Mediation as an Alternative Method in Civil Dispute Settlement in Court

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Abstract. Intercession is a serene interaction wherein the questioning gatherings present their settlement to a go between to accomplish a reasonable result for the two players to the debate. One of the reasons and considerations of the Supreme Court to issue PERMA Number 1 of 2008 is the implementation of Article 130 HIR/154 RBg to reduce the accumulation of cases in court, namely through mediation. The research method used in this research study is normative juridical, which is presented in a descriptive form to give a clear picture to the readers. Intervention in court is viewed as a quicker and moderately cheap debate goal process with the goal that it can make a positive commitment in satisfying a feeling of equity and give acceptable outcomes to the gatherings to the question. It is because of framework combination. Intercession focuses on an agreement approach in uniting the interests of the questioning gatherings.

Keywords: Mediation; Settlement; Civil Disputes

1 Introduction

Intervention is a course of settling questions agreeably. The cycle is somewhat quicker, less expensive, and can give more prominent admittance to equity to the gatherings in tracking down an agreeable manner to determine clashes by giving a feeling of equity. The incorporation of intercession into the legal interaction can be one instrument that is very successful in beating the issue of aggregation of cases in court and furthermore reinforces and amplifies the capacity of non-legal establishments for debate goal notwithstanding legal (choosing) court procedures. Intercession is a method of settling debates outside the court, through arrangements including outsiders who are nonpartisan (non-interventional) and unbiased to the questioning gatherings, and their essence is acknowledged by the questioning gatherings. The current procedural law, both Article 130 HIR and Article 154 RBg, urges the questioning gatherings to take an intercession interaction that can be escalated by fusing the intervention cycle into suit strategies at the District Court. Alongside the arrangement of laws and guidelines, considering the power of the Supreme Court to additionally direct official actions that poor person been adequately managed by laws and guidelines. Profoundly.

Mediation is understood as a negotiation process to resolve a problem in which an outside party is impartial, neutral, and does not work with the disputing parties to reach an agreement on a satisfactory negotiation outcome. Unlike judges and arbitrators, the mediator has the authority to decide disputes between the parties, but the parties authorize the mediator to help

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them resolve problems between them [1]. Mediation is a procedure in which the disputing parties submit suggestions through peaceful means. This freedom allows the mediator to provide innovative solutions through a form of settlement that cannot be carried out by the court, but the parties to the dispute obtain mutual-beneficial advantages. Etymologically, the term intervention comes from the Latin, mediare which means being in the center. This importance alludes to the job showed by outsiders as middle people in completing their obligations to intercede and resolve questions between parties. Being in the center additionally implies that the go between should be in an unbiased and unprejudiced situation in settling questions. The arbiter should keep up with the interests of the questioning gatherings reasonably and similarly, accordingly encouraging the trust of the questioning gatherings [2].

The clarification of intervention from the etymological side (historical background) accentuates the presence of a the outsider questioning gatherings to determine the dispute, which is very important to distinguish it from other forms such as arbitration, negotiation, adjudication, and others. Concerning mediation, Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution states:

> *"If a debate or distinction of assessment after an immediate gathering by the gatherings (exchanges) can't be settled inside 14 (fourteen) days, then, at that point, upon the composed arrangement of the gatherings, the question or contrast of assessment is settled through the help of at least one master counsels or a middle person"*[3].

High Court Regulations (PERMA) Number 1 of 2008 concerning alterations to PERMA Number 2 of 2003 concerning Mediation strategies in Courts likewise gives a meaning of intervention, specifically in article 1 section 7, which peruses "intercession is a method of settling questions through an exchange interaction to acquire an arrangement between the gatherings with the help of a middle person. The Collins English Dictionary and Thesaurus expressed that intervention is a spanning action between two questioning gatherings to create an understanding. This action is completed by the go between as a party who helps track down different elective debate goals. The situation of the arbiter, for this situation, is to urge the gatherings to look for arrangements that can end questions and debates.

The mediator is only in charge of assisting the disputing parties in resolving the problem and does not have the authority to make decisions. In other words, the mediator here only acts as a facilitator. With mediation, it is hoped that common ground for resolving problems or disputes faced by the parties will be reached, which will then be stated as a mutual agreement. Navigation isn't in the possession of the arbiter however the hands of the questioning gatherings.

Meanwhile, case decisions, either through court or arbitration, are formal, coercive, backward-looking, contradictory, and based on rights. If the parties are litigating a dispute, the case decision process is regulated by strict provisions, and a third-party conclusion regarding past events and the legal rights and obligations of each party will determine the outcome. Then again, intervention is casual, deliberate, forward-looking, helpful, and in view of interests. Like appointed authorities and judges, arbiters should be unbiased and nonpartisan, and they ought not meddle to determine and build up a considerable end result, the gatherings conclude whether or not they will concur without help from anyone else [4]. Then again, intervention is casual, intentional, forward-looking, helpful, and in light of interests. Like appointed authorities and referees, go betweens should be unbiased and nonpartisan, and they don't meddle in determining and deciding a meaningful end result, so the actual gatherings conclude whether or not they will concur [5].

