

COMPARISON OF IMPLEMENTATION OF ELECTRONIC MEDIATION IN INDONESIA AND MALAYSIA

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ABSTRACT

Mediation is a way of resolving disputes through the negotiation process to obtain an agreement between the parties with the help of a mediator. The benefits of mediation are to speed up the process of settlement of cases, save costs, reduce congestion and accumulation of cases in courts, improve access to justice for society, and so on. Pursuant to the provisions of Article 130 HIR/154 RBg, ex officio, the chairman of the judges' assembly on the first day of the hearing is obliged to offer peace to both parties to the dispute. The provisions on mediation in court are further regulated in the Regulation of the Supreme Court of the Republic of Indonesia No. 1 of 2016. Furthermore, the Supreme Court of the Republic of Indonesia also published SK KMA 108/KMA/SK/VI/2016 on the Administration of Mediation in the Court as technical provisions related to the method of mediation in court. Then in 2022, the Supreme Court of the Republic of Indonesia re-published the Regulation of the High Court of Indonesia No. 3 Year 2022 on Electronic Mediation in the Court. Electronic mediation is carried out with the support of information and communication technologies. The maintenance of electronic mediation is carried out in virtual spaces under the principles of voluntary, confidential, effective, secure, and affordable access. In the discussion of electronic mediation in this court, a comparison will also be made with the implementation of mediation, in particular electronic media, in Malaysia. This is to find similarities and differences in order to give a picture of the implementation of electronic mediation in Indonesia and Malaysia.

Keywords: electronic mediation, courts, comparison between Indonesia and Malaysia

INTRODUCTION

Mediation was chosen as an alternative dispute resolution method. Mediation is a process wherein the parties meet with a mutually selected impartial and neutral person, the mediator, who assists them in resolving their disputes. In this regard, mediation can be used to resolve both civil disputes out of court and within court (Wirnyaningsih, 2018) if the civil dispute is not excluded from the mediation proceedings by the applicable laws and regulations. Mediation is regulated in the Supreme Court Regulation of the Republic of Indonesia Number 1 of 2016 on Mediation Procedures in Courts (hereinafter referred to as Perma 1/2016). In the section considering Perma 1/2016, it is stated that mediation is an appropriate, effective way of resolving disputes in a conciliatory and amicable manner and can open wider access to the parties to achieve a satisfactory and just settlement. In Article 1 of Perma 1/2016, it is regulated that mediation is a way of resolving disputes through a negotiation process to obtain an agreement between the involved parties, assisted by a mediator. In the Large Dictionary of the Indonesian Language, the term "mediation" means the process of involving a third party in resolving a dispute as an advisor (KBBI, 1988). Through mediation, a negotiation proceeding is conducted between the two disputing parties that is flexible and kept confidential with the assistance of a neutral party called the mediator. The mediator is not the party who decides the dispute because the mediator does not have the authority to make a decision on the dispute; he is only mandated to assist and find out the issues arising between them. According to Goodpaster, mediation is a process of negotiation between disputing parties to find a solution, assisted by a neutral third party, to obtain an agreement that can satisfy both parties (Goodpaster, 1999). The form of agreement between the parties is set forth in an amicable agreement, which is a win-win solution. This indicates that the agreement between the two parties is made in an amicable agreement that benefits both parties.

There are several principles in mediation: a) the mediator who assists the mediation process is a neutral person who helps the parties to achieve a settlement of the dispute; b) mediation is a voluntary and confidential process that is non-binding until an agreement is reached; c) mediation is carried out without prejudice to the legal rights of the parties; d) if the mediation is not successful, then other dispute resolution methods can be taken by the parties (Manaf, 2014). In the mediation proceedings, there are useful values that live within the parties, such as the values of religious law, morals, ethics, and a sense of fairness to the facts obtained to reach an agreement. Based on Article 130 HIR and Article 154 RBg, on the day of the first session, which has been determined and attended by the parties, the judge has a duty to reconcile. If the parties are willing to make things amicable, an amicable deed will be drawn up. If the parties still want to continue the case, the judge shall order the parties to carry out the mediation process first. Thus, ex officio, the judge is obliged to offer reconciliation to the parties on the first trial day.

In addition, Article 3 paragraph (1) of Perma 1/2016 also states that every judge, mediator, party, and/or legal counsel shall follow the procedure for resolving disputes through mediation. Based on these provisions, the judge is obliged to follow the procedures for resolving disputes through mediation, and the judge, in his consideration, has a duty to state that he has formulated efforts to make amicable and, at the same time, cite the name of the mediator. In principle, all civil disputes submitted to court, including resistance (verzet), oververstek, and third-party decisions (derden verzet) against decisions that have permanent legal force, shall first seek settlement through mediation unless otherwise determined based on the Regulation of the Supreme Court of the Republic of Indonesia, such as simple lawsuits and others.

