



MEDIATOR JUDGE IN COURT: APPROACH TO LOCAL WISDOM IN BANYUMAS COMMUNITY

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Abstract

Court mediation is regulated in the Civil Procedure Code under the term peacemaking. Court mediation is a concept developed by the Dutch which is still used in the settlement of civil disputes in Indonesian courts. However, the implementation of mediation in court is not optimal. This research aims to analyze the causes of the unsuccessful implementation of mediation in court. The research method used is doctrinal research sourced from legislation, literature and scientific journals. The results showed that the success of mediation in court in resolving civil disputes lies in the role of judges as mediators. Judges serving in Banyumas must have sufficient knowledge about the philosophy of dispute resolution in Banyumas society. There are four types of Banyumas local wisdom that become the internal capital of dispute resolution to keep it running lightly, honestly, and firmly, egalitarian, traditional, deliberation and these five principles become the basis for Banyumas people to live in harmony and horizontal harmony, so as to create a safe and peaceful life.

Keywords: Mediator; judge; Local wisdom.

Abstrak

Mediasi pengadilan diatur dalam KUHAP dengan istilah perdamaian. Mediasi pengadilan merupakan konsep yang dikembangkan oleh Belanda yang masih digunakan dalam penyelesaian sengketa perdata di pengadilan Indonesia. Namun pelaksanaan mediasi di pengadilan belum optimal. Penelitian ini bertujuan untuk menganalisis penyebab tidak berhasilnya pelaksanaan mediasi di pengadilan. Metode penelitian yang digunakan adalah penelitian doktrinal yang bersumber dari peraturan perundang-undangan, literatur dan jurnal ilmiah. Hasil penelitian menunjukkan bahwa keberhasilan mediasi di pengadilan dalam penyelesaian sengketa perdata terletak pada peran hakim sebagai mediator. Hakim yang bertugas di Banyumas harus memiliki pengetahuan yang cukup tentang filosofi penyelesaian sengketa dalam masyarakat Banyumas. Ada empat jenis kearifan lokal Banyumas yang menjadi modal internal penyelesaian sengketa agar tetap berjalan ringan, jujur, dan tegas, egaliter, tradisional, musyawarah dan kelima prinsip tersebut menjadi landasan bagi masyarakat Banyumas untuk hidup rukun dan harmonis secara horizontal, sehingga tercipta kehidupan yang aman dan damai.

Kata Kunci : Mediator; Hakim; Kearifan Lokal.

INTRODUCTION

Since Indonesia has a very diverse population, it is essential to learn more about the philosophy of the law before drafting any legislation that will govern how society will function. Only then will it be possible to achieve true justice for all Indonesian groups, including ethnicities, races, and religions. (Bintoro, 2016: 121). A court institution is one institution from modern law that has society's trust—the court is the last resort in looking for truth and justice. The court is a functioning institution for coordinating disputes in public seekers trusting justice-track litigation. Court institutions still trusted the public as an institution for complete civil disputes. Based on the Report Annual Supreme Court of Indonesia 2020, the number of incoming things to the Court throughout Indonesia as many as 20,761 cases, an increase of 2.40% compared with 2019, which amounted to 20,275 cases (Supreme Court, 2020: 4).

As Indonesia's highest court institution, the Supreme Court has started using several strategies to expedite legal dispute resolution. Courtroom mediation is regarded as a way to resolve more disputes quickly and relatively cheaply, which could contribute positively to upholding the rule of law and providing the disputing parties with a satisfactory resolution. That factor made integrating the mediation system more prioritizing the consensus approach in bringing the opposing parties' interests together.

Mediation is a global reality, and one recognized important step in the process of conflict resolution. At the same time, the development of mandatory court-based mediation schemes worldwide has become a trend over the past few decades (Schaffer, 2018: 229-238). In Indonesia, courtroom mediation strives to improve the accessibility of justice for those seeking it. One option to the mutual dispute lucrative second split party is courtroom mediation. The parties can gain various advantages from a settlement through the court's mediation process. More quickly, assuming automatic will may reduce costs. However, from an emotional standpoint, a win-win solution approach will reassure the parties because it includes the specifics of their agreement signed in line with his will. However, despite the many advantages of courtroom mediation, it is still not very successful in Indonesia.

