

## The Strength of the Peace Deed in the Settlement of Land Disputes Through Mediation at the Karawang Regency Land Office

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### KEYWORDS

Peace deed; mediation; Land

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### ABSTRACT

Land dispute resolution through mediation is one of the alternative methods regulated in Article 44 Paragraph (5) of the Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 21 of 2020 concerning the Handling and Settlement of Land Cases. This study aims to examine the legal strength of peace deeds produced through the mediation process at the Karawang Regency Land Office, as well as the effectiveness of its implementation in resolving land disputes. The method used is a normative juridical approach with reference to legal documents, legal doctrines, and interviews with relevant sources. The results of the study show that the peace deed has binding legal force equivalent to a court decision with permanent legal force, but its effectiveness in the field is still low due to factors such as lack of public understanding, the ego of the parties to the dispute, and the low level of attendance in the mediation process. To increase the success of mediation, it is recommended that BPN be more active in socialization, increase the capacity of mediators, and strengthen legal arrangements related to peace deeds so that they can be more reliable in the process of resolving land disputes.

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### Introduction

Land which is an area of power controlled by the government as stated in Article 1 paragraph (1) of Law number 5 of 1960 concerning Basic Regulations on Agrarian Principles throughout Indonesia is the unity of the homeland of all Indonesian people who are united as the Indonesian nation (Indonesia, 1960). Land has several functions not only as a residential function, agricultural function, social function, and economic function. Land is included in immovable objects as Article 506 of the Civil Code. Land which is a group of immovable objects that can be owned by individuals or legal entities in Article 16 paragraph (1) of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles.

Land is the most basic thing in human life, sometimes there is often a conflict that is caused by land, there is a struggle for rights, land boundaries, customary land control and so on, we often hear these conflicts with the term land dispute, which is a dispute or conflict that arises between

two or more parties related to ownership, use, land boundaries, land acquisition or rights related to land or property. According to expert Rusmadi Murad (1991), definition of land rights dispute, namely: Land dispute is a dispute resulting from the implementation of a legal act or the occurrence of a legal event regarding a certain piece of land. Doing a legal act so that there is no dispute or accepting the legal consequences of a legal event, one must first understand what is called land and the provisions that govern it.

Dispute resolution requires legal regulations or legal rules, namely legal regulations that live in society that can regulate and enforce to ensure order in society (Sutedi, 2009, p. 23). In carrying out its role in resolving non-litigation disputes, the National Land Agency refers to Law number 30 of 1999 (Kementarian Agraria, 1999) on Arbitration and Alternative Dispute Resolution, where mediation is applied as one of the alternative methods of dispute resolution by the National Land Agency. In its implementation, the mediation carried out by the National Land Agency is not widely known by the general public, nor is a written report made, so that the effectiveness of the mediation carried out by the National Land Agency is very difficult to be known by the public and the central government, and of course this condition raises a question of how effective the mediation is carried out at the National Land Agency.

Karawang Regency is a very strategic area which is located not too far from the capital city of Jakarta so that many industrial areas are being built and also Karawang as a city that supports the capital city of Jakarta which is very beneficial for the people in Karawang Regency. Problems that often occur in Karawang such as land ownership disputes, land procurement, double certificates, land ownership by the government, the use of customary rights or the conversion of land from agricultural land are now land for industry and housing which has been causing conflicts in the community.

Basically, in the settlement of land disputes, the purpose is for peace in the community as the purpose of the law is to regulate peaceful life associations (Apeldoorn, 1993, p. 10). With the Law, it is aimed at achieving the greatest possible benefits, benefits/happiness for the community (Sanusi, 2002, p. 57). The settlement of land disputes through litigation has compulsory legal force and also the judicial institution has a bailiff who can always execute a decision that already has permanent legal force or *Inracht van gewijsde*.

Previous research conducted by Ardiyanto explained that mediation by the National Land Agency resulted in an out-of-court settlement agreement. Then the peace deed that has been agreed upon by the parties is made before a notary in the settlement of land disputes through mediation as an authentic deed by fulfilling the requirements that the deed is made by a notary as a public official.

In contrast to the previous research, the research conducted by the author focuses on efforts to resolve land dispute problems through the mediation process at the Karawang Regency Land Office and the legal force of the peace deed resulting from the mediation process at the Karawang Regency Land Office which does not yet have executive rights if the parties have not been registered with the local District Court and this research also focuses on whether or not it is effective or not through mediation in resolving land disputes. This research aims to provide novelty

in understanding the process of resolving land disputes through mediation at the Karawang Regency Land Office, especially in the context of the implementation of Article 44 Paragraph (5) of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 21 of 2020. This research is expected to provide new insights into the effectiveness and power of binding peace deeds as a means of resolving land disputes, as well as a reference for the community and related parties in understanding the role of mediation at the Land Office as an alternative to efficient and fair dispute resolution.

