

The Position of The Village Head as Mediator in Resolving Disputes.pdf

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**The Position of The Village Head as Mediator in Resolving Disputes
in the Village in Terara District, East Lombok Regency**

Achmad Azro'I, Galang Asmara, Minollah

Faculty of Law Mataram University Indonesia

11
Abstract

The purpose of the study was to analyze the position and legality of the village head in resolving disputes through mediation and to analyze the legal implications of the peace agreement produced by the village head as a mediator in resolving disputes in the village. The type of research used is empirical juridical, with legal materials in the form of laws governing villages, village heads, certified mediators and other complements. The sample villages were Sukadana, Jengik, Pandanduri, Santong, Terara and Suradadi. The findings in this study indicate that the village head has a clear position as a mediator, because it is the duty, authority and obligation of the village head in resolving disputes of his citizens. Village heads who do not position themselves as mediators, if there are residents who are in dispute can be subject to administrative sanctions (oral, written, temporary dismissal and dismissal; article 26 paragraph 4 and article 28 of Law No. 6 of 2014). In the context of legality, the existence of work guarantees on the law gives an indication that the resulting peace products have legal force, but the facts in PerMA No. 1 of 2016 is only given the title as a peace agreement and a lawsuit needs to be made to the court to become a peace deed. Facts on the ground, especially in some sample villages in East Lombok Regency as the parties to the dispute, where the village head has obtained peace, including between village heads, is obeyed by all parties. In order to maintain certainty, important suggestions in this study for disputes that have a large nominal value or large impact should be submitted to the court to become a peace deed. The government through its various agencies should provide training to all village heads to become certified mediators.

Keywords: *Position, Village Head, Mediator and Dispute.*

A. Introduction

The village government as the lowest government in the government system in Indonesia is empirically still an option, compared to the village government. It is stated so, because in quantity there are 74,953 villages and 8,488 urban villages¹. It can also be seen from the aspect of government recognition of origin rights, customs and traditional rights, all of which are stated in Law no. 6 of 2014². The village government with its autonomy rights is expected to be able to recognize the problems of its community so that welfare-oriented development can be realized more quickly. Related to this, the village government which is run by the village head is given adequate authority, duties, rights and obligations, even in practice the village head is involved in all village community affairs, including being a mediator for disputes³.

The village head is assigned to administer village government, carry out village development, develop village community and empower village communities (Law No. 6 of 2014). In realizing this task, adequate authority is given, one of which is fostering peace and order in the village community. Furthermore, in order to carry out all these duties and authorities, obligations are also given, one of which is to resolve village

¹ Yulianssyah dan Rusmianto. 2016. Akuntansi Desa. Jakarta: Salemba Empat. p.1.

² Undang-Undang Republik Indonesia No. 6 Tahun 2014 tentang Desa. Pasal 1 ayat 1. 2014.

³ Soerjono Seokanto. 1986. *Kedudukan Kepala Desa Sebagai Hakim Perdamaian*. CV Rajawali. Jakarta. p. 39

community disputes⁴. In line with the duties and obligations of resolving disputes between community members, in the history of the village government system in Indonesia, the position as a village peace judge has been given. The existence of this change, basically still positions the village head as a peace judge or mediator, which is carried out actively or passively, depending on the condition of the community who understands the role of the village head.

In village communities that are built with original values, customs and rights, including in the East Lombok Regency, the role of the village head covers all aspects of people's lives, especially their existence will be religious leaders, community leaders and traditional leaders. The role in creating an orderly, safe and peaceful atmosphere in society is very important, because it will be a potential for development and empowerment. Associated with an increasingly modern life and on the other hand, there are judicial arrangements that require the mediating party to have a certificate or known as a "certified mediator", then the role of the village head as a mediator needs to get an in-depth study. This context is specifically regulated through PerMA No. 1 of 2016, that the process to produce a peace deed, only through the work of certified judge mediators and certified non-judge mediators (certified mediators), both outside the court and inside the court.

