

Legal Arrangements Regarding Dispute Resolution Through Mediation In Civil Cases

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ABSTRACT

Settlement of land disputes can be done through mediation or a peace process, meaning that the parties to the dispute submit the resolution to a mediator to achieve a fair final result, without wasting huge costs. The requirement to carry out mediation applies to court case processes, both in general and religious courts. One of the provisions of article 2 of the Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Court is that the provisions that must not be ignored are that the decision is null and void if the mediation procedure is not carried out based on the Republic of Indonesia Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Court. Article 3 (2) of the Republic of Indonesia Supreme Court Regulations states that the Case Examining Judge in considering the decision must state that efforts have been made to reconcile the case through mediation by naming the mediator. This article will review mediation in civil cases. The implementation of the Republic of Indonesia Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Court, which can be the main option in resolving civil cases so as to reduce the buildup of the number of civil cases in court and be more profitable.

Keywords: Civil Case; Mediation, Supreme Court

1. INTRODUCTION

Indonesia is a State of Law, this is stated in article 1 paragraph (3) of the 1945 Constitution (3rd amendment). The Unitary State of the Republic of Indonesia is a State based on law (*rechtstaat*), not based on power (*machtstaat*). Government is based on a constitutional system (basic law), not absolutism (unlimited power). An important principle in the rule of law is the guarantee of the implementation of judicial power for the upholding of law and justice. Judicial power is the power of an independent state to administer justice to uphold law and justice based on Pancasila and the 1945 Constitution for the sake of implementing the Indonesian Rule of Law, as regulated in article 1 point 1 of Law Number 48 of 2009 concerning Judicial Power. In connection with this, every Indonesian citizen is obliged to obey the applicable legal norms, both public law norms and private/civil law norms. In Indonesia, there are many conflicts related to civil cases. The large number of civil cases that go to court is a problem for the court if the cases must always be examined until the final decision.

This will of course lead to an increase in the number of cases entering the Court. In an effort to overcome the buildup in the number of cases entering court. The Supreme Court took the

initiative to issue Republic of Indonesia Supreme Court Regulation No. 1 of 2016 concerning Mediation Procedures in Court. Mediation is a method of resolving disputes through a negotiation process to obtain agreement between the parties with the assistance of a mediator. The mediator is a judge or other party who has a mediator certificate as a neutral party who helps the parties in the negotiation process to seek various possibilities for resolving the dispute without using the method of deciding or forcing a resolution (a person who arranges a meeting between two or more disputing parties) to achieve a fair final result without wasting too much money, but still effective and fully accepted by both parties to the dispute voluntarily (Fatahilah, 2012).

Mediation, as a method of peaceful dispute resolution, has a great opportunity to develop in Indonesia. With eastern customs that are still deeply rooted, people prioritize maintaining friendly relations rather than momentary gain if a dispute arises. Resolving a dispute in court may result in huge profits if you win, but the relationship suffers. Saving face or someone's good name is an important thing that is sometimes more important in the dispute resolution process in Indonesia. Mediation is an effective instrument for non-litigation dispute resolution that has many benefits and advantages. Disputes can be resolved with a win-win solution, the time spent is not prolonged, the costs are cheaper, the relationship between the two people in dispute is maintained and excessive problems are avoided. Therefore, it is hoped that it is not just a party that wins or loses that it can produce an agreement between the disputing parties with a consensus that is felt to fulfill the wishes of the parties (win-win solution). Not only is this beneficial for the parties to the dispute, this settlement also provides benefits for the world of justice. First, the use of mediation is expected to overcome the problem of the backlog of cases submitted to court (Rahmadi, 2012). The large number of cases resolved through mediation will automatically reduce the backlog of cases in court. Second, the small number of cases submitted to court will make it easier to monitor if there is a delay or deliberate delay in examining a case for certain improper purposes. Third, the mediation process is seen as a faster, cheaper way of resolving disputes compared to the process of deciding by a judge (Rahmadi, 2012). The requirement to carry out mediation in civil cases that go to court is one of the interesting provisions of article 3 of the Republic of Indonesia Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Courts. This provision must not be ignored and needs to be paid attention to by various parties, because the legal consequences are the decision. null and void if you do not carry out mediation procedures based on the Republic of Indonesia Supreme Court Regulation Number 1 of 2016 concerning Mediation procedures in Court (Rahmadi, 2012). Republic of Indonesia Supreme Court Regulation Number 1 of 2016 has changed judicial practice in Indonesia. The court is not only tasked with examining, adjudicating and

