



Reconstruction of land property rights dispute settlement regulations based on justice value

Saharuddin^{1*}, Gunarto², Anis Mashdurohatun²

¹ Doctorate Student, Faculty of Law Sultan Agung Islamic University, Semarang, Indonesia

² Faculty of Law, Sultan Agung Islamic University, Semarang, Indonesia

Abstract

A land dispute is a form of dispute between individuals, legal entities, or institutions that do not have a wide impact. Settlement of land disputes can be done through litigation or non-litigation. This study consists of 2 (two) main problems, namely analyzing the weaknesses of dispute resolution of land ownership rights holders in the current Indonesian legal system which is still not based on the value of justice, and reconstructing legal dispute resolution for land ownership rights holders in the Indonesian legal system based on justice value. This study uses a constructivism paradigm with a sociological juridical approach by examining primary data and secondary data by determining the legal reality experienced in the field as well as qualitative descriptive methods. The results of this study shows that the weaknesses of land dispute resolution is the legal structure, abuse of duties and authority as officers of the National Land Agency in issuing land certificates, and judges who handle land cases using the HIR/RBg procedural law made to defend the material law, namely the Book of Laws. Civil law with the concept of western law does not defend the Basic Agrarian Law which has the concept of customary law. The two legal substances are the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency No. 21 of 2020 concerning Regulation Handling and Settlement of Land Cases Stipulates that National Land is only a mediator and Judge's Decision whose execution is returned to the National Land Agency and the third is the factor of community legal culture where the level of legal awareness of the community does not have the intention to resolve land disputes. Reconstruction of Article 44 paragraph (5) if Mediation is reached a peace agreement is stated in a peace deed and registered by the National Land Agency of the parties in the District Court of the jurisdiction where the land is the object of the case to obtain a peace decision. And establish a special judicial body that handles land disputes.

Keywords: reconstruction, dispute resolution, land, and justice

Introduction

Problems in the field of land not only come from the community as the buyers and sellers of the land but the authorities in the field of land also sometimes do not comply with land regulations that have been set by the Government. Agencies in the field of defense that should be a container to ensure the certainty of land law also play a role to benefit one of the parties (Murad, 2007) ^[1].

The land is a natural resource that human beings need to meet their needs, whether directly for their livelihoods such as farming or housing, as well as for conducting business, such as for trade, industry, agriculture, plantations, education, construction of facilities or other infrastructure. (Suardi, 2005) ^[2].

Juridically, the meaning of land is contained in Article 4 Paragraph (1) of Law No. 5 of 1960 on the Basic Regulation of Agrarian Principles which explains that "Based on the right to control of the State as referred to in Article 2 it is determined that there are various rights over the earth's surface called land, which can be given to and owned by the people both alone and together with others and legal entities".

Land management in Indonesia in practice is not good enough and even often causes social unrest in the community. In general, land disputes in Indonesia can be grouped into 4 classifications of problems, namely problems related to:

1. Recognition of ownership of land;
2. Transfer of land rights;
3. Charges of rights and
4. Former occupation of private land.

Judging from the disputed subjects, land disputes can be grouped into 3 types, namely

1. Land disputes between residents;
2. Land disputes between Local Government and residents
3. Disputes related to the management of natural resources

High land issues not only worry the community but also affect the community's confidence in the performance of authorities in the field of land such as the National Land Agency. The National Land Agency is considered unable to run the land administration properly because it is less able to deal with land issues that occur.

Land disputes are land disputes between individuals, legal entities, or institutions that do not have a broad socio-political impact. This emphasis that does not have a broad impact is what distinguishes the definition of land dispute from the definition of land conflict. Land disputes can be in the form of administrative disputes, civil disputes, criminal disputes related to ownership, transactions, registration, guarantees, utilization, control, and disputes over customary rights. Meanwhile, land conflicts are land disputes between individuals, groups, groups, organizations, legal entities, or institutions that have a tendency or have had a broad socio-political impact. Land cases are land disputes whose resolution is carried out by judicial institutions or decisions of judicial institutions for which dispute resolution is still being requested at the Indonesian National Land Agency (Zulaeha, 2016) ^[3]. Several types of land disputes were put forward by experts and practitioners by the real situation that occurred, namely Maria SWSumardjono, that in general land disputes can be divided into 5 (five) groups, namely:

1. Cases relating to people's cultivation of plantation lands, forestry;
2. Cases regarding violations of land reform regulations;
3. Cases relating to excesses of land provision for development;
4. Civil disputes relating to land issues;
5. Disputes regarding customary land (Kurniati, 2016) ^[6].

