

## The Role of Mediation in Civil Case Settlement Banyuwangi Court

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### ARTICLE INFO

*Keywords:* Dispute Resolution, Decision of Peace Deed, Post Mediation

*Received :* 09, June

*Revised :* 10, July

*Accepted:* 12, Agustus

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### ABSTRACT

It is clear from the research and analysis that the Banyuwangi District Court's procedure for settling Civil Case No. 12 / Pdt.G / 2018 / PN. Byw went through three stages and was in compliance with PERMA No. 01 of 2008 concerning Mediation Procedures in Courts. The Pre-Mediation Stage, Mediation Process Stage, and Post-Mediation Stage are some of these stages. In Civil Case No. 12/Pdt.G/2018/PN. A violation of contract and an illegal act formed the basis of the complaint. At the first trial in this civil action, the court attempted to mediate a settlement for the parties, and the mediation's conclusion was mutually agreed upon, stated, and affirmed in the judgment and stipulation of the Deed of Peace No.12/Pdt.G/2018/PN.Byw.

## INTRODUCTION

Humans require interaction with other parties (persons or legal entities) in order to be able to fairly meet their needs or interests. Human wants and interests are quite diverse, hence there is a wide range of interests that exist between individuals. A civil dispute is what results from this conflict of interest. Civil lawsuits with at least two parties – the plaintiff and the defendant – are referred to as civil conflicts. The party whose rights are violated can launch a lawsuit if a disagreement in society cannot be addressed through discussion. The plaintiff is the name of this party. A court with jurisdiction over the matter will hear the lawsuit (Sudikno Mertokusumo, 2002). Lately, many people involved in civil disputes have chosen the path of mediation, whether attempted by judges, lawyers, or the will of the litigants themselves. Resolving mediation in civil disputes or lawsuits, the methods used are for the parties to make, determine sincerely and consciously the contents of the peace agreement. Supreme Court Regulation No. 1 of 2008 concerning mediation procedures in court, requires that peace efforts be made with the help of a mediator first. At the latest one day after the first hearing, the parties must choose a mediator who is owned by the court and who is not listed in the court register.

A mediator must be chosen or appointed, and the mediation procedure must be concluded within a maximum of 40 working days. The time period is increased to 30 days if the mediator is from a setting other than the courtroom. The entire agreement including the case revocation clause or case statement has been produced at trial if the mediation is successful. The agreement will subsequently be approved as a peace deed by the panel of judges. Judges must constantly uphold the ethical and aesthetic standards of concluding civil disputes in a comprehensive and final manner in order to preserve the interests of all parties and maintain legal order, which means that legal certainty must generally be upheld. Article 130 paragraph (2) HIR states that both parties must abide by the terms of the peace deal if the judge is successful in bringing the two disputing parties together. The peace deed that was created as a result of the peace that both parties were able to reach has the same authority as a regular judge's ruling and has perpetual legal effect (*inkracht van gewijsde*).

But if it's too late to settle disagreements, it will make the process of national growth ineffective. In order to accomplish a goal, it is therefore vital to work on a dispute resolution system that is quick, effective, efficient, and informal; yet, it is certain that the process of forming a connection in the future will result in conflict between the parties. A civil disagreement between BIMARSINI alias WIWIK, in this case as Plaintiff, and ISTIQOMAH, et al., as Defendant is one of the civil cases Number:12/PdtG/ 2018/ PN. Byw that has ever been filed at the Banyuwangi District Court.

## **LITERATURE REVIEW**

### **Peace in the settlement of civil cases**

A settlement is an agreement that allows both parties to put an ongoing case to rest or stop one from starting, based on a mutual understanding. It can be inferred from various definitions of peace that it means: (1) Agreement between the disputing parties in full awareness and without pressure from third parties; (2) Through deliberation to reach a consensus; (3) On the basis of mutual understanding; and (4) To put an end to an ongoing issue. However, any legal (civil) connection introduces the possibility of a disagreement, particularly in situations when one party has an issue with the other party. In a relationship where a disagreement arises, one party may urge the other party to do something or refrain from doing something, while the other party may disagree. Settlement of civil cases through peace is far more effective and efficient, the development of various ways of resolving disputes inside and outside the court is the same as efforts for peace. Settlement of civil cases by means of peace outside the court (non-litigation) is generally more flexible and able to cover all aspects of disputes except for juridical aspects.

