


## **Mediation as an Effort to Resolve Disputes on Ownership and Control of Heirs' Land**

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### **Abstract**

Support the successful implementation of mediation. This research uses a juridical-empirical approach. Data sources come from primary and secondary data using interview and documentation data collection techniques. Data validity uses triangulation which is then analyzed qualitatively. The research results show that (1) their disputes, according to Dean G. Pruitt and Jeffrey Z. Rubin's dispute theory, are caused by differences in interests and one of the effective resolution efforts is mediation. The implementation of this mediation resulted in an agreement to inherit; split property rights; and carry out a transfer of rights or change of name. (2) The successful implementation of mediation is in accordance with Lawrence M. Friedman's theory because it is supported by legal structure, legal substance, and legal culture. The strategy implemented is to ensure that disputes are resolved through mediation; coordinate with legal counsel; declare readiness to provide assistance; and communicate with the parties to the dispute.

**KEYWORDS:** *Mediation, Dispute, Heir, Land Ownership*



## Introduction

The existence of land is valuable and very important in the lives of Indonesian people because it is used as a place where people live and land also provides a livelihood for them. Land has a function as the center of social, economic,<sup>1</sup> and political life, a source of livelihood which is closely related to community identity.<sup>2</sup> This land is a primary human need, both directly to meet daily life, such as for agriculture and settlement, as well as as a base for various economic and development activities, such as trade, industry, agriculture, gardens, and education, as well as the development of infrastructure and other facilities.<sup>3</sup>

Land on the other hand also always triggers disputes from time to time<sup>4</sup> increasing both in quality and quantity.<sup>5</sup> This land dispute has become a classic issue in Indonesia so it needs to be resolved quickly and precisely.<sup>6</sup> Over time, land will surely run out with every piece of land owned or inhabited due to the increasing population of Indonesia.<sup>7</sup> It could be that over time our land is used up for all to use and there will be no more empty or abandoned land.<sup>8</sup> Therefore, a legal regulation or legal code is needed, namely rules of social life that are regulatory and coercive to ensure order in society.

The high value of land can be seen from any perspective, including sociology, anthropology, psychology, politics, military, and economics.<sup>9</sup>

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<sup>1</sup> Chandra, "Non-Litigation Process Land Dispute Settlement for Legal Certainty."

<sup>2</sup> Wabelo, "Approaches To Rural Land Dispute Resolution Mechanisms in the Ethiopian Rural Land Legislations: Regional States Based Analysis."

<sup>3</sup> Syarief, *Menuntaskan Sengketa Tanah Melalui Pengadilan Khusus Pertanahan*.

<sup>4</sup> Iswantoro, "Strategy and Management of Dispute Resolution, Land Conflicts at the Land Office of Sleman Regency."

<sup>5</sup> Hayati, Suhaimi, and Sulaiman, "The Role of the Regional Office of the National Land Agency Aceh Province in Settlement Land Disputes."

<sup>6</sup> Sunarno, "Development of Land Conflict Settlement Model Based on Indigenous Knowledge of the Local Communities in Indonesia."

<sup>7</sup> Wahanisa et al., "Problems of Disputes/Conflicts Over Land Acquisition Towards Development for Public Interest in Indonesia."

<sup>8</sup> Wahyuni and Ramanda, "Penerapan Itikad Baik Para Pihak Kepada Penyelesaian Sengketa Tanah Di Desa Segara Makmur."

<sup>9</sup> Syarief, *Menuntaskan Sengketa Tanah Melalui Pengadilan Khusus Pertanahan*.

Land is one of the natural resources that is important for the survival of mankind, the relationship between humans and land is not just a place to live, but more than that, land provides resources for the survival of mankind. The importance of land for humans is so important that it often causes land problems/disputes.<sup>10</sup> The emergence of land rights disputes can occur due to a lawsuit from a person or legal entity containing a lawsuit due to legal actions that harm other parties.<sup>11</sup>

The problem of land disputes in Indonesia is not something new and is still ongoing today. Initially, land disputes only occurred between certain individuals, but now land disputes have spread to various sectors of community life, including forestry, infrastructure, mining, and even fish ponds/coastal areas. Legal disputes arise from complaints submitted by certain parties, both individuals and legal entities, containing complaints and demands related to land status, priority use, or land ownership, with the hope of obtaining administrative resolution by applicable regulations.<sup>12</sup> Unequal land ownership/control and disparities in agricultural land use are factors causing land disputes.<sup>13</sup>

Land disputes ultimately impact all aspects of life starting from the economic, social, and environmental aspects.<sup>14</sup> So far, land dispute resolution can be done through court or outside court. People who choose to resolve cases through court can now take advantage of e-litigation or electronic courts. This is as regulated in Supreme Court Regulation Number 1 of 2019 so that people can obtain true justice based on the principles of fast, simple, and light.<sup>15</sup> Apart from that, electronic courts should be more

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<sup>10</sup> Irhamna, "Penyelesaian Sengketa Pertanahan Melalui Mediasi Oleh Kantor Pertanahan Lombok Barat."

