


Resolution of Land Disputes Through Mediation

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ABSTRACT

This study delves into mediation as a means of dispute resolution, particularly outside the courtroom, contrasting with the prevalent use of courts, especially in land dispute cases. It highlights mediation as a direct process with enduring positive effects, aiming to achieve peace and mutually beneficial solutions while ensuring no party is harmed. The resulting agreement from mediation holds legal weight and is considered final, bolstered by a peace agreement signed between the involved parties and the mediator. The study aims to evaluate the efficacy of mediation as a conflict resolution tool outside the courtroom, culminating in a documented agreement. Employing normative legal research methods with a statutory approach, the study meticulously examines all relevant laws and regulations. Data collection utilizes literature review methods, providing a comprehensive reference base to support research on the role of mediators in dispute resolution. The gathered information is systematically compiled and analyzed using descriptive methods. In conclusion, mediation has demonstrated its effectiveness as an alternative to court proceedings in settling disputes. The mediator, acting as a facilitator, helps the parties reach an agreement. The outcomes of mediation, documented in the peace agreement, are registered in court, providing legal validity and conclusiveness to the agreed-upon terms.

Keyword: Mediation, Dispute Resolution, Land.

ABSTRAK

Studi ini mengeksplorasi penyelesaian sengketa melalui mediasi, khususnya di luar ruang sidang, berbeda dengan tren umum penggunaan pengadilan, terutama dalam kasus sengketa tanah. Penelitian ini menekankan bahwa mediasi adalah proses langsung dengan dampak positif yang berkelanjutan, bertujuan mencapai perdamaian dan solusi saling menguntungkan, serta memastikan bahwa tidak ada pihak yang dirugikan. Kesepakatan yang dihasilkan dari proses mediasi memiliki kekuatan hukum dan dianggap final, diperkuat oleh perjanjian damai yang ditandatangani antara pihak yang terlibat dan mediator. Penelitian ini bertujuan untuk menganalisis efektivitas mediasi sebagai alat penyelesaian konflik di luar ruang sidang, yang berakhir dengan kesepakatan yang didokumentasikan. Dengan menggunakan metode penelitian hukum normatif dengan pendekatan peraturan perundang-undangan, penelitian ini secara cermat memeriksa semua undang-undang dan peraturan yang relevan. Pengumpulan data menggunakan metode literatur, menyediakan referensi komprehensif untuk mendukung penelitian tentang peran mediator dalam penyelesaian sengketa. Informasi yang dikumpulkan disusun secara sistematis dan dianalisis dengan menggunakan metode deskriptif. Sebagai kesimpulan, mediasi telah terbukti menjadi alternatif yang layak dalam proses pengadilan dalam menyelesaikan sengketa. Mediator, yang disebut sebagai moderator, memfasilitasi kesepakatan antara dua pihak. Hasil mediasi, yang didokumentasikan dalam perjanjian damai, didaftarkan di pengadilan, sehingga memberikan keabsahan hukum dan kefinalan terhadap syarat-syarat yang disepakati.

Keyword: Mediasi, Penyelesaian Sengketa, Tanah.



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1. Introduction

Land is an essential necessity for human existence¹, serving as a source of livelihood and income throughout one's life². The 1945 Constitution, Article 33, stipulates that land, water, and natural resources are under state control and should be utilized for the greatest welfare of the people.³ Individuals are granted land rights under the Basic Agrarian Law to use or exploit it.⁴ Land issues are fundamentally linked to the basic rights of individuals, often resulting in disputes.⁵ These disputes are particularly prevalent in areas where land is involved, reflecting a core societal issue. The concept of the Unitary State of the Republic of Indonesia in 1945 ensures that legal disputes over land remain a fundamental concern, emphasizing the importance of land in human life.⁶

Land boundary disputes often stem from factors like unregistered land or the involvement of third parties with land rights. If left unresolved, these disputes can lead affected parties to resort to legal action, including filing lawsuits in court.⁷ Land disputes are land disputes between individuals, legal entities or institutions that do not have a broad impact.⁸ Disputes that occur cannot be avoided because land is very important and full of proof of ownership, and will have a wide impact if many parties are involved.

