

The Use of Mediation as an Alternative Dispute Resolution in Village Dispute Resolution

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Abstract

In the current conditions of the covid 19 pandemic and conciliation, it is possible to have disputes, especially those that occur in rural areas, the settlement of village dispute problems is stipulated based on Law No. 6 of 2014, so that the law expands the scope of the law in the settlement of disputes in rural communities and reduce the burden of cases in court. In law No. 6 year 2014 forward mediation as an alternative dispute resolution which is also one of the efforts to revive the culture and empower local wisdom in managing local wisdom. From the results of the study it is clear that alternative dispute resolution through mediation is very effective in maintaining good relations and kinship as the characteristics of the Indonesian nation

Keywords

alternative dispute resolution;
village; mediation



I. Introduction

Actually, the problem of dispute or conflict is natural as long as there is a relationship between people with each other. In anthropological research, disputes are events that occur and can be observed in social life that cannot be kept away from social life, as well as in societies that have multicultural patterns. This is inevitable in life together.1 real conflict or dispute (manifest conflict) has various forms as well as individual conflict, conflict between families, between groups and so forth. In legal science there are two options for citizens in resolving disputes disputes through judicial (litigation) conducted by the state judiciary and through non-judicial means (non litigation). Development is a systematic and continuous effort made to realize something that is aspired. Development is a change towards improvement. Changes towards improvement require the mobilization of all human resources and reason to realize what is aspired. In addition, development is also very dependent on the availability of natural resource wealth. The availability of natural resources is one of the keys to economic growth in an area. (Shah, M. et al. 2020)

Indonesian people, especially in the village environment, have used to wear and adhere to local norms or institutions that have experience from local wisdom in resolving disputes. Expressions such as menang tanpa ngasorake, ana rembug di rembug, rukun agawe santoso, siro yo ingsun - ingsun yo siro, or ngalah dhuwur wekasane and so on, are the values of local wisdom in resolving disputes in rural communities in Indonesia in general. Likewise, local expressions that promote harmony, peace, and brotherhood in resolving disputes such as Andhap, Asor, Lemmak, Sangghem, Naremah, Nanggemah in madura.

Local wisdom as conflict resolution (the process that allows someone to solve conflicts in a method, style, manner and good attitude) can be implemented by means of implementation techniques in resolving disputes and violence. It turns out that the local order that develops in the archipelago is a practice carried out by the community with dispute resolution techniques that have been carefully thought out to maintain harmony in the household and in the community.

Settlement of disputes peacefully, it is very necessary to take precedence in order to provide a defense against social tranquility in people's lives, and not to cause offense or hurt that causes protracted revenge. This peaceful and family dispute resolution, the point is where the party who made a mistake to the injured person asks for forgiveness and also the injured party is willing to apologize to the party who made a mistake. People who are left in the area of Bali are more convinced of the decision of the customary institution. Because of the sense of justice that is always reflected in every judicial decision Culture.

The village and its devices in it have a very important role and are needed to act as a solution in resolving disputes in community life. Judging from the history of the Dutch East Indies has been known the existence of village courts. By using (Set Top Box) or television broadcast 1935, 1935, number 102 inserted Article 3 a into or regulation of the court organization which briefly mentions that the position of judges in small communities (villages) is still recognized to examine cases that are within their authority, to judge administratively without sentencing (criminal). The authority of these judges does not diminish the authority of the parties to submit their cases at any time to the judge's decision. With the insertion of this article, then recognized the position of the village court. In fact, during the Dutch colonial government, two forms of justice were known for the indigenous people, namely customary justice and administrative justice.

In connection with the enactment of existing regulations in Law No. 6 of 2014 on the village that confirms and explains the function of the village head as a dispute resolution dispute. This function has been described in Article 26 paragraph 1 which states: "The Village Head functions to organize village government, carry out Village Development, foster communities in a village, and empower village communities". Further Article 26 paragraph 4 letter k. states: that in Paragraph 1 The Village Head has an obligation to carry out his duties, namely: solving problems arising in the community in the village;"

In Law No. 6 of 2014 on villages and in Government Regulation No. 43 of 2014 on Implementing Regulations of Law No. 6 of 2014 on villages, there is absolutely no explanation about the type of case/dispute, mechanism, form of decision product or legal consequences of the village head dispute settlement.

