ANALYSIS OF NON JUDGE MEDIATORS' EFFORTS IN THE SETTLEMENT OF CIVIL CASES BASED ON PERMA NUMBER 1 YEAR 2016 CONCERNING MEDIATION PROCEDURES

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Abstract

Mediation is one of the faster and cheaper dispute resolution processes, and can provide greater access to justice for the parties in finding a satisfactory dispute resolution and fulfilling a sense of justice. case in court. The problems in this research are the efforts of non-judge mediators in settling civil cases based on PERMA Number 1 of 2016 and the inhibiting factors of non-judge mediators in settling civil cases based on PERMA Number 1 of 2016. The results of the study, Non-Judge Mediators Efforts in Settlement of Civil Cases Based on PERMA Number 1 of 2016 that mediation is a controlled process, where a neutral and objective party can be accepted by both parties to the dispute, helping the parties to find an agreement that can be accepted by the parties. both to end the dispute between them. inhibiting factors of non-judge mediators in the settlement of civil cases Based on PERMA Number 1 of 2016 that the parties are not in good faith, the parties are supported by their environment, good faith is one of the factors that most influence the success of mediation because the parties are the main actors in the mediation process, whatever What happens during the mediation process is the responsibility of the parties to determine their own desires, the mediator only directs and helps provide choices, not to make decisions on what the parties want.

Keywords: *Mediator; Judge; Civil Case; PERMA Number 1 Year 2016;*

I. INTRODUCTION

Economic development in Indonesia is inseparable from development efforts in the field of law, as a means to strengthen and provide legal certainty and business certainty for Indonesian citizens. The State of Indonesia was founded by the founding fathers of the nation with the aspiration of upholding the state based on law and affirmed in the 1945 Constitution of the Unitary State of the Republic of Indonesia Article 27 paragraph (1) that: "All citizens are equal before the law and government and obliged to uphold the law and the government with no exceptions.

Law enforcement in Indonesia is still weak, causing people to become tired and influencing the perspective of law and law enforcement as a bulwark of justice. As a result, many people try to avoid the judiciary if they want to settle disputes with

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other parties. Disputes are a phenomenon that we always encounter in every society in the world, both in societies that are still traditional, modern and even post-modern societies that have links to the laws that apply in the society concerned or more precisely with the law as much attention from the public. reviewers of "law and society" (Law and Society), Legal Anthropology, and Business Law.[4]

In general, dispute resolution is usually carried out by litigation or dispute resolution before the court. In such circumstances the position of the disputing parties is very antagonistic (very opposite to each other). In this regard, it is necessary to find and think about ways and systems for resolving disputes that are fast, effective, and efficient. For this reason, a dispute resolution system must be fostered and realized that can adapt to the pace of development in society quickly and at low cost.

Dispute resolution through the judiciary often creates new problems, because winning or losing is not pleasing. Usually people who have had a dispute in the judiciary, even though the dispute has been decided, but the disputes between the disputing parties continue, such as not greeting each other anymore and not infrequently holding long-lasting grudges against each other.

The settlement of cases in the judiciary often has to take a long time, especially if there are many cases that are piled up in court, it will take a long time and eventually the length of time will result in not small costs. This would contradict or be incompatible with the principle known in the Civil Procedure Code which reads: "Judgments are carried out simply, quickly and at low cost".[5] In order to realize a simple, fast and inexpensive process, peace efforts are arranged, namely by integrating the mediation process in court. This is regulated in Article 130 paragraph (1) of the HIR (Herziene Indonesisch Reglement) which states that: "If on the appointed day, both parties come, then the District Court with the help of the Chief Judge will try to reconcile them".[6]

In addition to the conventional dispute resolution model through the litigation of the judicial system, in practice in Indonesia, a new alternative model is also introduced. The alternative referred to above is quite popular in the United States and Europe, known as ADR (Alternative Dispute Resolution) is an alternative dispute resolution outside of litigation which aims to reach an agreement between the litigants that are mutually beneficial (win win solution) not to seek defeat. or win (win or lose) as the final result if the settlement is carried out through a

[4] Abdurrahman, 2008. *Penyelesaian Sengketa Melalui Mediasi Pengadilan Dan Mediasi Alternatif Penyelesaian Sengketa, dalam Refleksi Dinamika Hukum, Rangkaian Pemikiran Dalam Dekade Terakhir, Analisis Komprehensif Tentang Hukum Oleh 63 Akademisi dan Praktisi Hukum*, Perum Percetakan Negara Republik Indonesia, Jakarta. cet ke-1, p. 553

[5] Sudikno Mertokusumo, 1979, *Hukum Acara Perdata Indonesia*, Liberty, Yogyakarta, Cet ke-2, p. 21

[6] Rambe Ropaun, 2006, *Hukum Acara Perdata Leng*kap, Jakarta : Sinar Grafika. p. 245

litigation process. And one alternative dispute resolution outside the court is by way of mediation. (Basith: 2014).

Mediation is one of the faster and cheaper dispute resolution processes, and can provide greater access to justice for the parties in finding a satisfactory dispute resolution and fulfilling a sense of justice. cases in court as well as strengthening and maximizing the functions of non-judicial institutions for dispute resolution in addition to the judicial process which is adjudicative in nature.

There are 2 types of mediation, namely outside and inside the court. Mediation in court is regulated by PERMA Number 1 of 2016 which is the result of an amendment to the Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2008 and Regulation of the Supreme Court of the Republic of Indonesia Number 2 of 2003. However, there is also mediation outside the court. Mediation outside the courts in Indonesia is contained in several laws that have been published, such as the Law on the Environment, the Law on Forestry, the Law on Manpower and the Law on Consumer Protection. However, in this study, the researcher limits the research by examining mediation in courts regulated in PERMA Number 1 of 2016 concerning Mediation Procedures by Non-Judge Mediators.