According to Article 3 paragraph (3) of Perma 1/2016, the case examining judge does not order the parties to mediate, thus they are not violating the provisions of the applicable laws and regulations regarding mediation procedures in the court. In addition, if the judge ignores the stages of the mediation process in the examination of the case, then the judge can be subject to sanctions, known as having violated the judge's code of ethics. If the case reaches the level of legal remedies, the high judge shall,

before deciding the case, address it to the prior SL decision, and thus the court of application conducts a mediation examination, and the results are sent back to the high court at the appeal level for the case to be decided (Suadi, 2020).

Based on Article 6 paragraph (1) of Perma 1/2016, the parties are required to attend the mediation meeting in person, with or without being accompanied by their attorney. According to Perma 1/2016, in trials that are carried out electronically, for the mediation stage, the presence of the parties is still required directly, either accompanied or not accompanied by their attorneys. Meanwhile, mediation meetings that are carried out using long-distance audio-visual communication media are still considered as direct presence according to Article 6 paragraph (2) of Perma 1/2016. Thus, meetings through audio-visual means, which allow all parties to see and hear each other directly and participate actively in the mediation, are also still considered a direct presence in the mediation stage according to Perma 1/2016. The presence of the parties at the mediation hearing is mandatory. The parties direct absence from the mediation process can only be done for valid reasons. According to Article 6 paragraph 4 of Perma 1/2016, the reasons for the absence of the parties are caused by:

1. "Health conditions that make it impossible to attend the mediation meeting based on a doctor's certificate,
2. Under the amnesty,
3. Have a residence, domicile, or domicile abroad,
4. Carry out state duties, professional demands, or jobs that cannot be abandoned."

However, at this time, with the issuance of Regulation of the Supreme Court of the Republic of Indonesia Number 3 of 2022 concerning Mediation in Courts Electronically (hereinafter referred to as Perma 3/2022), mediation can be carried out electronically with the support of information and communication technology. In the section considering letter d of Perma 3/2022, it is stated that the reason for the issuance of the Perma is because Perma 1/2016 does not clearly and in detail regulate the implementation of electronic mediation in court. Thus, the provisions in Perma 3/2022 are arrangements regarding electronic mediation to complement the provisions for mediation in court as stipulated in Perma 1/2016. This is strictly regulated in Chapter IV, the Closing Provisions, where Perma 1/2016 remains valid in electronic mediation as long as it is not specified otherwise in Perma 3/2022.

According to Article 1 paragraph (1) of Perma 3/2022, mediation in court electronically is a way of resolving disputes through a negotiation process to obtain an agreement between the parties, assisted by the support of information and communication technology. In principle, electronic mediation is carried out voluntarily, confidentially, effectively, safely, and with affordable access, as stipulated in Article 2 paragraph (1) of Perma 3/2022. Article 3 of Perma 3/2022 states that electronic means are an alternative procedure for court mediation in the event that the parties wish to conduct a mediation process using electronic means. Thus, electronic mediation is an alternative to the implementation of mediation in court, which can be done directly or by using a virtual space. According to Perma 3/2022, to conduct electronic mediation in court, both parties must agree. In the event that one of the parties does not agree to the implementation of electronic mediation, then the mediation will be carried out manually (Article 5 paragraph (2) of Perma 3/2022). Furthermore, based on the provisions in Article 4 paragraph (2) of Perma 3/2022, the case examining judge encourages the parties to mediate electronically.

The implementation of electronic mediation is carried out in a virtual space. The electronic mediation virtual room is a legal mediation place, as is the mediation room in court, as stipulated in Article 12 of Perma 3/2022. In Article 11 paragraph (1) of Perma 1/2022, it was stated that the electronic mediation meeting was held in a virtual space that was in the application that had been agreed upon by the parties. The electronic mediation virtual space is provided by the mediator (Article 11 paragraph 2), and the application costs are borne by both parties (Article 11 paragraph 3 of Perma 3/2022).

Given that the provisions regarding electronic mediation are still relatively new, the Supreme Court of the Republic of Indonesia continues to strive to disseminate the newly issued regulations by conducting scientific discussions, including implementing the Perma 3/2022 socialization program at universities in Indonesia. Therefore, an investigation into the matter to find out how Perma 3/2022 is implemented within the courts in Indonesia is needed. This research-based paper focuses on the application of electronic mediation in Indonesia. Based on the obvious description and issues, the research problems in the present study are as follows:

1. How is the regulation and implementation of electronic mediation in Indonesia according to the applicable laws and regulations?
2. What is the comparison of electronic mediation arrangements between Indonesia and Malaysia?

Based on the introduction and research problems stated above, the research objectives of this research consist of:

1. To assess the regulation and implementation of electronic mediation in Indonesia according to the current applicable laws and regulations.
2. To assess and seek out the differences in electronic mediation arrangements between Indonesia and Malaysia.

