The Effectiveness of Mediation as an Alternative of Civil Dispute Settlement

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Abstract. The principle of simple, fast and inexpensive process is a very important principle in the implementation of procedural law. In practice, court dispute resolution processes fail to take into account common interests, tend to create new problems, are slow to resolve, costly, unresponsive, and create hostility among disputing parties. In response, and in an effort to strengthen and streamline the functioning of the judiciary, the Supreme Court (MA) has introduced mediation as an integral part of the court's dispute resolution process. The accumulation of cases is expected to be overcome. However, empirical facts show the opposite. According to previously published research, the trend of cases resolved by litigation remains high and is increasing each year, including Class IA in Tanjung Karang District Court. As a result, there were 209 cases in 2017, 237 cases in 2018, and 260 cases in 2019. Based on these matters, a comprehensive study needs to be conducted to analyze the effectiveness of mediation as an alternative dispute resolution in the First Class Court of Tanjung Karang District Court.

Keywords: Effectiveness · Mediation · Private Case

1 Introduction

A. *Background*

Humans as social beings interact with one another and unconsciously carry out legal relationships. In general, a legal relationship is a relationship between two or more legal subjects in which the obligations and rights of the parties face each other [1]. The legal relationship that was born from a legal event sometimes arises a dispute that cannot be resolved due to parties who do not have good intentions and result in disputes between the parties.

Disputes between the parties can be resolved in court (litigation) or out of court (non-litigation). Ideally, dispute resolution through court or litigation should be the last resort. That is, a last resort if out-of-court efforts fail. However, despite the principle of quick, easy and cheap procedure, in practice the court proceedings did not go as expected. Court dispute resolution processes fail to take into account common interests, tend to create new problems, are slow to resolve, costly, unresponsive, and hostile among

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parties to disputes. [2]. Resolving litigation is time consuming and expensive because if you are unsatisfied with a judge's decision, you can file an appeal, reverse, and judicial review (PC). This reality has led to a pile of cases in the Supreme Court, preventing quick, easy, and inexpensive trials.

In response to this reality, and in an effort to strengthen and streamline the judiciary's ability to settle disputes in Indonesia, the Supreme Court issued Supreme Court Order No. 1 of 2002 to implement peace institutions in the first level courts. Gave permission to do so. Supreme Court Judicial Order No. 1 of 2016 Concerning Court Arbitration (PERMA-Arbitration). This rule makes alternative dispute resolution, or mediation, an integral part of the dispute resolution process in court. Mediation provides greater access to litigants by considering the good faith of the parties participating in the mediation. It is hoped that this will optimize the effectiveness of mediation in resolving issues between the parties [3]. Mediation allows parties to negotiate to find a compromise before court proceedings continue.

Article 2 of PERMA requires judges to offer mediation as a means of resolving disputes before the case is considered. Arbitration is an obligation that must be served to litigants. Article 3(1) states that judges, mediators, parties and/or lawyers must follow procedures for resolving disputes through mediation. In this way, it is necessary to mediate based on the terms and conditions, so there should be no cases where mediation procedures are not followed.

If a party violates or hesitates to use the mediation procedure, the claim will be declared inadmissible by the case examiner and will also be obliged to pay the mediation costs (Article 22.1). and 2). Accordingly, when considering his decision, the arbitrator shall declare that the case is sought to be settled by arbitration and, together with the penalty for payment of the arbitration costs, constitutes a final decision that the action is unsuccessful or unacceptable. Must make a decision to and court costs.

Mediation is an alternative form of dispute resolution. Mediation is basically a method of resolving disputes out of court through negotiation involving a neutral (non-intrusive) and impartial third party whose existence is accepted by the parties [4]. The presence of the mediator is intended to create a conducive atmosphere for collaborative negotiation processes or problem solving, rather than competition. The mediator may unilaterally oversee the information exchange process and is obligated to keep the information confidential to the other parties. In addition to the negotiation process itself, the mediator can also make substantive proposals for resolving the issue [5]. Anything brought about in the arbitration process must be the result of an agreement or understanding between the parties. An agreement can or can be reached if the parties agree to the agreement.

However, sometimes due to various factors the parties are unable to reach a settlement so that mediation ends in a stalemate. Although mediation has many advantages as an effort to resolve disputes, the legal product is an agreement which is an agreement between the parties. The agreement that is the product of the mediation does not have the executive power as a court decision. This makes it difficult to enforce the contents of what has been agreed upon by the parties in the mediation process [6]. The essence of mediation is its voluntary nature and the fact that any settlement reached is the result of the agreement of the disputing parties.

