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Comparison of Mediation in The Court and Outside the Court in Resolving State Administrative Cases

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ABSTRACT

Disputes in legal relations that arise in the community are a natural thing as a result of a consequence of the legal relationship. In practice, the process of resolving disputes can be carried out within the court and outside the court, the determination of which is chosen by the disputing party. In the process before a dispute resolution is carried out, mediation efforts are made first. which aims to take steps that are mutually beneficial to both parties to the dispute. Regarding the mediation effort, it raises the question whether the process ns equally between mediation carried out in court and mediation efforts carried out outside the court Dispute resolution as mediation has been known since the first in Indonesia because of the customs system in resolving a case always uphold discussion and consensus through traditional forums of each region in Indonesia. As it grows by time, this is enforced in the court (Court Connected Mediation) as form of justice law.

1. INTRODUCTION

The Republic of Indonesia, as a legal state based on Pancasila and the 1945 Constitution, aims to create a prosperous, safe, peaceful, and orderly state and national life system. In this way of life, the equal status of citizens under the law is guaranteed. However, the implementation of various functions to ensure equality of position and individual rights in society must be adapted to the outlook on life and personality of the state and nation based on Pancasila so as to achieve prosperity, balance, and harmony between individual interests and the interests of society or the public interest.

Law Number 5 of 1986 concerning the State Administrative Court, which was passed on December 29, 1986 (LN1986/Number 77 TLN Number 3344), which is also called the State Administrative Court, is essentially an embodiment of the principle that Indonesia is a State of Law as stated in required by the 1945 Constitution.

The importance of the State Administrative Court is currently felt by the majority of Indonesian people who want to maintain a sense of comfort and a sense of justice in society in connection with the increasing role and intervention of the government in all aspects of community life. The government is trying to achieve these national development goals so that it, through its apparatus in the field of State Administration, is required to play an active, positive role in people's lives. Establishing a State Administrative Court is part of legal development to resolve conflicts of interest, disagreements, or disagreements between State Administrative Bodies or Officials and members of the public. The State Administrative Court was established to provide protection to people seeking justice who feel they have been disadvantaged due to a State Administrative decision. The word "mediation" comes from the English "mediation," which means dispute resolution involving a third party as a mediator or resolving disputes by mediating; the person who mediates is called a mediator or the person who mediates. Juridically, the meaning of mediation can be found in Article 1 number 1, PERMA RI Number 1 of 2016 concerning Mediation Procedures in Court, which states that: "Mediation is a method of resolving disputes through a negotiation process to obtain agreement between the parties with the assistance of a mediator." The purpose of mediation. It is to help reach a compromise solution that is seen as beneficial to both parties. Amendment II of the PTUN Law does not regulate the concept of mediation in resolving cases. However, this does not rule out the possibility that justice seekers highly anticipate the practice of mediation at the PTUN in the future.

This mediation concept aligns with the Fourth Principle of Pancasila values, which emphasizes resolving all disputes by deliberation to reach a consensus. Seeing the problems that often arise in society, especially state administration cases that pile up in court, the principle of deliberation to reach a consensus in mediation must prioritize the principle of kinship to create a peaceful society in public life.

2. METHODS

The research methods used include normative juridical research, bearing in mind that the object of this research is to analyze and compare the characteristics of mediation inside and outside the court in resolving administrative disputes, the concept of mediation in resolving administrative disputes, and regulating the concept of mediation in resolving administrative disputes. State efforts

are based on Pancasila Justice values, and the specifications are descriptive. The data used is secondary data supported by primary data, with qualitative data analysis.

3. RESULT AND DISCUSSION

A. The mediation process is used to resolve cases in law courts

The mediation process in resolving cases in law courts involves a neutral third party, namely a mediator, to help the parties involved in the dispute reach an agreement. The main aim of mediation is to find a solution acceptable to all parties without involving the judge's role in decision-making. The following are the general steps in the mediation process in a court of law:

1. Selection of Mediator:
The parties involved in the dispute choose a neutral mediator with expertise in dispute resolution.
2. Introduction:
The mediator explains the role and process of mediation to the parties involved. The mediator can also set ground rules to ensure fairness and transparency.
3. Problem Statement:
Each party is allowed to explain their version of the problem at hand.
4. Identify the Problem:
The mediator helps identify the main issues and interests of each party.
5. Solution Search:
The parties jointly seek solutions to meet their interests and solve the problem.
6. Deal Making:
If a solution has been found, the mediator assists in making an agreement outlined in a written agreement.
7. Implementation:
The agreement that has been made can be submitted to the court for formalization or compliance.
8. Conclusion.
The mediation process ends with signing a dispute resolution agreement. If mediation is unsuccessful, the parties can continue the litigation process in court.

