

# The Role Of Mediation Based On Regulation Of The Minister Of Agrarian And Spatial Planning/Head Of The National Land Agency Number 21 Of 2020 Concerning The Handling And Settlement Of Land Cases

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## The Role Of Mediation Based On Regulation Of The Minister Of Agrarian And Spatial Planning/Head Of The National Land Agency Number 21 Of 2020 Concerning The Handling And Settlement Of Land Cases

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### Abstrak

Settlement of land cases through mediation carried out by the Land Office of Boalemo Regency refers to Regulation of Agrarian Affairs Minister and Spatial Planning/Head of the National Land Agency Number 21 of 2020 concerning Handling and Settlement of Land Cases. Mediation as an alternative for resolving land cases, it is necessary to popularize "mediator". A mediator must know psychologically the condition of the parties, so that they feel comfortable and the problem is resolved comfortably. In addition, the mediator must have analytical skills and expertise in creating a personal approach for the parties involved in the dispute. The mediator must be able to understand and give a positive reaction to the perceptions of each party. The goal is to build good relationships and trust. The parties' trust in the mediator makes it easier to reach a consensus. The priority regarding the purpose and function of the mediator is to resolve land cases in order to resolve cases without creating new ones. The research method that the author uses in this study is the empirical juridical law method, empirical juridical law is a study in addition to looking at the positive legal aspects, it also looks at its application or practice in the field. Thus the empirical juridical approach is a legal research method that seeks to see the law in a real sense or it can be said to see, examine, how the law works in society. The results shows that the handling and settlement of land cases through mediation at the Land Office of Boalemo Regency Land Office is done and carried out based on the Agrarian Affairs Minister Regulation and Spatial Planning/Head of the National Land Agency Number 21 of 2020 concerning Handling and Settlement of Land Cases. Constraints faced in handling and resolving land cases through mediation at the Land Office of Boalemo Regency are in the form of juridical and non-juridical constraints. The juridical constraint is the technical instructions for the mediation procedure referred to by the regulation have not yet been published, while the non-juridical constraint is in the form of limited qualified human resources as mediators. Based on this, the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency in the future must make structured, systematic and massive improvements to the mediation process by immediately issuing technical instructions and improving the quality of human resources in terms of being a mediator through guidance, training and direction.

**Keywords :** Land Office, Land Case, Mediation

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## INTRODUCTION

By nature land has an attachment and plays a very important role in human life. In this case it can be described that between land and humans have a very close relationship, because land is the main source and mostly in Indonesia land is the only capital (van Dijk, 2006). In the philosophy of the Indonesian nation, the concept of the relationship between land and humans places each community group and individual as something that is difficult to separate.

Meeting human needs for land can be positioned in the framework of these human needs with the intention that the relationship regarding rights to individuals needs to be considered on the other hand, the collective nature must be more dominant than the individual. *Land is the basis of all forms of human activity. From it we find everything important for life, i.e., the food we eat, the shelter we need, the space to work and the room to relax. The accessibility to land is vital for human life.* (Sayeh Kassaw Agegnehu, 2021)

This philosophy is then outlined in Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, hereinafter abbreviated as UUPA, rules regarding the state's right to control which is authorized to ensure and regulate legal relations between humans and legal acts in terms of earth, water and space. Philosophically, individuals cannot be given land. So if someone buys and sells land that they sell is actually a service for maintenance when controlled by the land. (Soedharyo Soimin, 1993) This illustrates that the state is present to provide legal guarantees and respect for the rights of citizens and it is regulated in legislation where land rights are not absolute but have a value, namely social and economic value.

In daily life or business, problems often arise due to changes or competition with the same goals and objectives or inequality in the sources needed. The emergence of problems means the emergence of a crisis and efforts to overcome it, it is necessary to improve the relationship. (Asmawaty, 2014). So valuable is land that a person or group of people categorized as social beings will fight to defend their land in various ways so that sometimes land disputes are often found. Land disputes will increase as the human desire for land increases both as housing and as capital for business activities. Land in economic terms is very prone to cause land cases. In addition to economic aspects, land issues are also triggered by religious, social and cultural aspects.