One example of land disputes that often occur in Indonesia is island tenure disputes that occur because the basis of the occupation is unclear. The parties claim that the basis of occupation they hold is legitimate. Land disputes that occur can be resolved through deliberation, but most of them are not resolved properly and take legal processes in court as was the case in Banjarmasin.

Not accepting the land grabbing, Wisnu Saputra filed a lawsuit to the Banjarmasin District Court. The defendants were Hj Leila Farid and Syahrudin. Even the Banjarmasin National Land Agency was dragged into it. This dispute has actually been going on since 2018. The object of the dispute is a land on Jalan Sutoyo S, Central Banjarmasin. The back area of 7.5x12.7 meters is controlled by the plaintiff. Both parties claim to hold official land ownership documents. The case began when Leila bought a land area of 225 square meters from Syahrudin in 2012. The location of the land is next to Wisnu which was also purchased from Syahrudin, in 2008. Leila was accused of annexing, even though the certificate was issued in 1983. Compared to the 1992 certificate issued by Wisnu.

The second example is the case of H. Jailani Bin. The late Darmawan, who resided at Jalan Basirih Dalam, No. 16, RT. 026, RW. 002, South Basirih Village, South Banjarmasin District, Banjarmasin City, South Kalimantan Province. The land area of 36,000 square meters on Jalan Governor Soebarjo, South Basirih, South Banjarmasin, Certificate No.17/1969 where the certificate has been split by the Office of the National Land Agency of Banjarmasin City into two certificates with Ownership Certificate No. 1410 with an area of 11,388 square meters and SHM No. 934 with a land area of 20,507 square meters in 2004. 17 of 1969 which was originally an area of 36,000 square meters which should have been controlled by H. Jailani (the Reporting Party), due to the derivatives of two Certificates of Ownership No. Owned No. 17 of 1969.

There are two Certificates of Ownership issued by BPN Banjarmasin in 2004, namely No. 934 and No. 1410 even though at that time the land was being controlled by H. Jailani. Another discrepancy when the Certificate of Ownership No. 1410 and Certificate of Ownership No. 934 Derivative of SHM No. 17 of 1969, which was issued by the Banjarmasin National Land Agency Office in 2004, was litigated at the South Kalimantan Police Ditreskrim on May 8, 2017, then by the Head of the Banjarmasin City National Land Agency Office, the second Certificate of Ownership No. 934 and Certificate of Ownership No. 1410 could be reversed on November 23, 2017, and on December 29, 2017, even though at that time the object was still controlled by H. Jailani.

The decision of the Banjarmasin District Court dated August 21, 2018 Number 4/Pdt.G/2018/PN Bjm, was confirmed by the decision of the Supreme Court of the Republic of Indonesia which clearly ordered the Banjarmasin City National Land Agency Office to return the Certificate of Ownership No. 17 of 1969 to H Jailani in full. empty, perfect, and without any burden attached to it. However, until now the Head of the Banjarmasin City National Land Agency Office has not implemented the Banjarmasin District Court's Decision and Stipulation. Finally, H Jailani reported the Banjarmasin National Land Agency to the South Kalimantan Police on suspicion of not carrying out the Banjarmasin District Court's decision dated August 21, 2018 Number 4/Pdt.G/2018/PN Bjm by BPN to return the Property Rights Certificate. H. Jailani

The above case represents a few of the many land problems that occur in Indonesia, which are not easy to solve. There are so many land statuses whose ownership is unclear and leads to disputes. Of course legally, whoever has the right must get justice, lest the person who is entitled to it suddenly loses his/her rights because of the actions of people who duplicate or falsify letters or data on legal land ownership.

Land dispute resolution in Indonesia is still mostly pursued through the judiciary (litigation) rather than through deliberation (non-litigation) because the judiciary is the place for justice seekers. If the land dispute that occurs is a civil dispute, it is generally taken through the general court. Several ways in which the land dispute resolution process in Indonesia has been carried out by the applicable laws and regulations, but unfortunately the results of the process mostly do not result in legal certainty such as the examples of the cases described above, one of the

decisions has been Inkrah, but what happened so far In this case, the case is still rolling, suing each other and reporting to the authorities, and automatically there is no legal certainty.

