

Settlement of Land Rights Dispute through Mediation Related to the Construction of the Trans Sumatera Toll Road in South of Lampung District

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Abstract: Lots going on dispute land in the development process road toll across Sumatra, one of them related gift change loss. Problems in the field that occur is gift change loss that doesn't appropriate because exists dispute ownership right on ground. The legal basis for land disputes is regulated in Law no. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, supreme court rule No. 1 of 2016 concerning Mediation Procedures in Courts and Regulation of the Head of the National Land Agency Number 3 of 2011 concerning Management of the Study and Handling of Land Cases which has been replaced by Regulation of the Minister of Agrarian Affairs and Spatial Planning/ Head of the National Land Agency of the Republic of Indonesia Number 11 of 2016 concerning Settlement of Land Cases . Problems in study this is how settlement dispute right on land through mediation and what factor inhibitor settlement dispute through mediation related development road toll across Sumatra. Study this use approach juridical normative and approach juridical empirical with method learn materials bibliography and interviews. The results of the research show that the parties choose mediation for finish dispute on change make a loss related development road toll across Sumatra. As alternative f e solution dispute, mediation that is done gives the result of a win-win solution decision, where both parties do not feel disadvantaged. Factor inhibitor in settlement dispute through mediation has two factors, namely internal factors in terms of data collection carried out by the Village Government regarding land in the Village area is not optimal. While external factors, namely the parties often do not follow existing procedures, defend each other's claims without clear evidence, low public awareness and understanding regarding land disputes. Author 's suggestion could give is needed mechanism in settlement dispute through mediation and necessary exists socialization for society knowing how settlement dispute through mediation.

Keywords: Dispute Land Right, Mediation, Toll Road Construction.

1. Introduction

Land is an asset the very country of Indonesia fundamental, because the State and nation live and thrive in on land, Indonesian people position ground on very position important. As individual beings, tanha is needed by humans from birth for economic life until death, especially for adherents of certain religions. That as a social being, land is a gathering place for several individuals to form a kinship or even a small community that is mutually dependent on one another both in traditional and modern societies. Significance land for man as individual as well as the state as organization supreme society in a manner constitution arranged in Article 33 Paragraph (3) of the 1945 Constitution (1945 Constitution) which states that : " Earth, water and wealth nature contained therein , controlled by the state and used for profusely prosperity the people ".Then as follow carry on from Related Article 33 Paragraph (3) of the 1945 Constitution with earth or ground , arrangement right on land has arranged in Constitution Number 5 of 1960 concerning Fundamental Basic Rules Agrarian Law (the basic agrarian law). it arranged in Article 2 Paragraph (1) the basic agrarian law, that: "On the basis of provision in Article 33 Paragraph (3) of the 1945 Constitution and matters as intended in Article 1, earth, water and space, incl riches nature contained therein's on a level ".

The basic agrarian law also regulates about types right on land among them Property Rights , Rights To use Building , Rights Business Use, rights use , right lease , rights open land , rights for pick up results forests and other rights that are not including in rights above will set with Constitution as well as inherent rights temporary like right pawn , right effort for results , rights ride and rights rent land agriculture arranged for limit its properties as mentioned in Article 53 the basic agrarian law. Consequence utilization land in accordance with need man through deed law often raises dispute as example transition right on ground. Besides that's ground too

often becomes object disputed by various parties and groups, yes among public with society, society with company, community with government and entrepreneurs with government. Dispute happens often among public with government about problem ownership land in difference perception about draft mastery and utilization ground. Government with various development programs think that earth (or soil), water, and all the wealth contained therein controlled by the state, because that they entitled do change on every land for interest together. The Ministry of Agrarian Spatial Planning/National Land Agency noted, at least there were 8,959 cases dispute land and 56% of total the is conflict land among public with other societies, for example among neighbor with neighbors, 15% conflict land between people and legal entities, with company, Rights Business Use, state-owned enterprises, 0.1% conflict between legal entities with legal entities and 27% disputes public with government for example public with the Indonesian National Army.

