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Judicial Review on Civil Dispute Resolution Through Mediation in Connection with the Mahkamah Agun Regulation Number 1 Of 2016 Concerning Mediation Procedures in Bandung State Court Class Ia.

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Abstract

Mediation provides a method for disputing parties to implement their own choices, accompanied by care and effort to improve their thinking in order to produce a favorable decision for both parties by taking control of their lives in resolving the disputes they face. Various judicial efforts in Indonesia to bridge the issue of civil dispute resolution through mediation can still be considered insufficient.

The issues to be discussed in this study are the position of the peace agreement as the basis of mediation and several obstacles in mediation. According to Article 1 number 10 of the Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in the Judiciary, a peace agreement is a document that contains the content of the peace settlement and the judge's decision that reinforces the peace agreement. If the disputing parties reconcile and then request the court to strengthen the peace agreement with a court decision, this agreement is called a peace agreement. The peace agreement is just one form of the outcomes of mediation. Mediation itself is based on negotiation and agreement between the parties involved in the conflict, not on specific legal documents. Therefore, mediation can take place without producing a peace agreement, depending on the decisions of the parties involved. Obstacles in undergoing the mediation procedure carried out by the parties in the District Court as well as the Supreme Court. One of the main obstacles in mediation is the disagreement between the parties involved in the dispute. If one or both parties are unwilling to participate in mediation or do not have a sincere intention to reach an agreement, the mediation process can become difficult or even unproductive.

Keywords
dispute, civil, mediation.

Mediation is one of the alternative methods for resolving disputes outside the realm of litigation, used to reach agreements between parties involved in the dispute. Mediation is typically facilitated by a neutral and trained mediator who assists the disputing parties in reaching mutually beneficial agreements. Unlike in the court process, the final decision in mediation is usually made by the parties involved, not by a third party.[2]

Mediation is a dispute resolution process through negotiation to obtain an agreement among the parties, facilitated by a mediator. Mandatory Mediation for Certain Cases. All civil disputes submitted to the court, including opposition to default judgments (verzet), opposition by parties involved (partij verzet), and third parties (derden verzet) against the enforcement of final and binding judgments, must first attempt to be resolved through mediation, unless otherwise determined by this Supreme Court Regulation.[3]

The Indonesian government has encouraged the use of mediation in dispute resolution across various sectors. Badan Mediasi Nasional (BMN) was established to provide mediation services and promote the use of mediation in dispute resolution in Indonesia. In practice, mediation is used to settle various types of disputes, including civil disputes, business disputes, environmental disputes, and labor disputes. Mediation can be conducted voluntarily or by court order, depending on the policies and regulations applicable in each case. By adopting mediation as an alternative dispute resolution method, Indonesia hopes to reduce the burden on the judiciary, expedite dispute resolution, and create a more harmonious environment for conflict resolution.[4]

When examined explicitly, Peraturan Mahkamah Agung (PERMA) Number 1 of 2016 is an implementation of Civil Procedural Law (HIR and RBg). However, PERMA Number 1 of 2016 still conflicts with the Civil Procedural Law regulated in HIR and Rbg, including the following: 1) Parties declared to act in bad faith, even if they win the main case, are still ordered to pay mediation costs; 2) If the plaintiff is declared to act in bad faith, the lawsuit is deemed inadmissible or NO (Niet Ontvankelijk Verklaard) even though the formal claim is correct and there is no legal remedy; 3) The mediator judge can become the judge examining the case, although mediation records should be destroyed.[5]

Article 130 HIR states that: (1) If on the appointed day both parties appear, the district court, through its chairman, attempts to reconcile them; (2) If such reconciliation occurs, then at the hearing, a deed is made, in which both parties are obliged to comply with the agreement made in the deed; the deed will then be valid and executed as a regular judge's decision.[6]

Material civil law that has been violated must be upheld or enforced. To implement material civil law, especially in cases of violations or to uphold the continuity of material civil law in terms of rights claims, a series of other legal regulations besides the material civil law itself is required. These legal regulations are referred to as formal law or civil procedural law.[7]

The existence of a reconciliation process in the Court, as regulated in the Supreme Court Regulation Number 01 of 2008 (hereinafter referred to as PERMA on Mediation Procedures in Court), is expected to provide an opportunity for the parties to take the initiative to resolve disputes with the assistance of a third party as a mediator. PERMA on Mediation Procedures in Court becomes a general standard for guiding the intensified mediation process within the