## **Research Methods**

This research uses a normative juridical method. Normative juridical approach based on Soerjono Soekanto's opinion (2007, p. 14) is legal research conducted by researching literature or secondary data as a basis for research by conducting a search of regulations and literature related to the problem being researched. The normative juridical research method is research that is focused on examining the application of rules or norms in positive law (Tehupeiory, 2021, p. 89). Legal rules that have a formal nature such as laws, regulations, literature that contain theoretical concepts which are then linked to the problem of the strength of the peace deed obtained in the mediation process at the Karawang Regency Land Office.

The research approach used in this normative juridical law research is the legislative approach (Statue Approach), which is an approach that is carried out by examining laws or regulations related to the research made (Napitupulu, 2023). The type of data used in this study is primary data. Primary data is data obtained from observations in the field directly on the research object. Observations conducted in government offices that provide services to the community, conducting interviews with representatives of certain heads of fields which are used as the main data for the author in conducting this research. In this study, the type of primary data was obtained based on the results of an interview with the Head of the Dispute Control and Handling Section.

This study uses secondary data which includes three types of legal materials, namely primary, secondary, and tertiary legal materials. Primary legal materials consist of relevant and authoritative laws and regulations, such as the 1945 Constitution of the Republic of Indonesia, Law Number 5 of 1960, and various other regulations related to the settlement of land disputes. Secondary legal materials include supporting literature, such as books, research results, scientific journals, and internet media that help deepen understanding of primary legal materials. Meanwhile, tertiary legal materials are in the form of reference sources such as dictionaries, encyclopedias, and other documents that provide additional explanations for primary and secondary legal materials.

The data collection technique uses literature study and interview methods for data collection. The literature study was carried out by collecting primary, secondary, and tertiary legal materials, such as laws, books, journals, internet articles, and related documents, including mediation results from the Karawang Regency Land Office. An interview was conducted with Mrs. Niluh Ketut Suriartika, Dispute Control and Handling Section of the Karawang Regency Land Office, to strengthen secondary data. Data analysis uses qualitative normative methods, which integrate empirical facts with laws and regulations, theories, and expert opinions to obtain solutions to

research problems. The focus of the research was carried out at the Karawang Regency Land Office because this area has a high level of population density and significant complexity of land problems.

## **Results and Discussion**

### **Efforts to Resolve Land Dispute Problems at the Karawang Regency Land Office**

The National Land Agency constitutes a state institution that has been authorized to execute government functions within the land sector, in accordance with the stipulations outlined in pertinent legislation and regulations. This assertion is further substantiated by Article 2 of Presidential Regulation number 48 of 2020 (Perpres, 2020). The National Land Agency is entrusted with the responsibility of formulating and implementing policies pertaining to the management and prevention of disputes and conflicts, in addition to the adjudication of land-related cases, as delineated in Article 3, letter (g) of Presidential Regulation number 48 of 2020.

The problem of land disputes that occur is due to the large amount of land that has not been registered or has not been certified, both in the form of rice fields and dry land or even embossed land. This condition occurs a lot in the Karawang Regency area, especially in rural areas, so that several problems related to land plots arise (Suriartika, 2024).

Initiatives to facilitate dispute resolution can be carried out by the National Land Agency. Basically, although the types of typologies are different, the steps to implement land dispute resolution through mediation are the same for each type. Mediation is the settlement of land disputes by entering into an agreement between the parties to the dispute through a third party as a neutral mediator.

Dispute resolution through mediation, both parties agreed to seek advice from a third party, in this case the National Land Agency which is the mediator in the disputed case. Dispute resolution through mediation is carried out on the basis of the agreement of both parties to the dispute that their problems will be resolved through a mediator. The third party that provides this advice is neutral and independent, in the sense that it cannot be intervened by other parties. If an agreement is reached between the two parties in the deliberations, a collective agreement is made. But if there is no agreement, the mediator conveys the recommendation in writing to both parties. If the written recommendation given by the mediator does not receive a response or is rejected by the disputing party, the dispute resolution can be continued by filing a lawsuit to the Court.

