

## Factors Inhibiting Land Dispute Resolution in Gorontalo Regency

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### Abstract

The aim of this research is to determine the solution of land boundary disputes through mediation and the inhibiting factors. The method used in the research is empirical with qualitative descriptive data analysis which describes and describes and explains data and facts according to applicable laws and regulations as well as the results of findings at the location.

Based on the research results, the answer was obtained that the resolution of land boundary disputes through mediation at the Gorontalo Regency Land Agency was carried out in several stages, namely examining complaints; Conduct file research; Carrying out Mediation Procedures by deliberation, namely using a family approach carried out formally through summons, making minutes and deeds or statements of peace as evidence for the parties; and carry out follow-up actions if no point of agreement is found, then a stage is carried out, namely preparing a draft decision to cancel land rights which are deemed to be administratively defective based on a later court decision. Inhibiting factors for resolving land boundary disputes through mediation at the Gorontalo Regency Land Agency are internal factors originating from within the agency or land office itself, such as no mapping drawings and incomplete data on old certificates, making it difficult for BPN; Lack of human resources in the field of dispute resolution and handling; There are no strict sanctions for the BPN if there is an element of intent on the part of one of the parties to the dispute, thereby hampering the mediation process, and invitations related to summoning the parties are considered trivial. External factors, namely there are parties who do not have good intentions and do not take advantage of this mediation process by stalling for time; The parties were overcome with emotion; and sufficient information was not provided by the parties. Therefore, the Government and society should strive for a mediation process in resolving disputes including land boundaries, as an implementation of national character and culture that prioritizes deliberation and consensus and increasing human resources at BPN Gorontalo, as well as increasing the quality and professionalism of Mediator through participation in training and workshops on how to handle cases.

**Keywords: Land Boundary; Mediation; Dispute**

### INTRODUCTION

Agrarian law cannot be separated from an understanding of land issues and their legality, such as land documents, which are vulnerable and complicated to resolve until they finally go to court. Land problems occur because there are legal subjects who own a plot of land and in their ownership there are other people who claim to have the same rights to the land object. This is related to land which basically cannot be separated from human life, because every one needs it in daily life, both in carrying out activities and for development, but its availability for human control is limited, while the human population continues to increase.

Disputes themselves are something that cannot be avoided if not handled properly, and if left unchecked will disrupt the ability of people's lives, as well as not achieving state goals and programs. While land and conflicts are not actually something new, they are becoming increasingly widespread now a days compared to the past. Settlement, especially of land issues outside of court, is not intended to take on the duties of the judiciary, but rather as an alternative solution for the parties to the dispute in order to obtain a

resolution and mutual benefit. Settlement of land issues and cases outside of court is facilitated by the National Land Agency, and involves various parties who choose to settle by deliberation and consensus through BPN mediation. The authority that BPN has in resolving disputes is procedurally carried out by first conducting a study and approaching the disputing parties, and one party submits a request to have the problem resolved, and the other party does not object to the problem being resolved by the land management agency, namely BPN.

One way to improve the quality of service from the officials themselves is to carry out land registration. Registration of land that is subject to western law aims to provide a guarantee of certainty and is known as Rechts Cadaster or Legal Cadaster. Meanwhile, although customary land rights have been registered, it does not aim to provide legal certainty, but rather administrative data collection, especially relating to tax payments (Fiscaal Cadaster), which produces proof of payment of tax on land, and results in no written proof in the form of a certificate. does not provide certainty and legal protection for ownership rights.

Concerning land issues, this is part of civil law, which is regulated in Law no. 5 of 1960 concerning Basic Agrarian Regulations, as well as Government Regulation no. 24 of 1997 which has been changed to PP No. 18 of 2021 concerning Land Registration. The result of land registration is the issuance of a certificate of land rights as valid evidence as stated in Article 19 Paragraph (2) letter c, UUPA. Apart from that, it is also confirmed in Article 32 Paragraph (1) PP No. 24 of 1997 which states that a certificate is proof of ownership rights which is valid as physical and juridical evidence contained there in, for example a measuring certificate and land book of rights in question. This land right is also regulated in Article 19 Paragraph (1) of the UUPA, which guarantees legal certainty regarding land rights and is implemented by issuing a letter or certificate.

Regarding the authority of land agencies in resolving disputes, problems that sometimes arise are related to the legal basis that regulates government agencies and the procedures for resolving disputes. In principle, the authority of the regional office of the land agency in the role of dispute resolution is based on statutory regulations, namely the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 11 of 2016 concerning Settlement of Land Cases as the legal umbrella where BPN acts as a mediator in land disputes that arise in society. Meanwhile, there is a lack of community intention in resolving land disputes at BPN because the settlement process carried out has not been able to reach the interests of the parties to the dispute, the role of BPN should be to make it easier for the community to seek justice in resolving disputes.

