

The contribution of Mediation in the settlement of the case for the Restriction of the Efforts of Law In the district Court

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Abstract

In solve legal problems better by way of mediation so that the bias resolved in kinship if these efforts has been done has not been successful then the restriction of the efforts of the law through the mediation to ensure that the judicial process that is quick and cheap (so that the judiciary can be the choice of the people to resolve their disputes) as well as the anticipated increase in the number of cases which aims to reduce the accumulation of cases in the Supreme Court, especially at the level of Cassation. The increasing number of cases that enter, and decided in the district Court and the High Court, result in the amount of the verdict asked the efforts of law Appeal to the supreme court also increased and began to be a serious problem. Underlying it is necessary to do a study about the Role of the Judiciary in the Restriction of the Efforts of the Law in order to reduce the accumulation of cases in Court.

Keywords: The contribution of Mediation, restrictions, remedies.

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INTRODUCTION

Related to the process of settlement of litigation through the courts is actually contrary to the implementation of the principle of justice that are simple, quick and low cost as determined in article 2, paragraph (4) of Law No. 48 Year 2009 on Judicial Power, which states that "the Judiciary is made with simple, fast, and low cost." The setup of the principle of justice is simple, fast and cost of the lightness, the most important thing in order to reduce the accumulation of cases in the Supreme Court, especially at the level of Cassation [1]. It memunculkan the Idea of the necessity of limitation of the case that can be filed to the Supreme Court (MA) has been quite a long time posed as a response to the problem of arrears cases (case backlog) in the Supreme Court (MA) [2].

In addition, there is also the idea to increase the number of justices to compensate for the amount of things there. Ideas above depart from the assumption that the main cause of arrears cases in MA is due to the large number of cases that enter into the MA (and the lack of the number of judges of the supreme), is because, along with the increasing number of cases that enter, and also that successfully terminated in the district Court and the High Court, then the amount of

the verdict entered in the Supreme Court at the rate of Cassation also increased and started to become a serious problem [3].

Annual report of the Supreme Court of the period 2018 to mention that the number of civil cases the level of the court of first entry from year to year continues to grow. If compared with the case that goes to the Supreme Court in 2017 as much as 80.085 the case, then in 2018 as many as 96.214 cases, increased by 120%. Arrears cases up to December 2017 until 13.123 case, plus things that go until January 2018 as many as 8.017 case [4].

In 2018, the case received the appellate court amounted to 6.754 case consisting of the rest of 2017 as much as 1.403 the case so that the number of case report 8.157 case. Of all the case that unplug 35 has been successfully disconnected as much as 6.654 case. The percentage of civil cases in the court of appeal broke up by 82%. In 2017 case received amounted to 6.464 cases where the rest of the cases in 2016 amounted to 1.288 the case so jumla matter entirely 7.752 case. Of these 55 cases revoked, putusan as much as 5.853 case, so that the percentage of the verdict in the civil case in the court of appeal of 76% [5].

Despite a lot of people talk about the need for the restriction to the case that may be filed cassation or Overview Back (PK) to the Supreme Court (MA), does not mean that there are currently no restrictions at all. The problem for this is setting restrictions on the case which is currently considered to be still too minimalist and not able to withstand the magnitude of the desire of the seeker of justice to ask for a justice to the supreme court [6].

Implementing the principle is simple, fast and low cost, in the judicial process supported by the Supreme Court Circular No. 1 of 2002, the date of 30 January 2002 on the Empowerment of the Court of First instance to Apply the Institute of Peace, which has been updated with the issuance of the Supreme Court Regulation No. (Perma) No. 2, 2003 on the Procedure of Mediation in the Court, as later refined by the Supreme Court Regulation (Perma) No. 1, 2008 on the Procedure of Mediation in the Court. Through the institution of the peace (dading) is expected to civil judicial process can take place with a simple, quick and low cost. Thus it appears that, of the Supreme Court through the Perma No. 1 Year of 2008, expect the settlement of the dispute can be resolved through the institutionalization of Mediation institution in order to support the implementation of the principle of justice is simple, fast and cost of the lightness [7].

In the beginning, alternative dispute resolution are positioned face to face in the opposite or is a competitor of dispute resolution conventional through the institution of the judiciary, but it is recognized that some models of alternative dispute resolution can be integrated into the Court (court connected mediation), namely for mediation and conciliation. Considering the condition of things that accumulate and to consider the advantages of alternative dispute resolution, then the Supreme Court issued the Regulation of the Supreme Court No. 1, 2008 on the Procedure of Mediation in the Court, which is aimed at the institutionalization of the institution of mediation in the court. Based on the above description, the formulation of the issues that will be discussed in this paper is: First, factors contribute to the mediation proven to be connected with the court and the Second, the restriction of the efforts of the law through the institution of mediation in the court [8].

