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**THE ROLE OF NATIONAL LAND AGENCY IN LAND DISPUTE
THROUGH MEDIATION MECHANISMS**

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Abstract

Land issues are no longer easily solved issues and have increased both in quality and quantity of issues. The cause is due to more complex needs for land use, while the availability of land is very limited. In addition, the cause can be triggered by overlapping regulations related to land issues and lack of public legal understanding as results of their actions toward their land. Land disputes that occurred in Jambi Province are between company with other company, between company and society or between society and other society. The way to resolve land dispute can be done by non-litigation or by litigation that have their own advantages and disadvantages. Selection of land dispute settlement is a matter of how quick the settlement is done and fairness value of the dispute settlement. This research reviews about the type of land dispute settlement which settled through mediation that occurred in Jambi province. The issues raised in this research are what kind of land disputes are settled through mediation in Jambi Province and the role of National Land Agency in these land dispute settlement. This research method was conducted in Jambi Province by using descriptive qualitative research type which aims to give an in depth description about the role and strategy in solving land disputes by using mediation method. The results of this research are expected to give contribution of thoughts and help the regulator to make regulation in land sector which is better than the current Basic Agrarian Law.

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1. Introduction

The total surface area of the earth is about 197 million square miles or 509 million square km. approximately 71% or about 139.87 million square miles covered by water and the remaining 29% are land that inhabited by about 7 billion more inhabitants of the earth. Land is not just a place to live, but more than that the land provides resources for the survival of mankind. Given the importance of land to humanity it's often leads to land disputes. Recent land disputes have become more complex. The trigger is not limited to economic aspect only, but also social and cultural and even religion aspect. According to Murad (1991) the emergence of legal disputes concerning land originated from the complaint of a party (person or legal entity) which contain objections in the hope of obtaining administrative settlement in accordance with the provisions of applicable regulations.

Dispute settlement can be done through 2 (two) ways. Firstly it is through the litigation process in the court; afterwards they develop dispute settlement process through cooperation outside the court commonly called non litigation process. Usman (2003) said that the litigation process resulted in adversarial decision which has not been able to embrace the common interest, even tended to cause new problems, slow in completion, costly, unresponsive and cause hostility between parties in the dispute. Non-litigation settlement has several forms to settle the dispute namely Negotiation, Mediation and Arbitration. All of the forms of dispute settlement are conducted by parties who feel harmed or having a difference of opinion either between individuals, groups or between business entities. Non-litigation dispute settlement is conducted to settle the dispute by negotiation of consensus and the result of dispute settlement is in a familial manner.

Legal disputes over land cannot be separated with the orientation of Unitary State of the Republic of Indonesia which is a state oriented to the general welfare as written in the Constitution of the Republic of Indonesia year 1945. According to Article 1 Point 1 of Regulation of the Minister of Agrarian and Spatial Planning Affairs/Head of the National Land Agency of Republic of Indonesia Number 11 Year 2016 concerning Land Dispute Settlement (hereinafter referred to as Regulation of MoASP/NLA No. 11/2016), land cases are Disputes, Conflict or Land Case in which getting settlement in accordance with the provision of land regulations/policy. Article 1 Point 2 Regulation of MoASP/NLA No. 11/2016 mentions that land disputes are strife about the land between individuals, legal entities or institutions which have no widespread impact.

Conflict by Coser definition is *conflicts involve struggles between two or more people over values, or competition for status, power, or scarce resources* (Coser, quoted by Susan Stewart, 2002). If the conflict is real (manifest), then it is called a dispute (Moore, 1996:17).

According to Head of the Central National Land Agency (NLA) (Dr. Juyo Winoto, 2009), There are at least three major causes of land disputes, ie:

1. Administrative issues of unclear land certification, which the consequent is the existence of land owned by two people each with certificate;
2. Uneven distribution of land ownership. The imbalance in distribution of land ownership for both agricultural and non-agricultural land has created inequality both economically, politically and sociologically.