The provision for mediation as regulated in the article is a process of activities carried out by the parties according to the provisions of Article 6 paragraph (2) of Law Number 30 of 1999.[7] Mediation is a mediating procedure in which someone acts as a vehicle for communication between the parties, so that their different views on the dispute can be understood and may be reconciled, but the main responsibility for achieving a peace remains in the hands of the parties themselves..[8]

The Supreme Court has changed the paradigm of adjudicating to the paradigm of mediating/reconciling disputes/legal cases, especially civil cases. The form carried out by the Indonesian government is oriented towards developed countries that have resolved disputes through mediation such as Japan, Singapore, the United States, Canada, the Netherlands, and Australia. The court as one of the instruments of law enforcement has started mediation since 2008. It is called judicial mediation. Every civil case submitted must go through a mediation process. Mediation is carried out by a judge mediator and a non-judge mediator. Non-judge mediators in particular will obtain a mediator certificate by participating in the Mediator Professional Special Education (PKPM) organized by an institution that has been accredited by the Supreme Court. In carrying out their duties and functions, they must refer to the provisions of PERMA Number 1 of 2016 concerning Mediation Procedures in Courts (hereinafter written PERMA Number 1 of 2016) and the Guidelines for Mediators made by the Supreme Court of the Republic of Indonesia.

[7] Gunawan Widjaja. 2001. *Alternatif Penyelesaian Sengketa*, Jakarta: PT Raja Grafindo Persada. p. 90

[8] John W. Head. 1997. *Pengantar Umum Hukum Ekonomi*, Jakarta: Proyek ELIPS. p. 42

The Tanjung Karang Religious Court has the duty and authority to examine, decide, and settle civil cases at the first level between people who are Muslims in the fields of Marriage, Inheritance, Will, Grants, Endowments, Zakat, Infaq, Shadaqoh, and Sharia Economics. Of this type of case, marriage cases are at the highest number outside of other cases, especially divorce cases (broken marriage). Based on the Statistical Report available at the Tanjung Karang Religious Court in 2020, divorce cases reached 80% - 95% of all cases received as shown in the following table:

Mediation as one of the non-litigation dispute resolution processes, based on PERMA Number 1 of 2016 concerning Mediation Procedures is realized as part of the initial process of resolving civil disputes in the Court to practically interpret the embodiment of the provisions of the judge's obligation to reconcile the disputing parties, including the provisions of Article 130 HIR / 154 RBg. The institutionalization of the mediation process into the judiciary is expected to expand access for the parties to obtain a sense of justice. A sense of justice can not only be obtained through the litigation process, but also the process of deliberation and consensus by the parties which provides an opportunity to jointly seek and find the final result. Another objective can be to strengthen and maximize the function of court institutions in dispute resolution.

Article 4 of PERMA Number 1 of 2016 concerning Mediation Procedures determines that cases that can be attempted mediation are all civil disputes that are submitted to the court of first instance. In practice, the understanding of the nature of mediation and its benefits is still not maximized. Many people know that mediation is just meeting with a third party as a mediator, but they don't see more than the mediation process.

Several reforms in PERMA Number 1 of 2016 concerning Mediation Procedures include: (1) Regarding the shorter mediation time limit from 40 days to 30 days as of the stipulation of the order to conduct Mediation; (2) There is an obligation for the parties (inperson) to attend the Mediation meeting directly with or without being accompanied by a legal representative; (3) The existence of rules regarding "Good Faith" in the mediation process with strict sanctions if violated. Article 7 states that the parties and/or their legal representatives are required to take Mediation in "Good Faith". Article 23 of PERMA Number 1 of 2016 concerning Mediation Procedures stipulates that if the Plaintiff is declared to have no good faith in the Mediation process, then the lawsuit is declared unacceptable (N.O.) by the Case Examining Judge. If the Defendant does not have good intentions, it will be subject to the obligation to pay Mediation fees.

This level of success is still far from expectations, one of the objectives of the issuance of PERMA Number 1 of 2016 concerning Mediation Procedures in Courts is to resolve cases in a win-win solution and reduce the number of accumulations of cases. Mediation is also often used in the field of civil procedural law. A civil case is a case concerning a relationship dispute between individuals (legal subjects) with

one another regarding rights and obligations/orders and prohibitions in the civil field such as disputes regarding sale and purchase agreements, leases, distribution of joint assets and so on. Sudikno Mertokusumo, stated that disputes (contentius) and those that do not contain disputes (volunteers).[9]

J. Folberg and A. Taylor put more emphasis on the concept of mediation on the efforts made by the mediator in carrying out mediation activities. These two experts stated that dispute resolution through mediation was carried out jointly by the disputing parties and assisted by neutral parties. The mediator can develop and offer dispute resolution options and the parties may also consider the mediator's offer as an alternative to an agreement in dispute resolution.

The role of judges in efforts to resolve cases peacefully is very important. Peace decisions have a very important meaning for society in general and especially for people who seek justice (justitiabelen). The dispute is completely resolved, the resolution is fast and the cost is light, besides that the hostility between the two litigants is reduced. This is much better than if the case is decided by an ordinary decision, where for example the Defendant is defeated and the decision must be enforced by force.[10]

Optimizing the mediation process is very important considering the high will of justice seekers to use legal remedies in civil cases which results in the accumulation of cases in the High Court and the Supreme Court. In civil cases, justice seekers tend to use all available legal remedies, ranging from appeals, cassation to judicial review (PK), even many cases whose objects of dispute are very small, are still submitted to the level of review in the Supreme Court..[11]

Mediation is a process to reconcile the disputing parties. Mediation is an alternative and method of resolving a dispute in which the disputing parties submit their settlement to a mediator with the intention of obtaining a fair result and acceptable to the disputing parties.

