



The Implementation of Dispute Resolution Containing Local Wisdom as a Peace Solution

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Abstract. Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution accommodates the implementation of arbitration and alternative dispute resolution in Indonesia. However, its existence is less effective in resolving civil disputes in certain communities because it does not accommodate the values of the community. On the other hand, Indonesian society can create its mechanism for dispute resolution by applying local values in the dispute resolution mechanism. This study aimed to analyze the concept of local values in alternative dispute resolution and the implementation of local values in alternative dispute resolution in the communities of Tlagayasa Village, Bobotsari Subdistrict, Purbalingga Regency, and Tetel Village, Pengadegan Subdistrict, Purbalingga Regency. This study used the empirical juridical method with structural, cultural, and pluralism approaches. The data used in this research were primary data and secondary data. The data were collected through interviews and a review of the literature. The results showed that customary elders implemented local values in alternative dispute resolution mechanisms called cablaka, rembugan, ganden, sidem, and reputation. Indigenous elders in Indonesia are frequently referred to as community leaders, someone who is recognized for their position or authority to the point that their leadership can transcend current laws and regulations. Using local values in alternative dispute resolution is beneficial since it has a high success rate.

Keywords: Local Values, Alternative Dispute Resolution, Local Wisdom

1. Introduction

The development of society often leads to differences of interest that can lead to disputes and need to be resolved with the right dispute resolution method to achieve justice for the parties. Dispute resolution can be conducted through litigation and non-litigation processes. The non litigation process is carried out through arbitration and Alternative Dispute Resolution. Law No. 30/1999 on Arbitration and Alternative Dispute Resolution has accommodated the implementation of arbitration and Alternative Dispute Resolution. Even though it has only been legalized since 1999, the Indonesian people have acknowledged Alternative Dispute Resolution through Consensus Deliberation as a form of local wisdom. Local wisdom is anything that has grown, executed and become a community activity with noble principles.[1] Local wisdom will foster local values that become guidelines for the community in everyday life. However, these local values are not fully accommodated in Law No.

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30/1999 on Arbitration and Alternative Dispute Resolution so the regulation is not effective in resolving disputes in certain communities. On the other hand, the Indonesian people can establish their dispute settlement by incorporating local values.

The dispute resolution process between certain communities is often carried out by developing local values through the mediation process. By referring to the opinion of Satjipto Rahardjo and Lawrence Friedman, the connection with the settlement of civil disputes between the parties through mediation is a way to overcome the complexity of the problems faced.[2] In Bangladesh, the existence of village heads in the Shalish institution is very effective in resolving disputes in the community, so a number of alterations to this institution have been carried out by various parties, including the Madaripur Legal.[3] The mediation process in Indonesia is carried out by peace institutions or individuals. Customary conflict settlement organizations such as Saniri Negeri and Saniri Raja Putih exist in Maluku. Individuals, such as customary leaders known as Pemangku Adat, also play a role in the mediation process. Traditional rulers who specifically manage forests called pemangku adat manage customary forests in Bayan Village.[4] Aside from Bayan Village, Tetel Village, and Tlagayasa Village continue to use local values in the mediation process. These local values, however, deviate from the provisions of Law No. 30/1999 on Arbitration and Alternative Dispute Resolution. The author created the paper "Implementation of Dispute Resolution with Local Wisdom as a Peace Solution" having this background in mind.

2. Problem

How is the implementation of local values in the implementation of Alternative Dispute Resolution with local wisdom in Tetel Village and Tlagayasa Village?

3. Method

This study uses empirical juridical method. The empirical Juridical method is a legal research method that serves to see the law in real terms and examine how the law works in society.[5] This study used structural, cultural, and pluralism approaches. The structural approach is an approach to the operation of law in society based on the structures contained in society, the cultural approach emphasizes that the law is seen as a manifestation of the culture adopted by the community, while the pluralism approach emphasizes the plurality of laws that provide different results with the applicable positive law.

This study was conducted in Tlagayasa Village, Bobotsari Subdistrict, Purbalingga Regency, Central Java, and Tetel Village, Pengadegan Subdistrict, Purbalingga Regency, Central Java. This study used primary data as the main data and secondary data that supported the processing of primary data. The primary data used were the results of interviews using the snowball sampling technique. The

snowball sampling technique is used when the size of a population cannot be determined (no sampling frame is available) and is difficult to reach for various reasons (rare, hidden populations).[6] This study was conducted by making the Village Head and Community Leaders the main resource persons who would give direction to the next resource persons. The Village Head as the lowest authority is considered to know all mediation processes in the village while the Community Leader as an observer is considered to be able to assess how the mediation process works. Research in Tlagayasa Village, Bobotsari Sub-district, Purbalingga Regency, Central Java started with the Village Head and the former Village Head as the elder community leader and ended with the 18th interviewee, while research in Tetel Village, Pengadegan Sub-district, Purbalingga Regency, Central Java started with the Village Head and one of the educated community members and ended with the 34th interviewee. The interview procedure began with the first circle, the Village Head, and community leaders, who then nominated the next applicant from the second circle. The third circle will likewise be recommended as the next interviewee by the second circle. The first circle represented the resource person who knew the most about the mediation process, the second circle represented the resource person who comprehended the mediation process, and the third circle represented the resource person who knew the mediation process.