Disputes over land ownership are almost inevitable due to the significant value and tangible evidence associated with land. These disputes, which often involve multiple parties, can have widespread repercussions. Each land dispute requires resolution, which can be achieved through either litigation or non-litigation methods. Non-litigation dispute resolution, considered an alternative approach, occurs outside the court system and aims to achieve legal certainty in a cost-effective, efficient, and timely manner, benefiting all parties involved. Both litigation and non-litigation approaches have their own advantages and disadvantages during the resolution process. However, regardless of the chosen method, reaching an agreement among the involved parties is essential before the dispute can be resolved.⁹

Mediation is a method of peaceful dispute resolution that is appropriate, effective, and can open wider access for the parties to obtain a satisfactory and fair resolution.¹⁰ This encourages individuals to opt for mediation as a conflict resolution method, emphasizing its positive and beneficial long-term impacts. Mediation stands out as a pathway to resolving disputes amicably, culminating in a written peace agreement signed by all involved parties, including the mediator.

Referring to the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 21 of 2020 concerning Handling and Settlement of Land Cases, Article 1 Paragraph 11 defines mediation as a way of resolving cases through a negotiation process aimed at reaching an agreement. This is facilitated by the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency, the Land Office in its jurisdiction, and land mediators.¹¹

¹ Suwardhie Sasro Prawira, A Muin Fahmal, and Ahyuni Yunus, "Resolving Land Disputes Through Mediation: Study of the Bantaeng Regency Land Office," *Lex Philosophy Journal (JLP)*, 1.1 (2020) <<https://doi.org/10.52103/jlp.v1i1.23>>.

² Muh. Fajri Nurahmin, Maisa, and Muh. Rizki Syafaat, "Settlement of Certified Freehold Land Disputes Through Mediation by the Palu City National Land Agency," *Collaborative Science Journal*, 4.6 (2021) <<https://doi.org/10.56338/jks.v4i6.1919>>.

³ Lalu Muhammad Wira Arizki, Arief Rahman, and M. Yazid Fathoni, "Application of Regulation of the Minister of Agrarian Affairs/Head of the Land Agency Number 21 of 2020 in Settlement of Land Disputes Through Mediation," *Civil Law*, 3.2 (2023) <<https://doi.org/10.29303/prlw.v3i2.2612>>.

⁴ Eko Yuliasuti, Hakam Sholahuddin, and Lefita Dewi Liarasari, "Resolving Land Boundary Disputes Through Mediation," *Yustitiabelen*, 8.2 (2022) <<https://doi.org/10.36563/yustitiabelen.v8i2.530>>.

⁵ Prawira, Fahmal, and Yunus.

⁶ Bandaharo Saifuddin and Marwan Busyro, "Process of Settlement of Land Rights Disputes Through Mediation at the Padangsidempuan City Land Office," *Muqoddimah Scientific Journal: Journal of Social, Political and Humanities Sciences*, 7.1 (2023) <<https://doi.org/10.31604/jim.v7i1.2023.115-124>>.

⁷ Yuliasuti, Sholahuddin, and Dewi Liarasari.

⁸ Hamid A. Cennu, Baso Madiung, and Zulkifli Makkawaru, "Resolving Land Disputes Through Mediation in Toili District, Banggai Regency, Central Sulawesi," *Indonesian Journal of Legal Legality*, 4.2 (2022) <<https://doi.org/10.35965/ijlf.v4i2.1381>>.

⁹ Kurniati Kurniati, Baso Madiung, and Zulkifli Makkawaru, "Analysis of Land Dispute Resolution Through Mediation in Bontomanai Village, Manngarabombang District, Takalar Regency," *Journal of State Administration Paradigm*, 3.2 (2021) <<https://doi.org/10.35965/jpan.v3i2.662>>.

¹⁰ Kurniati, Madiung, and Makkawaru.

¹¹ Muhammad Wira Arizki, Rahman, and Fathoni.

The National Land Agency (BPN), acting as a mediator, follows the guidelines outlined in the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of BPN Number 11 of 2016 regarding the resolution of land cases through mediation.¹² Therefore, this research focuses on resolving land disputes through negotiations between parties via deliberation, involving a neutral third party without decision-making authority, commonly known as a mediation process.

2. Research Purposes

The research on mediation seeks to delve into the intricacies of how mediation can effectively resolve land conflicts. It aims to not only analyze the efficiency and effectiveness of mediation as an alternative tool for resolving such conflicts but also to understand the key factors influencing its success in achieving a fair and satisfactory resolution for all involved parties.

Moreover, the objectives of this research can be expanded to encompass the development and evaluation of mediation programs or methods applicable in broader contexts, such as legal, educational, or organizational settings. The study may also aim to pinpoint the most effective mediation strategies and techniques, examining the pivotal role of the mediator and the requisite skills to excel in this role. Additionally, the research objectives may include exploring the roles of emotions, communication, and negotiation in mediation, as well as examining the long-term impact of settlement through mediation on the relationships among the parties involved.