Arbitration does not involve an element of coercion, which makes the process very interesting, but conversely, it allows the parties to reach agreements that the courts cannot reach, minimizing losses in disputes. Can be suppressed. Whenever possible [7]. The use of mediation is expected to overcome the accumulation of cases. If parties can resolve disputes peacefully, fewer cases will go to court because peace is the will of the parties. Mediation is accomplished through a process of deliberation and agreement between the parties and is expected to expand the parties' access to a sense of justice achieved.

However, even though in theory there are so many advantages of mediation over litigation procedures, empirical facts show the opposite. From previous and published studies, it is found that the reality of the trend of cases being resolved by litigation procedures is still high. Selong District Court, for example, from the number of cases registered in civil cases as many as 313, only 1 case was successfully mediated [8]. Similarly, the statistics on the success of mediation at the Amlapura Court. In 2018, the number of successful mediations was 2 while those that failed were 49. In 2019, there was no successful mediation while the failed mediation was 56. In 2020, the number of successful mediations was 2 and failed mediations were 34 [9].

The reality of the case settlement process through mediation at the Tanjung Karang District Court is interesting to study considering that the number of general civil cases at the Tanjung Karang 1 District Court is quite high. In a row, in 2017 there were 209 cases, in 2018 there were 237 cases, and 2019 there were 260 cases. From these data there is a fact that the settlement of cases (litigation) in the jurisdiction of the Tanjung Karang District Court tends to increase every year. Is the upward trend in the number of incoming cases directly proportional to the success of the mediation? This question becomes very realistic to be asked, as mentioned above, in several courts that have been studied, in fact the high number of cases in court is not directly proportional to the high success rate of mediation. Based on these things, the author is interested in conducting an in-depth and comprehensive study to find out and analyze the effectiveness of mediation as an alternative dispute resolution and the factors that hinder the success of mediation in resolving civil cases at the Tanjung Karang District Court Class IA.

B. *Research Methodology*

The method used in this study is prescriptive empirical research, that is, research that uses prescriptive empirical legal case studies in the form of legal action artifacts. This research is carried out by conducting a comprehensive survey of the applicable normative laws, namely Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution and PERMA No. 1 of 2016 on Mediation.

Procedures in Courts. In addition to normative studies, the second stage of this research is to look at the application of these norms to the in concreto incident at the Tanjung Karang District Court Class IA.

The method of thinking used is the method of deductive thinking, namely drawing conclusions from general premises to specific premises. The problem approach method used is the statute approach and the socio-legal approach to determine the implementation of mediation in practice at the Tanjung Karang District Court Class IA. The data to be used are primary data and secondary data.

2 Literature Review

The definition of a dispute in Kamus Besar Bahasa Indonesia is a confrontation or conflict between two or more parties on an issue involving specific interests between the parties involved [10]. A dispute, according to Yahya Harahap, is a dispute that arises between parties over matters that are the subject of an agreement between the parties. This occurs when one party is dissatisfied because the other party has not performed the services or obligations set forth in the subject matter of the contract or agreement. Such situations are known as late payment or breach of promise. Default can be:

- Not carrying out any achievements at all;
- Carry out achievements, but not in accordance with the agreement;
- Implement the agreement, but late or not on time;
- Carry out things that are prohibited in the agreement [11].

Mediation is a method of resolving disputes through a negotiation process to reach an agreement between the parties with the help of a mediator. A mediator is a judge or other person holding a certificate of mediation as a neutral party who assists the parties in the negotiation process to explore various possible dispute resolutions without resorting to any means to determine or enforce a settlement. I am a party. The provisions of the Supreme Court Decree on Arbitration Procedures apply to disputes in both general and religious courts. Judges, arbitrators, parties and/or attorneys must follow procedures for resolving disputes through mediation. A judge reviewing a case against a decision must state that the case was sought to be resolved through mediation by appointing a mediator. By not ordering the parties to mediate, the parties failed to mediate.

If you violate these terms, the Court of Appeal or the Supreme Court shall, in the case of an interlocutory action, order the first level court to convene. The presiding judge then appoints and determines a judicial mediator who is not the coroner of the case. The arbitration process will take place within 30 days after he receives notification of the High Court or Supreme Court's preliminary decision. The President of the Court submits a report of the outcome of the mediation with the case file to the High Court or Supreme Court. Based on the report, a judge hearing the case in the High Court or Supreme Court made a decision.

All civil disputes submitted to the courts are subject to resistance to Verstek's decisions (verzet) and resistance by litigants (partij verzet) and third parties (derden verzet) to the implementation of decisions with permanent legal force. Including the case should first be resolved through: A court seeking arbitration, unless a Supreme Court order provides otherwise. Disputes exempt from the obligation to resolve through mediation are:

- Disputes resolved through the Commercial Court procedure;
- Disputes resolved through the Industrial Relations Court procedures;
- Objection to the decision of the Business Competition Supervisory Commission;
- Objection to the decision of the Consumer Dispute Settlement Body;
- Application for annulment of the arbitral award;
- Objection to the decision of the Information Commission;

- Settlement of political party disputes;
- Disputes that are resolved through a simple lawsuit procedure; and
- Other disputes whose examination at the trial is determined by the grace period for their settlement in the provisions of the laws and regulations [12].