The primary data obtained was analyzed and conceptualized by finding meaning through the interpretation of words in the data. The data was presented descriptively. Secondary data used primary legal materials and secondary legal materials. Primary legal materials are The 1945 Republic of Indonesia Constitution, Law No. 30/1999 on Arbitration and Alternative Dispute Resolution, and other regulations. Secondary legal materials are in the form of literature. The data was collected by literature study method, analyzed by qualitative normative method, and presented descriptively.

4. Discussion

Civil dispute resolution is more flexible to achieve peace because of the freedom for the parties to choose the method of dispute resolution, either by litigation or non-litigation through arbitration and Alternative Dispute Resolution. Article 1 point 10 of Law No. 30/1999 on Arbitration and Alternative Dispute Resolution stated that Alternative Dispute Resolution is an institution for resolving disputes or differences of opinion through procedures agreed upon by the parties, namely non-litigation processes utilizing consultation, negotiation, mediation, conciliation, or expert judgment. "Procedures agreed by the parties" are interpreted as opportunities for dispute resolution that refer to the principle of freedom. Local values that evolve in the community also implement the idea of freedom in dispute resolution. If there is a conflict or dispute between the people and the custom is not carried out, it is believed that it will damage the order of harmony which is a violation of traditional wisdom. [7] Furthermore, there is Badamai law that contains local wisdom as a peace solution. Wisdom is synonymous with the ability to take a positive, good and useful attitude and action by avoiding the impact of badness and loss.[8] The existence of local

wisdom is recognized by Article 32 paragraph 1 of The 1945 Republic of Indonesia Constitution which stated that the State promotes Indonesian national culture amid world civilization by guaranteeing the freedom of the community to maintain and develop its cultural values. The article recognizes the existence of local wisdom. Local wisdom is a view of life and science as well as various life strategies in the form of activities carried out by local communities in responding to various problems in meeting their needs.[9] Local wisdom can also evolve into customary law or *adat* law, which is used by communities that work with established systems. Van Vollenhoven insisted that *adat* law was not only used in courts, but in many different contexts. The result was that often different sets of *adat* interpretations coexisted, not parallel and in isolation, but in mutual relationships: what he called „lawyers“*adat*“, the government“s interpretation, and „people“s *adat*“ with its local understandings. [10] While habits are norms, rules and actions are still carried out only on small groups of individuals. It is effortless to say that this is customary law and that it is a fundamental habit and custom in indigenous people in Indonesia.[11] All local communities have local wisdom with a very strong influence in regulating the balance between humans and nature and among humans.[12] This promotes the development of local wisdom and values in Indonesian society. Local values are distinct values that are acknowledged and used as guides for the lives of people in a particular region. Local values are very concerned about each problem faced by them specifically with the stance that each problem is not the same as another problem even though it has similarities.[13] It indicated that the use of local values is effective in dispute resolution. One area that still upholds local values is Tlagayasa Village, Bobotsari Sub-district, Purbalingga Regency, Central Java and Tetel Village, Pengadegan Sub-district, Purbalingga Regency, Central Java. These local values can be seen in the mediator criteria, mediation principles and the implementation of mediation process.

4.1. Mediator Criteria

Mediation is classified into two categories, namely 1) in-court mediation and 2) private mediation.[14] In-court mediation is a mechanism that must be passed by the parties in court, meanwhile private mediation is a mechanism to achieve peace and resolve the parties' dispute without going to court. Mediation is a dispute resolution process between the parties with the help of a neutral and impartial third party (mediator), whose decision is still taken by the parties themselves. The role of each party to be cooperative and in good faith determines the timing of the dispute examination process.[15] It is obvious that the success of negotiations will depend on the quality of the parties to the dispute as negotiators, as well as on the variety of their communication techniques and methods.[16] The mediation process will also operate smoothly if it is carried out by mediators who are capable of carrying out their responsibilities, hence mediator requirements are required.