RESEARCH METHODS

The method used in this research is Descriptive method. This method is seen as a research procedure that produces descriptive data. On the other hand, in accordance with the goal that this research is intended to describe the answers to the formulation of the issues surrounding the effectiveness of the success of mediation in the Courts of the Country. The entry of the mediation process in the judicial system is expected

to strengthen and invigorate the function of the court in the settlement of disputes, the court of which are cut (ajudikatif).

Analysis of legal materials in this research, beginning: First, the identification of the facts of the law to establish the legal issues to be solved; Second, collecting legal materials (primary and secondary); the Third, conduct a review of the legal issues posed by legal materials that have been collected; the Fourth, formulate a conclusion in the form of arguments to answer the legal issues; and the Fifth, giving dreskripsi based on the conclusions.

THE RESULTS OF THE DISCUSSION

Factors contribute to the mediation proven to be connected with the court.

Mediation is substantially the peace, in principle in the law has been introduced in Indonesia since the year of 2003, namely the process of mediation on the judiciary. The government, through the Supreme Court issued the Supreme Court Regulation (PERMA) No. 3, 2003 on the procedure of mediation in the Court of the Supreme Court of the Republic of Indonesia.

Settlement by way of peace (Mediation) has substantially introduced in the system of laws that apply in Indonesia, namely in the Dutch east Indies government through Reglement op de burgerlijke rechtvordering or abbreviated as Rv. In 1894 settlement through arbitration has been introduced. Officially arbitration (including mediation, conciliation, consultation, or expert judgment) is introduced by BJ Habibie government through LAW No. 30 of 1999 on arbitration and alternative dispute resolution. The cornerstone of the implementation of the institution of peace by the judiciary based on some rules that include:

1. HIR article 130 (=chapter 154 RBg. = article 31 of the Rv). During the reign of the Dutch east Indies through the Reglement op de burgerlijke rechtvordering or abbreviated as Rv, the government makes the rules about the efforts of peace, the sound of the above article is as follows : (1) if on the appointed day, the two sides came, then the district court with the help of the chairman tried to reconcile them, (2) if a peace that can be achieved, then at the time convened, do a letter (certificate) about it, in which both parties condemned will keep the covenant do it, the letter which will be powered and will run as the verdict of the commonly, (3) the decision so it can not be allowed to appeal, (4) if at the time tried to reconcile both parties, need to use an interpreter, then the regulations of the article the following done to it.
2. LAW No. 1 1974 article 39 of LAW No. 7 1989 article 65, KHI article 115, 131 (2), 143 (1-2), 144, and PP. 9 1975 article 32. Legislation, government

regulations, and the KHI as above mentioned that the Judge shall reconcile the parties before the verdict of the Attempt to reconcile the parties to the dispute is performed at each examination. So peace efforts can be realized, then the judge shall also present to the family or the people closest of the litigants to be heard specification, as well as the judges ask for help to the family so they can bury the hatchet. If this still fails then performed a legal settlement in litigation.

3. Supreme Court No. 1 2002 (Ex article 130 HIR /154 RBg) and the results of the discussion of Commission II of the Congress is limited, let's. The results of the meeting held on 26-27 september 2002 in Surabaya contains : (1) that the peace efforts should be done in earnest and optimal, not just a formality, (2) involving judges are appointed and can act as a facilitator or mediator, but not a judge of the majlis (but the results of the congress to allow judges majlis by reason of lack of judges in the area of daan because it is aware of the issue), or the parties concerned, ask the other party (third parties) are considered to be able to the chairman of the majlis, (3) if the peace efforts it takes a long time, then the examination of the case can go beyond the maximum time (6 months) as defined in the SEMA No. 6, 1992, (4) a peace treaty was made in the form of a deed of peace (dading), and the party punished to obey what has been agreed upon, (5) if that doesn't work, the judge concerned shall report to the chairman of the court/the chairman of the majlis and the examination of the case is continued, (6) facilitator/mediator should be neutral and impartial, not affected by both internal and external, does not play a role as a judge to determine right or wrong, not as a counselor, and(7) the successful completion through peace, can be used as assessment materials for the judge becomes the facilitator/mediator.
4. Perma No. 2, 2003 on the procedure of mediation in the Court of the Supreme Court of the Republic of Indonesia. Rules of the Supreme Court regulates the procedure of mediation in the Court of the Supreme Court, which includes pre mediation, the mediation session, the place and the cost of the mediation. A total of 18 articles in Perma is everything set the mediation that is integrated in the process of litigants in Court. Perma No.2 years 2003 and then revised and replaced with dikelurkannya Perma RI No.01, 2008 on the procedure of mediation in the court.

