

The Effectiveness of the Mediator's Role in the Reduction of Case Burdens at the Lubuk Pakam District Court during the Covid-19 Pandemic

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ABSTRACT

As a public service institution, the court has political, juridical and sociological functions. The first one is to oblige all courts to carry and direct all court decisions towards the ideals of the proclamation. The second one is directed to administer justice, with the main task of receiving, examining and adjudicating and deciding cases that are brought to court, in order to enforce law and justice based on *Pancasila* ideology for the implementation of the constitutional state of the Republic of Indonesia. The third one refers to a dynamic role of the court in reorganizing the process of social life, especially for justice seekers. In the examination of civil cases in the district court, after the parties, both the plaintiff and the defendant, both in person and their attorneys are present at the trial, then the judge is obliged to examine the case and seek peace between the parties. One of the peace efforts carried out by the panel of judges who examine cases is by means of mediation. The effectiveness of the mediator's role in reducing the accumulation of cases during the pandemic has not been achieved. Efforts to overcome the obstacles faced by mediators in carrying out their role in reducing the accumulation of cases are to increase the number of human resources of mediators.

Keywords: effectiveness, mediator's roles, reduction, accumulation of legal cases

INTRODUCTION

The court (Dutch *rechtsbank court*) as an institution that performs judicial power has

an important function, and its existence is the main feature of the rule of law in Indonesia. The sociological role of the court is the dynamic role of the court in reorganizing the process of social life, especially for justice seekers. [1] The court is a council or body that hears cases [2] while the judiciary (Dutch *rechtspraak judiciary*) deals with the state's duty to enforce law (Dutch *het rechtspreken*) and justice [3] although other views on both also exist. [4] Regarding the authority of district courts to examine, hear and decide on criminal and civil cases at the first level [5] the examination of civil cases, for example, is carried out after the presence of the parties.

One of the peace efforts carried out by the panel of judges who examine cases is by means of mediation. [6] Mediation in court is the result of developing and empowering peace institutions (*dading* institutions) as regulated in the provisions of Article 130 HIR/154 R.Bg [7] (see also the role and attitude of mediators [8]).

The government's effort to avoid crowds in the court environment to prevent the spread of Covid-19 is to issue Perma (Supreme Court Regulation) Number 1 of 2019 concerning the Administration of Cases and Trials in Courts Electronically (hereinafter referred to as Perma Number 1 of 2019), which is a revision of the Supreme Court Regulations Number 3 of 2018 concerning Electronic Court Case Administration.

Furthermore, the Supreme Court has also issued several circulars regarding work from home, and finally the Supreme Court Circular Letter of the Republic of Indonesia Number 1 of 2020, dated March 23, 2020, concerning Guidelines for the Implementation of Duties During the Prevention of the Spread of Corona Virus Disease 2019 (Covid-19) for the internal of the Supreme Court of the Republic of Indonesia and the Judicial Body under it.

The implementation of this electronic trial as referred to in Perma Number 1 of 2019, is also applied at the Lubuk Pakam District Court (PNLP) which is the place where this research was carried out. Likewise, mediation carried out by mediators during the Covid-19 used direct and electronic media that limit meetings between the disputing parties and the mediator directly, to reconcile their cases. In 2020, during the Covid-19 pandemic that hit Indonesia, the number of disputes or civil cases registered with the PNLP was 301 disputes or cases, with the number of disputes or divorce lawsuits 142 and the rest as many as 159 disputes or cases other than divorce, and of these 301 disputes, which were successfully mediated amounted to five cases while 296 were tried by a panel of judges who examine the dispute or case. Furthermore, in 2021, the number of civil disputes registered was 242 disputes or cases, consisting of 146 divorce claims and 96 non-divorce claims. These 242 which were successfully mediated amounted to two disputes or cases, the remaining 240 disputes were heard by the panel of judges. [9]

The problems in this research are: 1) To what extent is the effectiveness of the mediator's role in reducing the accumulation of cases during the Covid-19 pandemic in PNLP?, 2) What are the obstacles faced by the mediators?, and 3) What are the efforts to overcome these obstacles?

