


The Role Of Notaries In Land Dispute Resolution Through Alternative Mediation And Arbitration

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Article Info	ABSTRACT
Keywords: Land Dispute Resolution, Mediation, Arbitration, Notary, Deed of Peace.	Land dispute resolution in Indonesia often faces various obstacles, Challenges faced in resolving land disputes include taking a long time, expensive costs, and not always resulting in a satisfactory settlement for all parties. Therefore, the role of notaries in resolving land disputes through alternative channels such as mediation and arbitration provides significant advantages, including time and cost efficiency, as well as maintaining good relations between the parties involved. With the authority to make authentic deeds, notaries not only ensure the legality of documents, but also act as neutral mediators in conflicts involving administrative, civil, and criminal aspects. Their unique position allows them to facilitate effective communication between the parties to the dispute, guiding them towards an amicable solution. This study examines the diverse roles of notaries in land dispute resolution, emphasizing their ability to simplify the process and provide legal certainty. By leveraging their expertise in legal documentation and mediation techniques, notaries contribute to a more harmonious approach to conflict resolution, fostering cooperation and understanding among the parties to the dispute while ensuring that the agreements made are legally binding. This study aims to examine the role of notaries in helping the parties reach a mutual agreement and resolve land disputes. The results of the study show that mediation and arbitration conducted by notaries not only speed up the dispute resolution process, but also provide better legal certainty for the parties.
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INTRODUCTION

As a country of law, Indonesia has a system that regulates all aspects of community and state life through applicable laws and regulations. However, in its implementation, various legal problems can occur (Harsono, 2007). This can be caused by various factors, including ignorance of applicable regulations, abuse of authority, and social and economic disparities (Budiono and Moeliono, 2006). In addition, weak law enforcement can encourage violations due to unclear sanctions, as well as conflicts of interest between individuals or groups that often lead to legal disputes (Mertokusumo, 2009).

Legal disputes in civil law are disputes or conflicts that occur between individuals or legal entities regarding the rights and obligations regulated in civil law (Handayani, 2022). Civil disputes usually relate to civil relationships such as agreements, property rights,

inheritances, debts and receivables, and other civil liabilities. The elements of a dispute are as follows:

1. There is a conflict or difference of interest between 2 (two) or more legal subjects;
2. There is a breach of contract by one of the parties involved in an agreement

One of the civil disputes that often occurs is land disputes, which are disputes between legal subjects regarding ownership, territorial boundaries, or land use (Badruzaman, 1994). These disputes usually arise due to the existence of overlapping land certificates or the issuance of double certificates, unclear land legal status, differences in interpretation of territorial boundaries, or because one party feels that the right to his land is violated by another party.

The resolution of legal disputes in Indonesia is carried out through a mechanism regulated by the judicial system consisting of institutions such as the general court and the state administrative court. Law enforcement also involves the role of the police, prosecutors, and advocates who work to ensure that the legal process runs fairly and transparently. In addition to formal mechanisms, legal dispute resolution can also be done through alternative channels such as mediation and arbitration which offer faster and more effective settlement in civil cases. The results of legal dispute resolution, especially civil disputes, are usually in the form of legal decisions, compensation, or the implementation of certain obligations in accordance with applicable civil law.

Mediation is one of the ways to resolve disputes through a negotiation process to obtain an agreement between the parties with the help of a mediator. Meanwhile, based on the Arbitration Law and Alternative Dispute Resolution, arbitration is one of the ways of resolving civil disputes outside the general judiciary which is based on an arbitration agreement made in writing by the parties to the dispute (Wajdi, Lubis and Susanti, 2023).

The Notary profession must be able to face every possibility that occurs and be ready to account for its profession for all the consequences that arise. Notaries have an important role in preventing and resolving civil disputes, especially those related to authentic documents and legal agreements (Campbell, 1990).

In this case, the notary plays a role in helping the parties involved in legal transactions to clearly understand their rights and obligations, so that there are no misunderstandings that can trigger disputes. In addition, the notary as a mediator or arbitrator must ensure that the process is carried out fairly and transparently, as well as maintain the confidentiality of the information obtained during the process (Rosiana, 2021).