The policy of the Supreme Court of the Republic of Indonesia to apply mediation in the case process in the Court is also based on several practical reasons as follows:

First, the mediation process aims to overcome the problem of case accumulation. If the parties can resolve their disputes on their own, without the judge having to go to court, the number of cases that need to be reviewed by a judge will also decrease. If the dispute can be resolved amicably, the parties will not appeal, waive, or redo the PC due to the win-win nature of the arbitration decision.

Second, the mediation process is considered a quicker and cheaper way to resolve disputes than the court process.

Third, mediation is expected to increase opportunities for the parties to gain a sense of justice. A sense of justice can be achieved not only through litigation, but also through deliberative processes and consensus among the parties. The introduction of mediation into the formal judicial system allows communities seeking justice in general, and disputing parties in particular, to first seek resolution of their disputes through a consensus approach assisted by mediators called mediators.

Fourth, the institutionalization of the mediation process in the judicial system can strengthen and maximize the role of the judiciary in dispute resolution. Where in the past the function of decision was more prominent, the introduction of PERMA mediation is expected to bring the function of arbitration or mediation in close alignment and balance with that of decision.

The most fundamental point relevant to PERMA #1 of 2016 regarding court mediation proceedings is the determination of good faith as one of the determinants of the success or failure of mediation. The arrangement appears to raise awareness among litigants to change mindsets in resolving disputes by prioritizing peace efforts. This provision seems to be based on the fact that many cases are arbitrated, especially in large city courts, where the most important parties, even if summoned, do not appear before the arbitrator. In fact, mediation directly to the material parties has been found to be far more optimal and more likely to achieve peace. It is understandable, therefore, why the PERMA Arbitration stresses the importance of good faith on the part of the litigants by threatening to declare their claims inadmissible if the plaintiff does not have good faith.

Article 7 (1) of PERMA No. 1 of 2016 on Court Mediation emphasizes the obligation of litigant parties to act in good faith during the mediation process. Failure to do so in good faith will result in the act being declared inadmissible. Section 7(2) describes matters or circumstances in which one or both parties to an action are held to be in bad faith.

- Failure to attend after being duly summoned to Arbitration Session 2 (twice) in succession without justifiable cause.
- Attended the first arbitration conference, but did not attend the next conference despite two successive duly subpoenas he had without good cause.

- Repeated absences without justifiable reason that interfere with the scheduling of the conciliation meeting. d) Participating in an arbitration session but not submitting and/or responding to the other party's resume; or
- Not sign the agreed draft peace deal without good reason; [13].

In the mediation process, there are 3 (three) stages, namely:

1) *Premediation stage*

The pre-mediation stage is the initial stage in which the mediator has a series of steps and preparations in place before mediation begins. At this stage, mediators take several strategic steps. Building trust; communicating with the parties; researching and providing initial mediation information; focusing on the future; and create mutually beneficial situations.

2) *Mediation implementation stage*

The implementation stage of mediation is the stage where the disputing parties meet and negotiate in a forum. In this stage, there are several important steps, namely remarks and introductions by the mediator, presentation and explanation of the factual conditions experienced by the parties, sorting and correctly identifying the problems of the parties, discussing (negotiating) agreed issues, reaching alternatives. Alternative settlements, finding points of agreement and formulating decisions, recording and recounting decisions, and closing mediation.

3) *The final stage of mediation implementation*

At this stage, the parties implement what they have agreed to in their written agreement. The parties will enforce the agreed outcome based on the commitments they made during the mediation process. The act of mediation (act) is usually performed by the parties themselves, but in some cases other parties assist in the act.

3 Discussion and Analysis

A. *Effectiveness of Mediation as an Alternative for Dispute Resolution (APS) in Resolving Civil Cases at the Tanjung Karang District Court Class IA*

To talk about the validity of laws is to talk about the power of laws to regulate or compel people to obey them. Laws are effective when the factors affecting them are allowed to function properly. A measure of the effectiveness of applicable legal regulations can be found in community behavior. A law or law is in force if the community behaves as expected or if the law achieves the desired goals. Then the law or the validity of the law is achieved. In this regard, good faith in mediation by Perma No. 1 of 2016 is also a law requiring enforcement by the parties towards a win-win solution. What is being held does not conform to the applied quick, easy and cheap principle.