The mediation process in a court of law has advantages, such as time and cost savings, compared to a formal litigation process. Additionally, mediation gives the parties involved more control over the outcome of their dispute resolution.

B. Mediation outside the court and inside the court

1. Out-of-court mediation

Out-of-court mediation in Indonesia is covered by Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution; this can be seen in Article 6, which reads:

- a. "Disputes or differences of opinion can be resolved by the parties through alternative dispute resolution based on good faith by setting aside litigation settlement in the District Court.

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- b. Settlement of disputes or differences of opinion as intended in paragraph (1) shall be resolved in a direct meeting between the parties within a maximum period of 14 (fourteen days), and the results shall be stated in a written agreement.
 - c. If a dispute or difference of opinion as intended in paragraph (2) cannot be resolved, then based on the written agreement of the parties, the dispute or difference of opinion is resolved through the assistance of one or more expert advisors or a mediator.
 - d. If the parties, within a maximum of 14 (fourteen) days, with the assistance of one or more expert advisors or through a mediator, cannot reach an agreement, or the mediator cannot bring the two parties together. The parties can contact an arbitration institution or an alternative dispute resolution institution to appoint a mediator.
 - e. After appointing a mediator, arbitration institution, or alternative dispute resolution institution, mediation efforts must be started within a maximum of 7 (seven) days.
 - f. Efforts to resolve disputes or differences of opinion through mediators as intended in paragraph (5) by upholding confidentiality within a maximum period of 30 (thirty) days, an agreement must be reached in written form signed by all parties concerned.
 - g. A written agreement to resolve disputes or differences of opinion is final and binding on the parties to be implemented in good faith. It must be registered in the district court within 30 (thirty) days from signing.
 - h. The agreement for resolving disputes or differences of opinion as intended in paragraph (7) must be completed within 30 (thirty) days of registration.
 - i. If the peace efforts as intended in paragraphs (1) to paragraph (6) cannot be achieved, then the parties based on a written agreement can submit efforts for settlement through an arbitration institution or ad hoc arbitration."

Then, the Supreme Court Regulation Number 1 of 2008 also "contains a link between the practice of mediation outside the court which results in an agreement. Article 23 of this Supreme Court Regulation regulates the legal procedures for obtaining a peace deed from the Court of First Instance for a peace agreement or mediation out of court." The procedure is "by filing a lawsuit which is accompanied by a peace agreement text or document and the peace agreement is the result of negotiations between the parties mediated or assisted by a certified mediator. The peace agreement document can be submitted as a lawsuit to obtain a peace deed to the court of competent authority. The plaintiff of the lawsuit is the party who, in this dispute, dispute has suffered a loss.

2. Mediation in court

The integration of mediation in the court process is "to facilitate, strive seriously to help the parties to the dispute overcome all obstacles and obstacles to achieve justice that is simple, fast and low cost through negotiation, deliberation and ignoring the law to reach a peace agreed upon by both parties. Party". In the context of the court's earnest efforts to help the parties to such disputes, Satjipto Rahardjo stated that "enforcing the law is not the same as applying laws and procedures. Upholding the law is more than that within the law administrators". This means "in law enforcement, we do not only rely solely on intellectual intelligence (based on laws or written regulations as a source of law), but also by combining conscience, because the truth is already in the heart of every human being, which must be understood and owned by every organizer or law enforcer as well as parties seeking justice." Thus, "the essence sought in resolving disputes or cases by integrating mediation into court proceedings is justice because the desires of both parties can

be fulfilled, no one feels defeated or humiliated, but on the contrary, both parties feel respected, thereby fulfilling the deepest essence of the human ego, namely glory or Gloria always to want to be respected, always want to be superior to other humans."