Ninety-five thousand six hundred twenty-three cases could be resolved by mediation in Indonesia in 2020. Five thousand one hundred seventy-seven cases were among those that were successfully mediated, while 68,048 cases were among those that were unsuccessfully mediated, resulting in a realization rate of 5.41% and an accomplishment rate of 21.64%. Table 1 is below.:

Table 1
Percentage Case Resolved Through Mediation

Performance Indicator	Target	Realization	Achievement (%)				
			2022	2021	2020	2019	2018
Percentage resolved matters through mediation	25%	19.07%	76.29	39.68	21.64	113.80	132.5

Source: Supreme Court Performance Report, 2022

This article will analyze one-factor failure mediation by judges as mediators in operating obligation to mediate the disputing parties.

RESEARCH METHODS

The research method used is normative juridical. The data used in this research is secondary data in the form of legislation on mediation, research journals and books. This approach is the best choice since it frames issues through several steps, such as contextual reading, document research, problem recognition, law-moment collection, and context-sensitive analysis. The primary goal is gathering new information and assessing concepts to suggest fixes or modifications. The method selected for this article is because of the required identification of court mediation and related difficulties in the implementation of court mediation in the Banyumas region.

DISCUSSION

Court Connected Mediation Dispute Civil

Conflict or disagreement is reasonable concerning people and on any public layers. One option for resolving a problem is litigation- or non-litigation-track mediation. Court-sponsored mediation owns the benefits as follows: empowering the disputing parties in resolving the dispute (access to justice) for the community, character closed/secret and more elevated level possibility for carrying out an agreement so that the future relationship. Accelerating the dispute resolution process at a low cost allows the achievement of a solution that produces a deal that can be accepted by all parties in order for the parties not to go through appeals and cassation efforts (Amarini, 2016: 87-88).

Mediation benefits the disputing parties and provides several benefits for justice: First, the use of mediation expected could overcome problem accumulation in the case filed to the court. Amount solution cases through mediation will reduce the accumulation of cases in court. Second,

at least the entire case filed to court will make it easy to supervise if occur lateness or intentional slowdown inspection of something case for something objective certain not commendable. Third, the mediation process is looked at as a method solution more disputes fast and cost inexpensive compared to the judge's decision process (Siregar & Munawsir, 2020: 7-16).

One means of resolving disputes in the form of personal jurisdiction is mediation. Cases that do not follow procedure are determined under Article 130 HIR and/or Article 154 RBG. The HIR and RBG are violated during mediation, rendering the decision void. Courtroom mediation is regarded as a way to resolve more disputes quickly and relatively cheaply, which could contribute positively to upholding the rule of law and providing the disputing parties with a satisfactory resolution. That factor made integrating the mediation system more prioritizing the consensus approach in bringing the opposing parties' interests together (Hanifah, 2014: 21).

As the highest-ranking justice organizer in Indonesia, the Supreme Court has started implementing several measures to speed up the resolution of legal disputes. Among the ideas is improving civil institution mediation. Court-related mediation aims to establish a successful and efficient court system that will enable easy, quick, and inexpensive trials. The parties should not complete the lengthy and time-consuming trial process to the dispute; instead, they should only go to the pre-inspection stage if they successfully settle through mediation before the trial begins.

Court-connected mediation in Indonesia is an institutionalization and empowerment of peace in line with Pancasila, which is the country's fundamental value, particularly its fourth value, democracy lead by hikmat kebijaksanaan dalam perwakilan (wisdom in representative deliberation). The fourth Pancasila principle states that one should make an effort to resolve any disputes, conflicts, or cases through dialogue in order to reach a mutually passionate agreement. It implies that every disagreement, conflict, or case should be resolved by negotiation or peace between the conflicting parties to reach an amicable resolution. A culture of negotiation or discourse marks the broader community in Indonesia. (Bintoro, 2016: 121-142). A realization-focused approach to justice can contribute to this endeavor as it pays more attention to the particular social context of justice seekers and obstacles to justice that lie beyond the quality of the respective justice system (Haug, 2014: 357-375).

