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A Certified Mediator who Works as a Civil Servant in the Judiciary Institution

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Abstract.
The Supreme Court of the Republic of Indonesia, in Supreme Court Regulation Number 1 of 2016 on Mediation Procedures in Court, states that to perform their duties as mediators, every mediator must participate and pass the certification training conducted by accredited certification institutions recognized or accredited by the Supreme Court. In its development, many civil servants such as lecturers or civil servants in ministries such as the Ministry of Manpower, Ministry of Public Works, and others, have registered as prospective certified mediators and many have successfully obtained certification as mediators from the Supreme Court. However, can certified mediators who are civil servants perform their profession as non-judicial mediators in the court? This study is a literature research as the data used is sourced from literature or written materials. Literature research is a series of research activities related to the study of literary data. The nature of this research is descriptive, where data is presented qualitatively. Descriptive research is intended to provide descriptions of situations or events. This research is descriptive because the results are presented in a narrative form. Since this study belongs to the category of literature research, the data sources were secondary data, obtained through the review of legal materials Legal materials can be divided into two types: primary and secondary legal materials. The results of this research indicate that civil servants, such as lecturers or civil servants in ministries such as the Ministry of Manpower, Ministry of Public Works, and others, who have been certified as mediators by accredited mediation institutions recognized by the Supreme Court, can indeed practice their profession as non-judicial mediators in the court.

Keywords: mediation, mediator, Court

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1. Introduction

Human beings are social creatures (zoon politikon), and therefore, they cannot live without other human beings. Since birth, humans have been equipped with an instinct to live together with others. This instinct to live together with others results in a strong desire for order in life. Physically, humans are weaker compared to other creatures, but with their intellect, humans are capable of surviving and controlling functions within a wide range of environments as a means to fulfill their desires and needs in life. The dimension of human thinking develops much more rapidly compared to other creatures

dCompared to the capacity of the environment to support it, the balance in social interactions gradually begins to show worrying symptoms as communication between individuals within the environmental subsystem becomes contaminated by negative reactions from uncontrolled social changes[1].

The history of humankind has consistently shown conflicts of interest between individuals, as the raison d'être of law is the conflict of human interests. This implies that law exists to eliminate or at least minimize conflicts or disputes that occur in society, thus achieving order and peace.[2].

To overcome or resolve disputes, in human social life, various methods are employed, namely: 1. Letting it be (lumping it): Allowing the dispute to remain unresolved without taking any action. 2. Avoidance: Deliberately avoiding or evading the conflict to prevent further escalation. 3. Coercion: Using force or violence to impose one's will and resolve the dispute through power. 4. Negotiation: Engaging in discussions and dialogue to reach a mutually acceptable agreement or compromise. 5. Mediation: Involving a neutral third party, the mediator, who assists the disputing parties in finding a mutually satisfactory resolution. 6. Arbitration: Submitting the dispute to a neutral third party, the arbitrator, who listens to both sides and makes a binding decision to resolve the conflict. 7. Adjudication: Resorting to formal legal proceedings in a court of law, where a judge or panel of judges renders a final and legally binding decision based on the evidence and arguments presented. The choice of these methods depends on the culture, values, and goals of the parties involved in the dispute. In a well-ordered social life governed by law, the use of violence or taking matters into one's own hands is actively avoided.[2]

Indonesia, as a diverse country with various ethnicities, cultures, and races, has had the aspiration to achieve national goals since its proclamation of independence on August 17, 1945. This is stated in the fourth paragraph of the preamble to the 1945 Constitution, which aims to advance the welfare of the people, enhance the intellectual life of the nation, and contribute to the establishment of a world order based on freedom, eternal peace, and social justice. In order to realize the common welfare, Indonesia, based on the principle of eternal peace, strives to address social conflicts that arise from conflicting interests, which are inherent in the agendas to create prosperity in all sectors of life[3].

The impact of Dutch colonialism on Indonesia has deeply ingrained the continental legal system. However, previously Indonesia was a country based on the principle of musyawarah (consensus). All disputes that occurred in society were resolved through musyawarah, seeking win-win solutions. In conflicts, there were no winners or losers.