3. Method

This study adopts normative legal research methods, incorporating a statutory, case, and historical approach. Secondary data is collected through the library method, encompassing primary and secondary legal materials. The data is systematically organized and analyzed using descriptive methods. The statutory approach involves reviewing all relevant statutory regulations related to the topic. The author utilizes a library research method to compile comprehensive references supporting the research, particularly concerning the role of mediators in dispute resolution.¹³

4. Result and Discussion

4.1 Mediation

Mediation is an alternative method of resolving disputes outside of court, where a neutral mediator helps facilitate negotiations between the involved parties. Unlike a judge or arbitrator, the mediator does not make decisions but rather assists the parties in finding a mutually acceptable solution. The mediator's role is to guide the discussion and encourage communication, helping the parties reach a resolution that meets their needs.¹⁴

Apart from that, mediation is also one of the methods regulated in the Arbitration Law and APS. The principle of mediation is a win-win solution, so that the parties involved in the dispute feel that there is no winner or loser.¹⁵ Sukmawati believes that mediation offers an alternative approach to resolving land disputes outside of court, emphasizing counseling procedures to achieve consensus. This method prioritizes structured pathways and task-oriented interventions, aiming for active participation from all parties to reach mutually agreed-upon resolutions.

Adolf describes mediation as a dispute resolution method involving a third party, often from an institution or professional association, who acts as a neutral party to help reconcile disputing parties. Mediation

¹² Cennu, Madiong, and Makkawaru.

¹³ Achmad Fauzy Alviansah, Bambang Tjatur Iswanto, and Heniyatun Heniyatun, "The Role of Mediators in Dispute Resolution in the Mungkid Religious Courts," *Journal of Borobudur Law and Society*, 1.1 (2022) <<https://doi.org/10.31603/6538>>.

¹⁴ Fira Amalia Sugianto and Devi Siti Hamzah Marpaung, "Effectiveness of the Role of Mediation in Alternative Efforts to Resolve Intellectual Property Disputes," *Meta-Judicial Journal*, 5.1 (2022) <<https://doi.org/10.26877/my.v5i1.8756>>.

¹⁵ ("Mediation as an Alternative Form of Dispute Resolution," 2020)

is recognized as an institutionalized dispute resolution forum within Indonesia's legal framework.¹⁶ The characteristics of Mediation are as follows:

- a) Expansion of the development or negotiation process assisted by a third party
- b) The intervention of a third party (mediator) that is impartial and acceptable to both parties through negotiation
- c) The third party (mediator) (mediator) has no authority to make decisions
- d) A third party (mediator) helps the parties to reach or produce an agreement that is acceptable to the parties
- e) The process is confidential and the presence of a mediator is agreed upon by the parties

The mediation process that will be undertaken has several weaknesses and disadvantages of mediation as an alternative for resolving land disputes, including:

- a) The final decision is not guaranteed
The certainty and satisfaction of the parties in the final outcome of the mediation must be detailed and fair.¹⁷ If either party feels that the final decision does not align with their expectations, they may revisit the dispute with the assistance of a neutral mediator. Mediation is a voluntary process where the involved parties ultimately determine the resolution. This can lead to discontent if a party perceives the decision as unjust or unsatisfactory. The assurance of a final decision hinges on the agreement reached by the parties during the mediation process.
- b) There is no binding legal force
The legal force of mediation is consensual/agreement, consensus and collaborative for the parties to the dispute. So, its legal force is only binding on both parties, unless the agreement is made in the form of a peace deed.¹⁸ Enforcing the outcome of mediation poses challenges since it doesn't yield a legally binding decision. If one party refuses to adhere to the mediation results, enforcing compliance typically requires resorting to a lengthier legal procedure.
- c) Lack of ability to resolve complex disputes
A mediator must have good skills, in order to achieve a smooth-running mediation process.¹⁹ Mediation is generally more appropriate for simpler and easily resolved disputes but can be challenging for complex or multi-party disputes. In such cases, the mediator's skills are crucial. It's important to select an experienced and professional mediator to ensure the best possible outcome from the mediation process.
- d) Depends on the wishes of both parties
The level of compliance of the parties undergoing mediation is very low so that when the mediation process is about to take place, but one of the parties is not present, the mediation process is delayed or can even be cancelled.²⁰ The mediation process relies on the cooperation and mutual agreement of both parties involved in the dispute. If one party refuses to engage in mediation or is unwilling to collaborate on finding a resolution, the mediation process is likely to fail. Good faith from all parties is essential for the successful implementation of the agreed-upon mediation process.
- e) Cost and time required
Several factors can impede and prolong the mediation process, often resulting in increased costs and time investment. These factors include a lack of understanding among the parties regarding the case's subject matter, parties struggling with negotiation, and mediators lacking the experience and skills

¹⁶ Hendri Jayadi et al., "Land Dispute Resolution Based on Positive Law Regarding Dispute Resolution in Indonesia," *ComunitA Servizio Journal: Journal Related to Community Service Activities, Especially in the Technology, Entrepreneurship and Social Sectors*, 5.1 (2023) <<https://doi.org/10.33541/cs.v5i1.4287>>.