LITERATURE REVIEW

Various views on effectiveness emerged, for example, Gibson [10], Siagian [11], and Yudho and Tjandrasari. [12] The

effectiveness of the law in this study is seen in terms of implementation, obstacles and efforts to overcome obstacles to Perma No. 1 of 2016 practiced by the mediator, to carry out mediation in resolving the disputes of the parties peacefully.

The Concepts of Effectiveness and Legal Effectiveness

Effective means achieving the goals or objectives as determined. [13] Effectiveness is the level of success in achieving goals or objectives; thus, effectiveness can be seen in terms of productivity, perception or individual attitudes. [14] Hence, the effectiveness of the law is the ability of the law to create conditions or situations as desired or expected by law. Legal effectiveness is a match between what is regulated and implemented. The effectiveness of the law can also be implemented because the community's compliance with the law is due to the coercive element of the law. The issue of legal effectiveness has a very close relationship with the issue of the application, implementation and enforcement of law in society in order to achieve legal objectives. This means that the law really applies philosophically, juridically and sociologically.

Mediator and Mediation

A. Mediation Arrangements

The mediation arrangement is originally contained in Number 1 Article 154 *Rechtsreglement voor de Buitengewesten* (hereinafter referred to as R.Bg) and Article 130 *Herziene Indonesisch Reglement* (hereinafter referred to as HIR) stating: "If on the appointed day, both parties are present, then the court through the chairman of the session tries to reconcile them". Article 154 R.Bg/130 HIR is known as the dading institution or the peace institution. Furthermore, mediation is regulated by Perma No. 2 of 2003 which has been replaced by Perma No. 1 of 2008, and the last is regulated in Article 1 Number 1 of Perma No. 1 of 2016.

B. Concept of Mediation

Mediation comes from the Latin *mediare* which means to be in the middle. [15] In English, *mediare* is the equivalent of mediation, meaning dispute resolution involving a third party as an intermediary or dispute resolution mediating, the person who mediates is called a mediator. [16] Furthermore, Article 1 Number 1 of Perma No.1/2016 states that mediation is "The method of dispute resolution through a negotiation process to obtain an agreement between the parties with the assistance of a mediator."

C. The Principle of Mediation

The principle in carrying out mediation is a guideline for a mediator to think or act in carrying out the mediation, including maintaining the confidentiality of the parties, neutrality, non-judicial, voluntary, time-saving, cost-effective and others.

D. Benefit of Mediation

The benefit of mediation is that the parties can resolve disputes based on an agreement in a fair, voluntary and mutually beneficial manner. Even in failed mediation, where the parties have not reached an agreement, the benefits have actually been felt. The willingness of the parties to meet in the mediation process has at least been able to clarify the root of the dispute and narrow down their dispute. [17]

E. Mediation in Islamic Perspective

In Islamic law, mediation is known as *ishlah* and *hakam*. *Al-ishlah* in Arabic means repairing, reconciling and eliminating disputes or damages. The word *ishlah* appears in Surah Al-Baqarah verses 220 and 228, in Surah An-Nisa' verses 35 and 113, Surah Hud verse 87, and Surah Al-A'raf verses 55 and 85. [18] In the Qur'an 'an, the term *hakam* (peacemaker) is found in Surah An-Nisa verse 35 and peace in Islam is highly recommended because it avoids the destruction of the friendship and the enmity between the disputing parties can be ended. [19]

F. Concept and role of mediator

Article 1 Number 2 of Perma No.1 of 2016 states that: "Mediator is a judge or other

party who has a certificate of mediator as a neutral party who assists the parties in the negotiation process to seek various possible dispute resolutions without resorting to a way of deciding or imposing a settlement". Based on the regulation, a mediator can come from a career judge or a non-career judge (namely someone who already has a mediator certificate). The most important personal abilities of a mediator are to be non-judgmental and impartial, to listen, and to act wisely.