In Lampung Province, problems land happens often found one of them related construction of the Trans Sumatra Toll Road. Road construction toll along 140.41 kilometers with wide road reach 120 meters this the plan will liberate land owned by inhabitant area of 2,100 hectares. Development of this the Trans Sumatra Toll Road across 3 districts, 18 districts, and 70 villages, namely South Lampung Regency as many as 13 sub-districts and 30 villages, Regency offer 1 sub-district and 3 villages, and Central Lampung Regency 4 sub-districts and 14 villages. South Lampung Regency is one of them affected area from development infrastructure road toll especially about liberation land and buildings. One affected residents development road toll the namely Agung Laksono. object land owned by Agung Laksono is a plot land covering an area of ±10,304 m² (ten thousand three hundred four square meters) located in the Village Tanjung Sari, District Natar, South Lampung Regency. The land caught impact Trans Sumatra Toll Road development and will done payment change loss. However, still there is problem related ownership land the with inhabitant another named Wim Surachmat. Because that, finally Agung Laksono submit lawsuit civil to Kalianda District Court. with Case Register Number 19/ Pdt.G /2018/ PN.Kla with on the name Agung Laksono as Plaintiff and Wim Surachmat as Defendant as well as Committee executor Land Acquisition Toll Road Section Bakauheni-Fly Major I (Office of the South Lampung National Land Agency) as participate defendant.

Effort the second solution party through mediation. Because it based on problem above this is what it is attention writer about how effort settlement dispute land through mediation related Trans Sumatra Toll Road construction carried out by the South Lampung Regional Government and the State-Owned Enterprises/ Land Office in South Lampung Regency. So that raises question like how settlement dispute right on land through mediation related to the construction of the Trans Sumatra Toll Road in the Village Tanjung Sari, District Natar, South Lampung Regency? factors what just what to be inhibitor in settlement dispute right on land through mediation related to the construction of the Trans Sumatra Toll Road in the Village Tanjung Sari, District Natar, South Lampung Regency? Aim study this, for knowing settlement dispute right on land through mediation related to the construction of the Trans Sumatra Toll Road in the Village Tanjung Sari, District Natar, South Lampung Regency. Study this use primary data sources and secondary data. Primary data is data obtained from results study in the field in a manner directly on the object research conducted in the village Tanjung Sari, District Natar, South Lampung District, was used as supporting data for writer for writing in study this. And secondary data is the data used in answer existing problems in study this through studies library. Secondary data is the supporting data used in writing this like Constitution Number 5 of 1960 concerning Fundamental Basic Rules Agrarian Law (the basic agrarian law) and Decisions Number 19/ Pdt.G /2018/ PN.Kla ., Studies field done with aim for obtaining primary data, which is done with stage interview with respondent or considered parties could give information to problem to be discussed in Journal Scientific this.

2. Research Methods

The research method used is normative juridical research method, with descriptive research type. This study uses a statutory approach, namely examining matters relating to legal principles, views, and doctrines, and laws and regulations related to "land dispute settlement issues through mediation". Data used are primary and secondary data that are analyzed qualitatively.

3. Results and Discussion

Completion Dispute Land Rights through Mediation Regarding the Construction of the Trans Sumatra Toll Road in the Village Tanjung Sari, District Natar, South Lampung Regency

The authority in land rights is stipulated in Article 4 paragraph (2) of the basic agrarian law, namely to use the land in question, including the body of the earth and the space and space on it is only needed for interests that are directly related to the use of said land within the limits according to the Law. -This law and other higher legal regulations. The application of Mediation in the settlement of land disputes has obtained legal standing since the issuance of Presidential Regulation No. 10 of 2006 concerning the National Land Agency, in whose organizational structure a Deputy for the Study and Handling of Land Disputes and Conflicts was formed,

whose duties and functions include "formulation of technical policies in the field of study and handling of land disputes and conflicts" and in "implementing alternative settlements problems, disputes and land conflicts through mediation and other facilitation" (Article 23 letters a and e).