It can be said that mediation is the development and empowerment of peace institutions contained in article 130 HIR/154 RBg concerning peace (vrede), which previously existed, and required judges to hear cases seriously and seek peace between litigants. However, in practice, the Supreme Court indicated that judges advocating peace in court were only a formality without seeking it optimally.

Understanding mediation knowledge by the parties will further encourage the successful settlement of land cases. Theoretically, there are many models of mediation according to laws and regulations, but it is felt that not all mediation models are very suitable for resolving land cases, therefore in-depth research is needed to understand the mediation model that is very suitable for resolving land disputes effectively, efficiently. and legal certainty (Hajati, Sekarmadji, and Winarsi, 2014) ^[7].

Mediation is not part of the litigation institution, but now the mediation institution has crossed into the court area. It can be said that mediation is the development and empowerment of peace institutions contained in article 130 HIR/154 RBg concerning peace (vrede), which previously existed, and required judges to hear cases seriously and seek peace between litigants, however in practice, The Supreme Court indicated that the judge in advocating peace in court was only a formality without seeking it optimally (Rosy, Mangku, and Yuliantini, 2020) ^[8].

The current method of resolving land disputes in Indonesia is not by the applicable laws and regulations, both in litigation and non-litigation methods, because in practice there are still many contradictory and overlapping laws and regulations, including the decisions. there is legal harmonization between the main laws, namely Law No. 5 of 1960 concerning the Basic Regulations on Agrarian Principles (UUPA) with other laws and regulations which eventually blocked the legal channels to be taken so that legal certainty did not materialize. In addition, the completion process is very convoluted, the time is very long, and the cost is also very expensive.

The model for resolving land disputes in Indonesia that justice seekers most hope for is a one-door process in the Court, with the requirements that it must be simple, it must be fast, it must be cheap, the decision must be binding and final, and it needs to be handled by a special judicial institution so that it is integrated, such as the industrial relations court. Why is it that because there are many unresolved land disputes, it is hoped that legal certainty will be realized soon?

Therefore, new laws and regulations must be made specifically to regulate land dispute resolution which is simple, fast, and low cost. with the establishment of a Special Judicial Body (Special Land Court) such as the Industrial Relations Court (PHI) where the process can be carried out in a comprehensive, integrated, and integrated manner, which in the end the settlement of land disputes in Indonesia can be carried out effectively and efficiently by the principles of justice, namely simple, fast and low cost, and legal certainty can be realized for sure. So that the authors are interested in conducting further studies regarding the procedures for resolving land disputes that occur as one of the government's efforts to guarantee legal certainty for the Indonesian nation, a new reconstruction of law enforcement behavior, and the rule of law in land dispute resolution based on justice can be achieved if law enforcers can conclude the decisions made. This ability is not just carrying out a textual procedure because if the law enforcers themselves make textual decisions in the judicial process, a fair dispute resolution will not be achieved.

Based on this background, it is necessary to carry out further discussion regarding "*Reconstruction of Regulations for Settlement of Legal Disputes for Land Ownership Rights Based on Justice Values*". Therefore, the authors raised the following 2 (two) main issues, namely:

1. What are the weaknesses of the regulation on the settlement of legal disputes over land rights holders in the Indonesian legal system?
2. How is the reconstruction of regulations for resolving legal disputes over land ownership rights in the Indonesian legal system based on the value of justice?

Method of Research

This study uses a constructivist legal research paradigm approach. The constructivism paradigm in the social sciences is a critique of the positivist paradigm. According to the constructivist paradigm of social reality that is observed by one person cannot be generalized to everyone, as positivists usually do.

This research uses descriptive-analytical research. Analytical descriptive research is a type of descriptive research that seeks to describe and find answers on a fundamental basis regarding cause and effect by analyzing the factors that cause the occurrence or emergence of a certain phenomenon or event.