The flow of resolving land disputes through mediation at the Karawang Regency Land Office is as follows: (Suriartika, 2024)

#### **1. Complaint Letter**

The complainant submits a complaint letter to the Land Office through the complaint desk. The complaint letter must include the identity of the complainant, the subject matter, and the purpose of the complaint. The complaint letter submitted through the complaint desk will then be forwarded to the authorized officer who will submit the complaint to be forwarded to the authorized official.

2. Responses

After the complaint is submitted to the authorized official, the official then provides a response to the complaint letter to be followed up on the complaint.

3. Summoning of Parties

The Karawang Regency Land Office, based on the data of the parties that have been received, calls the parties to clarify so that they can clearly know where the complained case sits.

4. Penelitian Lapangan

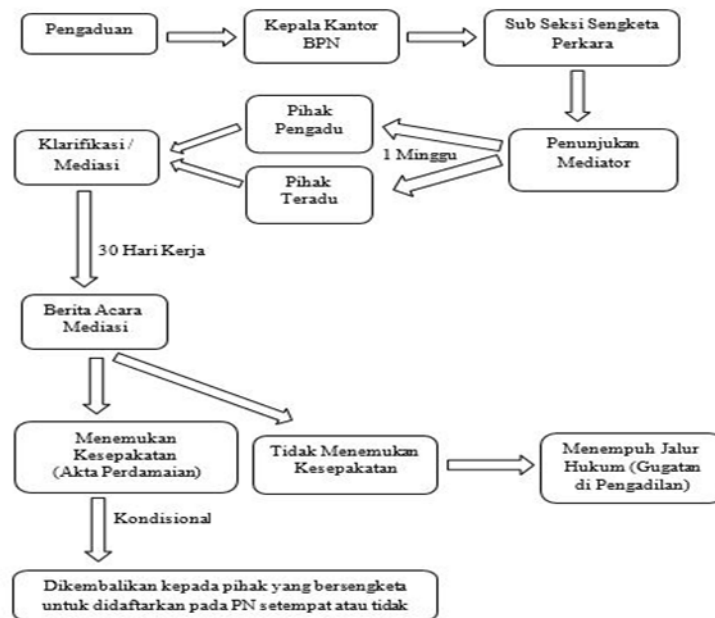
The purpose of conducting field research is to know the position of the case clearly in order to be able to provide solutions to disputes that occur and so as not to make mistakes in making decisions. Based on information obtained from Mrs. Niluh Ketut Suriartika as the Head of the Dispute Control and Handling Section, field research is not always carried out for every dispute that occurs. Field research is carried out if it is deemed necessary to conduct a review of the location that is the object of the dispute.

5. Internal Degree

Based on the results of the assessment carried out by the authorized officials, an internal title was subsequently carried out which aimed to:

- a. Menghimpun pendapat dari para pejabat yang berwenang
- b. Mengidentifikasi sengketa atau konflik yang diperselihkan
- c. Rencana penyelesaian

6. Mediation Degree



**Figure 1. Pattern of Mediation Implementation by the National Land Agency of Karawang Regency**

The settlement of land cases is carried out by mediation both by the Ministry of ATR/BPN and the Karawang Regency Regional Government. Just because a land dispute is resolved with the birth of a court decision, it does not mean that the problem has been resolved, the dispute resolution process requires an understanding of the characteristics of the parties in the lawsuit and is able to reach a mutual agreement by setting aside the subject matter of the case (Suriartika, 2024).

Solving problems by means of mediation without partiality, this puts the parties in an equal position in finding the best solution to resolve disputes. By prioritizing the resolution of the problem in a win-win solution, the parties agreed to put aside the subject matter, which is the key to success in resolving land dispute problems.

The purpose of mediation is essentially a "win-win solution", namely the principle of justice in the application of law to ensure that no party is harmed by the decision or agreement reached in the mediation process, where a mutually beneficial result is achieved between the parties in the agreement, in which case no party is harmed by the legal decision taken.

Settlement of land disputes through mediation is the task of the National Land Agency in the context of resolving land problems. The settlement of land cases is carried out by mediation both by the Ministry of ATR/BPN and the Karawang Regency Regional Government. Based on the information provided by Mrs. Niluh Ketut Suriartika as the Head of the Dispute Control and Handling Section, it is stated that the settlement of land cases through court decisions does not always make the problem resolved (Suriartika, 2024). The settlement of land disputes carried out at the Karawang Regency Land Office can be said to be not optimal. This can be seen from the success rate of mediation at the Karawang Regency Land Office. From the data obtained by the author, several disputes registered from 2022 to 2023 were only 1 (one) successfully resolved at the Karawang Regency Land Office through mediation.