RESEARCH METHOD

The research method used to study and analyze problems in this research is normative legal research or normative jurisprudence, i.e., by describing various problems comprehensively and integratively (Soekanto and Mamudji, 2003) concerning the mechanism of electronic mediation in Indonesia. This research uses normative legal research methods, or library legal research, as legal research is carried out by studying library materials. The main source of data in normative legal research is secondary data or library data (Soekanto and Mamudji, 2003).

In legal libraries, the source of the data is called legal material. Legal material is anything that can be used or is necessary for the purposes of analyzing applicable law. Legal materials studied and analyzed in normative legal research consist of primary, secondary, and tertiary legal materials carried out using data collection techniques through the study of documents and library studies (Soekanto, 1986). Document study is the study of various documents, both those related to legislative regulations and existing documents (Soekanto, 1986).

The data analysis used is qualitative (Ali, 2011). The method of data analysis used is descriptive-analytical, i.e., the analysis of data used is qualitative analysis of secondary data. The descriptive includes the content and positive legal structure,

which is an activity carried out by the researcher to determine the content or meaning of the legal rules referred to in solving the legal problems that are the object of study (Ali, 2011).

THEORITICAL FRAMEWORK: REGULATION AND IMPLEMENTATION OF ELECTRONIC MEDIATION IN INDONESIA

Etymologically, the term "mediation" comes from the Latin *mediare*, which means being in the middle. This discloses that the third party has a role as a mediator to resolve disputes between the two concerned parties. Being in the middle means that the mediator shall be in a neutral and impartial position in resolving the dispute (Abbas, 2011). The definition of mediation emphasizes the existence of a third party who bridges the gap between the disputing parties to resolve their disputes. The mediator is in a middle and neutral position between the disputing parties by trying to reach an agreement; hence, results can be achieved that can satisfy and benefit both parties (a win-win solution). Based on the provisions of Article 130 HIR/154 RBg, the judge on the first trial day attempts to reconcile the two parties. According to Yahya Harahap, there are four basic criteria for reconciling the parties, cited as follows (Mulyadi, 2005):

1. Improving the relationship between the disputing parties through the negotiation phase by encouraging the parties to address direct communication,
2. Generating an agreement between the disputing parties,
3. The agreement is able to resolve disputes in a fair, impartial, cooperative, and humanistic manner,
4. Aligning actions and interests by prioritizing future interests and no longer debating prior disputes and animosities.

To encourage the parties to seek amicable settlement, the Supreme Court of the Republic of Indonesia issued Supreme Court Circular Number 1 of 2002 concerning the empowerment of the Court of First Instance in Implementing Amicable Settlement Procedures. Subsequently, on September 11, 2003, the Supreme Court of the Republic of Indonesia issued Regulation of the Supreme Court of the Republic of Indonesia Number 2 of 2003 concerning Mediation Procedure in the Court. In its development, Perma 2/2003 was later revoked and replaced with Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2008 concerning Mediation Procedure in the Court. However, Perma 1/2008 was deemed not optimal to meet the need for a more efficient mediation implementation and to increase the success of mediation in court. Therefore, on February 3, 2016, the Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2016 was promulgated on Mediation Procedure in the Court, which revoked the provisions of Perma 1/2008 (Rahmah, 2019). As the implementing regulation, SK KMA Number 108/KMA/SK/VI/2016 concerning Governance Mediation in the Court was issued.

The benefits of carrying out the mediation process in resolving disputes between the parties are delivered as follows (Waruwu, 2022):

1. Accelerate the dispute resolution process;
2. Through the mediation process, the cost of dispute resolution becomes lower;
3. Reduce congestion and the accumulation of cases in court;
4. Provide an opportunity for reaching an agreement between the parties in dispute resolution;
5. Streamline the path of justice (access to justice) for the community;
6. are closed or confidential;
7. Implementation of the agreement can maintain good relations between the parties in the future.

According to Article 2 of Perma 1/2016, it is stated that the provisions regarding mediation procedures apply in the public court and the religious court. Any court other than a public court and a religious court may apply mediation as long as it is permitted by the applicable laws and regulations. The disputes that are excluded from the mediation process according to Article 4 paragraph (2) of Perma 1/2016 are as follows (Indonesia, 2016): "Disputes whose examination at trial is determined by a grace period for completion which includes, among others:

1. disputes resolved through Commercial Court procedures;
2. disputes resolved through the procedures of the Industrial Relations Court;
3. objection to the decision of the Business Competition Supervisory Commission;
4. objection to the decision of the Consumer Dispute Settlement Agency;
5. request for annulment of the arbitral award;
6. objection to the decision of the Information Commission;
7. settlement of political party disputes;
8. disputes resolved through a simple lawsuit procedure and;
9. other disputes whose examination in court is determined by the grace period for completion in the provisions of laws and regulations."