<sup>11</sup> Mwaigombe and Kashaga, "The Role of Informal Land Dispute Settlement Mechanisms on Family Land Ownership in Tanzania: A Case Study of Mbeya District, Mbeya Region."

<sup>12</sup> Manan, *Penyelesaian Sengketa Hak Atas Tanah Melalui Pengadilan Tata Usaha Negara*.

<sup>13</sup> Sobseh and Ngwa, "Land Tenure Insecurity And Land Conflicts In The Bamenda Grassfields Of Cameroon: Puzzling Evidence From Bali Nyonga/Bawock Land Conflict."

<sup>14</sup> Manan, *Penyelesaian Sengketa Hak Atas Tanah Melalui Pengadilan Tata Usaha Negara*.

<sup>15</sup> Latifiani et al., "Reconstruction of E-Court Legal Culture in Civil Law Enforcement."

effective by the basic principles to make justice accessible to all levels of society, but since it was implemented, e-litigation has become less popular with the public.<sup>16</sup>

Administrative Court generally have incomplete and suboptimal results. This is because resolving civil disputes in general courts requires a long process and is not as simple as expected with several stages and procedures starting from the preparation stage, filing and registering a lawsuit, as well as the trial stage which can sometimes take more than one year to complete.<sup>17</sup> This is caused by overlapping decisions that have been determined by each judicial body, the difficulty of executing decisions of judicial bodies that have permanent legal force, and the lack of clarity regarding which laws and regulations are competent to resolve land cases in Indonesia. As a result, injustice arises, legal uncertainty, land grabbing, disruption to the rate of economic growth and development due to investors being reluctant to invest their capital in Indonesia, and social and political conflicts arising.<sup>18</sup> Therefore, resolving disputes outside the court, such as mediation, is always the best choice to find a win-win solution for both parties.<sup>19</sup>

Mediation can be interpreted as a dispute resolution process in which the disputing parties receive assistance from a neutral third party, who acts as a facilitator.<sup>20</sup> Decisions in mediation are based on an agreement between the parties involved in the dispute. Mediation can be used to resolve land disputes, where the third party is usually from the National Land Agency

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<sup>16</sup> Rizky et al., "Hambatan Pembuktian Dalam Pelaksanaan E-Litigasi Guna Mendukung Pembaharuan Hukum Di Era Revolusi Industri 4.0."

<sup>17</sup> Latifiani and Ratnasari, "The Small Claim Court To Realize the Fast and Simple Principle in Civil Disputes Resolution."

<sup>18</sup> Mudjiono, "Alternatif Penyelesaian Sengketa Pertanahan Di Indonesia Melalui Revitalisasi Fungsi Badan Peradilan."

<sup>19</sup> Patoari, "Legal and Administrative Challenges of Alternative Dispute Resolution (ADR) as a Peaceful Means of Resolving the Land Dispute in the Rural Areas of Bangladesh."

<sup>20</sup> Aritonang, "Land Conflict Resolution: Case Study In Sarirejo Village."

(BPN), and the decision resulting from this mediation has the same legal force as an ordinary decision because it is agreed to by both parties.<sup>21</sup>

One example of a land dispute that was attempted to be resolved through mediation at the Jepara Regency Land Office is the case as contained in the Minutes of Mediation Number 17.3/BA/VII/2022 concerning a land boundary dispute located in Sengonbugel Village RRT 006 RW 003 Mayong District Jepara Regency between Saripah with Sugeng. The main issue in dispute is that Saripah, as the complainant, requested that the western boundary, which is written as the Relief Road, which is approximately 1.5 m<sup>2</sup> wide, be widened further to 3 m<sup>2</sup>. The mediation was carried out 4 times at the Jepara Regency Defense Office with the result that they agreed to provide access to a 1.5 m<sup>2</sup> wide road to the back/to the south (as a road so it cannot be used as property by anyone).

