

Court Connected Mediation: Civil Dispute with a Local Society Cultural Approach

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Abstract

Civil dispute resolution through court mediation has been carried out in Indonesian courts since the Dutch East Indies era in 1848. However, the western model did not work. The purpose of this research was to analyze the judge's appropriate approach in the mediation process in Indonesian courts. The research used a philosophical and conceptual approach. The data used were secondary data related to the judge's approach in court connected mediation in resolving civil disputes. They were collected by using literature studies by searching, exploring, collecting, and analyzing the required data. Data analysis was carried out by qualitative analysis until a conclusion were deduced. Based on the research results, the Supreme Court has developed mediation in the Court through the Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Courts, but it is not optimal. Judges as mediators in court connected mediation should take an approach that is in accordance with the culture of the local society. This is in line with the obligation of judges to realize the noble mandate by accommodating legal values in society.

Keywords: judges; mediation; culture; society

Abstrak

Penyelesaian sengketa perdata melalui mediasi pengadilan telah dilakukan di pengadilan Indonesia sejak era Hindia Belanda pada tahun 1848. Namun, model barat tidak berfungsi. Tujuan penelitian ini adalah untuk menganalisis pendekatan yang tepat hakim dalam proses mediasi di pengadilan Indonesia. Penelitian ini menggunakan pendekatan filosofis dan konseptual. Data yang digunakan adalah data sekunder terkait pendekatan hakim di pengadilan yang menghubungkan mediasi dalam menyelesaikan sengketa perdata. Mereka dikumpulkan dengan menggunakan studi literatur dengan mencari, mengeksplorasi, mengumpulkan, dan menganalisis data yang diperlukan. Analisis data dilakukan dengan analisis kualitatif sampai kesimpulan diuraikan. Berdasarkan hasil penelitian, Mahkamah Agung telah mengembangkan mediasi di MK melalui Peraturan Mahkamah Agung Nomor 1 Tahun 2016 tentang Prosedur Mediasi di Pengadilan, namun belum optimal. Hakim sebagai mediator di pengadilan mediasi yang terhubung harus mengambil pendekatan yang sesuai dengan budaya masyarakat setempat. Hal ini sejalan dengan kewajiban hakim untuk mewujudkan amanat mulia dengan mengakomodasi nilai-nilai hukum di masyarakat.

Kata kunci: hakim; mediasi; budaya; masyarakat

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Introduction

The term court connected mediation refers to mediation conducted during the process of formal litigation (Rundle, 2013). Court-connected mediation programs have been developed to guide and inform courts interested in initiating, expanding, or improving mediation programs to which they refer cases. Courts across the country are seeking ways to provide a better quality of justice for various kinds of litigation, improve

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citizens' access to justice, save court and litigant costs, and reduce delays in the disposition of cases (Shaw, 1993). Court-connected mediation is a sign of a new legal culture and by highlighting a need for expanding our understanding of what promotes and inhibits settlement efforts in contemporary justice (Adrian, 2016).

Court settlement in Indonesia has been done since the enactment of HIR/*Het Herziene Inlandsc Reglement/Staatblad* 1941-44 and RBG/*Rechtsreglement voor de Buitengewesten/Staatblad* 1927-227 as civil court procedural law (Heriyanto, 2015). This provision is only applied to the extent of providing space for the parties to carry out their own settlement, while the judge at trial cannot get too far into the parties' problems. This is related to the code of ethics and procedural law which regulates that the parties themselves who must be active in pursuing the settlement (Article 130 HIR/154 Rbg). Initially, court settlement or mediation tended to be voluntary, but now it leads to imperative/coercive. It can be said that mediation in court is the result of the development and empowerment of the settlement institution, as regulated in Article 130 HIR/154 Rbg, which requires judges who handle a case to seriously seek peace between the parties in dispute (Heriyanto, 2015).

However, the implementation of court connected mediation in Indonesia has not been successful. This can be seen in several research results: in 84 cases mediated, only 1 case or only 0.011 per hundred were successful in settlements. It means that mediation at the Pekalongan District Court is not effective in resolving civil litigation (Aziz, 2008). In the mediation at Banda Aceh Sharia Court in 2013, only 26 or 11.25% were successful in reaching settlement, while the failure rate reached 117 or 50.64%. Meanwhile, in 2014, only 25 or 9.57% of successful mediation was carried out, while the failure rate increased to 144 or 55.17% (Hirdayadi, 2017). The mediation success rate in court is relatively low. There are several factors of influence, including the parties/attorneys, judges/court institutions, governance/administration of mediation institutions in the court, lack of information regarding the benefits and procedures of mediation, the role of judge/non-judge mediators, and unclear mediation arrangements (Pusdiklat MA, 2019).