In addition to the exceptions mentioned above, the following items are also excluded based on the provisions of Article 4 paragraph (2) of Perma 1/2016 (Indonesia, 2016), namely:

- a. a dispute whose examination is carried out without the presence of the plaintiff or the defendant who has been duly and legally summoned;
- b. counterclaim (counterclaim) and the inclusion of a third party (intervention);
- c. a dispute regarding the prevention, rejection, cancellation and legalization of marriages;
- d. a dispute submitted to the court after an out-of-court settlement was attempted through mediation with the help of a certified mediator registered with the local court but was declared unsuccessful based on a statement signed by the parties and the certified mediator."

Based on the provisions of Article 17 paragraph (1) of Perma 1/2016, on the day of the hearing that has been determined and attended by the parties, the judge examining the case requires the parties to take mediation. The obligation to mediate applies to all civil disputes that are submitted to the court, including resistance (*verzet*) against *verstek* decisions and third parties (*derden verzet*) against the implementation of decisions that have permanent legal force. The mediation process lasts a maximum of 30 (thirty) days from the stipulation of the order to mediate by the presiding judge and can be extended for a maximum of 30 (thirty)

days from the end of the mediation period as stipulated in Article 24 paragraphs (2) and (3) of Perma 1/2016. In principle, the process of implementing mediation in court includes several stages, namely the pre-mediation stage, the mediation process stage, and the final stage of the mediation process (Rahmah, 2019). At the pre-mediation stage, it starts with the plaintiff registering his lawsuit with the court. Then, the plaintiff pays the court fee, followed by the determination of the panel of judges, the determination of the first day of trial, and the summons of the parties. On the first day of trial, the chairman of the panel of judges will oblige the parties to carry out a mediation process first. Furthermore, the chairman of the panel of judges will explain to the parties the mediation procedure, followed by determining the mediator party. Afterwards, the chair of the panel of judges will provide time and opportunity for the parties to mediate. Entering the mediation proceedings will be carried out by submitting resumes from each party so that the mediator can understand the case from the perspective of each party and accept the amicable options offered by the mediator, followed by meeting sessions on the agenda of negotiations between the parties. In the mediation process, a caucus can be carried out, namely a meeting of one party with a mediator without the presence of the other party. At the final stage of the mediation process, if amicability is reached, an agreement will be delivered, which will be set forth in the form of an amicable deed. However, if the mediation fails, then the parties will be requested to sign the minutes, which explain that the amicable was not reached properly or that the amicable has failed.

Based on Article 6 paragraph (1) of Perma 1/2016, the parties are required to attend the mediation meeting directly, with or without being accompanied by a legal representative. In this case, the attorney is only accompanying. Such an obvious mandate requires the parties to be present directly in the mediation process, unless their absence is due to the reasons stipulated in Article 6 paragraph 4 of Perma 1/2016. The parties' presence through long-distance audio-visual is considered a direct presence according to Article 6 paragraph (2) of Perma 1/2016. The existence of a provision that requires the principal to be present in person is intended so that all forms of amicable settlement can be achieved more easily and quickly than if the mediation process were only attended by attorneys. Because those who actually understand what the parties are willing to obtain from an amicable agreement are only known by their own principles. Thus, in the mediation process, the presence of the parties directly becomes an obligation, so mediation can be carried out properly. According to Article 18 paragraph 3 of Perma 1/2016, in the event that the parties are unable to attend based on valid reasons, the attorney can represent the parties to mediate by showing a special power of attorney containing the authority of the attorney to make decisions. In practice, there are mediators who require attorneys to show a special power of attorney for mediation, and there are mediators who do not require it on the grounds that attorneys based on a special power of attorney, which contains the authority to make amicable with the opposing party, are considered to have represented the interests of the principal since the beginning of the lawsuit filed, so there is no longer a need for a special power of attorney for mediation. In the mediation process, the parties and/or their proxies are required to mediate in good faith, as stipulated in Article 7 paragraph (1) of Perma 1/2016. One of the parties and/or their attorney can be declared to have bad faith if they comply with the matters stipulated in Article 7 paragraph (2) of Perma 1/2016, described as follows (Indonesia, 2016): "a. was absent after being duly summoned two (two) times in a row at the mediation meeting without any valid reasons; b. attended the first mediation meeting but never attended the next meeting even though they had been duly summoned two (two) times in a row without any valid reasons; c. repeated absences that disrupted the mediation meeting schedule without any valid reasons; d. attended the mediation meeting but did not submit and/or did not respond to the other party's case resume; e. did not sign the draft amicable agreement that has been agreed without any valid reasons". Based on the above issues, provisions regarding good faith in the mediation process are a new norm regulated in Perma 1/2016, which had not previously been regulated in Perma 1/2008. If the plaintiff is declared to have bad faith in the mediation process, then the lawsuit is declared unacceptable by the case examining judge as stipulated in Article 22 paragraph (1) Perma 1/2016, accompanied by a penalty of paying the mediation fee and case fees (Article 22 paragraph (4) Perma 1/2016).

