



LEGAL CONSTRUCTION OF MEDIATOR PROFESSION REGULATIONS TO ACHIEVE LEGAL CERTAINTY

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Abstract:

Peaceful conflict resolution has been practiced in Indonesian society for centuries. Indonesian society has experienced that peaceful dispute resolution has led them to a harmonious, fair, balanced life, and the preservation of communal values within society. Society strives to resolve their disputes quickly while upholding communal values and not infringing upon or suppressing individual freedoms. Indonesian society, like other societies around the world, feels that conflicts or disputes that arise in society should not be allowed to continue indefinitely, but rather efforts should be made to resolve them. The impact of conflicts not only worsens relations between parties but can also disrupt social harmony within society. The type of research used is normative legal research. The urgency of regulating the profession of mediator in the form of a law is aimed at achieving legal certainty, based on the philosophical reasoning that legal certainty can be based on the essence of justice achieved through deliberation, as in the Indonesian legal system, where deliberation is enshrined in the fourth principle of Pancasila. Through deliberation, justice can be achieved for the parties involved to build harmony after a conflict.

Keywords:

Legal; Media; Society

1. Introduction

Peaceful conflict resolution has been practiced in Indonesian society for centuries. Indonesian society has experienced that peaceful dispute resolution has led them to a harmonious, fair, balanced life, and the preservation of communal values within society. Society strives to resolve their disputes quickly while upholding communal values and not infringing upon or suppressing individual freedoms. Indonesian society, like other societies around the world, feels that conflicts or disputes that arise in society should not be allowed to continue indefinitely, but rather efforts should be made to resolve them. The impact of conflicts not only worsens relations between parties but can also disrupt social harmony within society.

In the history of Indonesian legislation, the principle of peaceful deliberation has also been used in the judicial system, particularly in the resolution of civil disputes. This is evident in a number of laws and regulations from the Dutch colonial period to the present day, which still include the principle of peaceful deliberation as one of the principles of the Indonesian judicial system.

Mediation is an alternative form of dispute resolution that has grown and developed in line with the growing desire of humans to resolve disputes quickly and satisfactorily for both parties. The philosophy behind mediation is that

humans do not inherently desire conflict or disputes, but these cannot be eliminated from the reality of human life. Humans continue to seek patterns of dispute resolution in order to fulfill their natural desire to live in peace, safety, justice, and prosperity. Based on this background, the problem is formulated as follows: the urgency of constructing legal regulations for mediators to achieve legal certainty in Indonesia.

2. Research Method

The type of research used is normative legal research.

3. Results And Discussion

3.1. The Existence of a Mediator as an Intermediary between the Disputing Parties

Article 1 of Supreme Court Regulation (PERMA) No. 1 of 2016 concerning Mediation states that Mediation is a method of dispute resolution through a negotiation process to reach an agreement between the Parties with the assistance of a Mediator. A Mediator is a Judge or another party holding a Mediator Certification, acting as a neutral party to assist the Parties in the negotiation process to explore various possibilities for resolving the dispute without resorting to adjudication or imposing a resolution.

In court mediation, the mediator judge helps resolve disputes between two parties by talking to them. This is very important for resolving cases properly. Considering the provisions outlined in PERMA 1 of 2016 Article 2, particularly paragraph (1), it is clear that the mediator judge has a responsibility to bring about peace rather than impose decisions or use force. This principle is directly related to the content of Article 13(2) of PERMA 1 of 2016, which states that a judge without certification may act as a mediator when a qualified mediator is unavailable. Article 8 of PERMA 2016 on Mediation states that mediation may be conducted by judges, court staff, or non-judge mediators who are not court staff, provided they hold a mediator certification. Non-judge mediators are increasingly involved because they are believed to have qualitative advantages over judge mediators due to their educational background, experience, and profession. A non-judicial mediator may have a varied educational background (not only from law school). This is certainly very useful for viewing a dispute not only from a legal perspective, but also from various multidisciplinary aspects. (Pranadita, 2019) In addition, non-judicial mediators are increasingly involved in the mediation process for court cases, given the heavy workload of judges.

