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The Role of Mediators in Assisting in Settlement Civil Cases in Court

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Abstract
The implementation of Mediation is regulated in Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures and has been carried out in accordance with applicable provisions starting from the pre-mediation stages, the mediation process, mediation reaching an agreement, mediation not reaching an agreement, and the end of the mediation. The mediator has a role as a neutral party who can perform a role according to his capacity with a number of skills, which are obtained from education, training and experience in resolving conflicts or disputes. Meanwhile, its function is to improve various communication weaknesses between the parties which usually have obstacles and psychological barriers, as well as encouraging the creation of a conducive atmosphere for starting negotiations, providing insight into the process and substance of ongoing negotiations, clarifying substantial issues and respective interests. each of the parties. The obstacle found in the mediation process was that the parties felt that their legal interests were not being met, as a result there was no meeting of mind and agreement to resolve the problem based on the principle of a win-win solution. The solution to overcome obstacles in mediation is Article 13 paragraph (1) PERMA No.1 In 2016, basically a Mediator is a person who is not a Judge who has received and obtained a Mediator certificate from an institution that has been accredited by the Supreme Court, however there are exceptions to this article which in the previous regulations, namely PERMA No. 1 of 2008 Article 5 paragraph (2) is also regulated, which provides leeway if in a judicial environment there is no certified Mediator, then the Judge who is in that judicial environment based on the decision of the Chief of Court can become a Mediator

Keywords: Mediator, Civil Case, Court

INTRODUCTION

Basically, in social and community relations, conflicts or disputes that occur generally concern rights and obligations that are classified as civil disputes. This arises because it is influenced by various factors, including internal and external factors. Differences in interests or disputes between one party and another are a cause of disputes that come from internal factors, while external factors are influenced by the existence of rules and written and unwritten procedures that cause disputes that are too rigid and harsh in their application (Rahmah, 2019).

Along with the development of the times, every legal pattern is always developed by humans to harmonize the needs faced without changing the existing principles. Many people involved in civil disputes in the Court choose the mediation route to resolve it, either by the judge, lawyer, or the will of the litigants themselves. Nama in fact The problem requires a repositioning in legal science to be able to find a comprehensive, credible and acceptable solution for all parties (Faisol Rizal, 2022).

This is certainly related to the explanation from Lawrence M. Friedman, that the legal system can run well if the three elements of the legal system support each other, namely law enforcement, legal rule and legal culture. Law enforcement can work well if the rule of law is good and clear, and the community obeys the law. If the three elements do not support each other, then *law enforcement* becomes ineffective.

Mediation in court (*court annexed mediation*) has come into force in Indonesia since the issuance of Supreme Court Regulation (PERMA) Number 2 of 2003 concerning Mediation Procedures in Court. This PERMA aims to improve the Supreme Court Circular Letter (SEMA) Number 1 of 2002 Article 130 (HIR) and Article 154 *Legal Regulations for the Outer Regions (RBg).* After the issuance of PERMA Number 1 of 2008, the Supreme Court again issued PERMA Number 1 of 2016 as an effort to accelerate, simplify, and provide greater access to justice seekers. Mediation is expected to continue to be an effective instrument that can overcome the accumulation of cases in court and at the same time maximize the function of court institutions in resolving disputes, in addition to the decisive court process (D.R. bi Rezki Sri Astarini, 2013).

Dispute resolution in court is a form of neutral legal enforcement. In fact, in dispute resolution through the court, it is not uncommon to find decisions that do not reflect a sense of justice, in addition to dispute resolution in court incurring very large costs and long time, so it is not uncommon for these obstacles to be encountered in dispute resolution in court. So that the possibility of an unsatisfactory verdict, a victory that has been determined may not necessarily be enjoyed quickly due to various obstacles such as obstacles to execution. There is even a possibility of new disputes arising, either from the losing party or from interested parties (Puspitaningrum, 2018). This situation only provides a court decision, but not in the settlement of the root of the dispute.