The new provisions, which are also regulated in Perma 1/2016, are regarding partial amicability. According to Article 30 paragraph (1) of Perma 1/2016, the parties can reach an agreement on part of the entire object of the case or lawsuit, and the mediator submits the partial amicable agreement to the examining judge of the case. In paragraph (2), it is stated that the case-examining judge can continue examining the object of the case or lawsuits that have not been successfully agreed upon by the parties. In the event that mediation reaches an agreement on some of the objects of the case or lawsuits, the examining judge of the case is obliged to take the partial settlement agreement into consideration in his decision, as stipulated in Article 30 paragraph 3 of Perma 1/2016. According to Article 33 Perma 1/2016, at every stage of the case examination, the judge always encourages or seeks amicable resolution until before the verdict is pronounced. And the parties, on the basis of an agreement, can submit a request to the case examining judge to make amicable at the case examination stage, as stipulated in Article 33 paragraph (2) Perma 1/2016. In addition, as long as the case has not been decided at the level of appeal, cassation, or judicial review, the parties, on the basis of agreement, may seek reconciliation. And the amicable agreement overrides existing decisions; this is regulated in Article 34 paragraphs (1) and (3) of Perma 1/2016.

In principle, the implementation of mediation is separate from the litigation process, so the mediation settlement period as stipulated in Article 24 paragraphs (2) and (3) and Article 33 paragraph (4) of Perma 1/2016 does not include the period of settlement of cases as determined in the Court's policy. Supreme Court regarding the settlement of cases in the court of first instance and the level of appeal in four (four) judicial circles as stipulated in the Circular Letter of the Supreme Court of the Republic of Indonesia Number 2 of 2014. Furthermore, if the parties fail to reach an agreement, the statements and confessions of the parties in the mediation process cannot be used as evidence in the trial process, and the mediation records must be destroyed at the end of the mediation process. In addition, the mediator cannot be a witness; this is regulated in Article 35 paragraphs (3), (4), and (5) of Perma 1/2016. In the event that the mediation succeeds in reaching an agreement, the parties, with the assistance of the mediator, are obliged to formulate a written agreement in the amicable agreement signed by the parties and the mediator. According to Article 27, paragraph 4, of Perma 1/2016, the parties can submit a reconciliation agreement to the judge examining the case to be strengthened in an amicable deed. The deed of amicable is also called *acta van dading*, which means final and binding, that is, last and binding. Against the deed of reconciliation, which is final and binding, no legal remedy can be submitted. In addition, according to Article 36 paragraphs (1), (2), and (3) of Perma 1/2016, the parties who succeed in reaching an amicable settlement out of court, either with or without the help of a mediator, can submit a settlement agreement to the competent court to obtain an amicable deed

by filing a lawsuit. The submission of the lawsuit must be accompanied by an amicable agreement between the parties, and in the presence of the parties, the examining judge will strengthen the amicable agreement into an amicable deed.

With the enactment of Perma 1/2016, it is expected that the buildup in the number of cases in court can be reduced by achieving amicability between the parties through a mediation proceeding in court. According to the data submitted in the Perma 3/2022 socialization, it was stated that in 2019, the number of cases carrying out mediation was 86,8277, with the number of successful mediation processes totaling 4,939 cases, with a mediation success percentage rate of 5.69%. Meanwhile, in 2020, the number of cases that carried out mediation was 95,623, and the number of successful mediation proceedings reached 5,177, with a success rate of 5.41% (Waruwu, 2022). Based on these formulated data, the success of mediation nationally in 2020 decreased by 0.28% when compared to 2019. However, the number of cases successfully mediated increased by 238. It is hoped that by optimizing the mediation process in court, among other things, by increasing the role of professional mediators, efforts to reconcile the parties can be increased. In addition, it is hoped that the provision of adequate services and facilities in the mediation process in court can increase the awareness of the disputing parties to be able to resolve disputes amicably by prioritizing mutually beneficial agreements. The success of the mediation proceedings in resolving disputes between the parties will realize the implementation of principles that justice seeks to reflect in a simple, fast, and low-cost manner.

RESULTS

Arrangement and Implementation of Electronic Mediation in Courts According to Supreme Court Regulation Number 3 Year 2022 in Indonesia

The development of technology, communication, and information today has had a considerable impact and influence on various aspects of life in society, including the effectiveness and efficiency of the litigation process in court. The emergence of electronic justice is the latest innovation in the context of modernizing the courts (Sabana, 2022). The establishment of a modern judiciary based on information technology is one of the efforts to realize a simple, fast, and low-cost judiciary as well as to increase access to justice for justice seekers. With the development of technology, the mediation process does not have to be done directly face-to-face but can be done through audio-visual communication. In Article 5 paragraph (3) of Perma 1/2016, it is stated that mediation meetings can be conducted through long-distance audio-visual communication or teleconference, which allows all parties to see and hear each other directly and participate in meetings to conduct mediation. This method can bridge various obstacles such as geographical constraints, distance constraints, and time-space constraints that affect the presence of the parties in the mediation process and can bring benefits in terms of time and cost savings.

