
**THE EXISTENCE OF MEDIATING JUDGES IN THE PROCESS OF
CIVIL DISPUTE MEDIATION
BASED ON THE SUPREME COURT REGULATION NO. 1 YEAR 2016**

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ABSTRACT

The aims of this research are 1) to analyze the existence of mediating judges in the process of civil dispute mediation based on the Supreme Court Regulation (Peraturan Mahkamah Agung/PERMA) No. 1 year 2016 regarding the mediation procedures in court; 2) to analyze the supporting and the inhibiting factors which influence the existence of mediating judges in the process of civil dispute mediation in court.

This research is a normative juridical study with primary, secondary, and tertiary law materials. The manner and the instruments to collect the legal materials are using the method of documentation and document study. Data analysis is done by analyzing the research materials qualitatively.

The research results and discussion show that the existence of mediating judges in the process of civil dispute mediation based on the Supreme Court Regulation No. 1 year 2016 regarding the mediation procedures in court becomes the main choice of the parties who are in dispute. The supporting factors of the mediation by the mediating judges in a civil dispute are: human resources, economical budget, and infrastructure. The inhibiting factors of mediation by mediating judges in civil law disputes are: the parties are not present during the mediation, the number of certificated judges, and the society's knowledge. Based on the research results and the discussion, it can be concluded that: 1) the mediation process by the mediating judges in the solving of civil law disputes becomes the main choice of the conflicting parties, 2) the supporting and the inhibiting factors which influence the existence of mediating judges in the process of mediating civil disputes are as follows: human resources, level of knowledge or the society's understanding, facilities and infrastructure, work burden of the judges, also the regulations in the implementation of the mediation. Suggestions regarding the results of this research are: 1) increasing the service of the mediation process by the mediating judges in court, 2) increasing the quality of the human resources, increasing the facilities and the infrastructure regarding mediation, 3) and increasing the socialization to the people regarding mediation and also the issuing of regulations on mediation which are more complete and detailed.

Keywords: *Mediation, Mediating Judges, Civil Dispute*

A. BACKGROUND

As a state of law, Indonesia has the obligation to base all of its stately living on the existing law. The implementation of life based on law also applies in the resolution of problems or disputes which include public or private disputes. In the process of solving problems – or as discussed in this paper, disputes – there are two methods, litigation and non-litigation. The resolution of civil disputes through litigation method is a way to resolve disputes through the process of justice or trial in court. The process of litigation places the parties – the plaintiff and the defendant – face-to-face, and they are obliged to go through a long and a complicated process. This long process usually inhibits the obtainment of the parties' rights and obligations in daily life. Another problem which arise is the high budget needed to solve the case, where the parties must prepare or allocate funds which are rather unaffordable. The fees which must be paid include the fee of the trial process, the fee to pay for the advocates, the transportation fees, etc., which in total has a high amount. This becomes an irony since the society is forced to allocate a relatively large amount of budget to solve the case in which its value or nominal is not so high. Usually in a case, the budget needed to solve the case is larger than the value or the nominal trialed in the case.

In the Constitution No. 48 year 2009 Article 2 Paragraph (4) regarding Judge's Power¹, it is said that the implementation of the justice process in Indonesia is done in a quick, simple, and budget-friendly manner. It also gives a foundation to the justice bodies in Indonesia to finish al justice processes simply, quickly, and with low budget. In reality, the implementation of the Article 2 paragraph (4) is still far from its ideals.