3. Legality of land ownership solely based on formal evidence (certificate), regardless of land productivity.

In Article 16 of Law Number 5 Year 1960 concerning Basic Agrarian Law (BAL) has been set about the land rights which can be given to its citizens which most importantly in the form of Right of Ownership, Right to Cultivate, Right to Build, Right to Use, Right to Rent, Right to Clearing Land, Right to Forestry and other rights which not included in the rights mentioned above and shall be established by the law and temporary rights referred to in Article 53 of the BAL. One of the government institutions in Indonesia that has close relationship with land is the National Land Agency, abbreviated as NLA which regulated by Government Regulation Number 10 Year 2006 concerning National Land Agency.

One of the work sector of NLA in the region is the Regional Office of NLA of Jambi Province. The Regional Office of National Land Agency of Jambi Province is a vertical agency of NLA in Jambi Province which is under direct responsibility to the Minister and it also supervises the Land Office in the Regency/City located in Jambi Province. Jambi Province is geographically located between 0⁰ 45' to 2⁰ 45' south latitude and between 101⁰ 10' to 104⁰ 55' east longitude. The north is bordered by Riau Province and Riau Islands, east by South China Sea, south by South Sumatera Province and west bordered by West Sumatera Province and Bengkulu. The total area of Jambi Province is 53.435 Km² with the land area of 50.160,05 Km² and the water area is 3.274,95 Km² (BPS of Jambi Province : 2016). Jambi Province consists of 2 Cities and 9 Regencies: Jambi City, Sungai Penuh City, Kerinci Regency, Merangin Regency, Sarolangun Regency, Batanghari Regency, Muaro Jambi Regency, Tanjung Jabung Timur Regency, Tanjung Jabung Barat Regency, Tebo Regency and Bungo Regency.

National Land Agency (NLA) is a government agency that is tasked to implement and develop land administration. Broadly speaking according to Article 1 Government Regulation Number 10 Year 2006, NLA is a Non Departmental Government Agency which is under and responsible to the President. Furthermore, in Article 2 it states that NLA has the task to carry out government task in the land sector in national, regional and sectoral level. Given the provision of this government regulation, clearly that NLA has task and responsibility in land sector nationally or regionally. In carrying out these tasks, land disputes settlement is one of the functions that become the authority of NLA so that NLA has a role in land disputes settlement through mediation.

2. Problem Statement

Mediation as referred in this paper is mentioned in Article 1 Point 7 Regulation of MoASP/NLA No. 11/2016, mediation is a way of settling disputes and conflicts through the negotiation process to gain agreement of the parties with the assistance of mediator. Mediation procedure in land disputes settlement is in accordance with the characteristics of Indonesian nation that prioritizes consensus and kinship. However, not all types of land disputes are settled through mediation by NLA. Some land disputes are settled through mediation in Regional Office of National Land Agency of Jambi Province and others are settled through the court. This could be caused by different authorities and constraints from the parties of the disputes. As to why the Regional Office of National Land Agency of Jambi Province is needed in land disputes settlement through mediation mechanisms

3. Research Questions

Based on the description above, the problem formulation in this paper are:

- 1) What kind of land disputes are settled through mediation in Regional Office of National Land Agency of Jambi Province?
- 2) How is the role of Regional Office of National Land Agency of Jambi Province in land disputes settlement through mediation mechanisms?

4. Purpose of the Study

The purpose of this paper is to map the types of land disputes that exist in Jambi Province and understand about the role of Regional Office of National Land Agency of Jambi Province in land disputes settlement through mediation mechanism.

5. Research Methods

This research was conducted at the Regional Office of Land Agency of Jambi Province, this research used descriptive qualitative which aims to give an in-depth description of the role and strategy in conducting mediation on land disputes or conflicts, especially land disputes in Jambi Province. The technique of determining the informants in this research is by using purposive sampling technique that is based on the consideration that closely related to the research purpose. The data collection technique conducted through in-depth interviews and literature study. Afterwards conducted a qualitative data analysis that is through data reduction, data presentation and conclusion

6. Findings

Land disputes consist of two syllables, namely disputes and land issues. While disputes usually connected with the word conflict. a conflict would not develop into a dispute if the parties feel harmed only harbored a feeling dissatisfied over the concern, on the contrary will develop if it's been stated directly to Contracting Parties that are regarded as the cause of the loss or the other party (Chomzah, 2003). Land disputes are disputes between two or more parties who feel or aggrieved those parties for the use and mastery of the rights to the land, which was resolved through discussion or by the Court. The incidence of land disputes is originated from the complaints of the parties which contain the objections and demands for land rights against land status, priority or ownership in hopes of gaining settlement in administration in accordance with the provisions of the regulations (Margono, 2004).

