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The Essence of Civil Dispute Resolution by Means of Mediation Carried Out by the District Court

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Abstract: The research objectives are to find the nature of civil dispute resolution by means of mediation in district courts, to find the role of mediation in district courts as an alternative to civil dispute resolution and to find the ideal concept of implementing mediation in district courts in order to realize legal objectives in civil dispute resolution. This research uses normative legal research and empirical legal research. These two types of research are defined in accordance with the formulation of the problem and the research objectives.
Keywords: Civil Dispute Resolution, District Courts, Mediation.

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I. INTRODUCTION

The State of Indonesia is a constitutional state which has the objectives as stated in the fourth paragraph of the Preamble of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution), emphasizing that:

"Protect all the people of Indonesia and all the independence and the land that has been struggled for, and to improve public welfare, to educate the life of the nation and to participate toward the establishment of a world order based on freedom, perpetual peace and social justice, therefore the independence of Indonesia is formulated into a constitution of the Republic of Indonesia."

Furthermore, to achieve the above goals, the Judicial Power was formed.[1] Based on Article 24 section (2) of the 1945 Constitution, it regulates that:

"The judicial power is exercised by a Supreme Court with its subordinated judicial bodies within the form of general courts, religious courts, military courts, administrative courts, and by a Constitutional Court."

One of the Supreme Court's efforts to realize simple, fast, and low-cost judicial principles is by issuing several strategic policies regarding efforts to optimize peace institutions in the District Courts and Religious Courts. In 2002, it was published Circular of the Supreme Court of the Republic of Indonesia Number 1 of 2002 on Empowerment of the First Degree Court to Implementing the Peace Institute. Subsequently, Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2016 on Mediation Procedures in the Court (hereinafter referred to as Regulation of the Supreme Court No. 1 of 2016). Establishment of Regulation of the Supreme Court No. 1 of 2016 presents several changes to mediation procedures that were not previously regulated in Regulation of the Supreme Court No. 1 of 2008 and Regulation of the Supreme Court No. 2 of 2003.

Initially, mediation in court tended to be facultative/voluntary, but it changed to imperative/compulsory later in its development. Mediation in this court is the result of the product and empowerment of the peace institution as based on Article 130 section (1) of Colonial Regulations, *Staatsblad* Number 44 of 1941 on *Herzien Inlandsch Reglement* (hereinafter referred to as the HIR) or Article 154 section (1) of Colonial Regulations, *Staatsblad* Number 227 of 1927 on *Rechtsreglement voor de Buitengewesten* (hereinafter referred to as the RBg), regulates that "*if on that appointed day, both parties come, the district court will reconcile them with the help of the chairman*". From this provision, judges are obliged to hear cases seriously and strive for peace between the parties through the mediation integration mechanism in the judicial system. This system is almost the same as the form of court-connected mediation developed in various countries.[2]

[1] Siahaan, N. H. T. (2008). *Hukum Lingkungan*. Jakarta: Pancuran Alam, p. 311.
[2] Witanto, D. Y. (2012). *Hukum Acara Mediasi: Dalam Perkara Perdata di Lingkungan Peradilan Umum dan Peradilan Agama menurut PERMA No. 1 Tahun 2008 tentang Prosedur Mediasi di Pengadilan*. Bandung: Alfabeta, p. vii.

In the Indonesian legal system, there are several alternative dispute resolutions outside the court. Based on Article 1 number 10 of Law of the Republic of Indonesia Number 30 of 1999 on Arbitration and Alternative Dispute Resolution (hereinafter referred to as Law No. 30 of 1999), regulates that:

"Alternative dispute resolution means a mechanism for the resolution of disputes or differences of opinion through procedures agreed by the parties, i.e. resolutions outside the courts by consultation, negotiation, mediation, conciliation, or expert assessment."

The implication in judicial practice is that this provision is ineffective and only serves as a formality. The judge only recommended that the parties reconcile and not be involved in the peace process. Usually, the judge postpones the trial at the first trial to allow the two parties to negotiate. If no peace is reached at the subsequent trial, the matter of the case is immediately examined.[3]

Mediation is intended as an imperative settlement of civil disputes for parties in court. The role of mediation can be relied upon as an alternative to resolving civil disputes. However, there is still a backlog of cases in courts, particularly at the Supreme Court.

Mediation is an effort to realize a simple, fast, and low-cost trial, but the reality shows that mediation in court has not demonstrated its effectiveness in its implementation. Preliminary data in this study indicate that the success rate of mediation at the Makassar District Court is meager. Furthermore, in 2017 and 2018, none of the mediations were successful. Therefore, there is a gap between expectations of a simple, fast, and low-cost court administration and the reality of mediation in dispute resolution at the Makassar District Court.