The process of solving disputes through a non-litigation method is an

¹ Berdasarkan Pasal 2 ayat (4) UU No. 48 Tahun 2009 tentang Kekuasaan Kehakiman, pengertian sederhana dalam proses peradilan adalah pemeriksaan serta penyelesaian perkara dilakukan dengan cara yang efektif dan efisien. Sedangkan yang dimaksud biaya ringan dalam ketentuan tersebut yaitu biaya perkara dalam proses pengadilan adalah murah dan dapat terjangkau oleh masyarakat. Pelaksanaan asas tersebut diatas harus memperhatikan ketelitian dan kecermatan sehingga menghasilkan putusan hakim yang mampu memberikan kebenaran dan keadilan kepada masyarakat.

alternative process of solving disputes which emphasizes deliberation to reach an agreement. This process of solving disputes only need a short amount of time, and there is no need for a high budget as the process is much simpler compared to solving cases in court. The increase of the society's awareness of law, especially that which regards the process of resolving civil disputes in a non-litigative manner is a positive development of law. The simple and quick process of resolution cuts the bureaucracy process compared by solving cases through court. This has been hoped for by the seekers of justice, so it may become a breakthrough in law to obtain truth and justice.

The definition of Alternative Dispute Resolution can mean a mechanism of solving disputes through the non-litigative manner. This alternative process of solving disputes is hoped to become a choice for the people who seek justice. This simple and non-bureaucratic process is hoped to fulfill the people's sense of justice. Apart from speeding the dispute process, this process is hoped to decrease the mounding amount of cases needed to be solved by the Supreme Court. Right now, Indonesia has already had a regulation regarding this alternative in solving disputes, which is the Republic of Indonesia's Constitution No. 30 year 1999 regarding Arbitrage and the Alternative in Solving Disputes.

A general definition of the Alternative Dispute Resolution is the process of resolving disputes outside of court, where the conflicting parties must go through this process without involving juridical bodies. The Alternative Dispute Resolution implementation is in this case the Mediation, which is believed to be able to offer solutions regarding the process of finding justice. The final aim is to reach the enforcement of law which is right on target. The Alternative Dispute Resolution can also be called the Alternative to Litigation or the Alternative to Adjudication. The Alternative Dispute Resolution in the sense of alternative to litigation is the whole process of resolving disputes outside of court, including arbitration, mediation, conciliation, and negotiation. They are basically part of the Alternative Dispute Resolution. The definition of the Alternative Dispute Resolution (outside of litigation and arbitration) as the alternative to adjudication has a

sense that the process may involve the mechanism of resolving cases which are consensual or cooperative, such as negotiation, mediation, and conciliation².

The birth of the Supreme Court Regulation No. 1 year 2008 is then updated with the presence of the Supreme Court Regulation No. 1 year 2016 regarding the Mediation Procedures in Court, giving hope for the people in receiving justice through mediation in court. The birth of this Supreme Court regulation gives a sense that the Supreme Court makes efforts to maximize the effort of mediation as an alternative to solve disputes in court. We certainly understand that the mounding amount of the thousands of cases needed to be solved in the Supreme Court each year needs a solution. There has to be steps taken to solve them. The Supreme Court as the highest institution of justice surely hopes that the mounding number of cases may be decreased. This minimizing amount of arrears will surely have a good impact for the enforcement of law in Indonesia, and the society will trust the justice system.

The resolution process of civil disputes through mediation in court, with the birth of the Supreme Court Regulation No. 1 year 2016 regarding the Mediation Procedures in Court, there now exists the obligation of the judges to mediate the disputing parties beforehand. The mediators will be chosen by the conflicting parties, including the judges³.

The obligation of the judges in the dispute resolution process is in offering a solution through mediation, which is actually an implication of the Supreme Court Regulation No. 1 year 2016 regarding the Mediation Procedures in Court. It is stated in the Article 3 paragraph (1) that, "All judges, mediators, the parties and/or the advocates must follow the procedure of dispute resolution through mediation."