The emergence of problems in society is caused by different types and reasons with practical provisions and standardization. Law functions as social control so that the existence of a community group survives. (Ria Andanari and Sigit Handoko, 2019) The essence of the interests of a person or community group cannot be ignored in land needs because everyone in the community group is protected and respected for their interests and rights. In the conception

of National Land Law, a person's land rights and personal nature have an important component, namely togetherness. This component is derived from the right of the nation, whether directly or indirectly, always exists in land rights. With the possession of the nation's rights, for the sake of the nation's progress, the public interest is prioritized over individual interests.

Handling and resolving land cases requires measured and clear efforts to understand the root of the case and other supporting factors so that the formulation of strategies and solutions is well obtained. With such efforts, land cases can be minimized as much as possible while presenting a good environment and creating legal certainty and justice for all.

In order to obtain a justice and legal certainty or known as access to justice where the ability of every person as a citizen does not discriminate against his background in order to obtain justice. This is also the same as the poor, low education or blindness to the law, so in order to obtain legal certainty in positive law must be fair and responsible. (Nia Kurniati, 2016)

Based on Article 1 paragraph (3) of the 1945 Constitution, the Indonesian State is a state of law, which in principle must have essential conditions, including human rights must be respected in the legal system as a minimum condition. Regarding the land sector, its management and regulation is through legislation, namely the UUPA, the regulation is believed to be able to handle and resolve land cases.

Regarding the authority of land agencies in terms of handling and resolving land cases in the UUPA is not specifically explained. However, if traced further regarding the implementing regulations, especially those relating to the regulations on the establishment of the National Land Agency, which began with Presidential Decree No. 26 of 1988 until Presidential Regulation No. 47 of 2020 concerning the Ministry of Agrarian Affairs and Spatial Planning and Presidential Regulation No. 48 of 2020 concerning the National Land Agency, certain sections are found whose duties and functions and authority are to handle and resolve land cases.

To carry out this authority, the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency stipulates rules regarding the mechanism for handling and resolving land cases, namely the Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency Number 21 of 2020 concerning Handling and Settlement of Land Cases, hereinafter referred to as Permen ATR / KBPN Number 21 of 2020. The purpose of this research is to increase broad knowledge about the authority to handle and resolve land cases. This is very useful if the regulation as a legal basis for it is clear and strengthened by an example as a form of implementation, so that land cases that continue to increase get the right and fast way and are complete and measurable in handling and resolving them. These are all

important things in the research to be carried out so as to reduce the quantitative land cases that occur.

In general, the handling and settlement of land cases through litigation requires the relevant parties to pay costs. Moreover, the judicial method takes a long time making the land as the object of dispute in a status quo position cannot be used. For this reason, non-litigation channels are needed in handling and resolving land cases.

In this case, the Ministry of Agrarian Affairs and Spatial Planning / National Land Agency, hereinafter abbreviated as ATR / BPN, can prepare mediation facilities to handle and resolve the land case. This is the most effective route because no parties are benefited or harmed. It is confirmed by ATR/BPN that land mediation or peace is also an option to resolve land disputes.

Mediation provides a consensus between the two parties through the use of a neutral third party. In resolving the conflict through mediation, both sides agree to seek advice from a third party. Conflict resolution is managed by one or several expert advisors or through a mediator. A third party is neutral (impartial) and independent and cannot be swayed or influenced by other parties. (Dedy Haspada, 2019)

Mediation based on Permen ATR/KBPN Number 21 of 2020 explains that mediation is a way of resolving cases through a negotiation process to obtain an agreement conducted by the parties facilitated by the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency, the Regional Office of the National Land Agency, the Land Office according to their authority and/or land mediators.