The use of technology in carrying out electronic mediation has actually been carried out, especially since the outbreak of the COVID-19 pandemic, which required parties to comply with health protocols and maintain a distance from each other, so that the trial process in court is carried out in a litigation manner, including online trials and online mediation. However, legally, there is no legal basis that specifically regulates mediation procedures in electronic courts. As for the arrangements regarding mediation in court, which were previously regulated in Perma 1/2016, it is felt that they have not been regulated explicitly and in detail regarding the implementation of electronic mediation in court. Therefore, the Supreme Court of the Republic of Indonesia issued Perma 3/2022 on May 17, 2022, as a legal umbrella that regulates mediation in courts electronically. Then, Perma 3/2022 was promulgated by the Ministry of Law and Human Rights and came into force on May 30, 2022 (Fachri, 2022). Perma 3/2022 specifically regulates the implementation of electronic mediation, starting from the process of agreeing with the parties, selecting a mediator, filling in the administration of electronic documents, selecting an electronic virtual space, and submitting the results of electronic mediation.

According to Article 1, point 1, of Perma 3/2022, electronic means in court are a method of dispute resolution through a negotiation process to obtain an agreement between the parties, assisted by a mediator with the support of information and communication technology. In Article 3 of Perma 3/2022, it is stated that electronic mediation is an alternative procedure for mediation in court using electronic means. The implementation of electronic mediation is carried out by taking into account the principles of voluntary, confidential, effective, safe, and affordable access. Digitalization in the mediation process in court is also in line with the principles of a simple, fast, and low-cost trial. The implementation of electronic mediation in court is carried out on the basis of the agreement and desire of the parties, as stipulated in Article 4 paragraph (3) of Perma 3/2022. Mediation can be carried out after the parties give their consent by filling out the electronic mediation consent form as stipulated in Article 5 paragraph (1) and Article 6 Perma 3/2022.

The electronic mediation meeting is held in a virtual room that is in the application agreed upon by the parties as stipulated in Article 11 paragraph (1) of Perma 3/2022. The electronic mediation virtual room is a legal mediation place, as is the mediation room in court (Article 12 of Perma 3/2022). Electronic mediation can be carried out in a virtual space using online applications such as Zoom Meeting, Skype, Google Meet, or Microsoft Teams. In the event that the parties succeed in reaching an amicable agreement, an amicable agreement is drawn up by the parties with the assistance of a mediator via electronic means (Article 24 paragraph (1) of Perma 3/2022). The signing of an amicable agreement by the parties and the mediator electronically is carried out using an electronic signature. The provisions regarding electronic signatures are still awaiting technical guidelines from the Supreme Court of the Republic of Indonesia. If the parties do not have validated electronic signatures, then the signing can be done manually in a face-to-face meeting between the parties and the mediator, as stipulated in Article 24 paragraph (3) of Perma 3/2022.

Arrangement and Implementation of Mediation Through Courts in Malaysia

The mediation proceedings in Malaysia are divided into 2 (two) terms, known as the mediation proceedings outside the court as stipulated in the 2012 Mediation Act and the mediation proceedings within the court through the Rules of Court 2012 and Rules of Court 2012 Amendment 2020. In the practice of court mediation, not all cases can be submitted for direct mediation. As stipulated in the Mediation Act 2012, there are 11 (eleven) types of cases that cannot be mediated (Sang, 2017). The eleven types

of cases that cannot be mediated are as follows (Malaysia, 2012): “Proceedings involving a question which arises as to the effect of any provision of the Federal Constitution.

1. Suits involving prerogative writs, as set out in the Schedule to the Courts of Judicature Act 1964 [Act 91].
2. Proceedings involving the remedy of temporary or permanent injunctions.
3. Election petitions under the Election Offences Act 1954 [Act 5].
4. Proceedings under the Land Acquisition Act 1960 [Act 486].
5. Proceedings involving the exercise of the original jurisdiction of the Federal Court under Article 128 of the Federal Constitution.
6. Judicial review.
7. Appeals.
8. Revision.
9. Any proceedings before a native court.
10. Any criminal matter”

According to Abraham C. in the Asian Business Law Review, cases that can be mediated through court are those related to the environment and social communities, such as land boundary disputes, violations in public places, illegal acts, and medical negligence (Sang, 2017). The regulations that refer to the fact that a case can be resolved through court mediation are regulated in Order 34 Rule 2 (2) (a) as follows (Malaysia, 2012):