After the officer receives the complaint, then the officer will perform data collection and analysis of the data. Analysis is conducted to determine whether the complaint is a NLA authority or not a NLA authority. Article 11 paragraph (3) Regulation of MoASP/NLA No. 11/2016 regulates the dispute or conflict under the authority of the MoASP/NLA including:

- a. Faulty procedures in the process of measurement, mapping and/or area calculation;
- b. Faulty procedures in the process of registration of affirmation and/or recognition of customary land rights;
- c. Faulty procedure in the process of stipulation and/or registration of land rights;
- d. Faulty procedure in the process of establishing abandoned land;

- e. Overlapping rights or land certificates in which one of their rights title is clearly had a fault;
- f. Faulty procedures in the process of maintaining land registration data;
- g. Faulty procedure in process of issuance of replacement certificate;
- h. Faulty in providing information of land data;
- i. Faulty in the process of licensing;
- j. Misuse of space utilization; or
- k. Other fault in the application of legislation.

Disputes or conflicts other than those mentioned above are not the authority of ministry and other agency and NLA will submit a written explanation to the complainant. But NLA can take the initiative to facilitate dispute or conflict settlement through mediation. Meanwhile the typology of land cases which become dispute, conflict and/or land affair that submitted to and handled by NLA are broadly grouped into:

- a. Land tenure without rights, which is differences in perception, values or opinion, interest, concerning the tenure status on certain land which is not or has not been given the right (State Land), or has been given the right by certain parties;
- b. Boundary disputes, which is differences in opinion, value or interest of location, boundary and land area recognized by one party which has been determined by the National Land Agency of the Republic of Indonesia and or still in the process of setting the boundary.
- c. Inheritance disputes, which is differences in perception, value or opinion, interest concerning tenure status on certain land which originating from inheritance.
- d. Selling repeatedly, which is differences in perception, value or opinion, interest concerning the tenur status on certain land acquired from sale and purchase to more than 1 person.
- e. Double certificates, which is differences in perception, value or opinion, interest concerning a particular land plot with a land certificate more than 1.
- f. Substitute certificate, which is differences in perception, value or opinion, interest concerning a certain land area that has been issued a certificate of substitute land right.
- g. Fake Sale and Purchase Deed, which is differences in perception, value or opinion, interests concerning a particular plot due to a fake Sale and Purchase Deed.
- h. The fallacy of border designation, which is differences of opinion, the importance value of location, boundary and land area which recognized by one of party determined by the National Land Agency of the Republic of Indonesia based on designation of a false boundary.
- i. Overlap, which is disagreement, importance value of location, boundary and land area recognized by a particular party due to overlapping of land ownership.
- j. Court Decision, which is differences in perception, value or opinion, interest concerning judicial decisions relating to the subject or object of land rights or concerning the procedure of issuance of certain land rights (Nasional, 2017)

As a priority program, the settlement of land cases are always become the concern of all staff of NLA of RI at the Central, Provincial/Regional Offices and Regency/City Land Offices throughout Indonesia. The largest concentration of agrarian conflicts based on interviews conducted by kompas.com is the plantation sector with 127 conflicts, and the second position is occupied by the infrastructure sector

with 70 conflicts. In order to carry out the tasks and functions of NLA in Jambi area, thus formed Regional Office of NLA in Jambi Province and Land Offices in regencies/cities in Jambi Province. The position of Land Office is as a vertical agency of NLA in Regency/City which is under and directly responsible to the Head of Regional Office of NLA of Jambi Province and performs part of tasks and functions of NLA in the relevant Regency/City which its existence facilitates the society in land management, fasten land management processes, increasing the scope of land management, and to ensure land maintenance without intermediaries within NLA of Republic of Indonesia. Data related to land disputes/conflicts which strived through mediation at Land Offices in Jambi Province can be seen in the following table:

Table 01. The Number of Land Disputes/Conflicts Strived Through Mediation at Land Offices in Jambi Province

| No | Land Offices | Types of Land Disputes | | | | Total |
|----|----------------------|--------------------------|----------------|-------------------------|---------------------------|-------|
| | | Land Property Boundaries | Land Ownership | Overlapping Certificate | Land Tenure And Ownership | |
| 1 | Jambi City | - | 5 | - | - | 5 |
| 2 | Batanghari Regency | - | - | - | - | - |
| 3 | Muaro Jambi Regency | 8 | 4 | 1 | - | 13 |
| 4 | Tanjab Timur Regency | - | - | - | 4 | 4 |
| 5 | Tanjab Barat Regency | - | - | - | - | - |
| 6 | Merangin Regency | - | 1 | - | - | 1 |
| 7 | Sarolangun Regency | 3 | - | - | 2 | 5 |
| 8 | Bungo Regency | - | - | - | - | - |
| 9 | Tebo Regency | - | - | - | - | - |
| 10 | Kerinci Regency | - | - | - | - | - |
| | TOTAL | 11 | 10 | 1 | 6 | 28 |

From the above data it can be seen that the number of land disputes/conflicts strived through mediation by Land Offices in Jambi Province are 28 cases. Basically, the settlement of land disputes shall first be applied to Land Office of each regency/city where the land is in place accordance with the function in Article 31 Letter g of Regulation of the Head of National Land Agency Number 4 Year 2006, namely: "Conflicts, Disputes, and Land Affairs Handling". However, the settlement of land disputes in the form of mediation is then conducted at the Regional Office of NLA of Jambi Province. The reasons based on research are as follows:

- a. An uncompleted mediation process which done by Regency/City National Land Office so that the parties are not satisfied and proceed it to Provincial/Regional Office of NLA as the direct superior of Regency/City Land Office;
- b. Efficiency reason, where the parties usually reside in Jambi city while the land location is faraway from the city;
- c. The location of disputed land is in two different regencies/cities so that one of the regency/city national land office where the land is located declared unauthorized which make it to be transferred to the Provincial/Regional Office of NLA.
- d. The parties feel that disputes occurred because of the regency/city national land office mistake thus they think that to cancel the decision of State Administrative Officer must be done by a higher institution or above it.
- e. The parties are not satisfied with the results of mediation by the Regency/City Land Office so that the parties proceed it to the higher level in the hope of finding a fair solution.

Based on the research results, there are 42 cases of land disputes handled by the Regional Office of NLA of Jambi Province in 2016 which only 4 cases from them solved outside the court. Several types of non-court disputes settled through mediation throughout years can also be seen in the following matters:

Table 02. Table 2 Typology of Disputes/Conflicts with Settlement through Mediation at the Regional Office of NLA of Jambi Province

| TYPOLOGY OF DISPUTES/CONFLICTS | YEAR | | | |
|--------------------------------|----------|----------|-----------|----------|
| | 2013 | 2014 | 2015 | 2016 |
| Land Ownership | 1 | 3 | 2 | 0 |
| Overlapping Land Ownership | 2 | 0 | 2 | 1 |
| Land Boundaries | 0 | 0 | 1 | 1 |
| Land Ownership Recognition | 0 | 0 | 1 | 1 |
| Land Tenure and Ownership | 0 | 0 | 6 | 1 |
| TOTAL | 3 | 3 | 12 | 4 |

Source: PPSKP Sector of Regional Office of NLA of Jambi Province

From the above research data it is known that the type of land disputes settled through mediation in Regional Office of National Land Agency of Jambi Province from 2014 to 2016 which is dominant throughout the years is land ownership with 6 (six) cases, then overlapping land ownership with 5 (five) cases, land boundaries with 1 (one) case, land ownership recognition with 1 (one) case, land tenure and ownership which increased in 2016 with 7 (seven) cases.

6.1. The Role of Regional Office of National Land Agency of Jambi Province in The Land Dispute Settlement Through Mediation Mechanisms

National Land Agency (NLA) is a government agency that is tasked to conduct and develop land administration. In carrying out these tasks, the land disputes settlement is one of the functions that become the authority of NLA. This authority is implemented in Presidential Regulation Number 10 Year 2006 concerning National Land Agency which contains the main tasks of National Land Agency. Article

2 of Presidential Regulation Number 10 Year 2006 concerning National Land Agency contains the main task of National Land Agency, which is to carry out government task in land sector in national, regional and sectoral. Then the function of National Land Agency in handling land disputes, accordance with Article 3 Letter n of Presidential Regulation Number 10 Year 2006 concerning National Land Agency, namely review and handling of disputes, affairs and conflicts in land sector. While the mission of NLA itself is to realize a harmonious living order by overcoming various land disputes, conflicts and affairs throughout the country and the arrangement of law and land management system so as not to give birth to any disputes, conflicts and affairs in the future.