Dispute resolution can basically be carried out through two methods, namely adjudication and non-adjudication. In dispute resolution through the adjudication process, there are two models, namely litigation (court) and non-litigation (arbitration), while non-adjudication dispute resolution or what is called alternative dispute resolution (APS) can be carried out through the process of negotiation, mediation and conciliation. The Supreme Court as the highest judicial organizer in Indonesia has begun to initiate several methods to shorten the dispute resolution process in court in realizing judicial goals that are simple, fast and low-cost, but can provide more optimal results. One of the ideas that is quite progressive is to optimize mediation institutions in civil disputes. It is intended that the parties to the dispute do not have to go through all stages of the long and time-consuming trial process, but it is enough only to reach the pre-examination stage, if the parties succeed in reaching a peace agreement through mediation at the beginning of the trial (Ompusunggu, 2020).

The existence of Supreme Court Regulation (PERMA) No. 1 of 2016 is expressly intended to provide certainty, justice, order, and smoothness of the peace process of the parties in resolving civil disputes. These efforts are carried out by intensifying the mediation process into court procedures, thus mediation becomes very important and is a part that must be present in the litigation process in court.

Based on Article 4 paragraph (1) of the Supreme Court Regulation (PERMA) Number 1 of 2016 concerning Mediation Procedures in Court, the types of cases that must be mediated are all civil disputes submitted to the Court, including cases of resistance to *verstek* decisions and resistance of litigants and third parties to the implementation of decisions that have permanent legal force.

The Mediation process is an inseparable part of the litigation process in court. The parties are required to follow the dispute resolution procedure through mediation. If the parties violate or are reluctant to apply the mediation procedure, then the lawsuit is declared unacceptable by the Judge who examines the case and is also subject to

the obligation to pay mediation fees (article 22 paragraph 1 and paragraph 2 of PERMA Number 1 of 2016). Therefore, as a Mediator in considering his decision, he is required to mention that the case concerned has been sought for peace through mediation.

Mediation will never happen without the role of the mediator as a third party or also called a mediator. Mediators have an important role, namely formulating and inviting interested parties to be dominantly involved in the achievement of the agreement. Of course, with every advantage, ability, skill, and flight hour of the mediator itself that specifically distinguishes between one mediator and another (Prasetiawan et al., 2022).

Although the legal position of mediation in the judiciary is very clear, coupled with the fact that the Indonesian people have a deliberative disposition in dealing with the disputes faced and the benefits that can be achieved if they choose mediation rather than resolving disputes in court, the fact shows that the community and of course the courts have not utilized this mediation process optimally, therefore this study is expected to provide an understanding of the policies and regulations regarding mediation in the Court and to understand and identify, obstacles and efforts of the Mediator in assisting civil justice cases in the court.

METHOD

The author uses a normative juridical method, namely by examining secondary data. This research is often also called doctrinal legal research, which is legal research that uses secondary data, by studying and examining legal principles, especially positive legal principles derived from literature materials, laws and regulations, journals related to the problems that are the subject matter.

RESULTS AND DISCUSSION

1. Implementation of Judicial Mediation in Civil Cases in Court

In the implementation of mediation in the Court, it is mandatory for every case submitted to the court of first instance except for disputes included in article 4 paragraph (2) of PERMA No.1 of 2016, the mediation procedure is divided into; Pre-Mediation is the stage before the implementation of the mediation process, including the Explanation of the Obligation of the Parties to be present and in good faith at the Mediation, the Selection of the Mediator and the time limit, and the summoning of the parties; And the Mediation Process is the stage where the Mediator begins to carry out the mediation process with a scope that is not limited only to the posita and petitum of the lawsuit, this Mediation Process includes a Mediator Meeting with both parties, a Mediator Meeting with one of the parties (Caucus), Case Resume Submission, Involvement of Experts and Community Leaders to Mediation Agreements.