II. STATEMENT OF THE PROBLEM

1. What is the essence of civil dispute resolution through mediation in district courts?
2. What is the role of mediation in district courts as civil alternative dispute resolution?
3. What is the ideal concept of implementing mediation in district courts to realize legal objectives in civil dispute resolution?

III. THEORETICAL FRAMEWORK

A. Theoretical Basis

1. Purpose of Legal Theory

One of the philosophers who put forward his views on justice from the liberals was John Locke. John Locke argued that:[4]

"The purpose of the establishment of the state was not to create equality for everyone, but to guarantee and protect the private property of every citizen who entered into this agreement with the government."

Law was created not primarily as a limitation but as the guidance of life for someone free and intelligent for his own sake or, in other words, the purpose of the law is to preserve and enlarge freedom.[5] Furthermore, Locke argues that "*the state formed as a result of the original agreement, and is not an absolute state as argued by Hobbes*".[6] Locke initiated the formation of a state with a minimal role. State power is not absolute because the power comes from the citizens who founded it. Thus, the condition can only act within limits set by society towards it. The state is only considered fair if it allows its citizens to work according to their freedoms and abilities. The condition may not intervene in each citizen to accumulate capital as much as possible. The state does not play a role in creating equity between investors and the community. The form must ensure the protection of the life and property of each person.

From the description above, the purpose of the law, as stated by Gustav Radbruch, which is where it consists of justice, benefit, and legal certainty. Furthermore, this analysis tool is used to test the formulation of the first problem, namely, the nature of mediation in resolving civil disputes in court will be viewed from an ethical aspect (justice), juridical (legal certainty), and sociological (benefit).

2. Legal Rationality Theory

Through social action theory, Max Weber seeks to understand the behavior of each individual and group having different motives and goals. Understanding individual and group behavior is a form of appreciation for typical actions that are characteristic of individuals or groups and will impact understanding the reasons for a person or group of people to take action. Max Weber classifies action in the context of the motives

[3]Sutiyoso, B. (2006). *Penyelesaian Sengketa Bisnis: Solusi dan Antisipasi bagi Peminat Bisnis dalam Menghadapi Sengketa Kini dan Mendatang*. Yogyakarta: Citra Media, p. 78.

[4]Locke, J. (2002). *Kuasa itu Milik Rakyat: Esai Mengenai Asal Mula Sesungguhnya, Ruang Lingkup, dan Maksud Tujuan Pemerintahan Sipil* (Widyamartaya, A., Trans.). Yogyakarta: PT. Kanisius, p. 25.

[5]*Ibid*., p. 43.

[6]*Ibid*., p. 46.

of the actors into four forms, namely traditional action, affective action, instrumental rationality, and value rationality.[7]

Furthermore, related to actions in law formation, Gunther Teubner stated that law develops in three forms, namely formal, substantive, and reflexive.[8] Formal law is a form of government authorization through laws and regulations. Substantive law is a form of state intervention on the goals and desired results by emphasizing the results desired by the rules. Reflexive law is a form that can cooperate with the social, economic, cultural, and political images to understand the transformation in society quickly.[9]

3. Legal System Theory

Belief in mediation starts from individuals who form character or character and morals to change things for the better. Furthermore, morals and morals empower feelings of self-worth and self-ability to inspire each party to be responsive, full of confidence, acknowledge the existence of others, and improve better relationships with other people. As according to Bush and Folger, that:[10]

"Transformational mediation transforms an individual's character to be morally better through empowerment (self-esteem, self-efficacy, self-respect) and recognition (concern for others), encouraging each party to be responsive, confident, and caring in the relationship".

According to Lawrence M. Friedman, that:

"The legal system consists of three elements, namely structure, substance, and legal culture. The structure is the body, the framework, the long-lasting shape of the system, for example, how courts or police departments are organized, the lines of jurisdiction, the table of organization. The substance is what we call the actual rules or norms used by institutions, the objective, observable behavior patterns of actors within the system. Besides structure and substance then there is a third and vital element of the legal system. It is the element of demand. What creators a direction? One factor, for want of a better term, we call legal culture. By this, we mean ideas, beliefs, expectations, and opinions about the law."

4. Dispute Concept

a. Definition Dispute

Disputes are social phenomena that have occurred since humans have interacted with each other. Humans have the same interest in something or sometimes have different opinions in understanding something. The complexity and high competition in modern life are increasingly likely to cause disputes between humans. A legal relationship born from an engagement, commitment, or agreement allows disputes between the parties. Disputes can originate from various potential sources and occur at any time caused by trivial and neglected circumstances without being calculated beforehand.[11]

Disputes usually arise because of problems in the community. As for the things that are the cause of the problem, among others, namely:[12]

1) Pre-conflict is a condition that underlies people's dissatisfaction;
2) Conflict is a situation where the parties are aware or know about the feeling of dissatisfaction; and
3) A dispute is a situation where the conflict is stated in public or by involving a third party.

