December 9th 2016

The 2nd Proceeding

"Indonesia Clean of Corruption in 2020"

"Comparative Law System of Procurement of Goods and Services around Countries in Asia, Australia and Europe"

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Faculty of Law, Sultan Agung Islamic University
Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

UNISSULA PRESS

ISBN. 978-602-1145-41-8

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MEDIATION RECONSTRUCTION AS ONE OF THE ALTERNATIVE SETTLEMENT OF DECLINE IN THE COURTS BASED ON THE VALUE OF JUSTICE (Study at the Simalungun District Court)

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ABSTRACT

PERMA No. 1 of 2008 on court mediation procedure is a refinement of the PERMA No. 1 of 2003, concerning the mediation procedure in court. Alternative dispute resolution through mediation aimed at creating a connection or a direct connection between the parties to have the dispute. Based on the above, mediation plays an important role, but in fact the success rate of mediation in court is still very low. I researched this research establishes, that the main problem of the effectiveness of mediation in the District Court in Simalungun and Pematangsiantar, obstacles encountered in the implementation of mediation in state court in the implementation of the mediation solution.

The method used in this study is an empirical sociological research study to determine the Effectiveness of law from the perspective of the nature of this research is descriptive. The results of this study show that the effectiveness of mediation is still low to solve dispute.

Obstacles encountered in the implementation of mediation in court because the parties did not understand the goodness and benefits of mediation, the role of Advocates less supportive and limitations of a mediator professionals besides facilities mediation process and efforts to overcome it by pursuing the room and mediators were appointed based on considered able to explain the process mediation, and the factors that most substances is the factor structure of the law, legal factors and cultural factors of law, the solution in the implementation of mediation in court additional is expected establishment of the implementation of training and education to become mediators area so as to facilitate legal practitioners, legal academics and legal scholars gain training and education to be a mediator, that mediation can work as expected.

Keywords: Mediation, One Alternative, Dispute

A. Background

A big problem facing our nation is the dilemma that occurs in the field of law enforcement. On one side the quality and quantity disputes that occur in society tends to increase from time to time. While on the other hand, the court states that retain the authority according to the legislation have relatively limited capabilities, so that from these conditions there was a buildup of cases, the cause of delinquency cases at the Supreme Court level.

Law enforcement does not only occur through the judicial process (pro justitia). But it can also be through alternative dispute resolution (*alternativedispute resolution*/ADR), this practice is growing because of the judicial process increasingly complex, costly, and time consuming with the output *(output)* lose or win (win lost solution). Circumstances worsened due to various judicial practice unhealthy breach the principle of impartiality, the act of corruption, collusion and nepotism. In the alternative dispute resolution that is intended is a win-win solution.

Concept solve dispute by mediation process its uses a win-win solution of win together, has long been known in Indonesia customary law. Community tradition (law) has long been customary resolve disputes through traditional institutions, the justice of the peace of the village. Usually acting as a justice of the peace of this village is the village chief or the head of the people, which is also the leader / head of customs and religion. A person in charge of the village head not only deal with matters of government, but also has a duty to resolve disputes that arise in society (legal) customary. In other words, the position and duties of the village head was also running affairs as a justice of the peace village (dorpjustitie).

The integration of mediation as an alternative dispute resolution in civil court in the beginning there has been arranged on civil procedure set out in Subsection 130 HIR / Subsection 154 RBg. Then the Supreme Court, on 23 September 2003 the Supreme Court issued a regulation (PERMA) No. 2 of 2003 on Mediation Procedure in court. Then Perma No. 2 Year 2003 changes with PERMA No. 1 of 2008 has brought a fresh wind to the institutional change process to reconcile the parties to settle a civil dispute from voluntary becomes something that is mandatory.

With the enactment of PERMA No. 1 of 2008 on Mediation Procedure Court, then any particular civil cases to be tried by court judges in general courts and religious courts are required prior to the procedures of mediation in court.

As mentioned above integration of mediation as an alternative dispute resolution in the civil trial was originally intended to reduce the buildup of cases, both at the District

Court, High Court and Supreme Court Level. Where the accumulated cases will be terminated very influential with the quality of decisions.

