

## Dispute Resolution Through Mediation in the Court (Court Annexed Mediation) After the Enactment of Supreme Court Regulation No. 1 of 2016

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### Abstract

This research aims to examine how the Procedure for Dispute Resolution Through Mediation in the Court and what are the consequences of the enactment of Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures. This study uses a normative method with a statutory approach and a case approach. The findings from the results of this study that with the enactment of Supreme Court Regulation No.1 of 2016, it turns out that it can accelerate the process of settling cases to 30 days and alleviate the costs of cases. Another finding is that there has been a significant increase in settlement of mediation cases compared to the enactment of Supreme Court Regulation No.1 of 2016.

*Keywords: dispute resolution, mediation*

### I. Introduction

Indonesian society has always known a dispute resolution process. Dispute resolution outside the court which is philosophically in accordance with the Indonesian philosophy. This can be seen in the Pancasila in the 4th Sila, namely: "Popularism led by wisdom of wisdom in representation.

So, in resolving dispute over basic deliberations on consensus, this principle is the highest value further elaborated in the 1945 Constitution and several laws under it.

The principle of consensus agreement is the basic value used by the parties to the dispute in finding solutions, especially outside the court. The value of consensus agreement is contested in several formal forms of dispute resolution outside the court such as mediation. Indeed, the dispute resolution process by means of mediation is nothing but in accordance with the philosophical foundation of the Indonesian people, namely family and consensus. This is in accordance with Article 33 paragraph (1) of the 1945 Constitution which reads, "The economy is structured as a joint effort based on the principle of kinship".

The presence of dispute resolution institutions is certainly very expected to be able to solve every problem and dispute effectively and efficiently. This is since the existence of the judiciary as the last bastion to seek justice in order to resolve any problems that occur as fast, simple and low-cost judicial principles is felt to be far from the expected reality. What is meant by simple, fast, and low-cost principles is that the judge in hearing a case must make every effort to resolve the case within a not too long time. Moreover, in resolving disputes that are carried out through litigation, the parties involved in the dispute will require large costs and a long time. In addition, the decisions taken by the judge are not necessarily truly fair because judges usually only have general knowledge.

Mediation in the Court came into effect in Indonesia since the issuance of the Supreme Court Regulation (PERMA) Number 2 of 2003 concerning Procedure for Mediation in Courts. Before issuing the PERMA Mediation, the Supreme Court of Indonesia had attempted to revive the peace mechanism case by the judge by issuing a Peace Circular. However, this institution is not effective because the form of the SEMA is only an appeal, not binding on the court to implement it. PERMA Year 2003 aims to perfect the Circular of the Supreme Court (SEMA) Number 1 of 2002 concerning Empowerment of the First Level Court in Applying the Peace Institution as stipulated in article 130 *Herziene Inlandsch Regulations* (HIR)

and article 154 *Rechtsreglement voor de Buitengewesten* (RBg). Article 130 HIR and 1 54 RBg as it is known to regulate peace institutions and require the judge to first reconcile the litigant parties before the case is examined.

In 2008, PERMA No.2 of 2003 was replaced with PERMA No. 1 of 2008. In PERMA No.1 of 2008, the mandatory nature of mediation in the litigation process in the Court is more emphasized. This can be seen by the article stating that the mediation process not based on PERMA was not a violation of the provisions of article 130 HIR / 154 Rbg which stated that the verdict was null and void (Article 2 paragraph (3) PERMA No.1 of 2008). After six years of the enactment of PERMA No.1 of 2008, finally the Supreme Court of the Republic of Indonesia issued PERMA No.1 of 2016.

## II. Discussion

### 2.1 Mediation Development After the Implementation of PERMA No.1 in 2016

As is known that if there is a civil dispute, then there are 2 (two) ways the parties complete the case, namely through a court and through peace outside the court.

However, after the enactment of the Supreme Court Regulation No. 1 of 2008, mediation procedures must be carried out in completing civil cases, both in the District Court and in the Religious Courts.

This mandatory mediation is carried out by a mediator (mediator judge) who will lead the course of mediation against the parties, consequently if this mediation procedure is not carried out then it is considered violating Article 130 HIR jo 154 Rbg which results in the cancellation of the judge's decision.

However, in PERMA No.1 of 2008 it does not regulate the legal requirements if the Plaintiff is unwilling to attend which causes the mediation process to fail. Therefore, in PERMA No.1 of 2016, the Plaintiff is required to attend the mediation process. If the Plaintiff is not present, the Plaintiff's claim is declared unacceptable.

With the existence of the Plaintiff's obligation to attend this mediation, it will have an impact on the increasing number of resolved mediations in West Nusa Tenggara, as shown in the table below.