As a result of the continental legal system, everything must now adhere to and follow the direction of legislation. Legislation indicates that if there is a dispute, it should be taken to the appropriate court. If unsatisfied with the judgment of the first court, one may proceed to the next court. Even at the level of the Supreme Court, there is an opportunity for a review, even if it does not meet the requirements. No new evidence needs to be presented. However, in order to respect the parties involved, the court facilitates their intentions. If the requirements are not met, it is the Supreme Court that will determine the outcome. This is how legal proceedings continue in this country.

Indonesia is a rule of law country, as stated in the explanation of the 1945 Constitution, where it is said that the State of Indonesia is based on the law (rechtsstaat) rather than sheer power (machstaat)[4], The resolution of disputes is an important aspect of law in a country based on the rule of law, as it contributes to the establishment of order and peace. In order to maintain good order and peace, the law must be in accordance with the legal aspirations of the society in that country.

In the system of governance in Indonesia, the independent judicial power has been recognized by the Republic of Indonesia, as stated in Article 24, paragraph (1) of the 1945 Constitution, which determines that “judicial power is an independent power to administer justice in upholding the law and justice.” Paragraph (2) of the same article further stipulates that “judicial power is exercised by a Supreme Court and subordinate courts within the General Judiciary, Religious Judiciary, Military Judiciary, Administrative Judiciary, and by a Constitutional Court [2].

The implementation of judicial power, as mandated by Article 24 of the 1945 Constitution, is regulated through Law No. 35 of 1999 as a replacement for Law No. 14 of 1970, Law No. 4 of 2004, and most recently Law No. 48 of 2009. The existence of judicial power is stated in Article 1, paragraph 1 of Law No. 48 of 2009, which stipulates: “judicial power is the independent power of the state to administer justice based on Pancasila and the 1945 Constitution, in order to uphold the law and justice and ensure the establishment of the Rule of Law in the Republic of Indonesia.”

Furthermore, Article 18 of Law No. 48 of 2009 states that “judicial power is exercised by a Supreme Court and subordinate courts within the General Judiciary, Religious Judiciary, Military Judiciary, Administrative Judiciary, and by a Constitutional Court.” The structure of these courts is also regulated by separate laws.

In the course of development, in line with social dynamics regarding the settlement of civil cases, resolution is not limited to formal processes (court proceedings) but can also be achieved through non-formal processes (outside the court). Settlement through reconciliation in court is the desired outcome for all parties. Based on the applicable

procedural law, reconciliation is always sought at every court session. For example, during the first hearing, it is expected that the husband and wife personally attend and not be represented by others. The judge is obliged to attempt reconciliation before proceeding with the case by providing advice. However, if the relationship between the husband and wife has deteriorated significantly, and their hearts have been divided, reconciliation efforts often yield limited results.

Article 130 of the Dutch Civil Code (HIR) / Article 154 of the Indonesian Civil Code (RBG), which mandates reconciliation efforts by judges, has become the main foundation in establishing this legal framework. It was initiated in 2002 through a Circular Letter from the Supreme Court (SEMA) No. 1 of 2002, which empowered first-instance courts to implement the two reconciliation institutions under Article 130 of the HIR / Article 154 of the RBG. This was further improved in 2003 through Supreme Court Regulation No. 2 of 2003 on Mediation Procedures in Court. In 2008, it was revised and replaced by PERMA No. 1 of 2008 on Mediation Procedures in Court, and the latest development occurred in 2016 when the Supreme Court revised Supreme Court Regulation No. 1 of 2008 with the issuance of Supreme Court Regulation No. 1 of 2016 on Mediation Procedures in Court. These revisions aim to provide greater access to parties in order to find satisfactory and just resolutions to their disputes.

In the implementation of mediation in court, there are two types of mediators: judge-mediators and non-judge mediators. To improve the quality of mediation, especially by non-judge mediators in court, the Supreme Court issued a policy in the form of Decree of the Chief Justice of the Supreme Court No. 117/KMA/SK/VI/2018 on the Procedures for Accreditation and Extension of Accreditation for Mediator Certification Institutions for Non-Judge Mediators. According to Supreme Court Regulation No. 1 of 2016 on Mediation Procedures in Court, every mediator must undergo and successfully complete certification training conducted by an accredited certification institution. The accreditation of these certification institutions is conducted by the Supreme Court or an accreditation team appointed by the Supreme Court.

Once a person has successfully completed the certification training conducted by an institution accredited by the Supreme Court, a non-judge mediator can practice their profession both inside and outside the court. To become a mediator in court, an application to become a non-judge mediator must be submitted, usually followed by a written examination and interview before being certified as a non-judge mediator accredited by the Supreme Court in a particular court.

