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## Authority Of the National Land Agency in The Implementation Of Mediation On Land Disputes In The City Of Gorontalo

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### ABSTRACT

This research aims to find out the authority of the National Land Agency in the implementation of mediation on land disputes and the obstacles of the Gorontalo City National Land Agency in the implementation of mediation against land disputes. The research method used is empirical. The results of the research obtained by the author include the Authority of the National Land Agency whose rights are attached to the Gorontalo City Land Office, is the Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency of the Republic of Indonesia Number 11 of 2016 concerning the Settlement of Land Cases is valid based on applicable laws and regulations. So that the Land Agency must resolve disputes that are complained about by the community without having to go through the judiciary if the parties are willing to be mediated by officers in the Land Office in question. Furthermore, the obstacles of the Gorontalo City Land Agency are still a lack of public awareness and understanding of mediation, the absence of the parties to the dispute, as well as the appointed mediator parties, still, the lack of certified mediator personnel and administrative complaints filed by complainants are incomplete.

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## I. Introduction

The establishment of a state in principle requires the creation of prosperity for all people. This was confirmed in the opening of the Constitution of the Unitary State of the Republic of Indonesia in 1945.<sup>1</sup>

Indonesia is a country that identifies the law as commander-in-chief so that the purpose of the law can be consumed by all people without any differences, which can provide legal purposes such as certainty, justice, and expediency.<sup>2</sup>

The Brights of Indonesian geese to land are the highest land tenure rights and include all land that is in the territory of the State and is common land, which is eternal and becomes the parent of other rights of ownership of the land. The right Bof Indonesiangeese to this land has a communalistic nature meaning that all the land in the Wilayah Negara Republic Indonesia, is the common land of the Indonesian people who unite as Bindonesian geese. In addition to being religious, all land in the region of Indonesia is a gift from God Almighty.

Land problems include relationships between individuals (individuals) of legal entities or communities as a collectivity.<sup>3</sup> Land problems in general are a problem on the cross-sectoral that concerns various agencies. In addition, land issues are governed by law. Either directly regulates land or other fields, but can not be separated from the problem of land. The relationship between the Indonesian nation and the land of eternal brsifat. That is, the relationship between the Indonesian nation and the land will last uninterrupted forever.<sup>4</sup>

Conflict can occur anywhere, anytime, and often unavoidable, conflict occurs because of a dispute that cannot be resolved by the parties. Everything that happens in life and the activities that humans live in can cause disputes and lead to conflict.

In essence, land dispute cases are conflicts of interest in the field of land, whether individuals, individuals with legal entities, or legal entities with legal entities. In connection with the above, for legal certainty mandated by UUPA, for land cases mentioned among others can be given a response/reaction/settlement to stakeholders (community and government) in the form of solutions through the National Land Agency and solutions through the Judicial Agency.<sup>5</sup>

Disputes related to land problems can be said to never disappear, it continues to

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<sup>1</sup> Fenty Puluhulawa, Dkk. (2020) *Penerapan Asas Keadilan, Kepastian Hukum dan Kemanfaatan Dalam Putusan Hakim Tindak Pidana korupsi*, Vol 3- No 2, Jurnal Fakultas Hukum Universitas Negeri Gorontalo, Hal 169

<sup>2</sup> Novendri M. Nggilu, Dkk, (2020), *Wajah Kekuasaan Kehakiman Indonesia*, Hal 2.

<sup>3</sup> Nirwan Junus, dan Dolot Alhasni Bakung, (2020) *Status Hukum Penguasaan Tanah Bantaran Danau Limboto Di Provinsi Gorontalo*, Jurnal Fakultas Hukum Universitas Negeri Gorontalo, Hal 16

<sup>4</sup> Urip Santoso, (2020), *Hukum Agraria Kajian Komprehensif kencana*, Jakarta, Hal. 77- 78

<sup>5</sup> Yudha Candra Arwana dan Ridwan Arifin, (2019), *Jalur Mediasi Dalam Penyelesaian Sengketa Pertanahan Sebagai Dorongan Pemenuhan HAM*, Jambura law Review, JALREV 1 (2) Hal 224

soar in the difficulty of the problem or quantity along with dynamics in the economic, political, and social fields, even religion. Recognizing the increasing breadth of community activities in various fields and the growing population and the need for land causes the position of the land to be very important, especially in its mastery, use, and ownership.<sup>6</sup>

The authority of the State in dealing with matters relating to land has been regulated in the laws and regulations. Data on the National Land Agency (BPN) emphasizes the results of land issues related to disputes, disputes, and cases throughout Indonesia (4,591) cases. This makes it a challenge for BPN to solve this problem through dispute operations.<sup>7</sup>

