



## Procedure for Land Dispute Resolution Through Mediation at the Land Office: A Critical Analysis of Procedural Justice

Renistya Anjening Rorosati<sup>1</sup>, Iwan Permadi<sup>2</sup>, M. Hamidi Masykur<sup>3</sup>

Universitas Brawijaya Malang, Indonesia

renistyaar@gmail.com<sup>1</sup>, iwan\_permadi@ub.ac.id<sup>2</sup>, hamidi@ub.ac.id<sup>3</sup>

**Abstract.** This research discusses legal certainty related to the period of out-of-court dispute resolution through mediation at the land office and its impact on the protracted mediation process. Legal certainty is a crucial element in dispute resolution to ensure justice and certainty for the disputing parties. Through a normative juridical approach, this research analyzes the laws and regulations governing mediation and its practical implementation at the land office. The findings show that the lack of clarity and certainty in the regulation of the mediation period at the land office leads to an ineffective and time-consuming dispute resolution process. Without a clear time limit, the parties and the mediator cannot resolve cases promptly. This study uses a systematic normative juridical research method to analyze these issues. The conclusion is that existing regulations vary in defining and implementing mediation, highlighting the need for technical guidelines for mediation procedures and rules regarding the implementation period at the National Land Agency to ensure optimal and efficient mediation.

**Keywords:** *Dispute Resolution; Legal Certainty; Land; Mediation*

## Introduction

The resolution of land disputes in Indonesia is divided into two main processes: through the court and out of court. The oldest method of dispute resolution is court litigation, which has since evolved to include out-of-court settlement processes such as mediation.<sup>1</sup> According to the Law of the Republic of Indonesia Number 48 of 2009 concerning Judicial Power, mediation is an institution for resolving disputes or differences of opinion through procedures agreed upon by the parties, namely out-of-court settlement through consultation, mediation, conciliation, or expert judgment.

Current literature reveals that mediation as a method of dispute resolution at the land office faces various challenges, particularly regarding the certainty of the resolution period. Previous studies indicate that Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Courts stipulates a 30-day mediation period. However, the Regulation of the Minister of ATR/BPN No.21 of 2020 lacks similar clarity, leading to prolonged mediation processes.<sup>2</sup> This gap in the effectiveness of mediation at the land office necessitates an analysis of the regulatory framework governing mediation and its practical implications. This research aims to address this gap by examining the existing regulations and their implementation.

The urgency of this research stems from the increasing number of unresolved land disputes due to inefficiencies in the current mediation process at the land office. The lack of clear regulations regarding the mediation period creates legal uncertainty and extends the dispute resolution process. This situation imposes additional burdens on the disputing parties and degrades the quality of public service in land dispute resolution.

The main legal issue addressed in this research is the legal certainty related to the period for resolving disputes through mediation at the land office. The lack of clear regulations affects the effectiveness of the mediation process and

---

<sup>1</sup> Susanti Adi Nugroho, *Penyelesaian Sengketa Arbitrase Dan Penerapan Hukumnya*, Edisi pertama (Rawamangun, Jakarta: Kencana, 2015).

<sup>2</sup> Gary Goodpaster, *Panduan negosiasi dan mediasi* (Jakarta: Proyek ELIPS, Departemen Kehakiman R.I., 1999).

## Renistya Anjening Rorosati, Iwan Permadi, M. Hamidi Masykur

Procedure for Land Dispute Resolution Through Mediation at the Land Office: A Critical Analysis of Procedural Justice

procedural justice for the disputing parties.<sup>3</sup> Therefore, this research is essential to identify the existing regulations and provide recommendations for improving the effectiveness of mediation at the land office.

The objective of this research is to analyze the legal certainty regarding the period of dispute resolution through mediation at the land office and its impact on the effectiveness of the mediation process. This study also aims to provide regulatory improvement recommendations to ensure that mediation can proceed efficiently and fairly, thereby enabling timely and effective resolution of land disputes.

### Research Method

The research methodology employed in this study is normative juridical research. Peter Mahmud Marzuki defines legal research as "a process to find a rule of law, legal principles, or legal doctrines to answer the legal problems faced. Normative legal research is conducted to produce new arguments, theories, or concepts as prescriptions in solving the problems faced."<sup>4</sup> The primary legal issue addressed in this paper concerns a legal vacuum. Specifically, this vacuum pertains to the absence of clear regulations regarding the period for out-of-court dispute resolution through mediation at the land office, as stipulated in the Regulation of the Minister of ATR/BPN No. 21 of 2020 concerning Handling and Settlement of Land Cases, which does not specifically address the time limits for mediation conducted at the National Land Agency.<sup>5</sup>

This normative juridical research adopts a statute approach, which involves examining all relevant legislation and legal products associated with the legal issues under investigation.<sup>6</sup> This approach entails a comprehensive review of

---

<sup>3</sup> David Aprizon Putra and M. Anton Alifandi, "Legal Study of The Existence of Genuine Autonomy in Order to Organize Village Autonomy in Indonesia," *NEGREI: Academic Journal of Law and Governance* 1, no. 1 (July 3, 2021): 35, <https://doi.org/10.29240/negrei.v1i1.2623>.

<sup>4</sup> Peter Mahmud Marzuki, *Penelitian hukum: Edisi Revisi* (Jakarta: Kencana Prenada Media Group, 2005).

<sup>5</sup> Anang Darwisyi Baidhowi, "Human Rights for The Elderly Group in Indonesia: Elderly in The Era of Covid 19," *NEGREI: Academic Journal of Law and Governance* 2, no. 1 (June 18, 2022): 23, <https://doi.org/10.29240/negrei.v2i1.3629>.

<sup>6</sup> Johnny Ibrahim, *Teori Dan Metodologi Penelitian Hukum Normatif* (Malang: Bayumedia Publishing, 2005).

laws and regulations pertinent to the research topic, particularly 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, and Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution.

