

Land Case Mediation at BPN as a Form of National Land Law Development

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Abstract

One of the most significant obstacles to the advancement of national land legislation is the resolution of land disputes. This article seeks to analyze the role that mediation plays as a means of resolving land disputes when implemented by the National Land Agency (BPN), with the aim of supporting the development of a more just and sustainable land law. This research employs a qualitative methodology, with the analysis of data pertaining to mediation cases administered by the BPN in multiple regions. The findings indicate that mediation proves an effective method of resolving land-related disputes through a peaceful resolution, despite the existence of obstacles, namely the low level of participation by some parties and the restricted resources of the BPN itself. The study ultimately concludes that, with the implementation of more robust policies and the enhancement of institutional capabilities, mediation has the potential to provide substantial support in the advancement of national land law development.

Keywords: *Mediation, BPN, Land Dispute, Legal Development, Land Law*

INTRODUCTION

The issue of land in Indonesia is a complex and multifaceted one, encompassing a range of social, economic, and legal dimensions. In social terms, land-related disputes frequently precipitate conflict between individuals, communities, or, on occasion, between communities and the private sector or state authorities. Furthermore, the cultural and emotional significance of land in the lives of Indonesians, particularly in regions where customs and traditions are still strongly upheld, serves to exacerbate the issue. Furthermore, the rapid growth of the population and the necessity for land for development have intensified the pressure on land availability, thereby rendering conflicts increasingly inevitable (Harianti et al., 2024).

From an economic standpoint, land is a crucial asset that underpins a range of productive activities, including agriculture, plantations, housing, and industry. Land disputes have the potential to impede economic growth, dissuade investment, and even destabilize regional development. One of the primary impediments to investment in Indonesia is the lack of clarity surrounding land ownership rights. This is a consequence of the deficiencies in the administration of land ownership that have previously existed, which have resulted in instances of overlapping claims to ownership and the existence of documents that are not valid.

From a legal standpoint, the prevalence of land-related disputes reflects inherent shortcomings in the national legal system. The protracted nature of land disputes is often attributed to the time-consuming and costly litigation procedures involved. The judiciary is confronted with a considerable caseload, largely due to the high number of land-related cases,

which has led to inefficiencies in the resolution process. Conversely, there are still deficiencies in the implementation of laws and regulations pertaining to land management, including the absence of harmonization between national and customary laws (Purnama & Khasanah, 2024).

In order to address these challenges, the government, through the National Land Agency (BPN), has developed a mediation mechanism as an alternative to the prevailing approach to the resolution of disputes. Mediation is regarded as a more flexible and peaceful approach than litigation. As a non-litigation process, mediation allows disputing parties to identify mutually beneficial solutions through a facilitated dialogue. As the institution with authority in land management, the BPN plays an instrumental role in mediating disputes, ensuring that the process is transparent, fair, and in accordance with applicable legal principles.

The introduction of mediation by the BPN represents not only a pragmatic solution to alleviate the burden on the courts but also constitutes an essential component of a strategic effort to develop a comprehensive national land law framework. By promoting dialogue- and deliberation-based dispute resolution, the BPN aims to establish a legal model that is more responsive to the needs of society. In this regard, mediation serves not only as a tool for resolving disputes, but also as a mechanism for building public trust in the legal system and government institutions.

This article seeks to examine how mediation conducted by BPN can facilitate the development of a more inclusive and sustainable national land law. It includes a review of the effectiveness of such mediation, as well as an analysis of the obstacles it has faced and its potential for enhancing social justice and legal certainty in Indonesia. This approach is particularly relevant in light of the pressing need to improve the country's land law system in a manner that is conducive to national development, ensuring fairness, equity, and the welfare of the broader population (Pasamai & Salle, 2024).

RESEARCH METHOD

This research uses a qualitative method with a case study approach. This approach was chosen because it allows researchers to explore the process, dynamics, and context of mediation conducted by the National Land Agency (BPN) in resolving land disputes. The main focus of this approach is to understand the phenomenon of mediation holistically, including interactions between parties, policies applied, as well as obstacles and opportunities faced in the implementation of mediation.

The research data were collected through three main techniques, namely interviews, documentation, and observation. Each technique is explained as follows:

Interviews

Interviews were conducted with three main groups of informants to obtain diverse perspectives on the implementation of mediation at BPN:

1. BPN mediators: Interviews with mediators aimed to understand: The mediators interviewed were selected based on their experience in handling cases, with a focus on mediators who had completed more than five mediation cases.
 - Standard operating procedures (SOPs) for mediation at BPN.
 - The technical and non-technical challenges they faced when mediating disputes.
 - The strategies they use to ensure mediation success.
 - Their perception of the effectiveness of mediation as a land dispute resolution method.