### **Peace on Court.**

In every civil case that is under examination before a judge there are at least two parties to the dispute or dispute. In relation to reconciliation between the two parties to the litigation, the judge is obliged to reconcile the two parties to the litigation. The obligation of the judge to reconcile the litigants in civil cases does not only occur at the beginning of the case process as mandated in Article 130 paragraph (1) HIR but in the entire series of events before the court or during the process of the case.

### **Peace outside the Court.**

The resolution of civil disputes that are resolved out of court typically takes the form of peace or kinship. Peace is a negotiation and problem-solving process in which the opposing parties work together to reach a settlement to end their civil proceedings and conflicts. In seeking peace for the parties, judges must always adhere to the ethics and aesthetics of completing civil cases in a complete and final manner, that is, in principle, legal certainty must be upheld in order to protect the interests of all parties and achieve legal order. Based on Law no. 30/1999 concerning Arbitration and Alternative Dispute Resolution, Gunawan Widjaja concluded that there are at least 5 (five) types of out-of-court dispute settlement procedures, namely: (1) Consultation. Consultation is an action that is personal between a certain party, which is called a client, and another party is a consultant party, who gives his opinion to his client to meet the needs and needs of his client, (2) Negotiation, in principle, with negotiations intended as a process of bargaining or talks to reach an agreement on certain issues that occur between the parties. Negotiations are carried out either because there has been a dispute between the parties, or simply because there is no agreement yet because the matter has never been discussed, (3) Mediation. Mediation is a process of negotiation to solve a problem through an impartial and neutral external party who will work with the disputing parties to help find a solution in resolving the

dispute satisfactorily for both parties, 4) Conciliation is the first step toward achieving peace before a trial (litigation) is conducted. This means that parties to a dispute can engage in conciliation at any stage of ongoing justice, including those that take place inside and outside of court, with the exception of cases in which a judge has rendered a decision that is legally binding forever.

### **Settlement of Civil Cases Through Mediation**

The term "Alternative Dispute Resolution Mechanism" is a translation of "Alternative Dispute Resolution" and refers to mediation as an alternative dispute settlement process. This mediation originated as a response to rising discontent with the judicial system or practice, which led to issues of time and expense in handling complex cases. This mediation was born out of the lengthy process of settling conflicts in court. According to the information provided, mediation clearly entails the presence of a neutral, unbiased third party who will serve as a mediator (either personally or in the form of an independent institution) as a third party fair, unbiased, and impartial arbitrator chosen by the parties (directly or through a mediation organization). The goal of mediation is to find a solution that will satisfy both parties to the disagreement. Mediation is a process of negotiation to solve problems through an impartial and neutral outside party who will work with the disputing parties to find a solution. The "Mediator" is the impartial third party who assists in resolving the conflict. The parties' preferences and the mediator's wishes must be taken into consideration while the mediator performs his duties and powers. However, there is a standard procedure that mediators can follow and usually follow when resolving disagreements between parties. The disputing parties must meet or be brought together by the mediator in order to get their opinions on the matters they are fighting over.

## **METHODOLOGY**

### **Types of research**

Empirical legal research, often known as non-doctrinal or descriptive research, is what the author employed to create this piece of legislation. A descriptive research aims to present as much precise information on people, conditions, or other occurrences as feasible.

### **Research sites**

The authors used the Banyuwangi District Court as their research site to collect all the necessary data. The Banyuwangi District Court was chosen as the research site by the author because it is a District Court with easy access for automobiles and houses a case involving mediation that the author is currently researching..

## Data source

Sources of data used in empirical legal research are primary data sources, namely, as follows: (1) Primary data sources, parties related to the problem under study. In this case the parties concerned are the Banyuwangi District Court judges. From the results of interviews with judges PURNOMO AMON TJAHO, SH, MH as a mediator judge appointed by the panel of judges to resolve civil disputes Number: 12/pdt.G/2018/PN.Byw through mediation, (2) Secondary data sources, Secondary legal materials are legal materials that are closely related to primary legal materials and can help understand and analyze primary legal materials, consisting of: 1) Mediator's report dated 23 May 2018 to the Panel of Judges Examining Case Number: 12/Pdt.G/2018/PN.Byw which is embodied in a peace agreement.