The approach method in research uses a method (*socio-legal approach*). The sociological juridical approach (*socio-legal approach*) is intended to study and examine the interrelationships associated in real with other social variables (Soekanto, 1984) [9]. Sources of data used include Primary Data and Secondary Data. Primary data is data obtained from field observations and interviews with informants. While Secondary Data is data consisting of:

1. Primary legal materials are binding legal materials in the form of applicable laws and regulations and have something to do with the issues discussed, among others in the form of Laws and regulations relating to the freedom to express opinions in public.
2. Secondary legal materials are legal materials that explain primary legal materials.
3. Tertiary legal materials are legal materials that provide further information on primary legal materials and secondary legal materials.

Research related to the socio-legal approach, namely research that analyzes problems is carried out by combining legal materials (which are secondary data) with primary data obtained in the field. Supported by secondary legal materials, in the form of writings by experts and legal policies.

Research Result and Discussion

1. Weaknesses of Legal Dispute Settlement of Land Ownership Regulations in the Indonesian Legal System

Settlement of legal disputes over land ownership rights holders through the courts is regulated in several regulations, namely:

- a. Article 23 paragraph (1) of Law no. 5 of 1960 Basic Regulations on Agrarian Principles stipulate that "Property Rights as well as the transfer, elimination and encumbrance of them with other rights must be registered according to the provisions referred to in Article 19 and Article 23 paragraph (2) which essentially regulates that "The registration as referred to in paragraph 1 is a strong means of proof regarding the nullification of Property Rights and the validity of the transfer and assignment of such rights.
- b. Article 52 paragraph (1) letter b Government Regulation no. 24 of 1997 concerning Land Registration stipulates that "Registration of the nullification of a Land Right, Management Right and Ownership Right to a Flat Unit is carried out by the Head of the Land Office by requiring notes in the land book and certificate and destroying the certificate of the rights concerned based on a copy of the official's decision letter. authorized, that the right in question has been canceled or revoked".
- c. Article 3 letter g Presidential Regulation no. 48 of 2020 concerning the National Land Agency explains that the National Land Agency carries out the function of formulating and implementing policies in the field of handling and preventing disputes and conflicts as well as handling land cases.
- d. Article 37 paragraph (1) Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency no. 21 of 2020 concerning Handling and Settlement of Land Cases which stipulates that every decision must be implemented.
- e. Article 38 paragraph (2) Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency no. 21 of 2020 concerning Handling and Settlement of Land Cases which stipulates that the cancellation of legal products as the implementation of court decisions that have legal force will still be followed up if the order declares void/illegitimate/does not have legal force/does not have binding force/does not have evidentiary power including determination land rights; registration of land rights for the first time; maintenance of land registration data; certificate of replacement for land rights; certificate of Mortgage; Cancellation decision; decision on the determination of abandoned land; certificate of ownership of the apartment unit; determination of land consolidation; affirmation of land reform object; determination of willingness to provide compensation for former private land; decision on granting location permit covering cross-province; Determination of State Administration Officials in the Ministry of Land Affairs which are concrete, individual and final.
- f. Article 29 paragraph (1) Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency no. 21 of 2020 concerning Handling and Settlement of Land Cases which stipulates that the Cancellation of Legal Products is carried out by an authorized official due to administrative and/or juridical defects; and implementation of court decisions that have permanent legal force.

Cancellation of a land deed is a statement of the cancellation of legal action against a legal action at the request of the parties to demand the cancellation. As a result of the cancellation of Land Ownership Rights based on a Court Decision, the deed based on the sale and purchase of the land was canceled and the disputed land became the property of the plaintiff, as a result of the cancellation of the deed of the Land Deed Officer, this was done by mistake, resulting in administrative defects in the land deed.

Based on the consideration of the Panel of Judges by the Banjarmasin District Court Decision dated August 21, 2018 Number 4/Pdt.G/2018/PN Bjm, it was confirmed by the decision of the Supreme Court of the Republic of Indonesia ordering the Banjarmasin City BPN Office, that H Jailani as the owner of the SHM land number 17 of 1969 covering an area of 36,000 square meters on Jalan Governor Soebarjo Banjarmasin and ordered the Banjarmasin City BPN Office to return the SHM Number 17 of 1969 to H Jailani empty, perfect and without any burdens attached to it. However, until the decision was made, the Head of the Banjarmasin City BPN Office did not implement the Banjarmasin District Court's Decision and Determination.

In this case, is clear that there is no legal protection to protect the interests of individuals in their position as human beings who have the right to enjoy their dignity by giving them authority to act in the context of their interests.

