

COMMUNITY EMPOWERMENT STRATEGIES THROUGH MEDIATION TECHNICAL GUIDANCE IN LAND DISPUTE RESOLUTION

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Abstract

The purpose of this research is to evaluate the effectiveness of mediation technical guidance in land dispute resolution in Sirah Padang Island Sub-district, Ogan Komering Ilir Regency, South Sumatra Province. The research method used was technical guidance and interactive discussions, as well as mediation simulations involving participants from various backgrounds, such as Village Heads, Heads of Neighborhood Associations, Community Leaders, Babinsa, and community members. Data were collected through interviews, questionnaires, and observations. The evaluation results showed that the mediation technical guidance program was effective in improving participants' understanding of land dispute resolution through mediation and sparked enthusiasm in disseminating information about land dispute resolution through mediation. In addition, the mediation simulation also helped participants in identifying problems in conflicts from various perspectives and increased participants' experience in finding alternative agreements between the parties. Therefore, mediation technical guidance can be effective in empowering communities to resolve land disputes and increase legal certainty in the land context.

Keywords: *Technical Guidance, Community Empowerment, Land Dispute, Mediation.*

INTRODUCTION

Land has a very valuable value in human life. In Indonesia, one of the problems that has recently been in the spotlight is the number of conflicts between people in an effort to maintain rights to a plot of land. Land disputes in Indonesia have recently become quite common, and are often covered by various media, both print and electronic media. The parties involved in these disputes vary, including individuals, groups, the private sector and the government. The various cases of land disputes that have occurred have at least opened our eyes that there are so many land disputes that cause social conflicts in the community.

Legal protection can be provided when there is legal certainty regarding the land rights concerned. Legal certainty is a condition in which the reality that occurs is in accordance with what is expected. In the context of land, its implementation is a guarantee of the correctness of land products. This means that the data contained in these products must match the actual conditions in the field. However, often the expected legal certainty does not match the

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expectations of the community, as evidenced by the reported disputes or land issues related to these land products. In Indonesia, this legal certainty should protect the people, especially those who are economically weak and marginalized by capitalist forces. The aim is to create justice in the land sector and prevent loss of access to such justice (Vel & Makambombu, 2010).

In Indonesia, various land law regulations have been issued in an effort to regulate and order the issue. These regulations began with Law No. 5 of 1960 on Basic Agrarian Regulations, better known as the Basic Agrarian Law (UUPA), as the National Land Law. The basic foundation for the government and people of Indonesia in formulating legal politics and policies in the land sector is contained in the 1945 Constitution Article 33 paragraph (3) which states that "The land, water and natural resources contained therein shall be controlled by the state and shall be used for the greatest prosperity of the people". This article is the constitutional basis for the formation of national agrarian law politics, which instructs the State to direct all policies and legal arrangements in the agrarian sector (especially land) for the prosperity of the people (Rokhmad & Jamil, 2008). With this legal basis, it is clear that the state has the right to regulate all matters related to land administration in Indonesia, by creating various laws and regulations. In principle, the state guarantees justice for all Indonesian people so that they can obtain rights that can improve their welfare on Indonesian soil.

Along with its development, many laws and regulations have emerged to regulate land administration in Indonesia, especially after the reformation period began. One of the implementing regulations issued is Presidential Regulation No. 10/2006 on the National Land Agency and Decree of the Head of BPN Indonesia No. 34/2007 on Technical Guidelines for Handling and Resolving Land Issues.

With the issuance of Presidential Regulation No. 10/2006 on the National Land Agency, land dispute resolution through alternative dispute resolution (ADR) mechanisms has received serious attention. This was marked by the establishment of a new deputyship within the National Land Agency, namely the Deputy for the Assessment and Handling of Land Disputes and Conflicts. According to Sumardjono (2008), the establishment of the deputyship indicates two things. First, the resolution of various land conflicts and disputes has become a very urgent issue that needs to be addressed. Second, there is a belief that not all disputes should be resolved through the courts.

In land dispute resolution, there are two types of alternatives, namely nonlitigation (Wowor, 2014) while litigation involves the courts. An example case of land dispute resolution through non-litigation can be mediation to reach a mutual agreement between the disputing parties. Meanwhile, litigation involves a court process to resolve land disputes. The National Land Agency also has a role in land dispute resolution, including through alternative channels such as Alternative Dispute Resolution (ADR) (Wowor, 2014).

Land disputes can arise due to various factors, such as incomplete regulations, inconsistencies in regulations, lack of response from land officials, inaccurate data, and erroneous land transactions. For this reason, resolving land disputes through various alternatives, including through the National Land Agency, is very important to resolve disputes effectively and efficiently (Darmika et al., 2022), (Mudjiono, 2007).