It is impossible to compare one location to another when using local wisdom. Local wisdom permanently focused on the way culture, with locals who have owned public local using values and culture. Of course,

morals, ethics, and institutionalized conduct by the traditional makeup local wisdom. This notion suggests that people who live in a community and are guided by a shared set of values will support one another in upholding the local laws. The intention is to foresee the numerous issues brought on by miscommunication. Local wisdom is considered to be the most effective tool for resolving conflicts. Condition the done with invite parties to a dispute to discuss and negotiate their desires for the other party. This thing will give influence shaping considered solutions possible and appropriate, as well as could make warning early to conflict (conflict early warning system) (Astri, 2011: 24).

According to the consensus approach, all decisions made throughout the mediation process must be under the parties' or the process' consensus. Parties with two conflicting parties or more parties may choose to mediate. Culture is referred to as a dominant influence in mediation. According to this perspective, the community may accept negotiation and mediation to reach a consensus since these methods are consistent with how society looks at its way of life. People who inherit society's tradition and intrinsic culture highlight Things crucial to harmony in life or association, of course, will be more capable of receiving and using means of consensus in dispute resolution. In addition to the cultural component, mediation fairly balances the power between the parties in conflict. Parties are willing to go through negotiation because they are bound by mark's culture or specific spiritual values only, but because he, of course, needs cooperation from others to reach a goal or realize the importance (Pradityo, 2018: 375-386).

The main focus of culturally specific mediation approaches is the provision of conflict resolution services based on the customary dispute settlement procedures of the disputants' culture. It means that in Kenya while adopting court-connected mediation, the program must draw from Kenyan culture rather than simply being a copy of the mediation model used in the West. It will guarantee that the interests of people and communities are served and that the program is more appropriate for the people.

Effective new mediation models, emphasizing relationships, and taking a multidisciplinary approach to understanding conflict and emotion have been articulated internationally. The failure of court-connected mediation in Indonesia is distinct from that reported in research findings from other nations. As a result, the mediation experience in Indonesia confirms the particular situation and suggested techniques. This failure is not entirely attributable to internal mediator strategy issues or model decisions made following laws governing mediation. External

aspects include the psychology of the disputing nation, legal tradition, and court practice that harmonizes with mediation without reference to local wisdom. (Riyanto et al., 2018). The mediation process used is living values in the community, such as mark law, religion, morals, ethics, and a sense of justice, towards the facts obtained to reach something agreement (Lestari, 2013). Quality in mediation from various perspectives argues that improved systemic supports are required to enhance mediation quality (Sourdin, 2010: 45).

Some people say culture is multicultural if it displays its diversity and differences. Diversity and difference are discussed concerning, among other things, diverse structure culture founded in differences of different values, race, ethnicity, and religion, as well as a diverse social group in society. In addition, multicultural society might be described as (1) Admitting the richness and complexity of life in the community; (2) treating everyone equally, regardless of culture or group membership; and (3) taking an equal stand against all forms of diversity and difference. (5) Element oneness, cooperation, and being together side by side peacefully in difference. (4) High appreciation for fundamental human rights and each other's honor in difference. Indonesia is a publicly multiethnic country with numerous ethnic groups and nationalities, each of which has distinct cultural traditions. This distinction can be observed in art, language, and customs, among other things. (Gunawan, 2011: 212-224).

A circular letter titled Empowerment First Instance Court in Implementing the Peace Institute as Set in Article 130 HIR/Het Herziene Inlandsc Reglement/Staatblad 1941-44 nand Article 154 RBG/Rightsreglement voor de Buitengewesten/Saatblad 1927-227, Issued by the Supreme Court of Indonesia in 2002, marks the beginning of mediation in Indonesian courts. Articles 130 HIR and 154 RBg deal with institutional harmony and call on judges to settle disputes more thoroughly before a matter is considered. The Supreme Court completes its Circular Supreme Court with the publication of Regulation Supreme Court Number 2 for 2003 regarding Court Mediation Procedures. In 2008, Regulation Court Agung Number 2 of 2003 was replaced with Regulation Supreme Court Number 1 of 2008. The Supreme Court noted that various issues arising from the Regulation were discovered following a review of the court-based mediation process based on Supreme Court Regulation Number 2 of 2003. The Supreme Court ordered that Rule The Supreme Court No. 2 of 2003 be amended to use courtroom litigation and related mediation better. Nature must mediation in litigation in court was once more underlined in Regulation Supreme Court Number 1 of 2008.