[2] Nurrachman, *Keadilan Sosial: Upaya Mencari Makna Kesejahteraan Bersama di Indonesia*, Jakarta: Kompas. 2014.
[3] https://www.pn-bandung.go.id/index.php?id=1327
[4] Rahmadi, T. (2017). Mediasi "Penyelesaian Sengketa Melalui Pendekatan Mufakat." Rajawali Pers. pg. 104
[5] Syahrizal Abbas, *Mediasi*, Kencana, Cetakan II, Jakarta. 2009. pg. 84.
[6] Made Widnyana, *Alternatif Penyelesaian Sengketa*, Indonesia Business Law Center, Jakarta. 2017. pg. 64.
[7] Sudikno mertokusumo, *Hukum Acara Perdata Indonesia*, Edisi VII, Yogyakarta, Liberty, 2006, pg. 147.

proceedings in the District Court. Mediation holds a significant position in PERMA since the mediation process is an integral part of the litigation process in court. Therefore, the implementation of mediation, the agreements reached, and the reasons for failure become the main considerations in assessing its effectiveness.[8]

The efforts of reconciliation mentioned in Article 130 paragraph (1) of the Civil Procedural Law are imperative.[9] This means that the judge is obliged to reconcile the disputing parties before the trial process begins. The presence of PERMA Number 1 of 2016 on Mediation Procedures in Court is an improvement over the previous PERMA Number 1 of 2008, as the latter was not optimal in meeting the needs for more effective and successful mediation implementation in court. In PERMA Number 1 of 2016, partial settlements involving disputing parties or partial agreements on the disputed objects are recognized. This is different from PERMA Number 1 of 2008, where if only some parties agree or are absent, the mediation is considered deadlocked (failed).

Based on Article 4 paragraph (1) of PERMA Number 1 of 2016 on Mediation Procedures in Court, the types of cases that are required to undergo mediation include all civil disputes submitted to the court, including opposition to default judgments (verzet), opposition by parties involved (partij verzet), and third parties (derden verzet) against the enforcement of final and binding judgments.

Supreme Court Regulation serves as an effort to resolve civil disputes through mediation, conceptually or essentially similar to the reconciliation effort mandated by Article 130 of the Civil Procedural Law or Article 154 of the Civil Code. Therefore, if the parties or the examining judge do not comply with this Regulation, it is considered a violation of both mentioned articles, resulting in the nullity of the judgment. Mandatory mediation does not mean that the parties are obligated to reach or achieve reconciliation. Reconciliation cannot be forced or mandated but must be the result of mutual awareness and willingness. The regulations concerning the functions of the Supreme Court as the judicial organizer are governed by the Supreme Court Law Number 5 of 2004 (hereinafter referred to as the Supreme Court Law).[10]

Mediation is conducted as an initial stage in the trial process, and the mediator/judge mediator will process a case after being notified by the Chairman of the Panel. The outcome of the mediation process only has two possibilities: successful or unsuccessful. Here is the data from the Bandung District Court Class 1A Special:

Year	Successful	Unsuccessful	Percentage
2018	17	462	4,52%
2019	21	533	4,31%
2020	26	597	5,72%
2021	22	471	4,56%
2022	12	196	5,01%
Average = 4,67			

Source: Bandung District Court Class 1A Special.

Over the number of civil cases filed from 2018 to 2022, the average success rate of cases that were successfully mediated was only 4.67%. This indicates that the implementation of Supreme Court Regulation (PERMA) Number 1 of 2016 has been applied, even though in reality, many

[8] Jimmy Joses Sembiring, *Cara Menyelesaikan Sengketa di Luar Pengadilan*, Visi Media, Jakarta, 2011, pg. 92.

[9] M. Yahya Harahap, *Hukum Acara Perdata: Tentang Gugatan, Persidangan, Penyitaan, Pembuktian dan Putusan Pengadilan*, Cet. VII, (Jakarta: Sinar Grafika, 2008), pg. 231.

[10] Syaifulloh Arief, I. Optimalisasi Peran Hakim Dalam Upaya Perdamaian Di Persidangan. Dir. Jenderal Badan Peradilan Agama. 2020. pg. 92.

mediations have failed. The effectiveness of the regulation is also perceived as not effective since only a very small number of cases have been successfully mediated. In practice, the success or failure of mediation heavily depends on the role of the mediator and the willingness of the parties involved.