Based on Article 1 point 2 of the Indonesian Supreme Court Regulation No. 1 of 2016 on Mediation Procedures in Court, a mediator is a judge or other party who has a mediator certificate as a neutral party who assists the parties in the negotiation process to find various possible dispute resolutions without deciding or imposing a settlement on the parties. To become a mediator, a person must first get a mediator

certificate from the Indonesian Supreme Court (or another institution approved by the Indonesian Supreme Court).[17] According to Article 26 of the Indonesian Supreme Court Regulation No. 1 of 2016 on Mediation Procedures in Court, the involvement of community leaders, religious leaders, and traditional leaders in the mediation process can be requested if deemed necessary. Mediation in Tlagayasa Village and Tetel Village disregarded the criteria set out by the Indonesian Supreme Court Regulation and even ignored the criteria and role of the mediator in general that must be an expert in law. The mediator also must be a neutral party. In Western society mediators play a strictly neutral role, ensuring that the parties arrive at their own agreement – even if the mediator disagrees with it. In traditional society the mediator plays a role more like that of a conciliator[18]. It because mediator considered as someone who knows everything better. Mediator and conciliator play different roles in the dispute resolution process. The mediator is passive, while the conciliator and the involved parties actively finds a solution.[19] This is characterized by the mediator's criteria for resolving disputes being based on local values and authority, rather than on the mediator's certificate or expertise in law. Authority or *gezag* comes from the word "zeggen" which means "to speak". A person whose words have binding force on others has authority or *gezag* over others[20]. With the authority, a mediator can act as a conciliator, presenting possibilities to the parties to reach an agreement. Age, religious understanding, social status, and reputation can all be used to determine authority, therefore anyone who fits these requirements can become a mediator. However, each location has its own set of standards. Mediation is performed in Tlagayasa Village by an authoritative community figure or someone who is qualified to be a mediator because they are victims or relatives of the parties. The Village Head or a former Village Head oversees the mediation process by community figures. If they are unable to resolve the disagreement, the mediation procedure will be outsourced to a higher-level government institution. Meanwhile, mediation in Tetel Village was exclusively carried out by the party now acting as the Village Head as a community servant. Servant leadership prioritizes and serves the interests of its followers.[21] It makes the Village Head have more role as mediator.

4.2. Mediation Principle

David Spencer and Michael Brogan refer to Ruth Carlton's argument, that there are five basic principles of mediation:[22]

a. The principle of confidentiality

Confidentiality means that nothing that occurs during the mediation process should be made public. The parties, the mediator, and the witnesses do not discuss any concerns outside of the mediation session.

b. Volunteer

The voluntary principle emphasizes that the mediation process is carried out by each party of their own accord without any coercion from the other party.

c. Empowerment

The principle of empowerment is founded on the idea that people who desire to come to mediation can reach an agreement on their own.

d. Neutrality

Neutrality means that the role of the mediator is only to provide facilities in the mediation process without making decisions on the mediation process.

e. A unique Solution

A unique solution emphasizes that the resulting agreement is not necessarily in line with the regulations, but is adjusted to the needs and sense of justice of the parties themselves.

The mediation principle is also recognized in customary law in the different words. The traditional law certainly does not just appear and is obeyed by the community. People regard it because they believe in the value of goodness in it.[4] Norms are generally described as how people are thinking (shared reality) and behaving and ultimately, they control the behaviour of people. They are therefore, conceptually related to cultural practices. They prescribe certain behaviors and once these behaviors are socially routinized, they become prioritized.[23] The mediation principles that exist in the communities of Tetel Village and Tlagayasa Village are reflected in the following values:

a. *Cablaka*

Cablaka is often interpreted as a character that emphasizes in the straightforwardness of Banyumas people.[24] *Cablaka* is interpreted as a process of expressing opinions without burden. *Cablaka* is an important value to reach a fair decision for the parties. Peace between parties is preceded by expressing opinions to each other so that there is no sense of defeat between the parties. *Cablaka* is the form of the empowerment.

b. *Rembugan*

Rembugan is similar with consensus (musyawarah mufakat). *Rembugan* is almost the same as consensus deliberation. The consensus approach in the mediation process means that everything produced in the mediation process must be the result of the agreement or consent of the parties[14]. By using mutual consultation, the mediation process is not rigid and formal so it is expected to find the best solution. *Rembugan* can make a unique solution.

c. *Ganden*

Ganden means that all issues are decided fairly between the parties. The process of problem-finding process needs to be studied by the mediator by gathering information from the parties. It is the form of neutrality and a unique solution.

d. *Sidem*

Sidem is an attempt to keep the dispute resolution confidential. It is intended to preserve the goodwill of the parties. The mediator will reconcile the parties and continue to mediate secretly. *Sidem* is a form of implementation of the principle of confidentiality.

e. *Reputation*

Reputation is a good value that lives and develops in society so reputation is determined by society itself. Reputation is usually determined and assessed through moral values that exist in society, including morals. Morals relate to the good and bad attitudes of humans as reasonable beings[25]. The regulations do not mention reputation as a principle that a person must have to become a mediator. However, reputation is a measure of a person's authority that influences the selection of mediators in Alternative Dispute Resolution.