Land disputes settlement covers both the handling of land issues by NLA itself as well as the handling of follow-up problem settlement by other agencies. The legal basis of NLA authority as explicitly stated, is contained in Regulation of MoASP/NLA No. 11/2016. In relation to the land issue that has been submitted, NLA has the authority on its own initiative to solve the problem in question. In accordance with Article 2 of Regulation of MoASP/NLA No. 11/2016 then the land issues settlement are done for some of these following matters:

- a. Knowing the history and root causes of Disputes, Conflict or Affairs;
- b. Formulating a strategic policy on Disputes, Conflict or Affairs settlement;
- c. Settling Disputes, Conflict or Affairs, so that the land can be managed, owned, used and utilized by the owner.

The objective of land issues settlement is to provide legal certainty and justice regarding possession, ownership, use and utilization of land. A mediation settlement can be made on land issues that do not include disputes under the authority of Ministry. According to Abbas, mediation is an alternative land disputes settlement outside the court that prioritizes negotiation to reach consensus and has characteristics on the time to settle dispute, structured, task-oriented and become a way of intervention involving active participation of parties by pointing a third party as mediator who help achieve things that have been agreed upon (Abdurrahman, 2009). Based on Article 1, Point 6 of Supreme Court Regulation Number 02 Year 2003 concerning mediation procedure in court, various cases of land has a horizontal or vertical trait, open possibilities to be resolved by way of negotiation or mediation (Sumardjono, 2009).

Mediation is disputes settlement through negotiation process for parties assisted by mediator. Dispute or conflict settlement can be done through mediation based on negotiation for consensus for the good of all parties principle. According to provision of Article 38 paragraph (2) Regulation of MoASP/NLA No. 11/2016, mediation conduct at a maximum of 30 (thirty) days. And based on paragraph (3), mediation aims to:

- a. Ensure transparency and analysis acuteness;
- b. Collective and objective decision-making;
- c. Minimize lawsuit over settlement results of disputes and conflicts;
- d. To accommodate information/opinions of all parties of the dispute, and from other elements that should be considered; and
- e. Facilitate disputes and conflicts settlement through negotiations.

The handling of land issues through mediation by NLA is usually based on two main principles, namely:

- a. The formal truths from facts that become the basis of problems concerned;
- b. The free will of the disputing parties toward disputed objects.

Land disputes settlement through mediation by NLA needs to be based on legitimate authorities under legislation. This is important as the basis of NLA to mediate in land disputes settlement, since land is controlled by public law aspect and private law aspect thus make not all of land disputes can be settled through mediation, only land disputes within the sole discretion of the right holders that can be settled through mediation. Therefore, the agreement in the context of dispute settlement through mediation needs to be done some restrictions. This is mean for the mediation decision to not violate the law as well as can be conducted effectively in the field. To find out the case position it is necessary to conduct research and assessment in juridical, physical as well as administrative. The dispute settlement decision on land issue is a test result from the disputed fact truth. The output is a problem solving formula based on the right or wrong aspects.

The handling of land disputes is done in simple, systematic, integrated, thorough, measurable, objective and totality in order to determine or decide the steps to solve them. Characteristic of the land issues that arise is a separate issue in an effort to find a solution (Musyarofah, 2011). In order for the dispute settlement to provide equal treatment for parties, they are given the opportunity in a transparent manner to propose their views on the matter. In addition, in certain cases they may be given the freedom to decide for themselves on the formulation of their problem settlement. In this case NLA only follow up the implementation of decision administratively as a formulation of problem settlement that they have agreed.