The mentioned article is an obligation of the judges as the judges who

² Suyud Margono, 2010, *Penyelesaian Sengketa Bisnis Alternative Dispute Resolutions (ADR)*, Ghalia

³ Lihat Pasal 8 ayat (1) Peraturan Mahkamah Agung Nomor 1 Tahun 2016 tentang Prosedur Mediasi di Pengadilan

handle civil cases must go through the mediation procedures. If not, it means that they violate Article 154 Rbg and/or Article 130 HIR. The consequence of violating the mentioned regulations include having the judge's decision regarding the civil dispute cancelled for the sake of law. Generally, the application of the Supreme Court Regulation No. 1 year 2016 regarding the Mediation Procedures in Court is a positive thing for the society as a whole, for the advocates, for the legal apparatus, and also for the judges themselves in understanding mediation.

The whole process of civil dispute resolution which are registered to the court must go through the mediation process before having been inspected. It must be processed according to the procedural law. This procedure has an exception, which are for the cases resolved through the Court of Trade procedures, if they object the decision of the Consumer Dispute Resolution Body (BPSK), Court of the Industrial Relations, also other cases which are related to the objecting of KPPU's (*Komisi Pengawas Persaingan Usaha*/Trade Competition Supervising Commission) decisions.

The main background of the mediation process in court is to increase the society's awareness of the importance of Indonesia's change in the legal process. By knowing this, the disputing parties may obtain an easier access of justice. The mediating judges' obligation regarding the mediation process is not only a formality which offers peace to the disputing parties, yet they also have the obligation to educate and give good understanding to the parties related regarding the advantages of mediation compared to the trial process in court.

The advantages of mediation according to the Supreme Court Regulation No. 1 year 2016 regarding the Mediation Procedures in Court is that using the services of the mediating judges and the court clerks do not require extra charge. The presence of the mediating judges makes it a consideration to the conflicting parties to choose the mediating judges instead of the mediating non-judges in the process of dispute resolution through mediation. The disadvantages of judges as mediators are as follows: first,

court judges usually have a larger burden of work. Second, there are still many judges in court who do not have enough capabilities to become good mediators. Third, the judges are used to deciding on cases based on winning or losing, which means that they may have difficulties becoming mediators.

The process of mediation in Article 24 paragraph (2) of the Supreme Court Regulation No. 1 year 2016 regarding the Mediation Procedures in Court gives 30 work days and may be extended based on the agreement of the parties related. The presence of caucus, certificated mediating judges, and advocates in the mediation process of civil disputes in District Courts is another parameter of the existence of civil dispute mediations by the mediating judges. Seeing the number civil disputes, the limited time of the mediation execution, the presence of caucus, the presence of certificated mediating judges, also the presence of advocates become interesting factors to be analyzed comprehensively.

Based on the background above, the writer is interested in analyzing the problem profoundly in this scientific paper entitled, “The Existence of Mediating Judges in the Process of Civil Dispute Mediation Based on the Supreme Court Regulation No. 1 Year 2006”.

B. RESEARCH PROBLEMS

The research problems in this study regarding the existence of mediating judges in the mediation process are as follows:

1. How is the existence of the mediating judges in the process of civil dispute mediation based on the Supreme Court Regulation No. 1 year 2016 regarding the Mediation Procedures in Court?
2. What are the supporting and the inhibiting factors of civil dispute mediation based on the Supreme Court Regulation No. 1 year 2016 regarding the Mediation Procedures in Court?

C. RESEARCH METHOD

This research which analyzes the existence of mediating judges in the process of civil dispute mediation is a juridical-normative study. A

juridical-normative study is a scientific procedure to find the truth based on the logic of knowledge in the normative point of view, where the object is the law itself⁴. In the process of research, the author will use the approach of the constitutional regulations and the conceptual approach. The analysis of the constitution uses the regulations of the Supreme Court Regulation No. 1 year 2016 regarding the Mediation Procedures in Court. The juridical-empirical research is a research based on literature review to obtain secondary data. Then, to complete the literature review, there will be a field study to obtain primary data⁵.