Meanwhile, from existing dispute cases, researchers took research objects regarding land boundary disputes that occurred in Gorontalo Regency. A sample case is in Kayu Bulan Village, Limboto District, where there was a dispute between two people with the initials Arifin and Noce over a piece of certified land. Based on observations at BPN by researchers, the land was the property of Arifin, for which a certificate of ownership had been issued since 2021, but Noce took issue with it in 2022 on the grounds that he did not know that part of the land had become part of the certificate controlled by Arifin.

Problems began to arise when Noce intended to sell his land to another party who then asked for land boundaries, but Arifin had already claimed ownership rights and was stated in a certificate regarding the boundaries and size. Therefore, Noce finally reported this to the BPN and intended to litigate a dispute regarding the boundaries of his land, which he did not know had been claimed by someone else while he was not there.

## **METHOD**

In this paper, the type of research used by researchers is empirical legal research. Empirical legal research is a study that views law as a reality which includes social, cultural realities and the study of other facts in the field. Meanwhile, the approach used is qualitative, namely research procedures that produce descriptive data, expressed by respondents in writing or orally according to their reality in the field. The research location targeted by prospective researchers is the National Land Agency of Gorontalo Regency, where there are disputes related to land.

## **DISCUSSION**

Land boundaries are contained in Article 21 and Article 22 of Minister of Agrarian Affairs Regulation Number 3 of 1997. As we know, the determination of land boundaries is the designation of the boundaries of a plot of land, and the installation of these boundary marks is carried out by the owner of the land rights because of his authority, and based on an agreement. between land rights holders.

Before carrying out measurements on a plot of land, the right holder must first place a boundary mark at a corner point, to prioritize balance values and equality of rights. This of course aims to teach that law in society must fulfill 3 values, namely justice, the aspect of certainty and the value of usefulness as a sociological aspect. Justice itself is the most widely discussed legal goal, especially in land matters.

Mediation itself has been regulated in Ministry of Agrarian Regulation Number 11 of 2016 as one of the resolutions of land disputes, not only deliberations carried out at the village level. Mediation is also a way of resolving disputes through a negotiation process to obtain an agreement between parties assisted by a mediator. In mediation, there is a problem-solving negotiation process, carried out by an impartial external party who collaborates with the disputing parties to find a mutual agreement.

Meanwhile, the dispute case discussed by the researchers as the object of the research study was regarding land boundary disputes that occurred in Gorontalo Regency. The case sample raised was regarding land boundaries in Kayu Bulan Village, Limboto District, where there was a dispute between two people with the initials Arifin and Noce over a plot of land that was certified. Based on the results of research and interviews with researchers at BPN, it was found that the land was the property of Arifin, for whom a certificate of ownership had been issued since 2021, but Noce took issue in 2022 on the grounds that he did not know that part of his land had become part of the certificate. controlled by Arifin.

This problem began to arise when Noce intended to sell his land to another party and then asked for land boundaries, but Arifin had claimed it as property rights and was stated in a certificate regarding the boundaries and size. Therefore, Noce finally reported this to the BPN and intended to litigate a dispute regarding the boundaries of his land, which he did not know had been claimed by someone else while he was not there. Therefore, Mrs. Noce directly requested that this matter be resolved by the BPN in various ways, because deliberations had already been held at the sub-district level but were not completed. He did this because it was the same as Mr Arifin, in that he also held proof of ownership rights in the form of a certificate.

Deliberation and consensus are carried out outside the court with or without a mediator. Usually mediators come from parties who have influence, for example village heads, traditional leaders and of course the national land agency. In resolving land disputes through deliberation, the conditions are that this dispute does not involve determining ownership of land which can give or remove a person's rights to land, and that the parties to the dispute have close kinship and are still adhered to in accordance with local customary law.

In resolving land disputes, especially those related to land boundaries in Gorontalo Regency, procedures carried out through a mediation mechanism by BPN begin with the plaintiff reporting his claim to the land office. In this land dispute, according to the results of interviews with Mr. Sivac, there were people who claimed that the land belonged to them. The chronology of the case is that there are residents who then claim to be the owners of the land or land for which a certificate has been made and thus receive a lawsuit from another party who does not have proof of similar ownership rights, but with the argument that they have been in possession for a long time.