Based on this, legal protection is needed in the land aspect. In other words, law is not only a power but also always regulates, protects, protects, rules, directs, and at the same time engineers human values and attitudes towards the land. The role of the mediator from the land office in reconciling the parties to the dispute and ensuring that the parties implement the results of the agreement obtained from the mediation process and also carry out the mandate of Article 44 paragraph (5) of the Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia number 21 of 2020 concerning the Handling and Settlement of Land Cases to register the results of the agreement with the local district court is a determining factor legal certainty in resolving land disputes.

### **The Power of the Peace Deed in the Settlement of Land Disputes at the Karawang Regency Land Office through Mediation**

The deed of reconciliation has a binding force of execution and has the same status as the judge's decision as stipulated in Article 130 Paragraph (2) of the HIR and Article 154 Paragraph (2) of the Constitution.

Peace as a win-win solution or an alternative form of settlement by winning both parties can be achieved in resolving disputes if an agreement has been reached between the parties. The



agreement is written and the parties are obliged to obey every clause contained in the peace deed. In addition, the main thing that is the basis for implementing a peace agreement is the good faith of the parties in resolving disputes. Therefore, the peace deed must be based on the agreement of the parties to end the dispute, the parties to the dispute must have good faith so that the contents of the peace deed can be implemented.

In a peace deed attached to legal force, this is regulated in Article 130 paragraphs (2) and (3) of the HIR which means that the decision is equivalent to a decision that has permanent legal force, has executory force, and the peace deed cannot be compared or cassated. Based on the force of the law, the peace deed is a reflection of the principles of justice, namely procedural justice and substantive justice.

The mediation deed in the settlement of land disputes is fixed, so the mediation deed has the same legal force as the judge's decision, even though the mediation is carried out outside the court. The Legal Force of the Mediation Deed is equated with a decision with permanent legal force. According to article 130 paragraph (2) of the HIR, the mediation deed has the same force as the judge's decision which has permanent legal force and cannot be appealed or cassation. According to Article 1338 of the Civil Code, "all legally concluded agreements are valid as law for those who make them". According to Article 1858 of the Civil Code, "all peace has a force between the parties such as a judge's decision at the final level, this peace cannot be disputed on the grounds that one of the parties is harmed".

In resolving the dispute through mediation, both parties agreed to seek advice from a third party. Dispute resolution through this form is carried out on the basis of the agreement of the two parties to the dispute that their problems will be resolved through the help of one or several expert advisors or through a mediator. The third party that provides this assistance is neutral, impartial and independent, and cannot be intervened by other parties.

The mediation contained in the Decree of the Minister of State Agrarian Affairs/Head of BPN Number 34 of 2007 is generally preceded by a negotiation process, the mediator is an employee or official of the National Land Agency who is tasked with helping the parties to resolve their disputes, the final result of the mediation process is an agreement and a minutes of implementation are made and, The agreement has no executory force and the implementation of the agreement is basically in good faith.

Based on available data, the settlement of land cases in Karawang Regency is more likely to be settled in court. This is marked by the fact that there are still many people who file disputes in the district court, settlement by mediation is considered less effective by some people. In fact, the case should be resolved through effective mediation rather than being brought to the Court either to the District Court or to the State Administrative Court. Based on an interview with the Karawang Regency Agriculture Office Official, the unsuccessful settlement of cases under his authority by mediation was caused by several things, namely: (Suriartika, 2024)

- 1) There are still parties who bring their own egos so that it is difficult to mediate and also get an agreement.
- 2) The disputing party uses the services of legal counsel who prefers to settle the case in court.

- 3) The Karawang Regency Land Office has summoned the parties, but sometimes there is one party who is not present or even both are not present in the mediation.
- 4) If the two parties do not agree on alternative settlements, dispute resolution is taken based on the settlement options proposed by the parties.
- 5) There are parties who do not have good faith and only use mediation to buy time, being uncooperative in the dispute resolution process through this mediation.
- 6) Public awareness to know about the origin of the land is very minimal. This is because information and facilities about land administration are far from adequate.
- 7) lack of Human Resources both in terms of quantity and quality in the Dispute and Case Handling Subsection that must carry out a mediation process with a limited number of Human Resources (HR) and is required to be able to complete mediation within 30 days.
- 8) Difficulties in finding files or documents that will later be used as data to analyze disputes that occur.