Mediation conducted by ATR / BPN is the best solution for the community to get justice in the process of resolving land issues so that the principle of simple, fast and low cost examination as described in Article 4 paragraph (2) of Law Number 4 of 2004 can be carried out by ATR / BPN through the process of handling and resolving land cases based on the provisions of Permen ATR / KBPN Number 21 of 2020.

The Boalemo Regency Land Office as part of the organ referred to by Presidential Regulation of the Republic of Indonesia Number 47 of 2020 concerning the Ministry of Agrarian Affairs and Spatial Planning and Presidential Regulation of the Republic of Indonesia Number 48 of 2020 concerning the National Land Agency to carry out the duties and functions of the National Land Agency in the regions, one of whose functions is to carry out control and handling of land disputes which has the task of carrying out control of land rights, land use change, coastal areas, small islands, borders and certain areas, controlling control, ownership and use, land utilization and handling disputes and conflicts as well as handling land cases as described in the Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of

the National Land Agency Number 17 of 2020 concerning Organization and Work Procedures of the Regional Office of the National Land Agency and the Land Office.

The Boalemo District Land Office to handle and resolve land cases in the form of mediation implementation is a technical form to realize its duties and functions as stipulated in the laws and regulations. This makes the role of the Boalemo District Land Office very necessary so that the handling and settlement of land cases can be resolved simply, quickly and at low cost which is directly facilitated by the Boalemo District Land Office through the agreement of the parties carried out as an effort to negotiate between the two parties.

The mediation process carried out by the Boalemo District Land Office to handle and resolve land cases refers to Permen ATR / KBPN Number 21 of 2020. The mediation process is one of the solutions in an effort to resolve land cases in which there is a mediator who has an important role in reaching an agreement between the parties which is neither beneficial nor detrimental to one party. Where a mediator is required to have intellectual abilities and expertise so that he can create relationships and trust to facilitate the achievement of a good consensus. The main purpose and function of a mediator is to resolve land cases in order to resolve existing land cases so that new cases do not arise. This is also done by the Boalemo District Land Office that the mediation carried out refers to the provisions stipulated in the laws and regulations but still experiences obstacles both juridically and non-juridically. In addition, there is only 1 (one) official qualified as a mediator at the Boalemo District Land Office, while mediation is the most effective in handling and resolving land cases. Seeing the background aspects that the author puts forward, the author is interested in discussing the problem, namely how the role of the ATR / BPN Boalemo District Land Office is to handle and resolve land cases with the media process.

## RESEARCH METHODS

Humans use research as a means to strengthen, build and expand knowledge. The author in this study uses the type or type of empirical juridical legal research. Empirical juridical legal research is research that examines aspects of positive law and practice or its application in the field. In essence, the empirical juridical approach is a legal research method that is used to see the law in a real sense or in another sense it can be said to see, examine and how the law works in society. (Soerjono Soekanto and Sri Mamudji, 2003)

The method used in conducting an empirical juridical approach is a qualitative method. Qualitative methods are used in this research because of considerations, including: first, qualitative methods when meeting with multiple facts are easier; second, qualitative methods

express directly the main relationship between the author and the respondent; third, qualitative methods are more able to adjust and be critical of the model of values encountered.

## **DISCUSSION**

### **The Role of ATR/BPN Boalemo District Land Office in Handling and Resolving Land Cases with the Mediation Process based on Permen ATR/KBPN Number 21 of 2020.**

In the implementation of the handling and settlement of land cases through mediation by the Ministry of Agrarian Affairs and Spatial Planning / National Land Agency, the Regional Office of the National Land Agency and the Land Office including the Boalemo District Land Office, a legal basis is needed in the form of legal regulations. This is important because it is the main thing for mediators considering that land has aspects of public law and private law, so not all land disputes can be resolved by mediation. Therefore, in handling and resolving land cases through mediation, agreements need to be limited with the aim that agreements in mediation do not violate the law and can be implemented effectively in the field.

