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Success Rate of Mediation in Pilot Project Court After the Issuance of Supreme Count Regulation Number 1 Of 2016 Concerning Mediation Procedures in Court (2017-2019)

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ABSTRACT
The purpose of this study is to analyze the success rate of mediation in the Pilot Project court after the issuance of PERMA Number 1 of 2016. This research will use a type of normative juridical approach that is carried out by examining literature material related to the issue at hand. The research problem raised in this study is about the level of mediation success in the Pilot Project Court after PERMA Number 1 of 2016 concerning Mediation Procedures in the Court (2017-2019). PERMA Number 1 of 2016 concerning Mediation Procedure is the latest legal mediation basis issued by the Supreme Court of the Republic of Indonesia. This regulation was issued by Indonesian Supreme Court with the aim of increasing the success rate of mediation in court. From the results of research conducted, PERMA Number 1 of 2016 has not been able to increase the success of mediation due to factors that are influenced by the parties, mediators, lawyers, and judges. This research will analyze the current legal problems and relate them to applicable regulations and laws.
Keywords: *Mediation, Pilot Project, Supreme Court of the Republic of Indonesia*

1. INTRODUCTION

Basically, humans are social creatures or also called Zoon politicon, which means someone needs another human being to support his life. Given the needs, it is very likely that conflicts will arise between them. This conflict is basically caused by differences in interests between human beings. With the onset of conflict, the law plays an important role in resolving the conflict [1]. But unfortunately the process of resolving problems through the court takes a very long time, a convoluted process, and costly.

To overcome this problem, an alternative dispute resolution by peace has emerged. In Indonesian procedural law, these alternatives can be found in Article 130 of the Herziene Inlandsch Regulation or commonly known as the abbreviation HIR (hereinafter referred to as HIR) and Article 154 Voor De Buitengewesten Rechtsreglement commonly known by the abbreviation RBg (hereinafter referred to as RBg). The peace efforts referred to in Article 130 HIR are imperative [2]. This means that the judge has the obligation to try to reconcile the disputing parties before the start of the trial process.

Although from before independence, the method of peaceful settlement has been used and has become the culture of the nation, in fact the development of concepts and theories of cooperative dispute resolution is even more developed in countries where the community does not have the roots of cooperative conflict resolution such as the United States Union [3]. Barulah pada tahun 1996 *Alternative Dispute Resoluion* (ADR) mulai dikenal di Indonesia.

The Supreme Court (hereinafter referred to as the MA) sees the importance of mediation in the justice system in Indonesia. The Supreme Court felt there was a need to re-emphasize the implementation of mediation in Indonesia so that the issuance of SEMA Number 1 of 2002. Furthermore, the Supreme Court issued a Supreme Court Regulation (hereinafter referred to as PERMA) Number 2 of 2003 concerning Mediation Procedures in the Court. The reason for the issuance of this PERMA is because SEMA is considered incomplete and has not fully integrated mediation into the court system forcefully but is only voluntary. In its development, PERMA No. 2 of 2003 was deemed not to meet MA expectations because the success rate was just under 5%. So the MA revised PERMA Number 2 of 2003 to PERMA Number 1 of 2008 concerning Mediation Procedures in the Court. This PERMA was issued by the Supreme Court as an effort to accelerate, cheapen, and facilitate dispute resolution and provide greater access to justice seekers [4].

In 2015, the Supreme Court plans to renew PERMA 2008 because the success rate is still low, so there are still many cases flowing to the Supreme Court. For this reason, the Supreme Court established the Supreme Court Mediation Working Group based on the Decree of the Supreme Court of the Republic of Indonesia Number: 123 / KMA / SK / VII / 2013 [5]. The

Indonesian Supreme Court Mediation Working Group will intensively monitor the implementation of mediation in 18 pilot courts appointed by the Supreme Court through the Decree of the Chief Justice of the Republic of Indonesia Supreme Court Number 24 / KMA / SK / II / 2015, especially in terms of infrastructure, orderly administration and mediation reporting. In the 2014-2015 period, the average number of mediation successes of the nine district courts was 15.54%, while the average success of the nine religious courts was 16.85%.