The second case, Mediation Minutes Number: 01/SP/33.20.MP.01.02/V/2022, a land dispute which was attempted to be resolved through mediation at the Jepara Regency Land Office, was a boundary dispute over Ownership Certificate Number: 799/ Potroyudan registered in the name of Nurul Amaliyatul Khasanah with waqf certificate Number: 20/ Potroyudan registered in the name of the Muslimat NU Bina Bhakti Wanita Education Foundation, located in Potroyudan Village, Jepara District, Jepara Regency. The main problem was that Nurul Amaliyatul was the complainant regarding the installation of paving on the western part of his land which was carried out by Farida as Chair of the NU Education Foundation. The complainant also objected to the fact that the southern part of his land was recognized as a public road because in SHM No: 799/ Potroyudan there was no picture of the road. Mediation was carried out 3 times by the Jepara Regency Land Office by reaching an agreement through mediation with a field check by BPN Jepara, there was an error in SHM No: 799/ Potroyudan and the complainant then agreed by handing over the

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<sup>21</sup> Asmah et al., "Fair Mediation as an Alternative for Settlement of Customary Land Disputes for Oil Palm Plantation Businesses in West Pasaman."

SHM for data correction and it was issued widely for public roads voluntarily without any compensation.

The third case, a land dispute that was attempted to be resolved through mediation at the Jepara Regency Land Office, was a dispute between heirs regarding Ownership and Control of SHM Land Number: 2985/Bondo registered in the name of Sugito Marjan located in Bondo Village, Bangsri District, Jepara Regency. Based on the Mediation Request Letter, one of the heirs through his attorney on June 22 2022 submitted a request for mediation to the Jepara Regency Land Office regarding the Application for Transfer of Certificate of Rights over SHM Number 2985 covering an area of 7850 m<sup>2</sup> in Bondo Village, Bangsri District, Jepara Regency. The chronology of this inheritance dispute begins with the distribution of inheritance assets to 4 heirs of Sugito Marjan, namely Tiyas Murti, Muji Astuti, Jatmiko, and Nuryanto.

One of the heirs, namely Jatmiko, as the mediation applicant, intended to register an application for the transfer of certificate rights over the land which was his share, but due to an unresolved sale and purchase dispute between Tiyas Murti and Muji Astuti's share, the latter was bought by Ratriyo and his wife Sukiswati. Sukiswati and the children were uncooperative in the process, unwilling to provide consent, personal data, and signatures for the process of transferring rights to the certificate. Negotiation and mediation efforts with family members (other heirs) had been carried out previously but Sukiswati was still unwilling to respond. Therefore, the next step taken was to use a mediator from the Jepara Regency Land Office.

The problem that later emerged after the decision through the mediation results was that inheritance and transfer of rights/change of name could not be carried out because it was hampered by the process of buying and selling inherited land between heirs which was previously carried out without the consent of all the heirs. The sale and purchase carried out by Tiyas Murti with Muji Astuti's share and the final purchase by

Ratriyo and his wife Sukiswati was carried out orally and was not known to all the heirs and other family members even though they were still related. In fact, according to the provisions, an heir must ask for approval from the other heirs if he wants to sell his inheritance land which has not yet broken the certificate because the other heirs also have rights to the land. This is as regulated in Article 1471 of the Civil Code. When an heir wants to sell the inherited land, initially there has been an agreement between the seller of the inherited land and the buyer, so all the other heirs who are listed as legal heirs must be present to give approval. If the sale and purchase of land does not have the consent of all the heirs, then the land sale and purchase agreement is null and void. With the cancellation of the sale and purchase of inherited land, the sale and purchase is deemed to have never existed, and each party is returned to its original state before the "sale and purchase" event occurs, where the ownership rights to the land remain with their respective heirs.

Based on the phenomenon of disputes between heirs regarding Ownership and Control of SHM Land Number: 2985/Bondo which were resolved through mediation at the Jepara Regency Land Office, even though there has been a mediation decision agreed upon by both parties, in fact, there are problems in the process of resolving rights for registration of Title Certificates. on the inherited land. The problem of buying and selling without the knowledge of all the heirs and carried out privately means that there is no sale and purchase deed from a notary as a condition for splitting and registering land rights so that the process cannot continue. Based on these problems, researchers are interested in conducting more in-depth research related to the disputes mediated by the Jepara Regency Land Office.

## **Method**



This research uses a qualitative research approach and empirical juridical research. Qualitative research was chosen with the consideration that the problems discussed in this research were to describe, and explain the implementation of mediation as an effort to resolve disputes over ownership and control of heirs' land and the strategy of the Jepara Regency Land Office to support the successful implementation of mediation of disputes over ownership and control of heirs' land. Empirical juridical research is research carried out by identifying laws (law in the book) and looking at the effectiveness of law implementation in society.<sup>22</sup>

The type of data in this research consists of primary data and secondary data. Moleong states that primary data sources are defined as sources of research data obtained by researchers directly without being at the research location or through certain intermediary media.<sup>23</sup> Primary data sources are the main data sources, namely informants. The informants for this research consisted of (1) Yuli Fitrianto, SH. as Head of the Control and Dispute Handling section of the Jepara Regency Land Office; (2) Faizal Widi Hartanto, S.ST., M.H. as Coordinator of the Jepara Regency Land Control Substance Group; and (3) Mar'atun Azizah, SH. The legal representative of the heirs "Is Abdul Ghofur & Partners". Secondary data sources are sources of research data obtained by researchers indirectly through intermediary media. Secondary data sources used in this research are books, scientific journals, and documents regarding efforts to resolve disputes over ownership and control of heirs' land through mediation. Tertiary data is supporting data that can provide clues to primary and secondary data. The tertiary data used comes from the Black Law Dictionary and Merriam-Webster Dictionary.