According to Winardi, that:[13]

"A dispute means a conflict between individuals or groups with the same relationship or interest or an object of ownership that causes legal consequences between one another."

According to Achmad Ali, that:[14]

"A dispute is a contradictory condition between two or more parties caused by differences in perceptions of interest or property that can give rise to legal consequences."

Dispute resolution in traditional and modern societies still maintains methods to resolve disputes or conflicts in the community. According to Achmad Ali, that:[15]

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[7]Jones, P. (2003). *Pengantar Teori-Teori Social: Dari Teori Fungsionalisme hingga Post-Modernisme* (Saifuddin, Trans.). Jakarta: Yayasan Obor Indonesia, p. 115.

[8]Gunther Teubner dalam Sukananda, S. (2018). Pendekatan Teori Hukum Refleksif dalam Menjawab Permasalahan terhadap Pelaksanaan Tanggung Jawab Sosial Perusahaan di Indonesia. *Law and Justice, Universitas Muhammadiyah Surakarta, 3*(1), p. 17.

[9]*Ibid*.

[10]*Ibid*.

[11]Harris, P. (2007). *An Introduction to Law* (Seventh ed.). New York: Cambridge University Press, p. 150.

[12]Arto, A. M. (2001). *Mencari Keadilan: Kritik dan Solusi terhadap Praktik Peradilan Perdata di Indonesia*. Yogyakarta: Pustaka Pelajar, pp. 28-29.

[13]Witanto, D. Y. (2012). *Op. Cit*., pp. 2-3.

[14]*Ibid*.

[15]Ali, A. (2004). *Sosiologi Hukum: Kajian Empiris terhadap Pengadilan*. Depok: IBLAM, p. 17.

"It is a mistake if people think that only judicial institutions are the only way to resolve disputes in modern society. Other dispute resolution methods are still outside the court, such as mediation, arbitration, and conciliation."

b. Disputes Characteristics

The source of the dispute will influence or shape the characteristics of the conflict. The most dominant source giving rise to a conflict will show the most prominent characters, which can be classified as follows:

1) Normal character, namely the nature of disputes inherent in the governing law that arises because the material of the law itself, for example, is unclear, contains various interpretations, and so on;

2) Material character, namely the nature of the dispute inherent in the form of the disputed item itself, such as disagreements, conflicts of interest, not getting a fair share, and so on;

3) Emotional character, namely the nature of dispute inherent in human emotions, such as negative feelings between parties, anger, resentment, revenge, and so on.

c. Dispute Resolution by Adjudication

The adjudication process, in this case, litigation and arbitration, involves third parties and waives their right to decide their disputes and instead entrusts them to the third party as adjudicator.

1) Litigation

Procedurally speaking, litigation guarantees fair treatment to the parties, opportunities to be heard, resolves disputes, and maintains public order. Public adjudication has the advantage that judges are given the authority to apply community values to resolve private disputes. So, public adjudication resolves disputes and guarantees a form of public order, which is explicitly or implicitly stated in the law.

The adjudication process in court in Indonesia requires considerable time and money so that the aim of justice seekers by presenting their disputes to court tends to cause disappointment. The result is not justice obtained, but experiences that do not provide benefits and satisfaction and prolonged uncertainty.

2) Arbitration

Arbitration is a method of resolving civil disputes outside the general court based on an arbitration agreement made in writing by the parties. Meanwhile, According to Prayitna Abdurasyid, that:[16]

"Arbitration is a legal action in which a party submits a dispute or difference of opinion between two or more people or two groups or more to a person or several experts agreed upon to obtain a final and binding decision."

According to Sudargo Gautama, that:[17]

"Initially, arbitration was able to provide a relatively short settlement and relatively cheap cost compared to litigation. However, over time the nature and character of litigation are getting closer to arbitration, does not solve problems, puts the parties in a losing and winning position. Lately, it is increasingly formalistic and expensive."

d. Dispute Resolution by Non-Adjudication

Dispute resolution by non-adjudication includes alternative dispute resolution that has been manifested in everyday life, which is called Alternative dispute resolution. Alternative dispute resolution is a dispute resolution institution or difference of opinion through a procedure agreed by the parties, namely resolutions outside the courts by consultation, negotiation, mediation, conciliation, or expert assessment.

5. Mediation Theory

Etymologically, the term mediation comes from the Latin word "*mediare*", which means being in the middle. This meaning refers to the role played by a third party as a mediator in carrying out its duties to mediate and resolve disputes between the parties. 'Being in the middle' also means that the mediator must be in a neutral position and not take sides in resolving disputes. He must be able to protect the interests of the disputing parties fairly and equally, thus fostering the trust of the disputing parties.[18]

The view above suggests that mediation is an agreement between the parties to end certain disputes that arise or may arise between them. The mediation agreement can be in the form of a mediation clause in a contract or the form of a separate contract. Mediation must be carried out in a manner agreed by the parties. If and to the extent that the parties have not signed the agreement, the mediator must determine other means so that the mediation can take place according to the rules. Each party must cooperate in good faith with the mediator to

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[16] Irawan, C. (2010). *Aspek Hukum dan Mekanisme Penyelesaian Sengketa di Luar Pengadilan (Alternative Dispute Resolution) di Indonesia*. Bandung: CV. Mandar Maju, p. 51.

