

The Effectiveness of Spatial Agrarian Functions/National Land Agency in Resolving Land Disputes Through Mediation

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Abstract. The aims of this study are (i) to analyze and explain the effectiveness of the ATR/BPN function in resolving land disputes in Maros Regency, and (ii) to analyze and explain the factors that influence the effectiveness of the ATR/BPN function in resolving disputes through mediation. This research is an empirical research, namely legal research conducted with an approach to the legal reality in society. The data analysis technique used is descriptive qualitative, that is, after the data has been collected it is then poured in the form of a logical and systematic description, then analyzed to obtain clarity of problem solving, then deductive conclusions are drawn, namely from general things to specific things. The results of this study indicate that as a mediator, the ATR/BPN Office of Maros Regency has the function of assisting the parties in understanding each other's views and helping to find things that are considered important to them. Mediation within the land agency environment, in this case the ATR/BPN Office of Maros Regency, actually makes it easier for the community to resolve land disputes because at this time mediation efforts already have a legal umbrella equipped with adequate technical guidelines and instructions so that there is no doubt for the implementing apparatus to carry it out.

Keywords: National Land Agency, Mediation, Dispute Resolution

1. Introduction

Land is an important natural resource as a gift from God Almighty for the survival of mankind. This importance shows that there is a very close relationship between humans and land, because land is a place of settlement and a place of livelihood for humans [1].

In article 16 of Law Number 5 of 1960 on the Basic Regulations of Agrarian Principles or commonly called the Law of Agrarian Principles abbreviated (UUPA) is regulated on the rights to land that can be given to its citizens in the form of the most important Property Rights, Business Use Rights,

Building Use Rights, Use Rights, Rental Rights, Land Clearing Rights, the Right to Collect Forest Products and other rights not included in the above rights will be determined by Law as well as rights that are temporary in nature. as mentioned in Article 53 of the UUPA.

Handling land conflicts that occur clearly requires efforts that are not easy. Therefore, an understanding of the root of the conflict, the supporting factors and the triggering factors is needed so that strategies and solutions can be formulated. With efforts to resolve the root of the problem, it is hoped that disputes and conflicts that occur in the land sector can be suppressed as much as possible, while creating a conducive atmosphere and the realization of legal certainty and justice.

The regulation and management of the land sector through the presence of existing laws and regulations, especially in the Basic Agrarian Law (UUPA), is believed to be able to resolve land problems or disputes, both existing and future ones. The settlement of land disputes based on the applicable law is based on the constitution which affirms that the state of Indonesia is a state of law. This is clearly stated in Article 1 Paragraph (3) of the 1945 Constitution. The rule of law in principle has essential requirements, among others, there must be a minimum condition of a legal system where human rights are respected. Specifically regarding the authority to land agencies in resolving land disputes, the problem that often arises is whether there is a legal basis that stipulates that government institutions represented by the National Land Agency (BPN) agency, hereinafter written by the Ministry of Agrarian Affairs and Spatial Planning (ATR/BPN) are given authority to settle land disputes.

Settlement of land disputes is divided into 2, namely through out-of-court or non-litigation (negotiations or deliberation, conciliation, mediation, arbitration) and Courts or litigation.

If the deliberation effort does not find an agreement, then the person concerned or the disputing party can submit the problem to the court (District Court or State Administrative Court).

Here, several land problems can be resolved properly by the National Land Agency through out-of-court channels that are "win-win solutions", guaranteed confidentiality of the parties' disputes, avoided delays caused by procedural and administrative matters, resolved problems in a comprehensive manner in togetherness and still maintained good relationship. The only advantage of this non-litigation process is its confidentiality, because the trial process and even the results of the decision are not published.

Dispute resolution outside the court is generally referred to as alternative dispute resolution (APS). So far, the National Land Agency has resolved several land issues through mediation, where mediation is one part of alternative dispute resolution, in addition to negotiation, arbitration and courts [2].

Based on the description above, the following problems can be formulated: (1) How is the effectiveness of the function of the Agrarian Spatial Planning/National Land Agency of Maros Regency in resolving land disputes through mediation? (2) What factors affect the effectiveness of the function of the

Agrarian Spatial Planning/National Land Agency in resolving land disputes through mediation?