Table 1. Mediation Success Rate

No.	Year	Number Of Cases	Conduct Mediation	Fail	Success	Percentage
1.	2019	265	168	154	2	1,2%
2.	2020	233	135	124	3	2,2%
3.	2021	221	138	118	6	4,3%
Mediation success rate: 2,5%						

From this data, it can be seen that the number of cases that went through the mediation process and ended amicably was still very small. As seen in the Table 1 in 2019, there were 265 civil cases entered and only 2 cases managed to reach an agreement to make peace. Whereas in 2020 there were 233 civil cases that were submitted, but only 3 cases succeeded in making peace and in 2021 as many as 221 cases, only 6 cases managed to reach an agreement to make peace. Referenced by Felik to the theory of legal validity put forward by Anthoni Allot. This theory states that a law is effective if the purpose of its existence and application is to prevent unwanted acts and to clear up confusion. A generally valid law can accomplish what it is planned to do. Potential for quick fixes when it's dark, but if you need to enforce or apply the law in a different new atmosphere, the law can do it.

Based on the foregoing, it is concluded that mediation as an alternative for resolving civil disputes in courts, especially at the Tanjung Karang District Court, has not been effective, given the low percentage of cases that have been successfully resolved through mediation mechanisms. In fact, the average success of mediation for three years only reached 2.5%. However, even though on paper the success of mediation is still very low when compared to the existing cases, what should be appreciated is the increasing percentage from year to year.

B. *The Obstacle Factors in the Settlement of Civil Disputes through Mediation at the Tanjung Karang District Court*

In this study, to find out the factors that become obstacles to the success of mediation in court, it is done by looking at the perspective of the mediation actors themselves consisting of the mediator judge, legal counsel, and the parties.

1) *The Obstacle Factors According to Mediation Judger*

Based on interviews conducted with several mediator judges, at least there are several things that are considered as obstacles to the success of mediation, including:

a) *Lack of seriousness or intention from the parties during the mediation process there was no seriousness and desire to make peace, was present at the first trial but was not present at the second trial so that the mediation session was delayed due to an attempt to summon the parties. it is conveyed that attendance is very important especially the defendant and the plaintiff must be present, if the parties are unable to*

attend there is an exception if they are under guardianship or because of their work or because their place of residence is far away so that their attorney can attend;

b) *The high ego of the litigants. All feel the most right, so that a win-win solution is difficult to achieve;*
c) *There is a party who is more dominant, even though one of the keys to the success of mediation is the existence of an equal position of the parties.*
d) *The complexity of the case to be mediated*.

From the things above, it can be concluded that the success or failure of a mediation is very dependent on the parties to the dispute. In short, the key to successful mediation lies in the intention of the parties. If from the beginning the parties have closed their hearts to peace, then no matter how hard mediation is carried out, then peace becomes an impossibility.

2) The Obstacle Factors According to Advocates

In line with the view of the mediator judge, apart from the factors of the parties, the attorney also highlighted several things that determine the success of a mediation. Among them:

a) *The low desire of the parties to make peace. If the good faith of the parties does not exist then mediation is difficult to carry out, whereas if the parties have good faith in mediating and the parties agree and admit mistakes then the mediation is complete;*
b) *Low good faith from the parties, marked by their absence when the mediation process is carried out;*
c) *There is an assumption that mediator judges sometimes only regard the mediation process as a formality.*
d) *Apart from judges, community cultural factors are also one of the inhibiting factors because mediation arises at the initiative of the panel of judges not from the disputing parties, this often causes people to violate the agreement, causing mediation to fail.*

3) The Obstacle Factors According to the Parties

From another perspective, the parties at least stated some weaknesses of mediation that caused mediation to often fail due to:

a) *Constraints from the parties, namely in the mediation process often the parties (opposite party) do not attend the mediation session and are represented by their legal counsel, this shows that the parties (opponent party) have no desire to make peace. If the parties have the desire to make peace, then they can attend the mediation session even though they may be out of town (via audiovisual).*
b) *The obstacles from advocates are that some advocates have a lack of understanding of the disputed issues they face, making the mediation process not run optimally, such as the default case where PT Artha wants to achieve achievements but the lawyers from the opposing party do not explain the value of the achievements to be achieved, only tells the beginning of the engagement made.*

c) *While the obstacle for the mediator judge is that there are mediator judges in the court who really care and some don't care about the problem. It doesn't matter what the parties want to convey, they are welcome but there is no consideration. The impression arises that the mediator only considers this as a formality to complete the litigation.*

4 Conclusion

Dispute resolution through court in Tanjung Karang District Court has not been able to overcome private case backlog in courts, particularly mediation. The success rate is still very low, below 5%. However, we should acknowledge the optimism towards mediation, this can be seen from the trend of mediation success which is increasing in percentage every year. From the perspective of mediator, lawyer, and the parties, the low success of it is caused by several things, including the low intention of the parties to produce a win-win solution agreement, the inequality of position between the parties involved in the dispute, lack of understanding of the mediator on the case that affects the low ability to find the root of the problems, the assumption that mediation is just a formality, and the complexity of the case itself.

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