deciding cases it receives, but also seeks to reconcile the parties. The court, which has been impressed as an institution that enforces the law of justice, now appears as an institution that seeks peaceful solutions for the parties (afandi, 2009). 5 It directs the litigants to go through a detailed peace process, also accompanied by the provision of consequences for violators of the rules. The way that must be done is the sanction of a decision that is null and void for a judge's decision that does not follow or ignores the Supreme Court Regulations. Article 4 of the Supreme Court Regulations further states that all civil disputes submitted to court, including cases of opposition (verzet) to the verstek decision and resistance of litigants (partij verzet) to the implementation of decisions that have permanent force, must first be resolved through mediation. , unless otherwise determined based on the Supreme Court Regulations, there are limits to cases that can be mediated. Mediation can be successful if the parties have an equal bargaining position and still value good relations between them in the future (Amriani, 2012). It is not uncommon for mediation to fail due to aspects of the individuals involved in the case themselves, such as a feeling of not wanting to be reunited and demands from third parties, for example families who do not support them. This is one of the factors that becomes an obstacle for mediators.

The basic understanding of mediation and its benefits is still not optimal, many people in the mediation process only meet with a third party as a mediator. The process of providing an understanding of the benefits of resolving cases through mediation (socialization) should be carried out optimally first so that the public gains understanding and knowledge of the importance of the process of resolving cases through mediation with the help of a mediator in accordance with the mandate given by the Republic of Indonesia Supreme Court Regulation Number 1 of 2016. The implementation of the Supreme Court Regulations on Mediation in Court can be an effort to resolve civil cases, so that resolving cases through mediation can be the main choice because it can negotiate the wishes of the parties by means of peace. Mediation efforts will of course also be beneficial for the court because its use is expected to overcome the problem of case backlogs (Rahmadi, 2012). The judge's action in reconciling the disputing parties is to stop the dispute and ensure that the dispute does not occur again. The judge who plays a role in seeking peace is the judge in the case trial when the case trial begins, while the mediator is someone appointed by the panel of judges to seek peace for the parties outside the court session based on the agreement of the parties. The mediator has a determining role in a mediation process. Whether mediation fails is also largely determined by the role played by the mediator. The mediator plays an active role in bridging a number of meetings between the parties. Mediation, if implemented effectively, is certainly very beneficial for the disputing or disputing parties, because by realizing this, the



judiciary also indirectly helps in realizing peace. In divorce cases, there are still many divorce lawsuits that have not been successfully reconciled, because the facts show that the divorce rate is still high. Based on the description above, it is still clear that there is a gap between legal rules (*das sollen*) and reality (*das sein*) regarding the role of mediators in resolving cases.

2. RESEARCH METHOD

The research methods used in this research are: Normative/doctrinal legal research is research carried out by examining library or secondary materials in the form of primary legal materials, secondary legal materials and tertiary legal materials, as well as carrying out reasoning or comparison of library data in the form of legal literature or reading books in which this is arranged systematically and then a conclusion is drawn in relation to the problem being studied.

3. RESULTS AND DISCUSSION

Mediation comes from the Latin word *mediare*, which means being in the middle. The meaning refers to the role played by a third party as a mediator in carrying out its duties to mediate and resolve disputes between the parties. Being in the middle also means that the mediator must be in a neutral and impartial position in resolving the dispute. He must be able to safeguard the interests of the disputing parties fairly and equally, thereby fostering trust from the disputing parties (Hanifah, 2016). The following is the definition of mediation according to experts: According to Takdir Rahmadi, mediation is a process of resolving disputes between two or more parties through negotiation or consensus with the help of a neutral party who does not have the authority to decide. The neutral party is called a mediator with the task of providing procedural and substantial assistance (Rahmadi, 2012). The definition of mediation according to Jimmy Joses Sembiring is that mediation is a dispute resolution process with a third party, namely the party who provides input to the parties to resolve the dispute (Sembiring, 2011). The definition of mediation according to Supreme Court Regulation Number 1 of 2016 article 1(1) states that mediation is a way of resolving disputes through a negotiation process to obtain agreement between the parties with the assistance of a mediator. A mediator is a judge or other party who has a mediator certificate as a neutral party who helps the parties in the negotiation process to find various possibilities for resolving the dispute by using methods to decide or force a resolution. In peace efforts, the first step that must be carried out by the judge in bringing peace to the disputing parties is to make peace with the disputing parties. Then the judge in reconciling the disputing parties is in line with the teachings of the Islamic religion, namely that if two groups of believers quarrel then