2 Methodology

The method used in reviewing this research is normative juridical relating to articles of mediation. This research begins by collecting literature sources related to mediation in a case. Next, the researcher observes and identifies the phenomena in the field to collect data from the facts. Next, the researcher analyzes the data, and finally, the researcher concludes.

3 Result and Discussion

PERMA stated that mediation is a process outside of litigation, so according to D.Y. Witanto, the mediation process has different characteristics and principles from trials in general, where the differences include [6]:

1. The mediation process is informal. The mediator as a facilitator will use a non-legal approach in resolving cases so that it is not rigid and rigid. For non-judge mediators, meetings can be held outside the court, such as hotels, restaurants, and so on, so that the comfortable atmosphere is relatively better to create peace for both parties. In mediation in court, they still follow the rules of procedural law as a guide for the process, but the level of formality is not as formal as in court proceedings. So the mediation process in court is semi-informal.
2. The time required is relatively short. In Article 13 paragraph (3) of PERMA Number 1 of 2008, it is stated that the mediation process lasts a maximum of 40 days, and in Article 13 paragraph (4) can be extended for a maximum of 14 days. This time is not absolute. If an agreement is reached in less than 40 days, the mediator can immediately submit a peace agreement before the judge who examines the case to make a peace deed. However, if mediation in the court of the first instance fails, it can be re-done at the level of appeal, cassation, and review.
3. The settlement is based on the agreement of the parties. The mediator is only a facilitator to reach an agreement that can benefit both parties.
4. Low cost and cheap. If the parties use the services of a non-judge mediator, the cost of mediation depends on the needs during the mediation process. However, if you use the services of a judge mediator, the cost will be much cheaper, namely only a summons fee is charged if there are parties who are not present according to the agreement. As for the services of a mediator from the judges and the use of the mediation room in court, there is no charge whatsoever.
5. The process is closed and confidential. In Article 6 of PERMA Number 1 of 2008, it is stated that the mediation process is closed unless the parties want otherwise.
6. A peace agreement is to put an end to things. It means that when the parties want a peace agreement, the lawsuit must be withdrawn until the matter is resolved.
7. The mediation process may override evidence. The parties do not need to argue based on evidence, but what is sought is to bring together the common ground of the problem.
8. The mediation process uses a communication approach. A dialogue approach is carried out with an interactive communication pattern of mutual respect and appreciation.
9. The result of the mediation is a win-win solution. There is no such thing as a win or lose. All parties must accept the agreement they made together.
10. The deed of peace is final and binding has permanent legal force (BHT), and can be executed.

Mediation as an alternative dispute resolution certainly provides benefits for the parties who want to resolve the case. So it is very appropriate if it is used as an option compared to attending a trial in court. According to Achmad Ali, the advantages of using mediation are [7]:

1. Fast process: most disputes handled by public mediation centers can be resolved with hearings lasting only two to three weeks. The average time spent on each examination is one to one and a half hours.
2. Confidential: everything that is said during the mediation examination is confidential that it is not attended by the public and there is also no press coverage.
3. Inexpensive: most public mediation centers provide quality services for free or at least at a super low cost: lawyers are not needed in a mediation process.
4. Fair: the solution to a dispute can be tailored to the needs of each party: legal precedents will not be applied in cases examined by mediation.
5. Successful: in four out of five cases that have reached the mediation stage, both parties to the dispute have achieved the desired outcome.

Another opinion uttered by Christopher W. Moore (1995) about some of the benefits that are often obtained from the results of mediation as quoted by Runtung, namely [8]: (1) An economical decision, mediation usually costs less than the costs that must be incurred to carry out litigation; (2) Quick settlement; (3) Satisfactory results for all parties; (4) Comprehensive and "customized" agreements; (5) Practice and learn creative problem-solving procedures; (6) A greater level of control and predictable results; (7) Individual empowerment; (8) Preserving existing relationships or ending relationships in a more friendly way; (9) Actionable decisions; (10) A preferred arrangement over tolerating a trade off or win-lose strategy; (11) Decisions that apply regardless of time.

The duties of the mediator according to PERMA Number 1 of 2008 are:

1. Prepare the meeting schedule,
2. Encourage the parties to take a direct role in the mediation process.
3. Organizing a Caucus,
4. Encourage the parties to carry out interest-based negotiations (Article 15 paragraphs 1, 2, 3, and 4).
5. Help the gatherings in defining a nonaggression treaty (Article 17 paragraph (1))
6. To declare mediation failed and not feasible (Article 14).