However, after the issuance of PERMA No. 1 of 2016, the success rate of mediation in the pilot project court was not what the Supreme Court had hoped. In fact, its success tends to decrease. The decline experienced by the pilot project court illustrates that PERMA Number 1 of 2016 has not effectively governed mediation because there are still many legal loopholes that can be exploited by the parties involved. In addition, factors such as the lack of mind mediation by the community, lack of ability of the mediators chosen by the parties, and lack of good intention all parties involved in mediation also played a role in the low success rate of mediation after the issuance of PERMA 2016.

1.1 Problems

Based on the description of the background described above, the formulation of the problem to be discussed is, what is the success rate of mediation in the Pilot Project Court after the issuance of PERMA Number 1 of 2016 concerning Mediation Procedures in the Court (2017-2019)?

1.2 Research Method

1.2.1 Type of Research

The suitable approach used in this undergraduate thesis is a conceptual approach which means looking for doctrines, legal sources, and principles in a philosophical sense [4].

1.2.2 Method of Approach

The research method that will be used is the normative juridical research method. The selection of this research method is based on the object of this research, namely the success rate of mediation in the Pilot Project Court after PERMA Number 1 of 2016 concerning Mediation Procedures in the Court (2017-2019).

1.2.3 Research Specification

The specification of this research is descriptive analytical because in this research will be explained about the applicable legal regulations and associated with actual practice in the field.

1.2.4 Type of Data

The type of data used is secondary data obtained from primary source library studies. The legal materials used in this study are:

1.2.4.1 Primary Legal Material, which contains laws and PERMA relating to Mediation.

1.2.4.2 Secondary legal material, which is legal material that helps primary legal material. This legal material can be in the form of research results, journals, books.

1.2.4.3 Tertiary legal materials, are legal materials that can provide clarity to primary and secondary legal materials. This legal material consists of dictionaries, internet artiker, and other texts.

1.2.4.4 While the primary data obtained by conducting interviews and collecting data from the field will support the secondary data above.

1.2.5 Data Collectin Technique

To obtain these research materials, this research will be conducted with a literature study that examines legal material [5]. In addition, data will also be collected using interview techniques and data collection in the field.

1.2.6 Data Analysis Techniques

Data analysis technique that will be used by the writer is qualitative descriptive analysis, which is an analysis that describes the state or status of a phenomenon with words or sentences.

1.3 Mediation in District Courts and Religious Courts of Pilot Project After the issuance of PERMA Number 1 of 2016 concerning Mediation Procedures in Courts

PERMA Number 1 of 2016 is an update of the previous PERMA namely PERMA Number 1 of 2008 concerning Mediation Procedures in the Court. This renewal is based on the thought of the Supreme Court which considers that the PERMA has not been optimal in meeting the needs of conducting mediation that is more efficient and able to increase the success of mediation in court [6].

In terms of regulations, PERMA Number 1 of 2016 has actually been very good because there have been some significant changes. The changes include the mediation deadline, which was shortened from 40 (forty) days to 30 (thirty) days from the order to determine the mediation (Article 24 paragraph 2 PERMA 2016) with the option to be extended for a maximum of 30 (thirty) days as of the end of the mediation process period (Article 24 paragraph 3 of PERMA 2016). There is a regulation that parties can attend mediation meetings with or without assistance from legal counsel (Article 6 paragraph 1 of PERMA 2016). Addition to the provisions on good faith in participating in mediation (Article 7 PERMA 2016) along with the legal consequences (Article 22 and Article 23 of PERMA 2016). This addition is the most important point in PERMA Number 1 of 2016. Good faith has actually been regulated in PERMA Number 1 of 2008, but the elaboration is still not detailed and there are no legal consequences. In addition, the existence of a new arrangement regarding a partial agreement that allows

for an agreement between the plaintiff and some of the defendants so that the plaintiff will change the lawsuit by no longer submitting the name of the defendant who has reached an agreement with him. The provisions of this partial agreement make it easy for the plaintiff to reconcile with those who agree with him so that it impacts on the ease of mediation. Finally, giving the authority of the parties to use independent mediators or mediators outside the court is a new rule implemented in PERMA Number 1 of 2016 after previously there was no regulation on the use of independent mediators in the previous regulation.