Table 1. Mediation Settlement

| No | Years | Mediation Settlement Number | Total     |
|----|-------|-----------------------------|-----------|
| 1  | 2015  | 18                          |           |
| 2  | 2016  | 27                          |           |
| 3  | 2017  | 31                          |           |
| 4  | 2018  | 33                          |           |
|    |       | TOTAL                       | 109 cases |

By looking at the data above, there is an increase in the number of cases that can be resolved through mediation in all District Courts in NTB, especially since the enactment of PERMA No.1 of 2016.

Then the other side that is noteworthy is the type of case that can be solved by mediation, which can be seen in the table below:

Table 2. Type of Case

| No | Type of Case  | Total | Total     |
|----|---|-------|-----------|
| 1  | Banking   | 17    |           |
| 2. | Inheritance   | 12    |           |
| 3  | Other Civil Code (Buy and Sell, Debt Receivables, etc.) | 48    |           |
| 4. | Act against the law                                     | 32    |           |
|    | TOTAL   |       | 109 cases |

By looking at the figures above, banking problems (bad credit) are usually settled by assets/collateral but can be resolved through mediation that benefits the parties, both debtors and creditors.

Likewise, the issue of acts against law directed at the government, it turns out, can be resolved by mediation so that the Government can give a sense of justice to the community.

## 2.2 *Mediation on the Sharing of Shared Assets (Gono Gini Assets)*

One interesting case of mediation was a case of a joint property lawsuit registered with the Mataram District Court No.28 / Pdt.G / 2016 / PN.Mtr dated 16 February 2016 between Ni Nengah Reseki as the Plaintiff against Made Santiana as Defendant.

The object of the disputed claim is shared assets (property of Gono Gini) between Ni Nengah Reseki as the ex-wife of Made Santiana as the Plaintiff's ex-husband concerning property in the form of fixed objects and movable objects, namely:

- a. The yard above which stands a house located in Cahaya Jempong Asri Housing, Jalan Banda Seraya No.9 Pagutan, Mataram, certificate NO. 3840, Area 100 M<sup>2</sup>, on behalf of Made Santiana (Defendant) with the following limits:  
North side : Mr. Suhaili's house;  
East : Road  
South side : Mr. Kasim's house  
West side : Cahaya Jempong Asri Housing.
- b. A black motorcycle brand Honda Vario DR.4312 HC in 2010 on behalf of the Defendant (Made Santiana);
- c. The Daihatsu Ayla Metallic silver color Dr.1689 DD was bought in 2013 on behalf of I. Made Santiana (Defendant)

Then based on the results of Mediation based on Supreme Court Regulation No. 1 of 2016 is stated in Decision No.28/Pdt.G/2016/PN.Mtr dated 13 April 2016, then the Plaintiff and Defendant have agreed on a peace that contains the object of the dispute in the form of land and house handed over to their child I Gede Krisna Ariantara is carried out with a separate grant after the credit or installments on the object of the dispute have been paid off.

Judging from the peace from the results of the mediation, it appears that the legal principles used by the parties are based on utility, that the property is not divided according to the applicable law, namely 50%: 50%, but is really intended for the interests of the child. That is why a mediation is not solely taught to legal certainty but can use the benefit theory (Utility Theory) as taught by Jeremy Bentham.

## 2.3 *Mediation in the Settlement of the Banking Sector*

An interesting case that ends in mediation is a case of bad credit which is usually resolved by auctioning non-items (land) which are a guarantee of security in the banking sector.

But in the civil case No. 35/PDT.G.Plw/PN.Pra/2015 The CASE OF CREDIT is not completed by auction but by mediation as follows:

1. Bank Bukopin Mataram (Opposite. 1) has given a loan to H. Lalu Mahirudin (Defendant. 2) with the approval of his wife Hj. Nirwati (Defendant 3) in the amount of Rp. 433,368,427 (four hundred million three hundred thirty thousand three hundred and sixty-eight four hundred and twenty toward rupiah) using collateral certificates of property rights Then Muhamad Nasir and Haji Lalu Tanwir (Pelawan).
2. It turned out that the loan finally had a problem or a traffic jam which resulted in the guarantee of the land rights of the Opponents to be auctioned by the Bank Bukopin. The amount of credit that cannot be repaid by the Defendant.2 and the Defendant.3 is Rp.278,306,300 (principal debt); Rp. 22,199,395 (principal arrears); Interest Arrears Rp. 85,529,907; Late fine Rp.69,532,220;
3. Through a mediation session, the dispute was successfully resolved with peace as stated in the Peace Deed of 14 December 2015:

Another case that is almost the same in a banking dispute is a dispute with No. Case 79/Pdt.G/2016/PN.Sel between Ny.Yayuk Rieta Miningsih (Plaintiff-1) and Makbul (Plaintiff-2) against Bank BTPN.Tbk as Defendant.

