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RESEARCH ARTICLE

**THE EFFECTIVENESS OF MEDIATION INTEGRATING THE ROLE OF COLLEGE'S THE
 INSTITUTE FOR LEGAL AID TOWARDS THE AGRARIAN CONFLICT IN THE PROVINCE OF
 SOUTHEAST SULAWESI, INDONESIA**

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Abstract

This paper is based on a research on the phenomenon of agrarian conflict that took place in Southeast Sulawesi Province, which increased throughout 2016 to 2018. Generally this conflict is triggered by a dispute over rights of land ownership, either between individuals or groups or with companies which is in Southeast Sulawesi Province of Indonesia. During this time the agrarian conflict is resolved through a court or so-called litigation dispute settlement. Settlement of litigation disputes still seems to cause various problems, among others, increasingly triggering the social estrangement for the people of Southeast Sulawesi who are still firmly holding the values of kinship. Besides the high cost litigation model, it takes a long time. The proposed mediation model by integrating The Role Of College's The Institute for Legal Aid which researchers recommended in the previous study suggests that the mediation model within the Southeast Sulawesi community culture context is very effective in dealing with agrarian conflict, because it offers a fairly efficient, non-cost dispute resolution process, and does not take a long time. The effectiveness of the mediation model can help the work of the courts in Southeast Sulawesi with respect to the buildup of incoming cases.

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Introduction:-

Southeast Sulawesi Province is one of the regions located in Indonesia. This region has geographic regional characteristic with maritime contour which almost dominates the mainland. The potential of maritime territory owned by Southeast Sulawesi Province, makes this region very rich in marine fisheries. Not only has the maritime region potential, Southeast Sulawesi also has a vast forest and field area. The vast potential of the land area also causes problems for the people of Southeast Sulawesi. The emerging problem, according to researchers' observation, is the increasing number of agrarian conflict¹ in the community. The agrarian conflict continues, so it can disrupt the harmonization of the social life of the community. The results of previous research by researchers, namely in 2017 showed that the agrarian conflict, among others, was the most prominent land dispute, which was the type of dispute, the researchers described it as follows:

¹Anton Lucas and Carrol Waren. 2018. *Land for The People: The State and Agrarian Conflict In Indonesia*. Ohio University Research In International Studies, USA, p. 8-10.

Table 1:-The Land Dispute in the Southeast Province, Indonesia

No	Type of Land Dispute	Data Source	%
1	Land dispute between local resident and immigrant who became transmigration resident	Heryanti's research 2017-2018	60%
2	Dispute around mining land between local residents of the mining area and mining companies	Muh. Satria and Muh. Sjaiful's research 2016-2017	80%
3	Dispute of Land Ownership	Muh. Sjaiful's research 2017	80%
4	People's protest against the Institute for National Land'spolicy by in Southeast Sulawesi	The Observation 2018	60%

Land disputes which are a phenomenon in the people of Southeast Sulawesi, as exposed in the table above, are generally resolved in various ways as described in the table below:

Table 2:-Resolution for Agrarian Conflict Taken by the People of Southeast Sulawesi

No	Resolution for Agrarian Conflict	Percentage
1	Complain to the Ministry of Land	11%
2	People's Protest	37%
3	Mediation of Regional Legislative Members and Police	23%
4	Court Dispute Resolution	11%
5	People's Protest towards the Land Mafia	18%
	Total	100

Source: Researchers' Observation 2017-2018

The resolution for the agrarian conflict² in Southeast Sulawesi, which is resolved in various ways as exposed in the table, some of which resolved the dispute, does not seem to have the effective effect of maintaining social harmonization between member of community involved in agrarian conflict³. In connection with that, researchers offer the model for land dispute resolution through mediation integrating the role of college'sthe institute for legal aid. Based on the result's research of 2017, the researchers initiate the concept for mediation by involving the college'sthe institute for legal aid⁴ to resolve agrarian conflict in Southeast Sulawesi, Indonesia. This mediation model, which is one model of non-litigation dispute resolution, is expected to provide legal certainty and can guarantee social harmonization among the residents of Southeast Sulawesi.

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²Asmawati.Maret2014."The Mediation is one way to resolve land disputes", *Journal of Jurisprudence*, Volume 1, p. 20.

³Hayat. Desember 2013. "Theory for Conflict in the Perspective of Islamic Law: Islamic and Social Interconnection". *Hunafa: Journal of Studia Islamika*, Volume 10 Nomor 2, p. 270.

⁴Farida Kurniawati, September 2012. "The Role of College's Legal Aid in Providing Consultation and Legal Aid Services for Criminal Studies Cases Against the Normative-Empirical Aspects in Surakarta", *Journal of Law*, Volume 15, Issue 2.

