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JURIDICAL ANALYSIS OF MEDIATION IN THE SETTLEMENT OF DEFAULT REVIEWED FROM SUPREME COURT REGULATION NUMBER 1 OF 2016 AT THE SINGARAJA DISTRICT COURT

Gede Agil Cory Subhakti[1] , Komang Febrinayanti Dantes [2], I Nengah Suastika [3]
Faculty of Law and Social Sciences, Ganesha University of Education, Email: agilcory1@gmail.com
Faculty of Law and Social Sciences, Ganesha University of Education, Email: febrinayanti.dantes@undiksha.ac.id
Faculty of Law and Social Sciences, Ganesha University of Education, Email: nengah.suastika@undiksha.ac.id

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Corresponding Author: Gede Agil Cory Subhakti, *email: Agilcory1@gmail.com*

Abstract

This research aims to find out (1) how the process of resolving mediation in default cases post PERMA Number 1 of 2016. (2) How effective mediation is in default cases post PERMA Number 1 of 2016 at the Singaraja District Court. The type of research used in this writing is normative legal research, normative legal research, namely research carried out by examining a system of laws and regulations that apply or are used in a particular legal problem. Not only legislation but also data collection with this type of normative research can use other library materials. Normative legal research functions to provide juridical arguments when there is a vacuum, ambiguity and conflict of norms, so that legal research plays a role in maintaining critical aspects of legal science as a sui generis normative science. There is no need to doubt the commitment of the Supreme Court of the Republic of Indonesia regarding the policy of implementing mediation for resolving disputes or civil cases in the courts of first instance, this can be clearly seen through several changes or revisions to the Perma concerning Mediation Procedures in Courts. The latest change is Perma Number 1 of 2016 concerning Mediation Procedures in Court. This commitment to implementing mediation is not only related to the interests and obligations of judges to provide a sense of peace for the disputing parties, but also provides practical needs in terms of implementing the principles of justice that are fast, low cost and simple, as well as to reduce the buildup of cases at the cassation and cassation levels. judicial review.

Introduction

The social dynamics that occur today continue to develop so rapidly that it has triggered the formation of fierce competition schemes in all aspects of life involving betting and social forces. The more difficult it is for humans to meet the needs of life, the more factual symptoms will be shown to the emergence of seeds of conflict in the social system which in the next stage will encourage the birth of certain concepts, such as egoism, materialrealism, and individualism in the structure of society globally. Social conditions like this will be one of the causes of conflicts and tensions as a result of the disruption of social balance and the loss of wisdom values in the scope of interaction between individuals. Opposition, disputes, and argumentative debates are one of the efforts made by humans to maintain their stance and recognition in the process of achieving an interest. Disputes occur because there are several interests that clash with each other. Counterproductive behavior increasingly creates a tendency for each individual in conflict to survive and try to control each other with all efforts of diplomacy, negotiation and by using formal legal procedures that have been provided by the state through litigation forums.

The more complex human interests in a civilization, the higher the potential for disputes that occur between individuals and between groups in a certain social population. The occurrence of disputes is difficult to avoid and even the level of probability cannot be eliminated to the zero point. The law and its supporters as part of the social apparatus that has the nature of regulating and creating order are in fact unable to suppress the expansion of social phenomena that show potential conflict. Efforts made by humans to maintain social harmony are by accelerating the resolution of disputes through simpler, more accurate and directed methods. Provisions regarding mediation in court are regulated in PERMA RI No. 1 of 2008 concerning mediation procedures in court. This PERMA places mediation as part of the process of resolving cases submitted by the parties to the Court. The judge does not directly resolve the case through the judicial process (litigation), but must first seek mediation. Mediation is an obligation that must be taken by judges in deciding cases in court (Abbas, 2009: 121). Mediation has an important position in PERMA No. 1 of 2016, because 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, the lawsuit is declared unacceptable by the Examining Judge and is also subject to the obligation to pay mediation fees (article 22 paragraph 1 and paragraph 2). Therefore, the mediator in considering his decision must state that the case concerned has been sought for peace through mediation by issuing a final decision stating that the lawsuit is unsuccessful or unacceptable accompanied by a punishment for payment of mediation fees and case costs.

