

***MEDIATION OF LAND CONFLICT BY LOCAL GOVERNMENT  
(STAIN MAJENE PROCUREMENT CONFLICT)***

**Nurul Wafiqah Ashar<sup>1</sup>, Sri Susyanti Nur<sup>2</sup>, Zulkifli Aspan<sup>3</sup>**

<sup>1</sup> Universitas Hasanuddin  
Jl. Perintis Kemerdekaan KM. 10, Tamalanrea, Makassar, 90245, Indonesia  
Tel./Fax: +62-411-585035 E-mail: [asharfiqah9@gmail.com](mailto:asharfiqah9@gmail.com)

<sup>2</sup> Universitas Hasanuddin  
Jl. Perintis Kemerdekaan KM. 10, Tamalanrea, Makassar, 90245, Indonesia  
Tel./Fax: +62-411-585035 E-mail: [srisusyanti23@gmail.com](mailto:srisusyanti23@gmail.com)

<sup>3</sup> Universitas Hasanuddin  
Jl. Perintis Kemerdekaan KM. 10, Tamalanrea, Makassar, 90245, Indonesia  
Tel./Fax: +62-411-585035 E-mail: [zulkifliaspan@gmail.com](mailto:zulkifliaspan@gmail.com)

*Submitted: November 14 2022 ; Reviewed: November 24, 2023; Accepted: December 28, 2023*

***Abstract***

*This study focuses on two main purposes (1) to identify the authority of the local government as a mediator in the case of land disputes at STAIN Majene and (2) to identify legal protection for STAIN Majene and the property rights holders. This study uses the type of normative-empirical legal research, in the form of normative legal research that is supported and equipped by empirical data and cases. The data sources were obtained through primary and secondary sources of material, interviewed the Head of the Land Division at the Housing, Settlement area and Land Office of Majene Regency, and the Head of the Administrative Section of STAIN Majene. This study was further analyzed qualitatively and the results were presented descriptively. The results of this study show (1) The procurement conflict at STAIN Majene caused a vertical dispute between the Majene Regional Government and the community so that mediation was created. However, in the implementation of mediation, the party who became the mediator was the Majene Regency Government which is not in accordance with the existing authority based on the Minister of ATR/BPN Regulation Number 21 of 2021. (2) Legal protection for STAIN Majene to obtain rights to organize educational activities and legal protection for the community holding certificates, property rights on STAIN campus land with preventive and repressive legal protection.*

**Keywords:** *Head of the Land Division at the Housing*

## INTRODUCTION

Regional government is a regional government administrator who is led by a regional head and he has the authority to lead the territorial government affairs. The implementation of good governance must be realized and implemented properly and correctly by civil servants based on the principles of good governance or it can also be called good government. However, the vertical government authority cannot be taken by the regional government, in this case the regional government takes over the authority of the National Land Agency to become a mediator in the land sector.

Government land asset as one of the objects of land registration, control and management which is given to government agencies both at the center and in the regions, with usage rights and management rights in accordance to the regulation of the State Minister of Agrarian Affairs number 9 of 1999 concerning procedures for granting and canceling land rights and management. Furthermore, in article 49 section (1) of Law Number 1 of 2004 concerning State Treasury states that state/regional property in the form of land controlled by the central/regional government must be certified on behalf of the Indonesian government/regional government concerned.

The land procurement of the educational institution should be mediate by the district government of Majene regency. Referring to the article 1 section (6) about case handlers, hereinafter referred to as handlers, are mechanisms or processes carried out by the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency, regional offices of the National Land Agency, land

offices according to their authority in the context of resolving cases.

The concept of sustainable development was agreed upon at the Rio de Janeiro conference in 1992 where the agenda discussed about the necessity of future generations' ability to meet their own needs so that environmental justice is available and guaranteed for future generations.

To actualize the achievement of Majene Regency's motto, namely Majene as the center city for Education, the local government takes over the authority of the National Land Agency as a mediator in the case of land procurement for the Stain Majene. On the other hand, during the conflict, the land that becomes the object of the conflict is in quo status so that the land cannot be utilized. As a result, there is a decrease in the quality of land resources which can harm the interests of many parties and the principle of land usage is not achieved.