Peace settlement itself must essentially conclude a case, be expressed in writing, involve all parties to the dispute and be made by authorized individuals, and be determined by a peace deed with legal validity and finality. Therefore, before conducting a case trial, the district court judge always endeavors to reconcile the parties in the court proceedings.[11]

The theory used in this research is the Theory of Legal Effectiveness according to Soerjono Soekanto, which states that the effectiveness or ineffectiveness of a law is determined by five factors:[12] a) the law itself (legislation); b) the law enforcers, which includes those who establish and apply the law; c) the facilities and resources supporting law enforcement; d) the society, referring to the environment where the law is applied; and e) culture, which represents the creation and sense of art based on will. These five factors are interconnected, as they constitute the essence of law enforcement and also serve as benchmarks for the effectiveness of law enforcement.[13]

According to Hoynes, various principles of mediation are found in the literature. The basic principles form the philosophical foundation for conducting mediation activities. These principles or philosophies are the framework that mediators must understand, so that they stay within the philosophy that underlies the existence of the mediation institution.[14]

Method

In this research, a normative legal research with a conceptual approach is used, which involves searching for principles, doctrines, and legal sources in the philosophical and juridical sense[15] to understand the mediation procedures in the court based on PERMA Number 1 of 2016.

To obtain the research materials, this study will be conducted through a literature review that examines legal sources. The legal sources as research materials are taken from primary legal materials, secondary legal materials, and tertiary legal materials.[16] The analysis of the legal materials used in this research is done after collecting the legal materials related to the issues under study, and then these materials are processed and analyzed legally.

Discussion

Mediation is a method of dispute resolution outside the court, through negotiations involving a third party who is neutral (non-intervening) and impartial to the disputing parties, and whose presence is accepted by the disputing parties. This third party is called a "mediator" whose task is only to assist the disputing parties in resolving their issues and does not have the authority to make decisions. In other words, the mediator only acts as a facilitator.

Through mediation, it is hoped that a point of resolution or settlement can be achieved for the problems or disputes faced by the parties, which will then be documented as a mutual agreement. The decision-making does not lie in the hands of the mediator but in the hands of the disputing parties. On the other hand, the adjudication of a case, either through a court or arbitration, is formal, coercive, backward-looking, characterized by conflict, and based on rights. This means that if

[11] Sudikno Mertokusumo, SH. *Hukum acara perdata Indonesia*. Edisi ke empat, Yogyakarta:liberty, 2008. pg. 82

[12] Soerjono Soekanto, *Faktor-Faktor yang Mempengaruhi Penegakan Hukum* (Jakarta: PT. Raja Grafindo Persada, 2008), pg. 8.

[13] Aan Andrianih, Efektivitas Undang-Undang No 1 Tahun 1965 tentang Pencegahan Penyalahgunaan dan/atau Penodaan Agama terhadap Kerukunan Beragama, (Jakarta: Tesis FH UI, 2012), pg. 99.

[14] Syahrizal Abbas, *Mediasi dalam Hukum Syariah, Hukum Adat dan Hukum Nasional,*
Jakarta: Kencana, 2011, pg. 2.

[15] Soerjono Soekanto, *Pengantar Penelitian Hukum*, (Jakarta: UI-Press, 2010), pg. 137.

[16] Ibid. hlm 144.

the parties litigate a dispute, the process of adjudication is governed by strict provisions, and the conclusion by a third party regarding past events and the legal rights and obligations of each party will determine the outcome.[17]

On the contrary, mediation is informal, voluntary, forward-looking, cooperative, and based on the parties' interests. Similar to judges and arbitrators, mediators must remain impartial and neutral, and they do not intervene to decide or determine a substantive outcome. The parties themselves decide whether they agree or not.[18]

In informal mediation, the parties are given the opportunity to express their emotions by seeking the underlying fundamental interests, then simplifying their emotional confusion. The primary goal of the mediation process is to reach an agreement acceptable to both disputing parties. This goal is to enable the parties to stop the emotional chaos caused by a dispute, which could have negative impacts on their future lives if they choose to resolve the dispute through litigation.[19]

According to Article 1 number 10 of Supreme Court Regulation Number 1 of 2016 on Mediation Procedures in Court, a peace deed is a document containing the peace agreement and a judge's decision to affirm the peace agreement. If both disputing parties reach a settlement and then request the court to confirm the peace agreement with a court decision, the form of the peace agreement approval is called a peace deed.

