



## **Analysis of Obstacles to Legal Optimisation in Mediation of Land Disputes in Biau District, Buol Regency**

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**Abstract:** The purpose of this study is to determine what factors impede the optimization of the law of land dispute resolution through mediation in biau district, buol Regency. This study uses empirical research methods using a qualitative approach. The result of this study is that the Biau District Office of Buol Regency has performance problems in resolving land disputes through mediation which is an important factor because it is one of the districts located in the capital of Buol Regency. The Biau district government in handling land dispute mediation cases is not optimal and efficient in its performance of its duties, especially in resolving disputes will greatly affect the success of agrarian cases in biawu district. One of the main problems that occurred in 2018, 2019, and 2020 is a problem that almost every year increases. This can be a reference to Article 12 paragraph 5 which states that disputes or conflicts are not the authority of the Ministry of Agrarian affairs, for that the district government can mediate against people who have cases or agrarian problems.

**Keywords :** Mediation; Dispute; Agrarian

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## 1. Introduction

Land or territory is the main element of a country. For the Indonesian nation, which is a country called an agrarian nation or an archipelago, land has a very important position in the context of organizing human life and life. On the other hand, for the state and development, land is also the basic capital for the implementation of state life in the framework of the integrity of the Unitary State of the Republic of Indonesia (NKRI) and to realize the greatest prosperity of the people. Therefore, with such a position, the control, ownership, use and utilization of land are guaranteed legal protection from the government.<sup>1</sup>

With the concept of the Unitary State of the Republic of Indonesia, namely the State of law that is oriented towards public welfare as stated in the Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency No. 11 of 2016 concerning Settlement of Land Cases states that the settlement of disputes and conflicts is carried out based on the ministry's initiative, first the Ministry of Agrarian Affairs conducts monitoring to find out disputes and conflicts that occur in certain areas. In addition, referring to the provisions of Article 12 Paragraph (5) of the Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency (BPN) that in disputes or conflicts not under the authority of the ministry of agrarian affairs, the ministry can take the initiative to facilitate the settlement of disputes or conflicts through, it will not be separated from legal disputes over land which is a fundamental problem in society, especially in the field of land. In this form of state, the government will enter almost all aspects of life and livelihood of the people, both as individuals and as a community. High citizens always defend their rights, while the government must also carry out the interests of the implementation of public welfare for all citizens.<sup>2</sup>

In order for the order kehidupan of community life to take place in harmony, it is necessary to protect the implementation of community interests. This can be realized if there is a guideline, rule or standard that is adhered to by the community. As hak a basic right, the right atas to land is very meaningful as a sign of existence, freedom, and dignity of a person. On the other hand, the state is obliged to provide kepastian legal guarantees for the right to land itu even though the right is not bersifat absolute because it is limited by the interests orang of other people, society and the state. In everyday reality, land problems arise and are experienced by all levels of society. Land dispute is an issue that always arises and is always actual from time to time, along with the increase in population, development development, and the meluasnya widening access of various parties to obtain land as modal authorized capital in various interests.

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<sup>1</sup> Sagita Citra Utama, "Upaya non Litigasi dalam penyelesaian Sengketa Perampasan Tanah (Studi Implementasi pasal 1 (10) UU No. 30 Tahun 1999 di Desa Sumber Malang Kecamatan Wringin Kabupaten Bondowoso Non Litigasi)" (Fakultas Syariah Program Studi Hukum Tata Negara, 2021).

<sup>2</sup> Depri Liber Sonata dkk., "Optimalisasi peran mediator desa dalam penyelesaian sengketa di Desa Hanuran Kecamatan Teluk Pandan Kabupaten Pesawaran," *Jurnal Sumbangsih* 3, no. 1 (2022): 32–36.