The emergence of land disputes is caused by evidence of ownership of land rights owned by more than 1 (one) person or one party. In other words, land disputes arise because of a conflict of interest between one party to another. The emergence of the land dispute is caused by a complaint by one party containing objections and claims for land rights, both claims on land status, priority, and ownership in order to obtain administrative settlements in accordance to the provisions.

In compensation, there is the essence of compensation in land procurement to realize justice. If the application of compensation is not feasible and fair, an objection can be filed through the court explicitly by the party

entitled to all forms and/or amounts of compensation so that it can be called as a violation.

In doing so, this study aims to analyze the authority of the local government as a mediator in the case of land procurement for the STAIN Majene and legal protection to educational institutions and property rights holders who are land procurement zones.

### **Research Method Types of the research**

This study uses a normative-empirical research method. This normative-empirical legal research is a type of normative legal research that is supported and equipped by empirical data.

### **Research Location**

To obtain the data and information related to the problems discussed, this study was carried out in Majene Regency at the Majene Regency Housing, Settlement and Land Office, STAIN Majene and Local Communities which are included in the Majene STAIN Campus Zone.

### **Data Collection**

In collecting the data of the study, the researchers conducted data collection as follows:

#### 1. *(Library Research)*

The study will be conducted by reading and reviewing several literatures, books, laws and regulations related to the problem to obtain secondary data so it easier to analyze the existing problems.

#### 2. *(Field Research)*

In the field of the study, research is carried out through interviews by conducting questions and answers

directly to the resource persons, namely, the Head of the Land Division at the Housing, Settlement and Land Office of Majene Regency, the Head of the Administrative Section of the STAIN Majene Campus and the local community including in the Land Procurement zone.

### **Data Analysis**

In data analysis, primary and secondary data in this study were analyzed qualitatively by describing and systematically compiling the data obtained from the interviews to achieve clarity of the problems discussed. After the data analysis has been completed, the results are presented descriptively by elaborate the problems of the Regional Government's authority as a Mediator and legal protection for the STAIN Majene and Property Rights Holders in the land procurement zone. From these findings, a conclusion is drawn to become the answer of the problems in this study.

### **Discussion and Analysis**

#### ***AUTHORITY OF LOCAL GOVERNMENTS AS A MEDIATOR OF LAND CONFLICT IN LAND PROCUREMENT FOR EDUCATIONAL INSTITUTIONS.***

The authority of local governments as mediators is not explained in legislation, but the mediator in land cases is the National Land Agency which is regulated in 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 the handling and settlement of land cases.

In Majene Regency, the land certificate has not yet been fully issued

because the process is quite time-consuming, the buying and selling system occurs illegally and caused land conflicts. The land registration system in Majene Regency is identified as a negative publication system in land registration activities, where the state does not guarantee the truth of the data presented in the certificate, the lack of public response to land registration due to the large number of overlapping lands and because of the large number of land mafias.

Hasim Purba clarifies the typology of land disputes into three forms, namely:

- 1) Horizontal Dispute: between the community and other communities
- 2) Vertical Dispute: between the community and the government
- 3) Horizontal-Vertical Disputes: between the community and the authorities (investors) who are backed up by the government (official person) and thugs.

Most of the conflicts occurred because of a discrepancy in the provision of compensation for community land. Companies and the government tend to view land from the community's point of view without considering the value of the land so that the compensation given is only based on economic prices. As a result, not only do they lose their land rights, but they also receive compensation that they don't think is appropriate. Moreover, conflict resolution can be done through conflict management, conflict management is needed to build and develop conflict resolution mechanisms to prevent conflict from developing into descriptive violence socially, economically, and ecologically and turn it into a constructive and cooperative social relationship.

In compensation, there is the essence of compensation in land procurement to realize justice. If the application of compensation is not feasible and fair, an objection can be filed through the court explicitly by the party entitled to any form and/or amount of compensation. Therefore, it is necessary for the National Land Agency to socialize land registration to the local community so that there will be no more overlapping certificates and a reduction of land mafia.