The problem arises because the Plaintiff is a debtor from the Defendant borrowing money from the Defendant in accordance with the Credit Act made by Notary 149 on May 18, 2011. The Plaintiff sued the BTPN Bank due to the Defendant's land and buildings being auctioned by the Defendant because the Plaintiffs were in arrears in the Defendant Rp. 650,000,000 (sixteen fifty million rupiahs).

Therefore, through mediation by a mediating judge, the lawsuit was agreed to be resolved through peace on 31 January 2017 in the contents

The Plaintiffs are willing to pay off the remaining debt of Rp.650,000,000, in the following ways:

- a. In January the Plaintiff (debtor) will pay Rp. 50,000,000 (fifty million rupiah);
- b. In February to May 2017, the Plaintiff (debtor) will pay monthly Rp. 10,000,000 (ten million rupiah);
- c. The remaining debt is fully repaid in June 2017.

Other cases of piracy that are settled by mediation are Case No.32/Pdt.G/2017/PN.Dpu between Plaintiff Said H Abdurahman (as debtor) against PT. Sinar Mas Bima Bank as Defendant (creditor).

The Plaintiff has a loan to the Defendant in the amount of Rp.413,003,776 (four hundred thirteen million three thousand seven hundred and forty-six). The loan includes principal loans plus interest that is congested so that the Defendant is forced to auction the collateral.

However, through mediation in the Court, the Collateral Property of the Plaintiff (debtor) shall not be auctioned with the peace agreement as follows:

1. The Plaintiff (debtor) is willing to pay installments in the amount of Rp. 2,500,000 every month for 9 months starting to be paid on March 25, 2018 until November 28, 2018. So that the total totals are Rp.22,500,000 (twenty-two hundred hundred thousand rupiah); So, the remaining loan is Rp. 390,505,746 (tugatus Ninety million five hundred five thousand seven hundred forty-six rupiah).
2. The Plaintiff is given the opportunity to search for the buyer himself for the land that is pledged to pay the remaining debts during the repayment period above to pay off the remaining payment of his credit.
3. If for 9 months plus 7 days the Plaintiff is unable to sell the collateral property/property himself, the Defendant will auction the collateral object/land using the highest assets.

Furthermore, an interesting case involving the banking sector (Bank BNI Syariah and insurance company PT Asuransi BRI Life with the Nasbah).

This case started when the customer of the Dompu Branch BNI Syariah bank gave credit to Ridho, then to guarantee the repayment of the loan Mr. Ridho insured himself to PT.Asuransi Life as a creditor partner (Bank BNI Syariah). The purpose of closing the insurance is to ensure that when Ridho dies, the remaining credit will be repaid or borne by PT. Asuransi Life.

However, when the credit was running, Ridho passed away, but PT. Asuransi BRI Life was not willing to pay for the insurance coverage in full because it was considered as being confined had a disease. So, the practice of insurance business practices nowadays contains a lot of "hoaxes", because general health checks should be done before someone closes the insurance agreement. But strangely the problem of the disease of the insurance customers will be questioned after the insured dies.

This dispute finally led to the Dompu District Court with the number 33/Pdt.G/2016/PN.DPU dated 28 November 2016. The mediation settlement was carried out because the Insurance party was willing to provide compensation even though not as much as the compensation that must be paid to the heirs.

Based on the description above, the settlement of cases through the mediation process after the enactment of PERMA No.1 of 2016 has brought progress and principles of settlement more quickly, simply and with low costs.

If you look at Justice Theory, the solution used in this thesis to analyze the problems in this study is clearly through mediation a sense of justice is created for the parties, both for the plaintiff and the defendant.

### **III. Conclusion And Recommendation**

#### *3.1 Conclusion*

From the overall discussions and descriptions that have been stated above, a conclusion can be drawn from the problems discussed are as follows:

1. The procedure for resolving disputes through mediation in the court as explained, there are two stages that must be passed by the parties to the dispute.
  1. Pre-mediation stage:  
At this stage the judge requires the parties to take mediation. The judge must explain the mediation procedure to the parties and the parties choose the mediator on the list of available mediators. Judges postpone the trial process to allow for a mediation process no later than 30 working days.
  2. Mediation Stage:  
Within a maximum of 5 working days after the appointment of mediators the parties must submit a case resume to the mediator. The mediation process lasts a maximum of 30 days and the mediator must prepare a schedule for meetings with the parties. The mediator is obliged to declare that the mediation has failed if one of the parties or his attorney has not attended the mediation meeting twice in a row. If the mediation produces a peace agreement, it must be formulated in writing and signed by the parties and mediators. Finally, the parties can submit an agreement to the judge to be strengthened in the form of a Peace Deed.
2. Quantitatively, the number of resolutions through mediation in NTB since 2016 has increased significantly, and qualitatively can provide a sense of justice for the people who have disputes both in banking cases, inheritance cases inherited and cases of acts against law committed by the government.