¹⁷ Aljuna Andyspahlawan, "Non-Litigation Resolution of Default Disputes Through Mediation by the Libas Legal Aid Institute in Civil Cases in Ngawi Regency," *Indonesian Law Enforcement Journal*, 2.3 (2022) <<https://doi.org/10.51749/jphi.v2i3.42>>.

¹⁸ Ni Nyoman Mariadi and I Komang Kawi Arta, "Effectiveness of Managing Electronic Mortgage Rights at the Buleleng Regency Land Office," *Journal of Research and Development of Science and Humanities*, 5.3 (2022) <<https://doi.org/10.23887/jppsh.v5i3.42527>>.

¹⁹ odelia Christy Putri Tjandra, "Effectiveness of Implementing Mediation as an Alternative for Peaceful Dispute Resolution in Divorce Cases," *Sapientia Et Virtus*, 6.2 (2021) <<https://doi.org/10.37477/sev.v6i2.334>>.

²⁰ Sri Hariyani, "The Effectiveness of Mediation in Resolving Divorce Cases in the Pasuruan Religious Court," *State and Justice*, 9.1 (2020) <<https://doi.org/10.33474/Hukum.v9i1.7492>>.

necessary to effectively manage the dispute being discussed.²¹ Although mediation is generally cheaper and faster than the legal process, it still requires a lot of money and time. In addition, there is no guarantee that mediation will be successful in resolving land disputes effectively.

Behind the weaknesses you have, there will always be advantages that make them better, as follows. Some of the advantages of mediation are:²²

- a) The parties to the dispute can maintain good relations. This is very good for business relationships because it is basically a good and trusting relationship
- b) Cheaper and faster
- c) Confidentiality, disputes that arise are not known to outside parties, is important to maintain a businessman's reputation because it is generally taboo to get involved in disputes.
- d) Satisfactory results for all parties
- e) Comprehensive deal
- f) More of the resulting agreements can be implemented.

Based on the advantages above, the following is a detailed explanation that the mediation process is more effective and appropriate as a method of resolving disputes in the land context, namely for the following reasons:

- a) Fast process
Time is very important for everyone, that is the reason why the mediation process has a fairly short duration and is not prolonged in resolving disputes specifically in the land sector.²³ Mediation often resolves disputes faster than traditional court processes, which can be time-consuming. In mediation, both parties must agree on the solution (win-win solution), making it easier for them to adjust the time needed for the mediation process, thus saving time.
- b) Lower costs
If the mediation process is efficient and brief, the costs involved are likely to be lower, making them more manageable for each party.²⁴ Mediation costs are generally lower than litigation costs because they do not involve high attorney fees or court costs.
- c) Maintain relationships
When facing problems/disputes, of course no one wants a problem to arise resulting in an estrangement in a relationship.²⁵ Mediation plays a crucial role in preserving relationships between disputing parties by focusing on finding mutually acceptable solutions. This approach helps prevent long-term issues, aligning with the foundation of social interaction that values kinship and shared interests in addressing common problems. By seeking solutions that are voluntary and mutually beneficial, mediation fosters prosperity in relationships.
- d) Joint decision
To address potential losses for any party involved, the ideal outcome is a win-win solution achieved through mutual agreement. Winning in this context goes beyond mere economic gains; it also encompasses moral standing, reputation, and trust with other parties. Joint decisions entail fulfilling obligations as agreed upon mutually.²⁶ Through mediation, parties can actively participate in the resolution process and mutually agree on decisions, avoiding unilateral actions. Joint decisions involve a process where each party expresses their interests and issues, ensuring no coercion as parties are free to speak and share their opinions during mediation.
- e) Confidentiality
The main advantage of dispute resolution in informal institutions is that it is confidential and flexible.²⁷ Confidentiality in the mediation process is rigorously upheld, typically involving only the disputing

²¹ Andyshero.

²² Sugianto and Marpaung.

²³ Tjandra.

²⁴ Tjandra.