The legal basis for the implementation of mediation in court is (Wirhanuddin, 2017):

1) Pasal 130 HIR (The Revised Indonesian Regulations, Staatsblad 1941:44), atau Pasal 154 R.Bg (Legal Regulations for Rural Regions, Staatsblad, 1927:227) atau Pasal 31 Rv (Regulations on Legal Procedure, Staatsblad 1874:52),
2) Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (APS).
3) PERMA RI No. 2 of 2003 concerning Mediation Procedures in Court.
4) PERMA RI No. 1 of 2008 concerning Mediation Procedures in Court.
5) PERMA RI No. 1 of 2016 concerning Mediation Procedures in Court.

6) SEMA RI No. 1 of 2002 concerning the Empowerment of Peace Institutions in Article 130 HIR/Article 154 RBg.

As for the mediation process at the District Court or Agaman, the mediation procedure is regulated, namely:

1) Pre-Mediation Stage

On the first day of the hearing, which was attended by both parties, the judge required the parties to go through mediation. The judge postponed the trial process of the case to provide an opportunity for the mediation process for 30 working days. The judge explained the mediation procedure to the parties to the dispute. The parties choose a mediator from the list of names that have been available on the first day of the hearing or no later than 2 working days at the latest. If within that time period the parties cannot choose the desired mediator. The chairman of the panel of judges immediately appoints a judge who is not the subject matter examiner of the case to carry out the function of mediator (Article 17 of PERMA RI No.1 of 2016 concerning Mediation Procedures in Court).

2) Mediation Process Stages

Within a maximum of 5 working days after the parties appoint an agreed mediator, each party may submit a case resume to the appointed mediator judge. The mediation process lasts a maximum of 30 working days from the establishment of the order to conduct mediation.

Then the Mediator is obliged to declare that the mediation has failed if one of the parties or parties has failed to attend the mediation meeting according to the agreed schedule for 2 consecutive times without reason after being duly summoned.

The Mediation process is a stage where the Mediator begins to carry out the Mediation process with a scope that is not limited to only the posita and petitum of the lawsuit. Mediation is confidential, so the Mediator Judge or Mediator must immediately destroy the Mediation documents after the completion of the Mediation. The time limit for Mediation is 30 days from the determination of the Mediation order, Mediation can be extended for 30 days on the basis of the consent of the parties and an extension must be requested from the Examining Judge.

The stages of the Mediation Process are informal stages in the sense that they are not sequentially regulated in the Supreme Court Regulation of the Republic of Indonesia No. 1 of 2016, but there are several stages that are habitually carried out. At the first meeting of Mediation, the parties were re-explained regarding the provisions of Mediation and also agreed on the rules of Mediation by the parties, this is related to the next Mediation meetings or the preparation of the Mediation meeting schedule. The agreement between the parties and the mediator is not regulated sequentially in the Supreme Court of the Republic of Indonesia Regulation No. 1 of 2016, but there are several things that are regulated in PERMA, including;

In Article 24, PERMA RI No. 1 of 2016, namely within 5 (five) days from the determination of the Mediator, the Parties can submit the Case Resume to the Mediator and other Parties. This case resume contains about the sitting of the case and what settlement or reconciliation effort is sought. Responding to the Case Resume submitted by the parties, the Mediator tried to find a common ground between the wishes of the parties. The submission of the Case Resume is intended so that the parties and mediators can understand the dispute that will be mediated,

this will help the smooth Mediation Process("Mediation of Dispute Resolution Through a Consensus Approach - Takdir Rahmadi," 2010). The Case Resume may contain an Offer for Mediation Settlement, which is the principal wish of the Parties to resolve the Case.

3) Mediation Reaches an Agreement

If mediation does not result in a peace agreement, it must be formulated in writing and signed by the parties and mediator. If the mediation is represented by a legal representative, the parties are obliged to state in writing the agreement reached. The parties are obliged to appear back to the judge at the predetermined hearing to notify. In a peace agreement to the judge to be strengthened in the form of a peace deed (Article 27 of PERMA RI No.1 of 2016 concerning Mediation Procedures in Court). There were 24 cases that were successfully mediated at the Banyumas District Court throughout 2020 (Article 32 of PERMA RI No.1 of 2016 concerning Mediation Procedures in Court).

