

## **Land Rights Dispute Resolution Through Mediation Process With Involving Third Parties for Buyers (Case Study in Blora District Land Office)**

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**Abstract.** The purpose of this study was to: 1) To analyze the role of a third party as a buyer in the resolution of land disputes in the District Land Office Blora 2). To analyze constraints and solutions in the settlement of land disputes by mediation in Blora District Land Office.

The research method approach used by the authors is empirical juridical approach. Specifications research using analytical descriptive. The data used is data qualitative, while the data collection techniques used were interviews and literature.

From the research we concluded that 1) A third party that acts as a creditor with good intention to buy the land on which the object is helpful in resolving issues of conflict between the parties, so that the conflict can be resolved without going through the litigation. 2) Obstacles encountered in the process of mediation in Blora district land office the address of domicile of the parties is less clear, the willingness of the parties to attend mediation, the emotions of the Parties and the willingness of the Parties to resolve the conflict by peaceful means. Notice mediation may be submitted to the village chief residence of the parties. Mediators should create an atmosphere of calm, relaxed but focused on the purpose of mediation.

**Keywords:** Mediation; The parties; Barriers; Solutions.

### **1. Introduction**

Indonesia is an archipelagic country located in Southeast Asia. Major islands located in Indonesia, Sumatra, Java, Borneo, Celebes, and Papua Island. Indonesia is located between two continents, Asia and Australia that are very strategic location of the Indonesian state and make it as the State Agriculture which has the potential of natural resources are very abundant.

Commodities results of Indonesia's natural resources come from a variety of sources: agriculture, plantation, forestry, fisheries and mining. Among the many commodities produced Indonesia there are crops derived from agriculture, plantation and forestry, all of which generated (derived) from land. Land has become a very important factor for human life, because it is not only used for a foothold and a place to stay alone but has a high economic value.

Because of the special nature of the soil and the close relationship between man and land, land rights has meant wealth that is priceless. In order to ensure legal certainty of the rights of the wealth that is priceless, one should be able to provide evidence that it was he who had that wealth. Without strong evidence that a person can lose their rights, especially if there are others who claim that the land was his and proved the truth of his claim.<sup>3</sup> The economic value of this land which can then lead to conflict and disputes.

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<sup>3</sup> Boedi Harsono, 2003, *Hukum Agraria Indonesia, Sejarah Pembentukan UUPA dan Pelaksanaannya*, Djambatan, Jakarta, p. 558

Conflict Coser by definition are "struggles involve; conflicts between two or more people over values, or competition for status, power, or scarce resources". If the conflict is already apparent (manifest), then it is called the dispute.<sup>4</sup> The cause of the conflict or the dispute very many kinds and multidimensional, such as the economy, politics, religion, ethnicity, class and so on. This then led to a conflict of interest (conflict of interest). Conflict or dispute is the actualization of a difference or conflict between two or more parties where conflict is a matter of urgency to be discussed given the increasing number and levels of conflict from day to day.<sup>5</sup>

Conflicts arising from the seizure of the land rights of course have an impact on society. The impact both socially and economically can cause harm to the public, thus requiring proper handling, fast, and economical.

Settlement of disputes or cases in general can be reached by the path of litigation or non-litigation. Strip settlement of disputes litigation is pursued by the courts through authorized law enforcement agencies, while non-litigation settlement of disputes out of court.

Dispute resolution outside the court has a variety of options such as consultation, custom hearing and so on. One way that developed at this time is through the ADR (Alternative Dispute Resolution) or translated into Indonesian be the Alternative Dispute Resolution (APS). The legal basis of the Alternative Dispute Resolution (APS) is regulated in Article 60 of the Law of the Republic of Indonesia Number 48 Of 2009 regarding Judicial Power, which states that:

"Alternative dispute resolution is an institution for settling disputes or differences of opinion in a procedure agreed by the parties, the settlement out of court by way of consultation, negotiation, mediation, conciliation or expert judgment."

One alternative dispute resolution of land provided by the Land Office is to mediation. Mediation (mediation) a dispute settlement mechanism with the help of a third party (the mediator) who does not take sides (as impartial) who participated actively provide guidance or direction in order to reach a settlement. Nevertheless, a mediator does not function as a competent judge make a decision, because the completion of the initiative remains in the hands of the parties to the dispute. Thus the result is a compromise solution.<sup>6</sup> In the case of dispute resolution mediation in a manner Land Office acts as mediator.

Various types of land disputes that have occurred have a complexity level of each course requires innovation to reach an agreement on the parties. Innovation dispute resolution is sought to give satisfactory results of the parties (win-win solution) so that the purpose of mediation is reached and the dispute can be resolved properly. One innovation that is created from mediation in Blora district land office, namely the inclusion of third parties (excluding dispute), which acts as a buyer of land is disputed. The entry of a third party (outside dispute) so as to make mediation locate completion point is very interesting and innovative, for the authors are interested in doing research with the title: "Land Rights Dispute Resolution Through Mediation Process With Involving Third Parties For Buyers (Case Study In Blora District Land Office)".