Based on the background, the research aims to analyze the appropriate approach used by judges as mediators in carrying out court mediation for civil disputes. The theory used is the theory of dispute resolution and sociological jurisprudence. Conflict theories inform the framework that is adopted to resolve disputes when parties submit their disputes to mediation (Shako, 2017). Sociological jurisprudence theory is used to analyze the approach used by judges in resolving civil disputes.

Research Problems

This research is a doctrinal law or normative legal research. In the normative concept, law is a good norm that is equal to justice that must be realized (*ius orders* that are explicit and positively formulated clearly (*ius constitutum*). Data collection were carried out by means of literature studies to obtain data in the form of documents and writings by tracing statutory regulations, invitations, documents, scientific literature, and

research by experts. This research used primary sources of secondary data or library sources. Secondary data includes primary legal materials, secondary legal materials, and tertiary legal materials. The analysis of legal materials used qualitative juridical analysis. It was carried out by systematizing written legal materials as a whole and constituting an integral part of the primary legal material. Then, secondary, or tertiary legal materials were used to further examine primary legal materials which were incomplete or require in-depth interpretation.

Discussion

Civil Dispute Resolution through Court Connected Mediation

Conflict and dispute are common in human relation and at any level of society. Some dispute resolution methods are negotiation, mediation, administrative settlement, arbitrate, and court channel and legislative approach. One of the methods, which is mediation, can be done by litigation and non-litigation channel. Conflicts or disputes are common in human relations and at any level of society. Several methods of dispute resolution are negotiation, mediation, administrative settlement, arbitration, court channels, and legislative approaches. One way of resolving disputes is by mediation which can be done through litigation or non-litigation channels. The advantages of resolving disputes with mediation in court are that the process is faster, with lower costs, and there is the possibility of settlement by agreement that is acceptable to all parties. Another advantage is that the parties do not seek appeal and cassation, thereby reducing case buildup and accumulation in court. Mediation also empowers the parties in the dispute resolution process, provides access to justice for the community, is closed/confidential, has a higher level of possibility to carry out the agreement so that the relationship between the parties in dispute in the future can still be well established (Amarini, 2016). Courts are well served using alternative dispute resolution techniques. Mediation has been proven to be a particularly effective means of resolving legal disputes in part because the parties are given an opportunity to participate in the resolution process (Edwards, 2005).

Mediation is a settlement process in which disputing parties leave the process to a mediator (someone who arranges a meeting between two or more disputing parties) to achieve a fair result, without wasting too large a cost but still effective and fully accepted by both parties. Mediation is not only beneficial for the disputing parties, but also for the court. First, the use of mediation is expected to solve the problem of case buildup in court. Cases settlement through mediation will reduce the cases accumulation in court. Second, the fewer cases that are submitted to court, the easier it is to supervise the delay of case examination for a certain bad purpose. Third, the mediation process is seen as a way of resolving disputes that is faster and cheaper than the judge's decision process (Siregar, 2020).

Basically, mediation must be carried out in all civil disputes. As regulated in Article 4 paragraph (1) all civil disputes submitted to the court, including cases of resistance

(*verzet*) over the *verstek* decision and the resistance of the litigant or third party to the implementation of decisions that have permanent legal force, are obliged to make efforts to resolve them through mediation, except for cases that are not allowed to use mediation by the Supreme Court Regulation Number 1 of 2016. The cases include (a) disputes which the examination at trial is determined by a time limit for settlement, (b) disputes which the examination is carried out in the absence of the plaintiff or defendant who has been properly summoned, (c) counterclaim/reconciliation and the entry of a third party in a case, (d) disputes regarding the prevention, rejection, cancellation and legalization of marriage, (e) disputes that are submitted to the court after being resolved out of court through mediation with the help of a certified mediator registered at local court but was declared unsuccessful based on a statement signed by the parties and a certified mediator.

Mediation as one of dispute resolution methods has a main scope in the form of private/civil jurisdictions. Civil disputes in the form of family, inheritance, business, contract, banking, and other civil disputes can be resolved through mediation. The obligation to carry out mediation is related to the case process in court, where recommendations by the judge, mediator and the parties are obliged to follow the dispute resolution procedure through mediation. Based on Article 130 HIR and/or Article 154 Rbg, a case that does not follow the mediation procedure is a violation of the HIR and Rbg provisions which results in the verdict being null and void. Mediation in court is considered a faster and relatively inexpensive dispute resolution process, so that it can make a positive contribution to fulfilling a sense of justice and provide satisfactory results for the disputing parties. This is because the integration of the mediation system prioritizes a consensus approach in bringing together the interests of the disputing parties (Hanifah, 2016).

Courts are one of the institutions of modern law that have earned the trust of people around the world. The court is the last resort or the last place to seek truth and justice (Lubis, 2019). Mediation is a global reality and one recognized important step in the process of conflict resolution. While the development of mandatory court-based mediation schemes around the world has become a trend over the past few decades, (Schaffer, 2018).