The data collection techniques that will be used in this research are observation, interviews, and documentation. Data analysis always involves three processes that are interconnected with each other, namely (1) The

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<sup>22</sup> Soekanto and Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*.

<sup>23</sup> Moleong, *Metodologi Penelitian Kualitatif*.



process of describing (describing) which states the main characteristics in the social context, social actors and social processes; (2) The process of classifying (classifying) which groups into classes in the form of certain categories so that they are easy to analyze; and (3) The process of linking or connecting (connecting) which connects classes in the form of categories into a concept that is produced in the classification process to find a pattern or framework of reasoning regarding the phenomenon being studied.<sup>24</sup> One model of qualitative data analysis techniques is interactive analysis techniques. This technique consists of four components, namely data condensation, data display, drawing, and verifying conclusions. Qualitative data analysis is carried out interactively and continues continuously until the data is saturated.<sup>25</sup>

## **Result and Discussions**

### **Implementation of Mediation as an Effort to Settle Disputes on Ownership and Control of Land of Heirs**

In essence, this land dispute is a difference of interest in the land sector between individuals and individuals, individuals,<sup>26</sup> natural persons who are legal entities; legal entities with legal entities and so on. To obtain legal certainty as mandated in the UUPA, the land case can be given a response or resolution to those concerned (community and government).<sup>27</sup> Land disputes are one of the most difficult problems to fix and must be handled carefully.<sup>28</sup> Cases of land disputes that fall into the serious category can give rise to social, political, and security problems.<sup>29</sup>

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<sup>24</sup> Dey, *Qualitative Data Analysis: A User Friendly Guide for Social Scientists*.

<sup>25</sup> Miles, M.B, Huberman and Saldana, *Qualitative Data Analysis, A Methods Sourcebook, Edition 3*.

<sup>26</sup> van Leeuwen et al., "From Resolving Land Disputes to Agrarian Justice—Dealing With the Structural Crisis of Plantation Agriculture in Eastern DR Congo."

<sup>27</sup> Lestari, Ilwan, and Cahyowati, "Authority of the Village Head in Efforts to Settle Land Disputes Based on Law Number 6 Year 2014."

<sup>28</sup> Manurung, "The Process Of Reviewing The Sale And Purchase Of Legal Aspects Of High Heritage Land Disputes (Analysis Of Decision Number: 11/Pdt. G/2015/Pn. Bsk)."

<sup>29</sup> Sukmawati, "Hukum Agraria Dalam Penyelesaian Sengketa Tanah Di Indonesia."

Before being mediated by the Jepara Regency Land Office, the dispute regarding the heir case had gone through various resolution efforts but was unsuccessful. The first attempt that was made by both parties to the dispute was a family discussion involving all family members but there was no agreement. Therefore, one of the heirs, Sujatmiko, asked for help from a lawyer to help resolve the dispute. Attorney Abdul Ghofur & Partners, who became Sujatmiko's attorney, then facilitated mediation to resolve the dispute case by (1) cross-checking the whereabouts of the SHM and it turned out that it was controlled by Ratrio's heirs, and even giving it to notary without the consent of the other heirs; (2) meeting Sujatmiko with Ratriyo's wife as parties to the dispute; and (3) making telephone communications with Tiyas Murti's heirs who are in Jakarta so that information is obtained that the sale and purchase with him has not been completed.

Mediation efforts carried out by Attorney Abdul Ghofur & Partners ultimately failed to reach an agreement and SHM is still controlled by Ratrio's heirs or his wife. Therefore, Attorney Abdul Ghofur & Partners then directed his client, Sujatmiko, to ask for help from a mediator from the Jepara Regency Land Office as a final step to resolve the dispute without going through legal/court channels. Based on this direction, Sujatmiko agreed and authorized Attorney Abdul Ghofur & Partners to submit a request for mediation assistance at the Jepara Regency Land Office.