The Supreme Court Regulation Number 1 of 2008 contains "ten principles governing the use of integrated mediation in court (court-connected mediation). These ten principles are as follows":

First, "Mediation must be taken before the dispute is decided by a judge; the parties must go through mediation. If the mediation process is not taken or a dispute is immediately examined and decided by the judge, the legal consequence is that the decision is null and void. This provision is contained in Article 2 paragraph (2) Supreme Court Regulation Number 1 of 2008". Some legal experts may question the principle of mandatory use of mediation because the HIR and RBG, which regulate "procedures for resolving civil disputes in court, do not mention mediation, whereas this Supreme Court Regulation, whose legal status in the order of statutory regulations is so low that its contents may not create a new norm.". However, the Supreme Court understands that "efforts to resolve disputes or civil cases through mediation are conceptually and essentially the same as peace efforts as required by Article 130 HIR or 154 Rbg. Thus, mediation does not deviate from the procedural law regulated in HIR and Rbg but can strengthen efforts of peace required by HIR and Rbg.

Second, the autonomy of the parties. The principle of autonomy of the parties is a principle inherent in the mediation process. In mediation, the parties can determine and influence the process and its results based on a consensus mechanism or consensus between the parties with the help of a neutral party. This principle is known as self-determination. Namely, the parties have the right or authority to determine whether to accept or reject everything in the mediation process."

Third, mediate in good faith. Mediation is "a process of resolving disputes through deliberation and consensus of the parties which will be able to run well if it is based on the intention to resolve the dispute."

Fourth, time efficiency. Time is an essential factor in resolving a dispute or case. Time is also related to legal certainty and the availability or utilization of existing resources. The principle of time efficiency in Supreme Court Regulation Number 1 of 2008 is seen in regulating time limits for parties. Parties in negotiations to choose a mediator among the options as stated in Article 8 paragraph (1)."

Fifth is mediator certification. Agung Court Regulation Number 1 of 2008 encourages the birth of professional mediators. This tendency can be seen from the provision that, in principle, "every person who carries out the function of the mediator is required to have a mediator certificate which was obtained after attending training organized by an institution that has obtained accreditation from the Supreme Court of the Republic of Indonesia."

Sixth, Mediator Responsibility. Mediators have procedural and facilitative duties and responsibilities. These duties are reflected in the provisions of Article 15 of Supreme Court Regulation Number 1 of 2008, namely: "preparing proposed meeting schedules for the parties, encouraging parties to directly participate in the mediation process, holding caucuses, encouraging

parties to explore or explore their interests and seek the best possible resolution options in their judgment."

Seventh, confidentiality. In contrast to the litigation process, which is open to the public, the mediation process is, in principle, closed to the public unless the parties wish otherwise. This means "only the parties or their legal representatives and the mediator may attend and play a role in the mediation session, while other parties may not attend it unless with the parties' permission."

Eighth, financing. Funding related to the mediation process includes at least the following: "availability of mediation rooms, honoraria for mediators, fees for experts if needed, and transport costs for parties who come to meetings or mediation sessions."

Ninth, repetition of mediation. Article 18 paragraph (3) of Supreme Court Regulation Number 1 of 2008 gives "the authority to the case examining judge to continue to encourage the parties to reach peace after the failure of the mediation process at the initial stage or the stage before the case examination begins. After entering the direct mediated examination stage by the examining judge, the peace process begins."

Tenth, peace agreement outside the Court. Supreme Court Regulation Number 1 of 2008 is intended to regulate the principles and procedures for mediation in cases or civil disputes submitted to the Court (court-connected mediation). However, as an effort to further strengthen the use of mediation in the Indonesian legal system and To minimize the emergence of legal issues that may arise from the use of out-of-court mediation, the Supreme Court, through Supreme Court Regulation Number 1 of 2008, also contains provisions that can be used by disputing parties which have succeeded in resolving the dispute through out-of-court mediation to request the Court so that the peace agreement outside the Court is strengthened by a peace deed." Initially, mediation in Court tended to be facultative/voluntary. However, now it is becoming imperative/compulsory. It can be said that mediation in this Court is "the result of the development and empowerment of peace institutions as regulated in the provisions of Article 130 HIR/154 Rbg, which requires judges who hear a case to strive for peace between the parties to the case earnestly."

