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Civil Case Settlement through Mediation in Court

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Abstract:
The mediation process in the courts under Article 7, paragraph (1) the Supreme Court Regulation No. 1 Year 2008 on Mediation Procedure of the Court. The Supreme Court of the Republic of Indonesia, is a process that must be executed by the litigants. In essence, mediation is a process that is personal, confidential (not exposed out), and as the cooperative is an impartial third party helps the disputing parties to resolve the conflict and bring differences. Mediation is also practical, elative informal and unregulated and technical procedures that apply in the judicial process. In mediation all parties to meet in person or represented by proxy with the mediator together or in a different meeting. During the meeting, all parties give each other information, description, explanation, regarding the problems faced and also exchanging documents in order to reach an agreement as a win-win solution.

Keywords: *Civil Case, Mediation*

1. Introduction

Dispute resolution in the courts, through the judicial procedure that no decisive period of time to complete a case, resulting in the process of examination of a case from the stage of registration, as well as the examination stage to the stage of decision requires a relatively long time. Reduce the number of cases piling up and accelerate the settlement of a litigation, can be done with an effective mediation process.

The mediation process in the courts under Article 7, paragraph (1) the Supreme Court Regulation No. 1 Year 2008 on Mediation Procedure of the Court of the Supreme Court of the Republic of Indonesia, is a process that must be executed by the parties litigants. This Article specifies that on the day of the trial that has been determined the presence of both parties, The Judges require judges to handle a civil case and the parties litigant to pursue the mediation process, prior to the examination of a civil case proceed in accordance with the procedure of the examination civil case in court.

Mediation is a process of the disputing parties appoint a third party (mediator) neutral to help the disputing parties to discuss settlement and tried to arouse the parties to negotiate a settlement of the dispute. The main purpose of mediation it is a compromise in resolving the dispute. Mediator seeks an approach to the parties to minimize the differences of opinion in the case at hand to reach agreement among them towards the solution of mutual profitable (win win solutions). Mediator only role is to assist the parties in reaching settlement of the dispute, for the mediator can communicate directly and confidentially with the parties to work together to reach an agreement.

In general, the principles that apply to alternative dispute resolution, including mediation are:

1. The principle of good faith, namely the desire of the parties to determine the dispute resolution will and they are facing.
2. The principle of contractual, namely the existence of an agreement set forth in the written form of the means of dispute resolution.
3. The principle of binding, ie, the parties are required to comply with what has been agreed.
4. The principle of freedom of contract, which the parties can freely determine what is about to be set by the parties to the agreement do not conflict with the law and decency. This means also an agreement on the place and type of dispute resolution will be selected.
5. The principle of secrecy, namely the settlement of disputes can not be seen by others as only parties to the dispute are unable to attend the course of examination of a dispute.

In essence, mediation is a process that is personal, confidential (not exposed out), and as the cooperative is an impartial third party helps the disputing parties to resolve the conflict and bring differences. Mediation also is practical, relatively informal and unregulated and technical procedures that apply in the judicial process. In mediation all parties to meet in person or represented by proxy with the mediator together or in a different meeting. During the meeting, all parties give each other information, description, explanation, regarding the problems faced and also exchanged documents.

The Supreme Court argued mediation procedure ought to be taken for the parties in court proceedings. This step is performed when the first hearing was held. Mediation is one solution to overcome the accumulated matter in court. Process mi assessed more quickly and cheaply, and can provide access to the parties to the conflict to gain justice or a satisfactory settlement of disputes faced. In addition to the mediation process in the judicial system can strengthen and maximize the functions of the judiciary in resolving disputes other than judicial proceedings that are cut (adjudicative).

Mediation is the first court set up by the Supreme Court Regulation No. 2 of 2003 on Mediation Procedure Court, which requires the examination gone through the mediation process before the principal civil cases with mediators consisting of judges of the district courts were not handling his case.

The Supreme Court of the Republic of Indonesia issued Regulation No. Mahkarnah Court 2 of 2003 on Mediation Procedure of the Court, as the improvement Supreme Court Circular No. I of 2002 on the first level tribunal Applying Empowerment Institute of Peace. In the circular, the judge is not given coercive powers to the parties to settling disputes through peace. Circular is considered to be almost the same as Article 130 of HIR, which only recommends the parties to make peace, as the wording of Article 130 HIR paragraph (1) which states that if the 1ain determined that both parties had arrived, the district court with the help of the chairman of trying to reconcile them.