reconcile them, this peace should be carried out fairly and correctly, because Allah really loves people who act fairly (Manan, 2015). The legal basis for mediation in Indonesia includes: 1. HIR article 130 Rbg Article 154 regulates peacemaking institutions. The judge is obliged to first reconcile the parties involved before the case is examined. 2. Article 1851 of the Civil Code 3. Republic of Indonesia Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Court. In Article 1 paragraph (2) of the Republic of Indonesia Supreme Court Regulation Number 1 of 2016. Settlement of Civil Cases by Mediator Based on the theory of legal effectiveness put forward by Soejono Soekanto, whether a law is effective or not is determined by 5 factors. These factors are neutral, so their positive and negative impacts lie in the content of these factors. The first factor is the legal factor itself, the second is the law enforcement factor, the third is the means and facilities that support law enforcement, the fourth is the community factor, namely the environment in which the law applies or is applied, and the fifth factor is culture which basically includes the underlying values. applicable laws, values which are abstract conceptions regarding what is considered good so it is obeyed and what is considered bad so it is not obeyed (Soekanto, 2007). These are the 5 (five) factors that can be used as a tool to measure effectiveness, which when related to the success or failure of a mediation process can be measured using these five factors. 1. Legal factors, namely the Republic of Indonesia Supreme Court regulation number 1 of 2016, can be a juridical basis for carrying out a mediation process. 2. Law enforcement factors, which in this case are the qualifications of the mediator, also determine the success of a mediation process carried out, therefore the ability of the mediator has a role which is very important. 3. Facilities and facilities factors. Based on the provisions of the Supreme Court Regulations, every court that handles civil cases in Indonesia is expected to have a special room to carry out the mediation process. Having a well-arranged mediation room will certainly provide a sense of comfort for the disputing parties to make peace. 4. Community factors, namely the community's understanding and compliance in carrying out the mediation process still has an inadequate level of awareness, there are still people who, because of their prestige/self-esteem, want to carry out mediation. 5. Cultural factors, the number of civil cases that go to court institutions, both judiciary general and religious courts are still quite high, this shows that the public culture of disputing disputes in court is still quite high. Obstacles for mediators in resolving civil disputes. The success and failure of mediators in resolving civil cases is influenced by several factors: 1. The strong desire of both parties to continue with the case, factors that hinder the progress of the mediation process 2. The conflict between the two parties has been going on for too long, so has become very complicated to unravel in order to achieve peace. And each party feels that they are right. There are



even times when the plaintiff can no longer forgive the defendant. 3. Circumstances where the parties cannot be reunited. 4. The ability of the mediator. The mediator must have the ability to manage conflict and communicate so that he can strive for a common ground between the parties which will encourage peace. Therefore, the mediator's ability influences the success of the mediation. 5. Spirituality and morals. This is a lack of basic knowledge about religion/faith that quarrels are something that must be resolved immediately peacefully in order to maintain friendly relations. 6. Sociological and psychological factors at this time each party feels that they can fulfill their own needs without needing the assistance of the other party, so that the tendency to separate/disconnect is no longer a problem for them. 7. Third parties During mediation the mediator will try to reconcile the parties, but this becomes difficult if there is interference from a third party.

4. CONCLUSIONS

From the description above, it can be concluded that resolving civil case disputes through mediators needs to be continuously improved. This is due to various factors as follows: a. Mediators who carry out their duties are often hampered by a lack of necessary facilities and equipment, as well as a lack of community compliance and unsupportive local culture. b. Limited human resources who have certificates of expertise in the field of mediation. c. The lack of effectiveness of judges who also act as mediators is due to the disproportionate number of cases submitted and the number of judges handling civil cases.

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