Based on what has been described in the background of this research, the objectives of this research are: (1) To analyze and explain the effectiveness of the ATR/BPN function in resolving land disputes through mediation. (2) To analyze and explain the factors that affect the effectiveness of the ATR/BPN function in resolving disputes through mediation.

Based on the description of the background above, the author would like to examine more deeply related to the issue of land ownership rights entitled "Juridical Analysis of Maros Court Decision on The Legal Sure of The Right to Land (Case Study of District Court Decision Number: 17 Pdt.G./2015.PN. MRS)

Based on the background description of the problem above, the authors formulate the following problem formulations: (1) What is the basis for the consideration of the panel of judges in deciding the case Number: 17Pdt.G/2015.PN.MRS? (2) What is the legal effect of the Maros District Court Decision Number: 17 Pdt.G/2015.PN.MRS? The objectives the researcher wants to achieve are: (1) To review the basis for the consideration of the panel of judges in deciding a case Number: 17Pdt.G/2015.PN.MRS. (2) To study the legal consequences of the Maros District Court Decision Number: 17 Pdt.G/2015.PN.MRS.

2. Literature Review

2.1. Legal Effectiveness Theory

The theory of legal effectiveness is the degree to which a group can achieve its goals [3]. The law can be said to be effective if there is a positive legal impact, at that time the law reaches its target in guiding or changing human behavior so that it becomes legal behavior. In relation to the issue of legal effectiveness, the identification of the law is not only with the element of external coercion but also with the court process. The threat of coercion is also an element that absolutely exists, so that a rule can be categorized as law, then of course this element of coercion is closely related to the effectiveness or not of a legal provision or rule.

The effectiveness of a law is determined by 5 (five) factors, namely: (1) The legal factor itself (Law) (2) Law enforcement factors, namely the parties that form and apply the law. (3) Factors of facilities or facilities that support law enforcement. (4) Community factors, namely the environment in which the law applies or is applied. (5) Cultural factors, namely as a result of work, creativity and taste based on human initiative in social life.

There are several elements of measuring effectiveness that depend on community conditions, namely: (1) Factors causing people to not obey the rules even though the rules are good. (2) Factors causing the community not to comply with the regulations even though the regulations are very good and the apparatus is already very authoritative. (3) Factors causing the community to not comply with good regulations, authoritative officers or officials and adequate facilities.

2.2. Theory of Legal Functions

Law serves as a tool of public order and order. The law as a guide to behavior for that the community must be aware of the orders and prohibitions in the law so that the function of law as a tool of public order can be realized. Law as a means to realize inner and outer social justice. Laws that are binding, coercive and enforced by authorized state instruments make people afraid to commit violations because of the threat of punishment (prison and others) and can be applied to anyone so that justice will be achieved. The awareness that causes the law to be an important instrument to achieve certain goals, makes the law a conscious and active tool used to regulate society, through the use of deliberately made legal regulations.

The function of law is a tool for the realization of the attainment of the objectives of the law itself. Law as a tool, theoretically usually put forward by experts, has several functions, including the following [4]: a. Law is a tool of social regulation, which is one of the legal functions that is oriented towards the rule of law, which means that the law functions as a tool or means of regulation. b. Law is a tool of social control oriented to law as a tool or means of exercising social control in the life of society. c. Law is a tool of social engineering developed by prof. Roscoe Pound in America, the function of law in this case is usually top-down, where the government uses law as a tool or means of desired social change. d. Law is a tool of social development oriented to law as a tool or means of legal development to become an agent in community development. e. Law is a tool of human humanism is a tool or means to uphold human values. This is the responsibility of the state in upholding and protecting human rights.

2.3. Conception of National Land Law

Land law only regulates one aspect of land, namely the juridical aspect called land tenure rights, so land law does not regulate land in all its aspects [5].

The communalistic nature of religion originating from customary law as one of the characteristics contained in the conception of the National Land Law is also shown in Article 1 Paragraph (2) of the Basic Agrarian Law (UUPA) which states that:

The entire earth, water and space, including the natural resources contained therein within the territory of the Republic of Indonesia as a gift from God Almighty, are the earth, water and space of the Indonesian nation and constitute national wealth.