C. Benefits obtained from the use of mediation in resolving disputes in the PTUN, both for the disputing parties and for the administrative justice system

Mediation in resolving disputes at the State Administrative Court (PTUN) or administrative court has several advantages, both for the parties to the dispute and the administrative justice system. Here are some of the benefits that can be obtained:

1. The mediation process tends to be faster and more economical than the formal litigation process. Disputing parties can avoid additional costs associated with lengthy trials.
2. Relationship Maintenance:
Mediation allows disputing parties to maintain good relations in the future. A collaborative mediation approach can minimize the risk of conflict and assist in building mutual understanding.
3. Control over Results:
The disputing parties have greater control over the outcome of the mediation. They can reach an agreement that meets their respective interests, while in the litigation process, the judge makes the decision.

4. Confidentiality:

The mediation process is often confidential and not open to the public. This can help disputing parties to talk more openly without worrying that the information they share will be used against them.

Benefits to the Administrative Justice System:

1. Reduction of Court Workload:

By using mediation, some disputes can be resolved out of court, reducing the courts' workload and allowing them to focus on cases that require resolution through the formal litigation process.

2. Justice System Efficiency:

Mediation helps improve the efficiency of the justice system by resolving disputes more quickly, allowing judges to focus on cases that require the court's attention.

3. Fulfillment of Leadership Principles:

Mediation reflects a proactive leadership approach to resolving disputes that supports the principles of justice and legal certainty.

4. Mediation Skills Development:

Integrating mediation in the administrative justice system can build mediation skills among legal professionals, judges, and mediators, improving their ability to handle conflict.

Mediation in the Administrative Court can provide effective and efficient solutions to administrative disputes, create a more collaborative environment, and support fair and efficient law enforcement.

D. Comparison between dispute resolution outside the court and mediation in the PTUN court, especially in terms of efficiency, speed, cost, and satisfaction of the disputing parties

Submission of disputes (alternative dispute resolution. ADR) is a way to resolve precisions safely and efficiently without taking long and expensive steps in the court process. Submission of disputes can be done in two ways, namely through mediation in court and mediation outside of court. Mediation in court is a method of submitting disputes carried out in a particular room in court. In mediation in court, the parties to the dispute will be appointed by a mediator to help them resolve the dispute. The mediator will try to understand the perspectives of both parties and help them find a solution that meets the needs of all parties.

Out-of-court mediation is a method of submitting disputes carried out widely outside a particular room in court. In out-of-court mediation, the parties to the dispute will be appointed by a mediator appointed by both parties to help them resolve the dispute. The mediator will try to understand the perspectives of both parties and help them find a solution that meets the needs of all parties. Dispute resolution through in-court mediation and out-of-court mediation has the following differences and advantages:

Difference:

- a. In-court mediation is a method of submitting disputes, which is carried out in a particular room in the court. In contrast, out-of-court mediation is a method of submitting disputes carried out widely outside a particular room in the court.

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- b. Mediation in court is held by a mediator appointed by the court, while mediation outside the court is held by a mediator appointed by both parties.
 - c. Mediation in court must accept a final agreement (settlement agreement) from the parties to the dispute. In contrast, mediation outside the court does not have to accept a final agreement (settlement agreement) from the parties to the dispute.

The advantages:

- a. Mediation in court has advantages because the parties to a dispute can obtain legal policies from a mediator appointed by the court. In contrast, mediation outside of court does not have this advantage.
- b. Mediation in court has advantages because the parties to the dispute can avoid the costs and lengthy time involved in the court process. In contrast, mediation outside the court cannot always avoid the costs and lengthy time involved in the dispute resolution process.
- c. Out-of-court mediation has advantages because the parties to a dispute can avoid administrative costs and time in a particular courtroom. In contrast, in-court mediation cannot always avoid administrative costs and time in a unique courtroom.

4. CONCLUSION

From the results of the author's description above, it is concluded that every mediation, both in court and outside court, has its advantages. However, according to the author, when choosing mediation to resolve disputes, it is better to use mediation in court regarding efficiency, speed, cost, and satisfaction of the parties. Party. Through mediation in court, the parties are bound to obey. The final result of the mediation process is not long-winded; then, the mediator and his fee are also the court's responsibility so that the process becomes more efficient.

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