Institutions that have roles and duties in dispute resolution, which are their authority and are outside the court, are the Ministry of Agrarian Spatial Planning/National Land Agency (Ministry of ATR/BPN). The implementation of mediation in the context of dispute resolution begins with a series of activities, in three periods, namely Pre-Mediation, Implementation of Mediation, and Post-Mediation.

The Pre-Mediation Stages based on the research results can be sorted as follows:

- a. Formation of a Land Dispute Settlement Team
- b. Data Collection and Assessment
- c. Exposure of Land Cases by the Dispute Settlement Team Inspection of the Dispute Object Field

- d. Appointment of Dispute Handling Mediator
- e. Summoning the parties in the form of sending a mediation invitation letter

The stages of carrying out land dispute mediation carried out at the Land Office begin with a mediator who is assigned to open the sign of the start of mediation in front of the parties and is accompanied by a note-taker, then the mediator asks for the identity of the parties, whether they are directly involved in the dispute or are the powers of the parties. The mediator can check the correctness of the data from the identity card and other documents that are the dispute file or receipt of the complaint.

The last of the series of mediation implementations is post-mediation. In this post-mediation section, the task of the dispute resolution team and mediator is to prepare reports on the results of the mediation. Administrative processes such as collecting Mediation Minutes, Attendance List, and Photo and Video Documentation are also carried out at this stage.

Although the mediator is typically responsible for managing the mediation process, there are no standard procedures or fixed rules. The process by which the mediator facilitates negotiation is often informal and unstructured. The actual practices of individual mediators vary greatly. While most mediators spend at least some time working with the parties together, practices vary concerning the use of “caucuses”. Many but not all mediators also meet privately and separately with each side in a “caucus”, often with an explicit ground rule that the mediator will not share what is learned with the other side. Among other things, this is thought to encourage each party to share confidential information with the mediator. Although such ex parte contact would ordinarily be considered improper for a judge or arbitrator, mediators commonly use such caucuses to explore various settlement possibilities (Robert, 1998) [10]

If the dispute results in an agreement, the parties must register the agreement with the district court to obtain a court order. Based on 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 concerning Handling and Settlement of Land Cases if Mediation is reached a peace agreement is stated in a peace deed and registered by the parties in the District Court of the jurisdiction the location of the land that is the object of the case to obtain a peace decision.

Article 44 paragraph (5) also has weaknesses in terms of norms, which makes its implementation multi-interpretation and can also be blurred. Whereas Article 6 paragraph (7) of Law 30 of 1999 on Arbitration and Alternative Dispute Resolution may be referred to, which states that within thirty days it must be registered after the agreement was made. So that in the findings of this study, it is known that there are two problems, both in the implementation of the norm, and the weakness of the norm itself in providing law.

Weaknesses in the regulation of legal dispute resolution for land rights holders in Indonesia can be seen based on the Legal System Theory by Lawrence M. Friedman as follows:

a. Legal Structure

1. National Land Agency

- a. Lack of competence to be a Mediator for State Civil Apparatus in the Control and Dispute Handling Section
- b. The Dispute Control and Handling Section have many supervisory functions, land control, and dispute resolution at all stages, both those that are still in the process of land registration objects, and those whose rights have been litigated in court, but the section only has two employees (officers) so that it is deemed inadequate. effectively carry out their duties and authorities in the context of implementing dispute resolution.
- c. The absence of Standard Operating Procedures in the form of Technical Guidelines and Implementation Guidelines for Dispute Controlling and Handling Section Employees in the implementation of mediation that can be referred to and guided.
- d. The appointment of a mediator for a dispute that is being resolved is only based on the decision of the Section Head and is directly appointed based on the main duties and functions of the employee.
- e. The professionalism of the mediator because the success of mediation is determined by the good attitude of both parties in interpreting mediation, mutual trust between the parties, and trust in the mediator in drafting the concept of an agreement that is mutually agreed upon by the disputing parties.
- f. The land dispute arose because the BPN itself was not in an orderly administration in the issuance of the current land certificate so it was misused by irresponsible persons and created legal loopholes which eventually became a dispute

2. Litigation settlement in court

- a. Appointment of Judges, the recruitment of judges has not been based on the norms of professionalism or the personal abilities of the judges concerned.
- b. Judge Education, It is recognized that the level of education of judges is not always a measure to assess the quality of decisions, but at least with judges attending master's level education, then the provision of knowledge such as legal discoveries, theories, and legal philosophy is given to master's level education with different methods. when given at the undergraduate level, it becomes a significant asset for judges.