To find out the case position, Regional Office of NLA of Jambi Province conducts research and assessment juridically, physically and administratively. After conducting the assessment there will be a clear picture of land dispute and formulation of problem based on the right or wrong aspects that will be tested in mediation that attended by the parties. The preferred approach used by Regional Office of NLA of Jambi Province in settling disputes is a persuasive approach by promoting a familial settlement approach among conflicting parties. The strategy used is to invite parties separately and listen to the subject matter, then analyze the outcome of meeting in a case holding by inviting officials in Regional Office of NLA of Jambi Province. The case holding will result in steps to speed up the settlement process. After Regional Office of NLA has a clear picture of case position of land dispute, then they invite the parties in a forum. Problem that often arises is one of the party does not fullfil the invitation so they reschedule the mediation again. If up to three summons, one of the party does not fullfil the invitation then mediation is considered to be a failure. Mediation participant based on Article 39 paragraph (1) Regulation of MoASP/NLA No. 11/2016 are:

- a. Management Team;
- b. Ministry, Regional Office of NLA and/or Land Office Officials;
- c. Mediators from the Ministry, Regional Office of NLA and/or Land Office;
- d. The parties and/or other related parties; And/or

- e. Experts and/or professionals related to disputes and conflicts, related institutions, and society elements, society/custom/religious figures, or agrarian and spatial planner observers/activists, as well as other elements, as necessary.

Regional Office of NLA of Jambi Province took a mediation path by bringing the two parties involved in the conflict together and discussing it in a familial way in accordance with Abdurrahman's opinion (Abdurrahman, 2009) that the patterns of settling land conflict outside the court are negotiation, consensus and mediation. Negotiation is conducted in a way where conflicting parties sit together to find the best way in settling conflict with a principle that in the settlement there will be no party that get disadvantaged (win-win solution), neither side has the disadvantage. Deliberation for consensus is a further step of negotiation. If in negotiation there is no mutually beneficial agreement, then the next step is to conduct consensus agreement by involving other party as mediator. The results then made into a letter of mutual agreement signed by the parties and the witnesses.

The role of Regional Office of NLA of Jambi Province in facilitating mediation is done by bringing together the two parties involved in the land dispute along with the party from Regency/City Land Office where the disputed land is located (Firdaus, 2017). This is in accordance with Mudjiono's opinion (Mudjiono, 2007) that Mediation is the control of land conflicts by making consensus between two conflicting parties by seeking a neutral third party as mediator in conflict settlement. In Regulation of MoASP/NLA No. 11/2016 stated that the role of NLA should be as a mediator in settling disputes or conflicts. But Regional Office of NLA of Jambi Province considers that the role of Regional Office of NLA of Jambi Province only as a facilitator, not as a mediator. This is related to differences in perception of mediator definition. According to Article 1 Point (8) mediator is a party that assisting the parties in negotiation process to seek possible disputes or conflicts settlement without disconnecting or enforcing a settlement. Meanwhile the definition of mediator according to Regional Office of NLA of Jambi Province is a person or party who must have a certificate of mediator and help mediation process. Nevertheless difference in definition does not affect the mediation process at Regional Office of NLA of Jambi Province.

Mediation settlement either through traditional method or through various Alternative Dispute Resolution (ADR) institutions has advantages compared to unflattering court litigation in terms of time, cost and mind/energy. Besides that the lack of confidence in judicial independence and administrative obstacles that cover it make the court become the last resort for dispute settlement. The expected output from mediation conducted by Regional Office of NLA of Jambi Province is the parties can understand the dispute problems as a whole and the most important thing from mediation is reconciliation from the parties. If the parties do not reach an agreement, then it can be proceed into litigation or through the judiciary.

7. Conclusion

From the explanation and description above, it can be concluded that the typology of disputes or land conflicts settled through mediation in Regional Office of National Land Agency of Jambi Province consists of land tenure and ownership dispute, boundary dispute, overlapping boundary and ownership dispute. The through mediation mechanism is in accordance with existing laws and regulations, although

there is a difference between mediator definition in Regulation of MoASP/NLA No. 11/2016 and with what happened in the field.

The advice that can be given to Regional Office of NLA of Jambi Province and the parties in mediation are:

Role of Regional Office of National Land Agency of Jambi Province in land disputes settlement Do the counselling and dissemination of mediation as a first step in settling land disputes because in mediation the problem can be known thoroughly and completely. Improving the ability of mediators in Regional Office of NLA of Jambi Province so that mediation becomes more effective, fast and directed. Establish a legal basis that implicates toward those who are absent even though properly invited to the mediation process so that there will be no intentional neglect toward mediation process.

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