

IMPLEMENTATION OF PERMA NUMBER 1 OF 2016 CONCERNING MEDIATION IN SETTLEMENT OF INHERITANCE CASES IN SURABAYA RELIGIOUS COURT

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Abstract— In this study, the authors used an empirical juridical method, namely research that aims to find out and analyze the implementation of Supreme Court Regulation Number 1 of 2016 concerning Mediation in the settlement of inheritance cases at the Surabaya Religious Court (Case Study: Application for Inheritance at the Surabaya Religious Court), and data sources were obtained from interviews with various parties related to the implementation of mediation at the Surabaya Religious Court, data obtained from the Surabaya Religious Court, legislation, and various literature. The results of this study can be concluded that many inheritance cases in the Surabaya Religious Court have not succeeded in obtaining a peace certificate in the mediation process. Mediation has not been carried out optimally because there are still obstacles both from the Surabaya Religious Court and from external parties. These obstacles include mediators, parties, and attorneys. Based on the results of research conducted by the authors of the various inhibiting factors that arise in the mediation implementation process, there are still efforts that can be made. Efforts made include the parties and attorneys must have good faith in carrying out the mediation.

Keywords— *Mediation, Deed of Peace*

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I. INTRODUCTION

Conflicts or disputes that occur between humans are quite broad in dimensions and scope, this is because these conflicts and disputes can enter into the public or private areas. This can happen because of the high mobility of the community and the existence of a cross of interests between the interacting communities. The cross of interests can cause a reaction, the cross can cause a positive reaction that does not cause harm to the parties or a negative reaction, namely a reaction that causes a loss for one of the parties so that in this case it causes a dispute.

Disputes that cause a loss for one of the parties must have a settlement, because the cause of a dispute is caused by several factors, including because of differences in interests between the parties, besides that it can also be caused by the existence of rules rigid which is then considered as a barrier or obstacle to achieving the goals of each party [1].

Meanwhile, in achieving the goal, each party will make every effort to achieve its goal, so that the difference or crossing of goals, in this case, the potential for disputes is very large. In addition, if a dispute occurs, the dispute must be resolved by the parties. Settlement of these disputes can be done either in court or out of court.

Settlement of disputes in court is guided by procedural law which stipulates the requirements that must be met in order for a dispute to be filed and the efforts that can be made. Meanwhile, out-of-court dispute resolution is a dispute settlement that is carried out based on the agreement of the parties and the settlement procedure is fully handed over to the parties to the dispute. Therefore, in terms of resolving disputes in court, the Supreme Court issues Supreme Court Regulation Number 1 of 2016 which regulates mediation in resolving disputes in court before entering the reading of a lawsuit, mediation is first carried out by one of the judges who does not examine the case or lawsuit. , if no common ground is found in the mediation then it will proceed to the trial with the agenda of reading the lawsuit [2].

Inheritance cases are included in civil law, because the majority in Indonesia are Muslim so that the majority of inheritance cases entered the Religious Courts. This inheritance case in its mechanism is almost the same as the civil process in the District Court where before the reading of the lawsuit is always preceded by Mediation, the mediation carried out is the same as mediation in the District Court.

It was the division of inheritance that was considered inappropriate and unfair which led to disputes, in which case one of the family members was dissatisfied with the portion of

the inheritance he received, so he filed a lawsuit in court in the hope of getting the expected justice. Even though the family realizes that an amicable settlement is the best way, if this process cannot be realized, then only through legal means is considered to fulfill the principle of justice for the parties to the dispute [3]. Because fair decisions are considered to fulfill legal certainty for the parties. Judiciary is one of the institutions in fulfilling people's needs in upholding law and justice, which refers to the applicable law. The existence of the Religious Courts is an institution exercising judicial power whose provisions have been regulated in law. Seeing from the systematics of the existence of the Supreme Court Regulation related to the existence of a mediation process in resolving disputes in the Court, the authors put it into a research form entitled: IMPLEMENTATION OF PERMA NUMBER 1 OF 2016 CONCERNING MEDIATION IN SETTLEMENT OF INHERITANCE CASES IN SURABAYA RELIGIOUS COURTS (Case Study: Application for inheritance at the Surabaya Religious Court).