The word default comes from the Netherlands, namely bad achievement (Compare: wan beheer which means bad management, wanddad bad deeds) (Yahman, 2014: 30). It can be understood that default is an act of breach of promise committed by one of the parties that causes losses. The settlement of default cases in Indonesia can be resolved through litigation and non-litigation. Settlement of cases through litigation is through the court route. Meanwhile, non-litigation is the settlement of cases by out-of-court channels or commonly called ADR (Alternative Disputes Resolution) with various settlement mechanisms such as negotiation, mediation, conciliation, and arbitration (Achmad Romsan, 2016: 12). One of the settlements of default cases is through the Mediation process. In dispute resolution, it is a win and a loss. Meanwhile, dispute resolution outside the court is considered faster and of course with a shorter time. The out-of-court dispute resolution

process is due to unresolved settlements in court. Various disputes that occur in court include land disputes, customary disputes, default disputes, and land disputes. A default dispute is a dispute that occurs when the debtor is unable to keep a promise in fulfilling a promise that has been made. Disputes certainly cause losses that lead to disputes that cannot be handled. A case of default occurs when one of the parties to a contract does not fulfill the obligations that have been agreed upon in the contract. Default can involve different types of contracts, such as sales and purchase contracts, rental contracts, employment contracts, or service contracts. The form of mediation in a default case is an attempt to resolve disputes peacefully between the parties involved without going through the courts. Mediation aims to reach an agreement between the parties so that the problem can be resolved in a mutually beneficial way and avoid greater conflicts. The mediation process is a popular alternative in resolving default cases because it can save costs and time associated with the court process. In addition, mediation also provides an opportunity for the parties involved to maintain better business or personal relationships in the future. This process can be said to be included in the non-litigation and litigation pathways as stipulated in PERMA Number 1 of 2016.

The Singaraja District Court is one of the courts in Indonesia located in the city of Singaraja, Bali. The history of this court dates back to the Netherlands colonial period in the early 20th century. Initially, in Singaraja there was a court called Landraad. Landraad is a Netherlands colonial court that has the authority to adjudicate criminal and civil cases in the region. The court was established in 1912 and operates under the legal system of the Netherlands East Indies. After Indonesia gained independence in 1945, the judicial system in Indonesia underwent changes. In 1950, Landraad Singaraja was transformed into a district court that adjudicated criminal and civil cases. The Singaraja District Court is part of the court under the Supreme Court of the Republic of Indonesia. Since then, the Singaraja District Court has continued to operate and play an important role in law enforcement in the Singaraja area and its surroundings. These courts adjudicate various types of cases, including criminal, civil, and state administrative cases. As time goes by, the Singaraja District Court continues to experience development and improvement in organizing the judicial process. In 2019, this court has also implemented an electronic-based judicial system to increase efficiency and transparency in case handling.

Research Methods

Research in general language refers to the search for knowledge. Research is the process of making statements and then correcting or omitting some of them for other statements that are guaranteed to be stronger. Research method means the right way to carry out an activity to search, record, formulate, and analyze to compile a report. Research methods in a scientific work have an important role as a determinant of whether a research can be said to have really complied with scientific requirements. The type of research used in this writing is normative legal research, normative legal research is research that is carried out by examining a system of laws and regulations that apply or that is used in a certain legal problem. Not only legislation but also data collection with this type of normative research can use other library materials (Ishaq, 2017: 20). Normative legal research functions to provide juridical arguments when there is emptiness, ambiguity, and normative conflict, so that legal research plays a role in maintaining the critical aspect of legal science as a sui generist normative science (Diantha, 2017: 12). In this study, a qualitative descriptive approach is used, which is a research process that produces descriptive data either in the form of writing or expressions obtained as well as describing the conditions or symptoms that exist in society.

Descriptive research is a form of research aimed at describing existing phenomena, both natural and man-made phenomena. The phenomenon can be in the form of form, activity, characteristics, changes, relationships, similarities, and differences between one phenomenon and another. Qualitative descriptive research is research that seeks to describe and interpret something, for example existing conditions or relationships, developing opinions, ongoing processes, consequences or effects that occur, or about ongoing trends.

Results and Disscusion

General Process of Mediation

Mediation as stipulated in Supreme Court Regulation Number 1 of 2016 Article 1 letter (a) concerning Mediation Procedures in Mediation Courts is a way of resolving disputes through a negotiation process to obtain the agreement of the Parties with the assistance of a Mediator. Mediation is an effort to reconcile the Parties in accordance with the principles of Justice and the Mediation procedure taken by the Parties can achieve peace and benefit for the Parties to the case. The Mediation process in Court is regulated in Article 130 of the Civil Service and Article 154 of the Civil Rights Act which regulates peace institutions. The judge is obliged to first reconcile the litigants before the case is examined. Mediation Procedures are regulated in Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Court which replaces Supreme Court Regulation Number 1 of 2008 concerning Mediation Procedures in Court. There are several differences regulated in Supreme Court Regulation Number 1 of 2008 concerning Mediation Procedures in Court and Supreme Court Regulation Number 1 of 2016. According to Wirhanuddin, resolving disputes is indeed difficult to do, but it does not mean that it is impossible to realize. Mediation can provide a number of benefits including (Wirhanuddin, 2014: 33-35):

1. Mediation is expected to resolve disputes quickly, relatively inexpensively compared to taking these disputes to court or to arbitration institutions.
2. This mediation gives the parties the ability to control the process and outcomes.
3. Mediation focuses the attention of the parties on their real interests and on their own emotional or psychological needs, so that mediation is not only focused on their legal rights.
4. Mediation provides an opportunity for the parties to participate directly and informally in resolving their disputes
5. Mediation can change the outcome, which in arbitration and litigation is difficult to predict, with certainty through a *consensus*.