Land problem is a problem that is quite complicated and sensitive nature, because it concerns various aspects of life both social, economic, political, psychological and so on, so that in solving land problems not only must pay attention to the juridical aspects but also must pay attention to various other aspects of life so that the resolution of the problem does not develop into unrest that can disrupt the stability of society. The emergence of various problems regarding land shows that the use, control and ownership of land in our country has not been orderly and directed. There are still many overlapping land uses in various interests that are not in accordance with their designation.<sup>3</sup>

Besides that, the facts also show that land tenure and ownership are still lame. There is a small group of people who own land in a wild and excessive way, and there is also a large group of people who only own a very limited amount of land. Indeed, many do not have it at all, so they are forced to live as tenants. Not infrequently, and not strange, arises the subject of land tenure by certain persons unilaterally. But it can be said that disputes in the land sector have never subsided, and even have a tendency to increase in the complexity of the problem and its quantity along with the dynamics in the economic, social and political fields.<sup>4</sup>

Complaints of land issues are basically a phenomenon that questions the correctness of a law related to land. This can be in the form of such land products, a history of land acquisition, tenure, ownership, use and utilization of land, land acquisition and so on. In short, almost all aspects of land can be a source of land disputes, such as wrong land boundaries and wrong inheritance. Therefore, the land needs to be regulated as well as state institutions that are specifically involved and authorized in land or land handling issues.

In accordance with Presidential Regulation No. 10 of 2006, the establishment of the National Land Agency (BPN) is strengthened by taking into account the side and aspects of aspirations and the role of the community in order to support the general welfare. So that BPN plays a role in helping and serving the community in getting their rights in the land sector, as well as in helping the community to be able to find a solution if there is a dispute between communities regarding their rights in the land sector.

**Table 1**  
**Data on cases of land dispute resolution through out-of-court mediation in**  
**Biau sub-district, Buol district**

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<sup>3</sup> Wa Ode Fatihatul Khaerunnailla, "Optimalisasi Peranan Lembaga Adat Kadie Mandati (SARA) dalam Penyelesaian Sengketa (Studi Di Wilayah Adat Mandati Kecamatan Wangi-Wangi Kabupaten Wakatobi)" (Brawijaya University, 2015).

<sup>4</sup> RIKE HERLINA, "Penyelesaian Sengketa Aset Daerah Antara Pemerintah Kabupaten Rejang Lebong Dengan Pemerintah Kabupaten Kepahiang (Studi Kasus Kepemilikan Gedung Rumah Sakit Umum Daerah Kabupaten Rejang Lebong Kecamatan Merigi Kabupaten Kepahiang)" (IAIN BENGKULU, 2020).

No	Year No	Cases that have not been mediated
1	2018	5 cases
2	2019	7 cases
3	2020	9 cases

**Source:** *Biau District Data*

All problems require a complete solution. If the problem is in the field of land because of its existence, land has a very close relationship with human life and life, there are various resolution channels that can be taken to resolve the land problem. One of them is alternative dispute resolution or mediation.

In addition to dispute resolution through court/litigation, the national legal system recognizes dispute resolution through extrajudicial institutions as regulated in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. One of the alternative dispute resolution (land) is through mediation. Mediation as an alternative dispute resolution offers a unique way of resolving disputes. Because the process is relatively simple, the time is short and costs can be reduced. Dispute resolution through mediation in the land sector must often be carried out by officials of the National Land Agency, but in conversation it is not well known by the public. This is due to a narrow understanding of dispute resolution itself, a lack of confidence in the effectiveness of the implementation of mediation decisions and concerns about confusion and utilization of existing arbitration institutions.<sup>5</sup>

The Biau Sub-district Office of Buol Regency is experiencing performance problems in resolving land disputes through mediation, which is an important factor because it is one of the sub-districts located in the capital city of Buol Regency, the Biau Sub-district Government in the performance of overseeing mediation of dispute resolution will greatly affect the success of the Agrarian Case. One of the main problems that occurred in 2018, 2019 and 2020 is a problem that increases almost every year. This can be a reference to Article 12 Paragraph 5 which states that disputes or conflicts are not the authority of the Ministry of Agrarian Affairs, for this reason the sub-district government can mediate against people who have agrarian cases or problems.

In the context of land-related legal issues, the utilisation of out-of-court or alternative conflict settlement mechanisms holds considerable significance and feasibility. The prevalence of diminished public confidence in the judicial system

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<sup>5</sup> Utama, "Upaya non Litigasi dalam penyelesaian Sengketa Perampasan Tanah (Studi Implementasi pasal 1 (10) UU No. 30 Tahun 1999 di Desa Sumber Malang Kecamatan Wringin Kabupaten Bondowoso Non Litigasi."

has led to an increased reliance on alternative methods of resolving disputes outside of the courtroom, such as negotiation, mediation, arbitration, or other similar mechanisms. In the resolution of disputes, particularly those pertaining to land, which are widely acknowledged as the most intricate conflicts within a community, it is evident from the numerous complaints across various scenarios that the involvement of a third party is essential. This third party serves to facilitate the exploration of diverse alternative dispute resolution methods, ultimately aiming to achieve a mutually beneficial outcome, commonly referred to as a "win-win solution," which is highly sought after by the community.<sup>6</sup>