- a. Deed of Peace Number: 12/Pdt.G/2018/PN.Byw.
- b. PERMA Number 1 of 2008 Concerning Mediation Procedures in Court.
- c. Law Number 31 of 1999 Concerning Arbitration and Alternative Dispute resolution.

## Data collection technique

### 1. Interview Technique (Interview)

The interview technique is a data collection technique by communicating with data sources. The communication is carried out through dialogue (question and answer) orally, either directly or indirectly. The parties to be referred to in the interview technique here are the Banyuwangi District Court Judges. The interview was conducted on Wednesday, 20 May 2020 at 11.00-12.30 WIB with Judge PURNOMO AMON TJAHO, SH, MH as the mediator appointed by the panel of judges to resolve civil disputes Number: 12/pdt.G/2018/PN.Byw through mediation.

### 2. Study of Documents or Library Materials

This method is a way of collecting data by reading, studying, studying, making the necessary notes, Mediation Guidelines, Alternative Dispute Resolution book, Civil case Number: 12/pdt.G/2018/PN. Byw, paper on Implementation of Mediation, PERMA No. 1 of 2008, and other matters related to the problem under study

## RESEARCH RESULT AND DISCUSSION

### The process of resolving civil disputes by means of mediation by Banyuwangi District Court in case no 12/PdtG/2018/PN.Byw

Based on the findings, peace has been sought for both parties, and the ISTIQOMAH defendant and the plaintiff DWI MARTINI have stated that they are willing to end the dispute between them contained in the lawsuit in a peaceful manner. The parties have chosen the mediation process because they are ready to make amends. In court proceedings, mediation can be a useful tool for resolving the issue of a backlog of cases, enhancing and optimizing the role of judicial institutions in settling conflicts in addition to adjudicative court processes, and more. One fast and simple method for resolving disputes is

mediation. It can provide the parties more access to the process so they can reach an amicable agreement and feel like justice has been served.

The mediation process must be taken in good faith to prevent cooperative parties, therefore good faith for the parties is the key to successful mediation. Based on the description above, in the mediation process, it was against one of the parties to reach a peace agreement. Where the peace agreement has been formulated and set forth in written form. The agreement was then signed by the parties to the dispute. Thus there is written evidence that between the parties a Peace Agreement has been reached through a mediation process so that no party can deny the existence of this peace agreement. A Peace Deed outlines the terms of the peace accord that was established throughout this mediation procedure. With the Deed of Peace, it may be said that the parties have agreed that the dispute has been resolved, and the judges' panel is aware of this settlement. The judge will now rule on the Deed of Peace. According to the rules of Article 1858 KHUPerdata and Article 130 paragraphs (2) and (3) HIR, this settlement decision has the same legal effect as a decision with permanent legal force. such that the judgment of the peace deed cannot be overturned through legal means such as an appeal or cassation. Deed of Peace Number: 12/Pdt.G/2018/PN.Byw. dated May 23, 2018 states, once a civil case has been resolved by a peace deed, the parties immediately put its terms into practice and are no longer permitted to pursue legal action.

According to the provisions of Article 17 of PERMA No. 01 of 2008, if mediation results in an agreement, then the parties with the mediator's assistance are required to draft a written agreement signed by the parties that contains a clause rescinding the case or a statement that the case has been resolved. The parties also have an obligation to return to the judge on the scheduled day of the trial to report the agreement on peace that was reached. The judge confirmed the obligation. A judge's ruling that has enduring legal effect is the same as a peace that the parties have agreed to and that the judge confirms. Due to the peace deed's executorial legal power, if one of the parties to its execution fails to uphold its commitments, the party that suffers a loss as a result of its non-implementation may petition for execution.