Attorney Abdul Ghofur & Partners gave directions to resolve the dispute through mediation from the Jepara Regency Land Office with the consideration that it had become part of the procedure to seek a resolution after many steps taken had been unsuccessful. Mediation was carried out 3 times at the Jepara Regency Land Office. Carrying out mediation on the heir dispute is very difficult because Sukiswati remains adamant about not being cooperative as long as the sale and purchase issue is not resolved. In this case, the Land Office has conducted mediation up to 3 times which was attended by the heirs including Sujatmiko and Sukiswati as parties to the

dispute. The mediation process takes a long time, the first being carried out in June 2022 and the last on November 9, 2022.

1. Mediation I (Clarification) from the Head of the Jepara Regency Land Office dated 27 June 2022 Number: MP.01.02/682-33.20/VI/2022.
2. Mediation II from the Head of the Jepara Regency Land Office dated 07 October 2022 Number: MP.01.02/990-33.20/X/2022.
3. Mediation III from the Head of the Jepara Regency Land Office dated 04 November 2022 Number: MP.01.02/1031-33.20/XI/2022.

Based on a documentation study of the implementation of mediation held by the Jepara District Land Office regarding cases of their disputes, it is known that the results of the mediation after 3 (three) meetings were determined as follows:

1. That the heirs agree to inherit property rights number 2985/Bondo.
2. That after inheritance is carried out, ownership rights number 2985/Bondo will be split.
3. The next stage will be the transfer of rights/change of name to the entitled parties in accordance with the agreement that has been approved by the heirs (Mediation Minutes Document at the Jepara Regency Land Office, 2022).

*Mediation* is defined as intervention from a third party to resolve a dispute without regard to whether the two parties to the dispute ask for help or not. People who act as mediators such as Village/District Heads, Heads of Government, Judges, and so on.<sup>30</sup> The results of the mediation at the Jepara Regency Land Office are the basis for the parties concerned, especially the heirs, to end the dispute and implement all the results of the mediation. The heirs do not dispute the results of the mediation decision and are willing to agree, so it can be interpreted that all the heirs are bound to agree with families to resolve land issues through deliberation. Then the

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<sup>30</sup> Manan, *Penyelesaian Sengketa Hak Atas Tanah Melalui Pengadilan Tata Usaha Negara*.

result of the agreement was that Sukiswati and her children, who were Ratriyo's heirs, were willing to hand over their certificates to take care of changing the names of the inheritance, then splitting and changing the names to each party for the land that was part of it.

The implementation of mediation took place starting from the lower level, namely from the family through deliberation, continued through mediation assistance from a lawyer/legal representative for one of the heirs, and finally using a mediator from the Jepara Regency Land Office. The results of this research are in line with the legal system theory of Lawrence M. Friedman which states that the legal system includes 3 (three) elements, namely legal structure, legal substance, and legal culture.<sup>31</sup> The correlation between the legal system theory put forward by Lawrence M. Friedman and this research is that the implementation of mediation as an effort to resolve disputes between heirs regarding ownership and control of land by the Jepara Regency Land Office can be effective if supported by the legal structure, legal substance, and legal culture as the form of the legal system.

Legal structure factors relate to law enforcement officials.<sup>32</sup> Law enforcers, in this case, came from the Jepara Regency Land Office as mediators in resolving their disputes and legal representatives who assisted in the dispute resolution process. Structural officials at the Jepara Regency Land Office who were appointed as mediators were able to prepare materials and procedures to carry out the mediation process by the circumstances of the dispute so that the mediator in carrying out his duties could master the substance of the problem, rectify the problem, provide suggestions and remind the parties to the dispute to comply with the results of the mediation. In this case, the mediator is neutral and cooperative towards both parties so that they succeed in finding a win-win solution.

The legal substance factor includes the content of legal norms along with their formulation and procedures for enforcing them which apply to

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<sup>31</sup> Friedman, *Sistem Hukum: Perspektif Ilmu Sosial*.

<sup>32</sup> Soekanto, *Faktor-Faktor Yang Mempengaruhi Penegakan Hukum*.

law implementers and justice seekers.<sup>33</sup> The Indonesian government has a set of statutory regulations as a basis for resolving land disputes, including 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. Apart from that, there is Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, which can be used to resolve land disputes, with 3 stages of the mediation process, namely the preparation stage, the mediation meeting stage, and the post-mediation stage. These statutory provisions have been able to support the effectiveness of mediation as an effort to resolve disputes between heirs regarding land ownership and control by the Jepara Regency Land Office.