This change in PERMA 2016 is one of the MA's efforts to implement the principle of quick, simple, and low cost justice. Mediation provides speed in solving existing problems when compared to the judicial process which can take years. A protracted judicial process is also very vulnerable to changes in the interests of one party so it is possible that the wishes of one of the parties may change throughout the judicial process. Changes in the desires of one of the parties affected by the existence of other interests, can cause difficulties in achieving mutual agreement. The process is also simpler when compared to the litigation process, both from the language used in the Peace Agreement and the procedures for implementing it. The costs incurred if the parties go through a mediation process are also smaller when compared to the litigation process. This is excluded if the parties use the services of professional mediators from outside the court. In the mediation process, the only costs that may arise are the costs of mediation and the costs of calling the parties. While the cost of litigation is the cost of confiscation of collateral, the cost of expert witnesses, stamp duty, execution costs, and others.

In the process of establishing PERMA Number 1 of 2016 concerning Mediation Procedures in the Court, precisely in 2015, the Supreme Court as the highest judicial authority in Indonesia appointed 9 District Courts and 9 Religious Courts to be used as pilot courts regarding the implementation of mediation. During this one year period, the Working Group formed by the Supreme Court will specifically monitor the implementation of mediation in 18 appointed Courts. This supervision aims to assist the Working Group in preparing the revised draft PERMA No. 1 of 2008.

From a total of 18 PN and PA which were used as a pilot court by the MA, researchers have collected data on the success rate of mediation from 2017-2019 from a total of 10 PN and PA which can be described as follows:

Percentage of Mediation Success in Pilot Court District Courts

	2017	2018	2019
DC of Cibinong	6,7%	1,4%	0,8%
DC of South Jakarta	4,2%	4,1%	5,3%
DC of Mataram	7,8%	5,4%	2,0%
DC of West Jakarta	1,8%	0,9%	3,3%
DC of Bogor	5%	11%	10%

Percentage of Mediation Success in Pilot Court Religious Courts

	2017	2018	2019
RC of South Jakarta	7%	3,4%	3,2%
RC of West Jakarta	5,1%	42,9%	18,6%
RC of Central Jakarta	6,5%	27,3%	7,4%
RC of North Jakarta	51,8%	37,3%	21,7%
RC of Cianjur	5,5%	2%	0,2%

From the data collected by the author through the Annual Report, Report on the Implementation of Activities as well as a direct report from the relevant court, there is a decrease in the number of cases successfully mediated from year to year. If there is an increase in the percentage of success the result is still below 10%.

The low success rate after the issuance of PERMA Number 1 of 2016 is influenced by several factors, namely: factors of the parties, factors of the mediator, factors of attorney, and factors of judges.

1.4 Factor From the Parties

Mediation is basically carried out in order to meet the legal certainty needs of the parties in a fast, simple, and low-cost way. It can be seen that the parties actually benefit from mediation. However, parties participating in mediation generally did not have the good intention to attend the meeting. Though it can be said their presence is a very influential factor for success because the purpose of mediation is to bring together the desires of each party to the dispute so that they can discuss the problem and then find a mutually beneficial solution. How can these goals be achieved if the parties themselves are not in good faith to attend.

The reasons for their absence cannot be justified or only use trivial reasons. This was motivated by their unwillingness to make peace since the case was brought before the court. If indeed this meeting produces a draft agreement, the selfishness of the parties can be seen from their unwillingness to agree on the contents of the agreement if it is considered detrimental to itself. Therefore it is not strange if many mediations have failed from the 3rd meeting, where the meeting was intended to discuss the peace agreement.