Based on the above, the Supreme Court of Letter No. 1 of 2002 was later replaced by the Supreme Court Regulation No. 2 of 2003 on Mediation Procedure Court, that with the enactment of regulations makes the peace efforts in the courts no longer just rely on Article 130 HIR.

Enactment of the Supreme Court of the Republic of Indonesia Number 1 of 2008 on Mediation Procedure Court, has made a fundamental change in the judicial practice in Indonesia. The court is not only the duty and authority to examine, hear and resolve cases received, but also obligation seek peace between the litigants. Supreme Court Regulation No. 1 of 2008 further confirms that if a judge's decision does not mention any mediation efforts in advance, the decision may be reversed for the sake of the law. This impressed the court as long as law enforcement agencies and justice, but now court also put themselves as institutions that seek a peaceful solution between the parties litigant.

2. Mediation as an Alternative Settlement of the Case

For Western societies that litigous minded concept of ADR into new innovations. As for the eastern society based on a culture that emphasizes harmony like Indonesia for example, ADR-style approach is a concept that is considered part of longstanding in the context of problem solving and commonly used by the people of Indonesia. It can be seen from customary law were put to customs as a mediator and give the verdict customary for disputes between citizens.

In the Minangkabau people who act as mediators also have the authority to give a ruling on the case brought before it as follows:

1) "Tungganai" or "Mamak head heir" to the extent "House sieve".
2) "Mamak heads of" the general level
3) "tribal prince" at rates; and
4) prince-prince

Functionaries such an important role in resolving disputes, both as mediator with (commensurate with the arbitrator or judge) above without the authority to decide (as mediator)

Similarly, in rural communities in South Sulawesi, is not only a head of the legal community or the village chief who acts as a judge (judikator), but it can also act as a mediator (mediator) or referees (arbitrator)

Means of dispute resolution does not like litigation in state court, but more pursued through negotiations, consensus agreement between the parties to the dispute itself or through a mediator or arbitrator.

More than that, this ordinance has officially become one of the philosophy of the countries of Indonesia which is reflected in the fourth principle of Pancasila as the principle of consensus

Mediation or alternative dispute resolution (ADR) in Indonesia is a culture of the Indonesian nation itself, both in traditional societies as well as the basis of Pancasila state known term deliberation entire tribes Indonesia would know the meaning and the term, although different but have philoshopy that same. In clause-clause contract or agreement, in the settlement of disputes is always followed by the words "If there is a dispute or disagreement will be settled by means of consultation and if not reached an agreement will be resolved in District Court".

Although the traditional society in Indonesia, Mediation has been applied in resolving conflicts are traditional, but the development concepts and theories in a cooperative dispute resolution actually developed in many countries where people do not have litigous or cooperatively conflict. Dialogue, deliberation and effort against the interests of all the parties actually the core and the concept of ADR processes. The concept is then directed to be a way of resolving disputes but using the legal principle on the part and the legal system. Therefore our challenge, particularly the legal community in Indonesia is documenting patterns of conflict resolution in the traditional societies and labarotaris develop ways of dispute resolution which is a product of Indonesia. Or with the same expression, forms of alternative dispute resolution is known in traditional Indonesian society needs to be developed towards modern alternative dispute resolution in order to accommodate a variety of public disputes that arise in contemporary Indonesian society.

Legal political direction of the Indonesian government to develop alternative dispute resolution is clear, marked with various laws that provide space for alternative dispute resolution as a means of dispute resolution in Indonesia such as Act 30 of 1999 on Arbetrase and Alternative Dispute Resolution , which introduced an alternative institution solution dispute through "arbitration", "consultation", "Negotiation", "Mediation", "conciliation" or "Experts Assessment" out of court, or by the exclusion of settlement of litigation in the District Court.

Mediation agency initially not part and institutions that are in court litigation. But now it has crossed the Mediation institutions entering the court (integrated). Developed Countries in general, among others, America, Japan, Australia, Singapore has Mediation institutions both in and outside the court.