Ulayat land as a form of rights originating from customary law, is land with members of indigenous peoples, which later in the conception of national land law is developed that all land within the territory of the state becomes land with all Indonesian people who are united to become the Indonesian nation as formulated in Article 1 Paragraph (1) Basic Agrarian Law (UUPA)

Dispute resolution can be done through 2 (two) processes. The oldest dispute resolution process is through the litigation process in court, then the dispute resolution process develops through cooperation (cooperative) outside the court. The litigation process results in an adversarial agreement that has not been able to embrace common interests, tends to cause new problems, is slow to

resolve, requires expensive costs, is unresponsive and creates hostility between the disputing parties. On the other hand, through an out-of-court process, it produces an agreement that is "win-win solution", guaranteed confidentiality of the parties' disputes, avoids delays caused by procedural and administrative reasons, resolves problems comprehensively in togetherness and maintains good relations [6].

2.4. Overview of Land Disputes and Conflicts

Disputes usually start from a situation where one party feels aggrieved by the other party. This is preceded by a subjective and closed feeling of dissatisfaction that can be experienced by individuals and groups. Feelings of dissatisfaction will surface when there is a conflict of interest. The party who feels aggrieved will convey his dissatisfaction to the second party. If the second party can respond and satisfy the first party, then the conflict is over. But if the reaction of the second party shows differences of opinion or has different values, what is called a dispute occurs. The dispute process occurs because there is no common ground between the disputing parties and potentially the two parties have different views or opinions which can lead to a dispute situation (Regulation of the Head of BPN RI Number 3 of 2011).

which is called "land", but also the body of the earth that is below it and the water and space above it, thus what is owned with land rights is the land, in the sense of a certain part of the earth's surface, but the authority to use what comes from that right is extended. to include the use of part of the earth's body that is below the ground, water and the space above it [7].

Public relations theory, emphasizes the existence of distrust and rivalry of groups in society. Adherents of this theory provide solutions to conflicts that arise by increasing communication and mutual understanding between groups experiencing conflict, as well as developing tolerance so that people can be more accepting of diversity in society.

2.5. Overview of Dispute Resolution

Litigation is a dispute resolution process in court, where all disputing parties face each other to defend their rights before the court. Where the authority to regulate and decide is exercised by the judge. The final result of a dispute resolution through litigation is a decision stating a win-lose solution [8].

In dispute resolution through non-litigation, we have recognized the existence of alternative dispute resolution (ADR), which in the perspective of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (ADR) is a settlement institution disputes outside the court based on the agreement of the parties to the exclusion of litigation dispute resolution in court.

In the dispute resolution process, the parties are free to choose which settlement process will be undertaken. When faced and lived by the parties without being assisted by other parties who have no interest, the dispute will continue. So that it is necessary to control social relations from the community itself, which means that basically the community itself is active in finding, choosing, and determining its own law [9].