Method of Research

This research is legal research with an empirical approach⁵. That is a legal research which investigates the symptoms of law in the midst of society⁶. Legal research on this model is used to find out the attitudes and knowledge of the people for the process of enforcement the law including the effectiveness of a legal product as a tool to change people's behavior into a conduct which is obedient to the law. For this reason, the data collected in this research for the sake of analysis are primary data and secondary data. Primary data is in the form of interview with respondents who know deeply the dynamic of agrarian conflict which occurred in the Southeast Sulawesi of Indonesia. While secondary data, in the form of written data, both in the form of document, statistical data, and other literature as material that can support the analysis of this research.

The Result of Research

Description of the Agrarian Conflict which was held by the Appellate Court of the Southeast Sulawesi of Indonesia

In the following section, the researchers present data on land conflict which held by the Appellate Court of the Southeast Sulawesi from 2016 to June 2018, as follows:

Table 3:-Data for Cases of Land Conflict which has been decided by the the Appellate Court of the Southeast Sulawesi of Indonesia 2016-June 2018

No	Cases In Years	The Cases Which Has Been Decided by the the Appellate Court
1	2016	70 Cases
2	2017	84 Cases
3	Until June, 30 st 2018	46 Cases

Source: the Appellate Court of the Southeast Sulawesi of Indonesia 2018

Data show that land cases decided by the Appellate Court from 2016 to 2017, have increased while those from 2017 to June 2018 have decreased. Agrarian cases in the Southeast Sulawesi High Court which tended to fluctuate, based on the results of observations by researchers, were more due to the culture of Southeast Sulawesi communities that in the face of land disputes still made the court route the last option in resolving land disputes between them. That is, the people of Southeast Sulawesi are still trying to take other ways outside the court when they are struggling with land cases. The results of interviews of researchers to a number of advocates in Southeast Sulawesi who deal with land disputes stated that land case fluctuations in the Appellate were partly due to:

First, the number of land cases which enter every district court in several cities and regencies is still piled up. There are also those who have already had the power of a judge's decision which is permanent, final, and binding, so that several existing land disputes, in large part, have not continued until the appeal level. Second, the people of Southeast Sulawesi are people who still adhere to kinship values, so that in resolving land disputes, the court approach (litigation) has not been taken before being settled in a family manner. The strength of kinship, the legal culture of the people of Southeast Sulawesi is a legal culture which still puts forward the values of kinship and social relation, although the culture of Southeast Sulawesi still maintains its rights, especially concerning land rights, which often lead to prolonged conflict but they are generally still out of court to resolve land conflict.

Model of Mediation in Resolving Agrarian Conflict by Involving the Role of College's the Institute for Legal Aid in Southeast Sulawesi Province, Indonesia

In previous studies, researchers offered a model of agrarian conflict resolution in Southeast Sulawesi province which integrates the role of college. This model, can be designed in two forms: The First Model, mediation by not involving the role of the court. This model is very suitable if the parties to the dispute really do not involve the court, so that those who act as mediator is third parties, namely College's the Institute for Legal Aid. Through this model, the parties can appoint themselves or through community leaders, to use the College's the Institute for Legal Aid in settlement of agrarian conflict which is being proposed by the parties. The idea of the model is as follows: After the College's Legal Aid has agreed upon by the parties to become mediator in the settlement of agrarian disputes,

⁵Lee Epstein & Andrew D Martin. 2014. *An Introduction to Empirical Legal Research*. Oxford University Press, United Kingdom, p. 8.

⁶Frans L Leeuw. 2016. "Empirical Legal Research". *A Guidance Book for Lawyers, Legislators and Regulators*. The Netherland, p. 10.

the College's Legal Aid will bring the parties in a special forum using a place which they agree. The design of this model, the researchers divide it into three stages, as follows:

The first stage, which is called the assessment or the verification. At this stage, the College's Institute for Legal Aid explains the objectives and final objectives of the mediation which will be carried out. This stage, at least, can also present community leaders or religious leaders who have position which can be heard by the parties in the dispute, if indeed there is a mutual agreement. This first stage, the mediator introduces himself, including the parties in the dispute, who also introduces themselves. When accompanied by a lawyer, he or she also introduces himself or herself by including the document of special power from the party who is representing. Leaders of Community or religious leaders who were present in the mediation process, of course, were asked to introduce themselves. The first stage of the continuation of this mediation is the initial stage of the mediator requesting a chronological dispute event and verifying land cases that are being disputed by the parties. The mediator also listens to the mutual agreement which is the best solution for resolving the agrarian conflict.