The following are the stages in the mediation process regulated by PERMA Number 1 of 2008:

1. Pre-Mediation Stage
   Plaintiff registered his lawsuit at the Registrar's Office. The obligation to mediate arises if on the first day of the trial the parties are present. In the wake of clarifying the intervention methodology, the Panel of Judges permitted the gatherings to pick a go between from the rundown of arbiters showed in the lounge area of the court office. The gatherings might pick their arbiter given that the go between as of now has a middle person authentication.
   If within 2 (two) days the parties are unable to determine a mediator, the Council of Judges will appoint a court judge other than a certified Case Examining Judge. However, if there is no certified judge, one of the members of the Examining Judge appointed by the Chairman of the Assembly shall perform the function of a mediator. The Examining Judge gives the parties 40 (forty) working days to go through the mediation process. If required, the mediation time can be extended for 14 (fourteen) working days (Article 13 Paragraphs [3] and [4]).

2. Formation of Forum
   Inside 5 (five) days after the gatherings delegate a concurred arbiter or after the gatherings neglect to choose a middle person, the gatherings might present a case continue [9] to a mediator appointed by the Panel of Judges. The mediator may request that the meeting be attended by the disputing parties directly and not represented by a legal representative.
3. Problem Deepening
   The way the mediator explores the problem is by utilizing a caucus. A caucus is a meeting between a mediator and one of the parties without the presence of the other party. The caucus is performed so that the parties can provide information to the mediator more broadly and in detail that may not be conveyed when meeting with the opposing party.[10] In this case, the mediator processes data and develops information, explores the interests of the parties, provides an assessment of the matters that have been inventoried, and finally leads the parties to the bargaining process for problem-solving.
4. Final Settlement and Determination of Agreement Results
   The parties will convey their will based on their interests in the form of agreement points. The mediator will record the wishes of the parties and put them into the agreement document. In Article 23 Paragraph (3) of PERMA Number 1 of 2008, it is stated that the conditions that must be met in the peace agreement are as follows:
   a. According to the wishes of the parties;
   b. Not against the law;
   c. Not to the detriment of third parties;
   d. Can be executed; and
   e. In good faith.

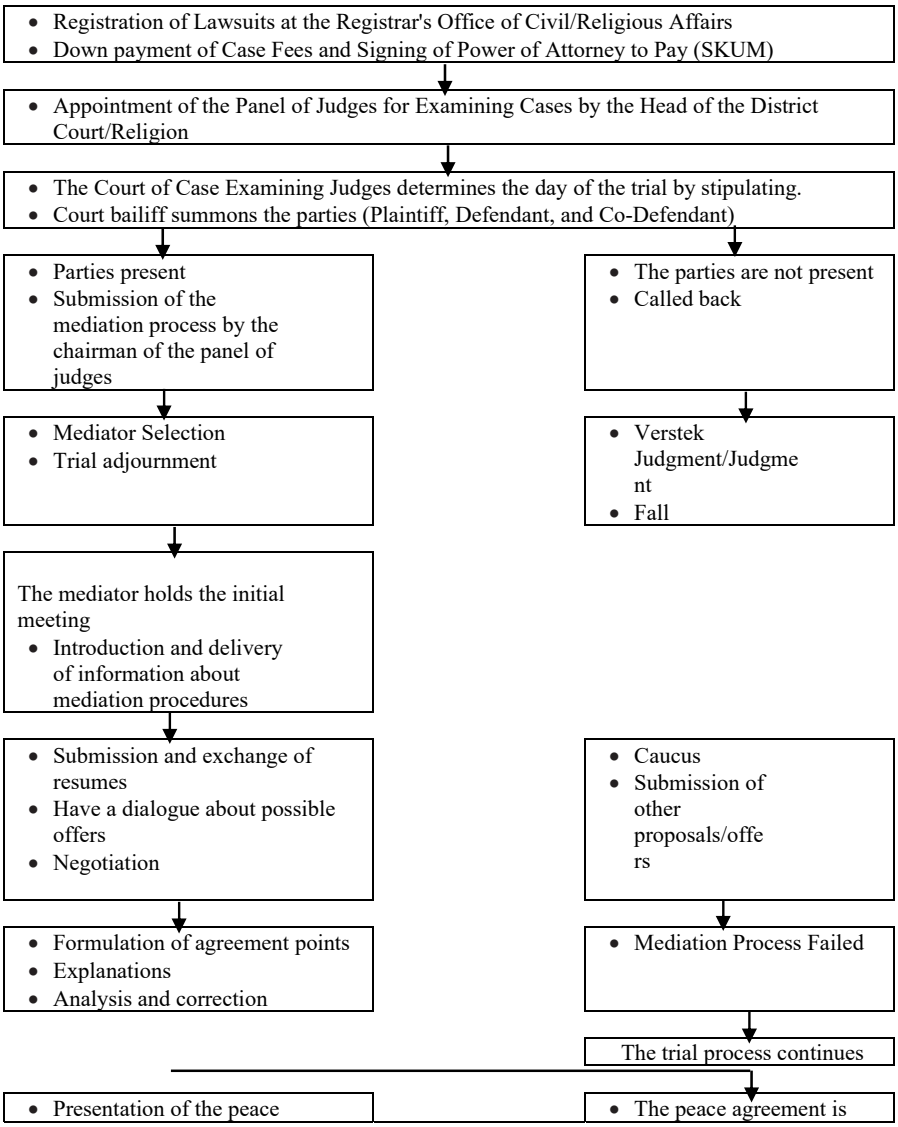
   If there is an agreement that violates the conditions mentioned above, the mediator must remind the parties. However, if they insist, the mediator has the authority to declare that the mediation process failed and report to the Case Examining Judge. The peace agreement document will be brought before the Case Examining Judge to be confirmed as a peace deed.
5. Out of Court Agreement
   The purpose of Article 23 Paragraph (1) PERMA is that the filing of this lawsuit is so that the dispute between the parties is included in the court's authority through registration in the case register at the Civil Registrar. The Court Chairperson can appoint a Panel of Judges who will confirm the peace in a trial that is open to the public (except for cases that are closed for the public, such as divorce).
6. Expert Involvement in the Mediation Process
   Article 16 Paragraph (1) PERMA Number 1 of 2008 states that with the gatherings' endorsement or their lawful agents, the arbiter might welcome at least one specialists in a specific field to give clarifications or contemplations that can assist with settling contrasts of assessment between the gatherings. The expense of acquiring a specialist is borne by the gatherings dependent on an understanding. Be that as it may, PERMA doesn't clarify who can be arranged as a specialist. Thus, the assurance of who will be made a specialist in the intercession interaction is following the proposals of the arbiter and the understanding of the gatherings.
7. End of Mediation
   The mediation process is declared to end in 2 (two) forms. First, the mediation is successful by producing points of agreement between the parties, the peace process will be followed up with the inauguration of the peace agreement into a peace deed that contains the same power as a Judge's Decision which has permanent legal force. Second, the