The Supreme Court as the highest judicial administrator in Indonesia has begun to initiate several methods to shorten the dispute resolution process in court. One of the methods is the optimization of mediation institutions in civil cases. The goal of court connected mediation is to create a simple, fast and low-cost trial through effective and efficient court institutions. The litigants do not have to go through all stages of a long and time-consuming trial process. It is enough for the parties to go to the pre-examination stage, if they succeed in reaching a settlement agreement through mediation at the beginning of the trial (Heriyanto, 2015).

The initiation of mediation in Indonesian courts began with the issuance of Supreme Court Circular No. 1 of 2002 concerning Empowerment of First Level Courts in Implementing Settlement Institutions, as regulated in Article 130 HIR/*Het Herziene*

Inlandsc Reglement/Staatblad 1941-44 and Article 154 RBG/*Rechtsreglement voor de Buitengewesten/Saatblad* 1927-227. Article 130 HIR and Article 154 RBg regulate settlement institutions and require judges to reconcile the parties before their cases are examined.

Furthermore, the Supreme Court refined the Supreme Court Circular by issuing Supreme Court Regulation Number 2 of 2003 concerning Mediation Procedures in Courts. In 2008, the Supreme Court Regulation Number 2 of 2003 was replaced by the Supreme Court Regulation Number 1 of 2008. In the section considering the Supreme Court Regulation, it was stated that after evaluating the implementation of mediation procedures in the Court based on the Supreme Court Regulation Number 2 of 2003, it was found that several problems several problems arise because of it. Therefore, the Supreme Court Regulation Number 2 of 2003 needs to be revised to make more efficient use of mediation related to court processes. In Supreme Court Regulation No.1 of 2008, the mandatory nature of mediation in court proceedings is emphasized. Meanwhile, Article 2 paragraph (4) of the Supreme Court Regulation Number 2 of 2003 states that judges in consideration of case decisions are obliged to state that there have been efforts to settle the case through mediation by mentioning the name of the mediator.

After six years of the enactment of Supreme Court Regulation No.1 of 2008, the Supreme Court issued Supreme Court Regulation No.1 of 2016. Basically, in the regulation issued by the Supreme Court, there are four types of settlement that are accommodated by the court: (1) settlement through compulsory mediation. This settlement must be ordered by the case examining judge and must be carried out by the parties before the judge hears the case for all civil cases with a period of 30 working days with an extension of another 30 working days. The settlement must be assisted by a judge mediator as well as a certified non-judge mediator. (2) Settlement through voluntary mediation at the case examination stage (3) Settlement through voluntary settlement agreements at the legal remedy stage (4) Settlement out of court with or without the assistance of a certified mediator (negotiation or mediation) which will be strengthened by a deed settlement in court.

Supreme Court Regulation Number 1 of 2016 in lieu of the previous Supreme Court Regulation, regulates the following new matters. (1) Regulations regarding criteria and sanctions for bad faith from the parties in the mediation process (2) Arrangements regarding the settlement agreement on the subject/party in the case or the settlement agreement on the problem/object of the case and the procedure for its resolution (3) Confirming the regulation that the mediation period is removed from the period of settlement of the case (4) Change of the mandatory mediation period from 40 working days and can be extended by 14 working days to 30 working days, and can be extended another 30 working days. (5) Confirmation regarding the stages of mediation as regulated in Article 14. Judges who have not been certified as mediator will be able to apply mediation at least in the same stages as the certified mediator judges.

To overcome the low success rate of court mediation, it is necessary to revitalize the role of legal counsel to support the mediation process and results, the obligation of the

head of the court to support mediation, the obligation of case examining judges to explain the benefits and procedures of mediation. It is also necessary to improve administrative governance of recording and reporting mediation processes and results. to upgrade mediation facilities in court, and to clarify the relationship between the Supreme Court and accredited mediator certification bodies and certified mediators/mediator associations.

Court mediation in various countries has been developed, such as in Germany and Japan (Heriyanto, 2015). Mediation is envisaged by the Italian legislator as possible strategies to reduce the courts' caseload (Silvestri, 2013). German, and other European courts show increased interest in experimenting with in-court mediation models. Afterwards, thoughts about the importance of establishing both in-court and out-of-court mediation systems follow (Bargen, 2014).

Mediator Judges in Court Connected Mediation

Judges, at all levels, occupy a central position in the judicial process. In this central position, it is hoped that law and justice can be enforced. The problem that needs to be resolved by judges is how abstract justice that contains certain values can be used as a guide in its application. The work to realize ideas and concepts of justice in a concrete form so that they are accepted by society is the work of law enforcers, especially judges. Judges are expected to have the ability to translate the values of justice in matters faced with them through their decisions (Amarini, 2019). The role of a judge in our multicultural society is crucial as it can serve effectively to prevent and counter the effect of direct, indirect, and multiple forms of discrimination, while contributing to integration and equality in treatment and opportunities (Kamil, 2009).