In PERMA No. 1 of 2008 concerning Mediation Procedures, the Mediator is a neutral party who assists the parties in the negotiation process to seek various possible dispute resolutions without resorting to breaking or imposing a settlement. While in PERMA No. 1 of 2016 concerning Mediation Procedures, the 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 seek various possibilities. 1 of 2016 concerning Mediation Procedures, 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 seek various possible dispute resolutions without using a way of deciding or forcing a settlement.

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[9] Sarwono, 2012. *Hukum Acara Perdata: Teori dan Praktik*, Jakarta: Sinar Grafika, p. 23

[10] Sri Puspitaningrum, 2018. *Mediasi sebagai upaya penyelesaian sengketa perdata di pengadilan*, Jurnal Spektrum Hukum, Semarang: Vol 15/No.2/Oktober, p. 3

[11] *Ibid*., p. 4

From the two differences in understanding, it shows that PERMA Number 1 of 2016 concerning Mediation Procedures places more emphasis on Judges or other parties who have mediator certificates. The mediator certification training conducted by an accredited institution has a 40 hour syllabus which is usually held for 4 or 5 days. The curriculum contained in this training consists of 30% theory and 70% practice in the form of simulations, games and role play. Before starting the training, participants were given a pre-test containing the basic theory of mediation as a means for the instructor to determine the extent of the participants' knowledge and understanding of mediation. At the end of the training, participants are required to take the Theory Final Examination (post-test) and Practice as a Mediator as a condition of graduation to become a mediator in court.

The mediator in applying the law is not limited to the existing law. He can use the principle of ex aequo et bono (property and feasibility). Due to its nature, the method of dispute resolution through mediation is more suitable for sensitive disputes. These disputes include disputes that have political elements, besides of course legal disputes.[12]

The mediator as a neutral, independent and impartial third party and appointed by the parties (directly or through a mediation institution), the mediator is obliged to carry out his duties and functions based on the will and will of the parties. However, there is a general pattern that can be followed and is generally carried out by mediators in the context of resolving disputes between the parties. As a party outside the case, which does not have coercive authority, this mediator is obliged to meet or bring together the disputing parties to seek input on the subject matter disputed by the parties. Based on the information obtained, only then can the mediator determine the problem, the strengths and weaknesses of each disputing party, and then try to develop a settlement proposal, which is then communicated to the parties directly. The mediator must be able to create an atmosphere and conditions that are conducive to the creation of compromises between the two disputing parties to obtain mutually beneficial (win-win) results. Only after obtaining approval from the parties on the proposed proposal (along with any revisions or amendments thereto) for the resolution of the disputed issue, the mediator then draws up the agreement in writing to be signed by the parties. Not only that, the mediator is also expected to assist in the implementation of the written agreement signed by both parties. So a non-judge mediator is another party who is not a judge who has a mediator certificate and is registered in the list of mediators at the Court in accordance with Article 1 number 2 and Article 19 paragraph (1) of PERMA Number 1 of 2016 concerning Mediation Procedures.

In several European countries, mediation is growing rapidly and is becoming a discipline in lectures. In Indonesia, mediation has now become something new and

[12] Rudolf L. Bindschedler, 1981. *Good Offices,*dalam R. Berhardt, *Ensyclopedia of Public International Law,* (Instalment 1). p. 67

has been officially used in litigation processes in court since the issuance of PERMA No. 2 of 2003 concerning the Mediation Process in Courts. The use of mediation as a method of peaceful dispute resolution is motivated by many factors, such as the human tendency to resolve problems in a peaceful way (win-win solution), the long and expensive litigation process in court, and the accumulation of cases in court, so that litigation resolution sometimes leads to longer problems, and so on.

The background of the emergence of mediation in Indonesia, peaceful settlement of disputes or conflicts has existed for a long time. This method is considered better than the settlement by means of violence or competition (contentious). In Indonesia, peaceful settlement of disputes was carried out long before Indonesia's independence. Such as solving problems through the Traditional Runggun Forum in the Batak community. In essence, this forum resolves problems by way of deliberation and kinship. In Minangkabau, dispute resolution is through the institution of peace judges in which the judge acts as a mediator or facilitator. Likewise in Java, dispute resolution is carried out through deliberation facilitated by community leaders or religious leaders.

The term mediation (meditiation) first appeared in America in the 1970s. According to Robert D. Benjamin (Director of Mediation and Conflict Management Services in St. Louis, Missouri) that mediation was only known in the 1970s and was formally used in the Alternative Dispute Resolution (ADR) process in California, and he himself only became a practice mediator in 1979. Chief Justice Warren Burger held a conference questioning the effectiveness of court administration in Saint Paul in 1976. This year the term ADR was officially used by the American Bar Association (ABA) by establishing a special commission to resolve disputes. And in the subsequent development of legal higher education in the United States to include ADR in the educational curriculum, especially in the form of mediation and negotiation.

Basically, the emergence of official mediation is motivated by a social reality where the court as one of the case settlement institutions is seen as not being able to resolve the case in accordance with the expectations of the community. Criticism of the judiciary is caused by many factors, including the generally slow completion of litigation (waste of time), very formal examinations (folrmalistic), very technical (technically), and cases that have entered the court are overloaded. Besides that, court decisions always end with wins and losses, so that legal certainty is seen as detrimental to one of the litigants.

This is different if the settlement of cases through mediation, where the wishes of the parties can be fulfilled, although not completely. This settlement prioritizes the interests of both parties so that the decision is a win-win solution. The background of the birth of mediation above is not much different from what happened in Indonesia. Therefore, the existence of mediation becomes very important in the midst of the increasing number of cases entering the court. This non-litigation method of dispute resolution has been introduced since the Dutch

administration. This method is carried out by applying peaceful means before the case is heard. The first time these rules were introduced by the Dutch East Indies government through the Reglement op de burgerlijke Rechtvordering or abbreviated as Rv in 1894. Besides that, the Indonesian government has also issued several regulations through circulars, regulations, and legislation.