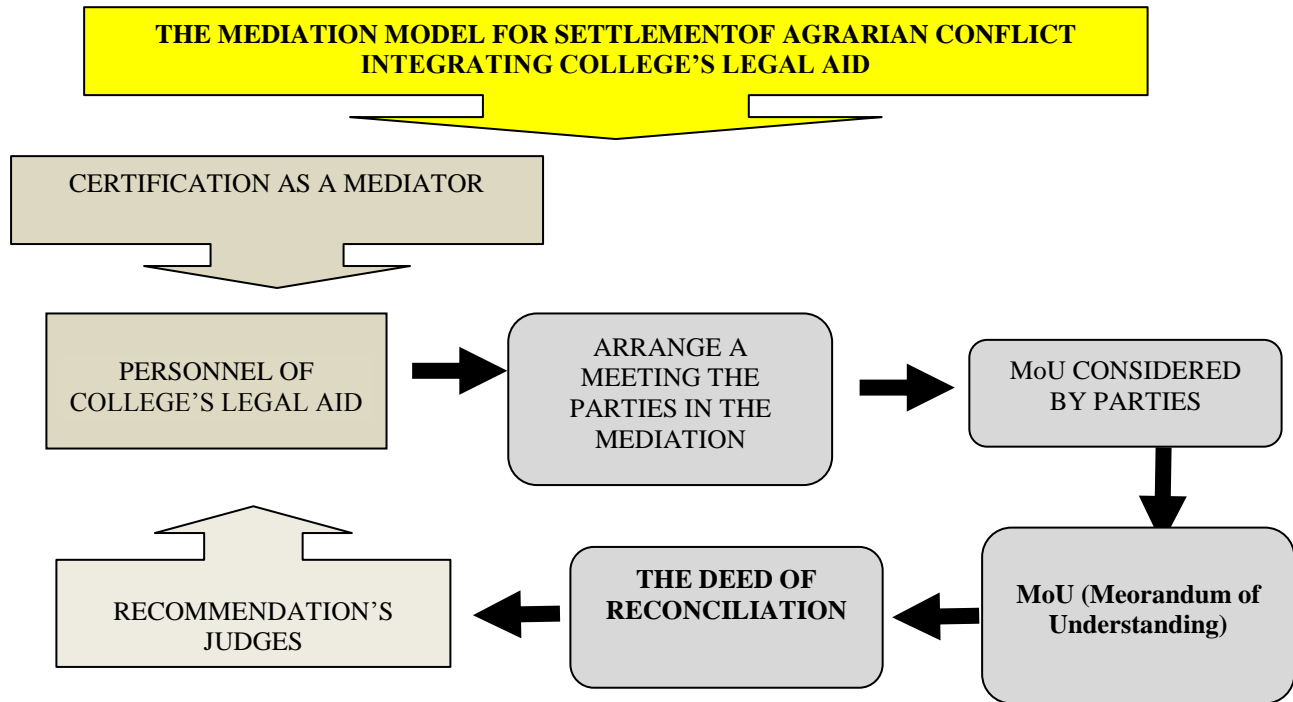
The second stage, is the stage of discussion or deliberation from the parties, as well as dialogue mediated by the mediator, the aim of which is to find a meeting point as an agreement to produce a decision that can be implemented by the parties based on the concept of "win-win solution". If it is deemed necessary, the process of discussion or deliberation, asks for advice or consideration from lawyer or community leaders. This second stage is the entry point of the whole series of mediation processes, so this stage runs long.

The third stage, the last stage or conclusion. This stage is the finalization of the whole series of mediation processes. This is the last stage that really determines whether the parties accept or reject the land dispute resolution decision which is initiated at the meeting. If there is a refusal, the mediation process is considered unsuccessful, then it is left to the parties to proceed to the court. If the concept initiated is accepted by the parties as a binding decision for solution to land dispute resolution among them, the decision by the mediator is set forth in a written document, in the form of a Memorandum of Understanding (MoU). To strengthen the legality of the MoU, the parties are required to sign the content of the clause contained therein as a sign of agreement, which is signed by the mediator, including lawyer and community leaders or religious leaders in mediation. We as researchers recommend that the MoU should be approved by a notary public to strengthen the legality and legally binding which can be adhered to by the parties in dispute.

The Second Model, mediation by involving the role of the court. This mediation model is a mediation model which refers to the Republic of Indonesia Supreme Court in the Regulation of 1 of 2016 on the Procedure for Mediation in the Court (*Peraturan Mahkamah Agung Indonesia Nomor 1 Tahun 2016 tentang Prosedur Mediasi Di Pengadilan*). The stage of the mediation model, practically, the same as the illustration of the first mediation model, only the difference is involving a judge as mediator appointed by the court. Its legal strength has very strong legality than the first mediation model, because the final mediation decision agreed upon by the parties is contained in a written document issued by the court called "the Peace Deed". This document has legal force which must be adhered to by the parties, so its position is the same as the court decision. The parties are not permitted to appeal it.