Related to land problems, it can be resolved in the Office of the National Land Agency through "Mediation". Mediation is the resolution of disputes involving neutral third parties who do not have the right to make their own decisions but help the parties to the dispute reach a settlement accepted by both parties.<sup>8</sup>

Peace or mediation in Indonesia is in principle regulated in the Civil Law Code (KUHperdata), Civil Procedure Reglement (RBG), and Updated Civil Event Reglement (HIR), as well as spread in other Laws and Regulations, including Supreme Court Regulation No. 1 of 2016 on Mediation Procedures in court.<sup>9</sup>

The implementation of the results of mediation should be returned in the good faith of the parties in resolving the problem. But regardless of the good faith, the mediation decision that is welcomed together will be more legal if, *first* able to be registered with the District Court (PN). So it is recommended that every result of mediation, especially those related to land problems need to be listed clausal to be followed up with registration in PN. *Both* results of mediation are followed up for legal action before the competent authorities, such as Notary or PPAT, in the event of a transfer of rights can be immediately registered with the Land Agency.<sup>10</sup>

To ensure the certainty of legal rights and certainty over land, UUPA has outlined the necessity to register land throughout Indonesia. As mandated in Article 19 of the UUPA, the Article lists the general provisions of land registration in Indonesia. Land registration is very important, when viewed from the point of view of land problems that are not recorded will facilitate the onset of

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<sup>6</sup> Suwitno Y. Imran dan Lisnawaty Badu, (2012), *Peningkatan Kesadaran Hukum Masyarakat Dalam Memahami Sengketa Hak Milik Atas Tanah Melalui Pemanfaatan Lembaga Bantuan Hukum Universitas Negeri Gorontalo*, Jurnal Fakultas Hukum Universitas Negeri Gorontalo, Hal 16

<sup>7</sup> Soerjono Soekanto, (2010), *Penelitian Hukum Normatif*, PT Rajagrafindo Persada, Jakarta, Hal. 67

<sup>8</sup> R.M Gatot P. Soemartono, *Arbitrase dan Mediasi di Indonesia*, 2006, Jakarta, PT Gramedia Pustaka Utama, Hal 2

<sup>9</sup> Arwana, Yudha Candra dan Arifin, Ridwan, *Jalur Mediasi Dalam Penyelesaian Sengketa Pertanahan Sebagai Dorongan Pemenuhan Ham*, Jambura Law Review, JALREF, 1 (2): 215

<sup>10</sup> Soerjono Soekanto, (2010), *Penelitian Hukum Normatif*, PT Rajagrafindo Persada, Jakarta, hal. 67

irregularities and abuses.<sup>11</sup>

This affects triggering land problems with other parties, especially legitimate landlords under the law. Related to the settlement of land disputes at the Gorontalo City Land Agency, prioritizing mediation efforts such as community and business empowerment, prioritizing effectiveness and confidentiality, close cooperation and not a formality, and putting forward solutions that must emphasize justice.

In connection with the description described above, researchers took the example of a land dispute case that occurred in Kota Gorontalo. In this case, the case related to the issuance of problematic land certificates, during the last two years, namely from Tahun 2019 to Tahun 2020.

Based on dispute data over the past two years, of the total cases entered into the Gorontalo City BPN, 20 cases were issued with problematic certificates, as many as 4 cases or 24% of the percentage of cases resolved in the Gorontalo City BPN through mediation, while 16 cases or 76% of the percentage of cases were resolved through the court. Meanwhile, when referring to the question of ben's authority in resolving land disputes about the blocking or preventing of the management of certificates on land whether the legal basis comes from those that have been mandated in the laws and regulations to manage and manage all matters in the field of land is the authority of the BPN.

The problem is related to how the Authority of the BPN Office in the implementation of mediation on land disputes in Gorontalo city and what are the obstacles of BPN Gorontalo city in the implementation of mediation on land disputes?

