

THE EFFECTIVENESS OF LAND DISPUTE RESOLUTION THROUGH MEDIATION BASED ON THE REGULATION OF THE MINISTER OF AGRARIAN AFFAIRS AND SPATIAL PLANNING/HEAD OF THE NATIONAL LAND AGENCY NUMBER 21 OF 2020 CONCERNING THE HANDLING AND RESOLUTION OF LAND CASES AT THE BADUNG REGENCY LAND OFFICE

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Abstract

Land disputes remain one of the most significant legal issues in Indonesia because they directly affect legal certainty over land ownership rights. Litigation is often costly, time-consuming, and produces win-lose decisions. Therefore, Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 21 of 2020 provides mediation as an alternative dispute resolution mechanism emphasizing consensus and mutual agreement. This study aims to analyze the effectiveness of mediation in resolving land disputes at the Badung Regency Land Office and to identify supporting and inhibiting factors affecting its implementation. This research employs empirical legal research using statutory, conceptual, and sociological approaches. Data were collected through literature review, interviews, observation, and documentation. The findings indicate that mediation has been relatively effective in resolving land disputes by providing faster settlement, lower costs, preserving relationships between disputing parties, and reducing litigation. Nevertheless, several obstacles remain, including lack of good faith among disputing parties, incomplete physical and juridical land data, limited authority of mediators, and inadequate public understanding regarding mediation procedures.

Keywords: Land Dispute, Mediation, National Land Agency, Legal Effectiveness.

INTRODUCTION

Land is a natural resource of strategic value in the lives of the Indonesian people, serving not only as a place of residence but also as a means of production and investment, as well as a support for national development. Its status as an asset of high economic value has led to an increased potential for disputes regarding land ownership and possession, driven by population growth and the progress of national development.

Constitutionally, Article 33, Paragraph (3) of the 1945 Constitution of the Republic of Indonesia affirms that the land, water, and natural resources contained therein are controlled by the state and utilized for the greatest possible prosperity of the people. This constitutional

mandate is further elaborated in Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, which designates the state as the administrator of land affairs to ensure legal certainty for the public. In practice, land disputes remain a significant issue in various regions, including Badung Regency. These disputes generally stem from overlapping land titles, discrepancies in land parcel boundaries, administrative flaws in title issuance, disparities between physical possession and legal records, and objections regarding the issuance of land rights titles. Such conditions undermine legal certainty, erode public trust in land administration, and even carry the potential to trigger protracted social conflict.

Resolving land disputes through litigation has generally been considered ineffective, as the process is time-consuming, costly, and results in adversarial rulings. Consequently, the government—through the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN)—issued Regulation Number 21 of 2020 concerning the Handling and Resolution of Land Cases, which provides a pathway for dispute resolution via mediation as a form of Alternative Dispute Resolution (ADR).

Mediation is a dispute resolution process involving a neutral third party (a mediator) who assists the parties in reaching a mutual agreement. Unlike litigation, mediation prioritizes the principles of deliberation, voluntariness, and a resolution that benefits both sides (a "win-win" solution). In the context of land matters, the Land Office acts as a facilitator, bringing the parties together, clarifying both physical and legal data, and encouraging an amicable resolution without the need for court proceedings.

At the Badung Regency Land Office, mediation mechanisms have been implemented to address various cases involving objections to certificate issuance and overlapping land claims. However, the success of mediation remains contingent upon several factors, such as the completeness of land documentation, the good faith of the parties involved, the mediator's competence, and the support of applicable regulations. This situation warrants examination to determine the extent of mediation's effectiveness as a tool for resolving land disputes under the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency (ATR/BPN) Number 21 of 2020. Given this context, this research is crucial for providing an overview of the effectiveness of mediation implementation and the factors influencing its success in resolving land disputes in Badung Regency.

1. Formulation of the problem

Based on the aforementioned background, the formulation of the problem in this study is as follows:

1. How effective is the implementation of mediation in land dispute resolution at the Badung Regency Land Office, based on the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 21 of 2020 concerning the Handling and Resolution of Land Cases?
2. What factors support and hinder the implementation of mediation for land dispute resolution at the Badung Regency Land Office?

METHOD

This study is an empirical legal study examining the effectiveness of the application of legal provisions in the practice of resolving land disputes through mediation at the Badung Regency Land Office. The approaches employed include the statute approach, the conceptual approach, and the sociological approach.

The data sources consist of primary data obtained through interviews with officials from the Badung Regency Land Office, as well as secondary data derived from primary legal materials, namely Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, Government Regulation Number 24 of 1997 concerning Land Registration, Presidential Regulation Number 177 of 2024 concerning the National Land Agency, and Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 21 of 2020 concerning the Handling and Resolution of Land Cases.