- c. Mastery of Legal Studies, Judges who decide agrarian disputes at this time, both in general courts and state administrative courts have general legal knowledge.
- d. Moral Judge, there are still many officials or law enforcement officers who abuse their authority for their interests.
- b. Legal Substance, Article 44 paragraph (5) Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency no. 21 of 2020 concerning Handling and Settlement of Land Cases if mediation is reached a peace agreement is stated in a peace deed and registered by the parties in the District Court of the jurisdiction where the land is the object of the case to obtain a peace decision. If the mediation agreement is not registered, the principle of legal certainty will be blurred. This weakness should be a concern for the Land Office of the City of Banjarmasin to become a facilitator who encourages parties to register a peace agreement, along with the minutes of mediation to the district court to obtain a court order as mandated by 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 Handling and Settlement of Land Cases. This weakness should be a concern for the Banjarmasin City Land Office to become a facilitator who encourages the parties to register a peace agreement, along with a mediation report to the district court to obtain a court order as mandated by the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia. Indonesia Number 21 of 2020 concerning Handling and Settlement of Land Cases.
- c. Legal Culture, There are still parties who are reluctant/do not have the intention to settle their land disputes through mediation, because many are not familiar with this alternative dispute resolution and still rely on settlement through the realm of general justice.

1. Reconstruction of Regulations for Settlement of Legal Disputes for Land Ownership Rights in the Indonesian Legal System based on the Value of Justice

Reconstructing Article 44 paragraph (5) of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency No. 21 of 2020 concerning Handling and Settlement of Land Cases to ensure legal certainty so that it becomes Article 44 paragraph (5) in the case of Mediation a peace agreement is reached in a peace deed and registered by the National Land Agency of the parties in the District Court of the jurisdiction where the land is the object of the case. to obtain a settlement decision.

Land dispute resolution in court has been using the procedural laws of *Herziene In Landsch Regulation and Rechtsreglement voor de Buitengewesten* (HIR/RBg). It turns out that with this approach zinc keta is difficult to complete completely. Court decisions that have permanent legal force are difficult to execute, so land disputes drag on. As a result, the status of land ownership is uncertain. The HIR/RBg procedural law was made to defend its material law, namely the Civil Code which has a western concept of law, not to defend the BASIC Agrarian Law which has the concept of customary law. What applies in Indonesia is the PRINCIPAL AGRICULTURAL LAW. It's not in sync. This is what makes land disputes drag on. Therefore, the government needs to establish a special land court using the procedural law by the PRINCIPAL AGRICULTURAL LAW and existing land regulations. The special land court is included in the general court environment. This court has the authority to examine, handle, adjudicate, and decide on all disputes related to land, both civil and criminal. In this way, the dispute resolution will not drag on anymore because the special court can produce a decision that is final and can be executed. So the principle of justice which is simple, fast, and cheap can be fulfilled.

Efforts in reconstructing the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency No. 21 of 2020 concerning Handling and Settlement of Land Cases, namely by reconstructing Article 44 paragraph (5) which states that "in the case of Mediation a peace agreement is reached in a peace deed and registered by the parties in the District Court of the jurisdiction where the land is the object of the case to obtain peace decision".

The weakness in the article is the existence of "legal uncertainty" regarding the settlement of land disputes which is also not by the achievement of legal certainty which has been explicitly demanded by government officials who carry out the task of carrying out legal provisions. Including efforts to formalize the implementation of mediation is considered not by other laws and regulations governing mediation, due to the absence of registration of the peace agreement. Due to the absence of registration of the peace agreement with the court from the results of the mediation that has been carried out at the Land Office, there are inconsistent conditions in the implementation of the Ministerial Regulation concerning the Handling of Land Cases. Moreover, regarding the power of mediation which can be assessed as equal to a court decision, even though the existence of a court ruling on the outcome of the mediation can make the mediation position stronger and clearer before the law. These weaknesses were then reconstructed into "Article 44 paragraph (5) of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency no. 21 of 2020 concerning Handling and Settlement of Land Cases if Mediation is reached a peace agreement is stated in a peace deed and registered by the National Land Agency of the parties in the District Court of the jurisdiction where the land is the object of the case to obtain a peace decision.