G. COVID-19 at glance

COVID-19 is a pandemic and a pandemic is "an epidemic that spreads simultaneously everywhere, covering a large geographic area". [20] Other measures to prevent the spread of the coronavirus include travel restrictions, quarantines, curfews, event delays and cancellations, and facility closures. [21]

MATERIAL AND METHOD

1. Research location

The research location is PNLP Class I A located at Jalan Jenderal Sudirman Number 58 Lubuk Pakam, Deli Serdang, North Sumatra, Indonesia. The reason for choosing PNLP is that this court belongs to Class I A category, so that many cases or disputes are registered, and this court has an accreditation rating of A; moreover, this court, based on the results of a community satisfaction survey (SKM) in the second semester, in the third quarter of 2021, got a score of 91.21 with service quality A (very good) and based on the results of the anti-corruption perception survey (SPAK) in the second semester, in the third quarter of 2021, it got a score of 3.60 with best service quality, free from corruption, and open in providing data and information access services.

2. Nature and type of research

This research is descriptive [22] with the type of research being normative juridical (seeing law as a norm (*das sollen*)) based on secondary data, for example various literature sources, and empirical juridical

(law as a social, cultural or *das sein* reality) with the support of primary data and with interviews and questionnaires.

3. Population and samples

Population is all objects that have certain characteristics in common. In this study, the population is all mediators, both from career judges and other parties who have mediator certificates, who serve in PNLP. Furthermore, in order to obtain valid data, one informant is also determined, namely the head of the PNLP, 15 respondents comprising of five respondents whose disputes or cases have been through a mediation process prior to the examination of the main case, five advocates and five mediators. Furthermore, sampling is carried out using simple random sampling, namely taking sample members from the population at random without regard to the existing strata in the population. [23]

4. Data collection technique

A. Data sources

This research uses primary and secondary data: i) primary data is collected by interview, ii) secondary data is obtained from books and documents, iii) primary legal material is from Perma No.1 of 2016, Regulation No. 1 of 2019, Circular Letter of the Supreme Court Number 1 of 2020 concerning Guidelines for the Implementation of Duties During the Prevention of the Spread of Corona Virus Disease 2019 (Covid-19) within the Supreme Court and Judicial Bodies under it, and others, iv) secondary legal materials including journals, reference books, scientific works, and results of scientific research, and v) tertiary legal materials including materials from internet media, dictionaries, encyclopedias, and so on.

B. Data collection

Data collection is done through library research and field research. [24]

5. Data analysis technique

Primary and secondary data obtained or collected in this study was carefully analyzed qualitatively.

RESULT AND DISCUSSION

1. An overview of the Lubuk Pakam District Court

The vision of PNLP is to realize a great court and this vision is supported by its mission, namely to maintain the independence of the PNLP, provide fair legal services to justice seekers, improve the quality of leadership in PNLP, and increase credibility and transparency in PNLP. Historically, PNLP covers the entire area of Deli Serdang Regency and is domiciled in Tebing Tinggi City (Deli) as the center of government. Previously, PNLP only served as a place of trial (*Zitting Plaat*) and then served as a District Court, which was separate from the main Tebing Tinggi District Court (Deli).

High volume of cases within the PNLP jurisdiction then led to an increase in class to class I-A. The court venues located in Pancur Batu and Labuhan Deli districts continue to be used as an effort to carry out their functions as judicial institutions. In carrying out these judicial duties and functions, the PNLP has the authority to examine and adjudicate civil and criminal cases within the Deli Serdang Regency government and parts of the Serdang Bedagai government. PNLP has a motto that is transparent, efficient, responsive, excellent, honest and independent. [25]

2. Survey results and resources

Based on the results of the community satisfaction survey (SKM) in the second semester of the fourth quarter of 2021, which was carried out by the PNLP, for justice seekers, it resulted in an SKM score of 94.44, with the quality of service letter A (very good). Furthermore, based on the anti-corruption perception survey (SPAK) in the second semester of the fourth quarter of 2021, the score was 3.77, with the quality of service being free from corruption. In

February 2022 PNLP experienced an increase in accreditation from B to A. [26] PNLP has 27 human resources, especially judges, including 1 PNLP chairman, Rosihan Juhriah Rangkuti, SH., MH and 1 deputy chairman, Raden Heru Kunto Dewo, SH., MH. There are 28 clerks, including 1 Registrar, Syawal Aswad Siregar, SH., M.Hum and nine non-permanent employees. PNLP, before July 2021, had two certified mediators who were not career judges but one of them resigned. There are 12 certified mediators from career judges before July 2021. In July 2021, due to the large number of cases in PNLP while the number of mediators from certified career judges is limited, then based on this need, the chairperson of PNLP appointed all judges in PNLP as mediators. Thus, the number of mediators from career judges is 27. [27] This policy is in line with Article 13 of Perma No. 1 of 2016.