²⁵ Nugraha Pranadita, "Changes in the Function of Mediation in Practice in District Courts and Religious Courts in Relation to the Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2016 concerning Mediation Procedures in Court," *Res Nullius Law Journal* , 1.2 (2019) <<https://doi.org/10.34010/rnlj.v1i2.2619>>.

²⁶ Tjandra.

²⁷ Pranadita.

parties, neutral mediators, and select individuals relevant to the mediation. This contrasts with court proceedings, which often involve numerous parties. Mediation is conducted in private, allowing parties to freely discuss their issues without concern for public disclosure. This confidentiality enables parties to fully explain their problems, ensuring a clear understanding for the mediator's consideration and advice.

f) Flexibility

Mediation is more flexible than judicial institutions.²⁸ Mediation offers the flexibility for parties to tailor solutions to their individual needs and interests. This process grants parties the freedom to adjust situations towards mutual agreement, allowing them to express desired solutions and maintain a comfortable, non-confrontational atmosphere. Flexibility in behavior is crucial during mediation to prevent stiffness that may impede progress.

Therefore, mediation can serve as a superior and more suitable alternative for resolving disputes compared to traditional judicial processes. The aforementioned advantages can serve as criteria for selecting alternative dispute resolution in land-related contexts. These advantages are directly related to the benefits that can be derived by choosing the appropriate alternative in line with current developments. The mediation process ultimately reaches a final outcome through consensus between the parties involved, fulfilling the desires of both parties in accordance with the aforementioned advantages. There are numerous benefits to be gained by selecting mediation as a solution to the disputes at hand.

4.2 Stages/Process of Land Dispute Resolution Through Mediation

To resolve land disputes effectively through mediation, a structured and comprehensive approach can be taken. The following steps can be taken in the mediation process:

a) Start mediation

The parties involved in the dispute have opted for mediation as a means of resolution. Selecting a mediator who maintains impartiality and possesses expertise in mediation, particularly in property law, is crucial. Initiating the mediation process involves immediate discussion between the parties to appoint a neutral third-party mediator, a decision made through mutual agreement. Once a mediator is chosen, the parties collaborate to determine the timing and location of the mediation proceedings. Unlike formal legal proceedings, the duration of mediation is not predefined, as its pace relies on thorough discussions and consensus-building among the involved parties. The flexible nature of mediation timelines emphasizes the need for ample room for constructive dialogue and negotiation, ensuring that all pertinent issues are addressed to the satisfaction of both parties throughout the mediation process.²⁹

b) Identify the problem

After agreeing on the mediator's appointment, a meeting forum is established between the involved parties and the mediator. This forum provides a platform for the parties to engage in discussions and dialogues regarding the core issues at hand. The mediator may suggest that the meeting be attended directly by the parties themselves, without representatives. This direct participation enables a more open and direct exchange of perspectives and concerns, thereby enhancing the effectiveness of the mediation process.³⁰ The involved parties express their land-related problems or differences and attempt to achieve a mutual understanding regarding these issues. The mediator directs the discussion to focus on the core problem, ensuring that efforts are made to align the parties' understanding of the problems raised. If the agreed-upon problem does not align with statutory regulations, the mediator intervenes by offering corrections or improvements in the discussion forum. This intervention helps prevent errors and ensures that the issues remain within the scope of ongoing dispute resolution.³¹ At this point, the mediator expects the parties to attend, as it provides an opportunity to suggest peaceful

²⁸ Jimmy Joses Sembiring, *How to Resolve Disputes Outside of Court*, Visimedia, 2018.

²⁹ Mayasari and Rudy.

³⁰ Irpan Manik Pujiana and M. Yazid Fathoni, "The Role of the Mediator Judge in the Divorce Case Mediation Process," *Civil Law*, 1.3 (2021) <<https://doi.org/10.29303/prlw.v1i3.417>>.

³¹ Saifuddin and Busyro.

solutions for both sides. During this session, the parties can elaborate on their problems. The mediator examines the issue's root to find solutions. Once the issue is clearly identified by the mediator and both parties, they proceed to discuss their respective interests.