The law materials used in this study are as follows:

1. Primary Law Materials.
 - a. Republic of Indonesia's Constitution No. 30 year 1999 regarding Arbitrage and the Dispute Resolution Alternative.
 - b. Republic of Indonesia's Constitution No. 48 year 2009 regarding Judge's Power
 - c. The Supreme Court Regulation No. 1 year 2016 regarding the Mediation Procedures in Court.
2. Secondary Law Materials.
 - a. Literature on law, especially regarding mediation.
 - b. Articles on mediation.
 - c. The opinions of scholars regarding mediation.
3. Tertiary Law Materials.
 - a. Dictionaries on law, the terms mediation and dispute resolution alternative.
 - b. *Kamus Besar Bahasa Indonesia* (The Grand Dictionary of Indonesian Language) regarding the general term of mediation and dispute resolution alternative.

⁴ Johnny Ibrahim, *Teori&Metodologi Penelitian Hukum Normatif*, Bayumedia, Malang, 2011, hlm 57

⁵ Soerjono Soekanto, 2005, *Pengantar Penelitian Hukum*, UI Press, Jakarta, hlm. 52

D. RESULTS AND DISCUSSION

1. The Existence of Mediation by Mediating Judges Based on the Supreme Court Regulation No. 1 Year 2016 Regarding Mediation Procedures in Court

Issuing the Supreme Court Regulation No. 1 Year 2016 regarding the Mediation Procedures in Court which obliges the judge to conduct mediation on every civil law case they handle, raises a legal obligation for judges in Indonesia. Mediation as one of the Dispute Resolution Alternatives can be defined as a negotiation process of solving problems, where a neutral outsider cooperates with the conflicting parties in order to find mutual agreement.⁷ Mediations is a tool to bridge the different opinions between two parties in order to achieve dispute solution between them. The other definition defines mediation as a manner to meet, to unify the differences, and to search for a solution for their mutual benefit.

Mediation in court is a formal effort provided by the Constitution to solve disputes with peace. It is facilitated by a mediator who has been appointed or been chosen. In the other opinion, mediation is defined as a process of solving disputes between the conflicting parties with the help from an appointed mediator, where the mediator must meet the criterias as regulated in the Constitution, through discussion to achieve mutually beneficial settlement. If we analyze mediation as stated in the Supreme Court Regulation No. 1 Year 2016 regarding Mediation Procedures in Court, its starting point is actually a process of implementing peace as regulated in HIR and/or RBg.

The existence of mediating judges in the process of civil dispute mediation in court can be seen in the initial process of the mediation implementation. In the process of choosing a mediator by the conflicting parties, mediating judges are still the main choice for the mediation process. It is a fact that the existence of mediating judges in the process of civil disputes mediation in court is acknowledged by the society.

The existence of mediating judges in the process of civil dispute

mediation in court is the time when the dispute between parties which was filed to the court is successfully mediated and solved so there is no need to continue the trial process in court. This existence can be seen when the conflicting parties in performing mediation process are willing to meet and discuss between them to achieve a peace so it does not process to the trial in court. As a matter of fact, the mediation process in the civil dispute does not influence the arrear of cases handled by the Supreme Court.

The existence of mediating judges in the process of civil dispute mediation as an implementation of the Supreme Court Regulation No. 1 Year 2016 regarding Mediation Procedures in Court, can be seen aside from the process of choosing the mediating judge by the conflicting parties, but also based on the achievement of peace between the conflicting parties. The existence of mediation by mediating judges in civil dispute in court is a requirement in the process of case solving in court. The philosophical background of issuing the Supreme Court Regulation No. 1 Year 2016 regarding Mediation Procedures in Court is to reduce the arrear of cases in the Supreme Court, but in fact it does not have the effect at all. The birth of the Supreme Court Regulation adds the work of the judges. The existence of mediating judges in the process of civil dispute mediation is a reasonable thing because it is the judges' obligation to conduct mediation in accordance with the Supreme Court Regulation No. 1 Year 2016 regarding Mediation Procedures in Court. The existence of the mediating judge occurs when a problem or a dispute experienced by the parties then was filed to the court is solved through mediation process. The existence of mediation by mediating judge is fulfilled when mediated civil disputes can be solved without going through a long and costly trial process. However, the obligation of mediation in civil dispute basically does not have significant effect in reducing the arrear of cases handled by the Supreme Court. One of the big expectations with the birth of the Supreme Court Regulation No. 1 Year 2016 regarding Mediation Procedures in Court as an improvement of the Supreme Court Regulation No. 1 Year 2008 is to fulfill the sense of justice for the society.