Some of these regulations can be read in the description of the juridical basis of mediation in Indonesia. This non-litigation settlement has been pioneered for a long time by legal experts. The Supreme Court as a high state institution feels most responsible for realizing the law on mediation. The Supreme Court held several National Working Meetings in September 2001 in Yogyakarta to specifically discuss the implementation of peace efforts in the judiciary. The result of this Rakernas is SEMA Number 1 of 2002 concerning Empowerment of the Courts of the First Level to Implement Peaceful Institutions. The Supreme Court also held a meeting on mediation in January 2003. The result of this meeting was PERMA Number 2 of 2003. The spirit to create a mediation institution has existed since the Chief Justice of the Supreme Court of the Republic of Indonesia, Bagir Manan, delivered his speech on January 7, 2003 at the mediation meeting. Bagir Manan encouraged the establishment of the National Mediation Center. Eight months later, September 4, 2003 to be exact.

The National Mediation Center was officially established, shortly before the Supreme Court issued Perma No. 2 of 2003. Juridical Basis Based on the reality, the implementation of mediation in Indonesia is carried out by the judiciary, especially the Religious Courts and non-judicial institutions, such as mediation institutions, government agencies, advocates and others. On the basis of mediation actors, mediation in Indonesia can be categorized into two forms, namely mediation carried out within the judiciary or known as court mandated mediation and mediation outside the judiciary. Mediation carried out in court to date has a history of juridical basis, namely Supreme Court Regulation no. 2 of 2003. Mediation can be divided into 2 categories, namely:

a. Legal Mediation

   Legal mediation is part of litigation, the judge asks the parties to seek a resolution of their dispute by using the mediation process before the mediation process continues. This legal mediation has been implemented since 2002 in district courts in Indonesia, with the issuance of Circular Letter of the Chief Justice of the Supreme Court of the Republic of Indonesia Number 1 of 2002 concerning Empowerment of Courts of the First Level to implement peaceful institutions. The aim is to achieve a substantive limitation of the appeal. The Circular regulates, among other things:

   1) Require all judges hearing cases to earnestly seek peace by applying the provisions of Article 130 HIR/154 RBg, not just as a formality advocating peace as has been done so far.

2) The appointed judge can act as a facilitator/mediator to assist the litigants to achieve peace.
3) Judges who are appointed as facilitators/mediators by the parties cannot be judges of the panel in the case concerned, to maintain objectivity.
4) The period for reconciling the parties is 3 months and can be extended, if there is a reason for that with the approval of the chairman of the district court.
5) If peace is reached, it will be stated in a written agreement and signed by the parties.

According to Thomas R. Dye in Howlett and Ramesh, public policy is "everything the government does, why they do it, and the difference it makes (what government does). did, why they do t, and what differences it makes)". In understanding that "decision" includes when the government decides not to "decide" or decides not to "take care of" an issue, this understanding also refers to the definition of Thomas R. Dye in Tilaar and Nugroho which states that public policy is "everything". what the government does and does not do". In line with Dye's definition, George C. Edwards III and Ira Sharkansky in Suwitri also state that public policy is:

What is stated and done or not done by the government that can be determined in laws and regulations or in policy statements in the form of speeches and discourses expressed by political officials and government officials which are immediately followed up with government programs and actions. The legal research method in this case is a science about how to carry out legal research in an orderly (systematic) manner. The research method as a science is always based on empirical facts that exist in society. The empirical facts are carried out methodically, systematically arranged and described logically and analytically.[13] Through research methods carried out systematically, it is hoped that it can provide directed instructions in order to answer the problems discussed and then can be accounted for the truth.

II. DISCUSSION

Mediation Type

In the Supreme Court regulation Number 1 of 2016 concerning Mediation Procedures in Courts, there are two types of mediation:

a. Mediation in Court

This mediation has two stages:

a) Initial litigation mediation, namely mediation carried out before the subject of the dispute is examined, and

[13]Abdulkadir Muhammad. 2004. *Hukum dan Penelitian Hukum*. Citra Aditya Bakti, Bandung, p. 57.

b) Mediation during litigation, namely mediation carried out when the subject of the dispute is in the examination stage. This mediation is divided into two:
    1) During the first-degree examination, and
    2) During the examination at the level of appeal and cassation.

b. Outside of litigation, namely mediation that is carried out outside the court, then the peace that occurs is requested to the court to be strengthened in the peace deed.

There are several differences between mediation carried out outside the court and mediation carried out in litigation processes in court, including:

a. If in the mediation process outside the court, the parties are not bound by formal rules, then in mediation in court, the mediator and the parties must comply with the mediation procedural law as regulated in Article 120 HIR/Article 154 Rbg. jo Regulation of the Supreme Court Number 1 of 2016.
b. Mediation outside the court (except for those regulated in Article 23 of the Supreme Court Regulation No. 1 of 2008) does not have executive powers whose implementation can be enforced through the assistance of state apparatus and apparatus when the peace agreement is not implemented voluntarily, while in the mediation process in court the result of the agreement will be strengthened in the form of a peace deed which has executorial power as a court decision with permanent legal force, because the peace deed contains instructions "For Justice Based on the One Supreme God".
c. In the mediation process in court, the parties can choose to use the services of a mediator from the court judges, so that the parties are not burdened with paying for the services of a mediator; while in the out-of-court mediation process, the parties who use a professional mediator will be burdened with paying the mediator's fee.
d. In the mediation process in court, if the mediation process fails, the case will automatically continue with the trial process; while in the mediation process outside the court if the mediation process fails and wants to continue with the litigation process, the parties must first file a lawsuit at the court clerk.