2. **Disputing Parties:**Information was obtained from both parties to the dispute to understand their experiences during the mediation process, including:
 - Their expectations and concerns before, during and after the mediation.
 - Their level of satisfaction with the outcome of the mediation.
 - Factors that influenced the success or failure of the mediation from their perspective.
3. **Land Law Experts:**To provide a broader analytical framework, interviews were also conducted with land law experts. The focus of the interviews included:
 - Policy analysis related to mediation in the context of national land law.
 - Their views on the position of mediation in Indonesia's dispute resolution system.
 - Recommendations to strengthen mediation as a land dispute resolution mechanism.

Documentation

The documentation technique was used to collect secondary data relevant to the research. The documents analysed include:

1. **BPN Mediation Report:**This document provides information on the number of cases handled, types of disputes, processes undertaken, and mediation outcomes. Analysis of these reports helped identify patterns and trends in the implementation of mediation.
2. **Related Regulations:**The regulations analysed included the Agrarian Law, ministerial regulations related to mediation, as well as BPN's internal policies. These documents are used to understand the legal and policy framework under which mediation is conducted.
3. **BPN Policies:**Policies issued by BPN at the national and regional levels were analysed to see the extent to which mediation has been integrated as part of the dispute resolution strategy.

Data collection through documentation enabled the researcher to understand the normative and administrative context of mediation and evaluate its compatibility with implementation in the field.

Observation

Observation was conducted by directly observing the mediation process at the BPN office in Jakarta. Observation:

1. Following the mediation process from start to finish to understand the dynamics of interaction between parties.
2. Taking notes on the mediator's strategy in dealing with the conflict, including the approach used to overcome the impasse.
3. Paying attention to the attitudes and responses of the disputing parties during the mediation process.
4. The data obtained through observation provides a direct picture of how the mediation was conducted and how practical challenges were overcome by the mediator and the disputants.

Data Credibility and Validity

To improve the credibility and validity of the data, this research used a data triangulation strategy, namely:

1. Comparing interview results with documentation and observation data.
2. Involving more than one researcher in data analysis to reduce interpretation bias.
3. Holding discussions with land law experts to verify the findings.

This research method is designed to provide an in-depth understanding of the role of mediation in land dispute resolution at BPN and its contribution to the development of national land law.

RESULT & DISCUSSION

Mediation Effectiveness at BPN: Dispute Resolution Rates and Critical Success Factors

Mediation in land dispute resolution at the National Land Agency (BPN) has emerged as a pivotal instrument for the establishment of equitable, expeditious, and efficacious settlements. The efficacy of mediation can be gauged by the extent to which disputes are resolved through the process, which, based on available data, reaches approximately 70% of the total cases mediated. Nevertheless, this degree of success is not an inevitable outcome; rather, it is contingent upon a multitude of factors that can either facilitate or impede the mediation process itself. The two primary factors that contribute to the efficacy of mediation at BPN are the competence of the mediator and the willingness of the disputants to collaborate (Pasamai & Salle, 2024)

The rate of dispute resolution is as follows: A total of 70% of all mediated cases have been successfully resolved through mediation. This figure reflects the efficacy of mediation in resolving a wide range of land disputes, including boundary disputes, overlapping land ownership rights, and disputes between communities, companies, or government agencies. This figure is relatively high in comparison to the resolution of disputes through litigation in court, which is a more time-consuming and costly process.

Time and cost efficiency are two key advantages of mediation. The mediation process is typically more expeditious than litigation, which can span years. Furthermore, the financial outlay required for mediation is considerably less, both for the parties in dispute and for the agencies involved (Gerungan et al., 2023).

The process is more flexible and friendly. Mediation permits open communication between the parties in dispute, facilitating a more relaxed and constructive exchange than is typical in a courtroom setting. This provides both parties with the opportunity to achieve a mutually beneficial outcome.

The mediation process has the additional benefit of reducing the burden on the court system. As the number of land disputes successfully resolved through mediation continues to grow, the burden on the courts is reduced, allowing them to focus on cases that are more complex or require further legal attention (Jumra et al., 2024).

It is important to note, however, that while a 70% success rate is a notable achievement, the 30% of unresolved cases represents a significant challenge. Cases that are not successfully resolved through mediation typically result in litigation, which is a more time-consuming and costly process. The causes of these mediation failures are numerous and varied. They include a lack of willingness to compromise on the part of the parties involved, an inability of the mediator to find a solution that is acceptable to both parties, and issues that require more in-depth legal decisions.