In connection with the above arrangements, there are indications that the work of the village head as a mediator is ambiguous, because the direction of regulation of PerMA No. 1 of 2016 is to make mediators as a new profession (certified mediator), where the opportunity is open to the general public with the condition to follow the training that has been set out in the PerMA. An in-depth study of the juridical aspects and implications needs to be carried out on the role of the village head as a mediator. In the context of the direction of the study, the research objectives were formulated in the form of 1) to analyze the position and legality of the village head in resolving disputes through mediation and 2) to analyze the legal implications of the peace agreement produced by the village head as a mediator in resolving disputes in the village.

B. Methods

The type of research used is in the form of empirical juridical research, because studies of legislation and other normative concepts are combined with empirical conditions in the field, related to the implications of the results of peace agreements that can be formulated by village heads. The research was conducted in the villages of Sukadana, Jnggik, Pandanduri, Santong, Terara and Suradadi. In this study, the legal material used is in the form of Law no. 6 of 2014 and its derivatives, up to Regional Regulation No. 1 of 2020, PerMA No. 1 of 2016 and other laws, including using theoretical studies in examining empirical facts found in the research sample villages. This study will present the various forms of peace agreements that were generated in the sample villages in East Lombok Regency, including the aspects in dispute and the implications for the parties to the dispute. Furthermore, legal, social and other approaches are analyzed in providing solutions to the problems posed in this study.

C. Results and Discussion

Village authority consists of authority based on origin rights; Village-scale local authority; the authority assigned by the Government, Provincial Government, or Regency/Municipal Government; and other authorities assigned by the Government, Provincial Government, or Regency/Municipal Government in accordance with the provisions of laws and regulations⁵. This authority can be broad depending on the local government in formulating regional regulations in interpreting the above legislation, its ability to play the function of the village in accordance with the special conditions possessed in its working area. This context depends on the ability of the executive and legislature to interpret the needs of the village community. In East Lombok Regency, East Lombok Regency Regent Regulation No. 1 of 2020 which regulates the rights of origin and local authority on a village scale, even allowing to regulate relations or coordination between villages by the respective village heads.

The regulations in this legislation provide a clear position for the Village Head, regarding his position as a mediator or mediating disputes between residents. This position is very clear, because there is an obligation to settle disputes between residents, because in the form of obligations there are very clear sanctions, up to

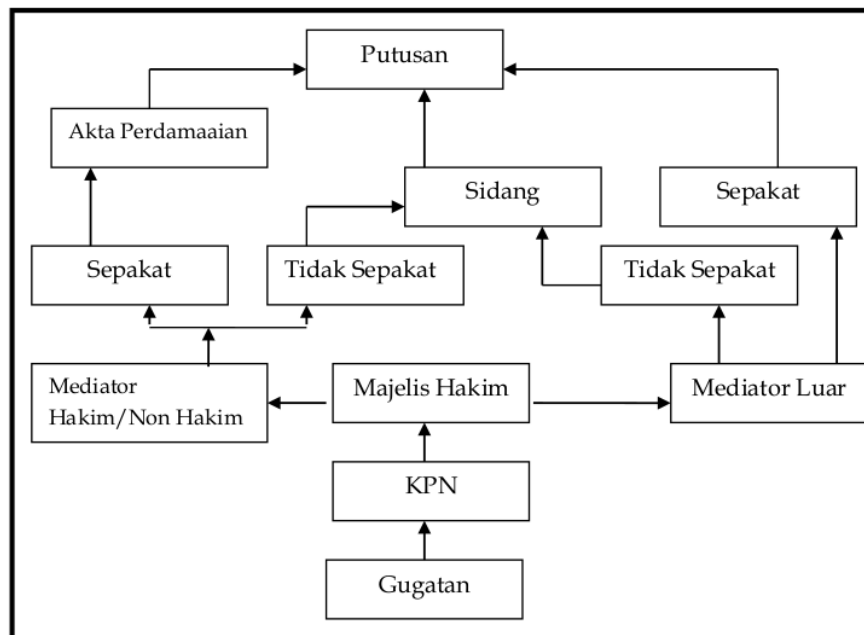
⁴ Undang-Undang Republik Indonesia No. 6 Tahun 2014. ayat 4 point k pasal 26.