Previous research has shown that notaries can play an important role in the land dispute mediation process. Research by Purnamawati (2023) shows that notaries have an important role as mediators in land disputes, because of the neutrality and trust given by the parties to the dispute. In this role, the notary helps the disputing parties to understand the legal aspects of the dispute and promotes the efficient conclusion of a peace agreement without going through the court process (Purnamawati, 2023). Research by Taofik (2021) concludes that the role of notaries is very helpful in creating transparency and clarity of inheritance rights, and recommends that notaries continue to improve their understanding of inheritance law to ensure smoothness and accuracy in resolving land inheritance rights disputes (Taofik, 2021).

Research by Noor et al. (2023) that notary involvement can help reduce tensions between the parties involved and speed up the out-of-court dispute resolution process (Noor *et al.*, 2023).

The formulation of the problem in this study is how the role of notaries in resolving land disputes through alternative channels in the form of mediation and arbitration. The ultimate goal of this study is to find out how to resolve land disputes with the help of notaries through alternative channels.

METHODS

This research uses qualitative and normative legal approaches. With a qualitative approach, researchers can identify the experiences and views of the parties involved in the mediation and arbitration process. Data is collected through several techniques, namely interviews with notaries and parties involved in land disputes. The normative legal approach method means that the research is focused on the use of library materials or secondary data which includes primary, secondary, and tertiary legal materials. The focus of the research is centered on the role of notaries as mediators and arbitrators in resolving land disputes.

The data was analyzed using a qualitative interpretive approach. The data from the interviews were analyzed through thematic coding techniques, where the researcher identified key themes, patterns, and insights related to the role of notaries in mediation and arbitration of land disputes. Secondary data from legal sources are analyzed through normative legal analysis, which aims to examine and interpret the applicable legal framework, identify gaps or inconsistencies, and assess the extent to which legal provisions support the practice of mediation and arbitration by notaries. This approach provides a comprehensive understanding of the practical perspective and legal context that underlies the role of notaries in alternative land dispute resolution.

RESULTS AND DISCUSSION

A notary is defined as a public official who is authorized to make authentic deeds and other authorities as referred to in Article 1 paragraph (1) of Law Number 30 of 2004 concerning the Notary Position (UUJN), as amended by Law Number 2 of 2014. Notaries function as a liaison between the community and the law, and have a great responsibility in ensuring the validity and legality of the deeds they make.

Based on Article 15 paragraph (1), a notary deed has legal force as authentic evidence. This means that the deed made by a notary is considered valid and can be used as strong evidence in court. In addition, Article 16 states that a notary deed cannot be refuted unless there is evidence showing that there is an error or irregularity in the preparation of the deed. Thus, the notary deed provides a guarantee of legal certainty for the parties concerned, so that they can feel safe in carrying out the agreement stated in the deed.

In land disputes, there are often disputes between related parties which include administrative, civil, and criminal aspects. Not all issues must be resolved through the courts. Currently, there is a known method of non-litigation dispute resolution known as Alternative Dispute Resolution (ADR), including mediation and arbitration. Both methods prioritize a

faster and cost-effective out-of-court settlement process, while maintaining good relations between the parties to the dispute.

The mediation process carried out by the Notary as a mediator is very possible, because the Notary has a deep understanding of the problems faced by his clients involved in the dispute. The notary can identify possible settlement directions, given its role as the drafter of the peace deed between the parties to the dispute. Thus, he has a strong understanding of the core and context of the ongoing problem.

According to Article 1851 of the Civil Code, a new peace agreement is considered valid if it is made in writing. To meet these requirements, a notary is needed who can make an authentic peace deed. An authentic deed serves as written evidence that has perfect evidentiary power. Thus, what is stated in the notary deed must be accepted, unless the interested party can show sufficient evidence to deny it in court. Regarding the power of proof of notary deeds as evidence, in general, it can be distinguished into three types, namely the power of proof of birth (*uitwendige bewijskracht*), the power of formal proof (*formele bewijskracht*), and the power of material proof (*materiele limitation of responsibility*).

A peace deed is an agreement between two or more parties that asks for the support of legal force, with the help of a mediator, to accept and implement the agreed agreement. Peace decisions have executory force, as explained in Article 1858 of the Civil Code (KUH Percivil) peace agreements must be written in the form of authentic deeds, otherwise the agreement cannot be implemented.

