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KEY WORDS: The settlement of dispute through mediation

THE SETTLEMENT OF CIVIL DISPUTE THROUGH MEDIATION

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ABSTRACT

The Mediation Process is a procedural law that must be carried out in court proceedings in civil disputes, for mediation is an implementation of the civil procedural law, HIR / Rbg that is applicable in Indonesia, meaning that the judge must try to reconcile the parties to the dispute before the proceeding proceeds in examining the substance of the case. The ultimate goal of mediation is peace, in which the parties to the dispute try to end the case with peace. Based on this, the problem raised in this research is how to solve the dispute by mediation in the Court. Theoretically, the results of this study can add more concrete information or insight to the litigants, judges and Advocates, practically as a reference by the judicial apparatus, and advocates in carrying out the mediation process in accordance with the applicable law. Output targets to be achieved in this study are scientific publications in international journals. This type of research is sociological juridical while data collection techniques are done by using the method of interview and observation. After collecting the data, the editing process and qualitative analysis were conducted as an analysis of the data rationally with a certain mindset.

1. INTRODUCTION

Criticism on the slow settlement of disputes through litigation is a common fact taking place throughout the world. In Indonesia too it is a reality faced by society to this day. The settlement of cases ranges from the first to final level of appeal, averaging between 7 and 12 years. The delay is difficult to remove, because all cases are appealed and cassation up to the review.

Since 1992, a policy has been issued by the Supreme Court, where every case handled by the court of first instance and appeal must be completed within 6 months.

The slow completion of the case, drowning the truth and justice into a steep valley, making it difficult for a justice seeker that will lead to a protracted uncertainty among the litigants, which keeps them in a state of perpetual unrest. The litigants suffered considerable economic losses, as disputed goods or loans could not be utilized for economic activity so that disputed wealth and wealth became a passive economic resource for many years. This is a situation as if the judiciary has become a tool of power that plays a role in impeding the rate of social economic development[1].

The justice seeker community expresses an irrational attitude in which they no longer question whether the judgment is true and fair and defeat is considered to be injustice. Therefore all legal efforts justified by the law are utilized. Utilization sometimes evidently contains elements of bad intention, just to prevent the execution. In such circumstances, the justice system is not able to minimize, let alone obliterate the use of legal efforts that are shrouded in bad intention. It is obviously congruous that the litigation system is indeed a potential to slow the settlement of cases.

As TONY ADAMS wrote in 1985, total attorney revenues in America amounted to $ 64.5 billion. Furthermore it says "that litigation cost may be doing damage to nation economy". It is fact that critics consider the high cost of the case affects the life of the economy takes place not just in America but also in all countries all over the world.

Therefore, the thinking among academics is to implement and institutionalize mediation as a mechanism for resolving the dispute of the present in Indonesia, as it happens in other countries, because it is not a foreign idea or an idea that simply adopts processes that develop in other countries and then transforming into our national legal system. This view is based on reasoning, that consensus-based mediation gained a socio-cultural foundation in indigenous peoples. The issue is how we make use of and modify the familiar processes known in indigenous peoples into contemporary contexts of disputes that differ in character from indigenous internal disputes[2].

Alternative Dispute Resolution (ADR) is a dispute resolution or disagreement institution through a procedure agreed upon by the parties, namely settlement outside the court by means of consultation, negotiation, mediation, conciliation, or expert opinion.

The form of dispute resolution outside the Court relating to civil disputes at the District Court level shall be settled in advance by means of Mediation as provided for in Article 2 paragraph 1 of Supreme Court Regulation No. 1 of 2016 which reads as follows:

"All civil cases filed to the Court of First Instance shall first be settled through peace with the assistance of the Mediator."

Mediation as one form of dispute resolution outside the court is through negotiations involving third parties who are neutral (non-intervention) and impartial to the parties to the dispute and are accepted by the parties to the dispute.

In discussing the mediation process we cannot be separated from the role of a mediator that is neutral and impartial person or third party that serves to assist the parties in seeking various possible solutions to the dispute.

Since the inception of Supreme Court Regulations No. 2 of 2003 on Mediation which has now been replaced by Supreme Court Regulations no. 1 of 2016, the mediation process should have been done well, especially in the Court, but according to the author's observation, it has not been implemented effectively.

Based on the above description, the authors are interested to examine and discuss the issue in a journal entitled " The Settlement of Civil Dispute through Mediation ".

2. RESEARCH METHODS

This research was conducted by legal research of socio legal research (empirical law research) that is conducting research about how the application of a law in the society life supported by normative research. The approach used in this study was analytical descriptive approach, while the technique of data collection was done by field research in forms of interview, observation, questionnaire and literature study. Data analysis used was qualitative analysis by using realistic mindset.