In addition, the number of cases that have entered the "acute" category but have only been sued in court have

influenced the emotional conditions of the parties when they were brought together. In marriage cases for example. When the parties have been fighting for a long time, it is unlikely that they would want to be reunited with the other party. When the meeting does not occur there will be no consensus, then the mediation fails.

1.5 Factors of Mediators

The obligation of the mediator is not chosen from the members of the judge who examined the matter causing the mediator's lack of understanding on the matter. A mediator's deep understanding of the matter becomes an important capital for him in the process of finding alternative solutions for the parties. How can he come up with alternative solutions when he himself does not fully understand the problems he is facing.

Public attitudes tend to prefer court mediators over professional mediators. The thing that makes people prefer court mediators is because the parties will not be charged the fee as written in Article 8 paragraph 1 of PERMA Number 1 of 2016. The mindset of "if there is free why should pay" from the public seems to still be attached very strongly. Yet we know that something that is paid is definitely better than what is free. The parties to the litigation often elect unpaid judge mediators but have a lot of work and are not necessarily experts in the realm of the case they are handling compared to mediators outside the court who are specifically dealing with a specific case.

In addition, many mediators also do not have sufficient communication skills. With poor communication, ideas that should be used as a reference by the parties will not be conveyed properly. The mediating ability of a mediator plays an important role in successfully drawing sympathy from the parties and also the parties' acceptance of the alternatives offered by him. With good communication skills, the delivery of ideas or ideas produced by the mediator will be conveyed well to the parties. Communication skills are also important when there is a situation that is not conducive in the meeting or when the parties stick to their own desires.

1.6 Factor of Legal Counsel

The limited space for legal power to act causes them to also be a contributing factor to the failure of a peace agreement. Legal counsel acts on the Power of Attorney from his client, which means he acts for and on behalf of the client. If the client does not want to reconcile, the legal authority cannot do anything.

The power of law can also only act in accordance with what is in the Power of Attorney. The power of attorney is in fact intended for the recipient to have or have the authority to act on behalf of the issuer of the power of attorney, rather than acting in accordance with his or her own will. So that the letter of authority given limits the legal space of law if he wants to follow mediation with good faith with the aim that the parties can make peace. If the party represented from the beginning does not want to make peace, then the legal authority must act as well. The legal obligation is only to help and encourage the parties to make peace, but it cannot force and oblige the delegated party to make peace.

Another factor that influences legal counsel to participate in mediation in bad faith is related to fees received by legal counsel. Although his services will still be paid by the client if peace is achieved, the payment he receives will certainly be higher if the case continues to a higher level.

1.7 Factors of the Judges

The judge has the obligation to reconcile the parties and the purpose of the day of the trial that has been determined is on the day of the first hearing is held (Article 17 paragraph 1 PERMA Number 1 Year 2016). So it can be interpreted that the judge only has the power to force the parties to make peace at the first hearing only. At subsequent hearings, the judge only has the power to recall the parties. So it can be said that the greatest opportunity for mediation to succeed is only in the first session, while in the next session there is a possibility that the parties want to make peace but the chances are slim.

The community also tends to prefer judge mediators because they are free of charge compared to using the services of paid outside mediators, which results in the piling up of judges' work as mediators in addition to their main work in examining and deciding cases. So it is difficult for the judge mediator to devote all their ability to mediate a case. There are several factors that influence this, namely being a mediator is not the main task of the judge, then the judge's work is not spiritual. At least in one year a judge can examine as many as 300 cases. This means that when compared to the number of days in a year, the judge examines one case in one day. Of course in this case, the flurry of judges in handling cases will be difficult to balance with their performance in mediating cases.

1.7 Community Compliance Against PERMA Number 1 of 2016

According to Soerjono, Salman, the nature of legal compliance has three factors that cause citizens to comply with the law, are [7]:

1.7.1 *Compliance*

This level of compliance is only based on one's avoidance of a sentence and compliance is not based on the objectives of the relevant legal norms. As a result, compliance is only carried out if there is supervision of the implementation of the rule of law.