2.5. *Conceptual Diagram*

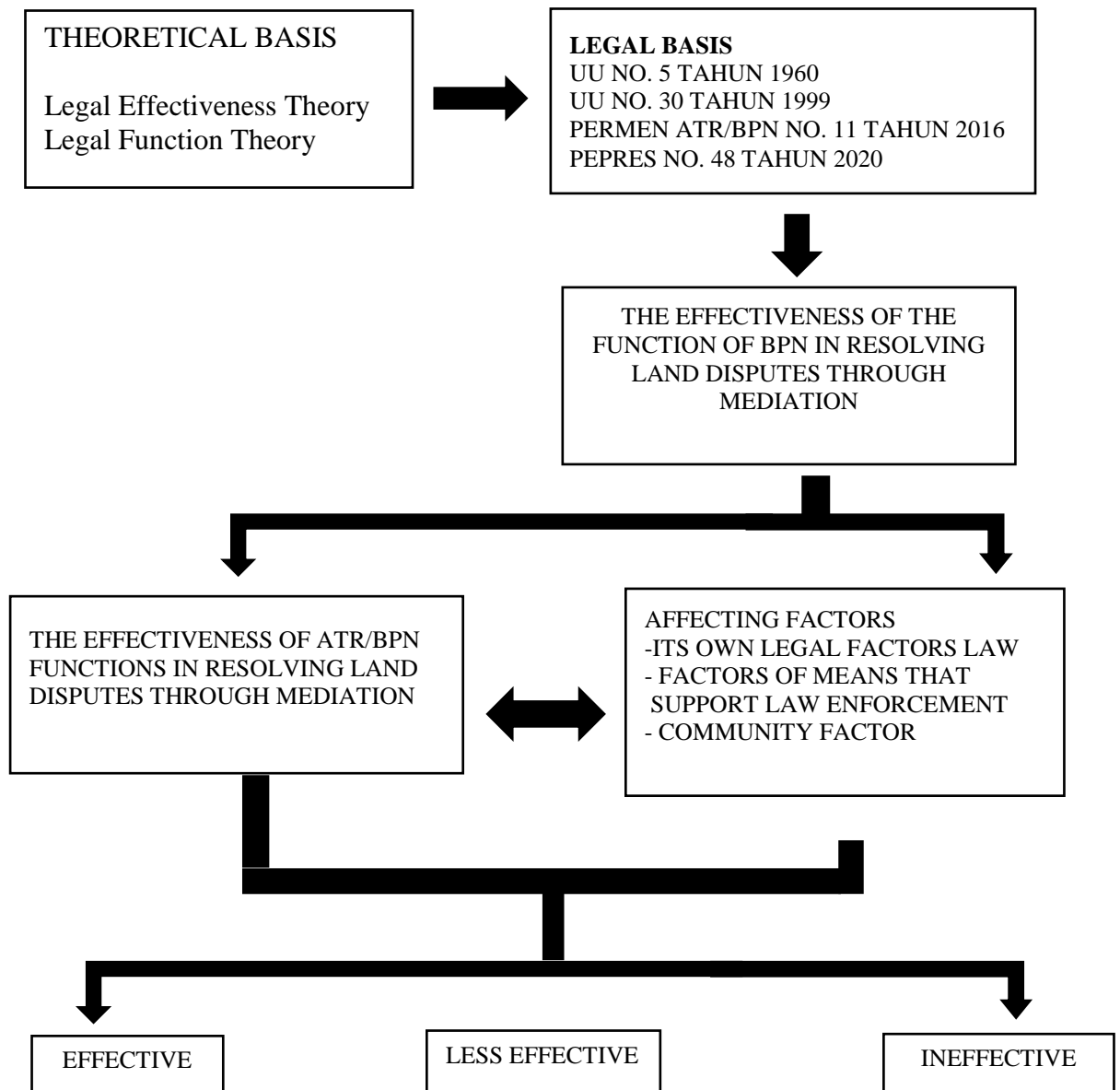


Figure 1. Conceptual Diagram

2.6. *Hypothesis*

Regulation of the Minister of Agrarian and Spatial Planning of the National Land Agency Number 11 of 2016 one of its functions is dispute resolution which is the authority of the National Land Agency, The author draws temporary conclusions, namely:

1. Whereas the ATR/BPN Office based on the Regulation of the Minister of Agrarian and Spatial Planning of the National Land Agency Number 11 of 2016 in carrying out its functions is less effective.
2. The factors that affect the effectiveness of the dispute resolution are:

- a. The initial steps that can be taken by the community before bringing the dispute to legal channels,
- b. Clearer and more efficient dispute resolution at the Land Agency.

3. Methods

3.1. Type of Research

The type of research used in this research is Empirical Legal Research [10].

3.2. Research Location

This research was conducted at the National Land Agency Office in Maros Regency. The research location was chosen with the following considerations and reasons:

1. The National Land Office of Maros Regency, as one of the agencies that has an important function in terms of administrative management and implementation of development for the public interest in Maros Regency.
2. As a vertical agency, it is increasingly facing rapid developments along with the dynamics of people's desires and needs for public services and facilities.

3.3. Population and Sampling Techniques

The population in this study are the parties involved in the settlement of land disputes in Maros Regency, namely the Head of the Land Agency of Maros Regency, Section V deputy for handling disputes, conflicts and land cases, communities related to land disputes and have been processed or have been resolved through the Office of the Republic of Indonesia. Agrarian Spatial Planning/Land Agency in Maros Regency.

The sampling technique used by the author is a purposive sampling technique with the intention of obtaining the designated subjects in accordance with the research objectives.