Additionally, the research employs a case study approach, a type of descriptive research that is conducted intensively, in detail, and in depth on a specific individual, institution, or phenomenon within a narrow scope.<sup>7</sup> According to Yin, case study research is a method that specifically investigates contemporary phenomena within real-life contexts, particularly when the boundaries between the phenomenon and its context are not clearly defined, utilizing multiple data sources.<sup>8</sup>

By combining these approaches, the research aims to thoroughly analyze the legal framework governing mediation at the land office and identify gaps and inefficiencies in the current regulatory environment. This comprehensive analysis will help to develop new arguments, theories, or concepts to address the legal vacuum and propose solutions to enhance the effectiveness and efficiency of mediation in land dispute resolution.

## **Results and Discussion**

### **Urgency of legal regulation regarding the time limit for dispute resolution through mediation at the land office**

Urgency refers to an immediate necessity, something critically important.<sup>9</sup> Legal urgency aims to ensure justice, certainty, and benefit. Dispute resolution generally follows two main pathways: through the court system or out of court. Traditionally, court-based dispute resolution often results in a win-lose outcome, where one party's satisfaction contrasts with the other's dissatisfaction.<sup>10</sup>

---

<sup>7</sup> Imam Gunawan, *Metode Penelitian Kualitatif: Teori & Praktik* (Jakarta: Bumi Aksara, 2013).

<sup>8</sup> Gunawan.

<sup>9</sup> Soerjono Sukanto, *Penegakan Hukum*, Cet.1 (Bandung: Binacipta, 1983).

<sup>10</sup> Emily Ryall, Jonathan Cooper, and Liz Ellis, "Dispute Resolution, Legal Reasoning and Good Governance: Learning Lessons from Appeals on Selection in Sport," *European*

## Renistya Anjening Rorosati, Iwan Permadi, M. Hamidi Masykur

Procedure for Land Dispute Resolution Through Mediation at the Land Office: A Critical Analysis of Procedural Justice

This can lead to further conflict between the disputing parties. Additionally, court processes are often slow, time-consuming, and costly, in contrast, out-of-court dispute resolution aims for a win-win solution. This method relies on agreements and deliberations between the parties, allowing for a mutually acceptable resolution.<sup>11</sup> It also ensures the confidentiality of the dispute, as there is no public trial process. This method, known as Alternative Dispute Resolution (ADR), includes various approaches such as negotiation, mediation, and conciliation.<sup>12</sup>

ADR is characterized by its reliance on consensus among the disputing parties, sometimes with the assistance of a neutral third party. Given the Indonesian societal values of kinship and cooperation, ADR aligns well with cultural norms and practices.<sup>13</sup> It is not a new concept but rather a formal recognition of traditional methods of conflict resolution. In Indonesia, dispute resolution is divided into two main processes: judicial (in court) and non-judicial (ADR). ADR methods provide a viable alternative to court litigation, offering a more flexible, cost-effective, and timely resolution process. These methods emphasize collaboration and mutual agreement, which are crucial in maintaining harmonious relationships within the community.<sup>14</sup> By incorporating ADR into the formal legal framework, Indonesia can leverage its cultural strengths in dispute resolution to enhance justice and efficiency in handling conflicts.

Alternative Dispute Resolution (ADR) is a term encompassing various methods of resolving disputes outside the traditional court system, including arbitration, negotiation, conciliation, and mediation. ADR can be seen as an alternative to

*Sport Management Quarterly* 20, no. 5 (October 19, 2020): 560–76, <https://doi.org/10.1080/16184742.2019.1636400>.

<sup>11</sup> Rachel Noorajavi, “The Implementation of Asian Value on the Democratic System of Southeast Asia,” *NEGREI: Academic Journal of Law and Governance* 1, no. 1 (July 3, 2021): 1, <https://doi.org/10.29240/negrei.v1i1.2562>.

<sup>12</sup> Rachmadi Usman, *Pilihan Penyelesaian Sengketa Di Luar Pengadilan*, Cet. 1 (Bandung: Citra Aditya Bakti, 2003).

<sup>13</sup> Hibah Alessa, “The Role of Artificial Intelligence in Online Dispute Resolution: A Brief and Critical Overview,” *Information & Communications Technology Law* 31, no. 3 (September 2, 2022): 319–42, <https://doi.org/10.1080/13600834.2022.2088060>.

<sup>14</sup> Chia Kuang Lee, Tak Wing Yiu, and Sai On Cheung, “Predicting Intention to Use Alternative Dispute Resolution (ADR): An Empirical Test of Theory of Planned Behaviour (TPB) Model,” *International Journal of Construction Management* 21, no. 1 (January 2, 2021): 27–40, <https://doi.org/10.1080/15623599.2018.1505026>.

litigation, incorporating all out-of-court mechanisms, or as an alternative to adjudication, focusing on consensus-based processes such as negotiation, conciliation, and mediation.<sup>15</sup>

ADR offers several advantages over litigation. One key benefit is the voluntary nature of the process, which lacks coercion and allows for greater flexibility. The procedures are typically faster and less formal than court proceedings, leading to non-judicial decisions that remain confidential. This confidentiality helps protect the privacy of the parties involved. Additionally, ADR provides flexibility in determining the terms of resolution, saving both time and costs.<sup>16</sup> The likelihood of parties adhering to agreements reached through ADR is high, and these methods often help maintain or even improve working relationships between the disputing parties.<sup>17</sup>

These attributes make ADR an appealing option for many, as it emphasizes cooperation and mutual agreement, aligning well with cultural values that prioritize harmony and consensus. By leveraging these strengths, ADR can effectively complement the formal judicial system, providing a practical, efficient, and culturally appropriate means of resolving disputes.

### **a) Arbitration**

Arbitration, often referred to as a form of wisdom or peace facilitated by an arbitrator or referee<sup>18</sup> involves resolving disputes through particular judges who operate independently of the formal court system. This method is characterized by its swift resolution process and the provision of decisions that are final and

---

<sup>15</sup> Suyud Margono, *ADR, Alternative Dispute Resolution, & Arbitrase: Proses Pelembagaan Dan Aspek Hukum*, Cet. 1 (Jakarta: Ghalia Indonesia, 2000).