Currently, in the application of applicable law in Indonesia, there are two types of dispute resolution, namely litigation and non-litigation. Litigation is a dispute whose settlement process is carried out in court, while non-litigation is a dispute whose settlement process is carried out outside the court, which is commonly called an alternative dispute resolution or *Alternative Dispute Resolution* (ADR), by means other than arbitration, can also be carried out by means of negotiation, conciliation, or mediation. The variety and complexity of the roots of the problems that underlie the emergence of land disputes, so that in their settlement it is not always possible to seek a quick resolution, and fulfill the principles of legal certainty and justice, the opinions and experiences of various parties related to the settlement of land disputes can be accommodated in order to find a settlement solution for the parties to the dispute as the embodiment of legal certainty in the settlement of disputes. Dispute resolution through the court process is basically the last step if deliberations are unsuccessful. The result end of the dispute resolution stage in court is a decision. In its development, the community began to choose the process of resolving disputes through mediation considering the process is simple and fast, as well as the win-win nature of *decisions*. The results are taken through deliberation and upon mutual agreement, so the parties feel that no one has been harmed. What more, mediation is a process of negotiating problem solving with the help of a neutral third party, namely the mediator, who works to help the disputing parties to produce a satisfactory agreement. The mediator does not have the authority to decide disputes between the two parties which is of course different from the authority that exists with judges and arbitrators. The mediator in mediation does not have the power to impose a settlement on the parties. The mediator guides the parties to negotiate until there is an agreement that binds the parties, then it is stated in an agreement or memorandum of understanding. So far the application of land mediation has been used in practice by the National Land Agency based on the Regulation of the Head of State-Owned Enterprises RI No. 3 of 2011 concerning Management of the Study and Handling of Land Cases. The use of mediation by the State-Owned Enterprises has succeeded in resolving various land disputes that have occurred in several cities.

Results of the author's interview with one of the Heads of the Office of the National Land Agency in South Lampung. Regency stated that the implementation of mediation at the Kalianda District Court on the basis of deliberation to reach a consensus, has been regulated in a number of laws and regulations in Indonesia. The forerunner to the birth of mediation in court is based on the provisions in Article 130 HIR which states:

- a. If on that appointed day both parties come, the District Court will try to reconcile them through the intercession of the chairman.
- b. If such reconciliation occurs, then regarding this matter at the time of trial, a deed is drawn up, with the names of both parties obligated to fulfill the agreement made, then the letter (deed) will be enforceable and will be carried out as an ordinary judge's decision.

So in this case the author is of the opinion that, the results of these provisions can be interpreted that in the process of civil procedural law requires a settlement with peace through efforts to reconcile or consult as referred to in a mediation process. However, in practice, the provisions of the article are facultative or interpreted by the judge as an option for dispute resolution efforts compared to his duty to decide on cases being handled or being examined. Moreover, in the absence of clear implementing instructions for implementing such a mediation process, the level of success achieved through mediation is still very low. One of the residents affected by the construction of the toll road is Agung Laksono. The land object owned by Agung Laksono is a piece of land with an area of $\pm 10,304$ m² (ten thousand three hundred and four square meters) located in Tanjung Sari Village, Natar District, South Lampung Regency. The land was affected by the Trans Sumatra Toll Road construction and compensation payments will be made. However, there are still problems related to the ownership of the land with another resident named Wim Surachmat. Therefore, finally Agung Laksono filed a civil lawsuit with the Kalianda District Court with Case Register Number 19/Pdt.G/2018/PN.Kla on behalf of Agung Laksono as the Plaintiff and Wim Surachmat as the Defendant and the Land Acquisition Executive Committee Bakauheni-Terbangi Besar I Toll Road (South Lampung National Land Agency Office) as co-defendant. The results of the author's interview with one of the victims of land disputes due to the construction of the toll road said that the emergence of disputes over land stems from complaints from a party (person or legal entity) containing objections and demands for land rights both regarding land status, priority and ownership in the hope of obtaining administrative adjustments in accordance with applicable legal provisions. Based on this, this land dispute will eventually lead to the claim that "someone" is more entitled than others (priority) over the disputed land. Viewed from the point of view of the conflict approach, the term land dispute is categorized as a manifest conflict and emerging conflicts. In a dispute, the parties have been identified, are dealing directly in an ongoing or ongoing dispute and no solution is reached that satisfies both parties