The village and its apparatus, namely the village head, have the function of arbitrators and Justices of the peace in resolving disputes. It is very appropriate and strategic in supporting or helping the smooth running of the state court in Indonesia, especially in reality this country is undergoing changes and movement from Group Peguyuban to Petembayan. With the plan to strengthen the values of Peguyuban, the function of the village head as a mediator in the settlement of disputes based on local wisdom or policies that have been explained and confirmed by Law No. 6 of 2014 on the village must be used properly as a form of business to expand the entrance.

II. Research Method

The approach method to be used in this research is normative juridical approach. This approach was chosen considering that in order to achieve the research objectives/ research targets the researcher refers to the legal norms contained in legislation, Court decisions and legal norms that exist in society and Alternative Dispute Resolution instruments. The research approach to legislation is carried out by reviewing all laws and regulations related to legal issues to be studied, namely normative studies of mediation arrangements in relation to village dispute resolution.

III. Result and Discussion

The word village comes from Sanskrit which means the land of birth, the land of origin, and the homeland. When viewed from a geographical point of view, the village has a unifying meaning of the community that has the authority to take care of their own families and households based on rights that are a living heritage and a village or community initiative, including the indigenous community organization system, institutions, and customary law, village treasury land, and agreements in the life of the village community. Understanding of the village according to legislation is:

- a) Article 1 Number (5) of Government Regulation No. 72 of 2005 concerning the village, states that the village is a legal community unit that has territorial restrictions that have the authority to provide rules and organize local community interest based on the origins and local customs that have been recognized and respected in a rule that is within the unifying government of the Republic of Indonesia.
- b) Article 1 Number (1) Government Regulation No. 43 of 2014 concerning the implementation regulations of Law No. 6 of 2014, the village is a village and traditional village or referred to by another name, hereinafter referred to as the village, is a unity of society in an environment occupied by limited by the territory authorized to regulate and manage the government, the rights of origin and traditional rights are respected and must be recognized in the system of government of the Republic of Indonesia.
- c) Article 1 Number (43) of Law Number 23 of 2014 concerning Local Government, Village is a village and custom or referred to by another name, hereinafter referred to , is a legal community unit that has territorial boundaries that are authorized to regulate and manage government affairs, the interests of local communities based on community initiatives, rights of origin, and/ or traditional rights recognized and respected in the NKRI government system.
- d) Article 1 Number (1) of Law No. 6 of 2014 concerning villages, villages are villages and customs or referred to by other names, hereinafter referred to as villages, are legal community units that have territorial boundaries that are authorized to regulate and manage government affairs, the interests of local communities based on community initiatives, rights of origin, and/or traditional rights that are recognized and respected in the NKRI government system.

The village is a part of several systems that exist in the government of the Unitary State of the Republic of Indonesia which has been recognized on the management regulations in the government (autonomy) through the head of government that can give the task to provide representatives from the government and from the regional government for the ongoing implementation of the existing government. Based on a thought in a setting is about diversity, participation, genuine regulation, democratization and empowerment of the community. In a regulation that has been regulated by Government Regulation No. 72 of 2005, explains that the implementation of government affairs by the government and consultative bodies in managing and regulating the interests of local communities based on the origins and habits that have been recognized and respected in a system of Government of the Republic of Indonesia. It is a government work, based on this thought, the implementation of management system in short the organizer, known as "government". The head is the person who carries out the policy while the agency is an agency that carries out policy supervision or the so-called regulations.

Candra Kusuma, Zakaria argued that in the book Wahjudin Sumpeno explained that the village is a group of people who live together or a region, which has a series of rules that have been set by themselves, and there is a leader in a region that has been chosen and

has been set by themselves. According to the explanation contained in Law No. 72 of 2005 article 6 states that the consultative government regulates and takes care of the interests of local communities based on the origins and customs that have been recognized and respected in a system of Government of the Republic of Indonesia.

The village has the authority as stipulated in the village law in Article 18 which includes authority in the field of village governance, implementation of Village development, utilization of village communities, and fostering Village community through the right of origin and Customs in the village. The village also has Village Authority as stipulated in Article 19 of the village law, which includes: rights of origin based on Authority, village-scale local authority, authority assigned by the Government, Provincial Government, or District Government, other authority assigned by the Government, Provincial Government, or district/city government in accordance with the provisions of legislation.

