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Effective and Efficient Dispute Resolution Through Optimation of Court Connected Mediation

Indriati Amarini[1], Noorfajri Ismail[2], Ratna Kartikawati[3], Marsitiningsih[4], Ika Ariani Kartini[5]
[1,4,5]Faculty of Law, Universitas Muhammadiyah Purwokerto, Indonesia
[2]Faculty of Syariah and Law, Universiti Sains Islam, Malaysia
[3]Departement of Civic Education, Universitas Muhammadiyah Purwokerto, Indonesia

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ABSTRACT

The judiciary is a mechanism provided by the state to resolve disputes. However in practice, dispute resolution in court is not in accordance with the principles of justice, namely effective and efficient judicial institutions. This research aims to analyze the legality and development of mediation in court. The research method used is library research with secondary data sources in the form of laws and regulations, research results and literature. One of the progressive ideas of the Supreme Court of the Republic of Indonesia in order to realize effective and efficient courts, among others, is to strengthen the institution of mediation in the Court for the settlement of civil disputes. However, it seems that the efforts of the Supreme Court institutions need to be further refined through improving the quality and quantity of human resources, improving supporting infrastructure and court institutions are consistent in supporting the mediation development programs in the Court.

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Corresponding Author:
Indriati Amarini
Faculty of Law, Universitas Muhammadiyah Purwokerto
Jl. KH. Ahmad Dahlan, Kembaran, Banyumas, Jawa Tengah 53182, Indonesia
Email: indriatiamarini@ump.ac.id

I. INTRODUCTION

The judiciary is an institution created by the legal system with a function as a means of resolving fair disputes through a simple, fast and low cost judicial process.[1] The principles that the judicial process is carried out simply, quickly and at low cost are realized in achieving an effective and efficient judiciary. However, the implications of the rapid development of economic and business activities are not matched by court institutions as a means of dispute resolution expected by the community. This is because the court institution, which concretely carries out the task of upholding law and justice when receiving, examining, adjudicating and resolving any disputes submitted, is considered an ineffective and inefficient place to resolve disputes[2]. The length of time it takes to settle a case makes it very expensive, especially if it is related to the length of time it takes to settle a case. The longer the settlement of a case, the higher the costs that must be incurred. This is of course very unfavourable for the business community which can result in investor reluctance to invest[3].

[1] Muhammad Alim, 2011, *Sekilas Tentang: Peradilan Sederhana, Cepat Dan Biaya Ringan*, Varia Peradilan No. 305, p. 5.
[2] Adi Sulistiyono, 2002, *Membangun Paradigma Penyelesaian Sengketa Non Litigasi Dalam Rangka Pemberdayaan Alternatif Penyelesian Sengketa Bisnis*, Disertasi Program Doktor Ilmu Hukum Universitas Diponegoro, p. 116.
[3] Gaby Hardwicke, Briefing Note: Costs in Litigation. Available from website www.gabyhardwicke.co.uk.

The court is still trusted by the public as an institution to resolve disputes. The existence of a court institution is an institution that functions to coordinate disputes that occur in a justice-seeking society that trusts the litigation route. Court mediation has been developed in various countries, one of the objectives of which is to provide access to justice for citizens, cost savings etc. As explained in the National Standards for Court Connected Mediation Programs: "courts across the country are seeking ways to provide a better quality of justice for various types of litigation, improve citizens' access to justice, save court and litigant costs and reduce delays in the disposition of cases"[4].

In realizing the goal of simple, speedy and low cost justice through an effective and efficient court institution, the Supreme Court as the highest judicial organ in Indonesia began to initiate several methods to shorten the dispute resolution process in court. One of the most progressive ideas is the integration of mediation in the courts[5]. As described above, the Supreme Court issued Number 2 of 2003. However, due to various reasons, the mechanism has not yet been institutionalized or applied in the community. This then prompted the Supreme Court to improve it by issuing Supreme Court Regulation Number 1 of 2016 on Mediation Procedures in Court.

Although the regulation on mediation in court has been enacted, it has not been effective and efficient. Based on a study conducted by IICT (Indonesian Institute for Conflict Transformation) in collaboration with the Indonesian Supreme Court and AIPJ during September-November 2013, facts were found related to the effectiveness of mediation in court. Some of IICT's findings are: First, the success rate of mediation in court is very low. Second, mediation has not been maximized in the courts. Third, mediation has not significantly reduced the accumulation of cases in court.

II. RESEARCH PROBLEMS

1. What factors cause the need to optimizing court-connected mediation?
2. How to realize effective and efficient justice through court-connected mediation?

III. RESEARCH METHODS

This type of research is doctrinal legal research or normative legal research. In this normative concept, law is a norm either identified with justice that must be realized (*ius constituendum*) or a norm that has been realized as an explicit and positively formulated order (*ius constitutum*). The research is conducted in the library (library research) which includes research on legal principles and comparative legal research. The type of data is secondary data which is then analyzed using deduction logic.