(deadlock).

The legal basis for the construction of the Trans Sumatra Toll Road refers to RI Presidential Regulation No. 100 of 2014, Presidential Decree No. 3 of 2016, and Presidential Decree No. 58 of 2017. The construction of the Trans Sumatra Toll Road will pass through at least three districts, namely South Lampung Regency, Central Lampung Regency and Pesawaran Regency. Of the three regencies, the toll road will pass through thirteen sub-districts and thirty villages in South Lampung, one sub-district and three villages in Pesawaran Regency, and four sub-districts and fourteen villages in Central Lampung Regency. The construction of the toll road section was carried out within four months by clearing 2,100 hectares of land with a total budget of IDR 3 trillion.

Toni Aprito as the plaintiff's advocate representing and accompanying and managing his legal interests, he stated that in connection with land disputes used for toll road construction, the proceeds from land compensation payments were divided. In the peace agreement letter it is stated that with respect to obtaining compensation payments for the object of dispute covering an area of approximately 10,304 M2 located in Tanjung Sari Village, Natar sub-district, South Lampung Regency, which was affected by the eviction for the construction of the Bakauheni-Terbangi Besar toll road, where the parties mutually agree to share 2 of the proceeds from land compensation payments that have been determined by the central government with a composition of each party of IDR 550,000,000 (five hundred and fifty million rupiah) for the first party and IDR 624,686,912 (six hundred and two twenty four million six hundred eighty six thousand nine hundred and twelve thousand rupiah) for the second party.

Mediation process used in the resolution of land disputes. According to the author, this dispute case complies with regulations made by the government, namely supreme court rule number 2 of 2003 concerning Mediation Procedures in Courts. This regulation places mediation as part of the process of settling cases in court which is an integral part of the dispute resolution process in courts that were not previously regulated in Het Herziene Indonesisch Reglement/ Reglementvoor de Buitenge westen, which is to resolve conflict cases and land disputes, which are civil in nature, settlement by courts are conducted based on Het Herziene Indonesisch Reglement/Reglement Voor De Buitenge westen, provisions, and settlement out of court using alternative dispute resolution mechanisms or *Alternative Dispute Resolution* (ADR).

According to the author, there are weaknesses in the settlement of disputes by the courts, causing the parties to turn to using the ADR mechanism. Considering the weaknesses in the settlement of disputes by courts, there is a legal principle in civil proceedings which states that the settlement of civil disputes through court decisions is the *ultimumremedium* or the last alternative, meaning that the settlement of civil cases as much as possible must be resolved by amicable deliberations. This is based on the notion that civil cases generally occur between parties who have family ties, close social relations, if the process of resolving the case goes through a procedural process with a court decision, the consequences will damage the family relationship that has long been built before. As an application of the *ultimumremedium* principle, the *Alternative Dispute Resolution* mechanism in resolving land disputes has been implemented in various regions of Indonesia.

Based on the explanation above, the results of the author's research on the case filed by Agung Laksono have carried out a mediation process at the Kalianda Court using a mediator judge, where the two disputing parties issued a peace agreement on Friday 23 February 2018, located at Kalianda, South Lampung Regency. One of the contents of the agreement is the revocation of the lawsuit letter Number: 19/Pdt.G/2018/PN.Kla, that in order to support the smooth implementation of the Bakauheni-Terbangi Besar 1 Toll Road Development which is being carried out by the Central Government for the benefit of the general public, the first and second parties agree to end the problem/dispute over ownership rights to the land through peace, and then this is realized by the revocation of the lawsuit Case Number: 19/Pdt.G/2018/PN.Kla. at the Kalianda District Court, South Lampung Regency.