The legal basis for the peace deed is Article 130 of the Herzien nlandsch Reglement ("HIR"), which describes the peace decision as follows: If, on the specified day, both parties appear, the district court, with the help of the chairman, will attempt to reconcile them. If such reconciliation is achieved, then at the hearing, a deed (akte) is made, in which both parties are obligated to fulfill the agreement made, and this deed will have legal validity and be executed as a regular decision. Such a decision is not subject to appeal.

If a language interpreter is needed during the reconciliation attempt of both parties, the following regulation will be followed. The peace deed has the same legal effect as a court decision, is equated with a final decision, and has executory power, as also explained in "Can Peace be Made When a Decision is to be Executed?". Therefore, if the peace deed is not executed, enforcement can be requested by the court due to one party's refusal to comply voluntarily. As a result, there is no provision for damages, and the only available action is a request for enforcement.

A peace decision with a signed peace deed that compels the disputing parties to fulfill their agreement has executory power. If one party breaches or fails to fulfill their agreement as stated in the peace deed and peace decision, the opposing party can immediately request enforcement.[20]

As a result, with regards to a dispute that has made a peace deed and been confirmed by a court decision, a new lawsuit cannot be filed, as the peace deed is considered equivalent to a final decision with binding legal force. However, a party feeling aggrieved due to the non-compliance with the peace deed can resort to the legal remedy of requesting enforcement.

The proper step to take is to submit a request for enforcement to the Court Chairperson. If there are discrepancies between the agreed-upon terms in the peace deed and their implementation, a new lawsuit cannot be filed regarding the land dispute; instead, the appropriate step would be to request enforcement from the Court Chairperson.

When examined explicitly, PERMA Number 1 of 2016 on Mediation Procedures in Court is an implementation of Civil Procedural Law, where the basis for the application of Civil Procedural

[17] Amarini. Penyelesaian Sengketa Yang Efektif Dan Efisien Melalui Optimalisasi Mediasi di Pengadilan. Kosmik Hukum. 2016. pg. 85.

[18] Mahkamah Agung Republik Indonesia, *Buku Tanya dan Jawab PeraturanMahkamah Agung RI Nomor 1 Tahun 2016 tentang Pelaksanaan Mediasi.* pg.10

[19] Rahmah, D. M. Optimalisasi Penyelesaian Sengketa Melalui Mediasi Di Pengadilan. Bina Mulia Hukum. 2019. pg. 53.

[20] Yahya Harahap, Ruang Lingkup Permasalahan Eksekusi Bidang Perdata, Jakarta : Sinar Grafika. 2016. pg. 302.

Law in judicial practice is essentially HIR and RBg. However, if examined in-depth, there are still inconsistencies between PERMA Number 1 of 2016 and Civil Procedural Law regulated in HIR and RBg.

Parties declared to act in bad faith, even if they win in the main case, will still be required to pay the mediation costs. The good faith of the parties during the mediation process has been identified as a factor contributing to the low success rate of mediation in court proceedings. Therefore, the introduction of Supreme Court Regulation (PERMA) Number 1 of 2016 has brought fundamental changes to the existing civil procedural law and its application.

If the plaintiff is deemed to act in bad faith, their claim will be declared inadmissible or NO (Niet Ontvankelijk Verklaard), even if the formal aspects of the claim are correct and there are no legal deficiencies. When the plaintiff is declared to act in bad faith as stipulated in Article 7 paragraph (2) of Supreme Court Regulation Number 1 of 2016, and this is confirmed by the Mediator, it is sufficient for the Judge presiding over the case to issue a decision stating that the claim cannot be accepted (NO Decision). This decision is immediately rendered after the Judge's Panel receives the report from the Mediator, without going through trial proceedings, including questioning and evidence presentation (Article 22 paragraph (4) of Supreme Court Regulation Number 1 of 2016).