II. METHOD

Types of research

The type of research used by the author is Empirical or Juridical-Empirical, which is a type of sociological legal research and can be called field research, which examines the legal provisions that apply and what happens in reality in society. Legal research is to discover the process by which law occurs and the process by which law works in society by examining the relationship between law and other social institutions using social science research techniques.

Data source

The data used in empirical legal research is data obtained directly from the public. Usually in the form of legal behavior from community members (empirical) which must be examined directly. Sources of data in this study are using primary data and secondary data. Primary data is data obtained directly from the source, either through interviews, observations or reports in the form of unofficial documents which are then processed by researchers. Secondary legal materials are textbooks because textbooks contain the basic principles of legal science and the classical views of scholars who have high qualifications.

Method of collecting data

To obtain the legal material needed in writing this thesis proposal, it is obtained in the following way:

1. Library Studies

Library Studies is the first step of any legal research (both normative and sociological). Literature study for legal research includes the study of legal materials consisting of: from primary legal materials, secondary legal materials and tertiary legal materials. Library data obtained through library research which originates from laws and regulations, books, official documents, publications and research results. Literature study for empirical legal research, is a data collection method that is used together such as interviews, observations (observations) and questionnaires [4].

2. Interview

Interview is a method with direct data collection. Data obtained from interviews is additional data from this research, namely as a complement to secondary data. The object of the interview is the party involved in mediation at the Surabaya Religious Court.

Data Analysis Method

The next stage after data collection is complete is the method of data analysis, which is a stage in a research. Because with this data analysis, the data obtained will be processed to get answers to existing problems.

Based on the nature of this study, which uses a descriptive analytical research method, the data analysis used is a qualitative approach to primary data and secondary data. The descriptive includes the content and structure of positive law, namely an activity carried out by the author to determine the content or meaning of legal rules which are used as references in resolving legal issues which are the object of study.

III. RESULT AND DISCUSSION

Factors That Obstacle the Implementation of PERMA Number 1 of 2016 Concerning Mediation in Settlement of Inheritance Cases at the Surabaya Religious Court

1. Mediators

The mediator is a neutral party who will direct and mediate in the mediation process. Therefore, the expertise and skills of a mediator are needed in carrying out mediation. The certainty and skill of a mediator can be seen from the existence of a mediator certificate owned by the mediator.

In accordance with Article 8 PERMA Number 1 of 2016 concerning Mediation Procedures in Court, it is also explained that judge mediators do not get service fees in carrying out their duties as mediators. If the cost of the services of a non-judge mediator and not a court

employee, the costs are borne by both parties on the basis of a mutual agreement. The absence of service fees is also a factor in the seriousness of the mediator in mediating the parties.

2. Parties

The high ego of the parties is also one of the biggest reasons that become an obstacle in carrying out the mediation process. Mediation itself is actually used to find a good way out without spending a lot of money and time. But the parties still maintain their respective arguments so that neither party wants to give in and does not find a better solution than settlement through litigation.

There are still many cases in the implementation of the mediation process at the Surabaya Religious Court where there are parties who bring old unresolved issues which are also being a problem for the parties. If the parties do not want to be invited to resolve cases amicably and ignore the communication that can actually be done, mediation will not run smoothly and effectively to reduce the high number of cases that occur in the Surabaya Religious Court.

The parties also came at will and often ignored summons that had been made by the Surabaya Religious Court. The parties have various reasons for not being able to attend the mediation process. There are still many who think that it is better to go straight into the litigation process without the need for further mediation from the Surabaya Religious Court [5].

The parties always have reasons for not having good faith in carrying out mediation. They feel that the existence of this mediation can slow down the litigation process that they will carry out. The parties are determined to resolve their cases in the realm of litigation at the Surabaya Religious Court. In reality, the parties are also more passive in carrying out mediation, which is contrary to Article 18 paragraph (2) point b PERMA Number 1 of 2016 concerning Mediation Procedures in Court. The article explains that the parties are required to be active in participating in the mediation process.