c) Discussion of interests

The involved parties articulate their interests regarding the land to identify areas of consensus and divergence, aiming to achieve a mutual solution. They engage in discussions and negotiations on the agreed-upon issues, generating options and seeking common ground from their expressed interests to develop solutions.³² This phase offers the involved parties a chance to present arguments regarding their respective interpretations of the problem, representing their interests. The mediator or moderator must clarify each party's explanations, ascertain the facts, and enable wise actions to reconcile the parties by reaching the correct solution.³³ The arguments presented should align with established facts, and parties are encouraged to provide evidence supporting their arguments to defend their rights. The mediator's role at this stage is crucial in maintaining control over the atmosphere, as debates and tension between parties are not uncommon, especially when discussing conflicting or divergent interests. Therefore, the mediator plays a vital role in reminding and guiding the parties to refocus on the core issues under discussion.³⁴ After all parties express their desires based on their interests in the form of points of agreement, the mediator summarizes these interests in crucial notes, which are then analyzed to identify solution items to be agreed upon.³⁵

d) Discuss the solution

From the parties' identified interests, they strive to find a mutually acceptable solution. The mediator assists in brainstorming and developing potential alternative solutions. Once the parties have outlined the crux of the issue and their respective interests, the solution emerges. The mediator delves deeper into the problem, and with the parties' consent, experts or community leaders can be brought in. The binding or non-binding nature of their opinions hinges on the parties' agreement.³⁶ As stated in PERMA Number 1 of 2016 Article 26 paragraph (1), with the approval of the parties and/or their legal representatives, the Mediator can present one or more experts, community leaders, religious leaders or traditional leaders.³⁷ Involving experts and community figures in the mediation process can help the disputing parties to clarify the issues being negotiated and can also help resolve problems by finding the best and fair solution for the parties involved.³⁸ Developing multiple solutions involves generating various options for resolving the dispute. The primary focus is on considering the options proposed by the parties themselves to resolve the problem. Parties can propose various options to address the issue, building on the discussions from the previous stage. Additionally, the mediator can suggest several alternatives, although these suggestions are not binding on the parties. The compiled options are then formulated collaboratively, considering their positive impact on all parties involved. This process ensures a clear connection between the problem and the proposed solutions. The mediator guides the process of finding solutions, and the agreed-upon results are communicated to the parties for

³² Habib Ferian Fajar and Julfahmi Syahputra, "Optimizing the Role of Mediator in Resolving Civil Disputes in the Religious Court Area of West Sumatra," *Lex Generalis Law Journal*, 4.4 (2023) <<https://doi.org/10.56370/jhlg.v4i4.370>>.

³³ Mukaromah Mukaromah et al., "Tudang Madeceng: Transformation of the Positive Values of Sigajang Laleng Lipa' in Non-Litigation Dispute Resolution," *Al-Azhar Islamic Law Review*, 4.1 (2022) <<https://doi.org/10.37146/ailrev.v4i1.120>>.

³⁴ Saifuddin and Busyro.

³⁵ Muten Nuna et al., "Essentials of Civil Dispute Resolution Through Non-Litigation Mediation," *Judicial Review Journal*, 23.1 (2021) <<https://doi.org/10.37253/jjr.v23i1.4390>>.

³⁶ Aswar Aswar, Muslimin H. Kara, and Nur Taufiq, "Implementation of Sharia Economic Dispute Settlement Mediation in the Makassar Religious Courts," *Al-Azhar Islamic Law Review*, 3.1 (2021) <<https://doi.org/10.37146/ailrev.v3i1.59>>.

³⁷ Fauzy Alviansah, Tjatur Iswanto, and Heniyatun.

³⁸ Muhammad Rizqi, "Effectiveness of Divorce Case Mediation in Jepara Religious Courts," *Isti'dal: Journal of Islamic Legal Studies*, 9.2 (2022) <<https://doi.org/10.34001/ijsh.v9i2.3995>>.

consideration.³⁹ In the process of reviewing available options, parties are given the opportunity to decide whether to accept or reject an option and can evaluate the harms and benefits associated with each option. Logical and rational considerations are very important at this stage because they will determine the result regarding the parties' agreement in choosing the proposed option.⁴⁰

e) Negotiations and agreements

In mediation, the parties discuss and negotiate potential solutions, aiming to reach a fair and mutually beneficial agreement. After presenting and discussing options, they create lists of solutions focused on the problem. These lists are then analyzed by the parties, who may seek guidance from moderators or experts/public figures involved in the mediation process. This stage marks the final decision-making process, as the agreement reached becomes the conclusive negotiation and decision in resolving the dispute. Once the agreement, guided by the mediator, is determined, a Peace Agreement is drafted based on the mediation minutes. This agreement is binding on the parties involved and outlines details such as accepted solution options, as well as the rights and obligations of each party in implementing the solution.⁴¹