After examining the notions of mediation, basically, normative mediation contains 5 (five) elements, as follows:

1) Mediation is a dispute resolution process based on legislation;
2) The mediator is involved and accepted by the disputing parties in the legislation;
3) The mediator is tasked with assisting the disputing parties to find a solution;
4) The mediator does not have the authority to make decisions in the mediation process;

5) The purpose of mediation is to reach or produce an agreement that is acceptable to the disputing parties in order to end the dispute.[14]

In addition to the elements mentioned above, the researcher also saw other elements of mediation, namely:

a) Mediation always prioritizes good faith with the will of the parties to deliberation in resolving disputes and efforts to always be honest in the mediation process;
b) Mediation can provide an appropriate sense of justice for the parties to the dispute (win-win solution).[15]

Forms of Dispute Resolution

Dispute resolution can be done through 2 (two) processes. The oldest dispute resolution process is through the litigation process in court, then the dispute resolution process develops through cooperation (cooperative) outside the court. The litigation process results in an adversarial agreement that has not been able to embrace common interests, tends to cause new problems, is slow to resolve, requires expensive costs, is unresponsive and creates hostility between the disputing parties. On the other hand, through an out-of-court process, an agreement that is "win-win solution" is guaranteed, the confidentiality of the parties' disputes is guaranteed, delays caused by procedural and administrative matters are avoided, comprehensively resolve problems in togetherness, and maintain good relations. The only advantage of this non-litigation process is its confidentiality, because the trial process and even the results of the decision are not published.[16]

a. Dispute Resolution in Court in the Book of Civil Procedure Law & Civil Case Litigation Documents by Bambang Sugeng A.S and Sujayadi the process for resolving disputes in court is as follows:
   a) The process begins with registering a lawsuit by the plaintiff at the competent District Court by first paying the down-payment of the court fees, then the Registrar will be given a Case Register Number.
   b) The registered lawsuit is then transferred to the Head of the District Court concerned. The Chief Justice of the District Court will appoint a panel of judges who will hear the case. The appointed panel of judges will determine the day and date of Session I and order the summons of the parties to Session I.
   c) During Session I, if the parties (Plaintiff and Defendant) are present, the Panel of Judges will order the parties to take a mediation process.

[14] Andi Tenri Famauri 2013. *dikutip dari M. Yahya Harahap, Mediasi Independen dalam Sengketa E-Banking,* Litera, Bandung. p. 186

[15] *Ibid*. p. 167

[16] M.Yahya Harahap. 2009. *sebagaimana dikutip oleh Susanti Adi Nugroho, Mediasi Sebagai Alternatif Penyelesaian Sengketa*, Graha Anugerah, Jakarta. p. 1

d) The litigating parties go through a mediation process facilitated by a mediator registered with the relevant District Court within a certain period of time.
e) If within the specified period of time the parties do not reach an agreement in mediation, then the parties return to the trial and the answer-and-response process begins. The response begins with the Defendant's answer. The defendant's answer will be refuted by the Plaintiff's Replic, which is then refuted by the Defendant's Duplication.
f) The next stage is proof. At this stage the parties are given the opportunity to present their respective evidence to strengthen their arguments, both written evidence and witness statements.
g) After no more evidence has been submitted and examined, the Judge will close the evidentiary process and allow the parties to draw conclusions. This conclusion is the opinion of the parties that strengthen their arguments based on the results of the evidence.
h) After the parties submit their conclusions, the Panel of Judges will render their decision.
i) If there are parties who object to the decision handed down by the Panel of Judges, within the specified period, the objecting party may file legal remedies (appeal, cassation, review).
j) If the decision has permanent legal force (inkracht van gewujsde), the party won by the decision can request the implementation of the decision (execution).[17]

b. Out of Court Dispute Resolution

Dispute resolution that does not go through court is called Alternative Dispute Resolution (APS) or in English it is called Alternative Dispute Resolution (ADR). Alternative dispute resolution includes negotiation, conciliation, mediation, and arbitration.

a) Negotiation

Negotiation is a way of resolving disputes through bargaining or directly to the disputing parties.

b) Conciliation

Conciliation is a settlement in which the parties actively seek a solution with the help of a third party. Conciliation is necessary if the disputing parties are unable to resolve the dispute on their own. This causes the term conciliation is often interpreted the same as mediation, whereas settlement through conciliation refers more to dispute resolution through the consensus of the

[17] Bambang Sugeng & Sujayadi. 2011. *Hukum Acara Perdata Dan Dokumen Litigasi Perkara Perdata, Kencana*, Jakarta. p. 13

parties, while third parties only act neutrally and play an active or inactive role.

c) Mediation

Mediation is a negotiated dispute resolution process in which an impartial and neutral outside party works with the disputing parties to help them reach an agreement by deciding.

d) Arbitration

Arbitration is a way of settling a civil dispute outside a general agreement based on an arbitration agreement made in writing by the disputing parties (article 1 point 1 of Law Number 30 of 1999 concerning Arbitration and Alternative General Dispute Resolution).[18]

Efforts of Non-Judge Mediators in Settlement of Civil Cases Based on PERMA Number 1 of 2016 concerning Mediation Procedures at the Tanjung Karang Religious Court

Mediation is a way of resolving disputes through a negotiation process to obtain an agreement between the Parties with the assistance of a Mediator. Based on an interview with Mrs. Siti Rahmah as a Non-Judge Mediator at the Tanjungkarang Religious Court, she explained that the mediation process in court was carried out by a mediator who came from elements of judges and non-judges. Non-judge mediators are mediators taken from elements of the community outside the court. A person who carries out this function is obtained after attending Mediator Professional Special Education (PKPM) which is held by an institution accredited by the Supreme Court. But PERMA No. 1 of 2016 concerning Mediation Procedures stipulates an exception that if there is no certified judge in the court area, then the judge in the court environment can function as a mediator. Thus, judges who are not/not yet certified can carry out the function of mediator.