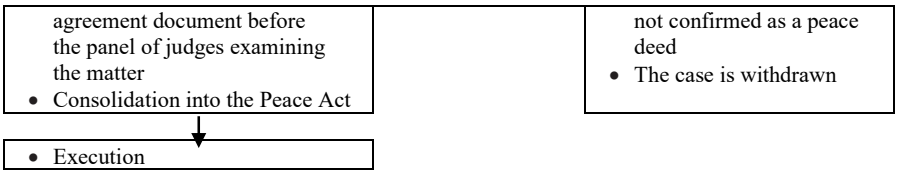
mediation process found a dead end and failed. The failed mediation process in court will continue in court.

8. Mediation at the Legal Effort Stage

The parties, based on mutual agreement, may seek reconciliation on cases that are in the process of plea, cassation, or review or on cases that are being examined at the level of appeal, cassation, and review as long as the case has not been decided.

Briefly, the stages of the mediation process can be seen systematically in the following diagram:





Based on the mediation process, it was found that the disputing parties in civil disputes can use the mediation mechanism to resolve in good faith to reach a win-win solution, before deciding to take litigation settlement efforts. It was found that the disputing parties in the District Court had to go through the mediation process first after someone submitted their case to the court, with a mediator appointed by the court or by the parties themselves, has shown that the Supreme Court is very responsive to the mediation process, and the responsive nature indicates that the dispute resolution process through mediation is a much better dispute resolution process than the judicial process and has implications for a simple, fast, and low-cost judicial process. This requires concrete support from a formal court institution, namely the Supreme Court of the Republic of Indonesia to supervise the mediation process as mandated in Supreme Court Regulation no. 1 of 2008 and also carry out responsive policies in reforms in the legal field, especially in dispute resolution.

4 Conclusion

Intervention is a method of settling debates by including an outsider as a middle person, where the go between is an unbiased party who is engaged with resolving the gatherings' question. Intervention is one of the quicker and less expensive debate goal processes and can give more prominent admittance to the gatherings by tracking down an acceptable question goal and satisfying a feeling of equity. One of the reasons and considerations of the Supreme Court for issuing PERMA Number 1 of 2008 was the implementation of Article 130 HIR/154 RBg to reduce the accumulation of cases in court. A dispute that is ended peacefully means that the problem ends completely, both physically and mentally. The relationship between the two parties automatically returns to the way it was before the dispute. When compared to dispute resolution through a judge's decision, the decision ends with the risk of a losing party and a winner. In the soul of each party, there is no complete solution, because the losing party still feels disappointed and does not simply accept his defeat, eventually taking legal remedies such as appeals and cassation.

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