In practice, the settlement of land disputes through ADR, especially through mediation, shows a tendency that the community has gained a place. Formally, BPN through Presidential Regulation No. 10/2006 on the National Land Agency has established the Deputy for Assessment and Handling of Land Disputes and Conflicts in the BPN organizational structure. And in its technical implementation, BPN has issued Technical Guidelines for Handling and Settlement of Land Issues through the Decree of the Head of BPN RI No. 34 of 2007. Based on this understanding, dispute resolution through mediation needs to be popularized, especially for land dispute resolution.<sup>7</sup> This is because in addition to its possible utilization, the main tasks and functions of the National Land Agency can include dispute resolution in this way. Given that Indonesians are famous for resolving problems through deliberation to reach consensus, the utilization of mediation institutions can be an alternative that has a positive impact on land dispute resolution.

## 2. Method

The type of research used in this research method is empirical research method with qualitative approach. According to Mukti Fajr and Yuliyanto Achmad the empirical approach of legal research aims to understand law in a practical way or, more precisely, to observe and investigate how law functions in society.<sup>8</sup> The qualitative approach is a descriptive analysis technique in which real behavior is investigated and studied in its entirety along with information provided by the respondent orally or in writing.<sup>9</sup> Based on the purpose of the study, the author uses empirical legal research by collecting factual real data obtained by carrying directly to the field to make observations (observations) and interviews.<sup>10</sup>

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<sup>6</sup> Musmuliadi Musmuliadi, Djumardin Djumardin, dan Aris Munandar, "Analisis Yuridis Penyelesaian Sengketa Tanah Akibat Sertifikat Ganda (Studi di Kementerian ATR/BPN Kabupaten Lombok Tengah)," *Jurnal Risalah Kenotariatan* 4, no. 1 (2023).

<sup>7</sup> Tian Nurmawan, "Efektivitas mediasi dalam penyelesaian sengketa perceraian di pengadilan agama karawang" (Jakarta: Fakultas Syariah dan Hukum UIN Syarif Hidayatullah, 2017).

<sup>8</sup> N. D. Mukti Fajar dan Yulianto Achmad, *Dualisme penelitian hukum: normatif & empiris* (Pustaka pelajar, 2010).

<sup>9</sup> Ishaq Ishaq, *Metode Penelitian Hukum Dan Penulisan Skripsi, Tesis, Serta Disertasi* (Alfabeta, 2017).

<sup>10</sup> Mukti Fajar dan Achmad, *Dualisme penelitian hukum: normatif & empiris*.

### 3. The Authority of the Sub-District Head as a Mediator in Land Disputes

The sub-district head is the head of government at the sub-district level whose authority is regulated in the provisions of Article 221 paragraph (1) of Law Number 23 of 2014 concerning Regional Government that the regency/city area forms a sub-district in order to improve the coordination of governance, public services, and empowerment of village/kelurahan communities.<sup>11</sup>

- a. The sub-district is led by a sub-district head who calls the sub-district head who is under and responsible to the Regent/mayor through the regional secretary.
- b. Regent / mayor shall appoint the head of the civil servants who master the technical knowledge of government and meet the staffing requirements in accordance with the provisions of legislation.
- c. The appointment of the sub-district head which is not in accordance with the provisions as meant in Paragraph (2) is canceled by the governor's decision to appoint him as a representative of the central government.

So it can be said that the sub-district was formed to facilitate the Coordination of governance at the sub-district level and below. So that the sub-district head as head of the sub-district government has the task and authority of coordination. The authority of the sub-district head is regulated in the provisions of Article 225 of law no. 23 of 2014, namely;<sup>12</sup>

- a. The subdistrict head as referred to in Article 224 paragraph has the following duties;
  - 1) Organizing general government affairs as referred to in Article 25 paragraph (6);
  - 2) Coordinating community empowerment activities;
  - 3) Coordinating efforts to organize public peace and order;
  - 4) Coordinating the implementation and enforcement of local regulations and regulations;
  - 5) Coordinating the maintenance of public service infrastructure and facilities;
  - 6) Coordinating the implementation of government activities carried out by regional apparatus in the sub-district;
  - 7) Fostering and supervising the implementation of village and/or kelurahan activities;
  - 8) Carry out government affairs which are the authority of the regency / city which are not carried out by the work unit of the regency / city regional apparatus in the sub-district; and
  - 9) Carry out other duties in accordance with the provisions of laws

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<sup>11</sup> Kurniati Kurniati, Baso Madiung, dan Zulkifli Makkawaru, "Analisis Penyelesaian Sengketa Tanah Melalui Jalur Mediasi di Desa Bontomanai Kecamatan Manngarabombang Kabupaten Takalar," 2021.