<sup>16</sup> Marta Zuccarelli et al., "Improving the Data Quality of Spontaneous ADR Reports: A Practical Example from Malta," *Expert Opinion on Drug Safety* 21, no. 2 (February 1, 2022): 253–68, <https://doi.org/10.1080/14740338.2022.1993820>.

<sup>17</sup> Rifqani Nur Fauziah Hanif, "Arbitrase Dan Alternatif Penyelesaian Sengketa," <https://www.djkn.kemenkeu.go.id>, Desember 2020, <https://www.djkn.kemenkeu.go.id/kpknl-manado/baca-artikel/13628/Arbitrase-Dan-Alternatif-Penyelesaian-Sengketa.html>.

<sup>18</sup> R. Subekti, *Kumpulan karangan tentang hukum perikatan, arbitrase dan peradilan* (Bandung: Alumni, 1992).

## Renistya Anjening Rorosati, Iwan Permadi, M. Hamidi Masykur

Procedure for Land Dispute Resolution Through Mediation at the Land Office: A Critical Analysis of Procedural Justice

binding, making them easier to enforce as the parties are more likely to comply.<sup>19</sup>

According to Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution, Article 1, paragraph 1, defines arbitration as a method of resolving civil disputes outside the public court system. This process is based on an arbitration agreement made in writing by the parties involved in the dispute.

In summary, arbitration is a voluntary procedure where disputing parties agree to be bound by the decision of a neutral third party, operating outside the traditional judicial framework. This approach is valued for its efficiency, finality, and binding nature, which facilitates easier enforcement and compliance by the involved parties.

### b) Consultation

Consultation involves a personal interaction between a party seeking advice, known as the client, and another party who offers expertise, known as the consultant. The consultant provides opinions and guidance to meet the client's specific needs and requirements. Law No. 30/1999 does not explicitly define consultation. According to Black's Law Dictionary, consultation is described as the act of seeking advice or conferring, such as a patient consulting a doctor or a client consulting a lawyer.<sup>20</sup>

Kurpius describes consultation as a voluntary relationship where a professional helper provides assistance to an individual, group, or social unit in need. The consultant aids the client in identifying and resolving work-related issues or potential problems within a client or client system.<sup>21</sup>

Therefore, consultation can be seen as a form of alternative dispute resolution. In this process, the consultant plays a non-dominant role, offering legal opinions upon the client's request. The ultimate decision regarding dispute resolution is made by the parties involved.<sup>22</sup> Occasionally, the consultant may

<sup>19</sup> Sudarmo Gautama, *Kontrak Dagang Internasional* (Bandung: Alumni, 1976).

<sup>20</sup> Nevey Varida Ariani, "Alternatif Penyelesaian Sengketa Bisnis di Luar Pengadilan," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 1, no. 2 (August 31, 2012): 277, <https://doi.org/10.33331/rechtsvinding.v1i2.101>.

<sup>21</sup> Samuel T Gladding, *Konseling Profesi Yang Menyeluruh* (Jakarta: Indeks, 2012).

<sup>22</sup> I. M. C. S. Illankoon et al., "Causes of Disputes, Factors Affecting Dispute Resolution and Effective Alternative Dispute Resolution for Sri Lankan Construction

also help in formulating the preferred methods of dispute resolution desired by the disputing parties.

### **c) Conciliation**

In the Big Indonesian Dictionary, conciliation is defined as an effort to align the desires of disputing parties to reach an agreement and resolve the dispute. It is also described as an attempt to bring the disputing parties together to resolve their issues through negotiation. Conciliation is a form of alternative dispute resolution where a professionally reliable individual is involved in resolving the dispute.<sup>23</sup>

Conciliation is a peaceful means of resolving disputes that involves a third party. This process is voluntary, meaning it is only undertaken if both parties agree to it, and it is carried out confidentially. The use of conciliation does not preclude the parties from pursuing further settlement processes or legal procedures if necessary.<sup>24</sup>

### **d) Negotiation**

Negotiation is a dispute resolution strategy where parties agree to resolve their issues through discussion, negotiation, or "urung rembuk." This process involves a third party only in the capacity that the parties or their representatives take the initiative to resolve the dispute themselves. The disputing parties are directly involved in the dialogue and process.<sup>25</sup>

Negotiation is a communicative process where individuals aim to influence the attitudes and behaviors of others, bringing together two parties with differing interests to jointly seek the best outcome.<sup>26</sup>

---

Industry," *International Journal of Construction Management* 22, no. 2 (January 25, 2022): 218–28, <https://doi.org/10.1080/15623599.2019.1616415>.

<sup>23</sup> Gunawan Widjaja, *Alternatif penyelesaian sengketa* (Jakarta: RajaGrafindo Persada, 2001).

<sup>24</sup> Novita H Sari and Irma Indrayani, "The Impact of the ASEAN Way and We Feeling Concepts on Indonesia's Involvement in Strengthening Regionalism," *NEGREI: Academic Journal of Law and Governance* 2, no. 1 (July 30, 2022): 67, <https://doi.org/10.29240/negrei.v2i1.4584>.

<sup>25</sup> Simon Roberts and Michael Palmer, *Dispute Processes: ADR and the Primary Forms of Decision-Making* (USA: Cambridge University Press, 2005).

<sup>26</sup> Gunawan Widjaja and Ahmad Yani, *Hukum arbitrase*, Cetakan kedua (Jakarta: PT RajaGrafindo Persada, 2001).



**Renistya Anjening Rorosati, Iwan Permadi, M. Hamidi Masykur**

Procedure for Land Dispute Resolution Through Mediation at the Land Office: A Critical Analysis of Procedural Justice

It is governed by Article 6 paragraph (2) of Law Number 30 Year 1999, which stipulates that parties can and have the right to resolve disputes that arise between them. A 14-day period is provided for settlement, which must be conducted through a direct meeting between the disputing parties. The resulting agreement must be documented in a written form acceptable to both parties, similar to the provisions outlined in articles 1851 to 1864 of the Civil Code.