### **Lawfor Settlement of Civil Cases Through the Banyuwangi District Court in case no 12/PdtG/2018/PN.Byw for both parties**

It is hoped that the parties to the litigation, especially the plaintiff, as the party taking the initiative in litigation, will resolve the disagreement as much as possible through a route of peace. Mediation as an alternative to dispute resolution is proof of settlement for cases. Because, ultimately, settling disputes amicably helps both parties and moves along the process quite quickly compared to going through a formal court proceeding and trial. Similarly, in terms of costs, there will undoubtedly be a reduction in expenses, and peace will be able to repair goodwill between the litigants. Judges consider more than merely making a decision in a disagreement. If you choose a conflict, it's likely that another one will develop or that an existing one will get worse. But if we focus on settling conflicts, then there won't be anymore because everyone is happy with the

agreement. Because the phrase is a settlement, which signifies resolution, and each party is expected to be satisfied with the outcomes of their own negotiations or via the negotiations of a mediator or arbitrator, mediation or arbitration is more appropriate in situations like this. The judge's significant contribution to the mediation process comes from the fact that they serve as mediators. Because the conflicting parties frequently pick Court Judges to serve as Mediators, the fact that some Mediators come from non-judges is restricted and does not constitute an excessive number. He is present among the contending parties in his capacity as a Mediator, but he is unbiased and does not speak for any of them. The first prerequisite for peace in a case settlement is that it must finish the matter entirely.

According to the author's study of research findings on the topic of civil cases Number: 12/Pdt.G/2014/PN. Byw. at the Banyuwangi District Court, there is always a chance of a disagreement in any legal (civil) connection. Because disputes typically result from one side having an issue with another member in the relationship, they can happen at any time. Therefore, a case settlement forum is required in order to prevent the dissolution of cases and ensure their speedy and affordable resolution. One of the efforts made by the Banyuwangi District Court in examining and deciding a case before the trial proceeds is peaceful attempts to resolve cases in court. This was established in the civil case BywMlg, where peace is also governed by PERMA No. 01 of 2008 about Mediation Procedures in Courts. Negotiation, which is essentially the same as the deliberative process, is the main component of mediation. There is no pressure to accept or reject an idea or settlement during the mediation process because that would go against the nature of negotiations or deliberations. Everything must have the parties' approval.

The goal of mediation is to find a solution that will satisfy both parties to the disagreement. Mediation is a process of negotiation to solve problems through an impartial and neutral outside party who will work with the disputing parties to find a solution. The "Mediator" is the impartial party who assists in resolving the conflict. According to Article 1 Paragraph 6 of PERMA No. 01/2008, the mediator is an impartial party who supports the parties during the negotiating process to find numerous options for dispute resolution without resorting to forcing or breaking a settlement. Therefore, during the mediation process, the mediators merely assist the parties by remaining neutral and not imposing their own opinions or judgments. In terms of civil litigation, PERMA No. 01 of 2008 significantly altered Indonesian judicial practice. Mediation as an effort to reconcile disputing parties is not only important but must be carried out before the case is examined.

According to Article 1 Number 7 of PERMA General Provisions No. 01 of 2008, mediation is a negotiation procedure in which a settlement is reached with the assistance of a mediator. From this clause, it follows that the mediation process seeks to end the conflict between the parties with the help of a mediator who seeks to act as a mediator for both parties and to offer advice in accordance with his or her field of expertise. According to Article 2 paragraph 4: Before a civil case can be presented to the Court of First Instance, the parties must attempt to resolve their differences through mediation with the aid of a case-specific mediator. Additionally, the Judge mandates that the parties to the case initially attend mediation when the matter is transferred to the Court, during the first trial in which both parties are present. In a civil matter with case number 12/Pdt.G/2018/PN.Byw, research was conducted at the Banyuwangi District Court. The goal is to achieve peace through mediation in accordance with the Banyuwangi District Court's current and appropriate procedures, as shown in the chart describing the court's procedures for handling civil cases.

### **CONCLUSIONS AND RECOMMENDATIONS**

The authors make the following deductions from the foregoing description: (1) At the Banyuwangi District Court, the Civil Case No. 12 / Pdt. G / 2018 / PN. Byw. was resolved in three phases in accordance with PERMA No. 01 of 2008 about Mediation Procedures in Courts. The Pre-Mediation Stage, Mediation Process Stage, and Post-Mediation Stage are some of these stages. (2) As a result, no legal action may be brought either on appeal or on cassation because the decision of the Peace Deed implicitly has the same legal power as a decision with permanent legal force (*Eintracht van gewijsde*).

### **ADVANCED RESEARCH**

Develop legal concepts and be able to understand the laws that arise in the practice of settling civil cases through mediation. Mediation institutions should not be used as mere formalism in the dispute resolution process at the Court of First Instance, but should be used as the first institution that can become a place for dispute resolution by the parties, so that this Mediation Institution can run well in accordance with the objectives to be achieved.



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