<sup>12</sup> Hendi Sastra Putra dkk., "Peranan Kantor Pertanahan Kota Bengkulu Sebagai Mediator Dalam Penyelesaian Sengketa Tanah," *AL IMARAH: JURNAL PEMERINTAHAN DAN POLITIK ISLAM* 7, no. 1 (2022): 99–113.

and regulations.

- b. Funding for the implementation of general government affairs as referred to in paragraph (1) letter a is borne by the APBN and the implementation of other tasks as referred to in paragraph (1) letter I is borne by the assignee.
- c. The sub-district head in carrying out his duties as referred to in paragraph (1) is assisted by the subdistrict head.

In addition to the tasks mentioned above, camat also received delegation of authority, this is regulated in Article 226 of law no. 23 of 2014 as follows;<sup>13</sup>

- a. In addition to carrying out the duties referred to in Article 225 paragraph (1), the sub-district head receives delegation as the authority of the Regent/mayor to carry out part of government affairs under the authority of the Regency/city.
- b. The delegation of authority of the Regent / mayor as referred to in Paragraph (1) is carried out based on the mapping of public services in accordance with the characteristics of the sub-district and/or the needs of the community in the sub-district concerned.
- c. The delegation of authority of the Regent/mayor as referred to in Paragraph (2) shall be determined by the decision of the Regent/Mayor based on government regulations.

And other authorities by the sub-district head are regulated by Government Regulation Number 17 of 2018 concerning sub-districts.

The authority of the sub-district head is a legal power in taking legal action or legal decision. The authority is valid when it has a legal basis that commands it to take legal actions or decisions. If there is no legal basis, then all actions or decisions taken by the sub-district head cannot be binding or have no legal force. For this reason, it is necessary to know how the authority of a subdistrict head in taking actions or decisions, it must be seen the duties and authorities given by the laws and regulations.<sup>14</sup>

Related to the duties and responsibilities set forth in the provisions of Article 10, Article 11, and Article 12 of Government Regulation Number 17 of 2018 concerning sub-districts, the duties and authorities of the sub-district as described in the previous chapter have been explained. Here the author deliberately lists the duties and authorities of the sub-district head to be the touchstone of whether the sub-district head has the duty and authority in terms of land dispute resolution let alone become a mediator in it.

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<sup>13</sup> Danar Aswim, Abdullah Muis Kasim, dan Martha Florita, "Peran Pemerintah Desa dalam Menyelesaikan Sengketa Kepemilikan Tanah di Desa Ribang Kecamatan Koting Kabupaten Sikka," *CIVICUS: Pendidikan-Penelitian-Pengabdian Pendidikan Pancasila dan Kewarganegaraan* 10, no. 1 (2022): 9–13.

<sup>14</sup> Ari Darmawan, "Peran Camat Sebagai Mediator Penyelesaian Sengketa Pertanahan Di Tarakan Utara," 2014.

Based on the provisions of Article 11 paragraph (3) Permen ATR/KBPN RI No. 11 of 2016 concerning the settlement of land cases has determined that “disputes or conflicts within the authority of the ministry as referred to in Paragraph (1) include: procedural errors in the process of measuring, mapping, and / or calculating the area, procedural errors in the process of registering the affirmation and / or recognition of rights to land formerly owned by the adat, procedural errors in the process of determining and/or registration of land rights, procedural errors in the process of determining abandoned land; overlapping rights or certificates of rights to land on which one of the bases of Rights is clearly an error, procedural errors in the maintenance of land registration data, procedural errors in the process of issuing replacement certificates, errors in providing land data in the process of granting permits, misuse of space utilization, or other errors in the application of legislation.<sup>15</sup>

According to the author, mediation like this is a voluntary mediation that could have been done by the local government. Camat although in PP Kecamatan not regulated authority as a mediator, but because his position could be a mediator of land disputes. Camat as a government at the sub-district level could be a mediator of land disputes if the dispute is not the authority of the ministry as referred to in Article 11 paragraph (1) and Paragraph (3) Permen ATR/KBPN RI No. 11 of 2016 on the settlement of land cases.