The fact that a Mediator can become the Judge presiding over the case, despite the mediation records being required to be destroyed, represents a significant change not only in the mediation process during court proceedings but also in the civil procedural law that has been in force so far. This is because the Judge presiding over the case must be entirely objective in delivering a verdict. If the Mediator can become the Judge presiding over the case, it will affect the verdict.[21]

Based on Lawrence M. Friedman's legal system theory, the new elements introduced by PERMA Number 1 of 2016 on Mediation Procedures in Court are expected to be implemented effectively, enhancing the success of mediation in court by the existing legal structure (Supreme Court and lower courts along with their apparatus), ultimately cultivating a good legal culture (values and beliefs of the public as mediation users).

The settlement of disputes through mediation, which is currently practiced in the court system, has its characteristics as it is done when the case has already been registered in court (connected to the court). Theoretically, settling disputes through mediation in court offers several advantages, such as quicker resolution, lower costs, and reduction of court congestion.

However, in reality, there are still challenges in adhering to the mediation procedure by the parties involved in resolving civil disputes in both District Courts and the Supreme Court. Some of the obstacles in following the mediation procedure in District Courts and the Supreme Court include the attitude of the parties. In essence, mediation in court is obligatory for the parties involved in a case. Failure to participate in the mediation process will result in the annulment of the decision. Therefore, some parties view mediation as a mere formality, leading them to be reluctant to reconcile during mediation.

Several main factors can cause the failure of mediation. Among them are disagreements about goals: If the involved parties do not have a clear agreement about their goals, the mediation process can be difficult. Conflicting or unrealistic goals may prevent mediation from achieving satisfactory solutions. Poor communication is also a factor; inadequate communication between the involved parties can hinder the negotiation

[21] Haerani, R. Tinjauan Yuridis Perjanjian Perdamaian Dalam Penyelesaian Sengketa di Pengadilan Melalui Proses Negosiasi. Unizar Law Review, 2020, pg.36.

process. If parties cannot effectively convey their interests, concerns, or views to the mediator and other parties, mediation may stall.

Significant power imbalances between the involved parties can render the mediation process unfair. If one party holds a dominant position and uses that power to dominate or pressure the other party, mediation may not succeed. Mediation requires a high level of trust between the involved parties. Lack of trust may lead to reluctance to share important information or cooperate in finding mutually beneficial solutions.

Sometimes, the fundamental differences between the parties involved in mediation cannot be overcome through negotiation. If the differences are too significant or uncompromisable, mediation may not succeed in reaching an agreement acceptable to all parties. The success of mediation heavily relies on the mediator's abilities and skills. If the mediator lacks adequate skills in facilitating communication, balancing interests, or creating a conducive atmosphere, mediation may not be successful.[22]

Parties involved in mediation may choose to terminate the process before reaching an agreement. There might be external factors that make them unwilling to continue mediation, such as legal developments or changes in the parties' interests or strategies. The failure of mediation does not always mean that mediation is an incorrect or useless approach. Sometimes, mediation may not be suitable for a particular situation, and the parties involved may need to consider other approaches, such as arbitration or litigation.

The difficulties in achieving reconciliation by the parties in the District Courts and the Supreme Court are actually rooted in factors of prestige and selfishness among the disputing parties. The parties involved in the case are reluctant to start reconciliation, driven by their individual egos. Furthermore, in cases involving land disputes, the parties often strongly believe that they have rights over the disputed object.[23]

Another obstacle in the mediation process is the lack of good faith from one of the parties. The reluctance of one party to attend mediation is often due to a lack of seriousness in seeking reconciliation. Instead, they choose to be represented by legal counsel during mediation, making it difficult for the opposing parties to find common ground. The absence of direct meetings removes the opportunity for the parties to express their desires and present their case. However, PERMA Number 1 of 2016 prioritizes the presence of good faith in mediation. In fact, if one party is declared to act in bad faith, even if they win in the main case, they will still be required to pay the mediation costs.[24]

Furthermore, the mediator's inability as stipulated in Supreme Court Regulation Number 1 of 2016 must be understood in the essence of mediation, which is negotiation between the disputing parties guided by a third party (the mediator). Negotiations result in several agreements that can end the dispute. In negotiations, the parties discuss their respective interests with the assistance of the mediator. The mediator must act neutrally and not take sides with any of the parties. Bias from the mediator towards one party will jeopardize the success of mediation. The mediator strives to find alternative possibilities for resolving the parties' dispute and must possess certain skills to explore these potential solutions.