2. The Supporting and the Inhibiting Factors of the Existence of Mediating Judges in the Process of Civil Dispute Mediation based on the Supreme Court Regulation No. 1 Year 2016 regarding Mediation Procedures in Court

a. The Supporting Factors of the Existence of Mediating Judges in the Process of Civil Dispute Mediation based on the Supreme Court Regulation No. 1 Year 2016 regarding Mediation Procedures in Court

The Supreme Court Regulation No. 1 Year 2016 regarding Mediation Procedures in Court is a regulation about the very positive proceedings for justice seekers, attorneys or advocates, and judges in understanding mediation. Mediation is one of the dispute solvings. It is a discussion process that give a large space for the parties in conducting negotiation or mediation to achieve the desired result. In the Supreme Court Regulation No. 1 Year 2016 regarding Mediation Procedures in Court, the process of mediation in court has been regulated in detail. It comes with expectation that it is able to give the sense of justice for the conflicting parties.

The supporting factors of mediation in court based on the Supreme Court Regulation No. 1 Year 2016 regarding Mediation Procedures in Court are as follows:

1) Human Resources

Human resources in this case is that the judge becomes a vital supporting factor in implementing mediation in court. The judge who has experience in solving criminal or civil cases will give psychological effect on each party to choose mediation in court. The judge is considered as the right figure by the parties who are in dispute in the mediation process with expectation that the problem is solved without dragging on.

If every conflicting party has enough understanding and knowledge in the dispute-solving process through mediation, it

will be supporting factor in mediation in court. These parties have crucial role in the success of mediation. If they have the same understanding in the dispute solving process, the mediation process will likely be successful.

2) Economical Budget

The process of mediation in court is an obligation taken by the court in order to solve civil dispute. Mediation can be done in two manners, in or out of court. Mediation out of court will use a professional independent mediator, while mediation in court uses mediating judge.

This economical factor is one of the reasons for the conflicting parties to choose mediation in court. If they use independent mediator out of court, every party will be burdened by the mediator service fee. Whilst using mediating judge in court, they will not need to spend more money or in other words it is free.

3) Infrastructure

Mediation process as an alternative in solving dispute, surely, needs adequate infrastructures. Infrastructure is an important aspect in the success of mediation. Court has excellent infrastructure in mediation process. The birth of the Supreme Court Regulation No. 1 Year 2016 regarding Mediation Procedures in Court gives the obligation to court in providing a proper mediation room.

The existence of regulation and budget from the Supreme Court in providing mediation room in court becomes a crucial supporting factor in the process of mediation in court as a mandate from the Supreme Court Regulation No. 1 Year 2016 regarding Mediation Procedures in Court.

b. Inhibiting Factors of the Existence of Mediating Judges in the Process of Civil Dispute Mediation based on the Supreme Court Regulation No. 1 Year 2016 regarding Mediation Procedures in Court

Mediation by mediating judge in civil dispute based on the Supreme Court Regulation No. 1 Year 2016 regarding Mediation Procedures in Court is very dependent on its supporting and inhibiting factors. The success of mediation implementation by mediating judge is tiny. Mediation which is the judge obligation before investigating civil law case or in other word is called civil law dispute, has several factors which inhibit its implementation. From research result, the obtained data are the factors that inhibit the existence of mediating judge in the process of civil dispute mediation. Thus are as follows:

1) The time in implementing mediation

The time in implementing mediation based on the Supreme Court Regulation No. 1 Year 2016 regarding Mediation Procedures in Court is 30 (thirty) working days. It is very limited time for a judge to do mediation on the handled civil dispute. This given time is not enough because in the mediation process, its main point is to grow good intention on the conflicting parties.