[17] Amriani, N. (2011). *Mediasi: Alternatif Penyelesaian Sengketa Perdata di Pengadilan*. Jakarta: PT. Raja Grafindo Persada, p. 22.

[18] Abbas, S. (2009). *Mediasi: Dalam Hukum Syariah, Hukum Adat, dan Hukum Nasional*. Jakarta: Kencana Prenada Media Group, p. 2.

advance mediation as quickly as possible. Based on Article 1 number 1 of Regulation of the Supreme Court No. 1 of 2016, regulates that "*the Mediation is a method of resolving disputes through the negotiation process to obtain agreement from the Parties with the assistance of a Mediator*".

According to Gary Goodpaster, that "*the Mediation is a problem-solving negotiation process in which an impartial outside party collaborates with the disputing parties to help them obtain a satisfactory agreement*".[19]

IV. DISCUSSION

A. The Essence of Civil Dispute Resolution by Mediation in the District Courts

1. Justice

Mediation is one of the efforts made by the parties to resolve the problems they face. Besides, the parties certainly hope to get their rights and provide a sense of justice from the agreement based on this settlement. However, to reach common ground in seeing the essence of justice in solving problems, the parties certainly need another party to act as the mediator. This intermediary is entirely free of any interest in the dispute. Therefore, to achieve justice which in essence must include material justice and procedural justice in the mediation process.

John Rawls has put forward the concepts of material justice and procedural justice, that:[20]

"The theory of justice must be based on a contractual approach. The principles of justice chosen together are genuinely the result of the collective agreement of all free, rational, and equal individuals. Only through a contractual approach can a theory of justice guarantee the exercise of rights and at the same time distribute obligations fairly for all people."

Besides, a good concept of justice must be contractual, and any idea of justice that is not contractually based must be put aside for the sake of justice itself. In this context, John Rawls calls "justice as fairness", which is marked by the principles of rationality, freedom, and equality.[21] Therefore we need principles of justice that prioritize the focus of rights over the direction of benefit.

The mediation process is a process of obtaining an agreement on an issue so that mediation has the character of a contract. Justice in mediation is seen from the parties' agreement and the entire process to reach the deal.

2. Legal certainty

Mediation is a form of alternative dispute resolution compared to litigation in court. Apart from mediation, several other forms of dispute resolution options are not well known in Indonesia, namely Early Neutral Evaluation and Fact-Finding and Arbitration. The methods of dispute resolution that are most widely recognized by the legal community and the Indonesian public apart from mediation are negotiation, arbitration, and the process of court litigation.[22]

Basically, the conciliation itself must end the case, be stated in writing, and be carried out by all parties involved. The peace agreement is the beginning of the issuance of a peace deed (*acte van dading*) from the Court (Judge), which has the same position as the Court's decision which has permanent legal force (*incraht*). In essence, a peace agreement can be made by the party before or by the judge examining the case. The peace agreement can also be caused by parties outside the Court and then brought to Court by the person concerned to be confirmed as a peace deed (*acte van dading*).

From the description above, the legal certainty in a peace agreement is not practical if the parties agree that it has not been confirmed as a peace deed because, with the existence of a peace deed, the peace agreement has legal force. An agreement or peace agreement resulting from mediation that has been confirmed and has the same status as a peace deed (*acte van dading*) has the same power as a court decision that has permanent legal force. Hence, a peace decision has three legal abilities like an ordinary decision, namely binding power and absolute, perfect proving power, and executorial power.

Binding the peace deed in court means that the court can execute every item agreed upon and contained in the peace deed. Of course, if one of the parties denies it while the final conciliation deed is to close all legal remedies for the parties, as based on Article 1858 section (1) and section (2) of Colonial Regulations, Staatsblad

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[19]Goodpaster, G. (1993). *Negosiasi dan Mediasi: Sebuah Pedoman Negosiasi dan Penyelesaian Sengketa Melalui Negosiasi*. Jakarta: ELIPS Project, p. 201.

[20]Golding, M. P. & Edmundson, W. A. (Eds.). (2005). *Philosophy of Law and Legal Theory*. Oxford: Blackwell Publisher, Ltd., p. 141.

[21]*Ibid*.