In the following section, researchers describe a diagram of the mediation model involving the College's The Institute for Legal Aid, as a model for resolving agrarian conflict in Southeast Sulawesi:

Diagram 1:-Mediation Model Integrating The Role Of College’sThe Institute for Legal Aid Towards The Agrarian Conflict In The Province Of Southeast Sulawesi, Indonesia



Effectiveness of Mediation Model Integrating The Role Of College’sThe Institute for Legal Aid TowardsThe Agrarian Conflict In The Province Of Southeast Sulawesi, Indonesia

Based on previous research, mediation is still a solution to the agrarian conflict in Southeast Sulawesi, which is very relevant because of the culture of the people of Southeast Sulawesi which inkinship values. For this reason, the existence of mediation mainly involves The Role OfCollege’sThe Institute for Legal Aid in Southeast Sulawesi, the research team concluded very effectively.

This conclusion is based on the result of response of advocates in Southeast Sulawesi to the effectiveness of mediation in resolving the Agrarian Conflict in Southeast Sulawesi, as the researchers describe in the following table:

Table 4:-Advocates' Response to the Effectiveness of Mediation for Agrarian Conflict Resolution in Southeast Sulawesi

No	Tanggapan Responden	f	%
1	Mediasi untuk menyelesaikan konflik agraria di Sulawesi Tenggara dipandang efektif	8	80
2	Mediasi belum efektif	1	10
3	Tidak memberikan jawaban	1	10
JUMLAH		10	100

Sumber: Data Primer (hasil angket, diolah), Juni 2018.

The table above shows that most of the respondents held the view that mediation in the context of resolving agrarian conflict in Southeast Sulawesi was effective because the characteristic of mediation resulted in a “win-win solution” not “win or lose”. This is in accordance with the legal culture of the peopleof Southeast Sulawesi who chose non-litigation to resolve agrarian conflict. Meanwhile, 1 respondent stated that the mediation model was not effective, if the land dispute was resolved through the role of lawyer, because lawyer often did not give advice to their clients to take dispute resolution through mediation.

Result of Interview with H CharisMardiyanto, the Chairman of the Appellate of Southeast Sulawesi, on July 3, 2018, said that land dispute resolution in Southeast Sulawesi through mediation was effective because this mediation model helped court that was increasingly handling land disputes day by day. Moreover, the number of judges held by each court of Indonesia is limited. The respondent also said that the mediation by integrating The Role Of College's The Institute for Legal Aid became effective, especially to empower The Institute for Legal Aid at the College in carrying out three main tasks of college (*tri dharma perguruan tinggi*) in Indonesia.

Mediation through the role of The Institute for Legal Aid of the College, can be effective when the legal parties joining to improve legal skill, including participating in mediator training held by the Indonesia Supreme Court. The training certificate given by the Supreme Court can be a document which legitimizes academics who are activists fighting for the rights and enforcers of justice for the poor in Indonesia.

Based on this discussion, the existence of mediation as an institution for non-litigation in handling the agrarian conflict in Southeast Sulawesi. It is very relevant. Moreover, the legal culture of the Southeast Sulawesi people, still in kinship values. This view is also stated by the Chairman of District Court of South Konawe which mediation was the institution for resolving agrarian conflicts in Southeast Sulawesi, was relevant and effective in avoiding horizontal conflict in the Southeast Sulawesi community.

Conclusion and Recommendation:-

The existence of mediation as an institution for resolving the agrarian conflict in Southeast Sulawesi is very relevant. Moreover, the legal culture of the people of Southeast Sulawesi community still holds kinship values.

We, the Researchers, recommend that the mediation model which integrates the role of the College's the Institute for Legal Aid to be immediately followed up by the Southeast Sulawesi Government by involving law apparatus and judges, which are formulated in the regional regulation, as a normative juridical basis for resolving agrarian conflict which prioritizes the values of justice in Southeast Sulawesi, Indonesia.

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We, researchers, say thanks to the Ministry for Research, Technology and the College, the Directorate General for Strengthening of Research and Development, the Directorate for Research and the Service for Community of the Republic of Indonesia" (*Kementerian Riset, Teknologi, dan Pendidikan Tinggi, Direktorat Jenderal Penguatan Riset dan Pengembangan, Direktorat Riset dan Pengabdian Kepada Masyarakat Republik Indonesia*), who has provided grant of fund to support the success of this research. We, as researchers, do hope that the result of this research can be useful for humanity and law enforcement.

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