The village also has the rights and obligations stipulated in Article 67 of Law Number 6 of 2014 concerning the village, namely, the village has the right:

- a. Organize and manage the interests of the community based on the rights of origin, customs, and socio - cultural values of the village community.
- b. Provide provisions and manage existing institutions in the village
- c. Obtaining Village income sources is obliged to protect and maintain the unity, integrity and harmony of the village community in the framework of national harmony and the integrity of the Unitary State of the Republic of Indonesia.
- d. Improving the quality of life of the village community.
- e. developing a democratic life
- f. developing Village Community Empowerment.
- g. provide and improve services to the village community.

The village head is a fictional character who can play an important role as a mediator and motivator as well as a village peace judge in resolving disputes within his environment. This is not the place of the village head, who is one of the most powerful figures and respected by the people in the community. In addition, according to the regulations in Law No. 6 of 2014 concerning villages, the village head is the leader of a government that has the strongest position and also has an appeal to be respected and respected by the community, so that the community hopes that it will be correct and appropriate in carrying out the role of a mediator or mediator in resolving disputes.

In Government Regulation No. 72 of 2005 concerning Village Government Chapter IV paragraph 2 of Article 14 states that the Village Head has an important role as an executor in organizing and as the main responsible person in the field of government, development and community in order to make the implementation of local government affairs. What is meant by the above government affairs is to regulate community life in accordance with the authority of the village as well as in making village regulations, forming village community institutions, and forming BUMDes and cooperation between villages. H.A.W. Widjaja argues in his book entitled "Village autonomy" states that: the village is a unifying legal community that has an original composition based on inheritance rights that have privileges. The beachhead or place of commencement of an act related to village government is wide range autonomy, participatory, democratic and in the utilization of society. R. Bintarto argued that based on his thinking, the village is something that is obtained from geographical, social, political and cultural manifestations that are in one region and have a reciprocal relationship with other regions.

3.1 Position Of Village Apparatus In The Settlement Of Village Disputes

Law as a rule that regulates human life must be used as a means to achieve justice, so that rational considerations can accept the presence of law as an order of values and norms that exist and develop in society as an effort to realize social order and not justify all forms of violence that occurs in society. Therefore, law is an important element in regulating the social life of the nation and state.

To realize this, the law must be the embodiment of four norm systems that apply in the life of the community, namely religious norms, norms of decency, norms of decency and legal norms themselves. In line with this, Meuwissen as quoted by Budiono is of the view that law is an order that seeks to influence human behavior so that the fulfillment of needs and needs is carried out in a proportional way based on moral or fair and justified general principles. Shifting the understanding of law as a rule and an important element as a means of achieving justice, Meuwissen also put forward four important moments that mark the law, namely; First the formal-normative moment that puts the law as a formal order aimed at enforcing peace, order, harmony and legal certainty. Both formal-factual moments that reflect the law as a symptom of power that can affect human attitudes and behavior. The third material-normative moment emphasizes that the law should contain ethical aspects. The four material-factual moments require that the law in principle relates to human needs of the law itself.

Along with the increasing level of public education and legal awareness, as well as critical views in an effort to develop the spirit of law (*volkgeist*) and the soul of justice in society, the concept of justice also shifted towards justice that prioritizes benefits for the parties, not just legal justice. This is based on the view that every group of people always has problems as a result of the difference between the ideal and the actual, between the standard and the practical, between what should be expected to be done and what is in reality. Group standards and values in society have variations as factors that determine individual behavior. Deviation from existing values in society brings behavioral gaps and disrupts order in society.

According to Article 27 paragraph (1) of the law- The Constitution of the Republic of Indonesia year 1945 (UUD NRI 1945), which states, that : "all citizens simultaneously position in the law and government and shall uphold the law and government with no exception" in this case the state is committed that every citizen should be treated well and fairly equal position in the law, also, humanity as a joint value of the state philosophy of Pancasila animates the entire existence of law in the country of Indonesia, starting from the Constitution of 1945 to the laws and regulations under it.

