

Actualization of Mediation During the Covid-19 Pandemic in the Court

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Abstract—The emergence of various problems occurs with the new virus that is infecting the world today, namely Corona viruses (Covid-19). The Ministry of Health of the Republic of Indonesia stated that the Covid-19 pandemic was first detected in Wuhan, China on December 13, 2019. COVID-19 is considered a deadly virus with a very fast spread process throughout the world and turned into a pandemic that is detrimental to the world community. One of them is in the world economy. One of them was in the trial process in court, so that he immediately reacted and made a decision to issue regulations that were unusual but proved to be worthy of appreciation. The issuance of Surat Edaran Mahkamah Agung Number 1 of 2020 concerning the Implementation of Duties During the Prevention of the Spread of Corona Virus Disease 2019 in the Supreme Court and the Judicial Bodies Under it, surat dari Dirjen Badan Peradilan Umum Number: 379/ DJU/ PS.00/3/2020 March 27, 2020 in turn became the legal umbrella and the basis for the conduct of the trial by tele-conference. In the criminal justice system, COVID-19 has indeed forced changes in the criminal examination process, especially regarding the presence of the defendant in court, which now means not only physical presence, but also electronic presence in the form of video conference (vicon). Although in practice there are still differences of opinion for all reasons, whether the implementation of video conference in this criminal trial is limited only specifically to defendants whose detention period cannot be extended anymore or can also be applied to defendants whose detention can still be extended or even to cases that have just been delegated, but It is undeniable that electronic attendance has been accepted as a legal norm practiced by judges. If the criminal justice system has changed due to COVID-19, the civil court has not experienced the same thing.

Keywords—actualization, mediation, court

I. INTRODUCTION

The emergence of various problems occurs with the new virus that is infecting the world today, namely Corona viruses (Covid-19). One of the international organizations engaged in the health sector, namely the World Health Organization, stated that Corona viruses (Covid-19) can spread through the respiratory tract in humans. The virus has a scientific name, namely COVID-19. COVID-19 can cause side effects ranging from mild flu to high fever experienced by infected individuals

and can cause death if not treated with special treatment [1]. It was found that 93 countries have been infected with COVID-19 and pose a very bad risk to the world economy, including Indonesia, especially in terms of tourism, trade and investment. Likewise, various fields of life are greatly affected by the condition of this COVID-19 pandemic.

One of them was in the trial process in court, so that he immediately reacted and made a decision to issue regulations that were unusual but proved to be worthy of appreciation. The issuance of the Circular Letter of the Supreme Court Number 1 of 2020 and the letter from the Director General of the General Judiciary Agency Number: 379/DJU/PS.00/3/2020 dated March 27, 2020, in turn became the legal umbrella and the basis for conducting tele-conference trials. In the criminal justice system, Covid-19 has indeed forced changes in the criminal examination process, especially regarding the presence of the defendant in court, which now means not only physical presence, but also electronic presence in the form of video conference (vicon). Although in practice there are still differences of opinion for all reasons, whether the implementation of video conference in this criminal trial is limited only specifically to defendants whose detention period cannot be extended anymore or can also be applied to defendants whose detention can still be extended or even to cases that have just been delegated, but it is undeniable that electronic attendance has been accepted as a legal norm and *fatsun* is commonly practiced by judges. If the criminal justice system has changed due to COVID-19, the civil court has not experienced the same thing [2]. The author assumes that this is partly because the civil court has already adopted an electronic court system or e-litigation in accordance with Supreme Court Regulation Number 1 of 2019.

Prior to that, the Supreme Court had actually opened up space for someone's presence electronically. Article 5 paragraph (3) of the Supreme Court Regulation Number 1 of 2016 concerning Mediation states that mediation meetings can be conducted through long-distance audio-visual communication media that allows all parties to see and hear each other directly and participate in meetings. In normal situations, the provisions of Article 5 paragraph (3) regarding mediation tend to be interpreted as if the physical presence becomes burdensome – perhaps because the parties are outside

the area or for other reasons – then the option of having an electronic presence is open as an alternative and solution for the difficulty of bringing the parties together physically. However, our understanding tends to turn 180 degrees if we read Article 5 paragraph (3) in the midst of the current pandemic. In the current situation, electronic attendance is actually the first choice because by carrying out successful mediation we mean that we have cut the chain of potential meetings and mass gatherings that occur during the trial process. Furthermore, the mediation process which is closed to the public directly makes it easier for the court to control the number of participants present in the trial. If mediation does indeed provide benefits both in the process of resolving the case and providing benefits in cutting the chain of the spread of the Covid-19 virus, shouldn't mediation really be attempted as one of the stages of resolving cases, instead of just releasing the obligation of mere legal formalities. This paper discusses how to implement e-court at the Bangkinang District Court.

II. PROBLEM FORMULATION

Based on the description of the background above, the problems discussed in this proposal:

What are the processes and obstacles to resolving cases through mediation during the Covid-19 pandemic at the Bangkinang District Court in Kampar Regency?