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<sup>4</sup>Maria S.W. Sumardjono, Nurhasan Ismail dan Isharyanto, 2008, *Mediasi Sengketa Tanah: Potensi Penerapan Alternatif Penyelesaian Sengketa (ADR) di Bidang Pertanahan*, Kompas, Jakarta, p. 2

<sup>5</sup>Bambang Sutiyoso, 2008, *Hukum Arbitrase dan Alternatif Penyelesaian Sengketa*, Gama Media, Yogyakarta, p. 2

<sup>6</sup>*Ibid.* p. 31

## Research methods

The method used in this study is an approach of empirical jurisdiction. Specifications research using analytical descriptive. First performed juridical approach to inventory the statutory laws and regulations (primary legal materials) associated with the object of research, then combined with the empirical approach in which a subject (respondent) research is Blora District Land Office.

Data collection techniques include primary data and secondary data, while the data obtained and analyzed qualitatively to answer the problem posed. A quantitative method for authors to learn what is conveyed by the respondents both orally and in writing and also acts done by respondents in relation to the object of this study as a whole.<sup>7</sup>

## 2. Results and Discussion

### 2.1. The role of the third party as a buyer in the resolution of land disputes in Blora District Land Office.

Land as one of the high-value investments, often become the object of dispute in the community. Various factors triggers strife and struggle for recognition of land tenure. One of them comes from the field of regulation of land at the beginning of the independence of Indonesia could have a lot of rules or a lack of uniformity.

As a country that respects indigenous peoples, Indonesia still recognize the rights of indigenous peoples, including indigenous lands belonging to indigenous peoples. The enactment of Act No. 5 of 1960 on Basic Regulation of Agrarian make regulations in the field of land has a unified whole and clear. One function of the lack of regulation in the field of land that is to create a legal proof (certificate) on the ownership of a plot of land.

In the submission process applicants who wish to apply for a plot of land certification should be able to explain the history or origin of the land applied for. The history of land acquisition must be in accordance with the fact the field to avoid conflicts. National Land Agency should perform checks carefully to future land ownership status has indeed been right and there is no objection from any party that can lead to conflict. If in the process of examination it turns out there is no objection from the other party then it can lead to a conflict that it can lead to a disputes.

Most of the root causes or land disputes that occur in Blora District Land Office is the struggle for recognition of rights between several parties. Weak evidence owned by the party making it in a position to draw. These conditions make the party even more reluctant to let go of his opinions.

For example there is a conflict between two parties recognize a piece of land. Party A (all the names will be suppressed in the interests of the parties) to admit having a plot of + 16 703 m<sup>2</sup> (approximately sixteen thousand seven hundred and thirty square meters) which is the former Land Property Rights of Indigenous C No. XX. Party A recognizes the land as land owned by his father genealogical generations of his family (heirs). Then there are those who argue Bs and claimed that the land had been bought by the grandfather of the grandfather's B side A with proof of purchase letter written using Java script (note purchase agreement under hand). Party a later report these controversies to Blora District Land Office to ask for help completion.

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<sup>7</sup>Soerjono Soekanto, 2014, *Pengantar Penelitian Hukum*, Penerbit Universitas Indonesia (UI-Press), p. 250

National Land Agency in this case the Blora District Land Office has no authority to decide a conflict over land. Land Office only has the capacity as mediator (mediator) so that the conflict resolution method used is mediation. As a mediator, Blora District Land Office domiciled neutral (impartial) and accommodate the will of the parties so as to draw a red thread that is expected to be the solution of the conflict.<sup>8</sup>

Described Pula in Technical Directive No. 05 / JUKNIS / DV / 2007 on the Implementation Mechanism of Mediation, that in certain cases by the authority (authoritative mediator authority) mediators may conduct intervention / interference in the process of seeking an agreement on the issue of the disputed (not unbiased), to put the deal to be achieved in accordance with the laws of the land. This means that after the consultation process carried out in mediation, the mediator (Blora District Land Office) to provide options for the completion of which is a summary of the opinion and the will of the parties.

In Case between Party A and Party B described above, the parties agreed to resolve the problem by way of a win-win solution. They do not mind if one of the parties will buy (indemnify) of most of the land being contested. The next obstacle is the land that became the object is very broad issues, namely + 16 703 m<sup>2</sup> (approximately sixteen thousand seven hundred and thirty square meters) so that either party A or party B cannot provide compensation corresponding to the value of the land.

Blora District Land Office as mediator gives an option to sell the land to a third party that is willing and able to buy the land with the appropriate values.

The third party means no relationship with the Parties (neutral), so the motive is really as a creditor with good intention to buy the land which is the object of the problem. In this case the third party and the party (Party A and Party B) is given the freedom to negotiate on the price of the land. After the price agreement then the process of land purchase is processed in accordance with applicable law and made on the notarial deed in order to have a strong legal force.