#### **4. Factors In The Implementation Of Land Dispute Settlement Mediation In The Sub -District Of Biau Buol Regency**

##### **1) Legal Understanding Factors**

One of the factors that hinder the process of resolving land disputes is the legal factor. Where people's understanding of land law is still very minimal so that if there is a piece of receipt file, the community already considers it sufficient as proof of land ownership. Moreover, if they have proof of SPPT then it is as if the land already belongs to them legally. This is what happened in the land dispute in Biawu District Biawu. With the SPPT evidence they have, they assume that there is no need to take care of the letter of switching ownership.

Meanwhile, one of the legal factors that hinder the implementation of mediation in the settlement of land dispute cases in Biawu District Biawu is the minimal legal understanding of both parties, not understanding what mediation is, and where it should be resolved in the event of a land dispute. Both parties also assume that the decision of the sub-district head of a dispute is a decision that is already strong and no longer needs to be contested. It was evident when interviews were conducted with both parties in the Biawu Sub- District of buol Regency that they understood and

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<sup>15</sup> BHRUM BHRUM, “PERAN KEPALA DESA SEBAGAI MEDIATOR PENYELESAIAN SENGKETA TANAH DI DESA KULO KECAMATAN KULO KABUPATEN SIDENRENG RAPPANG” (Universitas Hasanuddin, 2020).



approved the results of mediation conducted by the sub-district head on the case and were not followed up on the news of the event because it was over, let alone followed up just to spend money.

2) Factor intervenes in others

Outside interference greatly affects the course of the mediation process. Outsiders always try to influence the two belah parties to survive each other on their respective stand. It was revealed by the head of village that the involvement of outsiders greatly interferes with the mediation process, it is very difficult to reach an agreement because outsiders always persuade both parties. In the conduct of mediation, the parties' ignorance of the law is a major factor. The parties maintain their egoism by only holding on to some documents that are not too strong for proof and plus the old tax return (SPPT).

This was revealed by the Secretary of Biawu district Biawu, that during the mediation process sometimes the two sides argued with each other to maintain their respective arguments. It was also recognized by Muhammad Aris as the village head when making mediation efforts at the village level, where both sides argued with each other until finally The Village Head gave direction to the sub-district level.

3) Factors Lack Of Resources

One of the inhibiting factors that are no less important in the process of resolving land disputes in Biawu District Biawu, Takalar Regency is the lack of Human Resources (HR) who have a legal background or who have adequate negotiation capacity at the District Office. It was also recognized by Muhammad Arif as the Secretary of Biawu district Biawu, that in the implementation of mediation is only Camat berberan more active and at most assisted by a few people, while if the mediation team does not exist permanently established, continue to be associated with employees who have a legal background educatorsannya it was only two people.

From the information above, it is very necessary to improve human resources, especially adding employees with a legal background of Education. Kecamatan has an important role in service to the local community, both for ordinary service, and service over a conflict. Moreover, the status of the district is now a device of the district / city which is equivalent to the department and regional technical institutions. It is no longer merely a unit of government, but as a unit of work or service.

## 5. Conclusion

Based on the discussion of factors inhibiting the optimization of law in the settlement of land disputes through mediation in Biau District, Buol Regency, the following conclusions can be drawn:

Settlement of land disputes through mediation in Biau district faces a number of complex challenges involving social, legal, and cultural factors. Disagreements between the parties to a dispute, a lack of understanding of land law, and distrust between parties are often major obstacles in the mediation of land disputes. In overcoming this obstacle, a competent and neutral mediator plays a central role. Their ability to facilitate communication, guide the parties to a fair agreement, and ensure the implementation of the agreement is the key to successful mediation. In addition, it is also important to understand and respect local cultural values and norma social norms, as well as to consider the local political and legal aspects that can affect the mediation process. In the context of the Biau Sub-District, the success of mediation in land dispute resolution is highly dependent on the selection of the right mediator, who has adequate legal knowledge, good communication skills, as well as a firm neutral attitude. Through this approach, it is hoped that land disputes can be resolved in an efficient, fair, and sustainable manner, supporting social peace and sustainable community development in Buol Regency.

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