3. The effectiveness of the mediator's role in reducing cases

At the initial stage of the trial, before the examination of the main case is carried out by the panel of judges, the judge is obliged to order the parties to meet with the mediator as stipulated in Perma No. 1 of 2016. The mediator is a certified career judge appointed as mediator or not a career judge who has a mediator certificate. A mediator, if successful in reconciling the parties, can reduce the buildup of the number of cases in PNLP by judges. Regarding the role of mediator, the results of the questionnaire from respondents in PNLP are grouped into three parts:

i) judge as certified-mediator

Interviews with certified judges about their role indicate that they view their role as 1) very strategic (because if the mediator succeeds in reconciling the parties, the case does not reach the trial stage, thereby reducing the build-up of cases), 2) being a facilitator (they encourage the parties to in conducting mediation), and 3) very important (because if peace is reached it will reduce the number of cases). Thus, their role is in accordance with Article 14 of Perma No. 1 of 2016. There are also certified judges and mediators who think that their role is insignificant and ineffective because they are only able to resolve a few cases so that their insignificance and ineffectiveness lead to accumulation of cases.

ii) Mediators certified as non-judge

There is only one certified mediator who is not judge (or non-judge) and he believes that his role in reducing the accumulation of cases is very helpful and influential, provided that he succeeds in reconciling two litigants. Thus, a mediator must have the ability and tricks when he gives direction and views on the mediation. [28]

iii) Advocates

Regarding the role of mediators in reducing the accumulation of cases, advocates consider their roles ineffective because of three circumstances: 1) mediation is only to fulfill formality requirements, 2) the parties are determined to win (especially if they have already done so, using the services of a lawyer), and 3) the parties defend their respective egos and interests. [29] The number of cases that have been mediated and successfully resolved in 2020-2022 can be seen in Table 1.

Table 1. Number of resolved and unresolved cases with and without mediation in 2020-2022

No.	Year	Number of cases	Number of mediated cases	Number of un-mediated cases	Mediation can not be applied	On-going mediation	Types of cases
1	2020	163	7 (4%)	147	4	5	Unlawful Acts, Divorce, Default, & Joint Assets
2	2021	185	7 (4%)	165	5	8	Unlawful Acts and Default
3	2022	45	8 (18%)	28	-	9	Unlawful Acts and Default
	Total	393	22	340	9	22	

Source: Lubuk Pakam District Court, February 2022

Table 1 shows that out of 393 cases, only 22 (5.6%) were successfully mediated, 340 (86.5%) were unsuccessful, 9 (2.3%) mediation could not be carried out, and 22 (5.6%) mediation was in progress. Thus, the effectiveness of the mediator's role in reducing the accumulation of cases has not been achieved properly and Perma No. 1 of 2016 could not work. The success of mediation is divided into three categories: 1) successful with a peace deed (meaning that the case is successfully reconciled by the mediator, where the parties agree that their peace is made in a peace deed or *van dading*), 2) partially successful (meaning that mediation is successful only for partially, where the parties agreed to make peace only for part of the disputed case), and 3) succeeded with revocation (meaning that the mediation was successful because the parties agreed to make peace by removing the subject matter from the case register in court). [30]

The role of the mediator in reducing the accumulation of cases is not significant on the grounds that many civil cases require final certainty on the subject matter, causing the parties to refuse to reconcile. [31] In addition, the role of the mediator is not effective because the parties take their cases to court with the assistance of lawyers so that they survive with their respective egos. [32] According to the theory of legal effectiveness, Friedman offers three elements of the legal system, namely the structure of law (consisting of legal forms, legal institutions, legal instruments, and legal processes and performance), substance of the law (the disputing parties can achieving peace outside the trial and not continuing the case to be examined, tried and decided by the panel of judges), and legal culture (attitudes and values that are related to the law and the legal system, attitudes and values that influence the both positive and negative to behavior related to the law). [33]