3. RESULT AND DISCUSSION

A. Settlement by Mediation in Court

Based on the research conducted in the Court, the civil disputes that are filed to the Court on average each year reach 160 cases per year, it all is a case in the form of lawsuits in the language of the law called the Contentious case in addition to cases of applications that go to the Court or so-called with Voluntary terms such as child adoption and so on.

The cases that go to the Court in general are cases or disputes concerning matters whose objects are heavily related to inheritance or heirdom whose ownership is either ridden or collectively within the people, so it is rather complicated to make peace through mediation because so many other parties involved in the case.

The whole case of lawsuit case according to Supreme Court Regulations No.1 year 2016 must be completed first done or completed with Mediation before the case proceeded by way of trial open to the public as has been set according to the provisions of procedural law applicable event that is HIR / Rbg;

In the course of Mediation of all civil cases filed into the Court, the party who wields through his / her attorney has performed as specified in Supreme Court Regulations no. 1 year 2016, where the mediation process has been part of the process of lawyering that must be implemented in the trial process, because if not executed by the judge who hear the case the final decision of the case concerned can be null and void later.

Based on the research results it appears that the implementation and enforcement of Mediation based on Supreme Court Regulations No. 1 Year 2018 has been running well, but the results achieved from the Mediation is not maximized as expected.

Actually, the enactment of Mediation in the Courts in order to find the peace result between the parties to the dispute has been started since 2004 based on Supreme Court Regulations No.2 of 2003, then Supreme Court Regulations No. 2 year 2003 was replaced with Supreme Court Regulations No.1 in 2016 in order to better activate the role of the Mediator in carrying out its duties as the party that encourages that every case or dispute there must be a solution or solution, rather than having to libel the not necessarily satisfactory final, plus again takes a long time to obtain what we expect, so better be resolved carefully so that our lives back to normal as usual.

Based on the results of research conducted in the court, the mediation process that runs in the Court has been running in accordance with what has been stipulated in Supreme Court Regulation No.1 in 2016, but the results have not been effective in achieving the peace and have not achieved the maximum results as expected by The Supreme Court of the Republic of Indonesia to reduce the case of admission or appeal to the Supreme Court or in other words Mediation has not been effective in resolving civil disputes in the Court.

B. Factors that affect the non-implementation of peace by means of Mediation.

Any case or lawsuit registered and filed in the Court Clerk prior to being heard by the judge's judge appointed by the Chief Justice will go through mediation phase with the mediator's mediation in resolving the dispute. The mediator is decided by the litigants. If the litigants do not have or do not provide the mediator, then the appointed panel of judges will appoint one of the judges in the Court to be a mediator in the case concerned.

The appointed mediator will carry out his duties in pro bono to the litigants, whereas if the mediator is provided or brought by the litigants then the payment shall be awarded to the parties bringing the mediator.

Based on the results of research, there are several factors causing or affecting the non-achievement of peace by means of Mediation are:

1. Lack of a sense of shared perspective toward problem

The mediation proceeds by giving the litigant a chance to reconcile his opinion about the object in question. In this stage sometimes litigants do not have the same view to settle the problems peacefully, because they are affected by attitudes, inclination and different opinions, making it difficult to put together.

2. Emotional Attitude and Ego Factor.

The high emotional nature of a person (unable to control the emotions) in mediation is also a factor affecting the non-achievement of peace by means of Mediation, moreover in formulating a matter, the litigants are more concerned with self-interest than to seek a peaceful remedy for interests of others.

3. Time Factor.

Regarding the grace period that has been determined in the Supreme Court Regulation No, 1 of 2016, the problem of time cannot be extended again. Actually, the matter of time in mediation is not decisive for the achievement of peace, because the issue of peace begins the good faith of the litigants that the case can be ended by way of peace through this mediation.

4. Mediator Capability Factor (Skill).

The level of success of mediation in achieving peace over a matter is largely determined by the ability and professionalism of a mediator to provide insights that lead to a sense of intent to find the common ground of the problem at hand. The Skill of a mediator is here tested whether he is capable to encourage the litigant to find a solution that equally benefits both parties without prejudice to the interests to which the parties to the dispute must accept.

5. Legal Power Factor.

Although legal counsel has the duty and role of the person who accompanies and represents the litigants, it is not uncommon for lawyers to slow down or even provide legal advice or directives that allow delays in peace agreements in the mediation process. It is possible that the occurrence of peace by means of mediation is also caused by a lawyer who lacks understanding of the results to be obtained from the case concerned, so that it may postpone peace or avoid the occurrence of peace by means of Mediation.

4. CONCLUSION

Mediation in the Court has been running well in accordance with the Law Act of Supreme Court Regulation No.1 of 2016, but the results achieved from the Mediation result have not been effective in settling the dispute arising in the Court. Ineffective Mediation in settling disputes in Court is influenced by several factors, among others:

1. The lack of shared point of view towards the problem.
2. Emotional and Ego factors
3. Time factor.
4. Mediator Capability Factor
5. Legal Power or Attorney Factor

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