The requirement to become a mediator is to be certified through training in mediation techniques carried out more systematically, especially in exploring the interests and needs of litigants. Settlement of cases is based on these two rights, not based on positions. In this way, interests and needs will be easily captured so that they can be shifted to look for options that are win-win solutions.

Mediation outside the court can be divided into two categories, namely mediation carried out by mediators originating from mediation service providers, and mediators from community members. The appointment of a mediator is very dependent on the situation in which the mediation is carried out. If mediation is carried out by formal institutions such as courts or institutions providing mediation services, then the appointment of mediators follows the provisions of laws and regulations, whereas if mediation is carried out by mediators who come from

[18] *Ibid.,* p. 53

community members, then the appointment of mediators is not bound by formal provisions..[19]

The mediator is a neutral party who assists the parties in the negotiation process to seek various possible dispute resolutions without resorting to breaking or imposing a settlement. Mediator is a Judge or other party who has a Mediator Certificate as a neutral party who assists the Parties in the negotiation process in order to find various possible dispute resolutions without resorting to a way of deciding or imposing a settlement. Mediator Certificate is a document issued by the Supreme Court or an institution that has obtained accreditation from the Supreme Court stating that a person has attended and passed the Mediation certification training. Based on these data, only certified mediators can only be mediators in court. However, Article 13 paragraph 2 states that based on the decision of the head of the court, uncertified judges can carry out the function of mediator in the absence or limited number of certified mediators. Further provisions regarding the requirements and procedures for Mediator certification and granting accreditation of Mediator certification bodies shall be stipulated by a Decree of the Chief Justice of the Supreme Court.

According to Mrs. Siti Rahmah as Non Judge Mediator at the Tanjungkarang Religious Court, she explained the legal basis for non-judge mediator judges was also discussed in Supreme Court Decision Number 108 of 2016 Article 10 paragraph 1 Certified non-judge mediators can submit a written application to the head of the court so that their name is placed. to the list of mediators at the court concerned.

Paragraph 2 the application as referred to in paragraph 1 is submitted by attaching the following documents:

a) A valid copy of the mediator's certificate issued by an accredited mediator certification body.
b) A valid copy of the last education diploma.
c) Recent color photo.
d) Curriculum vitae which at least contains educational background, expertise and/or experience

The Chairperson of the Court is obliged to provide a written response to the application as referred to in paragraph 1 no later than 30 (thirty) days from the receipt of the application. In the event that the application meets the requirements as referred to above, the head of the court is obliged to issue a decision letter on the determination of a certified non-judge mediator into the list of mediators. Furthermore, the refusal of the chairman of the court on the application for placement into the list of mediators must be submitted in writing to the applicant by explaining the reasons within the grace period as referred to above.

[19] Syahrizal Abbas. 2009. *Mediasi Dalam Prespektif (Hukum Syariaah, Hukum Adat dan Hukum Nasional*, Kencana, Jakarta, p. 70

Based on the results of an interview with Mrs. Siti Rahmah as a Non-Judge Mediator at the Tanjung Karang Religious Court, she said that the main purpose of the mediation process was an agreement that was accepted by both parties to the dispute. Mediation is a controlled process, where a neutral and objective party can be accepted by both parties to the dispute, helping the parties to find an agreement that is acceptable to both of them to end the dispute between them. With a note that the parties still have the freedom to determine their will to find a settlement of the dispute. The main characteristics of a mediation process are:

a) There is an agreement between the parties to involve a neutral third party
b) The mediator acts as a mediator who facilitates the parties' desire to make peace.
c) The parties jointly determine the decisions to be agreed upon
d) The mediator can propose dispute resolution offers to the parties without any coercive and decision authority.

The mediator helps implement the contents of the agreement reached in mediation. A mediator can be said to be a good mediator, if in carrying out his functions and duties, he follows the Mediator Code of Ethics, the mediator's Code of Ethics is based on the five basic principles of mediator guidelines according to Diah Sulastri Dewi as quoted by Susanti Adi Nugroho, namely:

a) Basic principles of mediation (Ground Rules) The mediator must explain to the parties at the first meeting in full the understanding, procedures, stages of mediation, the mediation process, the role of the mediator and all matters related to mediation.
b) Principle of Neutrality The mediator must maintain his impartiality towards the parties. In carrying out its duties, the mediator is prohibited from influencing or directing the parties to produce a clause that provides an advantage for one of the parties or the mediator's personal benefit.
c) Principle of Self Determination The mediator is obliged to carry out the mediation process in accordance with the principle of self-determination by the parties, that the decisions in the mediation process are the result of the agreement of the parties. The mediator must respect the rights of the parties such as the right to leave the mediation process.
d) Principle of Confidentiality The mediator must maintain or maintain the confidentiality of everything, whether in the form of words, notes or matters revealed in the mediation process. The mediator must destroy the records in the mediation process, after the end of the mediation process, this makes the mediation process separate from the litigation process.
e) e) The principle of being free from conflict of interest (Free from conflict of interest) A mediator is prohibited from having involvement in a

conflict of interest in a dispute between the parties, in the event that the mediator knows that there is a conflict of interest, he is obliged to resign.[20]

Meanwhile, Soejono Soekanto uses the benchmark of effectiveness in law enforcement on five things, namely:

a) Legal Factors Law serves for justice, certainty and benefit. In the practice of administering law in the field, there are times when there is a conflict between legal certainty and justice. Legal certainty is concrete and tangible, while justice is abstract so that when a judge decides a case by application, when a judge decides a case by applying the law alone, there are times when the value of justice is not achieved. So when looking at a problem regarding the law, at least justice is a top priority. Because the law is not only seen from the point of written law.