Mediation is one of the ways of resolving land disputes regulated in Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. Mediation is a dispute resolution process between the parties assisted by a neutral third party as a facilitator, where the final decision remains in the hands of the disputing parties. Mediation can be used for land disputes where the third party is BPN. The out-of-court mediation process is not regulated in legislation, the regulation is only limited to the use of mediation, but not the process of organizing mediation (Paramartha & Pemayun, 2018). Mediation can be pursued in the case of land dispute conflicts and can be said to be one of the effective and efficient alternative channels for resolving land disputes (Hajati et al., 2014); (KAJU, 2021)).

The Ogan Komering Ilir (OKI) district in South Sumatra Province has experienced severe forest and land fires, with the highest number of hotspots occurring between 2015 and 2019 (Hadiyani & Nurhayati, 2022). The district also faces non-litigation environmental disputes, mainly between oil palm plantation companies and local communities (Syaifuddin et al., n.d.). In addition, OKI is also vulnerable to catastrophic forest fires, especially in peatlands and forest fire-prone areas (Putri et al., 2020).

The Ogan Komering Ilir or OKI District Government, South Sumatra, noted that it has handled 51 cases of land disputes over the past 3 years. In 2020, the Land Office managed to resolve 9 cases. Meanwhile, the remaining 5 cases are in the mediation stage, 2 cases are in the data collection stage, 3 cases are in the data analysis stage, and 5 cases are in the examination stage (Wulandari, 2021). The practice of implementing land acquisition for the public interest can cause problems, especially land ownership disputes. Ownership disputes

occur in the community of Ogan Komering Ilir Regency, due to overlapping ownership of Land Certificate (SKT) and Certificate of Ownership (Abadan, 2020).

This community service was carried out in Sirah Padang Island Sub-district, Ogan Komering Ilir Regency, because land disputes often occur in the area due to land ownership status. The community in this area only conducts land sale and purchase transactions based on mutual trust and considers that proof of land ownership is only in the form of physical possession. Therefore, community service in this area is needed. The purpose of this community service is to provide understanding and empowerment to the community regarding land dispute resolution through the mediation method in Sirah Padang Island District, Ogan Komering Ilir Regency, South Sumatra Province.

RESEARCH METHODS

The method of implementing this service uses technical guidance and interactive discussions. First, lectures and discussions were held at the Meeting Hall of the Sirah Padang Island Sub-District Office. The material was delivered by law lecturers from the Faculty of Law, Sjakhyakirti University in collaboration with the Liaison Office of the Judicial Commission for the South Sumatra Region. This interactive discussion aimed to provide an understanding of how to resolve land disputes through mediation in accordance with applicable regulations.

Furthermore, technical guidance was provided regarding the fulfillment of requirements and procedures for dispute resolution through non-litigation channels using the mediation method. This activity was carried out by the South Sumatra Regional Judicial Commission Liaison Coordinator Office in collaboration with the Faculty of Law, Sjakhyakirti University. This Field Work Practice was assisted by Sirah Padang Island District, Ogan Komering Ilir Regency, South Sumatra Province. This activity was attended by 60 participants, consisting of 15 men and 45 women. To collect data, interview techniques, questionnaire filling, and observation were used. The data collected is qualitative data taken from questionnaire answers and can be quantified by giving a score to each question.

RESULTS AND DISCUSSION

This activity was carried out in Sirah Padang Island Sub-district, Ogan Komering Ilir Regency, South Sumatra Province, at the Sirah Padang Island Sub-district Meeting Hall. The participants of this activity consisted of Village Heads and their apparatus, Heads of

Neighborhood Associations, Community Leaders, Babinsa Sirah Padang Island, and the community. The materials provided included:

The concept of mediation in land disputes is one of the alternative ways of resolving land disputes regulated in Law No.30 of 1999 concerning Arbitration and Alternative Dispute Resolution (Asmawati, 2014). Mediation is the process of resolving disputes between two or more parties through negotiation or consensus with the help of a neutral party (mediator) (Hilari, 2019). The purpose of this mediation is to build cooperation in the realm of dispute discussion between parties and reach consensus and have the characteristics of an agreement (Darmika et al., 2022).

In the context of land disputes, mediation is used as a means to resolve conflicts and disputes related to land ownership, boundaries, and utilization (Gžibovskis, 2022); (Kusumojati & Rosando, 2021, 2021). The role of mediation in land disputes is to provide a platform for conflict resolution by applying a legal system that promotes justice and legal certainty. Mediation is seen as an alternative to lengthy and expensive lawsuits, offering a more efficient and cost-effective way to address land disputes. The goal of mediation is to find a win-win solution for both parties involved, based on the principles of justice. It is a relatively new legal institution that aims to promote social cooperation and mutual ethics in legal relations.