Data collection was conducted through literature review, observation, documentation, and interviews. Subsequently, the data were analyzed using a descriptive-qualitative approach by linking empirical facts to theories regarding legal effectiveness, the rule of law, legal authority, and legal certainty, thereby leading to a conclusion concerning the effectiveness of mediation as an alternative method for resolving land disputes.

RESULTS AND DISCUSSION

The Effectiveness of Mediation Implementation in Land Dispute Resolution Based on Minister of ATR/BPN Regulation Number 21 of 2020

As a state based on the rule of law, Indonesia prioritizes legal certainty as a primary objective in the administration of land affairs. Consequently, any dispute arising from objections to the issuance of land certificates or from overlapping land rights must be resolved in a manner that ensures legal certainty, fairness, and utility. Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 21 of 2020 provides the legal basis for Land Offices to resolve disputes through mediation. These provisions indicate that dispute resolution need not always be pursued through litigation;

instead, it can be achieved through deliberation facilitated by a land official acting as a mediator.

In practice at the Badung Regency Land Office, the mediation process begins with the receipt of a public complaint regarding a land dispute. This is followed by an examination of physical and legal data, the summoning of the parties involved, document verification, and the conduct of mediation led by an official appointed as the mediator. If an agreement is reached, the outcome is recorded in an official report that serves as the basis for the administrative resolution of the land matter. Conversely, if no agreement is reached, the parties retain the right to pursue resolution through the courts.

The conduct of this mediation demonstrates that the Land Office does not function as an adjudicatory body for disputes—unlike a court of law—but rather as a facilitator assisting the parties in reaching a mutually agreed-upon solution based on land administration data. This resolution model reflects the principles of Alternative Dispute Resolution, which prioritize amicable settlements. According to Soerjono Soekanto's theory of legal effectiveness, the efficacy of a regulation is influenced by five factors: the law itself, law enforcement officials, facilities and infrastructure, the community, and legal culture. These five factors can be used to assess the effectiveness of land dispute mediation in Badung Regency.

a. Legal Factors

In terms of legal substance, the implementation of mediation rests on a sufficiently strong legal foundation provided by the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency (ATR/BPN) Number 21 of 2020. This regulation governs the entire process—from complaint intake, case examination, and the conduct of mediation to the follow-up on mediation outcomes—thereby ensuring procedural certainty for the parties involved. Furthermore, the authority of the National Land Agency (BPN) has been reinforced by Presidential Regulation Number 177 of 2024, which mandates the agency to handle land disputes and conflicts. Consequently, from a regulatory perspective, there is no legal void regarding the conduct of land mediation.

b. Law Enforcement Agency Factors

The success of mediation is heavily influenced by the mediator's ability to establish effective communication with the parties involved. Mediators are required not only to understand land law but also to objectively explain physical and legal data, ensuring that all parties share a common understanding of the disputed property. Research findings indicate that officials from the Badung Regency Land Office have endeavored

to perform this role professionally while maintaining their independence throughout the mediation process. The mediator's neutrality is a crucial factor in fostering public trust in the mediation-based dispute resolution mechanism.

c. Facilities and Infrastructure Factors

The increasingly digitized land administration system supports the mediation process. Documents such as land registers, survey records, parcel maps, and electronic land data assist mediators in verifying the tenure history and legal status of the disputed land parcels. Nevertheless, challenges remain—specifically discrepancies between legacy data and actual physical conditions on the ground—necessitating further examination through re-surveying or additional administrative review.

d. Societal Factors

The success of mediation as an alternative method for resolving land disputes is determined not only by the quality of regulations and the mediator's competence but also by the participation of the disputing parties. In the practice of dispute resolution at the Badung Regency Land Office, the success of mediation hinges significantly on the parties' good faith—specifically, their willingness to attend, present facts honestly, and seek a resolution through deliberation. Research findings indicate that the majority of disputes successfully resolved through mediation involve parties who share family, neighborly, or business ties that they wish to preserve. Conversely, mediation tends to fail when one party is uncooperative, refuses to attend, or stubbornly maintains a claim while disregarding available land administration evidence.

A lack of public understanding regarding the function of mediation is also a reason why the amicable resolution of disputes has not yet been optimized. Some members of the public still believe that the Land Office has the authority to determine who is right and who is wrong, much like a judge in court. In reality, however, under Regulation of the Minister of ATR/BPN Number 21 of 2020, the Land Office acts solely as a facilitator, assisting the parties in reaching a mutual agreement. Therefore, enhancing public legal education regarding mediation procedures and the benefits of non-litigation dispute resolution is a crucial step toward improving the effectiveness of land dispute resolution.

e. Legal Culture Factor

Legal culture is a key factor in Soerjono Soekanto's theory of legal effectiveness. It reflects the attitudes, values, and behaviors of society regarding the prevailing law. In the context of resolving land disputes, the culture of deliberation (*musyawarah*)

prevalent in Indonesian society serves as a fundamental asset for the success of mediation. The Balinese people have long practiced dispute resolution through mechanisms of deliberation - embodied in concepts such as *paras-paros* and *sagilik-saguluk salunglung sabayantaka* - which emphasize harmony and balance in social relationships. These values align with the principles of mediation, which prioritize reaching a consensus over resolution through a judicial ruling.