Conclusion

1. Weaknesses in the regulation of legal dispute resolution for holders of land rights in the legal system, among others, lie in the legal structure, namely the lack of competence as a mediator for the State Civil Apparatus

in the Dispute Control and Handling Section, the Dispute Control and Handling Section only has two employees (officers). so that it is deemed less effective in carrying out its duties and authorities in the context of implementing dispute resolution, there is no Standard Operating Procedure in the form of Technical Instructions and Implementation Guidelines for Employees of the Control and Dispute Handling Section for Dispute Control and Handling Section Employees in the implementation of mediation that can be referred and guided. Then from the aspect of legal substance, namely Article 44 paragraph (5) of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency no. 21 of 2020 concerning Handling and Settlement of Land Cases in terms of Mediation a peace agreement is reached in a peace deed and registered by the parties in the District Court of the jurisdiction where the land is the object of the case to obtain a peace decision. If the mediation agreement is not registered, the principle of legal certainty will be blurred. This weakness should be a concern for the Land Office of the City of Banjarmasin to become a facilitator who encourages parties to register a peace agreement, along with the minutes of mediation to the district court to obtain a court order as mandated by Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia No. 21 of 2020 concerning Handling and Settlement of Land Cases. The weakness of the legal culture aspect is that there are still parties who are reluctant/do not have the intention to resolve their land disputes through mediation, because many are not familiar with this alternative dispute resolution and still rely on settlement through the realm of general courts.

2. To reconstruct 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 concerning Handling and Settlement of Land Cases to ensure legal certainty so that it becomes Article 44 paragraph (5) if Mediation is reached a peace agreement is stated in the deed of peace and registered by the National Land Agency of the parties in the District Court of the jurisdiction where the land is the object of the case to obtain a peace decision. and the Government needs to establish a special land court using procedural law by the Basic Agrarian Law and existing land regulations.

References

1. Rusmadi Murad. *Menyingkap Tabir Masalah Pertanahan*, Mandar Maju, Bandung, 2007, 51.
2. Suardi. *Hukum Agraria*, IBLAM, Jakarta, 2005, 1.
3. Mulyani Zulaeha. *Mediasi Interest Based Dalam Penyelesaian Sengketa Tanah*, Jurnal Kertha Patrika, 2016:38(1):208-209. <https://doi.org/10.24843/KP.2016.v38.i02.p05>.
4. Barda Nawawi Arief. *Bunga Rampai Kebijakan Hukum Pidana*, First Edition, Citra Aditya Bakti, Bandung, 1996, 27.
5. Della Rahmaswary, Ngadino. *Perlindungan Hukum Penyerobotan Tanah Hak Milik Dalam Aspek Pidana (Studi Kasus Nomor:24/G/2013/PTUN-BL)*, Jurnal Notarius, 2019, 12(2).
6. Nia Kurniati. "Mediasi-Arbitrase" Untuk Penyelesaian Sengketa Tanah, Jurnal Sosiohumaniora (Jurnal Ilmu-ilmu Sosial dan Humaniora), 2016, 18(3). <https://doi.org/10.24198/sosiohumaniora.v18i3.10008>, p. 2019.
7. Sri Hajati, Agus Sekarmadji, Sri Winarsi. *Model Penyelesaian Sengketa Pertanahan Melalui Mediasi dalam Mewujudkan Penyelesaian yang Efisiensi dan Berkepastian Hukum*, Jurnal Dinamika Huku, 2014:14(1):36-37. <http://dx.doi.org/10.20884/1.jdh.2014.14.1.275>.
8. Kadek Oldu Rosy, Dewa Gede Sudika Mangku, dan Ni Putu RainYuliartini. *Peran Mediasi dalam Penyelesaian Sengketa Tanah Adat Setra Karang Rupit di Pengadilan Negeri Singaraja Kelas 1B*, Ganesha Law Review, 2020:2(2):157. <https://doi.org/10.23887/glr.v2i2.207>.
9. Soerjono Soekanto. *Pengantar Penelitian Hukum*. Jakarta: UI Press, 1984, 52.
10. Robert Mnookin. *Alternative Dispute Resolution*, Harvard Law School John M. Olin Center for Law, Economics and Business Discussion Paper Series, 1998, 5.