That the law is for humans, not humans for the law, whose purpose is to bring people to prosperity, happiness, and harmony. Therefore, there is mediation with the value of local wisdom must be the basis of resolution in civil disputes with due regard to referring to the win-win solution principle, what is meant by the disputing parties feel that no one is defeated, achieve the inner glory and inner peace of the parties, reinforcement of family values and sense of belonging to the disputing parties (Suwondo, 2020).

Fair and operational laws in local contexts are carried out by law enforcers who understand the problems and their respective jurisdictions (Suparlan, 2003). Mediation is a negotiation process to solve the problems of the disputing parties assisted by a mediator. A court connected mediator is performed by a judge. The function of the mediating judge is to assist the parties in a case in resolving problems between them by accommodating the interests of both parties. However, the results of the parties' agreement assisted by the mediator are final and binding on the parties (Rokhim, 2014).

Mediation in court settings is often promoted with the promise that negotiated agreements will address both parties' interests and needs rather than determining each party's rights. Implicit in this promise is the assumption that in the mediation process, parties will have the opportunity to think "outside the box," to discuss the issues that

underlie their demands, and to customize agreements to address their needs. Bargaining is not just a process of dividing up existing resources but is also a process sometimes used for creating additional value or mutual benefits (Adrian, 2014).

The legal perspective on the primary purpose of court-connected mediation is institutional efficiency or justice (Rundle, 2010). From various sides, the settlement through the mediation process has provided many benefits for the parties. Shorter time will automatically reduce costs to the lowest possible. Meanwhile, from an emotional point of view, a win-win solution approach will provide comfort for the parties, because the terms of the agreement are made according to their wishes. However, despite the many benefits of the mediation process the success rate of mediation institutions in court is still very low (Heriyanto, 2015).

The judge's duty is to give a decision on every dispute (conflict) assigned to him. It means that the judge has the duty to determine the legal relationship, the legal value of behavior, and the legal position of the parties involved in the situation assigned to him. As John Marshall put it in the case of *Marbury v. Madison*, "to say what the law is", a judge has the duty to state what the law is for certain concrete situations. Regarding this function, the judge must become the living oracle of the law (Blackstone) and act as a spokesperson for the fundamental values of society or the spokesmen of the fundamental values of the community (Sidharta, 2015).

The reality of law enforcement carried out by judges represents the social environment in which the law applies and is enforced. So far, the problem of enforcing the law that is true and fair has always been directed at law enforcers. Law enforcers, in this case including judges, are required to be true and fair law enforcers. Law enforcement is not in an empty reality. Law enforcement occurs and applies in people's lives. Furthermore, it is necessary to understand that law enforcement is not just during society but can be influenced by circumstances and social interactions that occur in society (Rumadan, 2017).

The mediation obligation in the Civil Procedural Law process is in accordance with Article 130 HIR and Article 154 of the RBG. Article 130 HIR states: Paragraph 1: if on that specified day both parties arrive, the state court with the help of the head of the court tries to reconcile them. Paragraph 2: if the settlement can be reached, then during the session, a letter (deed) is drawn up concerning it, meaning that both parties are forced to obey the agreement, a letter which has legal force and will be carried out as an ordinary decision. However, in Article 130 HIR, there is still a legal vacuum, the mediation procedure has not been regulated. Therefore, the Supreme Court issued further regulations to optimize the use of this article until the process runs well. The issuance of further regulations until the last one, Supreme Court Regulation No. 1 of 2016 concerning mediation procedures in court, further strengthens that mediation is an absolute thing in the judicial process (Ardhira, 2018).

The relatively low success of court mediation is due to several factors, including the role of the judge as mediator. Mediation is the product of the personal skills and attributes

of the mediator, the disputants, the representatives, as well as 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) (Welsh, 2005). The low success rate of mediation is caused by judges who are not serious in facilitating mediation (Ilyas, 2017) and the mediation process is carried out only as a formality (Asnawi, 2017). The judge with the character of the parties and cultural factors also influences the degree of success of mediation in court (Riyanto, 2018).

A mediator is defined as a neutral party who assists the parties in the negotiation process, to find various possible resolutions of disputes without using a way to decide or force a settlement. Meanwhile, mediation is a method of dispute resolution through the negotiation process to obtain an agreement between the parties, assisted by a mediator. The role of a mediator is essentially to help the parties without deciding or forcing a solution. In carrying out this role, the duties of the mediator generally include being obliged to propose a mediation schedule to the parties, encourage the parties to take an active role in the mediation process. If it is deemed necessary to conduct a caucus, the mediator should encourage the parties to explore their interests and find various settlement options that are best for them.