Many civil servants, such as lecturers or government employees in various ministries, including the Ministry of Manpower and the Ministry of Public Works, have registered as

candidates for certified mediators in the accredited mediation certification institutions under the Supreme Court. Many of them have successfully obtained certification as mediators accredited by the Supreme Court. The question remains whether certified mediators who are civil servants can practice their profession as non-judge mediators in court?

2. Methods

This type of research is a literature review or library research, as the data used is sourced from literature or written materials. Literature review is a series of research activities that involve the study and analysis of existing literature or written sources of information[5]. The nature of this research is descriptive, where the data is presented in a qualitative manner. Descriptive research is intended to provide an understanding of situations or events by describing them in detail [6]. This research is descriptive in nature because the results will be presented in a narrative form. As the research falls under the category of library research, the data sources are considered secondary data, which are obtained through the examination of legal materials. Data sources refer to the subjects from which the data is obtained.[7] Furthermore, the legal materials used by the researcher are categorized into primary legal sources and secondary legal sources. The data analysis method employed is an inductive qualitative approach with an interactive model.

3. Results and Discussion

3.1. Definition of Mediator

Article 1, paragraph 1 of the Supreme Court Regulation No. 1 of 2016 on Mediation Procedures in Court states that Mediation is a dispute resolution method through a negotiation process to achieve an agreement between the Parties with the assistance of a Mediator.

A Mediator is a neutral party who assists the parties in the negotiation process to explore various possible dispute resolutions without using decision-making or imposing a resolution. According to Syahrizal Abbas, a Mediator is a third party who assists in the dispute resolution process of the parties, without intervening in decision-making. The Mediator facilitates meetings between the parties, conducts negotiations, maintains

and controls the negotiation process, offers alternative solutions, and together with the parties formulates a settlement agreement.[8]

Meanwhile, Article 1, Number 2 of the Supreme Court Regulation No. 1 of 2016 on Mediation Procedures in Court states that a Mediator is a Judge or other party who holds a Mediator Certificate as a neutral party that assists the Parties in the negotiation process to explore various possible dispute resolutions without using decision-making or imposing a resolution. Furthermore, in Article 1, Number 3 of the Supreme Court Regulation No. 1 of 2016 on Mediation Procedures in Court, a Mediator Certificate is defined as a document issued by the Supreme Court or an accredited institution by the Supreme Court, stating that someone has participated and passed mediation certification training.

From the above definitions, it can be understood that a Mediator is someone who holds a Mediator Certificate and conducts mediation between the disputing parties as a mediator or neutral party that does not intervene or force the disputing parties in the negotiation process, resulting in a dispute resolution.

3.2. The tasks of a mediator

Regarding the tasks of a mediator, they are mentioned in Article 14 of the Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Court. These tasks form a series of duties for the mediator throughout the mediation process as guidelines to increase the probability of successful mediation. The stages of the mediator's tasks are as follows:

1. Introduce themselves and provide an opportunity for the parties to introduce themselves;
2. Explain the purpose, objectives, and nature of mediation to the parties;
3. Explain the neutral position and role of the mediator, who does not make decisions;
4. Establish mediation implementation rules with the parties;
5. Explain that the mediator may hold separate meetings with one party without the presence of the other party (caucus);
6. Develop a mediation schedule with the parties;
7. Fill out the mediation schedule form;
8. Allow the parties to express their issues and propose settlements;

9. Inventory the issues and schedule discussions based on priority;
10. Facilitate and encourage the parties to:
11. Explore and uncover the interests of the parties;
12. Seek various options for the best resolution for the parties; and Collaborate to achieve a settlement
13. Assist the parties in creating and formulating a peace agreement;
14. Report the success, failure, and/or inability to conduct mediation to the presiding judge;
15. Declare if one or more parties acted in bad faith and report it to the presiding judge;
16. Perform other tasks in carrying out their function.