b) Law Enforcement Factors In the functioning of the law, the mentality or personality of law enforcement officers plays an important role, if the regulations are good, but the quality of the officers is not good, there is a problem. So far, there is a strong tendency among the public to interpret the law as an officer or law enforcer, meaning that the law is identified with the real behavior of officers or law enforcement. Unfortunately, in carrying out its authority, problems often arise because of attitudes or treatments that are seen as exceeding the authority or other actions that are considered to undermine the image and authority of law enforcement. This is due to the low quality of the law enforcement officers.

c) Factors of Supporting Facilities or Facilities Factors of supporting facilities or facilities include software and hardware. According to Soerjono Soekanto, law enforcers cannot work properly if they are not equipped with proportional vehicles and communication tools. Therefore, facilities or facilities have a very important role in law enforcement. Without these facilities or facilities, it will not be possible for law enforcers to harmonize their supposed roles with their actual roles.

d) Community Factors Law enforcement comes from the community and aims to achieve peace in society. Every citizen or group has more or less legal awareness. The problem that arises is the level of legal compliance, namely high, moderate, or less legal compliance. The degree of community legal compliance with the law is one indicator of the functioning of the law concerned.

[20] Susanti Adi Nugroho. 2019. *Manfaat mediasi sebagai alternatif penyelesaian sengketa*. Pranemedia Group, Jakarta, p. 94-95

e) Cultural Factors Culture basically includes the values that underlie the applicable law, which values are abstract conceptions of what is considered good (so that it is obeyed) and what is considered bad (so that it is avoided). Thus, Indonesian culture is the basis or the basis for applicable customary law. Besides that, there is also written law (legislation), which is formed by certain groups in society who have the power and authority to do so. The statutory law must be able to reflect the values that form the basis of customary law, so that the statutory law can apply actively.[21]

Based on the results of an interview with Mr. Dhika Amal as a Non-Judge Mediator at the Tanjungkarang Religious Court, he explained that to assist the dispute resolution process, a mediator can use several techniques, as follows:

1) Build trust
2) Analyze conflict.
3) Gather information.
4) Speak clearly.
5) Listen attentively.
6) Summarize/reformulate the discussion of the parties.
7) Develop negotiation rules.
8) Organizing negotiating meetings.
9) Overcoming the emotions of the parties.
10) Make use of caucus.
11) Disclosing hidden interests.
12) Persuade the parties to reach an agreement.
13) Arrange agreements and others.

There are several differences between mediation carried out outside the court and mediation carried out in litigation processes in court, including:

a) If in the mediation process outside the court, the parties are not bound by formal rules, then in mediation in court, the mediator and the parties must comply with the mediation procedural law as regulated in Article 120 HIR/Article 154 Rbg..jo Regulation of the Supreme Court Number 1 of 2016.

b) Mediation outside the court (except for those regulated in Article 23 of the Supreme Court Regulation No. 1 of 2008) does not have executive powers whose implementation can be enforced through the assistance of state apparatus and apparatus when the peace agreement is not implemented voluntarily, while in the mediation process in court the result of the agreement will be strengthened in the form of a peace deed which has executorial power as a court decision with permanent legal

[21] Soerjono Soekanto. 2007. *Faktor-Faktor yang Mempengaruhi Penegakan Hukum*. Jakarta. Penerbit PT. Raja Grafindo Persada. p. 5

force, because the peace deed contains instructions "For Justice Based on the One Supreme God".

c) In the mediation process in court, the parties can choose to use the services of a mediator from among the court judges, so that the parties are not burdened with paying for the services of a mediator; while in the out-of-court mediation process, the parties who use a professional mediator will be burdened with paying the mediator's fee.

d) In the mediation process in court, if the mediation process fails, the case will automatically continue with the trial process; while in the mediation process outside the court if the mediation process fails and wants to continue with the litigation process, the parties must first file a lawsuit at the court clerk.

Based on Lawrence M. Friedman's theory where there are three elements in the legal system, namely legal culture, the legal culture, system-their beliefs, values, ideas, and expectations. Legal culture is a human attitude towards the law and the legal system, beliefs, values, thoughts, and expectations. Legal culture or culture is in the form of attitudes and actions of the community and the values it adheres to. Or it can also be said, that legal culture is the whole fabric of social values related to the law along with attitudes that affect the law, such as shame, guilt when breaking the law and so on.

Based on the description above, it can be analyzed that the efforts of non-judge mediators in carrying out mediation actually know the substance, structure and culture that exist in mediating, namely being able to build trust, being able to analyze conflicts, being able to collect information, speaking clearly, listening attentively, summarizing. / reformulate the talks of the parties, formulate negotiation rules, organize negotiating meetings with the parties, can overcome the emotions of the parties, make use of caucus (separate meetings), reveal hidden interests, persuade the parties to reach an agreement, draw up agreements and so on other.

Inhibiting Factors of Non-Judge Mediators in the Settlement of Civil Cases Based on PERMA Number 1 of 2016 concerning Mediation Procedures at the Tanjung Karang Religious Court

The role of non-judge mediators in supporting the success of this mediation is that although on the one hand the main lawsuit cannot be prevented, in mediation a settlement agreement can be made, for example due to divorce, namely for child custody, mut'ah and children's living expenses.

Based on the results of an interview with Mr. Dhika Amal as a Non-Judge Mediator at the Tanjung Karang Religious Court, he explained through a focused and professional Mediator that time was added to the caucus (a one-sided meeting that was successfully held, the potential root of the problem could be explored). For example, in the case of a divorce, both parties are involved or it is difficult to communicate. This is where the mediator brings together and builds

communication between the two parties. The percentage of success of mediation in divorce cases is mostly due to the success of the mediator in encouraging an agreement based on divorce. On the one hand, this divorce effect is not the main claim, many even do not include it in the lawsuit. The plaintiff only focused on the lawsuit for divorce. So that some judges are of the opinion that the mediator has made an agreement outside the material of the lawsuit.