According to Soekamto, whether or not a law is effective is determined by five factors: 1) the legal factor itself, 2) law

enforcement factors (those who make and apply the law), 3) target factors or facilities that support law enforcement, 4) community factors namely the environment in which the law applies or is applied, and 5) cultural factors as a result of creativity and taste based on human initiative in association. [34] Career judges who have this additional task prioritize and concentrate on their main duties, namely to examine, try and deal with the cases for which they are responsible. [35] Furthermore, the work of career judges with these additional duties was not evaluated, but received a reward from the Supreme Court, because based on reports from the head of the court to the Supreme Court, many mediations had been completed. [36] The cultures of the litigants, advocates and career judges with this additional task, of course also affect the ineffectiveness of the mediator's role in reducing the number of cases piling up in court, especially in PNLN.

4. Mediator barriers to carrying out the role

The mediator in carrying out his role to reconcile the parties to the dispute does not always run smoothly, but there are obstacles. Their obstacles include:

i) Number of mediators

The mediators in PNLN can be classified as, 1) mediators who have a mediator certificate, 2) career judges who have a mediator certificate, and 3) career judges with additional duties as mediators, because the availability of mediator judges is less than the number of cases in PNLN. There is only one mediator who has a certificate and 12 career judges who have a mediator certificate [37] so that the case is mediated in moderation and in a hurry, just to fulfill the formalities ordered by Perma No. 1 of 2016, and finally the mediation failed and peace was not achieved. [38] A mediator who performs a lot of mediation tasks get a high score, and get a reward even if the mediator does not work optimally.

ii) Mediator's quality

In general, the quality of mediators is good, but they lack of knowledge, skills and tricks because the object of the case is different, and the parties are also different. Furthermore, the obstacle to the quality of the mediators is the lack of motivation and persistence in resolving cases. Career judges (judge mediators) are of the opinion that mediators (both judge mediators, certified mediators, and mediators from career judges) lack of a clear orientation in conducting mediation. [40]

iii) The parties of the litigation

The obstacles faced by the mediators are:

a) The selfishness of each party

The parties to the litigation feel collateral to make peace with their opponents in order to maintain self-respect, anger and revenge.

b) The parties elect career judges with additional duties as mediators.

There are 27 career judges (12 of them have mediator certificates and 15 judges have additional duties as mediators). It turned out that the parties chose career judges with additional duties as mediators but they were unable to carry out their additional duties optimally and professionally; they viewed their main task as examining, adjudicating and deciding cases. In addition, the parties who chose career judges with additional duties as mediators did not issue a budget for the services of these mediators. However, they have to spend money if they chose and used a certified mediator.

iv) Less certified mediators in PNLP than in the Religious Courts

The number of certified mediators is less, but there are more mediators from career judges with additional duties as mediators; however, these two groups of mediators, together, cannot play their full role. Career judges do not yet have a clear orientation in mediating. [41] Almost no certified mediators were involved but career judges with additional mediator duties play a greater role. Supposedly, certified mediators

are given the opportunity to serve in PNLP. [42]

v) Mediator without honorarium

Certified mediators only receive honorarium from the litigants but do not receive honorarium from the government and so do career judges with additional duties as mediators. [43]

vi) No evaluation of the implementation of mediation by career judges

The Supreme Court did not evaluate the report made by the head of the PNLP regarding the results of the mediation (there is no evaluation of the implementation of mediation by career judges with additional duties as mediator), whether the results of the van dading deed mediation, the mediation was partially successful, or the mediation was successful with the revocation of the case. [44]

vii) Unprofessional lawyer

The next obstacle is related to the existence of advocates who advocate for their clients not to make peace with their opponents, even though their cases are actually reconciled. Advocates, it seems, have a personal interest above the interests of their clients, considering the cases they handle to be personal matters. [45]

viii) The unavailability of mediator

Mediators who are not on standby become obstacles even though they are provided with a complete mediation room. [46] There are two certified mediators but only one is seen. [47]

ix) Multitude number of cases

Another inhibiting factor is the large number of cases so that the effectiveness of the mediator's role is not optimal even though PNLP has Class I A status. [48]

x) The type or object of the case

Cases that are mediated or not mediated are regulated in Article 4 Paragraphs (1) and (2) of Perma No. 1 of 2016, for example all

civil disputes, for example cases of resistance (verzet) against verstek decisions and resistance by litigants (partij verzet) and third parties (derden verzet) against the implementation of decisions that have permanent legal force, must first seek a settlement through mediation, unless otherwise stipulated based on the Regulation of the Supreme Court. If more cases are registered, they are excluded from the obligation to settle through mediation, then the effectiveness of the mediator in carrying out his role in reducing the accumulation of cases is not achieved. Effective and successful mediation is intended for business and inheritance cases, while the most difficult case to settle amicably is divorce [49] as shown in Table 2.