The legal rules that form the basis for the implementation of mediation in Indonesia, both at the court level and outside the court, include a comprehensive and multi-layered range of legal instruments. First, the Compilation of Islamic Law, particularly Articles 115, 131(2), 143(1) and (2), and 144, provides the legal framework for mediation in the context of Islamic law. This is important given that Indonesia has the largest Muslim population in the world, so Islamic law plays an important role in dispute resolution, especially with regard to personal and family matters.

Secondly, Supreme Court Circular No. 1 of 2002 on Empowering Peace Institutions demonstrates the judicial system's efforts to promote conflict resolution through more peaceful and participatory means. The Circular recognizes the importance of alternative dispute resolution (ADR) and guides judicial institutions to support and facilitate mediation.

Third, Supreme Court Regulation No. 2 of 2003 on Mediation Procedures in Courts, followed by Supreme Court Regulation No. 1 of 2008 on Mediation Procedures in Courts, underscores the commitment of the Indonesian judicial system to the formalization of mediation as an integral part of the judicial process. These regulations not only establish a

procedural framework for mediation, but also emphasize the importance of mediation as an effective means of resolving disputes more quickly, economically and satisfactorily for all parties involved.

Overall, the combination of the Compilation of Islamic Law, the Supreme Court Circular Letter, and the Supreme Court Regulation reflects the holistic and adaptive approach of the Indonesian legal system to mediation. It demonstrates recognition of the country's cultural and religious diversity and the need to provide flexible, inclusive and effective dispute resolution mechanisms.

The mediation simulation consisted of 5 groups, with each group consisting of 12 people. In this simulation, participants acted as mediators and co-mediators. Meanwhile, other participants acted as parties involved in the dispute. In the second stage, participants were given technical guidance on how to conduct mediation and draft a peace letter in land dispute resolution. The diverse backgrounds of the participants helped in identifying the problems in the conflict from various perspectives. This process also increased the participants' experience in finding alternative agreements between the parties. Participants in this activity included the Village Head and his apparatus, the Head of the Neighborhood Association, Community Leaders, Babinsa, and community members. They actively participated in finding alternative agreements in each group.



Figure 1. Material Participants

In general, it can be understood that a dispute is a situation where there is a party who feels aggrieved by another party which causes dissatisfaction. This difference of opinion can result in quarrels, arguments, and disputes arising between the two parties.

According to Indonesian law, mediation is the process of resolving conflicts between two or more parties by means of negotiation or agreement under the assistance of a third party (mediator) who has no decision-making authority. The main legal basis governing the

organization and implementation of mediation is contained in the Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency (Permen Agraria/Tata Ruang/Kepala BPN) No. 11/2016, which deals primarily with the resolution of land issues. Article 4 of the regulation explains that there are two methods to resolve disputes, namely through actions from the community in the form of complaints originating from themselves and actions from the Ministry as explained in Article 4 part a and also outlined in Article 5.

The process of land dispute mediation involves the use of a neutral third party, known as a mediator, to help resolve conflicts between parties. The mediator actively participates in the negotiation process and identifies the causes of the dispute, aiming to find a win-win solution based on the principles of justice (Munir et al., 2023). Mediation can be initiated either by the Ministry of Agrarian Affairs/Land Agency or by public complaint (Hartarto et al., 2023). The role of the Land Office and the National Land Agency as mediators is to create a legal system that promotes justice and legal certainty in resolving land boundary disputes (Kusumojati & Rosando, 2021). Factors that contribute to the success of the mediation process include building trust, cooperation, neutrality of the mediator, and empowering the parties involved in the dispute (Hasanah et al., 2019). Mediation is seen as a preferred alternative to litigation, as it is more cost-effective and time-saving (Octaleny et al., 2020).

The mediation process is divided into 3 (three) stages, the first being the pre-mediation stage. The pre-mediation stage is an important phase in the mediation process that contributes to a successful outcome. During this stage, the parties are oriented to the principles and objectives of mediation, their roles, and other important guidelines, which help in creating a smoother, organized, and fruitful mediation process (Dušková & Holas, 2023). Pre-contractual liability is another aspect related to the pre-mediation stage, where parties can seek compensation for the costs made to conclude a non-established or ineffective contract (Olivetti Regina et al., 2022). In addition, the pre-mediation stage involves laying the groundwork for a successful mediation by considering factors such as the temporal contours of the process, limitation periods, confidentiality, and costs (Zhang, 2023). Overall, the pre-mediation stage plays an important role in preparing the parties, clarifying their rights and responsibilities, and setting the foundation for a productive mediation process (Ubilava, 2022).