#### 1. Land Dispute Resolution Procedure

Mediation in the land sector may be carried out by several institutions in accordance to their respective authorities, including the Ministry of ATR/BPN, *Komnas HAM*, and the courts. This is because the issue of land disputes involves cross-sectoral and ministerial authority where the local government mediates the disputing parties to actualize Majene as the center of the city of education in accordance to the regional regulation of the province of West Sulawesi number 1 of 2014 concerning the Regional Spatial Plan of the Province of West Sulawesi.

However, what happened in the field was the Majene district government as a mediator who carried out the mediation in the case of STAIN Majene is regulated in Article 1 section (11) of the Regulation of the Minister of ATR/BPN Number 21 of 2021 containing rules that mediation is a way of resolving cases through a negotiation process to obtain an agreement made by the parties and facilitated by the ministry of Agrarian and Spatial Planning/ National Land Agency, Regional Office of National Land Agency, Land Office according to the authority and/or Land mediator.

The stages of mediation for land procurement for STAIN Majene are divided into three stages, including:

a. Pre-mediation

The pre-mediation stage is the initial stage where the mediator arranges a number of steps and preparations before the mediation is carried out. In the pre-mediation stage, the mediator takes several steps, including: building confidence, contacting the parties, exploring and providing initial mediation information. This is related to the pre-mediation that occurred in the land procurement dispute for the STAIN Majene campus where the pre-mediation stage was carried out in 2010 with the mediator preparing a number of steps and preparations before mediating but before collecting the master certificate files from the land in dispute as collateral to the parties.

b. Mediation

The implementation stage of mediation is the stage where the disputing parties have faced each other and started the mediation process. Mediation is carried out in a place that has been adjusted to the principals and/or negotiators of each party. In the case of a non-principal negotiator, the mediator is obliged to notify the disputing parties to prepare a power of attorney and attach the required documents.

This is associated with the implementation of mediation that occurred in the Majene Regency government in the procurement of the STAIN Majene. In this stage, the disputing party is presented to another party but on the day of mediation where the party receiving the guarantee does not want to provide collateral before the debt from that party is paid or replaced with a

quarter (1/4) of the selling price of the land. And the party who was receiving the guarantee did not want to sell the land to the local government of Majene Regency.

Furthermore, in the mediation stage, compensation financing has been carried out by the Majene Regency government in accordance to the Sales Value of Tax Objects (*NJOP*), where the compensation value is in accordance to the *NJOP* value or as determined by the appraisal team.

### **LEGAL PROTECTION OF EDUCATIONAL INSTITUTIONS AND PROPERTY HOLDERS**

The government of Majene Regency always optimizes education both from the performance of educators and students. This is done to maintain the motto of the Majene district, namely "Majene as a City of Education", educational institutions as a forum and as a means of teaching and learning processes for students and lecturers.

Students as business actors are defined as any individual or legal entity, whether in the form of a legal entity or non-legal entity established and domiciled or conducting activities within the jurisdiction of the Republic of Indonesia. In relation to this, it is stated that there is a need to protect the Educational Institutions as assets of the local government of Majene Regency in the field of education which has been mandated in Majene Regency Regional Regulation Number 11 of 2008 concerning Regulation of Majene Regency Village Authority.

As a form of embodiment of essential legal protection in land procurement for the public interest,

education is the provision of appropriate and fair compensation to entitled parties as mandated in Article 1 point 2 of Law Number 2 of 2012 concerning land procurement, which stated:

*"Land procurement is an activity to provide land by giving proper and fair compensation to the rightful party"*

Therefore, in order to obtain a proper and fair compensation, there must be a basis and method for calculating the price of land compensation that has been formulated so that it becomes feasible and fair in accordance with Article 1 point 2 of the Law.

The protection of land rights is protected by the 1945 Constitution of the Republic of Indonesia which is mandated in Article 28 letter F in section 4 which stated:

*"Everyone has the right to have private property rights and these property rights must not be taken arbitrarily and must be balanced with compensation. The compensation, in addition to payment in monetary value, must also be able to provide a better survival than the level of socio-economic life before being affected by land procurement, so that it can produce a balanced compensation"*.