In conclusion, negotiation allows disputing parties to reassess and fulfill their obligations in a mutually beneficial manner, exchanging or relinquishing certain rights based on the principle of reciprocity. The agreement reached through negotiation is then formalized in writing and signed by the parties for implementation.

**e) Mediation**

Mediation involves the inclusion of a third party in the settlement of a dispute to act as an advisor. According to the Big Indonesian Dictionary, mediation consists of three key elements. First, it is the process of resolving disputes between two or more parties. Second, the individuals involved in the dispute resolution process come from outside the disputing parties. Third, these external parties serve as advisors and do not possess any decision-making authority.<sup>27</sup>

Mediation is a private and confidential process designed to foster cooperation in resolving disputes. The mediator, an impartial third party, assists the conflicting parties (individuals or institutions) in reconciling their differences. The essence of mediation is negotiation, akin to the process of deliberation or consensus-building. In line with the nature of negotiation, there should be no coercion to accept or reject any idea or settlement during mediation. All decisions must be mutually agreed upon by the parties involved.<sup>28</sup>

The legal framework for mediation is outlined in Article 6 paragraphs 3 to 5 of Law No.30 of 1999. According to Article 6 paragraph 3, if negotiations fail, the

---

<sup>27</sup> DR Syahrizal Abbas, *Mediasi: Dalam Hukum Syariah, Hukum Adat, Dan Hukum Nasional* (Jakarta: Prenada Media, 2017).

<sup>28</sup> Mahkamah Agung Republik Indonesia, *Buku Komentari Peraturan Mahkamah Agung Republik Indonesia Nomor 1 Tahun 2008 Tentang Pelaksanaan Mediasi Di Pengadilan* (Jakarta, 2011).

parties may, by written agreement, resolve their dispute with the assistance of one or more expert advisors or mediators.

Mediation offers significant benefits. When parties reach an agreement, it resolves their dispute in a fair and mutually beneficial manner. Even in cases where mediation fails and no agreement is reached, the process can still be valuable.<sup>29</sup> The act of bringing the parties together helps clarify the root causes of the dispute and narrows the issues between them. This indicates a willingness to resolve the conflict and helps the parties determine an acceptable form of resolution rather than pursuing uncertain outcomes.<sup>30</sup>

### **Dispute Resolution Through Mediation**

According to Garry Goodpaster, mediation is a negotiated problem-solving process where an impartial outsider collaborates with disputing parties to help them reach a satisfactory agreement. Unlike judges or arbitrators, mediators do not have the authority to decide the dispute but can assist if the parties authorize them to do so.<sup>31</sup> The underlying assumption is that a third party can alter the power and social dynamics of the conflict by influencing the parties' personal beliefs and behaviors, providing knowledge and information, or employing more effective negotiation techniques. This approach helps the participants resolve their disputed issues.<sup>32</sup>

The literature identifies several core principles of mediation, which serve as the philosophical basis for mediation activities. These principles guide mediators to ensure their practices align with the fundamental philosophy of the mediation institution.<sup>33</sup> David Spencer and Michael Brogan, referencing Ruth Carlton,

---

<sup>29</sup> Sean William Kane, "Making Peace When the Whole World Has Come to Fight: The Mediation of Internationalized Civil Wars," *International Peacekeeping* 29, no. 2 (March 15, 2022): 177–203, <https://doi.org/10.1080/13533312.2020.1760718>.

<sup>30</sup> Gatot P. Soemartono, *Arbitrase Dan Mediasi Di Indonesia* (Jakarta: Gramedia Pustaka Utama, 2006).

<sup>31</sup> Ahmad Hamidi, Asasriwarni Asasriwarni, and Ikhwan Matondang, "The Relationship Between Religion and The State in Indonesia, and Its Relation to Islamic Law," *NEGREI: Academic Journal of Law and Governance* 2, no. 1 (June 18, 2022): 1, <https://doi.org/10.29240/negrei.v2i1.3783>.

<sup>32</sup> Muhammad Saifullah and Ahmad Syifa'ul Anam, *Mediasi dalam tinjauan hukum Islam dan hukum positif di Indonesia* (Semarang: Walisongo Press, 2009).

<sup>33</sup> John Michael Haynes, Gretchen L Haynes, and Larry Sun Fong, *Mediation: Positive Conflict Management* (State University of New York Press, 2012).

## Renistya Anjening Rorosati, Iwan Permadi, M. Hamidi Masykur

Procedure for Land Dispute Resolution Through Mediation at the Land Office: A Critical Analysis of Procedural Justice

outline five basic mediation principles: confidentiality, voluntariness, empowerment, neutrality, and unique solutions.<sup>34</sup>

In the context of mediation at the National Land Agency, these principles are inherently present. Particularly, the fifth principle—unique solutions—emphasizes that mediators at the National Land Agency are neutral facilitators. The success of mediation largely depends on the parties involved.<sup>35</sup>

Mediation also involves various models in its implementation. Four key models are noteworthy for mediation practitioners: settlement mediation, facilitative mediation, transformative mediation, and evaluative mediation.<sup>36</sup>

*Settlement mediation*, or compromise mediation, aims primarily to encourage a compromise between the conflicting parties' demands. This type of mediation requires a mediator who is highly dedicated, even if not particularly well-versed in mediation processes and techniques.

*Facilitative mediation*, also known as interest-based or problem-solving mediation, focuses on moving disputants away from their rigid positions to negotiate their needs and interests. Here, the mediator must be skilled in mediation techniques and processes, though mastery of the subject matter of the dispute is less crucial. The mediator's role is to lead the process, foster constructive dialogue between the parties, enhance negotiation efforts, and facilitate agreement.

*Transformative mediation*, also known as therapeutic and reconciliatory mediation, emphasizes identifying the underlying causes of conflicts between parties through recognition and empowerment, forming the basis for dispute resolution. In this model, mediators must utilize therapeutic and professional techniques before and during the mediation process to address relational issues through empowerment and recognition.

---

<sup>34</sup> Abbas, *Mediasi: Dalam Hukum Syariah, Hukum Adat, Dan Hukum Nasional*.