Indonesia in terms of actual mediation institute is already more advanced and other States, as indeed in the civil Procedure Law, namely HIR RBg article 130 and article 154 has been set up institutions for peace; where the judge hearing the case must first reconcile the litigants before the case is examined in adjudications. Unfortunately, this peace institute Dading or is not popular anymore, and rarely occurs in a business dispute. The judge or panel of judges who examined the case is generally also less trying to reconcile the two sides of the pack to the dispute, so as to empower the article has also issued SEMA 1 of 2002 on the Empowerment Institute for Peace in article 130 HIR / 154 RBg. Subsequently issued also PERMA 2 of 2003 on Mediation Procedure Court which adopted the concept of ADR in resolving disputes but dengai using the principle of legality which became part and the legal system. This is what is referred to as "Integrated Mediation Court" or "Court annexed Mediation".

The Realization of justice quick, simple and low cost is a dream and every seeker of justice everywhere. Law No. 14 Year 1970 on Basic Provisions on Judicial Authority formulates in Article 4 paragraph (2):"Justice is done with a simple, fast and low cost."

In a civil case the judge must help those seeking justice and make great effort to overcome all obstacles and barriers to the achievement of justice that is simple, fast and inexpensive. Lucky to have had the legal provisions concerning civil procedure stipulated peace in Article 130 HIR / 154 RBg that does not exist in civil law in other countries. It could be said that in a civil case the judge must be active to make peace between the parties litigants, to resolve disputes that they encounter.

For comparison, in the face of problems case-overlood (increasing number of cases), giving rise to the problem of arrears cases, which seems to be the problem of the world today, in Germany simplification hearing system (and judicial) are also remedies for pretrial hearings and settlement (peace). Dr. Punt and the Netherlands (Deputy Chairman of the Rechtbank Den Haag) suggested that the average number of cases with a peace settlement is 40%. Efforts to settle the case with the "Settlement" is one way which about "Legain efficiency". The principle case orally (oral proceedings) is considered as a form of checks that can accelerate settling disputes.

The emergence of SEMA No. I of 2002 can not be separated and Rakernas Supreme Court in Yogyakarta on 24 s / d 27 September 2001 ago, which develops one of the key points that the Court of First Instance can develop a process for handling disputes pursuant to methods of alternative dispute resolution institutions. While waiting for the Law on Civil Procedures related to Dading good. The Supreme Court needs to make PERMA or SEMA as a guideline for the judge. It is also the result Rakernas rekomendation annual session of 2000, the Supreme Court resolve pending lawsuits. Empowerment of Article 130 HER / 154 RBg been issued SFMA 1 of 2002 on the empowerment of the Court of the Court of First Implementing Peace Institute (Dading) whose content is as follows:

a. So that all the Judges (Assembly), which hears cases earnestly seek peace by implementing the provisions of Article 130 HIR / 154 RBg, not just formalities advocated peace.
b. Judge appointed to act as a facilitator that helps the parties and in terms of time, the right and the collection of data and arguments of the parties in order to prepare for peace.
c. At a later stage if required the litigants. Judge or other party appointed to act as a mediator who will bring the disputing parties to seek input on the issues in dispute and based on the information as well as the information obtained by each party desired try to arrange peace proposal which is then consulted with parties to obtain mutually beneficial results (win win solution)
d. Judges were appointed as facilitators (mediator) the parties can not be the judge Assembly on the case in question to maintain objectivity.
e. For the implementation of the task as facilitator and mediator to the judge concerned is given a period of three (3) months, and may be extended apabia no reason for it with the approval of the Chairman of the District Court, and that time does not include time for settling disputes referred to in SEMA No. 6 of 1992.
f. Agreement of the parties set forth in a written agreement and signed, then created the Peace Certificate (Dading), so that with the Peace Act punished the parties to honor what was agreed / approved it.
g. The success of settling disputes through peace, can be used as assessment (reward) for the judge to become a facilitator / mediator.
h. When attempts were made by the judge to no avail. The judge concerned to report to the Chairman of the District Court / Chief and proceedings may be continued by the judges to not set odds for the parties to come to terms during the review process takes place.
i. The judge who became a facilitator or mediator shall make a report to the Chairman of the Court on a regular basis.
j. In the event of a peace process, the peace process can be used as a pretext for settling disputes exceed provisions 6 months.