3.4. Legal Data Analysis

The data obtained both primary and secondary data will be analyzed descriptively qualitatively. Qualitative descriptive analysis is a data analysis method that groups and selects data obtained from field research according to its quality and truth, then is connected with theories and legal rules obtained from field studies in order to obtain answers to the formulated problems.

4. Results and Discussion

4.1. Function of Agrarian Spatial Planning/National Land Agency in Resolving Land Disputes Through Mediation in Maros Regency

In accordance with Presidential Regulation of the Republic of Indonesia Number 17 of 2015 concerning the Ministry of Agrarian and Spatial Planning (ATR) has the task of carrying out government affairs in the field of agrarian/land and spatial planning to assist the President in administering state government.

Meanwhile, according to the Presidential Regulation of the Republic of Indonesia Number 48 of 2020 concerning the National Land Agency, BPN has the task of carrying out government duties in the land sector in accordance with the provisions of the legislation. In carrying out these tasks, the settlement of land issues is one of the functions under the authority of the land office.

Settlement of land disputes can be resolved through the Land Office Institution (Mediation) and through the Court (general court or State Administrative Court), land dispute resolution through mediation by ATR/BPN needs to be based on legal authorities based on laws and regulations. This is important as a basis for mediators in resolving land disputes, because land is controlled by aspects of public law and private law, not all land disputes can be resolved through mediation institutions, only land disputes which are under the full authority of the right holder can be resolved through mediation institutions. The provisions in Article 2 paragraph (2) of Law Number 5 of 1960 concerning Basic Agrarian Principles concerning the state's right to control land have determined the state's authority to:

1. Regulate and administer the designation, use, supply and maintenance of earth, water and space;
2. Determine and regulate legal relations between people and earth, water and ;
3. Determine and regulate legal relations between people and legal actions concerning earth, water and space.

Based on the interview, Andi Nurul Hidayanti, Head of the Sub-Section for Handling Conflicts and Land Cases in Maros Regency, emphasized that the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency in terms of the function of the Land Office in resolving land cases through mediation has been effective. Because the Land Office as a mediator has facilitated adequately, directing the parties to resolve the case amicably. Furthermore, the purpose of mediation is so that not all land cases continue to be cases in court as an example of the parties who will argue in court but after being mediated, they have a mutual agreement through a peace deed, so there is no need to proceed to the court stage.

Based on data obtained at the Office of the National Land Agency of Maros Regency, most reports or applications submitted are hampered in the process, in this case there are applicants who do not have administrative completeness so that the land dispute settlement process cannot be carried out.

From the private aspect, land rights contain the authority for the right holder to use the land and carry out legal actions. So the control, ownership, use and utilization of land by the right holder is limited by statutory regulations. It is the interests of the community and the interests of the State that cause disputes in the land sector to not be fully resolved through a pure mediation institution. In disputes faced by the parties, dispute resolution does not always have to be done in court, but can be done between them on the basis of deliberation and consensus, and most importantly there is a sense of kinship because this method does not damage the kinship between them.

In a purely civil dispute, the decision to settle the dispute is left entirely to the parties. As contained in Article 1338 paragraph (1) BW. In addition, the

weakness of the mediation decision can also occur in the follow-up to the implementation of the decision. Whether the mediation decision can be enforced or not is based on their consistency in voluntarily accepting or implementing the agreed decision.

Mediation is a negotiated problem-solving process in which an impartial and neutral outside party works with the disputing parties to help them reach a satisfactory agreement.

The mediator helps the parties prioritize issues and focus on discussions of common goals and interests. The mediator will often meet with the parties. As a forum for information between the parties, the mediator will have more information about disputes and issues than the parties and will be able to determine whether there are grounds for an agreement to be reached [11].

Regarding the effectiveness of dispute resolution through mediation, according to Andi Nurul Hudayanti, it has been effective. Because what is a joint decision in mediation can be appealed if there is an agreement between the parties, a peace deed or Minutes is made and registered with the district court. After the clauses agreed by the parties have been made, the results are registered with the district court, if one day one of the parties does not heed the results of the agreement, it can be used as material for appeal in court. This mediation becomes executory in nature to be carried out because it does not have to go to court, but the parties must obey what they have agreed upon, so there is no need to go to court.