However, the ever-increasing economic value of land leads some parties to prioritize their own interests over seeking a mutual resolution. This rising economic value often causes land disputes to escalate into protracted conflicts, thereby diminishing the effectiveness of the mediation process. Nevertheless, if a culture of deliberation is fostered through a mediator's persuasive approach, mediation retains significant potential as an effective instrument for dispute resolution.

An analysis based on Soerjono Soekanto's theory of legal effectiveness reveals that the implementation of mediation at the Badung Regency Land Office meets most indicators of legal effectiveness. Regarding regulations, Regulation of the Minister of ATR/BPN Number 21 of 2020 has provided procedural certainty for dispute resolution through mediation. Regarding law enforcement personnel, Land Office officials have performed their roles as mediators professionally, upholding the principles of independence and objectivity. Regarding facilities, the availability of physical and juridical land data has facilitated the process of clarifying the disputed objects. Regarding the community, the majority of parties remain willing to resolve disputes through deliberation, even though some cases ultimately proceed to court. Finally, regarding legal culture, the Balinese community continues to highly value kinship and peaceful resolution. Thus, the implementation of mediation under ATR/BPN Ministerial Regulation Number 21 of 2020 can be considered quite effective, although this effectiveness is not yet fully optimal due to various administrative and sociological obstacles that influence the success of mediation.

Factors Supporting and Hindering the Implementation of Land Dispute Mediation

A. Supporting Factors

Based on research findings, there are several factors that support the successful resolution of land disputes through mediation at the Badung Regency Land Office.

1. Existence of a Clear Legal Basis

Regulation of the Minister of ATR/BPN Number 21 of 2020 provides a strong legal basis for Land Offices to facilitate dispute resolution through

mediation. This regulatory certainty lends legitimacy to every stage of the dispute resolution process, thereby enhancing public confidence in mediation.

2. Availability of Physical Data and Juridical Data

Administrative documents - such as land registers, survey records, land parcel maps, and the history of rights transfers - greatly assist the mediator in clarifying the details of the disputed property. The more comprehensive the available land data, the easier it is for the mediator to explain the legal status of the disputed land to the parties involved.

3. Mediator Professionalism

A mediator's ability to facilitate communication, maintain neutrality, and objectively explain legal aspects is a key factor determining the success of mediation. A mediator who understands land law can more easily gain the parties' trust, thereby fostering a conducive negotiation process.

4. Good Faith of the Parties

The success of mediation is fundamentally driven by the parties' willingness to resolve the dispute amicably. If both parties approach the process with an open mind and are prepared to accept the outcome of the land administration clarification, the likelihood of reaching an agreement increases significantly.

5. Culture of Deliberation

The values of *musyawarah* (deliberation and consensus-building) that persist within Indonesian society serve as a form of social capital that strongly supports the practice of mediation. Resolving disputes through dialogue is considered more effective at preserving familial relationships than resolution through litigation.

B. Factors Hindering the Implementation of Land Dispute Mediation

In addition to the various factors supporting the success of mediation, this study also identified a number of obstacles affecting the effectiveness of land dispute resolution at the Badung Regency Land Office. These obstacles stem from legal, land administration, and institutional aspects, as well as the behavior of the disputing parties.

1. Lack of Good Faith Among the Parties

The most significant obstacle in the mediation process is the lack of good faith on the part of the disputing parties. Mediation is fundamentally a

voluntary dispute resolution process; therefore, its success relies heavily on the parties' willingness to negotiate openly. In practice, instances still occur where parties fail to attend mediation sessions, refuse to provide necessary documents, or stubbornly maintain their positions without considering the land administration data presented by the mediator. Such circumstances prevent the mediation process from yielding a mutual agreement, thereby necessitating the continuation of the dispute through court litigation. According to Syahrizal Abbas, the success of mediation is largely determined by the parties' willingness to compromise. If one party lacks the desire to reach a settlement from the outset, the likelihood of achieving an agreement becomes very slim.