[22]Rismawati, S. D., Askari, S., & Husein, M. M. (2012). Hakim dan Mediasi: Pemaknaan Hakim terhadap Mediasi Perkara Perdata di Pengadilan Negeri Pekalongan. *Jurnal Penelitian, Sekolah Tinggi Agama Islam Negeri Pekalongan, 9*(2), p. 257.

Number 23 of 1847 on the *Burgerlijk Wetboek voor Indonesie*/the Civil Code and Article 130 section (2) and section (3) of the HIR or Article 154 section (2) and section (3) of the RBg, which governs the peace treaty.

3. Benefit

Reconciling parties in court is not an easy task, especially if personal sentiment predominates over the real issue. Many factors can hinder success in achieving peace, among the many factors, one of which is the lack of legal institutions that can assist parties in choosing the correct method for resolving disputes. As the highest judicial body, the Supreme Court has a great interest in the success of the peace process. They are considering that the problem of case accumulation in the Supreme Court is indirectly caused by the failure of the peace process at the Judex Factie level, followed by the high use of legal remedies against civil disputes decided by the first-degree court. The Supreme Court is gradually anticipating this condition by issuing several strategic policies to optimize peace institutions within the District Courts and the Religious Courts.

Based on Article 2 section (4) of Law of the Republic of Indonesia Number 48 of 2009 on the Judicial Powers, regulates that "*Justice is done simply, quickly, and at low cost*".

From the above provisions, the simple principle implies that the trial is easy to understand, transparent, and straightforward. The fewer and simpler formalities required, the trial process will run smoothly. On the other hand, the more formalities required, the slower the trial process will be. On the other hand, the trial process tends to run smoothly because it allows the emergence of various interpretations, so it does not guarantee legal certainty and causes fear to proceed in court.

From all the descriptions above, it can be said that the essence of mediation in settlement of civil disputes at the District Court is the willingness of the disputing parties to take alternative dispute resolution. Furthermore, this alternative dispute resolution is carried out to obtain the parties' rights while still paying attention to the clauses set out in the peace deed. In addition, the peace deed has legal force as an inkracht decision and has executor power.

The essence of mediation as a forum for the community to obtain justice, benefits, and legal certainty needs to be supported by facilities and mechanisms that contribute to resolving mediation effectiveness in dispute resolution. However, it is necessary to note that the benefits of mediation must remain within the framework of justice for the parties. Mediation is an effort to achieve a win-win solution so that the parties can obtain benefits and justice. On the other hand, Regulation of the Supreme Court No. 1 of 2016 does not regulate the parties' obligations to submit their respective evidence. Mediation only rests on the desire to resolve disputes quickly, not resolve disputes fairly.

The mediation process places the willingness of the parties to take a middle course in resolving disputes. However, the court considered several other things before carrying out mediation and seeking peace for the parties. For example, in a land case, before conducting the mediation, the mediating judge needs to know the basis for ownership or control of each party because it would be unfair if the two parties to be reconciled do not have a basis for ownership or control of the land. Therefore, to achieve justice, benefit, and legal certainty for the parties, the mediation process must begin with a process of analysis and review of the mediation judge of disputes between the parties. In addition, the party that will make the settlement is the party who has a legal relationship with the objects or rights of the agreement.

B. The Role of Mediation in District Courts as Civil Alternative Dispute Resolution

One of the dispute resolutions is mediation. Mediation is the disputing parties appointing a neutral third party to assist them in discussing a settlement and trying to inspire the parties to negotiate a settlement and dispute. The primary purpose of mediation is compromising in resolving a dispute. Mediation is a process that is personal, confidential (not exposed outside), and cooperative in solving problems. As an impartial third party, the mediator assists the parties (individuals or institutions) resolve conflicts and settle or bring closer differences.[23]

There are several principles of mediation based on various literature. The basic principle is the philosophical basis for conducting mediation activities. This principle or philosophy is a framework that the mediator must know. In carrying out mediation, it does not go out of the direction of the philosophy that was the background for the birth of the mediation institution.[24] David Spencer and Michael Brogan draw on Ruth Carlton's views on the basic principles of mediation. The principle is known as the basic philosophy of mediation, namely:[25]

1. The principle of confidentiality;

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[23]Bintoro, R. W. (2014). Implementasi Mediasi Litigasi di Lingkungan Yurisdiksi Pengadilan Negeri Purwokerto. *Dinamika Hukum, Universitas Jenderal Soedirman, 14*(1), p. 15.

[24]Hoynes, J. M., Haynes, C. L., & Fang, L. S. (2004). *Mediation: Positive Conflict Management*. New York: SUNY Press, p. 16.

[25]Abbas, S. (2009). *Op. Cit*., pp. 28-30.