But in fact many of the disputes submitted to court is not successfully reconciled through the mediation process. The types of disputes submitted to court is not successfully conciliated can be categorized as:

a. Lawsuit Against Law

b. Dissenters Promise (wan prestasi)

c. Divorce lawsuit

According to the writer's observation, since the enactment of PERMA No. 1 In 2008, the District Court level Simalungun, mediation has not been successful in reducing the number of cases filed appeal and cassation.

Regarding the level of effectiveness of mediation in the study, there are two perpestif of effective words. The first terms of the rules. Whether the regulation has been effectively used or implemented. And both effective meaning here is whether the expected results or what the target or goal successful entry into force of these regulations? When is the first part PERMA No. 1 of 2008 has been successfully implemented. This proved any civil lawsuits filed in the District Court Simalungun superbly through the mediation efforts. Perma means it has been effective. However, if that is referred to in the second part, on the results of the application of PERMA targets have not been effective

Effectiveness is the ability to choose the right destination or the right equipment to achieve its intended purpose. In other words, an effective manager if he could choose the work to be performed or the method (way) is appropriate to achieve the objectives.

This matter with the number of cases that go at the Registrar of the Supreme Court, from 2004 to 2013 have increased. The number of these cases we can see from the data status in the Supreme Court since 2004 to 2013 in view the author via the internet:

Table 1. List of Cases that go on MA Since Year 2004-2013

Tahun	Perkara Masuk	Perkara Putus	Sisa Perkara
2004	n/a	n/a	20314
2005	7468	11807	15975
2006	7825	11775	12025
2007	9516	10714	10827
2008	11338	13885	8280
2009	12540	11985	8835

2010	13480	13891	8424
2011	12990	13719	7665
2012	13472	10995	10112
2013	12337	16034	6415

So that the mandate of PERMA No. 1 of 2008 to reduce the number of incoming cases and case buildup not eventuated well. So it is necessary to reconstruct PERMA No. 1 In 2008 the terms of the substance, public awareness and infrastructure. Based on this background can be drawn several problems. The issues that will be examined in this study are: What are the constraints of mediation as an alternative dispute resolution in civil Simalungun District Court?; How is the reconstruction of an effective and efficient mediation in resolving civil disputes in court based on values of justice?

B. Results

1. Constraints Implementation of Mediation in the Settlement of Civil Cases in Court.

Obstacles or barriers implementation of mediation in the resolution of civil cases in courts, among others:

a. Resources Mediator

Mediator a very big role in the success or failure of the mediation process. Therefore, a mediator must have specific expertise in the field of mediation. It has also been required by PERMA, where a mediator, both derived from a judge or not should already have the certification of mediators and had never trained mediator.

The main task of mediator in this case is to understand and interpret voice and body language. For example one of the parties being sat cross-hand, it can be interpreted by a mediator that such party was anxious and defensively. On the basis of this interpretation, the mediator can follow up an appropriate form of intervention.

Most of the time spent by the mediator was heard from the parties. Effective listener not only hear the words revealed but understand the meaning of

a. Message delivered by the parties.

The concept of active listeners confirms that being a good listener is not a passive activity. However relates with work hard. Listeners must physically show his concern, can concentrate fully, could encourage the parties to communicate, be able to demonstrate an

attitude of concern with impartiality, non judge others, not preoccupied to perform a variety of responses and are not distracted by things that are irrelevant.

b. Reluctance Practitioners Law to Support Mediation Process

Clients and the legal should prepare for mediation as in the preparation of other negotiations, as well as the need to be familiar destination and the mediation process. They need to be ready to take decisions on matters of tactical as it will be played in the negotiations, setting up who need to be present, the right moment to deliver, how they will face the internal conflict during the process and what strategies will be used.

However the essence of mediation requires that the parties be able to participate directly in the process and all the results of the survey stated that this is an important benefit obtained from the mediation process. From the survey also found that it is important for lawyers to understand both the process and the philosophy of mediation so that they do not take on the role of positional and opposite that would undermine its basic assumptions.

What to do when the mediator seems to have exceeded the mediation process, for example by being supportive a partisan role or try to force the parties to the agreement? One option is to ask for the holding separate meetings to the mediator to submit an objection feels. Another option is to terminate the process and make a report on the matter to their providers. The tendency of legal practitioners or interested parties with the status quo not to suggest mediation to their clients.