3.2. The Urgency of Enacting a Law on Mediators

Pancasila legal philosophy emphasizes the aspect of justice as the highest goal of law, which is elaborated through court decisions. Law is not only interpreted in black and white and in writing, but must be viewed broadly and comprehensively. In short, the philosophy of Pancasila law mandates that courts must decide cases in a comprehensive and progressive manner. Deciding comprehensively means that courts should not be confined solely to legal-formal elements of the law but must strive to consider various other factors to ensure that justice is truly realized. Meanwhile, deciding progressively means that the enforcement of law is not merely bound by the implementation of regulations, but is responsive to the legal will of society. (Nasihuddin, 2024)

Before the state regulated mediation and the movement of non-governmental organizations, some indigenous communities already had institutions that performed mediation functions. These institutions can take the form of agencies, organizations, or offices that provide mediators and mediation meeting facilities for use by disputing parties. Some of the institutions that provide mediators are public institutions, while others are private institutions that provide services in exchange for fees or remuneration. Institutions that perform mediation functions in Indonesia do not always obtain explicit authority to perform mediation functions from the laws and regulations that form the basis for their establishment, but due to empirical needs, through interpretation of the provisions regarding their functions, these institutions then perform mediation functions.

Today's society no longer judges a person's ability to help resolve problems solely on the basis of their age, experience, or wisdom. When seeking a mediator, society demands someone who has knowledge of the issues at hand and has achieved high standards in the field of dispute resolution and their social environment. (Margono, 2004)

Based on the above criteria, if mediation is expected to play a meaningful role in society, this dispute resolution option needs to be institutionalized. Although it is not new to Indonesian society, the form of mediation that is to be developed must be clearly introduced to the public so as not to give rise to abuse. If negotiation/arbitration is to be

made a profession, a common perception and understanding are of utmost importance. Furthermore, the development of the mediator profession in Indonesia must align with international rules and professional ethics codes.

Theoretically, the establishment of mediator legislation here is not limited to the existence of a law regulating the mediator profession alone, but also includes the existence of institutional mechanisms that enable a profession, namely mediators, to carry out their duties and responsibilities as well as possible to provide a sense of justice to the community.

3.3. Construction of the Law on Mediators to Achieve Legal Certainty

The types of organizations that exist operate within three spheres of communal life: the state, civil society, and the market. The distinction and even separation of these three domains must be adopted as a new perspective in understanding modern organizations. Moreover, there is an increasingly strong view today that the organizational communities within the state, civil society, and market domains must be in a balanced and mutually supportive position to sustain the nation's progress. Therefore, in preparing state regulations for various forms and types of organizations, it is important to consider (i) the principle of separation (decoupling) between the state, society, and the business world, (ii) the principle of "legal and constitutional organization," (iii) the principle of "good governance," and (iv) the need for "organizational empowerment" in order to (v) realize the principle of "freedom of association" which (vi) continues to guarantee, reflect, and not diminish the meaning of the principles of freedom of belief, freedom of thought, and freedom of expression. (Asshiddiqie, 2021)

Mediator organizations are grouped together in a similar training and development forum based on similarities in activities, professions, functions, religion, and belief in God Almighty. What is meant by "a similar training and development forum" is the formation of a National Mediation Council that carries out training functions for mediator organizations in Indonesia.

3.4. Appointment, Oath, Status, Enforcement, and Dismissal of Mediators

A mediator should be selected from among individuals with expertise and professionalism, with the aim of ensuring that the steps taken to resolve the conflicts they handle can be carried out in a timely manner while upholding the professional code of ethics for mediators. Professionalism as a mediator is a key support and is crucial in performing the duties of a mediator, particularly in the mediation process.

The ideal appointment of a mediator involves several stages, including specialized mediator professional education (PKPM) and a professional mediator examination/certification. One of the most important aspects in enforcing violations of the code of ethics begins with public awareness (people knowledge) and understanding of the mediator's code of ethics. The public may file a complaint if they feel they have been wronged by alleged violations of the code of ethics by a mediator in the course of their work. Complaints about a mediator's actions must be submitted in writing, accompanied by the reasons for the complaint, and submitted to the Branch/Regional Honorary Council where the mediator is domiciled.

3.5. Immunity Rights as Protection for the Mediator Profession

Immunity rights are the freedom of mediators to take or refrain from taking any action or to disclose or refrain from disclosing opinions, information, or documents to anyone in the performance of their duties, so that mediators cannot be punished for performing their duties. By granting immunity rights to mediators, it is hoped that the professionalism and integrity of mediators themselves will be enhanced. This is because in performing their duties, mediators only act as facilitators for the disputing parties. The final outcome of mediation is the best possible solution and represents an agreement between the parties, so the mediator cannot be held liable either civilly or criminally. If a mediator is investigated by the police, provided that the investigation is related to their work or profession, the police may only act if they have first sought clarification from the organization overseeing the mediator regarding the validity of the mediator's work.