Based on data obtained from the Karawang Regency Land Office in the 2022 – 2023 period, there were 9 cases of land disputes that were complained to the Karawang Regency Land Office to be resolved through mediation, but of the 9 cases only 1 case was successfully resolved through mediation, where the unsuccessful mediation carried out at the Karawang Regency Land Office was caused by the reasons mentioned above. In this case, the community is more confident in resolving land dispute cases through the court table (litigation).

Based on data obtained from the Karawang Regency Land Office, it can be concluded that mediation is still not effective in resolving land disputes on a familial basis. This is not in line with the purpose of holding mediation, one of which is to reduce cases in court, especially land dispute cases. Mediation as the main hope in the land dispute resolution process can be one of the alternative ways of resolving existing disputes.

Mediation carried out by the National Land Agency is rarely replicated or made into a report that can be accessed by the public at large, so that the effectiveness of the mediation carried out at the National Land Agency is difficult to be known by the public and of course this situation can affect the level of public trust in the effectiveness of mediation carried out by the National Land Agency, how professional are the officers of the National Land Agency National in carrying out mediation, as well as what efforts are made by the National Land Agency in overcoming obstacles and finding solutions to overcome land dispute problems faced by the National Land Agency in carrying out mediation.

In the event that mediation is reached, a peace agreement is stated in the peace deed and registered by the parties in the District Court of the jurisdiction of the land that is the object of the case to obtain a peace decision (Pemerintah Pusat, 2020). Parties, with or without the assistance of a certified mediator, who successfully resolve an out-of-court dispute by means of a peace agreement may file a peace agreement with the court authorized to obtain the deed of peace by filing a lawsuit (Mahkamah Agung, 2016).

The lawsuit in question is certainly not an ordinary lawsuit in general in civil procedure law. Lawsuits in civil procedure law are generally *contentiosa* cases, which are cases in which there is



a dispute between two or more parties, meaning that there is a conflict that must be resolved and must be decided by the court, whether it ends in defeat, victory or ends peacefully depending on the legal process (Mertokusumo, 2009, p. 5).

In the lawsuit to obtain a peace deed for a peace agreement out of court, in this case at the Karawang Regency Land Office, there is no dispute between the parties in the case, because previously between the parties had made and signed a peace agreement intended to be poured into the peace deed (*acte van dading*). Although there is no dispute between the parties, the term lawsuit is more appropriate to be used in this case than an application (a voluntary case), because a lawsuit obtaining a deed of peace on a peace agreement outside the court does not meet the requirements of a voluntary case (Harahap, 2017, p. 30).

In filing the lawsuit, a peace agreement must be attached as evidence showing the legal relationship of the Parties to the object of dispute. The judge presiding over the case will have the authority to transform the peace agreement into a peace deed, provided that it does not contravene legal statutes, public order, morality, cause harm to a third party, or lack enforceability. This process ensures that the peace agreement possesses permanent legal force (Mahkamah Agung, 2016).

The deed of peace, as stipulated in the peace decision rendered by the panel of judges during the trial, is a legal instrument that confers certain legal rights and obligations. This decision is akin to an ordinary decision in that it possesses permanent legal force, is binding and final, possesses perfect evidentiary weight, and is enforceable by law.

The implementation of peace deeds in the settlement of land disputes can have significant legal sustainability. A valid and binding peace deed will provide legal certainty for the parties and ensure the implementation of the agreement that has been reached. By implementing mediation settlement, the parties involved in the dispute can work together to formulate a peace deed that provides legal certainty for all parties and produces a fair and sustainable solution.

## **Conclusion**

The settlement of land disputes at the Karawang Regency Land Office through mediation faces various obstacles, such as differences in land boundary claims, double certificates, and a lack of public awareness about land administration. Although the mediation procedure involves a fact-finding by the Land Agency and an agreement between the parties to the dispute, the success rate is low. Of the various cases registered in 2022–2023, only one has been successfully resolved. The main obstacles include the unwillingness of the parties to attend mediation, the dominance of each party's ego, and disagreement on solution options. In addition, the low public awareness of the importance of land administration and the origin of ownership rights is also a major obstacle.

The peace deed has the same legal force as the final judge's decision, as stipulated in the HIR, RBg, and the Civil Code. This deed is binding and executable, but its implementation requires submission to the District Court to be ratified. Although theoretically peace treaties offer a win-win solution for the parties to the dispute, their implementation is often hampered by low public trust in mediation and the tendency to take disputes to court. This decrease in the effectiveness of

peace deeds indicates the need for a long-term strategy to improve public understanding of mediation as an efficient and beneficial settlement mechanism.

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