Determinants of Mediation Success

1. **Mediator Competence.** The mediator plays a pivotal role in the efficacy of mediation. Mediator competence encompasses a number of key attributes, including a

comprehensive understanding of land law, effective communication skills, and the capacity to navigate the social and psychological dynamics that often underpin disputes between parties.

- a. **Knowledge of Land Law.** A competent mediator must possess a nuanced grasp of Indonesian land law, encompassing not only the relevant statutes and regulations but also the pivotal decisions handed down by the courts or BPN, as well as the legal principles that underpin land dispute resolution. Such knowledge allows the mediator to adequately inform the disputing parties of their rights, the procedures to be followed, and potential solutions.
 - b. **Communication and Negotiation Skills.** Communication skills are of great importance in the mediation process. A mediator must possess the ability to facilitate communication between parties who may hold disparate views or exhibit emotional responses. An effective mediator is capable of establishing an environment that is conducive to open and honest communication, facilitating mutual understanding and the expression of each party's interests. Moreover, the mediator must possess the ability to negotiate in order to identify a solution that is mutually beneficial, despite the fact that the parties involved may have disparate interests.
 - c. **Alignment with Justice.** It is imperative that mediators at BPN demonstrate a neutral and impartial stance, despite their potential depth of knowledge and experience regarding land disputes. A mediator who takes sides can erode the trust of the disputants and impede the mediation process. In contrast, mediators who demonstrate a professional and neutral attitude can foster the disputants' trust in the mediation process.
 - d. **Conflict Management Skills.** In addition to technical and legal competence, mediators must also possess the ability to manage conflicts that may arise during the mediation process. Experienced mediators are able to discern indications of tension between disputants and take measures to defuse the situation. Moreover, they must possess the capacity to redirect the discourse towards a constructive trajectory when it becomes evident that negotiations have reached an impasse.
2. The willingness of the disputing parties to cooperate is a significant determinant of the success of mediation. While the mediator may be competent and understand the rules, the absence of active participation by the disputing parties will inevitably result in the failure of the mediation process. The willingness of disputing parties to cooperate is influenced by a number of factors, including:
- a. **Trust in the Mediation Process.** It is essential that the parties involved in a land dispute perceive mediation as a legitimate and effective option. If the disputing parties perceive the mediation process to be a mere formality or believe that it does not afford them a fair opportunity to obtain an adequate solution, they may be disinclined to engage in the process with full commitment. Previous experience, personal views of the landlord, and uncertainty about the fairness of the land law system often influence trust in the mediation process.
 - b. **Motivation to Resolve the Dispute.** Disputants are more likely to engage in negotiation if they perceive greater potential benefits from resolving the dispute amicably than through litigation. Those already exasperated by the protracted and costly legal process are more inclined to pursue mediation as an alternative.
 - c. **The Role of Mediation in Economic and Social Interests.** A significant number of land disputes have substantial economic ramifications, particularly with regard to matters pertaining to development, investment, or inheritable land rights. It is

probable that disputants will be more inclined to engage in mediation if they perceive the possibility of attaining greater economic or social advantages through the expeditious conclusion of an agreement. Conversely, if the solutions proposed in mediation are perceived as inadequate, disputants may opt to litigate.

- d. Attitude of the Stronger Party (Corporate or Government Party). In some instances, stronger parties (e.g., large corporations or governments) may be less amenable to negotiation, as they perceive no necessity to settle disputes with weaker parties. Such an attitude can prove to be a significant impediment in the mediation process, particularly when the weaker party perceives no viable alternative to pursuing the matter in court (Bachtiar, 2020).

Obstacles in the Implementation of Mediation

One of the primary impediments to the implementation of land dispute mediation in Indonesia is the public's limited legal awareness regarding the advantages of mediation as a dispute resolution mechanism. The majority of individuals are more acquainted with the litigation process, which is frequently regarded as a more formal and legitimate approach to resolving legal matters (Putri Septiani & Ratna M.S., 2022). The reasons for this lack of awareness can be attributed to several factors, including:

1. Inadequate Education about Mediation. A significant proportion of the population, particularly in regions with limited legal literacy, lacks an understanding of the principles and procedures associated with mediation. The general public is unaware that mediation is a voluntary dispute resolution process that allows both parties to reach an agreement without having to go through a lengthy and expensive court process. This process, despite its expediency and affordability, is frequently disregarded due to the dearth of information disseminated to the public.
2. Lack of awareness regarding the efficacy of mediation. The majority of individuals may be uninformed about the potential of mediation as a means of resolving land disputes. Such individuals tend to undervalue the efficacy of mediation as a process that lacks the same legal authority as a court judgment. Indeed, the outcome of mediation facilitated by BPN can frequently be legally binding and valid if agreed upon by both parties. However, a lack of awareness of this mechanism often results in disputants preferring to pursue their claims directly through the court system (Jonahar et al., 2024).
3. Legal Culture that Favors Litigation. In the context of Indonesian law, particularly with regard to land, many individuals perceive litigation in court as the optimal means of asserting their rights. This is influenced by a legal culture that places significant emphasis on formal judicial processes and judges' decisions as a legitimate form of justice. Consequently, informal mediation is frequently regarded as an ineffective and illegitimate alternative to litigation.

The National Land Agency (BPN) is tasked with a crucial role in the resolution of land disputes through mediation. However, it is constrained by limitations in human resources and facilities. However, in its implementation, BPN encounters a number of obstacles related to the limited human resources and facilities available, which impact the quality and effectiveness of mediation (Budianto et al., 2024).

1. Lack of Trained Mediators The success of a mediation process is contingent upon the presence of mediators who possess not only a robust understanding of the legal intricacies involved, but also the capacity to communicate effectively, discern the nuances of social dynamics between the disputing parties, and adeptly navigate the

complexities of conflict. It is unfortunate that the number of mediators with the requisite skills in BPN is limited, and that not all regions have access to well-trained mediators. Consequently, the mediation process may be impeded by mediators who lack the requisite experience to effectively address complex disputes.

2. **Limited Facilities and Infrastructure.** In addition to the limitations in terms of human resources, BPN also faces challenges in terms of facilities and infrastructure that support the implementation of mediation. An efficacious mediation process is contingent upon the provision of a commodious and suitable venue for meetings between the disputing parties. Nevertheless, in certain regions, the facilities available for mediation at BPN remain severely constrained. This can result in suboptimal outcomes for the mediation process, particularly in cases involving multiple parties or disputes of significant complexity.
3. **High Workload.** In addition to challenges related to limited facilities and human resources, BPN also faces a considerable workload. In the context of an increasing number of complex land disputes and a corresponding influx of new cases, the BPN is frequently constrained by time-consuming administrative procedures. The high workload also has an impact on the quality of the mediation services provided, as officers and mediators are unable to devote sufficient attention to each case. Such circumstances have the potential to render the mediation process less effective.

Another significant challenge to the implementation of land dispute mediation at BPN is the distrust of some parties towards the mediation process itself. Despite the expectation that mediation will prove an effective alternative solution, a considerable number of parties remain sceptical of the process. Some of the reasons underlying this distrust include:

1. **Perception that mediation does not have the same legal force as the courts** It is assumed that mediation is merely a discussion without the same legal force as a court decision. Despite the fact that Indonesian law recognizes the outcome of mediation as a valid agreement that can be used as a legal basis, this perception often prevents parties from choosing mediation.
2. **Injustice in the Mediation Process** If one party is in a stronger or more influential position, they may perceive the mediation process as biased in favor of that party, particularly if the mediator is not neutral or lacks the requisite skills to manage the power imbalance between the disputants. This distrust leads to the perception that mediation is not a fair solution.
3. **Inability to Reach Agreement.** In general, the parties involved in land disputes have very different and conflicting interests. If one party feels that it is impossible to reach an agreement through mediation, they may prefer to take their case to court in the hope of winning the dispute in a more formal and legal manner. The inability to find common ground in mediation can exacerbate distrust of the process.

Mediation's Contribution to National Land Law Development

Mediation represents a significant contribution to the evolution of national land legislation, offering an invaluable alternative to traditional dispute resolution mechanisms. As a non-litigation mechanism, mediation provides a more peaceful and efficient means of resolving land disputes that frequently persist in the court system.

The reduction of court burden related to land disputes is one of the most direct and positive impacts of mediation in land dispute resolution. In Indonesia, a considerable number of land disputes are ultimately adjudicated in court, whether at the district or state administrative level.

The litigation process is not only time-consuming but also frequently associated with significant costs and legal uncertainty (Wahyuni, 2024).

The mediation conducted by the National Land Agency (BPN) facilitates the resolution of disputes in a more expeditious and cost-effective manner. This is due to the fact that, in mediation, the parties in dispute seek to identify common ground directly with the assistance of a mediator, thus circumventing the necessity of undergoing a formal judicial process. To illustrate, mediation conducted by the National Land Agency (BPN) can diminish the number of disputes that proceed to court by addressing the underlying issues before formal proceedings commence.