A Mediator is an Intermediary (liaison, mediator) for the parties to the dispute that or a mediator is someone who is independent in mediation and assigned to assist and encourage The Parties to the dispute to:

- a. Communicate and cooperate to achieve a settlement in good faith;

- b. Identify and convey the problems, interests and expectations of one party to the other party;
- c. Create, develop and consider alternative forms of settlement;
- d. It examines a variety of possible risks and implications; and
- e. Resolve the dispute voluntarily.

The Mediator has 7 functions, namely as catalyst, educator, translator, resource person, bearer of bad news, agent of reality scapegoat;

1. As a catalyst; it contains the notion that the presence of a mediator in the negotiation process is able to push the birth of the atmosphere that is constructive to the discussion.
2. As teachers; mean one should seek to understand the aspirations, work procedures, limitations, political, and business constraints of the parties therefore he must be trying to immerse yourself in the dynamics of the differences between the parties.
3. As a translator; the mediator should be trying to convey and to formulate a proposal of one party to the other party through the language or phrases that good without reducing the target to be achieved by the proposer.
4. As a resource; the mediator is the place to ask, the giver of advice, search the source of the information. The Mediator is selected or appointed let the people who have knowledge or experience about the object of which is disputed.
5. As the bearer of the bad news; the mediator should be aware that the parties in the negotiation process can be emotional, for that mediators should hold a meeting separately with related parties to accommodate the various proposals.
6. As an agent of reality; the mediator should try to give the sense of it clear to one of the parties that the target is not possible or unreasonable achieved through negotiations.
7. As a scapegoat; the mediator should be ready to blame for instance in making the agreement of the results of the negotiations.

Things done through mediation in the Court of Semarang State is not too much, but if it refers to the previous years of litigation through the mediator has increased significantly.

As for the amount of settlement of the dispute through mediation in the Court of Semarang is the case entry overall in 2017 and 2018, where researchers conduct research is a 587 case, the accumulation of cases was reduced 68 cases through mediation. From the number of cases through mediation only 3 cases in 2017 and 5 cases in the year 2018 which is done through the mediation of the (peace), while the rest failed. The case failed due to the parties litigant is not

present, the desires of the proceeding (litigation) and there are plucking the case.

Semarang district court in examining a case which at the time of the first hearing, the judge always seek peace. Integrating mediation into the process through court can strengthen and invigorate the function of courts in resolving disputes in accordance with the principal task of the court is cut off (ajudikatif). Mediation within the court are governed by the Supreme Court Regulation (PERMA) No. 1 year of 2008, which obliges gone through the process of mediation before the examination of the principal civil case with the mediator consists of a magistrate judge of the district Court that does not handle the case. Until December 2008 the Court of Semarang State was still wearing the Perma No. 2 of 2003 in the determination of the judge mediator because Perma No. 1 Tahun 2008 new effectively held starting in December 2008 when Perma No. 1 of 2008 was passed on July 30, 2008.

The outline of the mediation procedure in the court of semarang state is as follows: on the first trial, the judge commits the parties on that day also to confer choose a mediator. The judge delay the process of the trial of the case to provide an opportunity to the parties to pursue mediation. Here the judge to give an explanation to the parties about the mediation procedure in the system of settlement of litigation in court.

The latest 7 working days after the mediator agreed upon, the parties can submit a resume things to each other and to the mediator. If the parties fail to agree on a mediator, then resume the case is given to a mediator appointed. The mediation process is at most 40 working days, and can be extended for a maximum of 14 working days, on the basis of the agreement of the parties. The Mediator shall declare the mediation fails, if one of the parties or its legal counsel has two times in a row, did not attend the meeting who has disepekati, or do not attend a meeting of the mediation without reason after being called properly.

Limitation of remedies through the Institution of Mediation in the Court

Driven by the accumulated load case in court as well as to provide wide access to the public to obtain justice and the settlement of a dispute that they face, then the Supreme Court (MA) has published Rules of the Supreme Court No. 1, 2008 on the Procedure of Mediation in Court (Perma No. 1 2008). Perma No. 1 2008 this is a revision of the of the Supreme Court Regulation No. 2 2003 in Applying the Institutions of Peace which is the implementation of Article 130 HIR/154 RBg, which according to the provisions of the judge in civil cases obliged to encourage the parties in the first trial to pursue peace.