The author looks at the mediation process or mediation stages, the enactment of Supreme Court Rule Mediation has fundamentally changed judicial practices related to civil cases. Prior to the existence of the Supreme Court regulation, the panel of judges only made efforts to reconcile the parties in a mere formality, but now efforts to reconcile the parties are given an opportunity to the mediator, while the examination of the main case must be postponed by the panel of judges. The mediator is given separate time and space to carry out mediation for the parties. This peace effort is not just a formality, but must be seriously and seriously implemented.

The Factors That Become inhibitor In Completion Dispute Land Rights Through Mediation Regarding the Construction of the Trans Sumatra Toll Road in the Village Tanjung Sari, District Natar , South Lampung Regency

At the planning stage, the Ministry of Public Works and Public Housing of Lampung Province as the agency that needed land carried out the planning in January-February 2015. The Ministry of Public Works and

Public Housing determined the center line through coordinate points, after which it determined the right and left stakes. The PUBLIC WORKS AND PUBLIC HOUSING Ministry also determines the toll road construction design, namely the interchange. The Trans Sumatra Toll Road in Lampung Province has nine interchanges. The resulting output is the length of the Trans Sumatra Toll Road in Lampung Province, which is 147 km long and 120 m wide, passing through 53 villages, 18 sub-districts and three regencies. There are many other facts that show how strategic the role of land is for human life. As a result of this important role, it is not uncommon for lives to be often at stake in order to maintain/obtain ownership rights to land. It's just very unfortunate that the high courage to defend/obtain ownership rights to the land is not comparable to the low awareness to register land at the local land office. This situation ultimately becomes one of the triggers for disputes/conflicts related to ownership of land rights. The purpose of the existence of land registration, namely:

- 1) Providing legal certainty and legal protection for a plot, apartment unit, and other registered rights.
- 2) Provides information on a plot, apartment unit, and other registered rights.
- 3) The implementation of orderly land administration.

Based on the results of interviews with one of the authors matter which filed to court must through procedure mediation, except existing matter period time that is such as PHI (50 days work), BPSK (25 days work) is lawsuit simple and no through mediation and cases that immediately the trial judge case the . But if matters like Dispute Property Rights, Defaults, Debts receivables and so on that is not including lawsuit simple must through mediation especially first. Like experienced cases by Agung Laksono, case the must do mediation especially first, because second case the is case which required by the judge to done mediation that is case right owned by on ground. Kalianda District Court already pointing all the judges have Mediator and Court certificates as well appoint the Mediator from outside Court which already have Certification from Supreme Court. The difference between internal and external Mediators that is the Mediator of in this no pick up cost a penny alias free while the Mediator from outside whole cost borne from the litigants and deal second split parties, as well the mediator is inside court this can appointed directly by the party litigation. The legal basis for the authority of the District Court in handling land dispute cases through mediation is supreme court rule Number 1 of 2008 concerning Mediation Procedures in Courts.

That in the context of solving the dispute problem to provide balanced treatment to the parties, the parties are given the opportunity in a transparent manner to submit their opinion regarding the matter. And based on the results of the author's interview with one of the people affected by the problem of land disputes for the construction of the toll road, stated that in order to resolve the dispute to provide equal treatment to the parties, the parties are given the opportunity in a transparent manner to submit their opinion on the matter. In addition, in certain cases they can be given the freedom to determine their own formulation of the solution to the problem.