f) Completion and fulfillment

Once the parties reach an agreement, the next step is to formalize the settlement and fulfill the agreement. This involves making a written agreement and legally transferring land rights. After the mediation process is successful and a point of agreement is reached, minutes and minutes of land case settlement will be prepared by the official responsible for handling the dispute or conflict.⁴² It is hoped that the parties will honor the mediation agreement with good intentions and respect. The peace agreement marks the conclusion of the mediation process and is documented for clarity. It includes the various dispute resolution terms agreed upon by both parties during the mediation process. These terms are signed by both parties and the mediator, formalizing the agreement in writing. A successful mediation agreement aims for a win-win solution, ensuring that all parties benefit. It should satisfy all parties, promote a sense of justice, and prevent any party from feeling unfairly treated by the outcome.⁴³ Article 27 PERMA no. 1 of 2016 regulates that if the parties reach an agreement through mediation, then with the help of the mediator they are obliged to formulate a written agreement in a Peace Agreement.⁴⁴ The agreement must be signed by both parties and the mediator. To ensure mutual benefit in every interaction between disputing parties, the mediation process must follow procedural stages, and the mediator must maintain neutrality, act with good intentions, and be committed to upholding justice. This ensures that the mediation process runs smoothly in accordance with its intended functions and principles.

g) Supervision and follow-up

After dispute resolution, supervision and monitoring are required to ensure the implementation of the agreement. If new problems or disputes arise, parties can again use mediation as a quicker and more efficient resolution method compared to formal legal processes. The agreement or peace agreement resulting from mediation has legal force, like other agreements, meaning that the results of the mediation agreement are binding and final as intended in Article 6 paragraph (7) of Law Number 30 of 1999. The good faith of the parties is very decisive and greatly influences the follow-up to the peace agreement achieved through mediation. The implementation of the mediation agreement and related

³⁹ Saifuddin and Busyro.

⁴⁰ Sri Hajati, Agus Sekarmadji, and Sri Winarsi, "Land Dispute Resolution Model Through Mediation in Realizing Efficient Settlement and Legal Certainty," *Journal of Legal Dynamics*, 14.1 (2014).

⁴¹ Saifuddin and Busyro.

⁴² Saifuddin and Busyro.

⁴³ Yudha Chandra Arwana and Ridwan Arifin, "Mediation Pathways for Settlement of Land Disputes as an Encouragement for the Fulfillment of Human Rights," *Jambura Law Review*, 1.2 (2019) <<https://doi.org/10.33756/jalrev.v1i2.2399>>.

⁴⁴ Aris Priyadi, "Decision/Deed of Peace as Part of the Mediation System Based on Perma Number 1 of 2016 at the Purwokerto District Court and Banyumas District Court in 2022," *Wijayakusuma Law Review*, 4.2 (2022) <<https://doi.org/10.51921/wlr.v4i2.215>>.

written agreement documents (Settlement Agreement) must be carried out in good faith, as these documents are considered final and binding. If in the future, one of the parties fails to implement the results of the peace agreement they have made, then the mediation agreement still does not have executory force, especially if the agreement has been registered with the court. In the event that it is not registered, if one of the parties does not have good faith in implementing the contents of the peace agreement resulting from mediation, then the aggrieved party can file a lawsuit in court. A successful mediation process, when an agreement is reached, requires the parties to register with the District Court within 30 days of signing.⁴⁵ It's important to understand that mediation is a voluntary process that relies on the cooperation of all involved parties. The effectiveness of mediation hinges on the willingness to find a peaceful resolution and the mediator's ability to lead constructive discussions. Additionally, the success of mediation is influenced by the mediator's skills. Therefore, the mediator plays a crucial role in managing the situation and atmosphere, possessing a variety of communication skills, and listening attentively. In mediation, the mediator must excel in managing the process, clearly and confidently conveying interests to foster collaboration in resolving disputes.⁴⁶

4.3 Land Cases Resolved Through Mediation

In 2020, the implementation of mediation in land ownership and boundary disputes showed positive outcomes, resulting in peace agreements between the parties involved. There were three cases resolved through mediation in 2020. In 2021, only two cases reached reconciliation, focusing on land ownership disputes and requests to cancel SHM. However, five other cases failed in mediation, leading the parties to pursue legal action. In 2022, there were no successful mediation cases, with disputes revolving around objections to measurement letter issuance, overlapping claims, and prevention of SHGB extensions.