In this level, community legal compliance is only based on sanctions for violating regulations so that their goal to obey is to avoid existing legal sanctions..

1.7.2 *Identification*

Legal compliance is based on the desire of one party to maintain harmonious relations with the other party. The motive of maintaining a relationship here is because one of the parties feels there is an advantage that he can get if the relationship is maintained.

In this second degree, community legal compliance is based because they want to maintain a pleasant relationship with another individual or group.

1.7.3 *Internalization*

At this stage, someone complies with the law because the intrinsic values in the regulation are in accordance with the values held by him. This stage is the highest degree of compliance, where obedience arises because the applicable law is in accordance with the values adopted.

When viewed from the perspective of legal compliance, all parties involved in mediation can be said to be obedient in undergoing the provisions contained in PERMA Number 1 of 2016. However, their obedience only reaches the Compliance level, which is complying with a regulation to avoid sanctions that are imposed will be granted and legal compliance will only be carried out when there is strict supervision of the implementation of these rules. The evidence can be seen from the decrease in the success rate of mediation after the MA Working Group no longer intensively monitors the implementation of mediation in court. Community compliance also does not reach the level of identification and internalization. The level of identification that has not been achieved by the community can be seen from the lack of willingness of the parties to maintain good relations with other individuals so that the settlement of a dispute with a win-lose solution is still the main choice for the parties to the dispute. While the level of internalization has not yet been achieved, it can be seen from the incompatibility of PERMA Number 1 of 2016 with the values that it adopts because PERMA 2016 places more emphasis on resolving disputes through peace.

1.8 Applicability of PERMA Number 1 of 2016

According to Hans Kelsen, the rule of law is divided into 4 environments, namely [8]:

1.8.1 Environmental validity according to time *(Sphere of Time).*

Each act of law is only valid for a certain period of time. This means that a rule of law has a validity period, does not apply before the rule of law is made, and does not apply when the rule of law is repealed.

1.8.2 Environmental spatial validity *(Sphere of Space)*

Applicability according to this space is identical to the place or region where the laws and regulations apply. That is, a regulation is limited by the region or only applies where the regulation was made.

1.8.3 Environmental validity according to people *(Personal Sphere)*

The enforceability of a rule is also limited only to certain people. Rules are not apply to all people.

1.8.4 Environmental validity according to material *(Material Sphere)*

Legal validity according to the matter relates to what legal enforcement is applied.

If seen from the side of legal validity according to Hans Kelsen, PERMA Number 1 of 2016 concerning Mediation Procedures in the Court can be said to be appropriate. All civil cases submitted before the issuance of PERMA Number 1 of 2016, the procedure is still adjusted to the previous PERMA namely PERMA Number 1 of 2008. However, cases submitted after the issuance of PERMA Number 1 of 2016 are considered subject to the provisions in PERMA 2016.
PERMA Number 1 of 2016 was formed in Indonesia by the Supreme Court of the Republic of Indonesia (MARI) so that the scope of its entry into force is only in Indonesian territory. In accordance with Law Number 48 of 2009 concerning Judicial Power, MARI oversees the General Judiciary Board, the Religious Courts Board, the Military Courts Board, the State Administrative Court, and the Constitutional Court (MK) so that the Regulations issued by MARI can apply to all bodies justice under it. PERMA Number 1 Year 2016 in Article 2 paragraph 1 confirms that this PERMA is valid within the General Courts and the Religious Courts.
The validity of PERMA Number 1 of 2016 is also limited only to parties with civil matters only as regulated in Article 4 paragraph 1. With the exception of matters that are not required in terms of settlement through mediation (Article 4 paragraph 2). The scope of the scope of validity is also applied in the case of mediation only.
A rule that is created will be useless without the presence of the people who follow the rules in the rule. In order to run smoothly, a rule must be able to be declared valid and accepted by the community. As revealed by Prof. Meuwissen, the law is acceptable and applicable in society can be viewed from 3 aspects [9]:
1. Factual / social validity
The rule of law can be said to apply factually if the rule is in a state that is truly obeyed and obeyed by the community. Meanwhile, the official authorized by the law is actually implemented and enforced. Thus the rule of law can be said to be effective because it affects the behavior of the public and authorized officials.
2. Legal validity
A rule of law is said to apply to jurisprudence when it is formed by an authoritative body and does not conflict with higher level rules.
3. Moral Validity
What is meant by moral validity is the level of quality and legitimacy of the law. A rule of law must not conflict with moral values [10].