III. PURPOSE AND OBJECTIVE OF WRITING

This research is focused with the aim of knowing the impact of the PERMA No. 1 of 2018 concerning Mediation on the success rate of mediation and to find out the difference with the previous PERMA. The purposes of the research to be carried out include: To find out the process and obstacles to resolving cases through mediation during the Covid-19 pandemic at the Bangkinang District Court in Kampar Regency.

IV. LITERATURE REVIEW

A. *Relevant Theories*

1) *Mediation Theoretical Framework*

The limitations of mediation put forward by experts:

a) *Gary Goodpaster, stated:* Mediation is a problem-solving negotiation process in which an impartial and neutral outside party works with the parties to help them reach a satisfactory agreement. Unlike judges or arbitrators, mediators do not have the authority to decide disputes between parties. But in this case the parties turn to the mediator to help them resolve the issues between them. The assumption that a third party will be able to change the strength and social dynamics of the conflict relationship by influencing the personal beliefs and behavior of the parties, by providing knowledge or information, or by using a more effective negotiation process, and thereby helping the participants to resolve the issues that arise. disputed.

b) Likewise, Christopher W. Moore argues [3]: Mediation is a negotiation to resolve a problem in which an outside party, impartial, neutral, does not cooperate with the disputing parties to help them reach an agreement on a negotiated outcome that satisfies the parties. and the mediator arbitrator has the authority to decide disputes between the parties instead the parties authorize the mediator to form them.

Mediation practitioners divide the stages of mediation, among others:

- Agree to go through the mediation process
 - Understanding problems
 - Generating problem-solving options
 - Reaching agreement and implementing agreement
- Various forms of library dispute resolution [4]:

First, is an adjudicative process such as an arbitration court with a neutral third party, namely an arbitrator judge who has the authority to decide based on the facts put forward by the parties in a decision. Second, investigative in nature, namely factfinding, with a neutral third party which usually consists of an odd number of parties appointed by the disputing parties with the end in the form of a recommendation from the fact-finding team which may or may not be binding on the parties. Third, it is based on a collaborative approach and consensus or consensus of the parties, such as negotiation and mediation. Mediation is one of the alternative problem solving processes with the help of a third party (mediator) and procedures agreed upon by the parties where the Mediator facilitates to reach a solution (peace) that is mutually beneficial to the parties. Mediation at its core is “a process of negotiations facilitated by third persons who assist disputes to pursue a mutually agreeable settlement of their conflict. “As an alternative dispute resolution method, Mediation has the characteristics of short time, structured, task-oriented, and is a way of intervention that involves the active participation of the parties. The success of mediation is determined by the good faith of both parties to jointly find an agreed solution. Nolan Haley as quoted in Sujud Margono's book, defines mediation as [5]: “A short term structured task oriented, perspiratory invention process. Disputing parties work with a neutral third party, the mediator, to reach a mutually acceptable agreement”. And Kovac defines mediation as: “facilitated negotiation. It process by which a neutral third party, the mediator, assist disputing parties in reaching a mutually satisfaction solution”. It can be concluded from the above formulation that the notion of mediasim contains the following elements:

- Mediation is a dispute resolution process based on negotiation.
- The mediator is involved and accepted by the disputing parties in the negotiations.
- The mediator is in charge of assisting the disputing parties to find a solution.

- The mediator does not have the authority to make decisions during the negotiations.
- The purpose of mediation is to make or produce an agreement that is acceptable to the disputing parties to end the dispute.

B. Framework of Thought

The Qur'an explains that conflicts and disputes that occur among mankind are a reality. Humans as the caliph of God on earth are required to resolve disputes, because humans are equipped with reason and revelation in managing their lives. Humans must seek and find patterns of dispute resolution so that the enforcement of justice can be realized. The pattern of dispute resolution can be formulated by humans by referring to a number of verses of the Qur'an, the hadith of the Prophet, customary practices and various local wisdoms. In general, communication is important in dispute resolution. Direct communication between the parties will be more productive in resolving disputes, thereby avoiding violence and lowering costs. Third parties are an integral part of peace-building interventions by facilitating communication, avoiding tensions, and helping to improve relations. Islam encourages active intervention, especially among fellow Muslims. As explained in the Qur'an Surah Al-Hujurat verse 9, Meaning: "If there are two groups of believers at war, then make peace between them. If one of the two groups persecutes another group, then fight the group that persecutes that group so that the group returns to Allah's commandment, then make peace between the two with justice. Verily Allah loves those who act justly. Verily, the believers are brothers, so make peace between your two brothers and fear Allah so that you may receive mercy." (Q.S. Al Hujurat: 9-10) [6]. In short, Islam avoids aggression and acts of violence in dispute resolution. Islam offers a peaceful and non-violent approach, through identifying a number of problems and the root causes of conflict [7].

V. RESEARCH METHODS

A. Types and Sources of Data

The type of research that will be used is sociological legal research, namely empirical studies to find theories regarding the process of occurrence and about the working process of law in society.

Data sources used are [8]:

- Primary data, Data obtained directly from the first source and direct observations made by researchers in the field
- Secondary Data, Data that includes official documents, laws and regulations, books, research results in the form of reports, which are relevant to the research conducted
- Data Tertiary. Data that supports primary data and secondary data such as Indonesian dictionary, English dictionary, encyclopedia, legal terminology.

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