Table 2. Effective and ineffective cases for mediation

No.	Type of cases	
	Effective and successful	Ineffective and unsuccessful
1	Business	Divorce
2	Inheritance	Estate
3	Defaults, debts and receivables	Act against the law

Source: Interviews with certified mediators, advocates, and judge-mediators

Business cases are effectively and successfully reconciled through mediation because the litigants are aware that they have wasted time and money and even their reputation is bad. The inheritance case was resolved because each of the litigants received suggestions during mediation. Default cases (in this case debts) were successfully reconciled by rescheduling the debt repayment. Divorce cases are difficult to resolve because husband and wife do not live together anymore and one or both of them already have a new partner. Regarding land cases and illegal acts, the litigants feel that they have no way or gap to make peace. [50]

xi) Limiting the mediator’s movement

According to career judges who are certified-mediators, Perma No. 1 of 2016 turns out to limit the movement of mediators to mediate, for example, mediation is prohibited outside the court but

must be in court (see Article 11 Paragraphs (2) and (3) of Perma No. 1 of 2016) and even must be in the mediation room in court or outside the court agreed upon by the parties (see Article 11 Paragraph (1) of Perma No. 1 Year 2016). Thus, the contents of Article 11 Paragraph (1) with Article 11 Paragraph (2) and (3) contradict each other. [51] In terms of legal effectiveness, the role of the mediator is clearly ineffective.

In terms of the structure of law, organization, management (procedures) and human resources of the apparatus, PNLN already has these components, but the additional duties of career judges as mediators are not carried out seriously. In terms of substance of the law, the number of cases that have been successfully mediated has not been achieved properly and in terms of legal culture, the public actually trusts the law and the legal process. Advocates who are not professional in the implementation of mediation are found where they do not advise their clients to make peace. Judge mediators with additional duties do not work hard. This research is relevant to the research by Simbolon. [52]

The mediation method, whether offline or online, has followed Article 4 of the Supreme Court Regulation Number 1 of 2019, Regulation of the Supreme Court Number 1 of 2019, Circular Letter of the Supreme Court Number 4 of 2020 concerning the Third Amendment to the Circular Letter of the Supreme Court Number 1 of 2020, Article 5 paragraph (3) Perma No. 1 of 2016, and Article 6 paragraph (2) of Perma No. 1 of 2016.

CONCLUSIONS AND RECOMMENDATIONS

Conclusions

The study concludes that: 1) the effectiveness of the mediator's role has not been achieved or is not effective, 2) the obstacles faced by the mediators are the shortage of mediators, the egoism of the litigants, career judges with additional duties as mediators do not work seriously, the absence of evaluation from the Supreme

Court, unprofessional advocates, and several objects of cases that cannot be mediated, and 3) obstacles related to the effectiveness of the work of mediators can be solved by increasing the number of mediators, by participating in scientific forums such as FGDs, seminars, training and others, by increasing the professionalism of advocates' work, by evaluating by the Supreme Court, by applying punishment to judge mediators and career judges who are given additional duties as mediators, and by honorarium from the government to mediators.

Recommendations

The researcher provides several suggestions, namely, 1) the PNLK chairman assigns all judges as mediators, 2) the PNLK chairman increases the number of judges who have a mediator certificate or asks judges who do not have a mediator certificate to attend mediator training, 3) mediators are required to participate in scientific forums, 4) Perma No. 1 of 2016 must be socialized to the public so that they understand the purpose and objectives of mediation, 5) advocates must behave and act professionally in the mediation process, 6) there is an evaluation of the performance of mediators, and 7) judge mediators, except certified mediators, must receive an honorarium.

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