Based on the explanation above, the five basic principles of mediation are carried out in the Alternative Dispute Resolution that contains local wisdom.

4.3. Mediation Process

The implementation of mediation in court is governed by legislative procedures, but non litigation mediation is governed by an independent mechanism. Several challenges exist in the application of dispute mediation in court, including the parties' lack of understanding and the limited number of certified mediator judges. Reliable mediators who are willing to settle disagreements through mediation are required for mediation to be successful.[26] Based on this, it is critical to perform out-of-court mediation. There are differences between the litigation mediation in court and non-litigation mediation. Dispute resolution through mediation in particular and non-litigation dispute resolution are limited to civil disputes, such as property right disputes, inheritance rights disputes, etc.[14] The scope of disputes that can be resolved in the community is established by the community itself depending on the background of the dispute as long as the disagreement is regarded to be troubling the surrounding community or the parties submit a mediation request to the prospective mediator. The mediation process in Tlagayasa Village, Bobotsari Subdistrict, Purbalingga Regency, Central Java, and Tetel Village, Pengadegan Subdistrict, Purbalingga Regency, Central Java, is not limited to specific problems but is broadly open to include marital problems, land disputes, business disputes, and other agreements-related disputes, as well as illegal acts such as theft.

According to the findings of the study, there were discrepancies in the notion of mediation between Tlagayasa Village and Tetel Village. The level of the mediation process demonstrates the conceptual difference. In Tlagayasa Village, mediation was done directly with the Village Head or in collaboration with institutions above him, rather than in stages. Meanwhile, in Tetel Village, mediation was carried out at the lowest level by the RT, then by the Hamlet Head, and finally by the Village Head, in line with the amount of difficulty of the mediation to reach peace. But, if the issue impacts a large number of individuals, the settlement might be made directly with the Village Head.

Based on the research results, the mediation process in Tlagayasa Village more

often used Sharia law because the Village Head is Muslim. Shari,a is not and could never be a customary law because unlike customary law which is largely man-made and unwritten, shari,,a is divine and largely written in the Qur"an and other Islamic sources[27]. As in Java, Hurgronje again observed how little Islamic doctrine the Acehnese sought in Mecca influenced their daily life. This point led Hurgronje to what has been noted as the supremacy of adat over sharia.[28] Meanwhile, in Tetel Village, the mediation process always used customary law. The mediator would start by organizing a "nembung" for the parties and then start the mediation at an agreed time and place.

4.4. The effectiveness of Dispute Resolution Containing Local Wisdom

Alternative dispute resolution through mediation in Tlagayasa Village and Tetel Village is not well recorded, so exact data on the number of mediations conducted cannot be obtained. However, none of the disputes resolved through mediation were submitted to the court. This means that the mediation was successful and achieved the results expected by the parties. Syahrizal Abbas provides a definition that mediation can bring the parties to an agreement without feeling that there are parties who win or lose (win-win solution).[29]

Based on the research results, 46 of 52 interviewees believed that the challenges they encountered might be resolved through mediation based on local wisdom. Furthermore, the mediation process incorporating local values had many successes, and the outcomes were accepted by the parties, resulting in satisfaction among the parties on both substantive and procedural levels, as well as psychologically. Substantive satisfaction refers to the parties' specific satisfaction, such as the payment of compensation. Procedural satisfaction is achieved when the parties have an equal opportunity to convey their ideas as outlined in an agreement. Psychological satisfaction concerns the emotional level of the parties which is controlled, respectful, open, and carried out with a positive attitude in maintaining the relationship in the future.[22]

Substantive satisfaction is achieved because the parties always fulfil the agreement. Procedural satisfaction is achieved because of the values of rembugan, ganden, and sidem, parties have an equal opportunity to convey their ideas. Psychological satisfaction is achieved because there is no feeling who win and lose between parties, either they come to an agreement.

5. Conclusion

Based on this discussion, it can be concluded that local values implemented in Alternative Dispute Resolution mechanisms, especially mediation. These local values can be seen in the mediator criteria, mediation principles and the implementation of mediation process. The local wisdom, include cablaka, rembugan, ganden, sidem, and reputation carried out by traditional elders by overriding existing laws for the sake of creating justice. Justice was created according to the parties so that none of the problems in the mediation process are submitted to the court. Based on this, dispute resolution using local wisdom was

an effective way as a peaceful solution.

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