The mediator organization's defense and assistance of its members in legal matters should be interpreted as defending the honor of the mediator profession from possible criminalization that could weaken the profession, as well as ensuring that the rights of its members are guaranteed. For mediators suspected of committing a criminal offense, their immunity rights no longer apply. This immunity has implications for the principle of equality before

the law; however, in certain circumstances, immunity is necessary not for the protection of an individual's interests but for the interests of enforcing the law. (Khambali, 2014)

3.6. Mediator Training and Supervision

The ideal mediator organization to be implemented in Indonesia at this time is one that is not a single entity but a multi-bar association. However, certain requirements must also be enforced so that the number of legally recognized mediator organizations is not too large, which could cause confusion among the public. Thus, clear regulations are needed regarding the authority of mediator organizations, which is different from the authority to ensure the standardization of the mediator profession. Additionally, there must be guarantees of uniform standards for the mediator profession, including a code of ethics and its enforcement, which requires a single regulatory body to ensure: (i) standardization of the mediator profession to improve the quality of mediators; (ii) easier and more reliable supervision of mediators because there is a single authoritative body (e.g., the Mediator Ethics Council) that can enforce the Code of Ethics; (iii) mediator organizations become stronger because they are not fragmented and therefore cannot be interfered with by outside parties; and (iv) justice seekers are better protected.

The proposed institutional model for mediator organizations is a multi-bar association model, as this model is considered more appropriate for the current situation in Indonesia, where there are more than 20 (twenty) mediator organizations. Currently, the multi-bar association model is already in practice in Indonesia. This is evident from the fact that there are various mediator organizations that conduct mediator certification, examinations, and graduations, as well as enforce their respective codes of ethics. There is a shared view that a framework is needed to ensure the emergence of strong, professional, and independent mediator organizations, including ensuring standardization of the mediator profession, particularly regarding mediator education, appointment and removal, the use and application of a common code of ethics, and its enforcement. In essence, there is a shared commitment to collectively uphold the dignity and standardization of the mediator profession, mediator organizations that can promote the enforcement of the supremacy of law and the rule of law, and protect the rights of citizens. In this context, what constitutes the 'single platform' should be placed within the context of professional standardization rather than the organization itself.

The Mediator Honorary Council is an institution or body that functions and has the authority to supervise the implementation of the mediator code of ethics as it should be and has the right to examine complaints against people who violate the mediator code of ethics. With the formation of the Mediator Organization, the Mediator Honorary Council has the authority to investigate and impose sanctions on mediators who violate the code of ethics. The inclusion of non-mediator elements in the Mediator Ethics Council is an effort to ensure balanced oversight and to ensure that the decisions of the Ethics Council are impartial.

4. Conclusion

The urgency of regulating the profession of mediator in the form of a law is aimed at achieving legal certainty, based on the philosophical reasoning that legal certainty can be based on the essence of justice achieved through deliberation, as in the Indonesian legal system, where deliberation is enshrined in the fourth principle of Pancasila. Through deliberation, justice can be achieved for the parties involved to build harmony after a conflict.

The legal reason is that there are no comprehensive regulations that reflect *lex scripta*, *lex cerea*, and *lex stricta* as guidelines for the profession of mediator in Indonesia, as well as a legal protection instrument. The sociological reason that dispute resolution through deliberation has been practiced since ancient times in traditional societies, as well as after mediation was regulated in court institutions, established as an alternative means of dispute resolution, and the development of efforts to achieve restorative justice in criminal cases.

The theoretical reason is that, from the perspective of Legal Purpose Theory, legal certainty is the primary guiding principle of law, meaning that law must be positive, i.e., it must apply with certainty. Law must be obeyed, and thus law is truly positive. Law is required to have certainty, meaning that it must not be subject to change. The construction of the law on mediators to achieve legal certainty includes: Mediator Organization, Appointment, Oath, Status, Disciplinary Action, and Dismissal of Mediators, as well as Immunity Rights as Protection for the Mediator Profession.

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