The high level of possibility of implementing the agreement so that the relationship between the parties to the dispute in the future can remain well established. Mediation regulated in Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Court cannot be applied in all judicial spheres, but only applies in the litigation process in the Court only within the General Court and Religious Court. Every civil case that enters the Court is required to undergo the Mediation process according to Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Court Article 4 paragraph (1) All civil disputes submitted to the Court include cases of resistance (verzet) to verstek decisions and resistance of litigants (partij verzet) and third parties (derden verzet) to the implementation of decisions that have permanent legal force, must first seek a settlement through Mediation, unless otherwise specified based on this Supreme Court Regulation (Ibid, p. 6). If there are no judges, advocates, legal academics, and non-legal professions who are certified mediators

in a court area, the judge in the court environment concerned is authorized to carry out the function of mediator (B.N Marbun, 2006: 168).

The Role of Legal Counsel in the Mediation Process in accordance with (PERMA) Number 1 of 2016

Advocate in terms is a person who carries out advocacy activities, namely an activity or effort made by a person or group of people to facilitate and fight for the rights, as well as the obligations of a client of a person or group based on the rules applicable according to Law No. 18 of 2003 concerning Advocates, including:

1. Advocate is a person who is in the profession of providing legal services, both inside and outside the court who meets the requirements based on the provisions of this Law.

2. Legal Services are services provided by Advocates in the form of providing legal advice, legal assistance, exercising power, representing, accompanying, defending, and carrying out other legal actions for the client's legal interests.

In order to provide assistance for the litigants, the Attorney General must meet the requirements to become a Legal Attorney as described in Law Number 18 of 2003 concerning Advocates Article 3 paragraph (1) To be appointed as an Advocate, the following requirements must be met:

a. citizens of the Republic of Indonesia;
b. residing in Indonesia;
c. not having the status of a civil servant or state official;
d. be at least 25 (twenty-five) years old;

The role and function of advocates can be seen in the Advocate Law. In article 1 paragraph (1), the provisions on the functions and roles of Advocates in full reads as follows: "Advocates are persons who are professionals in providing legal services both inside and outside the court who meet the requirements based on the provisions of this Law." From this definition, it can be seen that the role and function of an advocate includes work that is either carried out in court or outside the court on criminal or civil law issues, such as accompanying clients in investigations and investigations (in the prosecutor's office or in the police) or in front of the court (V. Harlen, 2011: 20). The word "Advocaat" originally comes from the Latin word "advocatus" which means: a legal expert who provides assistance or assistance in legal matters. This assistance or assistance is in the nature of giving advice as good services, in its development it can then be requested by anyone who needs it, needs it to be in the law. The provision of legal stones is of course by getting an honorarium or reward for legal services received based on an agreement with the client or providing free legal services to clients who cannot afford it.

Clients can be persons, legal entities or other institutions that receive legal services from an advocate.42 An advocate in United Kingdom is a person who does this professionally in a court of law, which means a person who works as a legal expert in the Court. Although actually the word advocate comes from the meaning of advice which means advice. If he is a legal advisor, he is often called a legal adviser. In Netherlands, the word advocaat means procereur meaning lawyer, while in French, advocat means barrister or counsel, pleader which in United Kingdom all these words refer

to activities in the Court (A. Sukris Sarmadis, 2009: 1). However, according to Subekti, he distinguishes the term Advocate from prosureur. Subekti argued that an Advocate is a defender or advisor, while a procedural law expert is a procedural law expert who provides services in filing a case to the Court and representing the people who litigate before the Court.

Mediation Settlement Process in Default Cases Post PERMA Number 1 of 2016

Dispute resolution can be carried out through litigation and non-litigation processes. Dispute resolution through the litigation process is a dispute resolution process through the courts. Meanwhile, settlement through non-litigation is a dispute resolution process that is carried out outside of trial or often referred to as alternative dispute resolution. There are several ways of non-litigation dispute resolution, one of which is through Mediation. The provisions of mediation are regulated in the Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2016 concerning Mediation Procedures in Court (hereinafter referred to as PERMA No. 1/2016) which is a replacement for the Supreme Court Regulation Number 1 of 2008. In dispute resolution, the mediation process must be carried out first. If the mediation procedure is not followed, the dispute settlement violates the provisions of article 130 of the HIR and/or article 154 of the Civil Rights Act, which results in a null and void decision. According to PERMA No. 1/2016, mediation is a way to resolve disputes through a negotiation process to obtain an agreement between the parties with the help of a mediator.