IV. RESULT AND DISCUSSION

1. Factors that lead to the need to optimizing court-connected mediation

a. Courts are still trusted by the public to resolve disputes

The judiciary is one of the institutions of modern law that has gained the trust of the world community. At that time the judiciary was a mechanism provided by the state in resolving disputes. Public trust in the judiciary is still quite high[6], this can be seen from the indication of the large number of cases that enter the courts. Based on the annual report of the Supreme Court, during 2022 the number of cases received by courts throughout Indonesia amounted to 100,382 cases[7].

The reasons that encourage people to resolve disputes through the courts are: Firstly, the belief that the court is the place to obtain the justice they want, Secondly, the belief that the court is an institution that expresses the values of honesty, an incorruptible mentality and other core values, Thirdly, the time and cost of resolving disputes through the court has been criticized quite sharply by both legal practitioners and theorists. The role and function of the judiciary is considered to be overloaded, slow and waste of time, very expensive and unresponsive to the public interest, considered too formalistic and too technical. Fourth, that the courts are the place where people can actually obtain legal protection[8].

However, public trust has not received an adequate response from the courts. In reality, the role of the courts has not been able to fulfil the expectations of the community. This is because many court decisions do not solve problems but instead cause problems.

b. Backlog of cases in the Supreme Court

One of the steps taken by the Supreme Court institution in overcoming case arrears is the use of technology in case settlement. However, it seems that the use of technology is not the only answer to erode case arrears.

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4 National Standars for Court-Connected Mediation. Available from website courtadr.org/files/NationalStandardsADR.pdf.

5 Darmoko Yuti Witanto, 2010, *Beberapa Permasalahan dalam Perma Nomor 1 Tahun 2008 Tentang Mediasi di Pengadilan*, Varia Peradilan, No. 294, p. 15

6 RAA Kapindha, *Efektivitas Dan Efisiensi ADR*, p. 2, Available from website law journal.uns.ac.id.

7 Supreme Court Annual Report 2022

8 Adi Sulistiyono, 2006, *Krisis Lembaga Pengadilan di Indonesia*, UNS Press, Surakarta, p. 19.

As stated by the Senior Assistant Registrar of the Supreme Court of Singapore, Yeong Zee Kin, case backlogs were once a chronic problem in the Supreme Court of Singapore in the 90s, with more than 2000 cases ready for trial but trial dates only available three years or more in the future, more than 10,000 inactive files in the Supreme Court, some more than ten years old, criminal cases taking up to four years, appeal cases taking about two years, almost half (44%) of all cases were 5-10 years old.

Zee Kin explained that the Supreme Court of Singapore pursued four strategies in reducing case backlogs as follows: First, diversionary efforts which include mediation, arbitration, strengthening the Singapore Arbitration Centre and the Singapore Mediation Centre. In addition, there are pre-litigation protocols, for motor vehicle accidents without injuries and medical negligence cases. There are also diversion programs to extrajudicial sources, such as the Financial Industry Disputes Resolution Centre in collaboration with the financial authorities in Singapore. Second, facilitative efforts by sharing the burden of judges with non-judge judicial officers for routine cases, which in the trial process changed the verbal process to a process with a stronger written culture. In addition, technology introduced the Electronic File Registration System and Electronic Litigation System, as well as the Digital Transcription System. Third, monitoring and control, viz: measurement against benchmarks, process time standards and corrective action.

The steps taken by the Registrar of the Supreme Court of Singapore are to emphasize procedures through the Business Process Reengineering team, a team of architects who elaborate on opportunities for process simplification. Any system change will impact at least four layers of regulations which include subordinate legislation, practice directions and counter instructions or manuals.

2. Realizing effective and efficient Court

To realizing the goal of effective and efficient court, the Supreme Court as the highest judicial organ in Indonesia has initiated several methods to shorten the dispute resolution process in court. One of these ideas is to optimizing the institution of mediation in civil cases. This institution is intended so that the litigants do not have to go through all stages of the trial process which is long and time consuming, but only up to the pre-examination stage, if the parties succeed in reaching a peace agreement through mediation at the beginning of the trial. The integration of mediation into the court process is expected to be one of the effective instruments to overcome the problem of case backlog in the Court as well as to strengthen the function of non-judicial institutions for dispute resolution in addition to the adjudicative court process.