Based on the results of the author's interview with one of the Office Officials of the National Land Agency in South Lampung Regency , stated that in the case of settlement of land disputes conducted by the Kalianda District Court, it was carried out based on the authority granted by Ministerial Regulation Number 1 of 2008 concerning Mediation Procedures in Court, after a meeting is held between the two parties, a measurement is carried out based on the certificate of ownership of the land, where in the certificate there is information in the form of a description of the area of the land that is the object of the dispute, then after obtaining the measurement results it can be seen whether the current land is in accordance with what is in certificate, if appropriate, then the problem is resolved that there is no boundary dispute over the land, if it is not appropriate, mediation is carried out in the form of a procedure for returning the deficient boundary between the parties, until there is a meeting point or agreement. Because the legal product for the settlement of land disputes or conflicts is in the form of cancellation of the tort lawsuit filed by Agung Laksono.

The results of the author's interview with Toni Aprito. as one of the advocates in Lampung Province shows that every land dispute can be resolved with existing norms and rules, or in other words resolved based on applicable law. Even for land disputes involving political, economic, socio-cultural, and defense and security aspects, settlements are still being handled with existing legal provisions, because all regulations issued by the Government are basically the resultant of economic, political, social, cultural factors. and defense and security, which is then set forth in laws and regulations.

According to one resident who was affected by the construction of the Trans Sumatra toll road, said that in the land sector, what happened could arise between the community and the community, and between the community and the government. As for the forms of land disputes between communities, such as land tenure and ownership issues, the problem of determining the boundaries and location of land parcels, the issue of customary land. Meanwhile, disputes between the community and the government include errors in mapping and measurement carried out by the Land Office, compensation for land in the public interest and errors in the implementation of land registration either by people who are dishonest in the application. The procedure for settling land disputes through a mediation mechanism by the Kalianda District Court begins with the plaintiff

reporting his claim to court. Regarding the report, the Administrative Section then made a letter of recommendation addressed to the dispute, conflict and case section in order to handle the problem. Then the section on disputes, conflicts and cases makes a summons to the parties to the dispute to hold negotiations.

Settlement of land disputes carried out by the Kalianda District Court was carried out based on the authority granted by supreme court rule Number 1 of 2008 concerning Mediation Procedures in Court, then where the disputing parties were presented/met to discuss the settlement of the dispute experienced, after a meeting was held between the two parties then a measurement is carried out based on the land ownership certificate, where in the certificate there is information in the form of a description of the area of the land that is the object of the dispute, then after obtaining the measurement results it can be seen whether the current land is in accordance or not with what is in the certificate, if appropriate, then the problem is resolved that there is no boundary dispute over the land, if it is not appropriate, mediation is carried out in the form of a procedure for returning the deficient boundary between the parties, until there is a meeting point or agreement. The provisions of the Regulation of the Minister of Agrarian Affairs Number 11 of 2016 concerning Settlement of Land Disputes do not contain provisions regarding legal remedies for the settlement of land disputes.

4. Conclusion

Based on results research and discussion about Completion Dispute Land Rights through Mediation Regarding the construction of the Trans Sumatra Toll Road in South Lampung Regency, then could concluded as following:

1. Completion Dispute Land Rights Through Mediation Related to the construction of the Trans Sumatra Toll Road in South Lampung Regency claim filed by the disputing parties right on land that is with method mediation through the Kalianda District Court judge has produce win decision solution , dispute land between second split party through mediation this raises satisfaction for second disputing parties because done based on will each for poured in form agreement or agreement to avoid prolonged and engendering disputes huge expense .
2. Factors that become inhibitor in settlement dispute right on land through mediation related development road trans Sumatra toll road in the village tanjung sari, sub -district natar, district Lampung south namely:
 - a. Internal factors, in matter data collection conducted by the Government Village about land in the village area not enough maximum so that when the evidence is in the mediation process still no data yet updated as well as government no make copy files letter agreement from results agreement Among party.
 - b. Factor external, the parties often no follow existing procedures, mutually maintain demands without there is clear evidence, low awareness and understanding Public related dispute land, object dispute right on still land not yet is known in a manner directly by the parties as well as still many no complete document ownership ground.

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