2. RECONSTRUCTION OF MEDIATION AS ONE COMPLETION ALTERNATIVE DISPUTE CIVIL COURT.

From the research conducted, the PERMA No. 1 of 2008 which needs to be reconstructed are: Subsection 19, point 4 PERMA No. 1 of 2008 states that the mediator cannot be subject to criminal or civil liability for the contents of the peace agreement of the results of the mediation process and Subsection 25 point (2) of the Supreme Court issued the Regulation of the Supreme Court judge the success criteria and incentives for judges who managed to run errands mediator.

Table Reconstruction of Subsection 13 point (6) and Subsection 25 point (2) PERMA No. 1 of 2008

No.	Subsection contents Before Reconstruction	Subsection contents Before Reconstruction (Perma No. 1 in 2016)	Weakness	Subsection contents After Reconstruction

	(Perma No. 1 of 2008)			
1	Subsection 19, point 4 PERMA No. 1 of 2008 states that the mediator cannot be subject to criminal or civil liability for the contents of the peace agreement of the results of the mediation process	Subsection 27 point (1) if the mediation succeeded in achieving agreement, the parties with the assistance of the mediator must formulate a written agreement in the peace agreement signed by the parties and the mediator. Point (2) to help formulate a peace agreement, the mediator must ensure the peace agreement does not contain provisions which: a. contrary to law, public order and morality. b. detrimental to a third party, or c. can not be implemented. Subsection 16 states: "President of the Court shall submit report on the performance of judges or court staff who successfully resolving cases through the mediation of the President of the Court of Appeal and the Supreme Court	It is feared that if there is no liability for the content deal mediator, then the result of the agreement will be memorable trivial. Besides, it is very risky as an opportunity for the mediator to allow the parties to make a peace agreement	mediator cannot be subject to liability in civil and criminal for the contents of the peace agreement the results of the mediation process, unless proven deliberate or negligent in not carrying out its obligation to examine the material peace agreement that in order to avoid any agreement contrary to the law or which can not be carried out or that contains bad faith
2	Subsection 25 point (2) of the Supreme Court issued the Regulation of the Supreme Court judge the success criteria and incentives for judges who managed to run errands mediator.	Subsection 27 point (1) if the mediation succeeded in achieving kesepakkatan, the parties with the assistance of the mediator must formulate a written agreement in the peace agreement signed by the parties and the mediator. Point (2) to help formulate a peace	In this subsection are not described in detail the success criteria mediator. Usually the mediator success criteria can be measured in terms of the implementation process and the	Subsection 25 point (2) President of the Court shall submit report on the performance of judges or court staff who successfully resolving cases through the mediation of the

		agreement, the mediator must ensure the peace agreement does not contain provisions which: a. contrary to law, public order and morality. b. detrimental to a third party, or c. can not be implemented. Subsection 16 states: "President of the Court shall submit report on the performance of judges or court staff who successfully resolving cases through the mediation of the President of the Court of Appeal and the Supreme Court	results of the satisfaction of the parties to the mediation result. Whereas Subsection 16 PERMA No. 1 2016 did not explain the purpose of delivering performance reports Judge or Court officials who successfully complete the case through mediation of the President of the Court of Appeal and the Supreme Court. This subsection is also no set incentives for Meditor Judge or Court officials who successfully complete the case through mediation. Do mediator obtain insentiv form of fees or memdapat his appreciation of the Chairman or President of the High Court or the Supreme Court.	President of the Court of Appeal and the Supreme Court. Point (4) incentive is meant to be a mediator of judges and court clerks who successfully complete the case and get a fee or reward (choose one or both) of the Chairman of the Court or the President of the High Court or the Supreme Court.