2. Incompleteness of Physical and Juridical Data

The next obstacle is the incompleteness of land data, covering both physical and legal aspects. In some instances, discrepancies have been found between actual land parcel boundaries on the ground and the data recorded in survey documents or land registers. Furthermore, disputes arise from incomplete documentation regarding the history of rights transfers, making it difficult for mediators to clarify the legal status of the disputed property. Such situations often necessitate administrative reviews or re-surveys before mediation can be conducted effectively. According to Boedi Harsono, legal certainty in land registration can only be achieved if the physical and legal data recorded in the land certificate accurately reflect the actual conditions on the ground.

3. Limitations on the Authority of the Land Office

Although Regulation of the Minister of ATR/BPN Number 21 of 2020 authorizes the Land Office to facilitate mediation, this authority is limited to that of a facilitator rather than an institution empowered to adjudicate disputes. A mediator cannot compel the parties to accept the mediation outcome nor unilaterally cancel a land certificate in the absence of an adequate legal basis. Therefore, if mediation fails to yield an agreement, the dispute must still be resolved through the District Court or the Administrative Court, depending on the nature of the dispute. This limitation of authority is a consequence of the rule-of-law principle that

distinguishes the function of government administration from the function of judicial power.

4. High Economic Value of Land

The growth of the tourism and investment sectors in Badung Regency has led to a significant rise in land prices. The high economic value of the land drives parties to tenaciously uphold their ownership claims, thereby narrowing the scope for compromise during mediation. In some instances, disputes are no longer based solely on land administration issues but are also influenced by investment interests and the commercial value of the land. Consequently, resolving these disputes through mutual deliberation becomes more difficult compared to resolving disputes over land with relatively low economic value.

5. Lack of Public Understanding of Mediation

There are still people who mistakenly believe that mediation is the same as a formal court hearing, expecting the mediator to determine who is right and who is wrong. In reality, however, a mediator merely assists the parties in reaching an agreement and lacks the authority to issue a binding legal ruling. This lack of understanding results in some people failing to utilize mediation as an alternative method for resolving land disputes. Therefore, more intensive public outreach is needed to highlight the benefits of mediation as a dispute resolution mechanism that is simpler, faster, and more cost-effective.

Based on the theory of legal effectiveness proposed by Soerjono Soekanto, the effectiveness of a legal provision is significantly influenced by five key elements: legal substance, law enforcement officials, facilities and infrastructure, the community, and legal culture. Research findings indicate that these five elements are interconnected in determining the successful implementation of mediation at the Badung Regency Land Office. Regarding the legal substance, Regulation of the Minister of ATR/BPN Number 21 of 2020 has provided an adequate legal basis for the conduct of mediation. From the perspective of law enforcement personnel, mediators have performed their duties professionally and objectively. Regarding facilities, the land administration system has evolved through the digitalization of land data, although some discrepancies between legacy data and actual conditions on the ground still persist.

Regarding the aspects of society and legal culture, the success of mediation is heavily influenced by the level of legal awareness, the willingness to engage in deliberation, and respect for the principle of peaceful dispute resolution. Thus, the effectiveness of mediation is determined not only by the quality of regulations but also by the legal conduct of the public as users of land services. Overall, this study demonstrates that mediation under Minister of ATR/BPN Regulation Number 21 of 2020 has proven to be an effective dispute resolution instrument, as it offers a faster and more cost-effective solution while preserving good relationships between the parties. Nevertheless, improvements in land administration quality, the strengthening of mediator competence, and increased public legal awareness remain necessary to further optimize the effectiveness of mediation.

cONCLUSION

Based on the results of the research and discussion, it can be concluded that:

1. The implementation of mediation for land dispute resolution at the Badung Regency Land Office—conducted pursuant to the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 21 of 2020—has proven quite effective. This effectiveness is evidenced by mediation's ability to resolve a portion of land disputes amicably, accelerate the resolution process, lower dispute resolution costs, preserve relationships between the parties, and reduce the number of disputes proceeding to court. Such success is underpinned by clear regulations, mediator professionalism, the availability of land administration data, and a culture of deliberation (*musyawarah*) that remains prevalent in the community.
2. However, the effectiveness of mediation still faces various obstacles, including a lack of good faith among the parties, incomplete physical and juridical land data, the limited authority of the Land Office as a facilitator, the high economic value of the land in question, and limited public understanding regarding the function and mechanisms of mediation. Therefore, sustained efforts are required to strengthen the land administration system, enhance mediator competence, and expand public legal education to optimize dispute resolution through mediation.

A. Recommendations

1. The government, through the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency, needs to continuously improve the quality of the land administration system by periodically updating physical and legal data, strengthening the competence of land mediators, and optimizing the digitalization of land services to minimize disputes arising from administrative errors.
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2. The Badung Regency Land Office is expected to intensify public outreach regarding mediation mechanisms so that dispute resolution through deliberation is prioritized over litigation. Furthermore, the public is expected to uphold good faith, information transparency, and amicable resolution in all land disputes to foster legal certainty and social harmony.

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