Mediation in order to Perma No. 1 2008 are must be taken in civil cases submitted to the court on the first level or in the district court, as Article 2, paragraph (2) Perma No. 1 2008 confirmed. Therefore, the nature of mediation in the courts of this is mandatory, the parties could not refuse or to request a direct examination case of litigation to a panel of judges who examined it. Further, in Article 2, paragraph (3) Perma No. 1 Year of 2008 specified that if there is a case that is examined and decided not to pursue the procedure of mediation based on this regulation is a violation of the provisions of Article 130 HIR and / or Article 154 Rbg which resulted in a verdict null and void.

At the stage of pre mediation, on the first hearing which was attended by the plaintiff and the defendant or his legal representative, the judge commits the parties to first pursue mediation. Judge obliges the parties on the same day or at most 2 (two) working days subsequent to negotiate in order to choose the mediator both which are in the list, which is owned by the court or in the court, including costs that may arise due to the choice of the use of a mediator is not a judge). The Mediator is selected can be from among judges, as long as the are not the judges examining the case, or a mediator from among the non-judge condition has been certified as a mediator that has been accredited by the MA. The implementation of mediation can be held in one of the halls of the court and for the use of the room is not charged, whereas if the implementation of the mediation is done in other places, then the cost arising from the use of such premises charged to the parties under the agreement. Similarly, the use of a mediator judge no cost while a mediator is not a judge of the cost is borne by the parties by agreement.

The stage of the mediation begins five days after the election or appointment of the mediator, the parties must submit a resume things to each other and to the mediator. The mediation process takes place during the forty days of work since the mediator selected by the parties or appointed by the presiding judge and on the basis of the agreement of the parties, the term of the mediation can be extended for a maximum of 14 (fourteen) working days from the expiry of 40 (forty) days as referred to in paragraph (3). In the implementation of the mediation the parties or its legal counsel and the mediator may invite an expert witness in a particular field to provide an explanation or consideration associated with dispute resolution, where all the cost of calling an expert witness is charged to the parties.

Good agreement was reached or not, the results of mediation remains were brought to the court and the parties facing back to the assembly of the judge. If the achieved agreement then the agreement must be formulated in writing and signed by the parties and the mediator re-examine the agreement to avoid an

agreement that is mutually contradictory. On the agreement that has been achieved based on the request of the parties, the judge may confirm the deal as a deed of peace (*akta van dading*) that have the force of law, and vice versa if the parties do not want the inauguration of the deal was in the deed of peace, then in the written agreement that there should be a clause which contains a statement of revocation of things.

If no agreement is reached in mediation until the specified time limit, the mediator shall declare that the mediation process failed and notify the Judge who examined the case. Immediately after the notification that the judge continue the process of examination of the case in accordance with the provisions in the Law of Civil procedure that apply as in Article 18 Perma No. 1 2008. If mediation fails to reach an agreement and the process of examination of the case in the trial resumed, then all the statements and confessions of the parties in the mediation process cannot be used in the process of the trial concerned or other things. Similarly, photocopying documents, notes and records of the mediator is obliged to be destroyed and the mediator is no any can be asked to be a witness in the trial of the case in question.

It can not be denied that the mediation in order to Perma No. 1 2008 is a breakthrough that should be appreciated in order to attempt to reduce the load cases that must be resolved by the court or to give access for the public in obtaining justice and the settlement of disputes that satisfy the parties.

CONCLUSION

1. The discrepancy principle in Perma No. 1 Year 2008, which is as it should be applied in every implementation of the mediation be more on the ineffectiveness of the implementation of mediation in the field. The parties litigants in the court since the original was already hostile psychologically each other "hated" each other, and only one of their goals in the litigants in the court, namely each other to prove the fault of the opposing party and trying to get the decision win him as well as, wherever possible, the verdict was to punish the opponent with harshly. For that mediation efforts in court since the beginning it is very difficult to achieve success.
2. The provisions in the Perma No. 1 Year 2008 is about the term of the mediation process at most forty days of work, and on the basis of the agreement of the parties can be extended for fourteen working days, as stated in Article 13 paragraph (3) and (4) Perma No. 1 2008. The

problems that arise with the provisions of this is that if the parties have not shown a willingness to pursue the mediation process, so that the mediation process is run not by a maximum of only to meet the requirements of the formal review required, then the time period is actually slow down the process of dispute settlement. Should in this case the mediator is given the authority, to pay attention and consider the real of the parties to pursue mediation process, to declare the mediation fails even though a given period of time is not over yet so the trial process can be continued. Thus it is clear that the compulsion of the belligerent parties to pursue mediation mandatory in order Perma No. 1 2008 can be reduced with a good understanding about the importance and benefits of the mediation process is taken and to it the role of the mediator is to provide an understanding (education) regarding such things are very important.

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