⁵ Undang undang Nomor 6 Tahun 2014 tentang Desa pasal 19.

the level of dismissal, if the village head does not carry out one of his functions as a mediator⁶. In letter k, article 28 provides an obligation to the village head to "resolve community disputes in the village". Completion of this task is very important, because in the context of development, community empowerment requires conducive conditions in the community (no disputes; between residents, between groups or between villages).

In order to reinforce the description above, the position of the village head as a mediator is getting clearer, as confirmed in PerBup No. 1 of 2020, through the authority of the village head is "the settlement of disputes and community disputes which are settled traditionally with customary courts and legal sanctions with Sasak customs"⁷. With regard to customary instruments, this aspect is very broad and covers all aspects of village community life, of course also village heads use the existing formal law. Provide answers regarding a clear position for the village head as a mediator, because there is legislation that regulates it, starting from the Law level to the PerBup level, because there are provisions from the above legislation for each region to make regional regulations.

The next sub-problem is related to legality. The answer to this problem can be given implicitly through the following scheme.



Flow Chart 1. Mediation Process in PerMA No. 1 Year 2016

The results of the work of the village head in mediating their citizens or between residents in disagreement are on the path of an outside mediator, where the result is a peace agreement. If the disputing party considers the content of the peace agreement to have a large nominal value or legal content that has a large or broad impact, it is necessary to file a lawsuit to the court, so that its status becomes a peace deed. The judge adjudicating the claim from the "peace agreement" only examines the results of the peace, in accordance with article 27, namely "in helping to formulate the Peace Agreement, the Mediator is obliged to ensure that the Peace Agreement does not contain provisions that a) conflict with law, public order, and/or or decency; b) harm third parties; or c) cannot be implemented"⁸.

All the results of mediation by the village head that occurred in the East Lombok Regency covered various aspects, both criminal and civil. All of its contents do not conflict with the points stipulated in paragraph 1

⁶ Ibid, pasal 26 dan 28.

⁷ Peraturan Bupati Kabupaten Lombok Timur No. 1 Tahun 2020 tentang Kewenangan Desa Berdasarkan Hak Asal Usul Dan Kewenangan Lokal Berskala Desa Di Kabupaten Lombok Timur. Pasal 4 ayat d.

⁸ Peraturan Mahkamah Agung No. 1 Tahun 2020 tentang Prosedur Mediasi di Pengadilan. Pasal 27 ayat 2 dan 36 ayat 1.

of article 27 of PerMA No. 1 of 2016. The disputing parties put their signatures on stamp duty, including the village head as a mediator. The facts found in the field do not deny the results of the peace. One of the results of the peace agreement by the village head as the mediator is as follows: The first party (I) has reported the actions of the second party to the police regarding the occurrence of a persecution case that occurred on Saturday, November 6, 2021 at around 23.00 WITA which was carried out by the Second Party. Both parties agreed to resolve the issue amicably and would not proceed to the realm of law with the content of peace, as follows:

- a) The First Party (I) is able not to repeat the beatings/tortures to the Second Party (II) and to anyone else (others).
- b) That both parties agree to resolve the incident amicably and if it repeats itself, the First Party (I) can be processed under applicable law.
- c) And upon an agreement made by both parties, all problems are considered resolved.⁹

Interviews were conducted with village heads, as follows:

The first party's report file was withdrawn... there was no further process, such as summoning the party who carried out the persecution. It's finished... with a peace agreement being managed in the village¹⁰.

In this study, many peace agreement documents in Terara District were able to be compiled, but they were presented for different cases, thus representing the variety of cases. In this finding, it turns out that there are many types of cases that can be mediated or a peace agreement can be formulated, major cases include inheritance cases with a land area of 48 acres, traffic accidents that cause one victim to die, ITE cases, buying and selling agreement cases, fighting cases, brawl cases, both internal to the residents of the village community and between residents of different villages. Everything was resolved well, where each party used the peace agreement well, without taking legal action again. Cases that have been submitted to police reports have also been withdrawn.