To deliver the same understanding between the conflicting parties. Sometimes, the process needs a long time.

2) The society's knowledge

The society's knowledge on mediation process becomes one of the mediation inhibiting factors. People do not understand and do not comprehend mediation, they always expect to win the dispute. Sometimes because of their egoism, they remain on their initial principle in the dispute process. Their knowledge is a factor that inhibits the process of dispute solving through mediation. It needs a massive socialization in order to increase the process of the society's understanding in solving dispute through mediation.

3) The additional work burden of the judges

Basically, judge has main duty and function in performing their profession. Judge is always tied by the regulation issued by the Supreme Court. With the obligation to conduct mediation as stated in the Supreme Court Regulation No. 1 Year 2016 regarding Mediation Procedures in Court, it gives judges more responsibility in performing their profession.

The additional work burden of the judges, surely, influences the success of case solving in the court where they are assigned. The judges who have had many workloads, after the enforcement of the Regulation by the Supreme Court, at least they have additional workload as a mediator.

E. CLOSING

1. Conclusion

Based on this research result analysis, it can be concluded that:

- a. The existence of mediating judge in the process of civil dispute mediation in court based on the Supreme Court Regulation No. 1 Year 2016 regarding Mediation Procedures in Court is started by choosing a mediator in the mediation process. The judge becomes the main choice as a mediator in the mediation process compared to the other mediator aside judge. Choosing mediating judge in the process of civil dispute mediation in court showed that the existence of mediation by mediating judge in civil law dispute is acknowledged by the society. The existence of the mediating judge in the process of civil dispute mediation in court, its main point is the time when the dispute between the conflicting parties which was filed to the court is successfully mediated and solved so it does not need to continue the trial process in court.
- b. The factors which support and inhibit the existence of mediating judge in the process of civil dispute mediation in court based on the Supreme Court Regulation No. 1 Year 2016 regarding Mediation Procedures in court are as follows: Human Resources, The level of the society's

knowledge and understanding, facilities and infrastructure, as well as the regulations regarding mediation.

- 1) The supporting factors of mediation by mediating judge in civil dispute based on the Supreme Court Regulation No. 1 Year 2016 regarding Mediation Procedures in Court are: Human Resources in court or the conflicting parties, economical budget or free, and infrastructure in court.
- 2) The inhibiting factors of mediation by mediating judge in civil dispute based on the Supreme Court Regulation No. 1 Year 2016 regarding Mediation Procedures in Court are: the time to implement mediation is brief, the society's knowledge on mediation is not evenly spread, the additional work burden of the judges with the existence of mediation.

2. Suggestions

Based on the conclusion, it can be suggested as follows:

- a. The existence of mediating judge in the process of civil dispute mediation based on the Supreme Court Regulation No. 1 Year 2016 regarding Mediation Procedures in Court, now, becomes the society's choice. To maintain this existence can be performed by increasing the service of mediation in court, whether from the quality of the judges, the infrastructure, or the socialization on mediation to the society.
- b. The mediation process by mediating judge in civil dispute based on the Supreme Court Regulation No. 1 Year 2016 regarding Mediation Procedures in Court must be supported by the number of judges or court officials who have the competency as a mediator or have mediator certificate. The increase and improvement of the mediating judge quality will give positive effect in implementing the existence of the mediating judges in the process of civil dispute mediation.
- c. The existence implementation of the mediating judges in the process of civil dispute mediation based on the Supreme Court Regulation No. 1 Year 2016 regarding Mediation Procedures in Court must be supported by increasing the quality of human resources, changing the society's

culture with performing socialization, and issuing a detailed regulation regarding mediation.

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