Some factors that influence the success of a mediator must have sufficient preparation and assessment of the case/dispute, the mediator must ensure the commitment of the parties to participate, the mediator must ensure the presence of the parties, the parties and the mediator must also have sufficient time, expertise, and information (supported at this stage assessment), and the mediator must have experience and professionalism (Pusdiklat MA, 2019).

In carrying out his duties as a mediator, a judge must follow the following ethical principles.

1. Self-determination

One important principle in mediation is that the parties determine for themselves the efforts or means used to resolve conflicts. The mediator must be a neutral party to the substance, not to direct the parties to take certain ways. The Mediator Code of Conduct emphasizes that the mediator is obliged to conduct mediation in accordance with the principle of self-determination by the parties (Article 4 paragraph 1).

2. Impartiality

The mediator is obliged to maintain impartiality in statements, attitudes, behavior towards the parties involved. A mediator can only mediate on cases in which he or she can remain impartial and balanced.

3. Conflict of interest

A mediator must be free from conflicts of interest in a case. Conflicts can arise if the mediator is related to a case, he has handled or is currently handling. Conflicts can also arise because the mediator has a relationship with the parties that are currently in litigation.

4. Competence

The mediator must have the competencies and qualifications expected by the parties, attend education and training, and have the availability of information about the parties that are relevant to the mediator's training, education, experience, and approach to mediation.

5. Confidentiality

Confidentiality is a principle that must be upheld by a mediator. The mediator must keep all information from the parties confidential in relation to the case being mediated. The mediator is obliged to keep statements and notes secret during the mediation process (Article 5).

6. Maintaining the Quality of the Mediation Process

A good mediator must keep the mediation process he leads running with the best quality. At least, the mediation will run according to the agreed schedule and in a balanced manner (Pusdiklat MA, 2019).

In carrying out his duties, a mediator has responsibility towards the parties according to the provisions in the Mediator Code of Conduct. In general, the objectives of the court mediator certification training are to: provide knowledge of the basics of mediation, provide mediation process management skills, provide interpersonal skills as a mediator, provide ethical knowledge, and develop the mediator profession.

Court Mediation: A Cultural Approach to Local Society

In language terminology, mediation is dispute resolution involving a third party as an intermediary, or settlement of disputes by means of arbitration. Meanwhile, etymologically, the term mediation comes from Latin, "mediate" which means being in the middle. This meaning refers to the role played by the third party as a mediator who must be in a neutral and impartial position in resolving disputes. The mediator must be able to maintain the interests of the disputing parties fairly and equally, thereby fostering trust from the disputing parties (Abbas, 2011). The goal of any judicial process is not only to determine who is wrong and who is right, or not only to find truth and justice. Furthermore, the judicial process must reconcile or rebuild the social relations of the parties that were damaged because of the dispute. In fact, social harmony is managed in a broader context: individually, collectively, and vertically with God. It seems that the judicial orientation with its philosophy of harmony can be applied in various social spaces, because the value of harmony is the dream of all humans in any part of the world (Medan, 2012).

Justice is concerned with the distribution of rights and obligations. Among the rights possessed by humans, there are fundamental rights which are a direct gift from God: human rights or natural human rights. All human beings, without distinction of race, ethnicity, nation, and religion, have the right to justice. Therefore, Indonesia, which is very heterogeneous, needs to formulate positive laws that are somewhat different from countries with homogeneous cultures. Before formulating laws that will regulate the journey of society, it is necessary to explore a more comprehensive philosophy of law that will bring about real justice for all groups, ethnicities, races, religions in Indonesia (Bintoro, 2016).

In mediation, a mediator plays a role in assisting the disputing parties by identifying the issues in dispute, developing options, and considering alternatives to be offered to the parties to reach an agreement. In carrying out his role, the mediator only has the authority to provide advice or determine the mediation process in efforts to resolve disputes. The mediator does not have the authority and role to determine the content of the dispute. He only keeps the mediation process running, resulting in an agreement from the parties.

A settlement agreement is the best method of dispute resolution. A dispute will create tension between the disputing parties or result in disharmony. This condition can worsen and cause deep enmity and hatred, so that it will break good relations or kinship. To re-create a harmonious relationship between the disputing parties, the wishes of the two conflicting parties must be fulfilled so that both feel satisfied. Satisfaction is not only limited to the substance (material) which is the subject of the dispute, but also involves psychological satisfaction. This can be realized through a settlement agreement (Suhariyanto, 2017).