Legal culture factors, values, and attitudes are part of the life of the community where the legal system is implemented.<sup>34</sup> This legal culture factor influences the effectiveness of mediation as an effort to resolve their disputes due to two things, namely first, differences in understanding of the rules, which causes differences in responding to these problems. "Differences in public perception of the provisions of statutory regulations will result in law enforcement being different between certain community groups and other community groups. Or in other words: cultural pluralism will result in pluralism in law enforcement".<sup>35</sup>

Second, differences in legal culture are seen from the perspective of internal legal culture and external legal culture. Friedman stated that internal legal culture is the legal culture of community members who carry out specific legal tasks, such as police, prosecutors, and judges in carrying out their duties, while external legal culture is the legal culture of society in general, for example, what the community's attitudes and knowledge are about tax provisions, divorce, and so on.<sup>36</sup>

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<sup>33</sup> Soekanto.

<sup>34</sup> Soekanto.

<sup>35</sup> Rizky et al., "Hambatan Pembuktian Dalam Pelaksanaan E-Litigasi Guna Mendukung Pembaharuan Hukum Di Era Revolusi Industri 4.0."

<sup>36</sup> Rizky et al.

The distribution of land by parents to their children has become the culture of Javanese society and the results of the distribution often give rise to disputes later because there is a buying and selling process and the certificate is not immediately issued. In this research, the legal culture factor becomes an obstacle in implementing mediation in resolving their disputes at the Jepara Regency Land Office due to the low level of knowledge and awareness among heirs regarding mediation and the process of breaking up title certificates. Apart from that, the heirs have an attitude that tends to be less caring and do not know properly about the mechanism of the process of buying and selling inherited land, so they carry out buying and selling under their hands so that in the end disputes arise which hinder the process of resolving the certificate of title to the inherited land.

The level of knowledge and awareness that is still low among heirs regarding mediation and the process of breaking up a certificate of rights indicates an external culture. The legal culture of traditional societies is an external legal culture that tends to be conservative in nature and will certainly prioritize traditional methods compared to more modern methods because basically, traditional societies that are strong in traditional culture will prefer to maintain the customs and traditions that have been in effect for a long time. However, it does not rule out the possibility that some traditional societies are open to this modernization.<sup>37</sup>

Mediation was carried out 3 times, attended by all the heirs, legal representatives, and the mediator (Jepara Regency Land Office) with the result of the mediation being that the heirs agreed to inherit property rights number 2985/Bondo; after inheritance was carried out, the ownership rights will be split; and the next stage is the transfer of rights or change of name to the entitled parties by the agreement approved by the heirs.

This research found that the results of the peace agreement were only stated in the form of Minutes of Mediation Implementation which contained the agreement and follow-up to the mediation which was signed

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<sup>37</sup> Rizky et al.

by the Head of the Dispute Control and Handling Section of the Jepara Regency Land Office and the mediation participants. The form of the mediation minutes is by the provisions of Article 44 paragraph (8) of the ATR BPN Ministerial Regulation Number 21 of 2021, which states that "The results of the Mediation are stated in the minutes of the Mediation Implementation which contains the agreement and follow-up to the Mediation signed by the official/team leader Settlement/Mediator". The results of this research are also in line with Pratiwi's findings that the final stage of implementing mediation is the preparation of minutes.<sup>38</sup>

Even though an agreement has been reached for mediation, there are accompanying legal problems, namely the gap between mediation practices at the Land Office and the statutory provisions governing the handling and resolution of land cases. In this case, the Jepara Regency Land Office did not provide a peace deed and did not register it with the Jepara Regency District Court. In fact, by the provisions of Article 44 paragraph (5) of the Minister of ATR/Head of BPN Regulation Number 21 of 2020 "In the event of Mediation, a peace agreement is reached which is stated in a deed of peace and registered by the parties in the District Court in the jurisdiction of the location of the land which is the object of the Case to obtain a decision peace".

Based on the researcher's analysis, the resolution of the heir dispute has gone through a dispute process or stages according to Laura Nader and Herry F. Todd,<sup>39</sup> namely (1) pre-conflict stage or complaint stage, Sujatmiko's heirs have actually been complaining for a long time that other heirs should break the certificate. (2) Conflict stage, Sujatmiko's heirs continue to try to mediate before legal counsel; (3) Post dispute stage, this case then becomes a public issue until mediation is carried out at the Jepara Regency Land Office to resolve the problem. This is done deliberately and

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<sup>38</sup> Pratiwi, Sutarni, and Hidayat, "Pelaksanaan Mediasi Oleh Kantor Agraria Tata Ruang/Badan Pertanahan Nasional Kabupaten Boyolali Dalam Penyelesaian Sengketa Waris."