In line with the statement above, the researcher claims that in taking community land rights, it should be balanced with proper and fair compensation and the local government of Majene Regency must also ensure a more decent and better survival in the future.

Moreover, the most urgent thing in the implementation of land procurement is the existence of strong government guarantees, especially guarantees regarding compensation and

guarantees at the time of land acquisition and after the implementation of land acquisition which is intended to the public needs in education. One of the legal functions is to provide legal protection to rights holders, ownership on land for land acquisition, especially those in a weak position due to legal relations or unequal position. Associated with this research is the release of rights for the public interest in this case educational institutions, where legal protection is always related to power.

Furthermore, the researcher relates the theory of legal protection according to Philipu M Hadjon, which is divided into two types, namely preventive legal protection and repressive legal protection. Preventive legal protection, for people whose rights to land acquisition are given up are given the opportunity to submit objections or opinions before a decision by the local government of Majene Regency gets a definitive form. Thus, preventive legal protection aims to prevent a dispute from occurring. On the other hand, repressive legal protection aims to resolve a dispute. Preventive legal protection is very meaningful for government actions based on freedom of action because with this legal protection the local government of Majene Regency is encouraged to be careful in taking actions and decisions, while repressive legal protection is legal protection efforts carried out through courts, both general court and state administrative court.

## **CONCLUSION**

The government of Majene Regency does not implement Law No. 2 of 12 concerning land acquisition and Ministerial Regulation No. 21 of 2020

concerning the handling and settlement of land cases and has caused many problems in the expansion of the Education Institute's land because it is not in accordance with the land acquisition mechanism. Hence, the government took over the authority of the Vertical Government to accelerate the construction of the Educational Institute in Majene district. Thus, before expanding the land for the Educational Institute, it is better to prepare the land long before the construction of the Educational Institute in the land bank and compensate fairly.

#### **BIBLIOGRAFI/BIBLIOGRAPHY**

- Hasim Purba, “*Reformasi Agraria dan Tanah Untuk Rakyat: Sengketa Petani Vs Perkebunan* “ Jurnal Law Review, Volume X Nomor 2, Universitas Pelita Harapan.
- Zulkifli Aspan, 2017, *Advokasi Litigasi Kasus Reklamasi Pantai Makassar (Prespektif Undang-Undang Lingkungan Hidup)*, Jurnal Ammana Gappa, Volume 25 Nomor 2, Fakultas Hukum, Universitas Hasanuddin
- Muhammad Ilham Arisaputra & Sri Wildan Ainun Mardiah, *Kedudukan Hukum Tanah Adat dalam Pengembangan Administrasi Pertanahan di Indonesia; Studi Komparatif*, Volume 27 Nomor 2, Jurnal Ammana Gappa, Fakultas Hukum, Universitas Hasanuddin
- Muhammad Yogi Pratama, *Esensi Ganti Kerugian Dalam Pengadaan Tanah Untuk Mewujudkan Keadilan*, Jurnal Pro Hukum, Volume 11 Nomor 3, Universitas Gresik.
- Sri Susyanti Nur, *Aspek Hukum Pendaftaran Tanah Bekas Milik Asing Sebagai Aset Pemerintah Daerah*, Volume 1 Nomor 1, Hasanuddin Law Review, Universitas Hasanuddin.
- Undang- Undang Dasar 1945
- Undang-Undang Nomor 2 Tahun 2012 Tentang Pengadaan Tanah
- Peraturan Menteri Agraria/ Tata Ruang Nomor 21 Tahun 2020
- Peraturan Daerah Provinsi Sulawesi Barat Nomor 1 Tahun 2014 tentang Rencana Tata Ruang Wilayah Provinsi Sulawesi Barat
- Peraturan Daerah Kabupaten Majene Nomor 12 Tahun 2012 tentang Rencan Tata Ruang Wilayah Kabupaten Majene