## II. Research Methods

The type of research the authors used in this study was empirical legal research. Empirical legal research is a type of research using an empirical approach. An empirical approach is an attempt made to approach a problem that is researched with a real legal nature or by the facts that live in society. In this type of research, often the law is conceptualized with what is written in the laws and regulations, or the law is conceptualized as a rule or norm that is a benchmark for behaving that is considered appropriate.<sup>12</sup> In this research, the data analysis technique used is a qualitative analysis method, which is an analysis by describing and providing an interpretation of the data obtained on the ground by basing on applicable

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<sup>11</sup>Nur Muhammad Kasim, dan Johan Jasin, (2020), Status Tanah Wakaf Melalui Perjanjian Dibawah Tangan Kota Gorontalo, Jurnal Fakultas Hukum Universitas Negeri Gorontalo, Hal 123

<sup>12</sup> Amirudin dan H. Zainal Asikin, (2004), *Pengantar Metode Penelitian Hukum*, PT Raja Grafindo Persada, Jakarta, Hal. 118

norms or applicable legal rules that are associated with the subject matter studied.<sup>13</sup>

### III. Discussion

#### A. Authority of BPN Office in The Implementation of Mediation on Land Disputes in Gorontalo City.

The National Land Agency (BPN) is a Non-Departmental Government Agency that is under and responsible to the President and headed by the Head (By Presidential Decree No. 10 of 2006). The National Land Agency is formed based on Presidential Decree of the Republic of Indonesia No. 26 of 2008 as an improvement from the Directorate General of Agrarian Affairs of the Ministry of Home Affairs and is a *non-departmental* government agency (LPND), which is located under and directly responsible to the President.

The legal principle that reads *point d'interet, point d action* (no interest then no action) explains that a lawsuit is filed to defend the rights (interests) of the person or legal entity that is violated. Therefore, if a person has no interest, then he cannot file a lawsuit.<sup>14</sup> The implementation of legal protection in the field of land rights in practice, in addition to being determined by legal substance, is also determined by the implementing apparatus and public legal awareness.<sup>15</sup>

In Perma Number 02 of 2003 the meaning of mediation is said in Article (01) Point (6) mediation is the resolution of the problem through the negotiation process of all parties with assistance by the mediator. The meaning of a mediator here is that you can find various solutions to solve problems.<sup>16</sup>

In disputes, where one of the parties is stronger and tends to show its power, a third party plays an important role in disposing of it. An agreement can be reached by mediation because the parties to the dispute succeed in achieving mutual understanding and jointly formulating dispute resolution without the direction of the other parties. The main role of a mediator is that he must be able to stimulate the parties to create creative solutions, and this can be done if he truly understands the interests of each of the parties to the dispute, so that the parties can find solutions that meet the interests of the parties that are fundamental.<sup>17</sup>

Based on data obtained by the author is researching the field, as the author has outlined on the number of dispute cases in the issuance of problematic certificates in the Gorontalo City BPN in 2019-2020, there are 2 (two) cases resolved by BPN Kota Gorontalo through mediation throughout 2019 to 2020. Out of a total of 7

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<sup>13</sup> *Ibid* Hal. 171

<sup>14</sup> Celina Tri Siwi Kristiyanti, (2008), *Hukum Perlindungan Konsumen*, Sinar Grafika, Hal 183

<sup>15</sup> Adrian Sutedi, (2014), *Peralihan Hak Atas Tanah dan Pendaftarannya*, Bandung, Sinar Grafika, Hal 17

<sup>16</sup> Supreme Court Regulation No. 2 of 2003, on Mediation Procedures in Court

<sup>17</sup> Celina Tri Siwi Kristiyanti, 2010, *Hukum Perlindungan Konsumen*, PT Rajagrafindo Persada, Hal 187

(seven) land dispute cases entered in the Gorontalo City BPN, 5 (five) cases were resolved through the court.

The pattern of mediation applied by the BPN, in this case, the Gorontalo City Land Office is by familial means or putting forward the principle of consensus deliberation, although the results of deliberations are the agreement of the parties, the nature is not binding as well as the results of mediation conducted in court. As we all know, mediation conducted in the Land Office is based only on the principle of the family which at any time for parties who are not satisfied with the results of the mediation, can still make a lawsuit to the court if in the future there are parties who feel not too satisfied with the agreement that has been done before in the deliberation. It is also based on the principle of fast and low cost as well as other mediations. However, there are differences in the process and stages, where the mediation system used by the Land Office is much simpler and easier.

Although mediation is an important part of efforts to resolve community disputes over land, in the process of implementing it is also necessary to pay attention to the provisions that are part of the regulations that must be obeyed and obeyed. As well as the provisions on the length of mediation are also a thing that needs to be considered because to ensure the effectiveness of mediation, consideration of the implementation time is also needed. Because the sooner it will be better for the parties to the dispute.

In connection with the time as intended above, of course, it has been mandated also in one of the Articles contained in Permen No. 11 of 2016 on settlement of land cases, namely in Article 38 Paragraph 2 which states that "The implementation of mediation is carried out for a maximum of 30 days". This is certainly a must in the mediation process. However, in practice, there is mediation that lasts more than 30 days, due to the obstacles that occur, in the Land Office or obstacles experienced by the parties involved, as described in the interview description above.