<sup>35</sup> Saba Joshi, "Contesting Land Grabs, Negotiating Statehood: The Politics of International Accountability Mechanisms and Land Disputes in Rural Cambodia," *Third World Quarterly* 41, no. 9 (September 1, 2020): 1615–33, <https://doi.org/10.1080/01436597.2020.1763170>.

<sup>36</sup> Dwi Rezki Sri Astarini, *Mediasi pengadilan: salah satu bentuk penyelesaian sengketa berdasarkan asas peradilan cepat, sederhana, biaya ringan*, Edisi pertama, cetakan ke-1 (Bandung: P.T. Alumni, 2013).

*Evaluative mediation*, also referred to as normative mediation, seeks to reach agreements based on the legal rights of the parties as would be anticipated by a court. In this scenario, the mediator must be an expert in the relevant subject matter, even if they are not highly skilled in mediation techniques. The mediator's role typically involves advising and persuading the parties, as well as predicting potential court outcomes.

Considering the mediation types mentioned, the mediation process at the National Land Agency aligns more closely with compromise mediation (settlement mediation), where both the parties and the mediator work together to find a resolution to the dispute. "On average, cases that reach the BPN in Malang Regency are minor, mostly concerning physical possession, which are then mediated to find a win-win solution."<sup>37</sup>

The juridical foundation for out-of-court mediation in Indonesia is established by Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. This law emphasizes the resolution of disputes outside the court through arbitration, consultation, conciliation, negotiation, and mediation.

Several regulations comprehensively define mediation, each with slight variations in meaning but fundamentally referring to mediation as an alternative dispute resolution method outside the court system. Court mediators are typically judges or other parties who assist in the negotiation process, ensuring that mediation serves as a viable and effective alternative to litigation.

### **Based on Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Courts**

Prior to the issuance of Supreme Court Regulation No. 1 of 2016, several other regulations governed mediation procedures in court. Initially, the regulation concerning mediation in court originated from Circular Letter No. 01 of 2002, which aimed to empower courts of first instance to implement the institution of peace, as outlined in Article 130 HIR / 154 RBg. This was followed by the issuance of Supreme Court Regulation No. 02 of 2003, which specifically addressed Mediation Procedures in Court.

---

<sup>37</sup> Lina Pramawati, Interview Results with Mrs. Lina Pramawati, November 26, 2023.

**Renistya Anjening Rorosati, Iwan Permadi, M. Hamidi Masykur**

Procedure for Land Dispute Resolution Through Mediation at the Land Office: A Critical Analysis of Procedural Justice

Subsequent refinements were made with the amendment of Supreme Court Regulation No. 1 of 2008, also concerning Mediation Procedures in Court. The most recent amendment, Supreme Court Regulation No. 1 of 2016, continues to govern mediation procedures in court to this day, ensuring that the process remains structured and consistent across the judicial system.

**Based on Supreme Court Regulation No. 3 of 2022 on Electronic Court Mediation**

Supreme Court Regulation Number 3 of 2022 on Electronic Court Mediation was introduced in response to the changes necessitated by the Covid-19 pandemic. This regulation enables mediation in court to be conducted electronically using information and communication technology, either as a replacement for or in addition to traditional face-to-face mediation.

Electronic mediation involves resolving disputes through virtual negotiations facilitated by a mediator. All parties must sign a consent form to agree to electronic mediation; otherwise, the mediation will proceed conventionally.<sup>38</sup> In traditional mediation, litigants submit the mediation resume physically. In electronic mediation, however, the mediation resume is submitted through the court information system. If the parties do not engage in electronic litigation, they can submit the resume electronically to the mediator.

The mediator in electronic mediation is responsible for explaining the meeting schedule and the ethics of electronic mediation to the litigants. The mediator must organize the schedule, ensure adherence to ethical guidelines, and electronically summon the parties using a valid virtual address. Additionally, taking photographs or making audio/visual recordings during electronic mediation meetings is prohibited. This ensures the confidentiality and security of the mediation process while utilizing technology to facilitate dispute resolution

---

<sup>38</sup> Agung Prasetya, "Transformasi Penyelenggaraan Mediasi di Pengadilan dari Konvensional Menjadi Elektronik," <https://www.djkn.kemenkeu.go.id>, Oktober 2020, <https://www.djkn.kemenkeu.go.id/kpknl-manado/baca-artikel/13448/Penyelesaian-Sengketa-Non-Litigasi-Melalui-Proses-Mediasi.html>.

### **Based on 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**

According to 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, Article 1 paragraph 11 defines mediation as a way of resolving disputes through a negotiation process facilitated by the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency, the Land Office, or a land mediator.

Mediation is a dispute resolution process that involves an impartial and neutral third party working with the disputants to help them reach a mutually satisfactory agreement. This third party, known as a mediator, plays a crucial role in guiding the parties toward a resolution. In the context of this research, a land mediator is someone who assists the disputing parties in finding a solution. The mediator's experience, skill, and integrity are essential in making the negotiation process more effective and ensuring that both parties are satisfied with the outcome.

#### **Case at the Land Office**

Dispute resolution efforts carried out by the National Land Agency (BPN) may sometimes be unsuccessful, with parties rejecting the proposed settlements. As a land institution, the BPN faces various obstacles in handling and resolving land disputes. These obstacles include mediation deadlocks, where despite the presence and participation of both parties, no resolution is reached due to the inability to find a mutually acceptable solution with the mediator's assistance. Another significant challenge is the emotional reactions of the parties during mediation, which can escalate conflicts and hinder resolution efforts.

Land disputes, particularly those related to property rights certificates, fall under State Administrative Law. These disputes arise from contested objects resulting from government legal actions. In administrative law literature, such conflicts are referred to as administrative disputes because the object of contention

## Renistya Anjening Rorosati, Iwan Permadi, M. Hamidi Masykur

Procedure for Land Dispute Resolution Through Mediation at the Land Office: A Critical Analysis of Procedural Justice

involves administrative decisions (*beschikking*) issued by State Administrative Bodies or Officials.<sup>39</sup>

The success of mediation in resolving land disputes is heavily dependent on the mediator's ability to facilitate understanding and communication between the parties. Effective mediation requires the disputing parties to comprehend the objectives and benefits of mediation, which can significantly enhance the likelihood of a successful resolution.