Second, the mediation implementation stage, the parties involved in the conflict meet and begin the mediation process. This stage involves several important steps such as

welcoming the mediator at the beginning, listening to and disclosing the stories of all parties involved, resolving the issues at hand, discussing and negotiating on the agreed issues, creating various options, reaching an agreement and drafting a decision, recording and reiterating the decision that has been made, and finally closing the mediation.

At the outcome stage of mediation, the parties to the conflict have met and begun the mediation effort. At this stage, there are several important steps such as; welcoming the mediator initially, presenting and disclosing the stories of all parties involved, organizing and resolving existing problems, discussing and negotiating on agreed issues, creating various options, finding an agreement and drafting a decision, recording and reiterating the decision that has been made, and finally closing the mediation. The results of the agreement must be registered at the Court in accordance with Supreme Court Regulation No. 1 of 2016.

In order to achieve optimal results, it is recommended to conduct simulations or practice in resolving land disputes through mediation. Extension participants will easily be able to practice the mediation, because they have done it before in solving problems that occur in their villages. Participants can make a peace agreement based on the mediation agreement and register it at the Court.

Based on the evaluation results, it was found that 50.5% of the participants understood very well, 13.5% understood, 27.2% understood quite well, 5.9 did not understand and 2.9% did not understand at all. In this community service activity, the focus is on increasing understanding and distributing information about out-of-court dispute resolution, especially mediation in the legal context. Another goal is to empower the community to be active in carrying out the role of socializing the benefits of out-of-court dispute resolution, especially through mediation. This was evident from the response of the participants who were very enthusiastic in the question and answer session (discussion) and technical guidance in the implementation of mediation, as well as bringing problems that occur in their environment to find solutions.

To follow up on the activities that have been carried out in order to strengthen and stabilize educating the community on the importance of resolving land disputes through mediation. Making and installing a land dispute resolution flowchart is expected to be an educational tool, especially for the community, especially at village offices, sub-district heads and community homes, to be able to remember the importance of mediation.

Based on the evaluation, it was revealed that 50.5% of participants had a very good understanding, 13.5% had a good understanding, 27.2% had a moderate understanding, 5.9% had a poor understanding, and 2.9% had no understanding at all of out-of-court dispute resolution, particularly through mediation. This community service program aims to raise awareness and disseminate information about this process. One of the objectives was to encourage community involvement in spreading the benefits of out-of-court dispute resolution through mediation. This can be seen from the high enthusiasm of participants in the discussion sessions and technical training on mediation, as well as their desire to resolve conflicts in their neighborhoods.

To expand the impact of the program and improve community education on the importance of resolving land disputes through mediation, it is proposed to create and place information boards on the land dispute resolution process in strategic places such as village offices, sub-district offices, and other public places. This aims to make the community more familiar with and remember the benefits of mediation in dispute resolution.

CONCLUSIONS

Technical guidance on mediation in land dispute resolution has significant benefits in empowering communities to resolve land conflicts. Through a holistic and adaptive approach, the program aims to increase community understanding of the importance of resolving land disputes through mediation, as well as to encourage active community involvement in out-of-court dispute resolution processes. The evaluation shows that the program has successfully increased participants' understanding and sparked enthusiasm in disseminating information on land dispute resolution through mediation. In addition, it is recommended to conduct simulations or practices in resolving land disputes through mediation so that participants can practice the mediation and achieve optimal results. Thus, the main conclusion is that mediation technical guidance can be effective in empowering communities to resolve land disputes and increase legal certainty in the land context.

ADVICE

Some suggestions for this service activity for the community of Sirah Padang Island Sub-district and for the Village Head based on the Village Government Law include:

1. Increase public understanding of land dispute resolution through mediation in accordance with applicable regulations, such as Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution.

2. Empowering the community to be actively involved in the process of resolving land disputes out of court, especially through mediation.
3. Encouraging village heads and their officials to disseminate information on the benefits of resolving land disputes through mediation to the village community.
4. Given the importance of mediation in resolving land disputes, it is proposed to create and place information boards regarding the land dispute resolution process in strategic places such as village offices, sub-district offices, and other public places.

Thus, the suggestion of this service activity can help the community of Sirah Padang Island Sub-district and the Village Head in understanding, applying, and disseminating information about land dispute resolution through mediation in accordance with the Village Government Law.

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