Procedure - Mediation Procedure

The procedure in the Court in Article 35 states that mediation is separate from the litigation process, meaning that the mediation process has not been included in the substance of the trial, because basically the judge being the mediator is different from the judge examining the case but the authority has become the authority of the court. The mediation process is divided into three stages, these three stages are the paths that will later be taken by the mediator and the parties in resolving the dispute, namely:

1) Pre-Mediation Stage

   The pre-mediation stage is the initial stage where the mediator prepares steps and preparations before mediation begins. At this stage, the mediator takes several steps, including: contacting the parties, digging up preliminary information, agreeing on the place and date of the meeting and building a sense of confidence to discuss the dispute with the parties

2) Mediation Implementation Stage

   At the stage of implementing mediation, the parties face each other and start the mediation process. Starting with the mediator giving an introductory speech to the parties, inviting them to sit down and give greetings, then the mediator introduces his or her identity and role in mediation. Furthermore, at the stage after the introduction, the mediator explained his position in the dispute resolution mediation process to help the parties find a way to solve the problems they are facing. After this stage is

completed, it is continued by explaining the problems of each party. Then the mediator maps the root of the problem and compiles it and continues with the discussion stage.

In this discussion, the mediator directs the parties to focus on the problem, after which the parties are asked to convey their demands to the mediator. And then the mediator gives options to the parties and the parties also provide their answers or other options, if the parties agree to the agreement, it will be stated in an agreement, and will be a prerequisite for the mediation contract. Before the parties sign the contract, the mediator will read back the agreement between the parties so that they really understand it. The last step in the implementation of mediation is closing, the mediator congratulates both parties on their agreement to make a resolution or dispute resolution.

3) Final Stage of Implementation of Mediation Results

At this stage, the parties carry out the results of their agreement outlined in an agreement

Conclusion

The commitment of the Supreme Court of the Republic of Indonesia regarding the policy of implementing mediation for dispute resolution or civil cases in the court of first instance does not need to be doubted, this is evident through several changes or revisions to the Perma on Mediation Procedures in the Court. The last amendment is Perma Number 1 of 2016 concerning Mediation Procedures in Court. The commitment to implement this mediation is not only related to the interests and obligations for judges to provide a sense of peace for the parties to the dispute, but also provides practical needs in terms of the application of judicial principles that are fast, light and simple, and to reduce the accumulation of cases at the cassation and review levels.

However, at the level of implementation, dispute resolution through mediation forums at the first level has not been maximally implemented, the success rate of mediation from each year still ranges from 1% - 2% of the total number of civil cases resolved in the Court. The maximum settlement of civil cases through the mediation stage required by the Supreme Court in the court of first instance is due to several things; Especially related to the factor of the judge as a mediator, the first is related to the judge's interpretation of the provisions or legal rules about mediation itself, and the second is the mindset of the judge himself related to the orientation to always decide the case so that the space provided to negotiate optimally for the parties is not used. On the one hand, the fact that judges in carrying out the case mediation process tends to be pragmatic (carrying out their routine duties only, and is a formality), only implementing legal provisions, because there are rules that require there to be stages of case settlement through mediation in the court of first instance. The above is one internal factor that is an obstacle or obstacle in resolving civil disputes through mediation, while the external factor is related to, (1) lack of understanding of mediation from the parties to the case; (2) the culture of the community that prefers to directly "litigate" rather than through mediation first, as well as (3) third-party intervention factors, including legal advisors or lawyers who play a lot of roles in thwarting the mediation process in the Court, and (4) because of the lack of facilities and infrastructure to conduct more ideal mediation.

Recommendation

1. It is necessary to provide a deep understanding for judges about the importance of reconciling the parties through a mediation forum so that the parties get a balanced portion of the object in dispute.
2. For the judge appointed as a mediator, he must change his mindset that the implementation of this mediation is not just to implement an ansich regulation, but further than that is so that the settlement of disputes between the parties concerned can be carried out in a peaceful way based on the agreement of the parties.
3. It is necessary to divide the time proportionally for the mediator judges who are in charge of carrying out mediation and the time to conduct the case, if the judge who is examining and deciding the case is too many, the portion as a judge mediator must be reduced.
4. The ability of judges is needed in understanding and exploring the problems of the parties to the dispute, therefore, related to the skills of mediators, judges need to deepen the material and techniques of conducting mediation through mediation certification training.
5. It is necessary to utilize non-judge mediators in the implementation of mediation, because many judges feel that the maximum amount allocated to mediation with time to conduct case hearings is their main task

6. Even in certain cases the mediator can be more than one person, which involves elements of non-judge mediators, so that the mediators are serious in finding the best way to reconcile the parties.

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