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The function of the mediator is to analyze and diagnose a particular dispute and then design and control the process and other interventions with the aim of guiding the parties to reach a healthy consensus. Dispute diagnosis is important to help the parties reach a consensus. The important function of the mediator is:

- a. Perform conflict diagnosis,
- b. Identification of problems and critical interests,
- c. Setting agenda,
- d. Facilitate and control communication,
- e. Invite the parties in the process of bargaining skills,
- f. Assist the parties in gathering important information,
- g. Problem solving to gather important information,
- h. Dispute diagnosis to facilitate problem solving.

Based on these legal developments, there is a need to optimize the dispute resolution system outside the court, namely alternative dispute resolution institutions.

Settlement of disputes through alternative dispute resolution, over time, is implicitly contained in Presidential Regulation Number 10 of 2006 concerning the National Land Agency. The organizational structure of the National Land Agency is formed by one deputy, namely: Article 21 paragraph (1) Presidential Regulation Number 10 of 2006 concerning the National Land Agency.

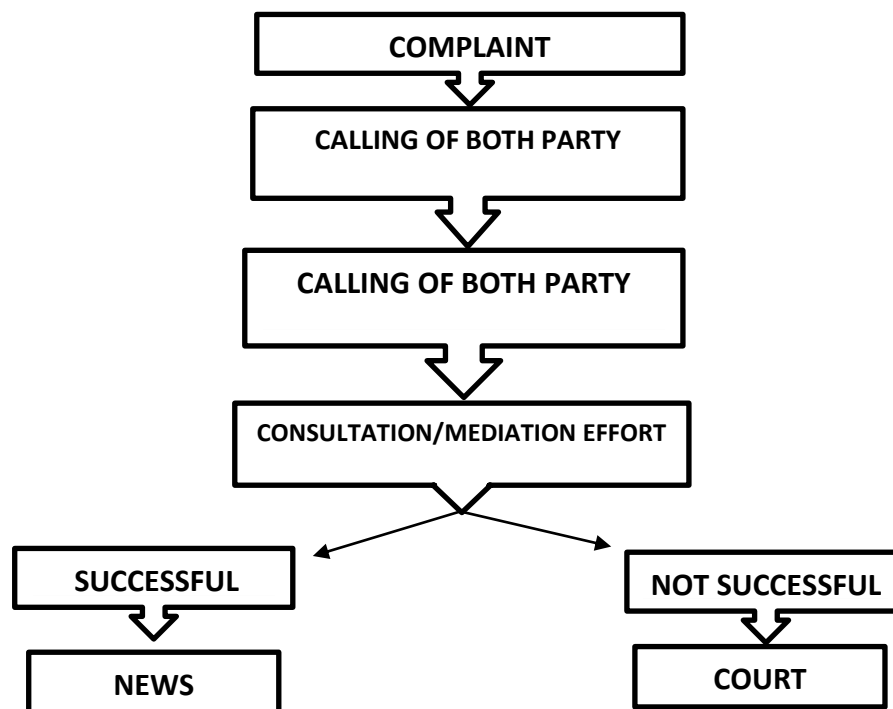


Figure 2. Procedure chart of land dispute resolution at the office of the National Land Agency of Maros Regency

Based on this idea, not all mediation decisions can be implemented by the Office of the National Land Agency. Only decisions that have taken into account the juridical, physical and administrative aspects can be implemented, based on the regulation of the minister of agrarian and spatial planning/national land agency no. 11 of 2016 concerning the settlement of land cases.

If in dispute resolution the disputing parties do not agree with holding a settlement through a mediation institution, then the disputing party can resolve the problem through other institutions such as litigation institutions or judicial institutions (interviews with heads of sub-sections of disputes, conflicts and cases at the district National Land Agency office. Maros , 02 September 2020)

Based on the description above, the author argues that land problems have emerged in many aspects with various forms. Various settlement efforts have been offered, either through traditional deliberations or mediation or land mediation established within the National Land Agency agency.

Settlement of legal disputes which are part of the tasks that must be borne by the National Land Agency, the deputy for the study and handling of land disputes and conflicts, and not only the obligations of the apparatus that require serious handling through consistent methods, procedures and consistent patterns.