Research conducted by Jamiat Akadol, Tamrin Muchsin, and Sri Sudono Salino at the Sambas ATR/BPN Ministry Office in 2019 revealed that out of 24 reported disputes, only five were successfully resolved through mediation in 2019, with an additional two disputes resolved in early 2020. This data highlights the significant number of unresolved disputes and the lengthy mediation process, as evidenced by disputes reported in 2019 that were only resolved in early 2020.<sup>40</sup>

These findings underscore the challenges faced in mediation efforts and the need for improved strategies to enhance the effectiveness and efficiency of land dispute resolution at the National Land Agency.<sup>41</sup> The number of unsuccessful mediations is caused by several factors, namely:<sup>42</sup>

- (1) There is no win-win solution agreement yet.
- (2) Lack of data from one of the incomplete parties.
- (3) Overlapping or ownership of 2 (two) certificates.

Ownership of 2 (two) certificates or commonly known as double certificates. Ownership disputes involving double certificates, also known as overlapping certificates, occur when two or more certificates describe the same parcel of land. These certificates are issued for the benefit of the rightful heirs according to the physical and juridical data recorded in the land register. A certificate is

<sup>39</sup> H Sadjijono, *Bab-Bab Pokok Hukum Administrasi Negara* (Yogyakarta: Laksbang Pressindo, 2008).

<sup>40</sup> Jamiat Akadol, Tamrin Muchsin, and Sri Sudono Saliro, "Kegagalan Mediasi: Sengketa Pertanahan Di Kementerian Agraria Tata Ruang/Badan Pertanahan Nasional Sambas," *Jurnal Wawasan Yuridika* 4, no. 2 (September 29, 2020): 175, <https://doi.org/10.25072/jwv.v4i2.393>.

<sup>41</sup> Lina Pramawati, Interview Results with Mrs. Lina Pramawati, March 28, 2024.

<sup>42</sup> Naufal Maharani, Interview results with Mrs. Naufal Maharani, Desember 2023.

provided to the individual listed in the land registry as the rights holder or to another person authorized by them.

Ali Achmad Chomzah defines double certificates as those that describe the same parcel of land. This situation often results in overlapping certificates, where the same land parcel is described by multiple certificates, either entirely or partially overlapping.<sup>43</sup>

For example, in a recent case involving the Malang toll road, a dispute arose between the toll road authority and an individual from Malang district, referred to here as Party A. Party A claimed ownership of land used for the toll road, arguing that the toll road authority did not consult with him. Upon investigation by the National Land Agency (BPN), it was found that Party A had never physically controlled the land but only held a Sale and Purchase Deed (AJB) for it. Mediation was then initiated between the toll road authority and Party A. Although the mediation process was challenging and took two years to complete, Party A eventually received compensation from the toll road authority for the land.<sup>44</sup>

In reality, the current state of mediation at the National Land Agency (BPN) often contradicts the principles of judicial administration, which advocate for justice that is simple, fast, and low-cost. Article 2 paragraph 4 of Law No. 48 of 2009 on Judicial Power explicitly states that case review and resolution should be carried out efficiently and effectively, with a focus on timely dispute resolution.

However, many mediations fail to meet these principles. Some cases require multiple mediation sessions without reaching a resolution, sometimes even after three attempts, resulting in unsuccessful outcomes.<sup>45</sup> If disputing parties are unable to attend mediation due to health or other valid reasons, they can be represented by an authorized proxy with decision-making power, provided both parties consent. If one party cannot attend, the mediation may be postponed to ensure full participation. If a party is invited three times and fails to attend, the

---

<sup>43</sup> H. Ali Achmad Chomzah, *Hukum Pertanahan: Pemberian Hak Atas Tanah Negara, Sertifikat Dan Permasalahan*, Cet. 1, Seri Hukum Pertanahan, 1.-<4.> (Jakarta, Indonesia: Prestasi Pustaka Publisher, 2002), 139.

<sup>44</sup> Lina Pramawati, Interview Results with Mrs. Lina Pramawati, February 28, 2024.

<sup>45</sup> Naufal Maharani, Interview Results with Mrs. Lina Pramawati, March 5, 2024.



**Renistya Anjening Rorosati, Iwan Permadi, M. Hamidi Masykur**

Procedure for Land Dispute Resolution Through Mediation at the Land Office: A Critical Analysis of Procedural Justice

mediation is declared unsuccessful, and the Ministry, Regional Office, or Land Office will proceed to make a decision on the case.

Unlike court mediation, where decisions are final and binding (*inkracht*), mediation outcomes facilitated by the Ministry, Regional Office, or Land Office result in a peace agreement. This agreement must be documented in a deed of peace and registered with the district court to obtain a binding legal decision. However, the Ministry of ATR/BPN itself does not issue binding decisions; instead, the resolution remains an agreement unless further issues arise.

Given these challenges, there is an absolute need for clear rules and guidelines on the technical procedures for implementing mediation at the National Land Agency. Additionally, establishing rules regarding the timeframe for mediation is crucial. Such regulations would ensure that mediation processes at the National Land Agency are conducted optimally, adhering to the principles of efficiency, effectiveness, and timeliness in dispute resolution.

The obstacles outlined above highlight the critical need for established guidelines on the technical procedures for mediation at the National Land Agency (BPN). These guidelines should include specific rules regarding the mediation period to ensure that the process runs efficiently and effectively. Implementing such regulations would facilitate optimal mediation practices at the National Land Agency, aligning with the principles of simplicity, speed, and low cost in dispute resolution. By addressing these procedural gaps, mediation at the National Land Agency can be improved to better serve the needs of all parties involved.

**Mediation Period According to the Rules**

Productivity in mediation, particularly in terms of time, can be assessed by examining the ratio of successful to unsuccessful mediations, and the average time taken by mediators to conclude the process. Following the issuance of Circular Letter No. 1 of 2002, which aimed to empower courts of first instance to apply the institution of peace (Ex article 130 HIR/154 RBg), the mediation process was set to last for three months. In 2003, Supreme Court Regulation No. 2 on Mediation Procedures in Courts was introduced, reducing the mediation process duration to 22 days.