“At a pre-trial case management, the Court may consider any matter including the possibility of settlement of all or any of the issues in the action or proceedings and require the parties to furnish the Court with such information as it thinks fit, and the appropriate orders and directions that should be made to secure the just, expeditious and economical disposal of the action or proceedings, including - (a) mediation in accordance with any practice direction for the time being issued;”

In pre-trial case management, the court may consider any method of settlement of any case, including the possibility of all settlements or one of the settlements of cases that are currently being acted on or processed, and the court may ask the parties to provide information to the court that is deemed not appropriate, and the court can give appropriate orders and directions made by upholding the principle of justice. The court has the right to order the parties to take action or process quickly and eliminate low-costs, including ordering and directing (a) the implementation of mediation in accordance with the published practice guidelines. In the new provisions, namely the amendment of Order 34 Rule 2 Rules of Court 2012 Amendment 2020, further clarifying the position of mediation in court, the provisions regulate as follows (Malaysia, 2020):

“(i) by inserting after paragraph (1) the following paragraphs: (1A) If a judge of the High Court identifies that an issue arising in the action or proceedings between the parties can be resolved by way of mediation, the judge may refer the parties to mediation as prescribed by practice directions issued from time to time. (1B) All running down cases shall be subject to mediation.”

And therefore, it can be concluded that, based on these provisions, the court authorizes the judge to determine whether cases that he thinks can be resolved by mediation will be resolved by mediation by upholding the principles of fairness, speed, and low cost. Based on the provisions of Order 34 Rules 2 (1B), any ongoing case since the entry into force of this provision is subject to mediation. Mediation through courts in practice is regulated through Practice Direction Number 4 of 2016 (Directions of the Chief Justice of the Supreme Court Number 4 of 2016). Such an obvious provision regulates the objectives of mediation, when the judge determines that mediation can be carried out, the types of cases that are easy to resolve through mediation, the method of settlement of mediation, the nature of confidentiality, and the results of mediation. The purpose of mediation, according to Practice Direction Number 4 of 2016 (Malaysia, 2016), is:

“2.1. The objective of this Practice Direction is to encourage parties to arrive at an amicable settlement without going through or completing a trial or appeal. The benefit of settlement by way of mediation is that it is accepted by the parties, expeditious and is final. 2.2 This Practice Direction is intended to be only a guideline for settlement. In this regard, the Judge and the parties may suggest or introduce any other modes of settlement so long as such suggestions or directions are acceptable to the parties. 2.3 Advocates and Solicitors shall cooperate and assist their clients in resolving the dispute in a conciliatory and amicable manner.”

Based on Practice Direction Number 4 of 2016, Judges may encourage the parties to resolve their disputes in pre-trial case management or at any stage, at any point before or even after the trial has started. It can even be suggested at the appeal stage. Completion can occur during the interlocutory application, for example, on the application for the assessment summary, or at other stages (Malaysia, 2016):

Types of cases that are easy to resolve through mediation: “(a) Claims for personal injuries and other damages due to road accidents or any other tortious acts because they are basically monetary claims; (b) Claims for defamation; (c) Matrimonial disputes; (d) Commercial disputes; (e) Contractual disputes; and (f) Intellectual Property cases.

Procedures for mediation through courts according to Practice Direction Number 4 of 2016 is divided into 3 (three) types cited as follows (Malaysia, 2016):

- a. by Judge-led mediation;
- b. by Kuala Lumpur Regional Centre for Arbitration;
- c. by other mediators agreeable by both parties.

Prior to selecting the procedure for mediating, the judge will summon the parties represented by their attorneys to appear before him and offer mediation to the two parties. If both parties accept the offer, the judge will request that the parties use which method of mediation among those three options. (Malaysia, 2016). Since the 2019 COVID pandemic took place, the Federal Court of Malaysia (Mahkamah Agung Malaysia) has issued several directives, instructions, and orders related to judicial practice during the 2019 COVID pandemic outbreak. Since the issuance of Practice Direction Number 1 of 2021 concerning civil case proceedings by technological communication for all courts in Malaysia (Malaysia, 2021). Because of the issuance of these directives, instructions, and orders, new instructions, directives, and orders are issued in Practice Direction Number 5 of 2021 concerning the handling of civil case proceedings in court during the Period of Movement Control (PKP).