4) Mediation Doesn't Reach an Agreement

If the mediation does not reach an agreement, the mediator is obliged to declare in writing that the mediation process has failed. At each stage of the examination of the case, the judge examining the case is still authorized to seek peace until before the pronouncement of the verdict. If mediation fails, the statements and acknowledgments of the parties in the mediation process cannot be used as evidence in the trial process.

5) End of Mediation

Similar to negotiations, the end of mediation can be influenced by two circumstances, namely first, successful mediation with the creation of a written agreement as evidence of peace between the parties. Second, mediation was unsuccessful so that a written agreement was not reached as evidence of peace. When the mediation process carried out by presenting a third party mediator is in one of these circumstances, then the mediation can be said to have ended. This means that no written agreement is reached as proof of the success or failure of the mediation process.

2. The Role and Function of Mediators in Assisting in the Resolution of Civil Cases in Court

Mediation is one of the alternative dispute resolution that uses the *win win solution* with a simpler process and way in order to provide more satisfactory access to justice to justice-seeking parties with the help of a mediator as a reservoir and channel of aspirations in an effort to find the best dispute resolution for both parties (Ompusunggu, 2020).

In principle, the current mediation is led by a mediator. The mediator itself can be a mediator from among judges, it can be a mediator outside of judges who have been certified as a mediator and registered with the court concerned. Even though the mediator has a certificate, he is not registered as a mediator in the relevant court, so he cannot act as a mediator in the district court concerned.

In PERMA No. 1 of 2008, there is no obligation for judges to give explanations about mediation, but in PERMA No. 1 of 2016, it has been regulated, there is even a kind of blank issued by the Supreme Court which essentially states that the panel of judges at the beginning of the trial must provide an explanation to the parties about the importance of the mediation process.

The role of the Mediator is to lead the mediation process. He has a very important role in the mediation process because the mediator plays the role of the person who leads the mediation which in principle directs the mediation process like, he provides

a kind of view to the parties, both the plaintiff and the defendant, about what is meant by mediation, what kind of mediation offers are desired by the parties. So the role of the mediator is very important because mediation will not work without a mediator.

The success or failure of mediation is also very much determined by the role shown by the mediator. The mediator plays an active role in bridging a number of meetings between the parties, guiding the meeting and controlling the meeting, maintaining the continuity of the mediation process and demanding that the parties reach an agreement with the mediator as a neutral third party serving the interests of the parties to the dispute. The mediator must build positive interaction and communication, so that he is able to absorb the interests of the parties and try to offer alternatives in fulfilling these interests.

In guiding the communication process, the mediator also directs the parties to discuss gradually the efforts that may be taken by the two in order to end the dispute. There are several mediator roles that are often found when the mediation process is ongoing. These roles include(Abbas;, 2011):

1) Fostering and maintaining confidence between parties
2) Explain the process and educate the parties in terms of communication and strengthen a good atmosphere.
3) Helping the parties to face the situation or reality
4) Teaching parties in the process and bargaining skills
5) Helping parties gather important information, and create options to facilitate problem solving.

The role of the mediator will be realized if the mediator has a number of skills. This expertise is obtained through education, training and a number of experiences in resolving conflicts or disputes. The mediator as a neutral party can display the role according to his capacity. Mediators can carry out their roles ranging from the weakest role to the strongest role. There are several mediator roles that are included in the weakest and strongest roles.

These roles show the high and low level of capacity and skill possessed by a mediator. The mediator displays the weakest role when in the mediation process, he only does the following:

1) Host a meeting
2) Lead discussions
3) Maintain and maintain rules so that the negotiation process takes place properly
4) Controlling the emotions of the parties
5) Encouraging parties who are less able to express their views.