The Supreme Court issued Regulation Supreme Court Number 1 of 2016 as a substitute for Regulation Supreme Court Number 1 of 2008, which had been in effect for six years. The previous Supreme Court implemented the following new measures: (1) Settings about criteria and punishments for behavior faith no good to both parties in the mediation process (2) Plans about agreement peace part on subject/party litigation nor agreement peace part on problem/object things and procedures the solution (3) Set period time mediation necessary 30 days work and earned extended 30 days work instead of 40 days work and extended 14 days work. (4) Affirmation settings that period time mediation issued from period time solution case. (5) Reaffirmation of the stages of mediation as outlined in Article 14, allowing judges without mediator certification to apply for mediation while at least following the same stage as judges with mediator certification.

In period 5 (five) years, efforts from Supreme Court were not successful. This thing seen in the details table following :

Table 2
Case Solution Through Mediation in 2020

No	Type of case	Amount Case Mediation	Success Status Mediation		
			Succeed	No Succeed	No Could be Implemented
1	General	36,366	1.125	14,955	20,286
2	Religion	59,257	4.052	53.093	2.112
	Amount	95,623	5.177	68.048	22,398
	Percentage (%)		5.41	71.16	23.42

Source: Supreme Court Performance Report, 2020

The following measures were taken to overcome low-level success in courtroom mediation: (1) revitalization role of the power law for support process and results of mediation; (2) the obligation of the examining judge case to explain the benefits and procedures of mediation; (3) the obligation of the court chairman for support mediation. (3) better infrastructure for courtroom mediation; (4) better governance, administration, recording, and reporting of procedures; and (5) clarification of the relationship between the Supreme Court and institutions that offer accredited mediator certification and with certified mediators or mediator associations.

Judge's Duties as Mediator in Court-Connected Mediation

In terms of language, mediation or mediation, i.e., the settlement of disputes involving a neutral third party as a mediator or the solution of issues through mediation. It refers to the role played by the third party

because a mediator must be impartial and refrain from taking sides in any disputes. The mediator must be able to protect the interests of the conflicting parties in a fair and equal manner to increase the parties' mutual trust. (Ilyas et al., 2017: 83-100).

Mediation aims to obtain a fair resolution without incurring high costs and, in a way, is acceptable to both disputing parties. Mediation is a peaceful process in which the parties to a dispute present the mediator with their proposed solution. According to the law, the main goal of court-related mediation is institutional effectiveness or justice. (Rundle, 2013: 33-65). Mediation is a negotiation process to solve the problems of the disputing parties whom a mediator assists.

In cases involving courts, the judge serves as the mediator. The mediator's role is to assist the parties in resolving their differences and satisfy the interests of the second split parties. However, regardless of the outcome, the parties' agreement with the mediator's assistance is final and legally binding. Locally administered, fair, and effective laws in each setting that are cognizant of the problems in each and their different spheres of influence (Suparlan, 2003: 24-37).

All levels of judges play a crucial role in the legal system. It is anticipated that by placing this in the center, justice, and the law can be upheld. How abstract justice, which incorporates specific values, can be used as a guide in its application is the issue that judges need to answer. Law enforcers, particularly judges, are responsible for putting ideas and notions of justice into practice, so society accepts them. Judges are required to be able to apply the principles of justice to the cases they are presented with through their decisions (Amarini, 2019: 21-38).

In order to successfully avoid and counteract the effects of direct, indirect, and numerous kinds of discrimination while promoting integration and equality in treatment and opportunity, judges play a crucial role in our multicultural society. The goal of the law—to bring people to prosperity, happiness, and harmony—is that it is for humans, not that humans are for the law. Resolution of civil conflicts through mediation must be based on the value of local wisdom and with adequate consideration for what is meant when the conflicting parties feel that no one is vanquished. About the win-win solution principle, Obtaining the inner peace and glory of the parties strengthens their family values and gives them a sense of belonging (Suwondo, 2020: 56).