Based on the directions, instructions, and orders from the Chief Justice of the Malaysian Supreme Court (Chief of Justice Federal Court Malaysia), all case handling activities in Malaysian courts are carried out online, so that mediation through the courts is carried out online (Malaysia, 2021). The implementation of online mediation is still carried out in accordance with applicable provisions such as the 2012 Rules of Court and their Amendments, Practice Directions Number 4 of 2016 On Mediation, and Rules For Court-Assisted Mediation. Further procedures related to mediation in general still follow the Rules For Court Assisted Mediation, such as registration procedures, requirements for judges as mediators, cases that are prioritized for mediation, the function and authority of the mediator, the notification of the mediation mechanism, the voluntarism of the parties to participate in mediation, the authority to reconcile, confidentiality, etc. still follow the Rules For Court Assisted Mediation (Malaysia, 2021). Based on the comparison of mediation procedures in both Indonesia and Malaysia, the following conclusions can be drawn :

1. In Indonesia, provisions regarding mediation procedures in courts are regulated in Perma 1/2016. According to the weighing section of Perma 1/2016, mediation procedures in court are part of the Civil Procedure Code, which can strengthen and optimize the function of the judiciary in resolving disputes. Mediation is an amicable way of resolving disputes that is appropriate, effective, and can open wider access to the parties to obtain a satisfactory and just settlement of cases. Meanwhile, the provisions regarding the mediation process in court electronically are regulated in Perma 3/2022. Perma 3/2022 specifically regulates the implementation of electronic mediation, starting from the agreement process of the parties, selecting a mediator, filling out electronic document administration, selecting an electronic virtual room, electronic signatures, and the submission of electronic mediation results.
2. In Malaysia, regulations that refer to a case conducted through court mediation are regulated in Order 34 Rule 2 (2) (a). Based on these provisions, the court authorizes judges to determine cases that, if they can be resolved through mediation, will be addressed through mediation. Meanwhile, mediation through the courts is in practice regulated by Practice Direction No. 4 of 2016 (Directive of the Chief Justice of the Supreme Court No. 4 of 2016). This provision regulates the purpose of mediation, when the judge determines that mediation can be carried out, the types of cases that are easy to resolve through mediation, the method of resolving mediation, the nature of confidentiality, and the results of mediation.
3. Since the issuance of Practice Direction No. 1 of 2021 on civil case proceedings by technological communication for all courts in Malaysia, the courts have carried out their function of adjudicating them by means of remote communication technology. Due to the issuance of these directives, instructions, and orders, new instructions, directives, and orders were issued as regulated in Practice Direction No. 5 of 2021 concerning the handling of civil case proceedings in court during the Period of Movement Control (PKP). Based on directions, instructions, and orders from the Chief Justice of the Malaysian Supreme Court (Chief of Justice Federal Court Malaysia), all case handling activities in Malaysian courts are carried out online, and therefore the mediation through the court is also carried out online.

CONCLUSION

Based on the results obtained in this line of research, it is therefore argued that administrative updates and online trials, including electronic means, were carried out to overcome matters and obstacles in the proceedings of administering justice. In this case, it is easier for justice seekers to settle cases in court using digital-based technology. Thus, the presence of electronic justice, including the electronic means system, is an attempt by the Supreme Court of the Republic of Indonesia to create a modern and superior judiciary in providing legal services for justice seekers by utilizing developments in information and communication technology. As already explained, the issuance of Perma 3/2022 is an embodiment of the simple, fast, and low-cost principles that shall be implemented by all courts in Indonesia. Regulations regarding electronic means have implications for the proceedings in handling cases in court, which can be carried out by utilizing advances in information and communication technology. Through electronic mediation, it provides alternative procedures for completing mediation through online application facilities. This can overcome various obstacles in the practice of mediation in the field, such as geographical constraints, distance, and length of time to mediate directly by coming to court. Through electronic mediation, it is expected that it can address benefits in terms of saving time, costs, and effort, and therefore the mediation proceedings can run quickly, effectively, and efficiently. Based on the comparison between the mediations in Indonesia and Malaysia, it can be concluded that both proceedings have several similarities. First, both systems are familiar with the mediation proceedings, either outside or inside the court. Second, in conducting mediation, not all cases can be addressed. There are several cases that are excluded during the mediation process. To sum up, the implementation of mediation both in Indonesia and Malaysia prioritizes the principles of justice, speed, and low cost. The differences just rely on its arrangements, phases, and procedures, as well as exceptions to cases in the mediation proceedings.

RECOMMENDATION

1. The regulation and application of electronic mediation in Indonesia need to be enhanced and expanded. The Supreme Court (Perma) Regulation 3/2022 has been a good starting step, but there need to be improvements in the application and spread of this technology to all courts in Indonesia. Furthermore, there is a need for improved training and education for the parties involved in the mediation process, including judges, lawyers, and justice seekers, so that they can use these technologies effectively. Furthermore, technological infrastructure and internet access need to be improved, especially in remote areas, so that electronic mediation is accessible to all.
2. In terms of the comparison of electronic mediation arrangements in Indonesia and Malaysia, these two countries have some similarities and differences. Both countries are equally aware of the process of mediation both outside and inside the courts and have put forward the foundations of fairness, speed, and low cost. However, there are some differences in terms of arrangements and procedures, as well as the exclusion of matters from the mediation process. Therefore, Indonesia can learn from Malaysia's experience in organizing and implementing electronic mediation, and vice versa. Cooperation and the exchange of knowledge between the two countries can help in the development and enhancement of electronic mediation in both countries.

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