3.3. The functions of a mediator

According to Fuller, a mediator has several functions, including:[1]

1. *In order to be able to make decisions in reaching an agreement as a catalyst, the presence of a mediator is intended to encourage the parties to find a common will.*
2. *As an educator, it means that the mediator should be able to act as an educator, providing guidance and advice regarding positive attitudes in resolving issues. The mediator should strive to understand the desires, aspirations, working procedures, political limitations, and constraints faced by the parties.*
3. *As a translator, it means that the mediator should be able to translate any concepts that are not understood by the parties into language that is easily understandable.*
4. *As a resource person, it means that the mediator should have a broad understanding, or at least be able to utilize and multiply the benefits of available sources of information.*
5. *As a bearer of bad news, it means that the mediator should be prepared to anticipate and seek solutions to any negative actions and reactions expressed by the parties.*

6. *As an agent of reality, it means that the mediator should gather all forms of information, including complaints, accusations, and confessions, and convey this information using the mediator's language*
7. *As a scapegoat, it means that the mediator should ensure that during the interaction process, the parties do not engage in unproductive arguments that do not serve the purpose of resolving the dispute.*[1]

3.4. The qualifications of a mediator

The mediator acts as a facilitator for the parties involved in a dispute. Mediators are expected to have skills in conflict management and facilitate the parties in exploring the best possible solutions for resolving their disputes. For this reason, it is now required to have undergone and passed mediator certification from a mediation institution accredited by the Supreme Court.

The provisions on who can become a mediator in court and the qualifications that must be met are stated in Article 13 of Supreme Court Regulation No. 1 of 2016 on Mediation Procedures in Court. Based on these provisions, the following points are mentioned:

3.4.1. Mediators must be certified

Every mediator is required to have a mediator certificate obtained after completing and passing the mediator certification training conducted by the Supreme Court or an accredited institution by the Supreme Court. Mediator certification serves as a platform aimed at producing competent mediators in conducting mediation in the court. Just like other professions that demand high performance and professionalism, mediators are also expected to master mediation techniques and demonstrate professionalism in conducting mediation. Mediator certification comprehensively introduces basic mediation techniques, conflict management, mediation optimization, and drafting techniques for peaceful agreements. By participating in and passing the certification process, individuals are deemed to have the necessary capabilities to conduct mediation effectively.[9]

3.4.2. Judicial officials can serve as mediators

If there are no certified mediators available within the jurisdiction of a court, judges within that court have the authority to act as mediators. It should be noted that due to the

large number of courts and a limited number of certified mediators, not all courts have certified mediators. To address this issue, the regulation provides a temporary solution by allowing court officials, even if they are not certified, to serve as mediators in court mediations. However, even if they are not certified, court officials serving as mediators must still demonstrate professionalism and, at the very least, have the ability to facilitate disputes between parties and maximize their potential to achieve reconciliation.[9]

3.4.3. The abilities that a mediator should possess include

The abilities that a mediator should possess include::

1. A mediator is appointed directly by the parties or by a mediation institution and is obliged to carry out their duties based on the will of the parties.
2. mediator must be able to create a conducive atmosphere for compromise between the two parties to achieve beneficial outcomes. A mediator can be passive or active.

Passive: When the parties have a high level of concern and actively seek to resolve their own issues, the mediator acts as a facilitator and guide, arranging the negotiations.

Active: When the parties are passive and struggle to communicate, the mediator needs to be responsive and take the initiative to facilitate the process.

Active listening techniques include, *attending skills*, *following skils*, *reflecting skills*) [10]

3.5. Accredited Mediator Certification Institutions by the Supreme Court

The Supreme Court of the Republic of Indonesia held a Coordination Meeting for Judge and Non-Judge Mediators at the Central Jakarta District Court on Friday, August 12, 2022. During the meeting, Assistant Chairman of the Chamber of Guidance of the Supreme Court, Edy Wibowo, stated that there are currently 23 accredited institutions for non-judge mediator certification by the Supreme Court. It should be noted that only graduates from these accredited institutions are recognized and eligible to practice as mediators in the courts.