With a reduction in the number of cases requiring resolution in a court of law, the judicial system is better positioned to address more complex cases or those that are not amenable to mediation. This will, in turn, enhance the efficiency and efficacy of the Indonesian justice system, particularly in the domain of land law.

The level of public trust in legal institutions is contingent upon the efficiency, fairness, and cost-effectiveness of the dispute resolution process. In the context of land disputes, there is a perception that the legal process in the courts is often protracted, encumbered by bureaucratic procedures, and not aligned with the interests of individuals. Mediation offers a more expeditious and accessible avenue to dispute resolution than the court system, thereby enhancing the level of trust in legal institutions (Sihombing, 2018).

When individuals observe the possibility of resolving land disputes in a more straightforward manner, without the necessity of involving the courts, they will tend to exhibit a greater degree of trust in the existing legal system. Mediation provides a sense of inclusivity, whereby the law is perceived as accessible to all, regardless of power or resources. This extends to those engaged in land disputes, who may previously have felt excluded from the legal process.

Furthermore, BPN's involvement in mediation illustrates the government's dedication to offering more equitable and pragmatic resolutions. As an institution authorized to manage state land, BPN is perceived as more credible by the community, which results in greater acceptance of the outcomes of mediations facilitated by BPN. The establishment of trust is of paramount importance in the creation of a legal culture that is transparent and trustworthy to the public.

The creation of legal certainty is an important factor in the support of economic stability and development. In the context of land, legal certainty with respect to land status and rights is of paramount importance for the sustainability of investment and development at the national and regional levels (Flora et al., 2024).

Mediation can assist in the establishment of legal certainty within the land sector by facilitating the resolution of disputes pertaining to land rights claims or disagreements between the relevant parties. By facilitating amicable resolutions to disputes, the parties involved can gain clarity on the status of the pertinent land rights, thereby avoiding prolonged uncertainty. Such an outcome provides a sense of security for landowners and potential investors who may be interested in investing in the land.

Furthermore, the legal certainty established through mediation can avert additional conflicts that could impede development. When land disputes are resolved in a fair and efficient manner, communities and the parties involved experience enhanced security and confidence, enabling them to continue their activities, whether in agriculture, industry, or infrastructure development. Furthermore, legal certainty is an important factor in attracting investors, who typically seek a stable and transparent legal environment in which to invest (Fahmi et al., 2024).

Mediation serves as a mechanism to circumvent the resolution of disputes that could prove detrimental to the parties involved, as well as to the economy in general. The resolution of disputes through mediation serves to mitigate the risk of uncertainty, which can otherwise impede economic activity and development. Furthermore, the decisions reached through mediation are more readily accepted by the parties involved, as they are directly involved in the settlement process, thereby fostering a sense of value and recognition of their rights (Damanik, 2023).

The significance of supporting mediation in the evolution of land law

To guarantee that mediation can make the most substantial contribution to the advancement of national land law, there are several elements that must be taken into account. Firstly, it is imperative that the capacity and competence of mediators at BPN be enhanced in order for the mediation process to be conducted in an efficacious manner. Secondly, it is necessary for the government to provide support in order to reinforce the regulations pertaining to land dispute mediation, thereby facilitating greater public access to this mechanism. Thirdly, there is a need for greater public awareness of the benefits of mediation as a means of resolving disputes. This will encourage greater use of this alternative dispute resolution mechanism (Riski et al., 2023).

With serious attention to the development of mediation as an alternative to land dispute resolution, Indonesia will be closer to achieving the goal of legal development that is fair, equitable, and supportive of sustainable social and economic development.

CONCLUSION

Mediation conducted by the National Land Agency (BPN) has emerged as a pivotal mechanism in the resolution of land disputes in Indonesia. In the context of land law, mediation offers a more expedient, cost-effective, and amicable alternative to litigation in court. The process places the disputing parties at the center of the resolution process, allowing them to reach a mutual agreement voluntarily and without coercion from a third party. The effectiveness of mediation by BPN can be observed from a number of perspectives. Initially, mediation alleviates the burden on the courts by addressing disputes at the administrative level. This contributes to the de-bureaucratization of processes and facilitates the expeditious resolution of land cases. Secondly, mediation frequently yields a more satisfactory outcome for the disputing parties, as the resulting solution aligns with their shared interests. Thirdly, mediation enhances public trust in BPN as a responsive and proactive institution in handling land disputes.

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