The integration of the settlement agreement, as stipulated in HIR/*Het Herzien Inlandsc Reglement/Staatblad* 1941-44 and RBG/*Rechtsreglement voor de Buitengewesten/Staatblad* 1927-227 in court proceedings is to facilitate disputing parties to overcome problems and obstacles to achieve a simple, fast, and low-cost trial through negotiation, deliberation, to the exclusion of the law to reach an agreement. Court mediation is the result of developing and empowering the settlement institution, as stipulated in Article 130 HIR/154 Rbg, which requires judges hearing a case to seriously seek peace between the parties in a case (Heriyanto, 2015).

Based on Supreme Court Regulation No.1 of 2016 concerning Mediation Procedures in Courts, mediation must be carried out by the parties involved in a civil case. The mediation was carried out on the first trial day. The purpose of court mediation is to create compromises between the disputing parties. Mediation is believed to be able to eliminate conflicts or problems that almost always accompany every compelling decision. Based on these considerations, at every level of the judiciary, mediation efforts must be taken in resolving civil disputes (Saraswati, 2020).

Regarding the judicial efforts to assist the disputing parties, Satjipto Rahardjo stated that enforcing the law is different from implementing laws and procedures. Enforcing the law is interpreted as "*mesu budi*" which means law enforcement by mobilizing all psychological potential in law administrators. Therefore, law enforcement is not only based on intellectual intelligence (based on written laws or regulations as a source of law), but also conscience because the truth is already in the heart of every human being. This is what every law enforcer and justice seeker must understand and have. The essence of dispute resolution by integrating mediation into judicial proceedings is justice because the wishes of both parties can be fulfilled, no one feels defeated or humiliated. On the other hand, both parties feel respected, because the deepest essence of the human ego is glory to always want to be respected, to always be superior to other humans (Sukadana, 2012).

In various literary sources, several principles of mediation are mentioned. The basic principle is the philosophical basis for conducting mediation activities. This principle or philosophy is the framework that the mediator should know. Thus, in carrying out mediation, he does not move away from the philosophy that precludes the birth of the mediation institution. David Spencer and Michael Brogan draw on Ruth Carlton's views on the five basic principles of mediation. These five principles are known as the five basic philosophies of mediation. The five principles are principles of confidentiality, voluntary principles of empowerment, neutrality principles, and a unique solution principle (Abbas, 2011).

One of the mediation tools is a mediator. Many factors influence the success of a mediator. A mediator must have sufficient preparation and assessment of the case/dispute, the mediator must ensure the commitment of the parties to participate, the mediator must ensure the presence of the parties, the parties and the mediator must also have sufficient time, expertise, and information (supported at this stage assessment), and the mediator must have experience and professionalism.

A Western model of court connected mediation was introduced into Indonesian courts in 2003 but was relatively unsuccessful because cultural issues were not considered. The diverse backgrounds of disputants need to be considered in the choice of mediator(s) and the process to be used. It is important to ground conflict resolution services in the traditional processes of the disputants' culture. The culturally competent mediator begins by reflecting on his or her own culture and the culturally based values, assumptions, and biases that are brought to one's mediation practice. At the same time, it is important to develop an understanding of the worldview of culturally diverse clients, and to draw upon the resources of diverse cultures in conflict resolution (Syukur, 2013). In fact, mediation fails because it is only considered a formality and the mediator releases himself from his obligations and responsibilities, and the settlement agreement is not considered important (Rus, 2019).

Mediation which has been integrated to court since 2003, was the result of transplantation from the United States of America with a low rate of success. If it is evaluated with the law of the non-transferable law by Robert B. Seidman, the rule of law derived from a country which is formed based on its socio-cultural condition cannot be automatically applied to a certain group of people living with a different socio-cultural awareness (Riyanto, 2017).

An understanding of society culture is needed by judges in dispute resolution through court mediation. This is because people who have inherited cultural traditions, which emphasize the importance of harmony and togetherness in life, will be more able to accept and use consensus methods in resolving disputes. This is like the view of North American scholars that the practice of mediation is influenced by Confucian spiritual values which emphasize the importance of harmony and peaceful settlement. The Japanese nation is also influenced by Confucian culture through the sense of harmony or peace which is the most valuable thing (Heriyanto, 2015). The legal consciousness of the

Japanese people was the decisive cause of the small number of lawyers and the low litigation rate in Japan (Murayama, 2014).

The consensus approach in the mediation process means that everything that results from the mediation process must be an agreement of the disputing parties. Mediation can be carried out by two or more than two disputing parties (multiparty). Mediation refers to the role of culture as a dominant factor. Based on this viewpoint, ways of consensus such as negotiation and mediation can be accepted and used by the society since they fit the people's way of life. People or society who have inherited a cultural tradition that prioritizes harmony in life or in association, will be more able to accept and use consensus methods in resolving disputes. Apart from cultural factors, mediation sees the strength of the disputing parties as relatively more balanced. The disputing parties are willing to enter negotiations not because they feel sorry for the opposing party or are bound by certain cultural or spiritual values, but because one party needs cooperation from the other to achieve goals or realize their interests (Pradityo, 2018).