According to the writer's opinion, the practice of mediation involving a mediator who is also the judge ruling on the case can create several problems related to the mediator's neutrality and independence. Mediators should play a different role from judges in court proceedings. One of the main principles of mediation is mediator neutrality. The mediator must strive to remain

[22] Interview with Sunarti, S.H. Pengadilan Negeri Bandung Judge 2nd July 2023
[23] Ibid.
[24] Mulyana, D. Kekuatan Hukum Hasil Mediasi Di Dalam Pengadilan Dan Di Luar Pengadilan Menurut Hukum Positif. Wawasan Yuridika, 2019. pg. 71.

neutral and not take sides with any of the parties involved in mediation. In this case, if the mediator is a judge who will rule on the case, there is a possibility that the dissatisfied party with the mediation result will feel that the mediator tends to favor the other party or consider their position as a judge in decision-making.

Additionally, mediator independence is also crucial in maintaining the integrity of the mediation process. A mediator who has a dual role as a judge may face pressure or influence from decisions they have made in previous court proceedings. This could lead to a compromise in neutrality or unfair influence on mediation. To preserve the integrity and effectiveness of mediation, it is recommended that mediators do not have conflicts of interest and are not affiliated with the parties involved in mediation. Ideally, the mediator should be a neutral party, not involved in previous court proceedings, and have no interests or relationships that could influence the mediation process.

If there are concerns about the mediator's neutrality or independence, it is important to bring this to the attention of the responsible party for the mediation process, such as the mediation institution or the relevant court. Efforts should be made to ensure that mediation is conducted by a fully neutral and independent mediator, so that the parties involved can trust the integrity of the process.

Judges are accustomed to resolving disputes through the adjudicative litigation process. Therefore, when assigned the task of resolving disputes through non-litigious means (mediation), it may feel unfamiliar and challenging.

For example, in the case of Case Number: 387/Pdt.G/2018/Pn Bdg, no inhibiting factors were found, primarily because of the presence of authentic land certificates. In the civil case trial Number 387/Pdt.G/2018/PN.Bdg, after all parties appeared in court, in accordance with Article 154 R.Bg/130 H.I.R. and Supreme Court Regulation Number 1 of 2016, the panel of judges initiated the trial by giving the parties an opportunity to settle the case amicably through the mediation process facilitated by a Mediator. Then, the disputing parties were offered the option to choose a Mediator, either from within the District Court's environment or from outside.

If a Mediator from within the District Court's environment was chosen, the parties were not burdened with mediation costs. However, if a Mediator from outside the District Court's environment was chosen, the parties would be required to pay mediation costs. The parties then entrusted the panel of judges to appoint H. Fuad Muhammady, S.H., M.H., a judge from Bandung District Court, as the Mediator in this case.

To overcome mediation failures or to ensure a smooth mediation process, here are some solutions or alternatives that can be applied, including selecting the right mediator. Choosing a competent mediator with appropriate skills is crucial. The mediator should have knowledge about the subject under dispute, strong communication skills, the ability to facilitate negotiations, and neutrality trusted by all parties. Thorough research and relying on reliable recommendations are essential to select the right mediator.

The mediator should ensure effective communication between the parties involved. They should create a safe and open environment where each party feels heard and respected. Active listening skills, asking appropriate questions, and embracing communication techniques that facilitate understanding and collaboration are essential.

The mediator should encourage the parties to think creatively in finding solutions. Techniques like brainstorming or role-playing can stimulate out-of-the-box thinking. The mediator can also help parties see the underlying issues from different perspectives, thereby expanding the range of possible solutions.

High emotions and intense conflicts can hinder mediation. The mediator must have the skills to manage emerging emotions and help the parties remain calm and focused on the real issues. They should treat conflict as an opportunity to build better understanding and seek joint solutions.

The mediator should be able to adapt their approach to the evolving dynamics during mediation. Flexibility is also needed when dealing with complex situations or special arrangements, such as multi-party mediation or cross-cultural mediation. If mediation still does not succeed or reaches an impasse, the parties involved may consider seeking alternatives, such as arbitration or the litigation process. Each situation is unique, and the right solution may vary depending on the needs and preferences of the parties involved.