According to Thomas R. Dye, public policy is whatever the government chooses to do or not to do. And if the government chooses to do something, it must have a purpose (object) because public policy includes all government actions, so it is not merely a statement of the will of the government or government officials. Besides, something that is not implemented by the government is also a state policy. This is because "something that is not done" by the government will have the same effect (impact) as "something that is done" by the government.

Based on the results of research observations conducted by the author in the jurisdiction of the Tanjungkarang Religious Court, the researchers concluded that the failure of mediation could be influenced by various factors, including the following:

a. The Parties do not have good intentions

   Based on research that has been carried out in the jurisdiction of the Tanjungkarang Religious Court, the researcher concludes that the absence of good faith from the parties is one of the important factors that determine the success or failure of a mediation process in court, based also on the attitudes and values of the parties towards the mediation process. . Even if the parties attend the court summons to carry out mediation, but their presence without being accompanied by good faith to make peace, the mediation carried out will be difficult to achieve success.

   Achieving the success of mediation must begin with the good faith of the parties, the good faith to be present in the mediation process and the good faith to find solutions to existing problems in achieving peace. Good faith is one of the factors that most influence the success of mediation because the parties are the main actors in the mediation process, whatever happens during the mediation process is the responsibility of the parties to determine their own desires, the mediator only directs and helps provide choices, not to make decisions on what to do. what the parties want. Rachmadi Usman explained that the principle of good faith is the benchmark for the disputing parties for the successful implementation of mediation in court.[22]

   In this regard, Article 7 Paragraph (1) of the Regulation of the Supreme Court Number 1 of 2016 concerning Mediation in Court states that "The parties and/or their legal representatives are obliged to take Mediation in good faith."

[22] Rahmadi Usman. 2012. *Mediasi di Pengadilan: Teori dan Praktik*, Sinar Grafika, Jakarta, p.158

Thus, the parties are obliged to go through the mediation process in good faith based on honesty, good intentions, and without any deceit.

b. The parties are supported by their environment

The family environment is an environment that also has a sense of belonging to the relationship of the parties. Family relations also have their own role in building and maintaining the household relations of the parties. There is support from the closest family who provide input and direction in order to realize the peace of the parties. This means that the family also plays a role in finding solutions and helps to melt the parties through an emotional approach so that the parties are able to think better to determine their decisions in achieving peace during the mediation process stage.

c. Factors or facilities that support the success of mediation

Article 11 paragraph 2 & 3 of the Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Court states that Judge Mediators and Court Employees are prohibited from holding Mediation outside the court and non-judge Mediators and are not Court Employees who are elected or appointed together with Judge Mediators or Court Officers in one case are obliged to hold Mediation in court. For this reason, the court must provide facilities in the form of rooms and other supporting facilities to carry out mediation activities. Good facilities and infrastructure are able to build comfortable and conducive conditions, so that the parties can be more comfortable and calm in the implementation of mediation. Feeling safe and comfortable is an absolute requirement in a communication so that the parties will be more relaxed and easier to express their statements more optimally.

Based on the results of an interview with Mrs. Siti Rahmah as a Non-Judge Mediator at the Tanjungkarang Religious Court, several efforts must be made to minimize obstacles in the role of non-judge mediators in resolving civil cases at the Tanjungkarang Religious Court:

a. Information

The occurrence of a lack of information, it easily results in an inaccurate picture.

b. Support

A mediation will be very difficult to implement if there is no support and participation from all parties involved in the mediation.

c. Potential sharing

That is the division of potential between implementing mediators with those related to the differentiation of duties and authorities.

This means that a mediation can not just go away. mediation. must be monitored, and one such monitoring mechanism is referred to as Mediation

evaluation. Evaluation is usually aimed at assessing the extent to which the effectiveness of mediation is accountable to its constituents where the objectives have been achieved. Evaluation is needed to see the gap between expectations and reality on the ground.

Based on the description above, it can be analyzed that the inhibiting factor for non-judge mediators is that the government, in this case the Supreme Court of the Republic of Indonesia, has tried to control protracted cases, the accumulation of cases so as to minimize conflicts so that peace or win-win solution cases emerge with the birth of PERMA Number 1 In 2022, however, there are inhibiting factors in the field encountered by mediators, especially non-judge mediators, namely:

a) The parties are not in good faith;
b) The parties are supported by the environment;
c) Inadequate facilities and infrastructure.

III. CONCLUSION

a. The Efforts of Non-Judge Mediators in Settlement of Civil Cases Based on PERMA Number 1 of 2016 concerning Mediation Procedures at the Tanjung Karang Religious Court are:
   a) Being a neutral and objective party so that it can be accepted by both parties to the dispute;
   b) Help the parties to find an agreement that is acceptable to both of them to end the dispute between them;
   c) Assist the implementation of the contents of the agreement reached in mediation;
   d) Carrying out its functions and duties, following the Mediator Code of Ethics, the Mediator Code of Ethics is based on five basic guiding principles for mediators.
b. The Inhibiting Factors of Non-Judge Mediators in the Settlement of Civil Cases Based on PERMA Number 1 of 2016 concerning Mediation Procedures at the Tanjung Karang Religious Court are:
   a) The parties do not have good intentions;
   b) The parties are supported by their environment;
   c) Factors of facilities or facilities that support the success of mediation;

Achieving the success of mediation must begin with the good faith of the parties, the good faith to be present in the mediation process and the good faith to find solutions to existing problems in achieving peace. Good faith is one of the factors that most influence the success of mediation because the parties are the main actors in the mediation process, whatever happens during the mediation process is the responsibility of the parties to determine their own desires, the mediator only directs and helps provide choices, not to make decisions on what to do. what the parties want.

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