The promise that negotiated settlements will satisfy both parties interests and needs rather than deciding each party's rights is a common selling point for mediation in court settings. This commitment assumes that parties will have the chance to look "outside the box," explore the

problems that underlie their demands, and tailor agreements to meet their requirements during the mediation process. In addition to splitting up available resources, bargaining is occasionally used to create value or achieve mutually beneficial outcomes (Adrian & Mykland, 2014: 421-439).

The judge's job is to decide on every dispute (conflict) he faces. It means the judge is on duty set connection law, value law from behavior, and position the law of the parties involved in the situation he faced. The judge states what the law for the situation concrete particular. concerning the function the then the judge must become the living oracle of the law and also play a role as an interpreter talking the fundamental values of the public or the spokesperson of the fundamental values of the community (Sidharta, 2015: 57).

Reality law enforcement by the judge describes the state's social context where the law is applied and enforced. The law enforcer has always addressed accurate and fair law during this dilemma. The judge charged with a crime also becomes an enforcement of pure and just law. No enforcement of the law exists in an empty reality. Law enforcement frequently occurs in middle-class society. It is essential to realize that social interactions and conditions outside middle society can affect how the law is enforced.

Success mediation in court is relatively low caused of some factors of them the role of the judge's mediator. Mediation is the product of the personal skills and attributes of the mediator, the disputants, the representatives, and the product of the system that supports it (Sourdin, 2010). Mediators should be committed to providing parties with both an experience of justice (procedural justice) and fair outcomes (substantive justice). The mediator judges whether the parties are serious in mediation (Ilyas et al., 2017: 83-100). The mediation process is carried out only as a formality.

A mediator is a third party who is a neutral facilitator during a negotiation. To explore alternative conflict resolution options rather than using coercive or imposed measures. In contrast, mediation is a means of resolving disputes through the negotiating process to obtain the parties' consent while being guided by a mediator. A mediator's role is essentially to help the parties without cutting off or forcing something solution. The mediator's responsibilities as an individual generally include preparing a proposal timetable meeting mediation to the parties for agreement, encouraging the parties to actively participate in the mediation process, encouraging parties to caucus if necessary, encouraging parties to explore and dig into their interests and seek out the best possible resolution for them.

Approach Character Banyumas Community

Indonesians who are different from each other, both vertically and horizontally, and of a degree adequate variability, cannot be expected to have the same view of the messages put forward by the legislation. A dispute is essentially a reflection of the character and will of two different people. Public disputes can be resolved in several ways. Each strategy employs a unique paradigm according to the conflicting parties' respective destinations, cultures, or values. The issue is not just with the settings' substance but also with the actors who apply those settings, such as judges, parties, and advocates.

Several factors can affect a mediator's ability to be successful, including the mediator's ability to prepare for and assess a case or dispute adequately; the mediator's ability to ensure the parties' participation; the presence of the parties; the parties' availability; the mediator's knowledge and experience; and the professionalism and experience of the mediator. (Supreme Court Education and Training Center, 2019: 8).

Different ethnic groups in Indonesia's nation have peacefully resolved conflicts through culture. An example of a lawsuit resolved through mediation in various Banyumas District Courts included the Banyumas neighborhood. Purwokerto, Banyumas, Purbalingga, Cilacap, and Banjarnegara are the courts covered by the Banyumas culture. Cablaka/blakasuta/thokmelong, local wisdom in Banyumas. Every legal proceeding has its goal not only to decide who is right and wrong but also to find truth and justice.

In contrast, a legal process should attempt to mend any socially damaged relationships between the parties resulting from a dispute. In truth, social peace is handled in the broader context and is excellent on an individual, group, and communal level as well as vertically with the Divine. Orientation of full court with philosophical harmony that it seems could be applied in various social rooms because harmony is a wish from all people in any part of the world (Medan, 2012: 48).

This court-related mediation failure in Indonesia is distinct from previous failures reported in study findings from other nations. As a result, the mediation experience in Indonesia supports the unique scenario and recommended techniques. This failure is not entirely attributable to internal mediator strategy issues or model decisions made under laws governing mediation. External influences, particularly court practice, harmonize with mediation without referencing local wisdom, tradition, and the nation's psychology in conflict.