Circular letter issued Supreme Court Number 1 of 2016 concerning Mediation Procedures in Court as an elaboration of Article 130 *Het Herziene Inlandsc Reglement*/Article 154 *Rechtsreglement voor de Buitengewesten* is the latest Regulation Supreme Court Number 1 of 2016[9]. Regulation Supreme Court is an improvement of the previous Regulation Supreme Court which contains, among others (a) the possibility for parties to pursue mediation at the appeal, cassation and review levels; (b) the possibility of an out-of-court settlement agreement to be confirmed as a peace deed and the increase of the mediation time limit to 40 days and can be extended for another 14 days

The peace agreement will be a complete settlement because the final result does not use the principle of win or lose. The agreement that has been strengthened into a peace deed is a binding and final dispute resolution. Binding because every item agreed upon in the peace deed can be implemented through an executable process if one of the parties denies it. Meanwhile, final means that the strengthening of the parties' agreement into a peace deed has closed all legal remedies available to the parties.

From several aspects, settlement by mediation process provides many benefits for the parties. The shorter time taken will automatically reduce costs to a minimum, while from an emotional point of view, the settlement with a win-win solution approach will provide comfort for the parties, because the points of agreement are made by the parties themselves according to their wishes. However, despite the many benefits of the mediation process, in reality the success rate of mediation institutions in the Court is still very low.

Other research results from the implementation of court connected mediation are also said to be not so prominent or around only below 2.5% as follows: The percentage of successful mediated cases on this regulation in district court pilot project of the Supreme Court of the Republic of Indonesia is below 2.5%, in spite of the contradiction between the amicable tradition of Indonesian people[10]. Many factors hinder success in reaching an agreement, for example: because the parties' disputes are based on emotional conflicts, resulting in weak enthusiasm and enthusiasm of the parties to form a communication forum, some of them even openly declare that they are not willing to pursue peace and insist on being resolved directly with the trial process.

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[9] Ahmad Mujahidin, 2016, *Wakai dan Chotei di Jepang serta Perbedaan dan Persamaannya dengan Upaya Perdamaian dan Mediasi di Indonesia*, Varia Peradilan, Majalah Hukum Tahun XXIX No. 339, p. 51.

[10] Yayah Yarotul Salamah, *Mediasi dalam Proses Beracara di Pengadilan: Studi Mengenai Mediasi di Pengadilan Negeri Proyek Percontohan Mahkamah Agung* RI, Dissertation, Available from website http://lib.ui.ac.id/opac/themes/libri2/detail.jsp?id+20277463&lokasi=lokal

Optimizing the mediation process through the courts is very important given the high intensity of the use of legal remedies in civil cases which has resulted in the accumulation of cases in the courts and the Supreme Court. In civil cases, the parties tend to use all available legal remedies ranging from appeals, cassations to judicial review, even many cases where the object of the dispute is very small are still submitted to the level of judicial review in the Supreme Court.

Mediation is a global and one recognized important step in the process of conflict resolution. For comparison, this is regulated in Article 275 of the Japanese Civil Code regarding *wakai* before a lawsuit is filed (*sokketsu*). Most of the disputes for which *sokketsu, wakai* is requested have been settled by the parties beforehand, which is substantial, meaning that the parties have settled before the judge.

Germany also applies and uses the term Court Connected Mediation with *schlichtung*. There are differences between the Japanese and German models: "... The Japanese model is based on the pursuit of social harmony, morals, duties and other extra-legal considerations." Whereas in Germany: The German approach, as embodied in the Bavarian Mediation Law, stands in harsh contrast to the Japanese recognition of extra-legal considerations[11].

The systems adopted by Japan and Germany are also adopted by Sweden and Australia. The differences are based on each country's legal system. As written: The national systems show great diversity, however. From the passive trial judge and referral out of the court in Australia to the very active trial judge and statutory conciliation in Japan with the Swedish system being positioned somewhere in-between.[12]

Some of the obstacles to the failure of mediation in the courts according to a study by IICT (Indonesian Institute for Conflict Transformation)[13] are: (1) not all judges have received mediation training so that their understanding is not uniform, (2) the number of judges in some areas is still limited so they are more focused on resolving cases in litigation, (3) the role of lawyers who hinder the mediation process because it will have an impact on the financial fees they get from clients, (4) the lack of knowledge of litigants about the benefits of resolving cases through mediation, (5) some judges still see mediation as an addition to their workload in deciding cases, and (6) the reluctance of judges to optimizing mediation due to the absence of a system of rewards and punishments in the implementation of mediation.

V. CONCLUSION

1. The judiciary is one of the institutions of modern law that has gained the trust of the world community. At that time the judiciary was a mechanism provided by the state in resolving disputes. Public trust in the judiciary is still quite high, this can be seen from the indication of the large number of cases that enter the courts. Judicial institution is a mechanism provided by the state to resolve disputes. People still have hope in the judiciary. One of the ideas of the Supreme Court in order to realize an effective and efficient judiciary is to optimizing the institution of mediation in civil cases through mediation in court.
2. Building an efficient and effective judiciary can be done through optimizing mediation in the courts. The efforts of the Supreme Court institutions need to be further refined through improving the quality and quantity of human resources, improving supporting infrastructure and court institutions are consistent in supporting the mediation development programs in the Court.

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