The mediator who displays a strong role, when in the mediation process he is able to do the following things:

1) Prepare and take meeting minutes
2) Formulating a common point of agreement from the parties
3) Help the parties realize that disputes are not a fight to be won, but that they must be resolved
4) Develop and propose alternative problem-solving
5) Helping parties analyze problem-solving alternatives
6) Persuading the parties to accept certain ususlan in the context of dispute resolution.

The roles mentioned above must be well known by a person who will be a mediator and a judge who is a mediator in the Court in dispute resolution. The mediator must try to do his best so that the mediation process runs optimally so that the parties are satisfied with the decision they made with the help of the mediator.

A mediator as a mediator in the mediation process has its own functions as a mediator as follows:

1) Improving the weaknesses of communication between the parties where there are usually obstacles and psychological barriers.
2) Encourage the creation of a conducive atmosphere to start fair negotiations.
3) Indirectly educate the parties or provide insight into the ongoing negotiation process and substance.
4) Clarifying substantial issues and interests of the parties (*Mediation Procedure Law in Civil Cases in the General Court and Religious Courts: According to PERMA No.1 of 2008 concerning Mediation Procedures in Courts / D.Y. Witanto | Library of Sultan Syarif Kasim State Islamic University Riau*, 2012). ”

Regarding the role and function of mediators which are very important in the mediation process in the District Court or Religious Court, the Supreme Court is expected to immediately hold trainings for judges in the District Court and Religious Courts in the regions, so that the judges who are moderators get enough insight to carry out mediation, the mediator judges are expected to learn more about mediation. Considering that the time used for mediation with the moderator from within the court is only 40 days, it is hoped that the mediator judges can develop the right strategy so that they can make better use of the time.

In the process of a mediation, the mediator carries out the role of mediating the parties to the dispute. This role is realized through the role of a mediator who actively assists the parties in providing a correct understanding of the dispute they are facing and providing alternatives, the best solutions for dispute resolution that must be complied with.

The roles mentioned above must be well known by a person who will be a mediator and a Judge who is a mediator in the District Court or in the Religious Court in, for example, about the settlement of joint property disputes. The mediator must try to do his best so that the mediation process runs optimally so that the parties are satisfied with the decision they made with the help of the mediator.

3. Factors Hindering Mediators in Resolving Civil Cases in Court

Based on the analysis of various scientific journals both in the Religious Court and in the District Court, it can be analyzed that the number of civil cases that have been successfully mediated is still low when compared to the civil cases that have been entered. The success rate of mediation in resolving civil cases in religious and state courts is still low due to the legal culture of the community, especially those who litigate in court in the mediation process, which is relatively low, among which can be seen from mediators who do not play a maximum role in the mediation process and or legal representatives who handle cases always do not want to bring together the principal (*in person*)) who filed a lawsuit to attend the mediation process in court. The lawyer usually no longer wants to reconcile, which results in the mediation process not being optimal, so that in two or three meetings it can be concluded that the mediation carried out has failed. Also, court judges already have a decisive nature and culture in handling various civil cases.

The failure of mediation is also because the parties feel that their legal interests are not met, as a result there is no meeting mind and agreement to solve the problem on the basis of the principle of win-win solution. The obstacles in the mediation process so that they do not find common ground are (Anindito et al., 2022):

1) The parties are stubborn.
2) The parties prioritize self-esteem.
3) The parties are selfish (do not want to give in).
4) The demands of the parties are too high.

The factors that hinder the mediation process include:

1) Time limitations are due to the time taken up by the mediator to complete the task as a case solver and the lack of skills as a mediator.
2) Mediators who still do not have competence in their fields. Because the competence possessed is important as a provision for mediators to resolve disputes.
3) Obstacles to the success of mediation also exist because of the high prestige factor of one party, especially when it comes to property and self-esteem.
4) There are lawyers who do not fully support the mediation process. The lawyer usually instigates the disputing party not to attend the mediation, because the honorarium factor that will be received by the lawyer will be much smaller if the case continues to the trial, if a case is completed at the mediation stage means that the frequency of the lawyer's visit to the trial is cut and affect the honorarium received(Dwi Wiwik Subiarti, 2018).
5) The parties no longer want to hold a mediation hearing. Usually one of the parties is not present at the mediation summons because they want a direct decision from the mediator to make a written recommendation only. In addition, some parties do not want to provide a chronology of their problems in writing or orally, so written recommendations are only made based on one-sided data (Dwi Wiwik Subiarti, 2018).