The role of the third party here is very helpful in resolving the conflict between Party A and Party B, whereby a third party know the history of the land becomes the object of conflict, but still good intention to buy it in order to be solving problems. In other words, the Third Party on this issue is a solution for the conflict between the parties, so that conflicts can be resolved without having to go through the path of litigation.

## **2.2.Obstacles And Solutions Mediation In The Settlement Of Land Disputes In Blora District Land Office**

The mediation process at the Land Office cannot be directly implemented if there is a report of one of the parties, but must go through several steps in advance in order to know the root of the problem and whether indeed these problems can be solved by mediation path.

Complainants advance<sup>9</sup> submit its report to the clerk of complaints in Blora District Land Office, hereinafter the complaint submitted to the competent authority. Officials authorized in this Section Chief of Land Management Troubleshooting and then create

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<sup>8</sup> Technical Directive No. 05 / JUKNIS / DV / 2007 on the Implementation Mechanism of Mediation

<sup>9</sup>Complainants are personally or body concerned and directly harmed or representatives from community groups for their rights, obligations and interests as well as the legal relationship with the land issue under the applicable regulations, report the complaint directly to the clerk. (Technical Directive No. 02 / JUKNIS / DV / 2007 on Procedures for Complaints Reception Counters Land Issues)

a schedule Case Holds to find out about the land issues, countermeasures and settlement in a discussion.<sup>10</sup> Case title held by the Land Office Blora (internal).

If the results of the Case Holds turns out the problem which is owned by the complainant can be considered resolved by mediation, the Land Office then call complainants and the parties concerned to be present in Blora District Land Office.

Barriers to implementation of the mediation appears at this stage. An issues must involve two or more parties, but who initiate a complaint to ask for settlement help usually only one party only. Other party bias refuse to present the reasons are less clear. Then the *domicile* of the parties is less explain, make the notification being sent does not immediately come to the party. These two aspects are very important obstacle in the implementation of the mediation process.

The next obstacle found on the implementation of the mediation process. According to Adi Nugroho Susanti, there are five barriers in the process of mediation which mediator's reactions, emotions of the Parties, Positions of the Parties, satisfaction of the Parties and the Power of the Parties.<sup>11</sup>

Based on research in Blora District Land Office main obstacle in the mediation process is the emotion of the Parties. Attitudes The parties uncooperative and defensive at the position can be motivated by an attitude of anger (anger and hostility), fear (fear), and a sense of suspicion or trust (distrust).<sup>12</sup> Emotions of the parties that lead to personal selfishness make the mediation process can be deadlocked. In addition, the problem of the parties also often guided by the price war themselves where they are basically reluctant to solve the problems by peaceful means.

The solution can be carried out in a notice of mediation if the domicile of the parties is not clear is present it to the village chief residence of the parties, and in the notification letter presented that mediation is a musyarwarah to seek a solution by peaceful means (win-win solution).

Solutions for face emotions of the parties, the mediator should create an atmosphere of calm, relaxed but focused on the purpose of mediation. The mediator should be able to understand the will of the parties, and present it in a neutral way that can be understood by the parties. Mediators also must remain calm and not be provoked, so that it can deduce the important points in mediation for subsequent offers finishing options that can benefit the parties in conflict.

### 3. Closing

#### 3.1. Conclusion

Based on the research results can be concluded as follows:

- The third party acting as a creditor with good intention to buy the land that became the object of the problem is very helpful in the resolution of conflicts between the Parties, where a third party know the history of the land becomes the object of conflict, but still good intention to buy it in order to be solving problems. In other words, the Third Party on this issue is a solution for the conflict between the parties, so that conflicts can be resolved without having to go through the path of litigation.
- Obstacles encountered in the process of mediation in Blora district land office the address of domicile of the parties is less clear, the willingness of the parties to

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<sup>10</sup> Technical Directive No. 03 / JUKNIS / DV / 2007 on the Implementation of Title Case

<sup>11</sup>Susanti Adi Nugroho, 2011, *Mediasi Sebagai Alternatif Penyelesaian Sengketa*, PT. Telaga Ilmu Indonesia, Tangerang, p. 134

<sup>12</sup>*Ibid*, p. 135

attend mediation, the emotions of the Parties and the willingness of the Parties to resolve the conflict by peaceful means. The solution can be carried out in a notice of mediation if the domicile of the parties is not clear is present it to the village chief residence of the parties, and in the notification letter presented that mediation is musyarwarah to seek a solution by peaceful means (win-win solution). Solutions for face emotions of the parties, the mediator should create an atmosphere of calm, relaxed but focused on the purpose of mediation. Mediators also must remain calm and not be provoked, so that it can deduce the important points in mediation for subsequent offers finishing options that can benefit the parties in conflict.

### 3.2. Suggestion

- Offers the option to include a third party (neutral) to the settlement of land disputes is a very good innovation, even so must the consent of the parties in question and the interests of third parties are protected.
- In the case of receiving the request from the complainant should be asked of the parties domicile address clearly and completely. Mediators should be able to master the situation and remain calm so that the goal of mediation in order to provide a solution to the parties is reached.

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