When we read the SEMA 1, 2002 will soon be known that SEMA is not rational. There are so many deficiencies immediately visible in matters that are not answered by the complexity of rules which should specify carrying out of something SEMA peace efforts undertaken before a trial court judge in adversarial do, but deserves a thumbs because, as stated by M. Siahaan, SEMA is a major breakthrough , which refers to the courage of the Supreme Court to use the function set (regelende functic) has. Shortcomings and things that are not clearly and thoroughly regulated, should be equipped in practice through a true understanding of the peace institute as a form of dispute resolution annexed Coart Follow up SEMA No. I In 2002, the Supreme Court found it necessary to issue a complete and refine PERMA No.02 of 2003 on Mediation Procedure in court. Mediation legal basis and which is one and the ADR system in Indonesia is the Indonesian state ideology of Pancasila which in philosophical principle implied that dispute settlement is deliberation. It is also implied in the Act of 1945.

Power and authority of the Supreme Court according to Law No. 14 Year 1985 regarding the Supreme Court Juncto Law No. 5 of 2004 on the Amendment of the Law No.14 of 1985 on the Supreme Court.

a. Examine and decide:
1. Cassation
2. Request for reconsideration
3.A dispute about jurisdiction to try
b. Giving consideration to the law of the Higher Institute
c. Giving legal advice to the President as head of state for the granting or denial of clemency.
d. Test materially regulations under the Act.
e. Make regulations sebagal complementary to fill the shortage or a legal vacuum that is necessary for the smooth course of justice.

3. Jurisdiction Mediation

The emergence of the Supreme Court rules (PERMA) No.02 of 2003 on Mediation Procedure in Courts and authorities from the Supreme Court in the function set as the letter e mentioned above.

Mediation was originally intended to deal problem-trade issues, but now it has grown also into other things throughout a civil matter. Therefore, coverage is very broad jurisdiction. Jurisdiction is also up to Divorce in be opposed to reconciling the parties lest divorce. Arises a question again of how on a case Criminal complaint (klacht delict) whether a case which has received the peace and has been confirmed by the Court then one of the parties concerned still complained the matter to the police transform and followed up to the Court, for example in the case-the case of IPR (Intellectual Property Rights).

Mediation jurisdiction in a wide range of environmental justice:

a. District Court have jurisdiction to make peace or mediation for all civil cases both business, land, marriage as well as civil cases of a criminal offense complaint (klact delict) and others to the litigants as stipulated in article 130 HIR / RBg , In the event of agreement between the parties that the agreement was confirmed by a judge and adjudicates cases. In the event that does not occur reconciliation of the examination continued in the principal case adjudication.
b. Islamic Court also has jurisdiction to conduct peace in the sense that the litigants are not divorced. Usually the parties to come to the religious court without going through BP4 case remains examined. The parties came to the Religious Court either already through BP4 or not, religious judge and adjudicates the case is still required to make efforts in order that the parties to the dispute gets peace. In the event of agreement then the plaintiff. revoke his case.
c. State Administrative Court (Administrative Court) does not have jurisdiction to conduct peace to the litigants because the substance of the case were examined by the administrative court is not a civil case is the decision of the State Administration but as stated in Article 53 of Law No5 in 1986. In practice, if the peace occurred between the litigants then one party would pull out its case. Therefore judge and adjudicates cases it may not do peace. Even if there is peace between the parties solely is happening outside the court without the knowledge of the judge who examined.
d. Military courts do not have jurisdiction to conduct peace to the litigants because the substance of the case were forwarded to the military court is not a civil case but a criminal offense.

4. Conclusion

1. The success of mediation in resolving civil disputes in court is Mediation gives the parties the opportunity to participate directly or informally in resolving their disputes.
2. Mediation is expected to resolve disputes quickly and relatively inexpensive compared to the dispute to court or arbitration.
3. Mediation will focus the parties on their real interests and the needs of their emotional or psychological, not just on their legal rights.
4. Mediation gives the parties the ability to control the process and the results, Mediation can change the result, which is in the draft arbitration litigation is difficult to predict, with certainty through consensus, mediation results and the test stand will be able to create a better mutual understanding between disputants because they themselves decide.
5. Mediation able to eliminate discord or hostility that almost always accompany any coercive decision handed down by a judge in a court or arbitrator in the arbitration.

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