Thus, if viewed legally, the implementation of mediation, which is more than 30 working days, becomes inconsistent with the rules that have been determined. However, in the practice of law, the implementation of mediation like this, the results of such mediation are still enforced and accepted by the parties to the dispute without rejection, because of their incomprehension regarding the time conditions specified by law and other regulations in the mediation process.

Based on the Decree of the Head of the National Land Agency No. 4 of 2006 concerning the Organization and Working Procedures of the Regional Office of the National Land Agency and the Land Office. Gorontalo City Land Office is led by a Head who has the task of carrying out some of the duties and functions of the National Land Agency in the regency/city concerned. In addition to organizing the duties of the Land Office of Gorontalo City also has the following functions: a. Preparation of plans, programs, and budgeting in the framework of

the implementation of land duties; b. Services, permits, and recommendations in the field of land; c. The implementation of surveys, measurement and basic mapping of measurement and field mapping, soil bookkeeping, thematic mapping and surveying of soil potential; d. Implementation of land management, land reform, land consolidation, and land arrangement of coastal areas, small islands, borders of certain areas; e. The proposing and implementation of land rights determination, land rights registration, maintenance of land data, and administration of land assets of the Government; f. Implementation of land control, processing of state land, abandoned land and critical land, increased participation and community empowerment; g. Handling of conflicts, disputes, and land matters; h. Coordinating land user stakeholders; i. Processing of National Land Management Information System (SIMTANAS); j. Providing information and land information to the public, government, and private sector; k. Coordinating research and development; l. Coordinating the development of land human resources; m. Implementation of business, staffing, finance, facilities and infrastructure, legislation, and land services.

Based on the functions given as mentioned in Point g, the Land Office is given authority in handling conflicts in the form of disputes, and other land matters. Thus based on the function that can be carried out, it is clear that the Land Office has the right to receive community complaints in the form of land disputes and is obliged to resolve the disputed issue in mediation if the parties both complaining and the complainant agree to be ready to be mediated by the local Land Office.

This authority is certainly a plus for land institutions. Because in addition to being given the authority to record and register land, the authority to mediate disputes over land registration disputes, is also given to the National Land Agency whose authority is also attached to the Gorontalo Land Office.

The authority of the National Land Agency whose rights are also attached to the Gorontalo City Land Office is the Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency of the Republic of Indonesia Number 11 of 2016 concerning the Settlement of Land Cases. Where in the case of land disputes to be done through mediation in the Land Office, it has been mandated in Article 37 Paragraph (1) "Resolution of disputes or conflicts as referred to in Article 12 paragraph (5) can be done through mediation".<sup>18</sup>

As with other civil cases, land cases also carried out the mediation stage to reconcile the parties to the dispute, so that the issues raised or disputed do not continue until the judicial process. This is done by officers at BPN as one of the legal efforts that are accountable to be implemented before the case proceeds to the judicial stage. In addition to being a form of implementation regulated in the regulation, mediation efforts are also carried out so that problems or disputes that

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<sup>18</sup> Article 37 Paragraph (1) of Agrarian And Spatial Candy No. 11 of 2016.

are referred to the court do not accumulate and can be resolved without having to undermine the peace of the parties to the dispute.

Furthermore, as referred to in the above article, reaffirmed in Article 38 Paragraph (1), namely: "If the parties are willing to mediate as referred to in article 37 paragraph (1), then mediation is carried out based on the principle of deliberation for the good of all parties".<sup>19</sup>

The above article shows that the principle of deliberation in question aims to reconcile the two parties without having to extend the case of dispute, to save time and costs that must be incurred, and the friendship between the complainant and the complainant is not broken due to the dispute issues that are complained.

Based on the mandate of the above article, it is clear that the authority of the BPN attached to the Gorontalo City Land Office has a legal basis stipulated in Permen No. 11 of 2016 on Land Case Settlement, which is valid under applicable laws and regulations. Because this has been clearly and expressly regulated the authority in the Candy in question. Therefore, based on the authority granted, the Gorontalo City Land Office in addition to being given authority also must resolve as a disputed issue that is complained about by the community without having to go through the judiciary, if the parties are willing to mediate officers in the Land Office in question.

Furthermore, in the case of follow-up conducted by the Gorontalo City Land Office related to community complaints about land disputes conducted through invitations to the parties to the dispute, the mediation stage to both parties is carried out by the mediation schedule determined by the local Land Office.