Article 2 paragraph (2) of Law No. 5/1960 on the Basic Agrarian Principles Regulation explains the provisions regarding the state's right to control over land which determines the state's authority to: 1) regulate and organize the allocation, use, supply and maintenance of the earth, water and space; 2) determine and regulate legal relationships between people and the earth, water and space; 3) determine and regulate legal relationships between people and legal acts concerning the earth, water and space. The authority has been strictly regulated but the community is difficult to regulate, so land cases often occur in this country. Therefore, in order to grant a land right, the National Land Agency has the authority to do so as part of the government so that land disputes and cases are also an integral part of the government's duties as an administrative function. (Rusmadi Murad, 1991).

Land is managed through 2 (two) aspects, namely public and private aspects. Through the public aspect where land is controlled by the state and used for the greatest prosperity of the people. This illustrates that the state has the authority to regulate the land sector. On the other hand, when examined from the private aspect where land rights by right holders have the authority to use the land and carry out legal actions on the land with restrictions that have been regulated in laws and regulations. The cause of cases in the land sector is due to the interests of society and the state, where handling and resolution do not always have to go through the courts but can be done by deliberation and consensus with a sense of kinship. People who cannot reach deliberation and consensus usually forward the matter to the village or sub-district office or even to the land office so that the village or sub-district head or head of the land office

who handles and helps resolve land cases acts as an intermediary commonly known as a mediator. In the context of handling and resolving land cases the mediation process is carried out with different approaches with the main attention to the interests of the parties (interest based).

The interests of the disputing parties can be accommodated properly if done with an emphasis on interest-based because this will have an impact on the satisfaction of the parties so that they voluntarily accept and comply with the decision. Such substantial advantages are obtained when handling and resolving land cases through the mediation process. In addition to substantial advantages, there are also procedural advantages where mediation is a simpler process and the parties can also provide solutions to the problems that occur so that they can explore the causes of the problem.

ATR / BPN has the authority on its own initiative to handle and resolve land cases both in following up the implementation of court decisions administratively and the formulation of settlements carried out independently. Specifically, the handling and settlement of land cases through mediation is regulated in Permen ATR / KBPN Number 21 of 2020 which in principle mediation conducted by ATR / BPN must be attended by the parties or principals and if unable to attend for legitimate reasons it can be represented by a proxy and if it has been properly summoned 3 (three) times but the parties are not present then the mediation is considered a failure. Mediation that reaches a peace agreement is outlined in a deed of peace and the parties must register it at the District Court where the land that is the object of the case is located in order to obtain a peace verdict. However, if no agreement is reached in mediation, the ATR/BPN in accordance with its authority makes a decision to resolve the land case so that the case does not become wild without a decision.

Head of the Dispute Control and Handling Section at the Boalemo District Land Office, Abdullah Ariefin. S.K, S.P., M.Ec.Dev explained that in the Boalemo District Land Office, the implementation of mediation depends on the typology of problems in land cases related to the parties. The handling and resolution of land cases through mediation efforts has a very important role because in mediation activities the root of the problem and the solution of the parties will be found. In addition, mediation efforts for the handling and resolution of land disputes can also reduce land cases that have not yet been handled by ATR / BPN or other institutions.

Abdullah Ariefin. S.K, S.P., M.Ec.Dev added that the handling and settlement of land cases at the Boalemo District Land Office is based on applicable laws and regulations in this case Permen ATR / KBPN Number 21 of 2020. In this regulation there are further technical

guidelines regarding mediation procedures but until now the technical guidelines have not been issued by ATR / BPN, on the other hand mediation requires a mediator. In the Boalemo District Land Office there is only 1 (one) mediator and to become a land mediator, it is mandatory to take part in land mediation training from ATR / BPN and the official in question currently serves as Head of the Rights Determination and Registration Section so that these things cause the resolution of land problems through mediation efforts at the Boalemo District Land Office to be ineffective.