Seeing things in the village government, as an area that is considered important, in colonial times even the rural areas are part of the existence of an indigenous judiciary in Java and Madura, or independent regional courts outside Java and Madura. Village judges have the right to examine various cases that according to customary judges are included in the jurisdiction. The competence of village judges is regulated in such a way, so as to prevent the possibility of jurisdictional disputes with gubernemen judges or religious judges. If there is harmony between peace and order, there will be peace in society. Thus, it is hoped that village heads can build peace which means there is no constraint on freedom and there is no disturbance of order. Peace is actually the most essential legal goal that can be achieved through legal certainty and legal equality. Thus, the core function of the village head is to apply the law as a means to control and renew the community in his village.

The position of the village head as a Justice of the Peace also certainly has a few problems related to the domain of law (criminal, civil, administrative) which is the most

appropriate to discuss the discussion this time considering that as a fellow part of Public Law, both criminal law and HAN have similar principles, including the principle of legality. This principle is the basis for society and the government to take legal action. The expansion that occurs between the two as an effort to adapt to the development of society certainly also has an impact on each other and if this is not discussed in depth, there will be a "gray area" between the two. This is one of them because of the privileges of criminal law, the rules of which are in other parts of the law, and the sanctions can be applied in almost all branches of legal Science. The presence of the "gray area" is also due to the extent of HAN's coverage, which until now has not been determined. The determination of these limits can actually be discussed in depth, and then poured in writing as a reference to the "law" itself.

However, The Shape Of The Village Head who acts as a judge of peace for the community is a means to make a law that regulates the rights and obligations of legal subjects so that each performs its obligations properly and gets its rights fairly. In addition, the law also serves as an instrument of protection for the subject of law itself. In terms of the position of the village head, in relation to the village head as the village government and village government bodies have the same position, in that case the village head is both a village institution that is parallel to the village community institutions and also traditional institutions which in this law does not divide or separate the position of both at a level of authority from the lowest to the top or called (hierarchy) by having the same position but has different functions.

Deliberation and consensus is the philosophy of Indonesian society in every decision-making, including dispute resolution. This deliberation and consensus has been recorded in the philosophy of the Indonesian nation in the 4th sila, in the 1945 Constitution and other laws and regulations. The tradition of dispute resolution in Indigenous Peoples tends to use 'customary patterns' or in other terms often called 'family patterns'. This pattern is applied not only to civil but also criminal disputes. Dispute resolution in the customary pattern, does not mean there is no compensation or punishment of any kind against violators of customary law. Indigenous Peoples prefer dispute resolution through deliberation, which aims to create peace in the community. The deliberation route is the main route used by indigenous peoples in resolving disputes, because in deliberation, a peace agreement will be made that benefits both parties.

The facts and values adopted by the people of Indonesia in resolving disputes, some of the evidence include :

- a. In Minangkabau, known density Nagari headed by Wali Nagari. What is meant by the density of Nagari Customs (KAN) is a representative institution of consultation and consensus of the highest customs that have existed and inherited from generation to generation along the customs in the middle of the Nagari community in West Sumatra. The decision of the Nagari customary density is always based on deliberation called Rapek (meeting) and in this meeting everything is considered as it is. The density of Indigenous Nagari is the highest density institution in nagari. This traditional institution in Minangkabau combines mediation approach and disconnecting approach. In the density of Nagari who act as mediators or breakers are the Traditional Rulers.
- b. Among the Sasak people on the island of Lombok there is also known a dispute resolution institution named Begundem. Sasak tribe in resolving disputes should first be preceded by giving a warning or advice, and if the warning is not heeded then resolved through deliberation to achieve peace. Deliberations are carried out by traditional institutions called Krama Adat according to their level and competence. For the level of the neighborhood or Hamlet is carried out by Krama Hut which is authorized to solve

problems between residents of the neighborhood or between families in the neighborhood. Karma Hut consists of the head of the environment as chairman of the customs in the environment, religious leaders and community leaders. Meanwhile, at the village level, it is carried out by the village Krama consisting of the village head as the head of Adat, clerks, village chiefs, community leaders and Kelians.

- c. The Batak Karo community is also familiar with dispute resolution through Runggun. In Karo Society every problem is considered a family problem and a problem of relatives, thus the problem concerning the family or relatives should be discussed traditionally and brought to a negotiation to find a solution. Runggun means to convene / negotiate by way of deliberation to reach a consensus. Runggun was attended by Sangkep Sitelu in the Karo community. Runggun on Karo community in dispute resolution does not require a long time, not convoluted, cheap, family and harmony. Runggun can be categorized as resolving disputes by mediation because it is carried out through the services of Anak beru, Senina and Kalimbubu.