Regarding the complaint as briefly described by the informant in the interview above, the details of the stages are more clearly contained in Article 6 to Article 8 of Permen No. 11 of 2016 concerning the Settlement of Land Cases.

As for the employee who became a mediator in the land dispute, in this case, led by the Head of The Land Office of Gorontalo City, Mr. Mohamad Hasan Mokoginta, as one of the research informants, were in the interview concerned conveyed that: "In terms of handling land disputes that are referred to the Gorontalo City Land Office, as the agency authorized on land registration, we receive complaints from parties who object to matters related to land registration in writing. As well as the acquisition of land rights that are still disputed, the Gorontalo City Land Office is obliged to accept complaints filed by the community as long as the rights to the disputed land are still within the jurisdiction of the Gorontalo City Land Office"<sup>20</sup>

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<sup>19</sup> Article 38 Paragraph (1) of Agrarian And Spatial Candy No. 11 of 2016.

<sup>20</sup> Interview dated February 9, 2021, with Mohamad Hassan Mokoginta as Head of Land Office of Gorontalo City.



Based on the above information, there is no reason for officers to reject community complaints related to land disputes related to land registration that is still a problem. This is the obligation of the Land Office because, in addition to being granted the right to register land, based on the information of the informant above, the Land Office is also given the authority to facilitate the disputed community for mediation if the parties complain to the local Land Office.

Thus, because of its mandatory nature, there is no reason to deny community complaints against land disputes in local jurisdictions. What's more, if the parties to the dispute do choose the Land Office as an agreed institution to resolve the issues.

## **B. BPN Barriers of Gorontalo City in the implementation of mediation on land disputes**

Apart from its authority, the National Land Agency also experienced many obstacles to the process of conducting mediation in conducting legal efforts, to seek justice and to resolve each case, officers who received complaints and who helped to resolve cases filed by the parties. The obstacles are:

1. The level of knowledge and awareness of public law is still low, due to the lack of socialization carried out by the Gorontalo City Land Office about the process of resolving land disputes by mediation as one of the alternatives to land dispute resolution outside the court.
2. Absence of the parties to the dispute, as well as the appointed mediator. Thus, the issue of the absence of the parties to the dispute, as well as the absence of the appointed mediator, becomes an important thing that also affects and hinders the implementation of mediation.
3. There is still a lack of certified mediators in the Office of the Gorontalo City National Land Agency. Because to become a substitute mediator can not necessarily be done, if other human resources appointed as substitutes are not ready to be mediators on the grounds of consideration of their abilities and expertise have not been able to make the concerned as a substitute mediator. The importance of a competent mediator cannot be underestimated, because being a mediator must be able to put oneself in a neutral position and be supported by the ability to carry out mediation. Because the results of the agreement in such mediation as much as possible produce a solution that does not harm both parties and wherever possible can reconcile the two parties without anyone feeling aggrieved or benefited unilaterally from the results of mediation conducted. Thus, the competence and ability of mediators, both emotionally, and academically, become very important things to pay attention to. Because to carry out the task as a mediator, it requires emotional intelligence and intellectual

intelligence to produce deliberation based on mutual agreement that upholds the values of brotherhood and justice as a common goal.<sup>21</sup>

4. Administratively or complaints filed by the complainant are incomplete. The importance of completeness of written complaints becomes one of the important conditions in making complaints. Because of the importance of written complaints about mediation, it is very important to clarify the chronology of the problems in the complaint. Because the basis of the examination in mediation later, is the subject of the case outlined in the written complaint. So that clarity on the problem to be complained about becomes a very important point to be explained in the written complaint. Thus, if the complaint submitted in writing does not contain a clear chronology of the problem, then the officer who receives the complaint will return the complaint entered to be clarified again by the complainant. After the improvement of the complaint and considered clear in outlining the substance of the problem to be mediated, then the officer will provide a complaint receipt as evidence and handle the complainant, that the complaint has been received and waiting for further process.

#### IV. Conclusion

Based on the results of the study as discussed above, the researcher concluded it as follows:

The Decision of the Head of the National Land Agency No. 4 of 2006 concerning the Organization and Working Procedures of the Regional Office of the National Land Agency and the Land Office. In addition to organizing the duties of the Land Office of Gorontalo City also has the function of one them handling conflicts, disputes, and land cases.

Apart from its authority, the National Land Agency also experienced many obstacles to the process of implementing mediation such as The level of knowledge and awareness of public law is still low; Absence of the parties to the dispute; There is still a lack of certified mediators in the Office of the Gorontalo City National Land Agency. Administratively or complaints filed by the complainant are incomplete.

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