<sup>39</sup> Sofian, *Perbedaan Konflik Dan Sengketa*.



actively with the intention that there will be action regarding the desired demands.<sup>40</sup> Post-dispute is a situation where the conflict is expressed publicly or involves a third party.<sup>41</sup>

Efforts to resolve disputes over ownership and control of land between heirs are by the theory of dispute resolution according to Dean G Pruitt and Jeffrey Z. Rubin. In this theory, it is stated that there are 5 (five) types of dispute resolution, namely: *Ontending*, namely trying to implement a solution that is preferred by one party over the other party; *Yielding* (giving in), namely lowering one's aspirations and being willing to accept a lack of what is desired; *Problem-solving* (problem-solving), namely looking for alternatives that satisfy both parties; *With drawing* (withdrawing), namely choosing to leave the dispute situation, both physically and psychologically; and *In action* (silent), namely not doing anything.<sup>42</sup>

The *Ontending* (competing) step is trying to implement a solution that is preferred by one party over the other party. In this case, mediation was carried out at the Law Office by lawyer Sujatmiko to find the best alternative solution for the heirs but failed to find a solution. Second, is *problem-solving*, namely looking for alternatives that satisfy both parties. In this case, mediation was carried out at the Jepara Regency Land Office. Efforts *withdrawing* (withdrawing), and *In action* (silent), namely not doing anything. This effort was made by the family of the late Ratriyo to withdraw and provide his personal data for the inheritance process and certificate breaking according to the agreement agreed upon by the heirs after the mediation process was agreed.

## **Strategy of the Jepara Regency Land Office to Support the Successful Implementation of Mediation**

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<sup>40</sup> Cumbhadrika, "Penerapan Penyelesaian Wanprestasi Melalui Gugatan Sederhana (Studi Kasus Putusan Nomor: 8/PDT.G.S/2020/PN.Yyk.)."

<sup>41</sup> Kadir, "Penyelesaian Konflik Berbasis Desa Di Indonesia (Studi Kasus Di Desa Yosorejo, Jawa Tengah)."

<sup>42</sup> Boboy, Santoso, and Irawati, "Penyelesaian Sengketa Pertanahan Melalui Mediasi Berdasarkan Teori Dean G.Pruitt Dan Jeffrey Z.Rubin."

Land dispute cases require special handling strategies from the National Land Agency and the Land Office. There are many overlapping laws and regulations, different perspectives and interpretations of law enforcers regarding laws and regulations, and inconsistencies in law enforcers in enforcing land-related rules.<sup>43</sup> The emergence of land rights disputes can occur because of a lawsuit from a person or legal entity which contains a lawsuit due to legal actions that harm the plaintiff's land rights, while material claims can take the form of demands for legal certainty regarding who has the rights to the land, the status of the land, the evidence that is the basis for granting rights, and so on.<sup>44</sup>

The results of this research indicate that in the process of implementing mediation, obstacles were encountered, namely that not all heirs were present at the mediation held by the Jepara Regency Land Office. The heirs who could not attend the reason were because they did not have time to attend because the distance was too far (domiciles in Jakarta and Kudus). Another obstacle that also accompanies the mediation process is the heirs' work attachment to their place of work so they cannot get permission to attend the mediation process. Apart from that, the heirs are also ignorant about land law, so there is a fear that if they give the certificate to be broken up and change the name, they will no longer have rights to the inherited land.

Of the obstacles in the mediation process for their disputes, the Jepara Regency Land Office has an important role in providing understanding, efforts, and strategies so that the implementation of mediation is successful, in the sense that it is agreed by the parties to the dispute as an effort to resolve the dispute. In this case, the Jepara Regency Land Office has a role to mediate land disputes in Jepara Regency, so that

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<sup>43</sup> Sugiarto and Mustomi, "Settlement of Land Procurement Disputes at the State Administrative Court."

<sup>44</sup> Irsan, Warman, and Elvardi, "Dispute Resolution of Land That Has Certified Rights in Bungo District Office."

land disputes and conflicts do not occur again. The Land Office as a mediator tries to prevent the dispute from proceeding to the realm of law or court because it will take longer, more money, energy, and thought for the disputing parties and other heirs. After the mediation process has ended and the mediation results have been determined for immediate action by the parties, the Jepara Regency Land Office still has the responsibility to ensure that the mediation results are actually carried out.

The results of this research found that the strategy of the Jepara Regency Land Office to support the successful implementation of the mediation results of their disputes regarding land ownership and control is (1) Ensuring that their disputes can be resolved through mediation by the Jepara Regency Land Office and do not continue through litigation/court; (2) The Head of Disputes at the Land Office communicates with legal counsel to monitor developments while the mediation process is still ongoing; (3) declare readiness to assist if necessary after the mediation results are agreed; (4) confirm/communicate with the disputing parties to ensure that the results of the mediation have been implemented.