A mediator's job during mediation is to assist the disputing parties in identifying the issues in dispute, developing choices, and considering any

potential compromises put up by the other party. When performing their duties, mediators are only authorized to offer counsel or set the terms of the mediation process to resolve disputes. The mediator has to oversee the mediation process and help the parties reach an agreement. Mediators do not influence the specifics of the subject of the dispute.

Peace is the most excellent way to resolve a conflict since the longer it lasts, the more tension or disharmony between the parties resulting from the conflict. Increases in sharpness lead to intense animosity and hostility, destroying family ties and excellent relationships. The wish of the opposing parties must be realized for the second party to feel satisfied to restore the connection between the parties to the conflict. The expected satisfaction is not just confined to the stuff (material) that gives rise to disagreements; it also includes psychological gratification. That could happen by resolving the conflict through peace. (Suhariyanto, 2017: 127).

Local wisdom in Banyumas that may be distinguished from other local wisdom is divided into four categories: internal capital solutions to disputes or cases; character *cablaka/blakasutha/thokmelong*; character egalitarian; tradition deliberation; and principles. *Cablaka* is portrayed as a man who values honesty (Taufiq, 2016: 399). Human Banyumas are happier and express the truth rather than covering up something. *Thokmelong*, which the Banyumas understand as "only shiny," refers to what can be seen in front of one's eyes; therefore, *cablaka* becomes synonymous with the system culture of the local public Banyumas. (Priyadi, 2007: 11-18). Local knowledge in the form of natural egalitarianism transforms the Banyumas community into a communal society that is not based on social classes. Consideration on one own refers to making a decision based on a known arrangement or a discussion to achieve an agreement. Discussions with *cablakas* of speech reflect the equality of citizens. Every plan will be implemented using straightforward villager logic. Nature *cablaka* returns to shape an egalitarian mindset, representing professionalism in Banyumas culture (Trianton, 2013: 219).

A mechanism is carried out through deliberation, use of mediators, institutionalization solution dispute, and execution results verdict (Taufiq, 2016). Advice *Ponco Waliko* could be seen at one of the historical sites in the Regency Banyumas, *Paseban Batur Sengkala*. *Ponco waliko* originated from *ponco* (five) and *waliko*, which means advice. *Ponco waliko* of five principles base consisting of from : (1) *Kudu tresno maring sepadaning urip* (2) *Ora pareng nerak wewalering negara* (3) *Ora pareng milik sing dudu semestine* (4) *Ora pareng sepata nyepatani* (5) *Ora pareng cidra ing ubaya. Rerangkenipun ora butuh rewang, ora butuh musuh, butuhe mung kabecikan*. Banyumas's reputation as a person who likes to speak openly (*cablaka*) has a good side

that can help you get to the root of the issue and identify what you want or need from the brewing process. However, suppose local wisdom is not balanced by other naturally egalitarian sources and ponco waliko. In that case, reaching an amicable agreement between the parties could make it more challenging. (Taufiq et al., 2017: 399). The judge, the parties' personalities, and cultural factors impact courtroom mediation's success. (Riyanto et al., 2018: 175).

CONCLUSION

Mediation in court provides benefits to the parties to a dispute because it can overcome the accumulation of cases filed with the court. The mediation process is seen as an effective and efficient dispute resolution method. The mediator is the judge. The role of the mediator is to assist the parties in resolving their differences and fulfilling the interests of both parties to the dispute. However, whatever the outcome, the agreement of the parties with the help of the mediator is final and legally binding. Judges as mediators in civil dispute resolution must understand the local wisdom of the local community. The Banyumas judge in charge should be sufficiently knowledgeable about resolving disputes within the Banyumas community. There are four kinds of Banyumas local wisdom: the internal capital dispute that is kept light, honest, and firm (cablaka/blakasutha/thokmelong), egalitarian in nature, tradition discusses something. Five fundamental principles of the Banyumas community so that they can live harmoniously and horizontally to create a safe and peaceful life.

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