### 3.2 Recommendation

To overcome at least minimize the problem of mediation in each court, then there are some suggestions as follows:

1. It is recommended that the general court or religious court implement the law to maximize the potential available in PERMA Number 1 of 2016 in order to minimize the occurrence of accumulation of cases in each court in Indonesia.
2. For the sake of a smooth mediation process, at least the parties are expected to voluntarily attend and participate in mediation in good faith as specified in PERMA Number 1 of 2016 concerning Procedure for Mediation in Courts.

## References

### Books

- [1] Amriani, Nurnaningsi. 2012. *Mediasi Alternatif Penyelesaian Sengketa Perdata Di Pengadilan*. PT, Raja Grafindo Persada, Jakarta.
- [2] Bambang Sutiyoso. 2006. *Penyelesaian Sengketa Bisnis*. Citra Media, Yogyakarta
- [3] Bambang Sutiyoso. 2008. *Hukum Arbitrase Dan Alternatif Penyelesaian Sengketa*. Gama Media, Yogyakarta.
- [4] B. N. Marbun. 2006. *Kamus Hukum Indonesia*, Sinar Harapan, Jakarta.
- [5] D. Y. Witanto. 2016. *Hukum Acara Mediasi Dalam Perkara Perdata di Lingkungan Peradilan Umum dan Peradilan Agama Menurut PERMA Nomor 1 Tahun 2008 tentang Prosedur Mediasi di Pengadilan*. Alfabeta, Yogyakarta.
- [6] Dwi Rezki Sri Astarini. 2003. *Mediasi Pengadilan Salah Satu Bentuk Penyelesaian Sengketa Berdasarkan Asas Peradilan Cepat, Sederhana, Biaya Ringan*. PT. Alumni, Bandung.
- [7] Elfaniah Zuhria. 2016. *Peradilan Agama Indonesia*. 2th Print. Setara Pers Group, Malang.
- [8] Fatahillah A. Syukur. 2012. *Mediasi Yudisial Di Indonesia*. Mold 1. Mandar Maju, Bandung.
- [9] Gatot Soermanto. 2006. *Arbitrase Dan Mediasi Di Indonesia*. PT Gramedia Pustaka Utama, Jakarta.
- [10] H. Zaenal. 2016. *Pengantar Ilmu Hukum*. 3th Printing. P.T Raja Grafindo, Jakarta.
- [11] Handi Raharjo. 2016. *Sistem Hukum Indonesia*. Mold 1. Pustaka Yustisia, Yogyakarta.
- [12] Maskur Hidayat. 2016. *Strategi Dan Taktik Mediasi*. Mold 1. Kencana, Jakarta.
- [13] M. Natsir Asnawi. 2016. *Hukum Acara Perdata Teori, Praktik dan PERMA salah satunya di Peradilan Umum dan Peradilan Agama*. Mold 1. UII Press, Yogyakarta.

- [14] Rachmadi Usman. 2012. *Mediasi Di Pengadilan*. Mold 1. Sinar Grafika, Jakarta Timur.
- [15] Rachmadi Usman. 2003. *Pilihan Penyelesaian Sengketa di Luar Pengadilan*. PT. Citra Aditya Bakti, Bandung.
- [16] Soesilo Prajogo. 2007. *Kamus Hukum Internasional dan Indonesia*. Wacana Intelektual, Jakarta.
- [17] Soetrisno S SH, MH. 2010. *Malpraktek Medik Dan Mediasi Sebagai Alternatif Penyelesaian Sengketa*. Telaga Ilmu, Tangerang.
- [18] Susanti Adi Nugroho. 2015. *Penyelesaian Sengketa Arbitrase dan Penerapan Hukumnya*. Kencana, Jakarta.
- [19] Syarizal Abbas. 2009. *Mediasi Dalam Perspektif Hukum Syariah*. Hukum Adat dan Hukum Nasional, Kencana, Jakarta.
- [20] Takdir Rahmadi. 2010. *Mediasi Penyelesaian Sengketa Melalui Pendekatan Mufakat*. Raja Grafindo Persada, Jakarta.
- [21] Umar Said Sugiarto. 2015. *Pengantar Hukum Indonesia*. 3th Printing. Sinar Grafika, Jakarta Timur.

### **Regulations**

- [1] Supreme Court Regulation Number 2 of 2003 concerning Procedure for Mediation in Courts
- [2] Supreme Court Regulation Number 1 of 2008 concerning Procedure for Mediation in Courts.
- [3] Supreme Court Regulation Number 1 of 2016 concerning Procedure for Mediation in Courts.
- [4] Law Number 48 of 2009 concerning General Courts
- [5] Law Number 49 of 2009 concerning Judicial Power