PERMA Number 1 of 2016 in this case can be said to be not fully valid factually / socially because there are a number of provisions which are not properly adhered to by the parties stipulated therein and these rules do not affect the behavior of the public and authorized officials. With the provisions contained in it, PERMA Number 1 of 2016 should be able to change the public's

perspective on mediation so that this method will be preferred by the community to solve their problems. But in reality people still tend to prefer litigation to settle cases. The authorized parties, in this case mediators, legal representatives and judges, their behavior is also not affected by this regulation.

With the background formed by the Supreme Court of the Republic of Indonesia (MARI), it can be interpreted that PERMA Number 1 of 2016 meets the requirements of juridical enactment. The rules in PERMA 2016 also do not conflict with higher regulations such as Article 130 HIR / Article 154 RBg, the 1945 Constitution (UUD 1945), and Pancasila.

As stated in Article 24A paragraph 1 of the 1945 Constitution, it means that the authority of MARI to form regulations is in accordance with the 1945 Constitution. rechtvorming [11]. The content of the provisions on the obligation of the parties who have the matter first sought to be resolved through the peace line has also been in accordance with Article 130 HIR / Article 154 RBg.

PERMA Number 1 of 2016 can be said to meet the provisions in morality where there are no provisions in PERMA that violate moral values. This fulfillment is affirmed through Article 27 paragraph 2 of PERMA Number 1 of 2016. In this provision it is stipulated that in the event of an agreement in mediation, the contents of the agreement must not conflict with law, public order, and decency or be detrimental to third parties. Thus, this provision covers the possibility that the peace agreement will disturb the interests of other parties who are not included in the parties to be reconciled. The things that are included in the peace agreement are only those that are the right of the litigants.

With the explanation above it can be said that PERMA Number 1 of 2016 concerning the Mediation Procedure fulfills the provisions regarding legal enforcement. This means that PERMA is not a dead rule (*dode regel*), it is not only a compelling rule (*dwangmaatregel*) but it can also be done by the parties regulated in the regulation, and is not a rule that is only aspired (*ius constituendum*).

2. CONCLUSION

The issuance of Supreme Court Regulation (PERMA) No. 1 of 2016 concerning Mediation Procedures in the Court brought significant reforms compared to its predecessor, namely PERMA No. 1 of 2008. But unfortunately PERMA Number 1 of 2016 has not succeeded in increasing the success of mediation in court because 6 out of 10 courts the pilot project still shows a success rate of under 10%. The influencing factors are the good intention of the parties in following the mediation process, the absence of a desire to reconcile since the case was submitted, the parties disagreement with the contents of the agreement because they feel disadvantaged, the problems that have been buried for a long time so it is very difficult to be reconciled. While the factor of the attorney is they can only act as the client wishes, and the fee that will be received by the attorney will be reduced if the case is finished through a mediation process. Judges also contribute to the factor in the failure of mediation because being a mediator is not the main job of a judge so the judge cannot focus on one area of work only. The last party is the mediator. Many mediators do not understand the problems in the case which are mediated to and the lack of speaking skills so that it causes less accommodating of the interests of the parties. In addition, the level of community compliance and all parties involved in the mediation process are limited to the level of Compliance. Not achieving the level of identification and internalization illustrates that the level of community compliance to actually implement the existing regulations is still relatively low. Although the success rate of PERMA Number 1 of 2016 is still low and the level of community compliance is still low, PERMA 2016 is not a dode regel, not only is a compelling rule (dwangmaatregel) but can also be carried out by parties regulated in the regulation, and is not a rule only aspired to (ius constituendum).

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