

CHAPTER I

BACKGROUND

A. Background of Research

Land problems are problems that concern the people's most basic rights. Land is one of the natural resources that is important for the survival of mankind, the relationship of human beings with land is not merely a place of life, but rather because it must be managed carefully in the present and for the future. The current phenomenon of conflict and land disputes has been and is taking place in various regions in Indonesia. This proves that land disputes in Indonesia are still quite high.¹

Throughout the year 2019 the Ministry of Agrarian and National Land spatial agency noted that there were 3,230 cases of land disputes that were successfully handled.² The case is more of a case occurring in year 2018. Recorded, throughout the year 2018 there were 2,546 land cases.³ The lands that are being objects of these disputes in turn cannot be optimized for use, and do not benefit economically both from the

¹ Andi Sitti Saidah, Abrar Saleng, Andi Tenrifamauri, "Peran Kantor Badan Pertanahan Nasional Dalam Menyelesaikan Sengketa Pertanahan Melalui Mediasi Sesuai Dengan Peraturan Menteri Agraria Dan Tata Ruang/ Kepala Badan Pertanahan Nasional Nomor 11 Tahun 2016". Nagari Law Review. Vol 1 No. 2, (April 2018), p. 160.

² Anna Suci, : "Sepanjang 2019, Kementerian ATR/BPN tangani 3.230 kasus sengketa pertanahan" (<https://nasional.kontan.co.id/news/sepanjang-2019-kementerian-atrbpn-tangani-3230-kasus-sengketa-pertanahan>), accessed in 28 June 2020, at 11.45

³ Rosiana Haryanti, "Catat, Ada 2456 Sengketa Tanah Sepanjang 2018" (<https://properti.kompas.com/read/2019/02/27/180422821/catat-ada-2546-sengketa-tanah-sepanjang-2018>) accessed in 3 December 2019 at 12.46

rightsholders and to the general public so that land of the dispute object cannot fulfil its social functions.⁴

In Yogyakarta, land disputes have decreased and increased at the same time. This is seen from data on the number of land cases completed in 2017 reached 31.00 units of cases, in 2018 reached only 17.00 units of cases and in 2019 the number of land cases solved increased by 35.00 units of cases.⁵ Based on bantul district land office data in 2019, the number of land disputes amounts to 11 cases, grouped according to the typology of disputes consisting of land ownership dispute there are 8 cases, debt receivables dispute there is 1 case, road access agreement dispute there is 1 case, and land sale and purchase dispute there is 1 case.

Disputes are part of human life as social beings. Inter human interactions allow for problems, if the parties can resolve their own problem well, then the dispute will not occur. Conversely, if the parties cannot reach an agreement regarding the solution of the problem, a dispute will arise.⁶

Basically the settlement of disputes can be done in two ways, which is commonly used is the settlement of disputes through the courts, then with the development of human civilization, settlement of disputes

⁴ Nia Kurniai, "Mediasi-Arbitrase Untuk Penyelesaian Sengketa Tanah", *Sosiohumaniora*. Vol. 18 No. 3, (November 2016), p: 207

⁵ Anonymous, "Jumlah Kasus Tanah yang Diselesaikan", (http://bappeda.jogjaprov.go.id/dataku/data_dasar/index/356-jumlah-kasus-tanah-yang-diselesaikan?id_skpd=30), accessed in 30 September 2020, at 08.00

⁶ Mulyani Zulaeha, "Mediasi Interest Based Dalam Penyelesaian Sengketa Tanah", *Jurnal Ilmiah Fakultas Hukum Universitas Udayana*. Vol. 38 No. 1, (January-April 2016), p: 156

outside the court was also developed. The process of dispute resolution by court resulted in a win lose solution, with the winning on the one side will be satisfied, but the losing party, on the other side will not be satisfied. So it can cause a new problem between the parties in dispute. Not to mention the slow dispute resolution process, long time, and relatively more expensive costs. While the proceedings of the dispute resolution outside the court, resulted in a win-win solution due to the settlement of disputes outside the Court through agreement and deliberation between the parties so as to produce a mutual decision acceptable by both parties, and the resulting decision can secured the confidentiality of the disputing parties as there is no obligation for having a trial process which is open to public. The settlement of disputes outside the court is commonly called Alternative Dispute Resolution.⁷