Then in Article 130HIR paragraph (2) which reads "In the event that the parties have agreed to make peace, the agreement must be stated in a deed made by a notary." and paragraph (3) "A peace deed made by a notary has executive force, so that it can be implemented without having to go through a court process." Notaries as public officials have an important role in making authentic deeds that are the legal basis for property transactions, including land. However, the role of a notary is not only limited to making deeds, but can also be a facilitator in resolving land disputes through mediation and arbitration.

Mediation is one of the methods of resolving disputes outside the court that is carried out with the help of mediators. In the context of land disputes, a notary can act as a mediator or as a party that assists in the mediation process by providing legal advice related to the legality of documents and the rights of the parties. The role of a notary in mediation is very important because a notary can ensure that the results of the agreement of the parties to the dispute are legally recognized and have executory force.

Arbitration is a dispute resolution carried out by a person or judge, where the parties will obey the decision that has been made by the person or judge. Quoted from Black's Law Dictionary, arbitration is a dispute resolution process that involves a neutral third party to make a decision, after the opinions of both parties have been heard. In contrast to consensual mediation, in arbitration, the arbitrator's decision is final and binding.

Based on Article 4 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, notaries can help draft and provide advice on arbitration clauses in agreements, especially in agreements related to land sale and purchase, use rights

agreements, and land lease agreements. The following are some of the roles of notaries in arbitration:

1. A notary can assist the parties in including an arbitration clause in a sale and purchase agreement or other agreement related to land. This clause will be the basis for a resolution dispute in the event of a dispute arising in the future.
2. A notary can also draft a deed of arbitration agreement that states that the parties agree to resolve the dispute through arbitration. This deed is the basis for the referee in carrying out his duties.

The role of notaries in mediation and arbitration has several significant advantages. First, notaries have high legal credibility, as public officials appointed by the state, deeds made by notaries have strong evidentiary power before the law. Second, notaries are neutral and have expertise in handling every transaction and dispute, so they are trusted to carry out the mediation and arbitration process fairly. A notary's in-depth knowledge of land law enables him to provide appropriate solutions for the parties to the dispute. Third, the settlement of land disputes through mediation and arbitration with the help of notaries is generally more efficient in terms of time and cost compared to settlement through the courts, thus providing additional benefits for the parties involved.

Although notaries have many important roles in resolving land disputes, there are several challenges faced. First, the lack of understanding of the parties about alternative dispute resolution is still a problem. Many parties think that dispute resolution can only be done through the courts, so the role of notaries in mediation and arbitration is not fully optimal. Second, there is still a lack of regulations that regulate the role of notaries in mediation and arbitration. So far, the role of notaries in this context has not been expressly regulated in laws and regulations, so notaries often only play the role of administrative facilitators, without obtaining clearer recognition and authority in the dispute resolution process.

In resolving land disputes, notaries have a significant role through alternative channels in the form of mediation and arbitration. With their expertise in creating authentic documents and a deep understanding of land law, notaries can be effective mediators or even arbitrators. In addition, the presence of a notary in the mediation and arbitration process provides a guarantee of legality and legal certainty for the parties to the dispute.

A notary who has legal knowledge and good communication skills can facilitate dialogue between the parties to the dispute and help them reach an agreement that satisfies both parties. Overall, the role of notaries in resolving land disputes is not only limited to administrative and legal aspects, but also includes the role of mediators, facilitators, and legal advisors who contribute to efforts to maintain clarity, fairness, and peace in land ownership and use.

CONCLUSION

This study finds that notaries in Indonesia hold a crucial role in resolving land disputes through alternative dispute resolution methods, specifically mediation and arbitration. As authorized public officials with the capacity to create authentic deeds, notaries do more than just verify document legitimacy; they actively serve as neutral mediators capable of handling

administrative, civil, and even criminal elements of land conflicts. The use of mediation and arbitration under notarial guidance offers distinct benefits, notably in reducing both the time and cost of dispute resolution, while also preserving positive relationships among the disputing parties. The study suggests that to further enhance the effectiveness of notaries in land dispute resolution, it is essential to develop clear regulations defining their role and responsibilities in the mediation and arbitration processes. Additionally, it recommends that ongoing education and training in mediation and arbitration techniques be provided to notaries to strengthen their abilities as effective facilitators in dispute resolution.

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