3.2 Mediation as An Alternative Dispute Resolution in Village Disputes

Alternative dispute resolution (ADR) is a form of out-of-court dispute resolution based on consensus conducted by the parties to the dispute either without or with the help of a neutral third party. Steps towards the development of mediation has been made by Indonesia with the promulgation of Law Number 30 of 1999 on arbitration and Alternative Dispute Resolution. Where mediation is regulated in Article 6 paragraph (3) which reads: "in the event that a dispute or disagreement as referred to in Paragraph (2) cannot be resolved, then by written agreement of the parties, the dispute or disagreement is resolved through the assistance of one or more expert advisors or through a mediator". The Supreme Court of Indonesia has also included mediation in the judicial process of the first instance, through the regulation of the Supreme Court of Indonesia Number 2 of 2003 on mediation procedures in court, which came into force since September 11, 2003.

Mediators involved in the mediation process are usually those who are respected in the family, community or among a particular profession. Many factors cause a person to be considered influential and authoritative in society. Among other things, the nature of his obedience, his skill, his wealth, or because of his strength and courage, or because of the combination of several elements. The development of mediation as an alternative dispute resolution in Indonesia is part of the tradition of the community, therefore its development is more influenced by cultural factors. But often the factor of inefficiency in resolving disputes through the courts also strengthens their commitment to using mediation.

In academic circles, this mediation concept is commonly known as Alternative Dispute Resolution (ADR) or alternative problem solving. ADR is actually not a new "stuff" in Indonesia, because of various forms of alternative problem solving has been part of the culture of the Indonesian nation since time immemorial. Currently, it is the right momentum to re-implement conflict/case resolution in the community through mediation mechanisms, especially mediation in the village. Since the enactment of Law No. 6 year 2014 about the village then there is a fresh space to revive the traditional institutions and village institutions that are tasked to solve the problems of the village community. This is very evident in the provisions contained in Article 26 paragraph (2) and Paragraph (4) which essentially gives the authority and obligation of the village head to discipline and resolve various problems of the village community.

Indonesian legislation contains the principle that peaceful deliberation and Consensus are also used in the judicial environment, especially in the settlement of civil disputes. This can be seen from a number of laws and regulations since the Dutch colonial

period until now. Mediation with the basis of deliberation towards a peace agreement, got its own arrangement in a number of legal products of the Dutch East Indies and in Indonesian legal products now. Alternative Dispute Resolution arrangements in the rule of law is very important, because Indonesia is a country of law. Mediation as a dispute resolution institution can be carried out by a judge in court or another party outside the court, as a result of which in the existence of mediation the rule of law is required. For this reason, the Indonesian government applies the rules governing mediation in Indonesia, namely:

- a. HIR Article 130/Rb.g Article 154.
- b. Law Number 30 of 1999 on arbitration and Dispute Resolution.
- c. Law No. 30 of 1999, on Environmental Protection and management.
- d. Law No. 1 of 1974 article 39, On Marriage, Law No. 3 year 2006 article 65, KHI Article 115, 131 (2), 143 (1-2), 144, and PP No. 9 Of 1975 Article 32.
- e. SEMA No. 1 of 2002, on the empowerment of the Court of First Instance to implement peaceful institutions.
- f. PERMA No. 2 of 2003.
- g. PERMA No. 1 of 2008, on mediation procedures in court.
- h. Supreme Court Regulation No. 1 of 2016

IV. Conclusion

Mediation is one type of Dispute Resolution outside the court that can be used as an instrument to resolve village disputes in the midst of the community. That village officials in the village do not all have a comprehensive understanding of mediation techniques, especially in resolving business disputes, so that legal counseling is needed about this mediation. Next in the mediation process must be considered is the skill mediator, control of the Mediator to the problem at hand and the neutrality of the Mediator and pay attention to the various stages in the mediation process. The author also suggested that in order for the first, the mediator must continue to increase his knowledge and professionalism in the mediation process. second, the parties who are undergoing the mediation process should still show good faith in order to resolve disputes that occur so that at the end of it will create a consensus.

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