C. Conclusion

1. The process of mediation in resolving civil case in court consists of two phases, namely: pramediasi and mediation process. Mediation in resolving the dispute in court has not been managed well to reduce the buildup of the case or to obtain justice. In the implementation of the mediation process are still many obstacles and barriers. Barriers to implementation of mediation in the settlement of a civil case in court is not ready for the judges who acted as mediator when there were still court judges do not have a certified mediator, that

mediation conducted by a judge who has not or do not have a certificate of mediator. The active role of judges and mediators of knowledge was instrumental in determining the success of a civil case mediation level, because it is very necessary knowledge and understanding of the judges certified mediator. Where to be able to be a mediator, a judge must be certified mediator and has been trained mediator. But until today in the District Court Simalungun still one judge has certified mediator while others have not been trained mediator. Ideally, the mediation process takes place several times, but often at the request of legal counsel mediation meeting only one meeting, and attorney implies that peace dpat not be achieved, and by the mediator suggests that the mediation has failed.

2. To further obtain better results in the institutionalization of mediation in court is necessary to reconstruct PERMA No. 1 Year 2008. Although at this time has been the enactment of PERMA No. 1 2016 there are bebarapa not yet regulated. One of them is the absence of the parties in implementing the mediation can not be represented by a lawyer. If the parties are unable to attend shall be evidenced by a certificate of illness or are abroad. Actually, with the technology that can already be anticipated that by using teleconfrence upon the parties who are abroad and against the parties who are sick who can not come to court.

D. Suggestions

1. To the law enforcement officials, especially judges and Advocates / attorney to be more empowering mediation in the settlement of civil disputes in court, by encouraging people contributed directly and actively in the mediation process, explain to the parties the benefits of successful mediation and trying to reach a settlement in mediation.

Mediator to judge, as one of the dominant determinant factor tiidaknya successful mediation, the mediator should be the judge has certified mediator, and the mediator judge must first make every effort to achieve peace in the mediation process. Mediator judges are also expected to act as a mediator prfesional. Mediation is expected succeed because of the nature of mediation is faster and cheaper is also the result of mediation that is a win-win solution.

2. In addition to the role of mediator, legal counsel and the parties to mediation success is also supported by the existing infrastructure in the Court. Facilities such mediation mediation decent space, ,,, was instrumental in determining the success of mediation.

Disputing parties in civil disputes using mediation mechanism to resolve in good faith to achieve a win-win agreement, before deciding to pursue efforts to resolve the litigation. The necessity of the parties to the dispute in the District Court to pursue the mediation

process in advance once a person to take the case to court, the mediator appointed by the court or by the parties themselves, have pointed out that the Supreme Court is very responsive to the mediation process, and the responsiveness of this indicates that dispute resolution through mediation is a dispute resolution process that is much better than the judicial process as well as the implications for the judicial process is simple, fast, and low cost; and need concrete support from formal institutions of justice that is the Supreme Court to oversee the process.

E. Implications Study

1. Theoretical Implications

Theoretically, a substantial differentiation in the legislation spawned a wide understanding. The differences in understanding, in practical terms, will impact on the different applications. Similarly, the Supreme Court Regulation No. 1 of 2008 on Mediation in the Court Procedure contains several subsections that interpretable. Among them, in understanding the obligations of mediation, as set out in the Perma, raises at least two different line of thinking: First, the mediation process shall be passed in the stage pernyelesaian any civil disputes submitted to the court; Second, mediation is mandatory for finalizing the civil disputes brought to trial when both parties litigating in the court. Regardless of which of the two votes against this understanding is correct, that surely both will give a different practical implications.

2. Practical implications

Furthermore, the level of technical implementation, the application of Perma also raises some important issues that need dialogical objective, of whom about ability mediator of a judge, the financing to call mediation, standardization (tokok measuring) the success of the mediation, the classification of types of cases mediated (principal and Accessoire) , reporting and evaluation. Several other issues must still be found, either in the form theory or discourse and the reality on the ground (app), but in this paper focuses only few things with brief descriptive exposure. The main hope of course that the subject of discussion deeper. Resources mediator is one thing that most affect the success of mediation in the settlement of disputes. So it is expected that every court of first instance has provided a mediator who has a certificate. Mediators are certified considered very necessary for membership mediator in facilitating, communicating and techniques are needed in mediation.

The parties to the dispute do not understand the benefits of mediation. So it is expected that mediation as an alternative dispute resolution be explained to the public. but besides that the attorney is also expected to prioritize the settlement of disputes by mediation by not promoting material or honorarium.

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