The primary emphasis of culturally specific mediation approaches is the provision of conflict resolution services that are grounded in the traditional dispute resolution processes of the disputants' culture. In Kenya, this means that in introducing court-annexed mediation, the program must draw from the culture of the Kenyan people and not just a replication of the Western model of mediation. This will ensure the interests of individuals and society are met and that the program will be a better fit for the citizens (Shako, 2017).

Indonesian society with a high level of heterogeneity, both vertically and horizontally, cannot be expected to have the same perception of the legal messages conveyed (Tanya, 2010). Basically, a dispute reflects different human character and will. Disputes in society can be resolved in various ways. Each approach uses a different paradigm according to the objectives, culture, or values believed by the disputing parties. The problem lies not only in the substance of the regulation, but more in the actors (humans) who are judges, disputing parties, and advocates (Irawan, 2015).

Internationally, new models of mediation have been articulated that are therapeutic in nature, highly value relationships and include a multidiscipline approach to understanding conflict and emotion (Douglas, 2007). This failure of court connected mediation in Indonesian is unique and out of what has been described in research results in other countries. Thus, the experience of mediation in Indonesia gives a confirmation of unique situation and strategies offered. This failure is not fully caused by internal factor related to mediator strategy, or the choices of model shown through Acts regulating the mediation. Outside the factors, external factors like psychology of the nation in dispute, law tradition, especially practice in court which is harmonized with mediation without the basis of local wisdom (Riyanto, 2016). In the mediation process used are values that live in society, such as legal values, religion, morals, ethics, and a sense of fairness, against the facts obtained to reach an agreement (Lestari, 2013). Quality in mediation from a range of

perspectives and argues that improved systemic supports are required to enhance mediation quality (Sourdin, 2010).

Court connected mediation in Indonesia is the institutionalization and empowerment of settlement agreements. This is in accordance with Pancasila as its philosophical foundation, which is the basis of the state, especially the fourth principle, “Democracy led by Wisdom in Deliberation/Representation”. The four precepts of Pancasila, among others, require efforts to resolve disputes, conflicts, or cases by deliberation to reach consensus, which is pervaded by the spirit of kinship. This implies that any dispute, conflict, or case should be resolved through negotiations or reconciliation between the disputing parties to reach a mutual agreement. The culture of conciliation or deliberation is the value of the wider community in Indonesia (Bintoro, 2016). Following a realization-focused approach to justice can contribute to this endeavor as it pays more attention to the societal context of justice-seekers, and obstacles to justice that lie beyond the quality of the respective justice system (Haug, 2014).

The approach to local wisdom is different from one region to another. Local wisdom still has the core of a cultural approach, by utilizing the local values and culture that the society already has. Local wisdom consists of traditional institutionalized values, ethics, and behaviors. It indicates that people who live together in the guidance of a value system, will complement their rules with several cultured local policies. The aim is to anticipate various problems due to misunderstandings. Local wisdom is the most powerful medium for finding solutions in conflict resolution. People involved in the conflict are invited to discuss and negotiate what they want from each other. This will have an impact on the most possible and appropriate form of resolution and can be used as a conflict early warning system (Astri, 2012).

Basically, a society is said to be multicultural if it has diversity and differences. The diversity and differences referred to, among others, the diversity of cultural structures rooted in differences in value standards, diversity of race, ethnicity and religion, diversity of physical characteristics such as skin color, hair, facial features, body posture, etc., as well as diversity of social group. In addition, society is called multicultural if there are these following things: 1) Recognition of the differences and complexities of life in society; 2) Equal treatment of various communities and cultures, both majority and minority; 3) Equal position in various diversity and differences, both individually and in groups and cultures; 4) High respect for human rights and mutual respect in differences; 5) Elements of togetherness, cooperation, and peaceful coexistence in diversity. Indonesia is a multicultural society. It has many ethnic groups which have different cultural structures. This difference can be seen from differences in language, customs, religions, types of art, and others (Gunawan, 2011).