2. The principle of voluntary empowerment;
3. The principle of neutrality; and
4. The principle of a unique solution.

The mediator has an essential role in the mediation process, as a neutral party who assists the parties in the negotiation process seeking various possible dispute resolution without using a way to decide or force a settlement. The mediator has the role of controlling the process and enforcing ground rules in mediation. In addition, the mediator seeks to cultivate and maintain trust among the parties, encouraging an atmosphere of good communication between the parties. The mediator is also tasked with assisting the parties in dealing with situations and realities and ending the mediation process when it is no longer productive.[26]

In an interview with Ibrahim Palino, a judge at the Makassar District Court on November 10, 2020, stated that "*there are still many mediators who do not have certificates or have not attended and passed mediation certification training*". Based on Article 13 section (1) of Regulation of the Supreme Court No. 1 of 2016, regulates that:

"Every Mediator is required to have a Mediator Certificate which is obtained after participating in and is declared to have passed the Mediator certification training held by the Supreme Court or an institution that has obtained accreditation from the Supreme Court."

The above provisions require that a mediator, both judges, and non-judges, must have a certificate as a mediator.

Regarding the ability of the mediating judge, Muh. Anwar, an advocate in Makassar City, in an interview on May 5, 2020, stated that:

"About the mediation practice carried out by mediators who come from judges who decide cases, the mediator tends to position himself not much different from his function as a judge before the court when conducting mediation. So that it is complicated to get an agreement, even many judges ask for proof of ownership of each party at the time of mediation so that if the mediator judge sees that one of the parties has more substantial evidence. For example in land cases, judges tend to side with those who have certificates. Meanwhile, Regulation of the Supreme Court No. 1 of 2016 states that the mediator is a neutral party."

Observing the interview results above, the researcher views that although mediation aims to find agreement between the parties, the mediating judge has the authority to ascertain the legal basis of each party. After all, a mediation process seeks common ground between the two parties. What is being mediated must still be related to the matters that are the object of the dispute.

The following are respondents' views (the litigant parties and advocates) regarding the role of the mediator in the implementation of mediation..

Table 1. Judge's Capacity as Mediator

No	Category	Frequency	Percentage
1	Optimal	25	28%
2	Less Than Optimal	65	72%
3	Not Optimal	0	0%
Total		**90**	**100%**

Source: Processed Primary Data, 2020.

The table above shows that 25 or 28% of respondents stated that the mediator has been optimal in mediation duties. In comparison, the other 65 or 72% of respondents stated that the mediator judges is less than optimal. In general, respondents think that the judge acts as a mediator to fulfill the requirements in civil cases.

From the provisions of Regulation of the Supreme Court No. 1 of 2016, it is necessary to understand that the essence of mediation is that negotiations between the disputing parties are guided by a third party (mediator). Negotiations will produce several agreements that can end the dispute. In negotiations, negotiations are carried out between the parties regarding the interests of each party assisted by the mediator. The mediator in conducting mediation between the parties must act neutral and impartial to one of the parties. If the mediator sides with one of the parties, this will fail in the mediation. The mediator seeks to find possible alternative dispute resolution between the parties. The mediator must have several skills that can help him find some possible dispute resolution.

The position of the parties in the mediation process is crucial. The success and failure of the mediation process also lie in the parties' willingness and good faith in realizing the success of the mediation. The parties

[26]Manan, A. (2005). *Penerapan Hukum Acara Perdata di Lingkungan Peradilan Agama*. Jakarta: Kencana Prenada Media Group, p. 177.

who came to court had negotiated first. The dispute process occurs because there is no common ground between the disputing parties. Disputing parties want to achieve their interests, fulfill their rights, show and maintain power.

The parties' perceptions about the mediation between the plaintiff/applicant and the defendant are very different. For the plaintiff, mediation is considered to complicate the case because the main objective is to sue so that the plaintiff often does not come to the mediation venue within the agreed time. For the defendant, mediation will help clear up the problem and try to find common ground on the problem at hand. Several times, the defendant was present with the reason that he wanted to clear up the problems faced by the plaintiff.

The following are respondents' views (the judges, third parties, and advocates) regarding the good faith of the litigant parties.

Table 2. Good Faith of the Parties

No	Category	Frequency	Percentage
1	Optimal	27	54%
2	Less Than Optimal	23	46%
3	Not Optimal	0	0%
Total		**50**	**100%**

Source: Processed Primary Data, 2020.

The table above shows that 27 or 54% of respondents stated that mediation was optimal in presenting the good faith of the litigant parties. In comparison, the other 23 or 46% of respondents stated that the mediation is less than optimal. In general, respondents think that even if the parties were well summoned, they were often absent from mediation events.

The lack of good faith factor is one of the obstacles in the mediation procedure. Lack of seriousness in reconciliation on one of the parties prevented them from attending the mediation process. The parties asked a legal representative to represent him during the mediation because the disputing parties in person were challenging to find common ground. The absence of a direct meeting eliminates the opportunity for the parties to express their wishes to present their case.