Conclusion

The peace agreement (akta perdamaian) is a legal document that regulates the agreement between parties involved in a conflict to cease hostilities and achieve peace. While the peace agreement itself is not the basis of mediation, it can be an outcome of the mediation process. During mediation, the involved parties may decide to reach a peace agreement and draft a peace agreement document as a result of the mediation. This peace agreement then becomes the legal basis governing the relationship between the parties involved. The peace agreement is just one form of the outcome of mediation. Mediation itself is based on negotiation and agreement between the parties in conflict, not on specific legal documents. Therefore, mediation can take place without resulting in a peace agreement, depending on the decisions of the parties involved. The peace agreement can also be used as evidence or reference in further legal processes, such as the implementation or enforcement of the reached agreement. In this context, the peace agreement serves as the basis for the involved parties to demand the fulfillment of the agreement and settle the arising disputes.

One of the main obstacles in the mediation process conducted by parties in the District Court or Supreme Court is the disagreement between the involved parties. If one or both parties are unwilling to participate in mediation or lack genuine intent to reach an agreement, the mediation process can be difficult or even unsuccessful. The need for qualified mediators is also crucial as the success of mediation heavily depends on the mediator's skills and qualities. If the mediator lacks adequate skills, neutrality, or the ability to manage the mediation process effectively, the process may not be successful.

ReferencesTop of Form

Amarini. Penyelesaian Sengketa Yang Efektif Dan Efisien Melalui Optimalisasi Mediasi di Pengadilan. Kosmik Hukum. 2016.

Haerani, R. Tinjauan Yuridis Perjanjian Perdamaian Dalam Penyelesaian Sengketa di Pengadilan Melalui Proses Negosiasi. Unizar Law Review, 2020.

https://www.pn-bandung.go.id/index.php?id=1327

Jimmy Joses Sembiring, *Cara Menyelesaikan Sengketa di Luar Pengadilan*, Visi Media, Jakarta, 2011.

Kusen, S. A. (2016). Hakekat Keberadaan Mediasi Sebagai Alternatif Penyelesaian Sengketa Perdata Di Pengadilan Negeri. Lex Crimen.

M. Yahya Harahap, *Hukum Acara Perdata: Tentang Gugatan, Persidangan, Penyitaan, Pembuktian dan Putusan Pengadilan*, Cet. VII, (Jakarta: Sinar Grafika, 2008).

Made Widnyana, *Alternatif Penyelesaian Sengketa*, Indonesia Business Law Center, Jakarta. 2017.

Mahkamah Agung Republik Indonesia, *Buku Tanya dan Jawab Peraturan Mahkamah Agung RI Nomor 1 Tahun 2016 tentang Pelaksanaan Mediasi.*

Manan, Bagir, *Mediasi Sebagai Alternatif Penyelesaian Sengketa*, Jakarta: Varia Peradilan, 2006.

Mulyana, D. Kekuatan Hukum Hasil Mediasi Di Dalam Pengadilan Dan Di Luar Pengadilan Menurut Hukum Positif. Wawasan Yuridika, 2019.

Nurrachman, *Keadilan Sosial: Upaya Mencari Makna Kesejahteraan Bersama di Indonesia*, Jakarta: Kompas. 2014.

Rahmadi, T. Mediasi *Penyelesaian Sengketa Melalui Pendekatan Mufakat*. Rajawali Pers. 2017.

Rahmah, D. M. Optimalisasi Penyelesaian Sengketa Melalui Mediasi Di Pengadilan. Bina Mulia Hukum. 2019.

Soerjono Soekanto, *Pengantar Penelitian Hukum*, (Jakarta: UI-Press, 2010).

Soerjono Soekanto, *Sosiologi suatu Pengantar,* Rajawali, Jakarta, 2008.

Sudikno mertokusumo, *Hukum Acara Perdata Indonesia*, Edisi VII, Yogyakarta, Liberty, 2006.

Sudikno Mertokusumo, SH. *Hukum Acara Perdata Indonesia*. Edisi ke empat, Yogyakarta:liberty, 2008.

Syoifulloh Arief, I. Optimalisasi Peran Hakim Dalam Upaya Perdamaian Di Persidangan. Dir. Jenderal Badan Peradilan Agama. 2020.

Syahrizal Abbas, *Mediasi dalam Hukum Syariah, Hukum Adat dan Hukum Nasional.* Jakarta: Kencana, 2011.

Syahrizal Abbas, *Mediasi*, Kencana, Cetakan II, Jakarta. 2009.

Yahya Harahap, Ruang Lingkup Permasalahan Eksekusi Bidang Perdata, Jakarta : Sinar Grafika. 2016.