4.2. Factors influencing the effectiveness of the Function of the Agrarian Spatial Planning/National Land Agency in Resolving Disputes Through Mediation in Maros district.

Mediation is an alternative land dispute resolution outside the court that prioritizes methods of deliberation to reach consensus and has the characteristics of a disputed dispute resolution time, structured, task-oriented and is a way of intervention that involves the active participation of the parties by appointing a third party as a mediator who help achieve the things that have been mutually agreed upon.

There are factors that affect the effectiveness of the implementation of mediation are as follows:

1. The Legal Factor

Based on Permen ATR/National Land Agency No. 11 of 2016 concerning the settlement of land cases, in particular the procedure for resolving land disputes by the Land Office of Maros Regency, does not have a significant difference.

Suhendra, as the head of the dispute, conflict and land case section of the Maros Regency stated that Permen No. 11 of 2016 is complete because it regulates basic matters, and this is in accordance with the nature of reaching an agreement between the parties. (interview 3 September 2020)

In article 17 paragraph (1) of the Minister of ATR/National Land Agency No. 11 of 2016, if the dispute is included in the authority of the ministry, the next process is dispute resolution. After the head of the regional office of ATR/National Land Agency or the minister resolves disputes and conflicts, the following will be issued:

- a. Decision on cancellation of land rights (article 24 paragraph (2));
- b. Decision on certificate cancellation (article 24 paragraph (3));
- c. Decision on changes to data on certificates, measuring documents, land books and/or other general registers (article 24 paragraph (4)) or;
- d. Notification letter that there are no administrative errors.

2. Facility Factor

Based on the results of field research, it appears that the facilities at the ATR/National Land Agency office of Maros Regency, especially in the dispute, conflict and land cases section are undergoing renovations so that they are temporarily diverted to an office building (ruko) located in the housing estate of Graha Cahaya Maros and far from the office. The ATR/National Land Agency, when presented is 60% adequate and 40% inadequate, due to the long distance from the ATR/National Land Agency office in Maros Regency, so that for the time being the implementation of mediation is carried out at the temporary office, especially the dispute section, conflicts and land cases but related to administration or ratification remain at the main office of

ATR/National Land Agency of Maros Regency. Because the dispute resolution process through mediation at the ATR/National Land Agency office is still small, the room facilities in the temporary office are only available 1 (one) and without partitions, as shown in the results of the study, the effectiveness of mediation at the land office is classified as feasible and is a reasonable result.

3. Community Factor

Judging from the community factor who still adheres to the understanding of the costs incurred when resolving disputes at the ATR Office/National Land Agency and to submit applications or reports, they still do not understand the process and administrative flow.

The results showed that the procedure for resolving disputes through mediation at the ATR/National Land Agency office in Maros Regency, was less effective. Judging from the graph of the number of cases that were mediated and failed to mediate in 2018-2020 and the graph of the number of cases that were successfully mediated by the ATR/Land Agency N Maros Regency in 2018-2020, it was strongly influenced by legal factors, facilities and community factors.

One of the functions of the ATR/National Land Agency office is to be able to mediate related to disputes, conflicts and land cases.

5. Conclusion

Based on the results of research and discussion in the previous chapter, it is concluded: (1) The function of the Office of the Ministry of Agrarian Spatial Planning/National Land Agency in resolving land disputes through mediation is still ineffective because there are still cases that have not been resolved and processed based on field facts. (2) The three factors that affect the effectiveness of the function of the Office of the Ministry of Agrarian Spatial Planning/National Land Agency in resolving land disputes are the legal factor, the factor of facilities that support law enforcement and the community factor. then the function of the Office of the Ministry of Agrarian Spatial Planning/National Land Agency will not be realized in Maros Regency. The suggestions from this research are (1) The Ministry of Agrarian Spatial Planning/National Land Agency is a state institution that has one of the functions of carrying out mediation, as a mediator of course maximizing its function as a place for dispute resolution and can function properly; (2) For the effectiveness of the Ministry of Agrarian Spatial Planning/National Land Agency, especially in Maros Regency, the community must be given counseling to the community regarding the resolution of land disputes through mediation because the administrative and mediation process for both parties does not require a fee.

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