Advocates are people who accompany parties in litigation. The main task is to ensure that assisted clients get proper rights in carrying out legal actions. The role of advocates in providing legal assistance is crucial to be able to provide understanding to the litigant about the positive things that can be obtained if settling a case through mediation.

The following are respondents' views (the litigant parties and judges) regarding the advocates' support for mediation in court

Table 3. The Role of Advocates

No	Category	Frequency	Percentage
1	Optimal	32	53%
2	Less Than Optimal	28	47%
3	Not Optimal	0	0%
Total		**60**	**100%**

Source: Processed Primary Data, 2020.

The table above shows that 32 or 53% of respondents stated that the advocates have been optimal in providing good support during the mediation process. In comparison, the other 28 or 47% of respondents stated that the role of advocates is less than optimal.

From the overall data above, the following are the respondents' overall views regarding the effectiveness of mediation in court.

Table 4. The Success Rate of Mediation

No	Category	Frequency	Percentage
1	High	32	32%
2	Moderate	68	68%
3	Low	0	0%
Total		**100**	**100%**

Source: Processed Primary Data, 2020.

The table above shows that 32 or 32% of respondents stated that mediation has a high success rate. In comparison, the other 68 or 68% of respondents stated that mediation has a moderate success rate.
In connection with the above, the following are data on mediation in the two research locations.

Table 5. Mediation at the Makassar District Court

No	Years	The Number of Cases Decided	Mediation Success	Mediation Failed
1	2016	335	11	189
2	2017	314	0	176
3	2018	309	17	291

Source: Registrar's Office of the Makassar District Court, 2019

The table above shows that the success rate of mediation in the Makassar District Court is meager. Even in 2017, no single mediation was successful. So there is a gap between expectations of simple, fast, and low-cost dispute resolution and the reality of mediation in the Makassar District Court.

Table 6. Mediation at the Sidrap District Court

No	Years	The Number of Cases Decided	Mediation Success	Mediation Failed
1	2016	83	1	82
2	2017	52	0	52
3	2018	30	1	29

Source: Registrar's Office of the Sidrap District Court, 2019

The table above shows that the success rate of mediation in the Sidrap District Court is meager. Even in 2017, no single mediation was successful. So there is a gap between expectations of simple, fast, and low-cost dispute resolution and the reality of mediation in the Sidrap District Court.

The description above shows that the role of mediation to settle cases amicably to maintain good relations between the parties and reduce the pile of cases in the court has not been fully achieved. This is due to the pragmatism of the parties concerned who view mediation as only fulfilling the formal requirements of a civil court because of an order from Regulation of the Supreme Court No. 1 of 2016.

C. The Ideal Concept of Mediation in Civil Dispute Resolution in District Courts

1. Legal Substance

The role of mediation in resolving civil disputes is crucial. Based on the urgency of the mediation, the Supreme Court issues a regulation that becomes a reference for the court in conducting mediation. The mediation arrangements in court were initially regulated in Regulation of the Supreme Court No. 1 of 2008 was later replaced by Regulation of the Supreme Court No. 1 of 2016.
Matters were significantly different between Regulation of the Supreme Court No. 1 of 2008 with Regulation of the Supreme Court No. 1 of 2016, which is related to good faith. Based on Article 7 of Regulation of the Supreme Court No. 1 of 2016, regulates that:
(1) The Parties and/or their legal attorneys are required to undertake Mediation in good faith.
(2) One of the parties or the Parties and/or their legal attorney may be declared not in good faith by the Mediator in the matter concerned:
a. absent after being summoned properly 2 (two) times consecutively in the Mediation meeting without a valid reason;

b. attend the first Mediation meeting, but never attend the next meeting even though it has been summoned properly 2 (two) times in a row without valid reason;
c. repeated absences that interfere with the Mediation meeting schedule without a valid reason;
d. attend Mediation meetings, but do not submit and/or do not respond to other parties' Resume of Cases; and/or
e. do not sign the agreed conciliation agreement concept without valid reasons.

From the above provisions, it is clear that Regulation of the Supreme Court No. 1 of 2016 places mediation as an essential part in resolving disputes in court. This Regulation of the Supreme Court also regulates that parties who are declared not in good faith are still punished for paying mediation fees, even though they win the main case. In addition, the results of the mediation process can also become a reference for judges, as based on Article 22 section (4) of Regulation of the Supreme Court No. 1 of 2016, regulates that:

"Based on the Mediator report as referred to in section (3), the Case Examining Judge issues a verdict which is the final decision stating that the lawsuit cannot be accepted accompanied by a penalty for the payment of Mediation Fees and court fees."

The above provision is a fundamental change in the mediation process in court and in the civil procedural law that has been implemented in Indonesia so far.

On the other hand, there are several weaknesses of Regulation of the Supreme Court No. 1 of 2016, including:

a. Article 3 section (3), regulates that:

"Case Examining Judges who do not order the Parties to take Mediation, so that the Parties do not carry out Mediation, has violated the provisions of laws and regulations governing Mediation in the Court."