The first strategy implemented by the Jepara Regency Land Office is to ensure that their disputes can be resolved through mediation by the Jepara Regency Land Office and do not continue through litigation/court. This strategy is the main thing that is instilled in the mediator's thinking so that it is hoped that the dispute will be resolved without having to involve the courts which are known to tend to take a long time, large costs, or other things that are needed. These results are in line with previous findings that resolving civil disputes in general courts requires a long process and is not as simple as expected with several stages and procedures starting from the preparation stage, filing and registering a lawsuit, as well as the trial stage which can sometimes be completed in more than one year.<sup>45</sup>

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<sup>45</sup> Latifiani and Ratnasari, "The Small Claim Court To Realize the Fast and Simple Principle in Civil Disputes Resolution."

The current strategy for resolving dispute cases can also be to choose to resolve cases through court by utilizing e-litigation or electronic courts. This is as regulated in Supreme Court Regulation Number 1 of 2019 so that people can obtain true justice based on the principles of fast, simple, and light.<sup>46</sup> Settlement of disputes through court is not recommended by the Jepara Regency Land Office and prioritizes resolution through mediation. This is because even though electronic courts should be more effective by the basic principles to make justice accessible to all levels of society since e-litigation has been implemented it has become less popular with the public.<sup>47</sup>

The second strategy is that the Head of Disputes at the Land Office communicates with legal counsel to monitor developments while the mediation process is still ongoing. Communication between legal counsel and the Jepara Regency Land Office is classified as very effective in supporting the success of the mediation process online (via social media), by telephone, or by short message. After the first mediation, the Jepara Regency Land Office continued to coordinate with legal authorities so that there would be no dispute afterward.

The third strategy is to express readiness to assist if necessary after the mediation results are agreed upon. Meanwhile, the fourth strategy is to confirm/communicate with the disputing parties to ensure that the results of the mediation have been implemented. Direct confirmation with the heirs was also carried out by the Jepara Regency Land Office as a strategy implemented after the mediation was implemented.

The strategy of the Jepara Regency Land Office is to support the successful implementation of the results of mediation of their disputes regarding ownership and control of land according to the theory of legal certainty which is protection against arbitrary actions, the community expects legal certainty, because the existence of legal certainty can also

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<sup>46</sup> Latifiani et al., "Reconstruction of E-Court Legal Culture in Civil Law Enforcement."

<sup>47</sup> Rizky et al., "Hambatan Pembuktian Dalam Pelaksanaan E-Litigasi Guna Mendukung Pembaharuan Hukum Di Era Revolusi Industri 4.0."

mean that provisions and decisions Judges must be based on clear, consistent, orderly and consequential rules and free from influence by subjectivity.<sup>48</sup> In this theory, legal certainty is in the formulation of legal norms and principles that do not conflict with one another, both in the articles of the law as a whole and about other articles that are outside the law. Second, legal certainty also applies in implementing the legal norms and principles of the law.

Efforts from the Jepara Regency Land Office have been able to provide legal certainty that the results of the mediation will be implemented by the parties. Therefore, the legal certainty that is intended to be realized in resolving this dispute includes certainty of ownership status of certified land and certainty of rights to use certified land. According to the theory of legal certainty from Utrecht<sup>49</sup> legal certainty contains two meanings, namely (1) the existence of general rules so that individuals (heirs) know what actions they may or may not carry out about the implementation of mediation, the mechanism for the process of breaking certificates of inheritance rights to land. and the process of buying and selling inherited land by legislation; and (2) legal security for individuals (heirs) from government arbitrariness because with the existence of general regulations, individuals can know what the State may impose or do on individuals.

## Conclusion

This research concludes that first, mediation as an effort to resolve disputes over ownership and control of the heirs' land was carried out 3 times with the presence of all the heirs, legal representatives, and mediators (Jepara Regency Land Office) with the result being a peace agreement between the heirs to inherit; splitting of Property Rights; and change the

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<sup>48</sup> Santoso, "Perspektif Keadilan Hukum Teori Gustav Radbruch Dalam Putusan PKPU "PTB."

<sup>49</sup> Syahrani, *Rangkuman Intisari Ilmu Hukum*.

name. The legal problem that arises from the results of mediation is that the peace agreement is only stated in the minutes of the mediation implementation even though, by the provisions of Article 44 paragraph (5) of the Minister of ATR/Head of BPN Regulation Number 21 of 2020, it should be stated in a peace deed and registered in the District Court to obtain a decision. peace. Second, the strategy of the Jepara Regency Land Office to support the successful implementation of mediation of disputes over ownership and control of land of heirs, namely ensuring that disputes are resolved through mediation and do not proceed to court; The Head of Disputes Division communicates with legal counsel to monitor the progress of the mediation process; declare readiness for assistance after the mediation results are agreed; confirm/communicate with the disputing parties to ensure that the results of the mediation have been implemented.

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