Supreme Court Regulation No. 1 of 2008 extended the mediation process to 40 days, with a possible extension of an additional 14 days if necessary. Supreme Court Regulation No. 1 of 2016 further refined this by stipulating a 30-day mediation period, slightly minimizing the duration compared to the 2008 regulation.

Law No. 30 of 1999, in Article 6 paragraph 6, mandates that efforts to resolve disputes through mediators must uphold confidentiality and reach an agreement within 30 days, documented in a written form signed by all parties involved. This article emphasizes that the entire mediation process, including reaching a written agreement, must be completed within the 30-day timeframe.

Despite these detailed regulations at the national level, the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN) has yet to specify a clear timeframe for the mediation process in its regulations, both current and previous. This lack of detailed regulation regarding the mediation period can lead to inefficiencies and delays in resolving land disputes.

To illustrate the evolution of mediation regulations over the years, the following chart outlines the changes in mediation duration stipulated by various regulations.

By addressing these gaps and establishing clear guidelines, the National Land Agency can enhance the efficiency and effectiveness of its mediation processes, ensuring timely and fair dispute resolution for all parties involved.

## **Conclusion**

According to the basic concept of the limitation of notarial authority in making land deeds based on positive law in Indonesia, there are various approaches from various legal theories, including the theory of legal certainty from the school of natural law and the school of positivism. Based on positive law in Indonesia, notaries are generally not restricted or given specific limitations in making land deeds. This is due to the authority granted to notaries in accordance with Article 15 paragraph 2 letter f of the UUJN, where only the law has the authority to limit the duties of notaries in making land deeds. It is important to note that only the law has the power to limit the authority of notaries in making land deeds, and not government regulations.

**Renistya Anjening Rorosati, Iwan Permadi, M. Hamidi Masykur**  
 Procedure for Land Dispute Resolution Through Mediation at the Land Office: A Critical  
 Analysis of Procedural Justice

## Bibliography

- Abbas, DR Syahrizal. *Mediasi: Dalam Hukum Syariah, Hukum Adat, Dan Hukum Nasional*. Jakarta: Prenada Media, 2017.
- Adi Nugroho, Susanti. *Penyelesaian Sengketa Arbitrase Dan Penerapan Hukumnya*. Edisi pertama. Rawamangun, Jakarta: Kencana, 2015.
- Akadol, Jamiat, Tamrin Muchsin, and Sri Sudono Saliro. “Kegagalan Mediasi: Sengketa Pertanahan Di Kementerian Agraria Tata Ruang/Badan Pertanahan Nasional Sambas.” *Jurnal Wawasan Yuridika* 4, no. 2 (September 29, 2020): 175. <https://doi.org/10.25072/jwy.v4i2.393>.
- Alessa, Hibah. “The Role of Artificial Intelligence in Online Dispute Resolution: A Brief and Critical Overview.” *Information & Communications Technology Law* 31, no. 3 (September 2, 2022): 319–42. <https://doi.org/10.1080/13600834.2022.2088060>.
- Ariani, Nevey Varida. “Alternatif Penyelesaian Sengketa Bisnis Di Luar Pengadilan.” *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 1, no. 2 (August 31, 2012): 277. <https://doi.org/10.33331/rechtsvinding.v1i2.101>.
- Baidhowi, Anang Darwisyi. “Human Rights for The Elderly Group in Indonesia: Elderly in The Era of Covid 19.” *NEGREI: Academic Journal of Law and Governance* 2, no. 1 (June 18, 2022): 23. <https://doi.org/10.29240/negrei.v2i1.3629>.
- Chomzah, H. Ali Achmad. *Hukum Pertanahan: Pemberian Hak Atas Tanah Negara, Sertifikat Dan Permasalahan*. Cet. 1. Seri Hukum Pertanahan, 1.-<4.>. Jakarta, Indonesia: Prestasi Pustaka Publisher, 2002.
- Gautama, Sudarmo. *Kontrak Dagang Internasional*. Bandung: Alumni, 1976.
- Gladding, Samuel T. *Konseling Profesi Yang Menyeluruh*. Jakarta: Indeks, 2012.
- Goodpaster, Gary. *Panduan negosiasi dan mediasi*. Jakarta: Proyek ELIPS, Departemen Kehakiman R.I., 1999.
- Gunawan, Imam. *Metode Penelitian Kualitatif: Teori & Praktik*. Jakarta: Bumi Aksara, 2013.
- Hamidi, Ahmad, Asasriwarni Asasriwarni, and Ikhwan Matondang. “The Relationship Between Religion and The State in Indonesia, and Its

Relation to Islamic Law.” *NEGREI: Academic Journal of Law and Governance* 2, no. 1 (June 18, 2022): 1.  
<https://doi.org/10.29240/negrei.v2i1.3783>.

Hanif, Rifqani Nur Fauziah. “Arbitrase Dan Alternatif Penyelesaian Sengketa.” <https://www.djkn.kemenkeu.go.id>, Desember 2020.  
<https://www.djkn.kemenkeu.go.id/kpknl-manado/baca-artikel/13628/Arbitrase-Dan-Alternatif-Penyelesaian-Sengketa.html>.

Haynes, John Michael, Gretchen L Haynes, and Larry Sun Fong. *Mediation: Positive Conflict Management*. State University of New York Press, 2012.

Ibrahim, Johnny. *Teori Dan Metodologi Penelitian Hukum Normatif*. Malang: Bayumedia Publishing, 2005.

Illankoon, I. M. C. S., Vivian W. Y. Tam, Khoa N. Le, and K. A. T. O. Ranadewa. “Causes of Disputes, Factors Affecting Dispute Resolution and Effective Alternative Dispute Resolution for Sri Lankan Construction Industry.” *International Journal of Construction Management* 22, no. 2 (January 25, 2022): 218–28.  
<https://doi.org/10.1080/15623599.2019.1616415>.