All of them have legitimacy, related to the authority of the village head in mediating and reinforced by the existence of a certain path in the trial, if the disputing parties mediate voluntarily and out of court. The legal position of the village head in conducting mediation is very clear, because he carries out his authority and duties, both those implied in general in maintaining village order and peace or specifically there is a statement that the village head has the authority to resolve disputes using the values and customs that apply in the village, generally speaking, specifically using Sasak customs.

Historically in the government system in Indonesia, there was once a role for the village head as a village peace judge. This fact is no longer there, but basically its value is still functioning through the authority and function of the village head described earlier. In the socio-economic life of the community, there is even a statement that all aspects of village community life do not escape the attention of the village head, where if there is a dispute, the role of the village head is to mediate. In carrying out it can be done by waiting for the parties to the dispute or being carried out actively, if there are indications that it will disturb the peace and order of the community, even in practice it can coordinate with other village heads.

In order to strengthen the authority and function of the village head in East Lombok Regency as a mediator, the district government should provide the opportunity or facilitate so that the village head gets a certificate as a mediator. This will strengthen the ability and control over the values and customs that apply in the Sasak community with material values that apply in the legal system in Indonesia. For efficiency in carrying out this authority, especially if there is a certificate as a mediator, the function of the village head as a village peace judge can be returned.

D. Conclusion

Regarding the position and legality of the village head as a mediator, it can be stated as follows: The village head has a position guaranteed by law (Law No. 6 of 2014 and its derivatives; for the case of East Lombok Regency through Regent Regulation No. 1 of 2020) as a mediator in resolving disputes between villagers. The role of the village head as a mediator is an obligation, if not implemented, he will receive administrative sanctions (oral, written warning, temporary dismissal to dismissal). Legality in the sense that there is a legal guarantee from the state apparatus (village head) in carrying out the functions, duties, authorities and

⁹ Dokumen Kesepakatan Perdamaian 7

¹⁰ H. Mas'ad, SH., Kepala Desa Terara (wawancara tanggal 16 April 2022)

obligations, it can be declared to have a decision; policy; their work is legal. The level of legislation that guarantees the role of the village head as a mediator is the law (Law No. 6 of 2014), but on the other hand in PerMA No. The product of the village head is at the limit of the peace agreement, so it needs to be strengthened through a lawsuit to the court to become a peace deed. PerMA No. 1 of 2016 recognizes it as an out-of-court agreement, but the stage is not final (the role of the village head as a mediator is recognized-but further legal activity is needed).

The existence of legal legitimacy from the peace agreement produced by the village head as a mediator, has implications for the legal system in Indonesia, as obeyed by legal subjects in the peace agreement, can be the basis for the police to stop the case, become the basis for the judge as a whole to stop the trial, including in deciding the outcome of the trial.

Recommendation can be given in this research are: In order to clarify the authority of the village head as a guarantor of peace and order in the village community and as a resolution of community disputes with Sasak values and customs (specifically at the research site; East Lombok Regency), the government should provide facilities for village heads to obtain a certificate as a mediator (certified mediator). The empirical facts of the village head as a mediator in producing peace agreements are running, even in very large numbers and are able to resolve (reconcile) large problems. The further implication of this is that there is a clear and adequate reward for the village head, every time he is able to have a peace agreement from a dispute.

Village communities who normatively want economic, social and other aspects of life to run in harmony, need a commitment to support the work of the village head. This includes supporting and complying with the contents of the mediation agreement that has been formulated with the village head. This is to maintain a shared honor that was built on exemplary values. This commitment is not limited to the individual who is in dispute, but should strengthen the results of the peace agreement on his heirs.

In order to efficiently implement the authority of the village head as a mediator, the practice of the village head as a village peace judge can be revived, because historically in the government system in Indonesia, this function has existed. The results of this peace agreement will be able to resolve disputes more fairly and satisfactorily, there will be no winners and losers for the disputing parties, because the wishes of both parties are accommodated.

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PAGE 1

PAGE 2

PAGE 3

PAGE 4

PAGE 5

PAGE 6