According to Supreme Court Regulation (Perma) No. 1 of 2016 on Mediation Procedures in the Courts, mediation is a mandatory part of civil procedural law to be implemented in General Courts and Religious Courts. Only non-judge mediators who

have graduated from accredited institutions recognized by the Supreme Court are allowed to practice as mediators and receive remuneration for their services in the courts. The accreditation requirements refer to the Decree of the Chief Justice of the Supreme Court No. 117/KMA/SK/VI/2018 on the Procedures for Accreditation and Extension of Accreditation for Institutions Organizing Certification of Non-Judge Mediators. The 23 accredited institutions for non-judge mediator certification are: [list of accredited institutions[11]:

1. Pusat Bantuan Mediasi Gereja Kristen Injili
2. Badan Mediasi Nasional Indonesia (BAMNI)
3. Badan Penasihatan Pembinaan dan Pelestarian Perkawinan (BP4) Pusat
4. Institut Pengadaan Publik Indonesia (IPPI).
5. Pusat Hukum dan Resolusi Konflik (PURAKA).
6. Walisongo Mediation Center (WMC).
7. Fokus Harmoni Pandu Mediasi Indonesia
8. Yayasan Mediator dan Arbiter Independen Indonesia (MedArbid).
9. Fatahillah Mediation Center UIN Syarif Hidayatullah Jakarta
10. International Mediation and Arbitration Center (IMAC).
11. Pendidikan dan Pelatihan Mediasi Universitas 17 Agustus 1945 Semarang
12. Pusat Pelatihan Pengembangan Pendayagunaan Mediasi (P4M).
13. Badan Mediasi Indonesia
14. Justitia Training Center
15. Indonesian Institute for Conflict Transformation (IICT).
16. Fakultas Hukum Universitas Tarumanegara
17. Lembaga Pendidikan Lanjutan Ilmu Hukum Fakultas Hukum Universitas Indonesia
18. Asosiasi Pengacara Syariah Indonesia
19. Pusat Mediasi Indonesia Universitas Gadjah Mada
20. Impartial Mediation Network
21. Jimly School Law and Government Surabaya

22. Pusat Mediasi Nasional
23. Fakultas Hukum Universitas Hasanuddin

3.6. Certified mediators who work as civil servants include:

Mediation in the court system originally referred to in the Circular Letter of the Supreme Court (SEMA) No. 1 of 2002 regarding the empowerment of the First Instance Court in Implementing the Peace Institution. It was later regulated in the Supreme Court Regulation No. 2 of 2003 on Mediation Procedures in the Court, then revised and replaced by the Supreme Court Regulation No. 1 of 2008 on Mediation Procedures in the Court, and most recently revised again with the issuance of the Supreme Court Regulation No. 1 of 2016 on Mediation Procedures in the Court. In conducting mediation, in addition to adhering to the provisions of the Supreme Court Regulation, the principles of mediation must also be taken into account.

The Supreme Court Regulation No. 1 of 2016 on Mediation Procedures in the Court stipulates that in order to perform the mediation function, mediators must hold a "Mediator Certificate" obtained after attending training organized by an institution accredited by the Supreme Court of the Republic of Indonesia. However, if there are no judges, lawyers, legal academics, or other non-legal professionals with mediator certificates in the jurisdiction of the court in question, the judges in the respective court are authorized to perform the mediation function. Nevertheless, with the presence of non-judge mediators, judges can focus on resolving cases while mediators will effectively enhance the role of certified non-judge mediators.

Article 57 paragraph (3) of Law No. 7 of 1989 states that court proceedings should be "simple, fast, and cost-effective." To achieve the provisions for resolving a case as stated in Article 57, mediation is ordered as a preliminary step according to the above-mentioned laws and regulations. This is aimed at avoiding prolonged proceedings at the first instance court. There are many advantages to resolving disputes through mediation for the parties involved, the mediator, and the court.

Many certified mediators from accredited mediator certification institutions by the Supreme Court are among the ranks of lecturers who are civil servants or civil servants in various ministries such as the Ministry of Manpower, the Ministry of Public Works and others. Considering the large number of courts, especially District Courts and Religious Courts, and the significant number of cases handled, the implementation of mediation in the Court refers to the Supreme Court Regulation No. 1 of 2016 on Mediation Procedures in the Court, which only requires that every mediator must hold a mediator certificate

issued by the Supreme Court or an accredited mediation institution recognized by the Supreme Court in order to practice as a non-judge mediator in the Court. Based on these provisions, it can be concluded that civil servants who hold a mediator certificate from an institution accredited by the Supreme Court are eligible to practice as non-judge mediators in the court system.

4. Conclusion

Civil servants such as lecturers, employees of the Ministry of Manpower, the Ministry of Public Works, and others who have undergone and successfully completed mediator certification training from institutions accredited by the Supreme Court, as evidenced by their possession of a mediator certificate from an accredited institution, are eligible to practice as non-judicial mediators in court.

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