Joshi, Saba. “Contesting Land Grabs, Negotiating Statehood: The Politics of International Accountability Mechanisms and Land Disputes in Rural Cambodia.” *Third World Quarterly* 41, no. 9 (September 1, 2020): 1615–33.  
<https://doi.org/10.1080/01436597.2020.1763170>.

Kane, Sean William. “Making Peace When the Whole World Has Come to Fight: The Mediation of Internationalized Civil Wars.” *International Peacekeeping* 29, no. 2 (March 15, 2022): 177–203.  
<https://doi.org/10.1080/13533312.2020.1760718>.

Lee, Chia Kuang, Tak Wing Yiu, and Sai On Cheung. “Predicting Intention to Use Alternative Dispute Resolution (ADR): An Empirical Test of Theory of Planned Behaviour (TPB) Model.” *International Journal of Construction Management* 21, no. 1 (January 2, 2021): 27–40.  
<https://doi.org/10.1080/15623599.2018.1505026>.

Maharani, Naufal. Interview results with Mrs. Naufal Maharani, Desember 2023.

———. hasil Wawancara dengan Ibu Naufal Maharani, S.Si, March 5, 2024.

**Renistya Anjening Rorosati, Iwan Permadi, M. Hamidi Masykur**

Procedure for Land Dispute Resolution Through Mediation at the Land Office: A Critical Analysis of Procedural Justice

Mahkamah Agung Republik Indonesia. *Buku Komentar Peraturan Mahkamah Agung Republik Indonesia Nomor 1 Tahun 2008 Tentang Pelaksanaan Mediasi Di Pengadilan*. Jakarta, 2011.

Margono, Suyud. *ADR, Alternative Dispute Resolution, & Arbitrase: Proses Pelembagaan Dan Aspek Hukum*. Cet. 1. Jakarta: Ghalia Indonesia, 2000.

Marzuki, Peter Mahmud. *Penelitian hukum: Edisi Revisi*. Jakarta: Kencana Prenada Media Group, 2005.

Noorajavi, Rachel. "The Implementation of Asian Value on the Democratic System of Southeast Asia." *NEGREI: Academic Journal of Law and Governance* 1, no. 1 (July 3, 2021): 1. <https://doi.org/10.29240/negrei.v1i1.2562>.

Pramawati, Lina. Hasil Wawancara dengan Ibu Lina Pramawati, S.H, November 26, 2023.

———. Interview Results with Mrs. Lina Pramawati, February 28, 2024.

———. Interview Results with Mrs. Lina Pramawati, March 28, 2024.

Prasetya, Agung. "Transformasi Penyelenggaraan Mediasi di Pengadilan dari Konvensional Menjadi Elektronik." <https://www.djkn.kemenkeu.go.id>, Oktober 2020. <https://www.djkn.kemenkeu.go.id/kpknl-manado/baca-artikel/13448/Penyelesaian-Sengketa-Non-Litigasi-Melalui-Proses-Mediasi.html>.

Putra, David Aprizon, and M. Anton Alifandi. "Legal Study of The Existence of Genuine Autonomy in Order to Organize Village Autonomy in Indonesia." *NEGREI: Academic Journal of Law and Governance* 1, no. 1 (July 3, 2021): 35. <https://doi.org/10.29240/negrei.v1i1.2623>.

Roberts, Simon, and Michael Palmer. *Dispute Processes: ADR and the Primary Forms of Decision-Making*. USA: Cambridge University Press, 2005.

Ryall, Emily, Jonathan Cooper, and Liz Ellis. "Dispute Resolution, Legal Reasoning and Good Governance: Learning Lessons from Appeals on Selection in Sport." *European Sport Management Quarterly* 20, no. 5 (October 19, 2020): 560–76. <https://doi.org/10.1080/16184742.2019.1636400>.

Sadjijono, H. *Bab-Bab Pokok Hukum Administrasi Negara*. Yogyakarta: Laksbang Pressindo, 2008.

- Saifullah, Muhammad, and Ahmad Syifa'ul Anam. *Mediasi dalam tinjauan hukum Islam dan hukum positif di Indonesia*. Semarang: Walisongo Press, 2009.
- Sari, Novita H, and Irma Indrayani. "The Impact of the ASEAN Way and We Feeling Concepts on Indonesia's Involvement in Strengthening Regionalism." *NEGREI: Academic Journal of Law and Governance* 2, no. 1 (July 30, 2022): 67. <https://doi.org/10.29240/negrei.v2i1.4584>.
- Soemartono, Gatot P. *Arbitrase Dan Mediasi Di Indonesia*. Jakarta: Gramedia Pustaka Utama, 2006.
- Sri Astarini, Dwi Rezki. *Mediasi pengadilan: salah satu bentuk penyelesaian sengketa berdasarkan asas peradilan cepat, sederhana, biaya ringan*. Edisi pertama, Cetakan ke-1. Bandung: P.T. Alumni, 2013.
- Subekti, R. *Kumpulan karangan tentang hukum perikatan, arbitrase dan peradilan*. Bandung: Alumni, 1992.
- Sukanto, Soerjono. *Penegakan Hukum*. Cet.1. Bandung: Binacipta, 1983.
- Usman, Rachmadi. *Pilihan Penyelesaian Sengketa Di Luar Pengadilan*. Cet. 1. Bandung: Citra Aditya Bakti, 2003.
- Widjaja, Gunawan. *Alternatif penyelesaian sengketa*. Jakarta: RajaGrafindo Persada, 2001.
- Widjaja, Gunawan, and Ahmad Yani. *Hukum arbitrase*. Cetakan kedua. Jakarta: PT RajaGrafindo Persada, 2001.
- Zuccarelli, Marta, Benjamin Micallef, Dianne Butler, Anthony Serracino-Inglott, and John-Joseph Borg. "Improving the Data Quality of Spontaneous ADR Reports: A Practical Example from Malta." *Expert Opinion on Drug Safety* 21, no. 2 (February 1, 2022): 253–68. <https://doi.org/10.1080/14740338.2022.1993820>.