Mediation generally requires a fee but the amount is not as large as the process in court. In an effort to handle and resolve land cases ATR / BPN conducts mediation at no cost. Mediation has many advantages but also has weaknesses, especially in terms of mediation decisions that are questionable in terms of their binding legal force. The mediator basically has the task of mediating in order to help the parties to resolve land cases that occur. The Boalemo District Land Office as a mediator has a role to provide assistance to the parties to understand the views of the parties and look for things that are important to them. The mediator provides the latest knowledge and information with the aim that the parties can find ways or solutions in resolving land cases and the parties can also offer neutral assessments.

The mediator's job is to diagnose and analyze a case and then design and control the process and intervention with the intention of directing the parties to reach a healthy consensus. The important tasks of the mediator include:

1. Conduct conflict diagnosis efforts;
2. Identify critical issues and interests;
3. Developing agendas;
4. Facilitating and controlling communication;
5. Guiding the parties in the bargaining process;
6. Helping the parties to gather important information;
7. Creating options for problem solving; and
8. Facilitate case resolution through dispute diagnosis

#### **Obstacles Faced by the ATR / BPN Boalemo District Land Office in Handling and Resolving Land Cases with the Mediation Process based on Permen ATR / KBPN Number 21 of 2020**

In the implementation of the handling and settlement of land cases through mediation at the ATR / BPN Boalemo District Land Office there are several obstacles even though the

handling and settlement of land cases through mediation has been carried out with reference to Permen ATR / KBPN Number 21 of 2020, among others:

1. Juridical Constraints

Based on the results of research in the field, mediation efforts in handling and resolving land cases that occur have not been effective, because in Permen ATR / KBPN Number 21 of 2020 the methods and procedures for mediation have not been explained. The mediation procedures in the regulation are further regulated in technical instructions. The technical guidelines are intended as guidelines in the mediation process for mediators at ATR / BPN with the intention that the technical guidelines are for uniformity of understanding or standardization of the mediation process for appointed mediators. However, until now the technical guidelines referred to by Permen ATR / KBPN Number 21 of 2020 have not been issued by ATR / BPN. Whether a law is effective or not is due to the legal factor itself, in this case the technical guidelines that follow up on the regulation in question and this is in line with what is explained in the theory of legal effectiveness.

2. Non-juridical constraints

Limited Mediators at the Boalemo District Land Office. The quality of human resources in terms of skills to become a mediator is limited at the Boalemo District Land Office, this is because the process of becoming a mediator must have terms and conditions from ATR / BPN. The mediator at the Boalemo District Land Office is only 1 (one) person, where the official in question carries out the mandate as Head of the Rights Determination and Registration Section, on the other hand land cases are increasingly complex so that mediation efforts in handling and resolving land cases at the Boalemo District Land Office have not been effective given the limitations of the mediator.

## CLOSING

In general, the handling and settlement of land cases through mediation at the Ministry of Agrarian Affairs and Spatial Planning / National Land Agency of Boalemo Regency Land Office has referred to the Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency Number 21 of 2020 concerning Handling and Settlement of Land Cases but on the other hand technical instructions in terms of mediation procedures as referred to by the regulation have not been issued and the obstacles for the Boalemo Regency Land Office in handling and resolving land cases through mediation are juridical constraints, namely the process of handling and resolving land cases through mediation is a juridical obstacle, namely the process of handling and resolving land cases through mediation is still not

effective because it is caused by the Regulation of the Minister of Agrarian and Spatial Planning / Head of the National Land Agency Number 21 of 2020 concerning Handling and Settlement of Land Cases has not been implicitly explained regarding mediation procedures in the technical instructions referred to in the regulation. Then non-juridical obstacles, especially in the Boalemo District Land Office, have limitations on the quality of human resources in the skills to become mediators. This is because the process to become a mediator must have terms and conditions from ATR / BPN. The mediator at the Boalemo District Land Office is only 1 (one) person, where the official in question carries out the mandate as Head of the Rights Determination and Registration Section, on the other hand land cases are increasingly complex so that the mediator can be a mediator.

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