However, there is no provision regarding sanctions for judges who fail to order mediation between the parties.

b. Article 3 section (4), regulates that:

"In the event of a violation of the provisions as referred to in section (3), if a legal remedy is filed, the Court of Appeal or the Supreme Court with an interlocutory decision orders the First Degree Court to carry out a Mediation process."

However, the problem that arises from this provision is that there is no legal remedy for the dispute. The legal strength of this inkracht decision is a question because if it refers to the provisions of Article 3 section (3), the case examining judge who does not order the parties to mediate is deemed to have violated the provisions of laws and regulations.

From the two provisions above, the researcher considers that it is necessary to change Regulation of the Supreme Court No. 1 of 2016, which adds legal consequences to decisions that do not begin with a mediation order by the examining judge. The clause related to the legal consequence is that the decision becomes null and void by law. Furthermore, the Regulation of the Supreme Court must also regulate sanctions against judges who are negligent in carrying out the mediation process.

2. Legal Structure

The legal structure in Lawrence M. Friedman's theory is the party or apparatus related to implementing the laws and regulations. In court mediation, the legal structure referred to is the mediator, mediator judge, court apparatus. Regulation of the Supreme Court No. 1 of 2016 opens up opportunities for licensed mediators to participate in dispute resolution. A licensed mediator is very helpful, especially in cases where the number of judges is very minimal. It's just that in many regions, it turns out that licensed mediators are still very rare, and even if they do exist, the parties generally choose a mediator judge to mediate in their problems.

Public knowledge about licensed mediators is still very minimal, so it is infrequent for them to choose a mediator when a case occurs. This can then become an obstacle if the number of judges in the court is minimal while the number of cases is enormous. Therefore, it is necessary to carry out a form of socialization related to the implementation of mediation, including a licensed mediator who can act as a mediator during mediation in court. This will make it easier for the community to carry out mediation without dealing with limited human resources in court.

3. Legal Culture

In general, dispute resolution that arises is not handled directly by customary leaders or community leaders in a deliberation. However, it is addressed gradually, namely the first stage by the parties or extended family of the parties (a type of negotiation) and the second stage, through the help of traditional leaders or community leaders as mediators (such as the mediation model).

Dispute resolution that occurs between two parties is usually handled by the parties concerned. If the disputing parties cannot reach an agreement, their respective extended families take over the dispute settlement. The point is that the disputes that occur are known to the families of both parties. Even if the dispute cannot be resolved through this route, the disputing parties can submit the dispute to the community leader or the customary leader. After the customary leader receives a complaint, the community leader or the eldest adat will study the dispute by paying attention to habits and closing the differences between the parties.

Developing mediation in Indonesia is a valuable thing. There are three elements in the legal system in terms of legal system theory, namely legal substance, legal structure, and legal culture. The ideal concept of mediation is mediation that fulfills these three elements to fulfill several needs, namely substantive needs, procedural needs, and psychological needs of the parties to a dispute.

From the description above, it can be seen that all legal subsystems related to mediation both legal substance, legal structure, and legal culture, have not been able to provide support for the realization of a simple, fast, and low-cost trial through mediation mechanisms in civil dispute resolution. The research results show that mediation in district courts in the context of settlement of case disputes has not been optimal in realizing legal objectives because most mediations fail and are only considered part of the fulfillment of formal procedural law. Therefore we need a mediation concept that can support the success of mediation.

Mediation is a process to reach an agreement between parties because each party carries different interests and even opposes different goals. The conception of justice in the thinking of each party is, of course, different because it departs from their respective interests. This needs to be of great concern to create a mediation mechanism in court settlement cases.

Based on the description above, the researcher believes that the ideal mediation concept is implemented after going through the process of examining evidence and witnesses. Furthermore, this examination is carried out so that the parties already know and understand the object they will discuss in the mediation.

V. CONCLUSION

1. The essence of mediation for civil dispute resolution in the District Court is the willingness of the disputing parties to take alternative dispute resolution. In addition, this alternative settlement aims to ensure that the parties get their rights as stated in the peace deed and have a permanent legal force so that the objectives of justice, benefit, and legal certainty for the disputing parties can be adequately achieved.
2. The role of mediation as a procedure leads to the principle of simple, fast, and low-cost dispute resolution. In addition, mediation also plays a role in avoiding the accumulation of cases through the judicial process. At the same time, optimizing the judiciary by integrating mediation into the court process has not shown significant progress. The percentage of successful dispute resolution through mediation is still tiny.
3. The ideal concept of mediation in dispute resolution is to meet three needs of the parties, namely the substantive, procedural, and psychological needs of the disputing parties. Therefore, it is necessary to change the mediation mechanism in which the parties understand, know, and value the disputes they face.

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