3. Legal Attorney

Lawyers are allowed to be present in the mediation process, but it is better if the principal is also present in the mediation process. Lawyers are obliged to assist the parties they represent to carry out their rights and obligations in the mediation process at the Surabaya Religious Court. Legal counsel is obliged to encourage the parties to play an active role directly in carrying out the mediation process.

In carrying out mediation it is better not to be represented by legal counsel, but in the field there are still many parties who surrender the mediation process completely to their legal

counsel. Basically the lawyer will only accompany and direct the parties who are in litigation and continue to support them in reaching a peaceful agreement in the mediation process.

Mediation Efforts in Inheritance Cases at the Surabaya Religious Court

1. Mediators

When selecting a mediator, of course priority is given to certified mediators. There is a lack of mediators at the Surabaya Religious Court and there are many cases that must be mediated, so uncertified mediators are also appointed to become mediators. With sufficient expertise, the mediator can help explore the problems that exist between the plaintiff and the defendant until they find a solution. The Surabaya Religious Court also has non-judge mediators who are of course certified and that is an added value.

The mediator has the duty to direct and accompany the mediation process carried out by both parties. The expertise of a mediator will also be a major influence on the success of mediation. In accordance with the explanation in PERMA Number 1 of 2016 concerning Mediation Procedures in Court, that a mediator must be certified.

Judges who become mediators can also focus more on trying to succeed in mediation by trying all their abilities. Because if this mediation is successful and amicable is reached between the two parties, then the Surabaya Religious Court will benefit, namely the reduction in cases that must be examined and decided.

The mediator will greatly determine the effectiveness of the process of resolving a dispute in the Surabaya Religious Court. Therefore he must be worthy and qualified and have good enough experience to direct the parties to the dispute.

2. Parties

The parties carrying out this mediation should also begin to instill in their mindset that the mediation process held by the Surabaya Religious Court is not merely a formality in carrying out regulations and hindering their trial. The parties must assume that this mediation is held so that they can re-discuss with the assistance of the mediator and try to find a way out before entering the realm of trial [6]. The parties must also try to reduce their ego, prestige, and passions so that this mediation can work well. Because basically this mediation process is carried out to find a settlement of a case and find common ground to discuss an issue. The presence of litigants in the mediation process is an important point. Without the litigants, the mediation process will not take place. The number of parties who do not want to attend even though they have been properly summoned can also be minimized. During the trial process at the first meeting, the case examiner judge had to interact more with the plaintiff and the

defendant to discuss mediation. It is recommended that the examining judge of the case order the parties to carry out mediation and should also convey what benefits will be obtained when carrying out the mediation process

3. Attorney

Lawyers must prioritize the interests of their clients before their personal interests in litigation. Advocates must also continue to invite their party to try their best to have good faith in the mediation process until a peace agreement is reached between the two parties, even though the attorney will face the risk of reducing the amount of fees that will be obtained from his party. Because after all it is the parties who decide, not the attorney. Lawyers representing the parties will always be present in the mediation process held at the Surabaya Religious Court. However, the presence of the power of the parties will sometimes become an obstacle to the course of mediation. If there are parties who cannot attend and are only represented by their attorneys, it is feared that these attorneys will not be able to deliver according to what their party wants. Because basically this mediation is carried out so that each party can come face to face and discuss trying to find a way out.

IV. CONCLUSION

1. In the process of implementing mediation at the Surabaya Religious Court, there are several inhibiting factors that can affect the success rate of mediation. These obstacles include mediators, parties, attorneys. Many parties in fact choose not to carry out their responsibilities. If all efforts are implemented, the success rate of mediation itself will increase. If the success of this mediation increases, many parties will benefit, including the Surabaya Religious Court itself.
2. Mediation based on PERMA Number 1 of 2016 is a refinement of the previous PERMA, namely Number 1 of 2008 which was considered less effective in resolving cases in court. With this PERMA in resolving disputes through mediation, it is hoped that the parties will be able to reach an agreement between them. Mediation is a way of resolving disputes through a negotiation process to obtain an agreement between the parties assisted by a Mediator. Mediators are judges or other parties who have a Mediator Certificate as a neutral party who assists the parties in the negotiation process in order to find various possibilities for dispute resolution without using a way of deciding or forcing a settlement.

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