Success factors in mediation can be categorized as juridical and non-juridical. Juridically, success hinges on the mediator's expertise and licensing. Non-juridical factors include the parties' good intentions and willingness to resolve issues efficiently, aiming for a mutually beneficial outcome.⁴⁷

Table 1. Number of Cases of Handling Land Disputes and Conflicts at the Central Lombok Regency Land Office

2020	<ul style="list-style-type: none"> • Reg No. 662 > Peace • Reg No. 157 > Peace • Reg No. 509 > Peace
Year 2021	<ul style="list-style-type: none"> • Reg No. 155 > Peace • Reg No. 044 > Disagree and Take Legal Action • Reg No. 008 > Disagree and Take Legal Action • Reg No. 519 > Disagree and Take Legal Action • Reg No. 342 > Peace • Reg No. 111 > Disagree and Take Legal Action • Reg No. 267 > Disagree and Take Legal Action
Year 2022	<ul style="list-style-type: none"> • Reg No. 215/IV > In the Mediation Process • Reg No. 4/1 > Research and case study is being carried out • Reg No. 97/11 > Research and case study is being carried out

Source: Dispute Control and Handling Section of Central Lombok Regency Land Office⁴⁸

⁴⁵ Dedy Mulyana, "The Legal Strength of Mediation Results in Court and Outside Court According to Positive Law," *Juridical Insight Journal*, 3.2 (2019) <<https://doi.org/10.25072/jwy.v3i2.224>>.

⁴⁶ N Ghaniyyu, FF; Husnita, "Implementation of the Concept of Sustainable Development Towards Strengthening the Basic Legal Concepts of Spatial Planning Based on Environmental Functions," *Padjadjaran Law Review*, 8.1 (2020).

⁴⁷ Muhammad Wira Arizki, Rahman, and Fathoni.

⁴⁸ Muhammad Wira Arizki, Rahman, and Fathoni

A number of enhancements use mediation as a resolution process dispute land, that is as following:

- a) Enhance Awareness of Mediation: Conduct socialization and educational campaigns to raise public awareness about the importance of mediation as an alternative dispute resolution method that is fast, effective, and cost-effective. Participate in seminars related to the mediation process to increase awareness and knowledge among the public. Highlight the economic advantages of mediation, emphasizing that it is much cheaper than going to court and more time-efficient.⁴⁹
- b) Training and Certification of Mediators: It is essential to improve the quality of mediators by providing opportunities for external candidates to undergo mediator training and certification from accredited institutions outside the court system.⁵⁰ Do training And certification for professional mediators And competent in handle dispute land.
- c) Engaging Relevant Stakeholders: Collaborate with the government, legal institutions, community organizations, and other relevant parties to support the mediation mechanism in resolving land disputes. For example, in the mediation case at the Land Office in Padangsidempuan City, which was initiated by a public request for mediation facilitation, the involvement and support of legal institutions and mediators ensured that the mediation process was conducted effectively and in line with the nature of the disputes being addressed.⁵¹
- d) Facilitate the Mediation Process: Ensure that the mediation process is facilitated effectively by providing suitable mediation rooms and arranging them to create a comfortable and conducive environment. This will help the parties involved in the dispute feel at ease and participate freely in the mediation process.⁵² Give support and facilitation in the mediation process between the parties to the dispute to reach fair deal and sustainable.
- e) Improve Cooperation between Party Related. Cooperation and trust in something connection very important for build cooperation between para party hence the sense of trust and peace must applied to the mediation process walk with fluent and get decision best for second split party.⁵³ Raising cooperation between parties related in solution dispute land through mediation for reach more success good.
- f) Evaluation and Monitoring. Do evaluation and monitoring of processes and results mediation in finish dispute land for analyzing the effectiveness and efficiency from thus mechanism mediation.⁵⁴

5. Conclusion

Mediation offers an alternative approach to resolving disputes outside of the court system, focusing on consensus and collaboration. All parties involved must unanimously agree to participate in the mediation process, encouraging cooperation and discussion to find a compromise. The agreed-upon solutions are then implemented based on the terms decided by the parties. Successful mediation depends on the collective effort of all involved, aiming for a mutually beneficial resolution.

The mediator plays a crucial role in facilitating the mediation process. They must have effective communication skills to guide discussions and manage tense moments or disagreements. By creating a comfortable and open environment, the mediator encourages all parties to express their arguments and interests. The proposed solutions should have positive and lasting effects, ensuring that no party is harmed by the agreement's implementation. This guarantees that the mediation agreement's outcomes are enduring and conclusive.

⁴⁹ Muhammad Wira Arizki, Rahman, and Fathoni.

⁵⁰ Juwita Tarochi Boboy Boboy, Budi Santoso, and Irawati Irawati, "Land Dispute Resolution Through Mediation Based on the Theory of Dean G. Pruitt and Jeffrey Z. Rubin," *Notarius* , 13.2 (2020) <<https://doi.org/10.14710/nts.v13i2.31168>>.

⁵¹ Saifuddin and Busyro.

⁵² Tjandra.

⁵³ Boboy, Santoso, and Irawati.

⁵⁴ Hariyani.

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