Ethnic groups in Indonesia have a culture of peaceful dispute resolution. Each region in Indonesia has local wisdom, including the Minangkabau society which always strives for a peaceful and prosperous life. Since long time ago, the community has been implementing democratic values. These values are reflected in the archaeological remains

associated with the activities of deliberation and the tradition that last until now. In making decisions for common interests, people tend to give priority to said agreement despite differences of opinion are also valued (Christyawati, 2010). Local wisdom such as *cablaka/blakasuta/thokmelong* exist in Banyumas (Priadi, 2013). There are four types of Banyumas local wisdom to settle legal disputes that occur in society, which are *cablaka/blakasutha/thokmelong* tradition, egalitarian nature, *rembugan* tradition, and *waliko ponco* principle. Meanwhile, the alternative form of dispute resolution is to use the partial judge model, mediation, and the settlement conference. The mechanism is carried out through a deliberation process, the use of a mediator, institutionalizing dispute resolution and executing the results of decisions. (Taufiq, 2016). There are Peusijek peace ceremony in Aceh (Kasim, 2016), a local wisdom of tao retreats post in Sasak and Mbajo (Asmara, 2010), and some of the values, policies, and wisdom of the Sasak tribe which are reflected in the concept of *krama*, *sesenggak*, *perteke* and *lelaqq* (Zuhdi, 2019).

The multi-dimensional model of social conflict prevention should be carried out using the rules contained in: *Dalihan na Tolu* custom, *Sipaingot*, *Pastak ni Paradaton*, *Uhum dohot Patik*, *Hapantunon*, *Tutur dohot Poda*, *Marga*, *Martahi*, *Mangupa*. While the system and strategies of negotiation to reach consensus in preventing multidimensional social conflict based on the following norms: *Tahi Ungut-ungut*, *Tahi Dalihan na Tolu*, *Tahi Godang Parsahutaon* and *Tahi Godang Haruaya Mardomu Bulung*. It is argued that the punishment model usually used by Batak community should be adopted both in preventing as well as resolving social conflict exists in society (Harahap, 2018). Bima's homogeneity and local wisdom should ideally be an adhesive to reduce the intensity of the conflict. Local wisdom is like the phrase: *Kalembo ade* (expose your chest, be patient), the culture of *maja labo dahu* (fear and shame), and *ndempa ndiha* (fist fighting without weapons) implemented in conflict reconciliation. Bima's social conflict was caused by the erosion of local wisdom in the form of cultural values, religious values and harmonious living traditions. In the form of culture and the people of Bima have the ideals of life: "*mantika ro sana mori in the world ro akhera*" (beautiful and happy to live in the world and the hereafter). Conflict causes damage and trauma (Anwar, 2019). Local wisdom of '*Pela and Gandong*' is considered capable of becoming a guidance for Maluku social groups and that Baku Bae movement is a ground to resolve conflict and to re-build Maluku people's future. During the worse time of the conflict, social group sees that *Pela* and *Gandong* relationship remains settled albeit the conflict. However serious the revenge of the Maluku people, they keep respecting *Pela* and *Gandong* relationship so that mutual killing was very rare between them when conflict takes place. Even they try to communicate and keep exchanging warnings that both do not become victims of the then on-going conflict. But the people were aware that the *Pela* and *Gandong* tie only covers two or three villages, while in fact Maluku has about 800 villages, all in conflict. (Ichsan, 2016).

The interpretation of local wisdom in manene rituals in the Baruppu community of North Toraja Regency includes several types of local wisdom, which are (a) religious values, (b) brotherhood, and (c) unity. (Tahir, 2020) The mediation field will do best in

the future by accepting its diversity and supporting the different models of mediation that have evolved (Saul, 2012). In conflict resolution, each customary law environment in the West Nusa Tenggara (NTB) region has main principles or main philosophies which have the meaning of togetherness, peace and balance in social life which is always adhered to and held firmly by the community in the community. customary law. Sasak customary law recognizes the principle of “*aik meneng, tukang tilah, and mpak bau*” which means “the water remains clear, the flowers in the pond remain beautiful, and peace is achieved”; Samawa customary law recognizes the principle of “*senapemu, nyaman nyawe, riam remo*” which means “cool, orderly, peaceful and harmonious”. Meanwhile, Mbojo customary law recognizes the principle: “*maja labo dahu, rombo ro ntiri*”, which means, “have shame and fear, loyalty, and honesty (uphold the truth)” (Asmara, 2010).

Conclusion

Court mediation is a process within the power and authority of the court. The Supreme Court has developed a court mediation paradigm in civil disputes through a Supreme Court Regulation on court mediation and mediation training for judges in the form of certification of judges as mediators. Judges who can resolve civil disputes through mediation in court are judges who have certificates as mediators issued by the Supreme Court. However, the results of court mediation have not met expectations. The failure to carry out mediation in court is due to cultural factors, the society who does not support dispute resolution through court mediation, and the factor of the judge's resources as a mediator. Judges in carrying out their duties and functions as mediators in resolving civil disputes should use different approaches based on the cultural values of the local society, such as from the aspects of religion, culture, and local customs.

Suggestion

Mediation training is conducted regularly for mediator judges with an approach that is culturally appropriate to the local society. The mediation training is carried out in the High Court area where judges serve. With the training, they are expected to find an appropriate dispute resolution based on the local society culture.

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