4. Solutions in Dealing with Mediator Obstacles in Efforts to Resolve Civil Cases in Court

Regarding the obstacles that exist in the Religious Court and the District Court, the solution that is able to answer or overcome almost all of these obstacles is based on Article 13 paragraph (1) of PERMA No.1 of 2016 basically a Mediator is a person who is not a Judge who has obtained and obtained a Mediator certificate from an institution that has been accredited by the Supreme Court, but there is an exception to this article which in the previous regulation, namely PERMA No. 1 of 2008 Article 5 paragraph (2) is also regulated, where it provides leniency if there is no certified Mediator in a judicial environment, then the Judge who is in the judicial environment based on the decision of the Chief Justice can become a Mediator. As stated in Article 13 paragraph (2) of PERMA No. 1 of 2016, that: "Based on the decision of the chairman of the Court, a non-certified Judge can carry out the function of a Mediator in the event that there is no or there is a limit to the number of certified Mediators". However, by looking at the data that there are no Mediators outside the courts in the Religious Courts or District Courts, while the Mediator certified Judges are only 1 (one) out of 7 (seven) Judges on duty and with a large number of cases. So that from this causes an imbalance between the number of Judges and the number of cases, it is indeed better for

mediators outside the court to be more empowered to help realize the goals of PERMA No. 1 of 2016, especially reducing the accumulation of cases in the court and is expected to be able to increase the success of mediation in the Religious Court or District Court.

CONCLUSION

1. The implementation of Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Religious Courts or District Courts has been carried out in accordance with applicable provisions starting from the following stages: pre-mediation stage, mediation process, mediation reaching an agreement, mediation not reaching an agreement, and the end of mediation.
2. The mediator has the role of a neutral party who can display the role according to his capacity with a number of skills, which are obtained from education, training and a number of experiences in resolving conflicts or disputes. While the function of the Mediator can correct various weaknesses in communication between the parties where there are usually obstacles and psychological barriers, encourage the creation of a conducive atmosphere to start negotiations, educate the parties or provide insight into the ongoing negotiation process and substance, clarify substantial issues and interests of each party.
3. The obstacles in the mediation process found were because the parties felt that their legal interests were not met, as a result there was no *meeting mind* and agreement to resolve the problem on the basis of the principle of *win-win solution.* The obstacles in the mediation process so that they do not find common ground are: The parties are stubborn, prioritize self-esteem, selfish (unwilling to give in) and the demands are too high.
4. The solution that is able to answer or overcome almost all of these obstacles is based on Article 13 paragraph (1) of PERMA No.1 of 2016 basically a Mediator is a person who is not a Judge who has obtained and obtained a Mediator certificate from an institution that has been accredited by the Supreme Court, but there is an exception to this article which in the previous regulation, namely PERMA No. 1 of 2008 Article 5 paragraph (2) is also regulated, where it provides leniency if there is no certified Mediator in a judicial environment, then the Judge who is in the judicial environment based on the decision of the Chief Justice can become a Mediator.

Suggestion

The author's suggestion to optimize the role of the Mediator in the Court in civil cases includes the criteria for determining a mediator who is professional and has a high *willingness* in order to be able to invite the parties to be able to reconcile, in addition to that the supporting facilities provided to carry out Mediation must be comfortable in order to create a conducive atmosphere at the time of the implementation of mediation; to the Parties who will compete, it is necessary to instill that The existence of Mediation can benefit the Parties, especially because they will get legal certainty, gain a sense of justice, and a fast, simple, and low-cost trial will be realized.

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