One alternative dispute resolution is by settlement of disputes outside the courts. In article 1 section 10 of the law number 30 of 1999 concerning arbitration and alternative dispute resolution, it is mentioned there are alternative ways of dispute resolution, among others are consultations, negotiations, mediation, conciliation, or expert judgment.⁸ Mediation as one alternative dispute resolution constitutes a settlement of disputes by using a third party as a mediator.

Mediation is a process that is personal, confidential (not exposed out) and cooperative in resolving the problem. Because the mediator as an

⁷ Rachmadi Usman, *Pilihan Penyelesaian Sengketa di Luar Pengadilan*, 2003, Bandung: PT. Citra Aditya Bakti. P. 2-3

⁸ Art 1 (10) Law Number 30 of 1999 About Arbitration and Alternative Dispute Resolution.

impartial third party assists the Parties (individuals or institutions) who dispute in resolving conflicts and resolve or bring closer to its differences, mediation is a practical, relatively informal way like a court process. In the mediation process, all parties meet privately and directly with a mediator together and or, in a different meeting. In this meeting, the parties gave each other information, descriptions, explanations of the problems being encountered.⁹

Mediation is considered one of the best alternative dispute resolution mechanisms in the appeals system and other forms of ADR. According to moore, the mediation process is said to be ideal because it meets 3 requirements of satisfaction. First, substantive satisfaction, namely satisfaction related to the specific satisfaction of the parties in dispute, for example indemnity in the form of money or providing satisfaction because the negotiations are completed quickly. Second, procedural satisfaction that both parties are given the same opportunity and free to express their opinions. The opportunity can also be realized into a written agreement and agreed to be implemented. Third, psychological satisfaction is that each party has a controlled level of emotion so that it can be respectful and open.¹⁰

Cases of disputes that registered to the Land Office of Bantul Regency not all can be resolved by using mediation. Of the 11 disputes entered, there were 4 land disputes that were not successfully resolved

⁹ Rika Lestari, "Perbandingan Hukum Penyelesaian Sengketa Secara Mediasi Di Pengadilan dan Di Luar Pengadilan Di Indonesia", *Jurnal Ilmu Hukum*, Vol. 3 No. 2. P. 220.

¹⁰ Abu Rohmad, *Paradigma Resolusi Konflik Agraria*, 2008, Semarang: Walisongo Pres. P. 141

using mediation as an alternative to dispute resolution. This is an interesting study, that it turns out that mediation still has the potential to be unful succeeding in the effort solving land problems.

In connection with the above description, as well as with the potential failure to resolve land disputes through mediation at the Land Office of Bantul Regency, researchers are interested in conducting an in-depth study with the title "Resolving Land Dispute through Mediation at the Land Office of Bantul Regency."

B. Statement Problems

Based on the descriptions that are in the background above, the authors formulate the following problems:

1. How to settle the land dispute through mediation at the Land Office of Bantul regency?
2. What are the factors that impede the processes of resolving land dispute through mediation at the Land Office of Bantul Regency?

C. Objective of the Research

From the issue above, the objectives of this research are:

1. To know how to resolve land dispute through mediation at the Land Office of Bantul Regency.
2. To know the factors that inhibit the resolution of land dispute through mediation at the Land Office of Bantul Regency.

D. Benefits of Research

From the research objectives above, this research is expected to provide benefits to:

1. Theoretical benefits: the research is expected to give a donation of thought to the science of law in general and agrarian law in particular about the process of resolving land dispute through mediation at the Land Office of Bantul Regency.
2. Practical benefits: the results of this research can provide input to the National Land Agency and the community in the form of the process of resolving land dispute through mediation.