The steps and efforts to resolve disputes by the BPN are in order to provide protection for property rights holders by following several procedures, where the handling of land issues through mediation institutions is based on 2 principles, namely the formal truth of the facts underlying the problem in question and the wishes free from the parties to the dispute regarding the disputed object. This is an effort to provide protection and justice to the community.

According to Sivac, sometimes disputes also occur because BPN officials have been negligent in that they have not checked the existence and origin of the land in detail, then only based on the size of the land on the sheet of paper shown by a certain party, then the certificate issuance process is completed. In this case, it

means that there is an attempt to violate legal procedures, especially the certificate processing mechanism, and the BPN could also become a defendant in the case.

Based on the explanation above, the researcher provides conclusions and analysis that land problems can be resolved through mediation by BPN, as an effort to resolve disputes through joint negotiations carried out by a neutral third party. The existence of this mediator is to find a form of resolution that can be agreed upon by all parties, where mediation is often an option in resolving disputes, because the mediator's understanding and knowledge will then encourage the successful resolution of land cases. In order to achieve dispute resolution based on the principle of a win-win solution, efforts are taken through non-litigation channels which are generally regulated in Law no. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. Meanwhile, there are specifically mediation regulations in Supreme Court Regulation Number 1 of 2008 concerning Mediation Procedures in Court, where Article 1 number 7 of PERMA explains that mediation is dispute resolution through a negotiation process between the two parties assisted by a mediator. In principle, the practice of mediation is often used by disputing parties to resolve their cases, with the hope of obtaining mutual benefits or at least not causing harm to the other party.

It is hoped that with examples of cases like this that people will be more careful and clarify the boundaries of their respective land so as not to cause disputes in the future. Apart from that, due to the many obstacles faced by BPN, it is hoped that officers will be more careful in taking measurements in making certificates so that in the future they can reduce the number of land disputes in Gorontalo Regency.

The mediation process at the Gorontalo Regency BPN is also based on statutory regulations, although in its implementation there are provisions that have not been implemented optimally, such as in the implementation of mediation, where this process is carried out for a maximum of 30 days, but exceeds that time. The resolution of land disputes which is carried out also brings together the disputing parties, mediators and witnesses related to land disputes to deliberate to find a solution as is one of the local wisdoms of the Indonesian nation and especially Gorontalo Regency.

## **Conclusion**

Based on the results of the discussion in the research, it can be concluded as follows;

Settlement of land boundary disputes through mediation at the Gorontalo Regency Land Agency is carried out in several stages, namely:

- a. Checking Complaints. Regarding the complaint received, the BPN examines the file containing the incident which shows that the applicant is the person who has the right to the land by attaching evidence and witnesses.
- b. Conducting research, where this effort is carried out by the BPN which is part of case handling, by collecting administrative data in the form of physical data in the field.
- c. Mediation and Deliberation Mechanism, namely at this stage is a form of approach to the parties by BPN who becomes a mediator in resolving land dispute cases with a family approach. This deliberation is carried out formally through a summons, making minutes and a deed or peace statement as evidence for the parties.
- d. Follow-up efforts, if a point of agreement can not be found, a stage in dispute resolution is carried out, namely preparing a concept for a decision to cancel land rights that are deemed to be administratively defective based on a later court decision.

Inhibiting factors for resolving land boundary disputes through mediation at the Gorontalo Regency Land Agency are internal and external factors.

### **1) Internal factors**

- a. It comes from within the agency or land office itself, such as there being no mapping images and incomplete data on the old certificate, making things difficult for BPN.
- b. There is a lack of human resources in the field of dispute resolution and handling, including only 2 (two) mediators, while there are many cases involving land disputes. The lack of human resources in the land dispute and conflict handling sub who is tasked with resolving land cases at the BPN Office makes the

mediation process hampered and requires waiting in queues.

c. There are no strict sanctions for the BPN if there is an element of intention on the part of one of the parties to the dispute, there by hampering the mediation process, and invitations related to summoning the parties are considered trivial.

## 2) External Factors

a. There are parties who do not have good intentions and do not take advantage of this mediation process by stalling for time.

b. The parties are controlled by emotions, so they choose legal counsel and hinder the mediation process, because there are some legal representatives who prefer to win their cases in court.

c. It took quite a long time because sufficient information was not provided by the parties.

## Suggestion

1. The government and society should strive for a mediation process in resolving disputes including land boundaries, as an implementation of the nation's character and culture which prioritizes deliberation and consensus.

2. Increase human resources at the Gorontalo National Land Agency, and increase the quality and professionalism of mediators by involving them in training and workshops on how to handle cases based on a family approach and in a persuasive manner, in order to minimize dispute resolution in court.

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