

# Peace Behind Disputes: A Study of Inheritance Settlement through Mediation

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*This research aims to determine and analyze the resolution of inheritance disputes through mediation based on legal provisions. The study reveals inconsistencies in the Supreme Court Regulation Number 1 of 2016 with the Civil Procedure Law in Indonesia, particularly regarding mediation costs and the role of the mediator judge. The mediation process in the Class I A Religious Courts consists of three stages: pre-mediation, mediation, and final implementation. However, the low success rate of mediation is attributed to inhibiting factors, including parties' reluctance to mediate and obstructing the process. This research recommends socialization of the benefits of resolving civil cases through mediation and the Supreme Court's regulation regarding sanctions for parties obstructing the mediation process. Furthermore, parties involved in disputes should prioritize good faith during the mediation process to optimize its success.*

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## INTRODUCTION

Conflict between man often happen Because difference aspect like physical , beliefs , patterns thoughts , and interests . The fundamental factors that become root conflict and dispute is incompleteness interests . According to Islamic teachings , disputes must completed with peace , as explained . In Surah Al- Hujurat Verse 9. Translation : " If there are two groups of believers quarrel , make peace both of them . If one of them from both of them do persecution against other ( groups ) , fight the ( groups ) who do it persecution that , so that group That return to Allah's command . If the group That has back ( to Allah's command ) , make peace both of them with fair . Behave fair ! Indeed, Allah loves those who behave fair ." (QS Al- Hujurat : 9 ) .[1] explain that If happen dispute , it is better look for road middle For finish conflict with fair and attitude good . Mediation hold role important in finish dispute with prioritizing dialogue, understanding , and efforts reach agreement .

Mediation hold role important in finish dispute with prioritizing dialogue, understanding , and efforts reach agreement that can be restore disturbed relationship . [2]This is teach importance guard peace , justice and harmony in interaction social as well as build better understanding Good between individual or disputing groups . Form alternative settlement dispute besides from court as explained in Article 1 Paragraph 10 of the Law Number 30 of 1999 concerning Arbitration and Alternatives Completion Dispute , namely : " Alternative settlement dispute is institution settlement dispute or different opinion through procedures agreed upon by the parties , namely settlement outside court with method consultation , negotiation , mediation , conciliation , or evaluation expert ."[3]

Mediation will done moreover formerly to parties to the case based on provisions of Article 6 of the Regulation Supreme Court (PERMA) Number 1 of 2016 concerning Procedure Mediation in Court . However , the conflict between expert inheritance often happen Because lack of understanding distribution treasure inheritance , differences interpretation to law inheritance , and the existence of conflict interest .[4] Based on the data, there are case mediation at the Makassar District Court which has not yet been finished and experienced decline following is the case data mediation at the Makassar District Court in 2020 there were 308 cases , and the number of cases that were successfully mediated there were 12 cases , and in 2021 there were 318 cases and the number of



cases was successful there were 12 cases , while in 2022 the number case mediated 469 cases and 9 cases were successful . Based on these data , there are unsolved matter finished in the year previous and year final experience decline . [5]From the settlement A successful case is due to the parties own faith good and full awareness . While things that are not successful , because factors that inhibit the mediation process . Research This aiming For analyze settlement dispute inheritance through mediation based on provision Regulation Supreme Court Number 1 of 2016 and the implementation process mediation in disputes inheritance at the Makassar Religious Court Class I A. [6]Research results This expected can become reference for community and input For parties who have authority in handle problem settlement dispute inheritance in law civil . Questions the main thing that will be discussed in study This is how is it settlement dispute inheritance through mediation based on provision Regulation Supreme Court Number 1 of 2016 and how is the implementation process ? mediation in disputes inheritance at the Makassar Religious Court Class I A.

## METHOD

Study This use method study law doctrinal or normative . Type study This is study normative , which aims For analyze and interpret rule applicable law .[7] Approach research used is approach statute approach and legal approach case approach. Approach legislation done with method analyze rule related laws and regulations with issue the law being studied . The approach case done with method analyze related cases with issue the law being studied . [8]Types and sources material the law used in study This is material primary law , material law secondary , and materials law tertiary . Primary legal materials are material law in the form of rule applicable laws and regulations , such as The 1945 Constitution of the Republic of Indonesia, the Civil Code , and the Regulations Supreme Court Number 1 of 2016. Legal materials secondary is material law in the form of explanation and analysis about material primary law , such as books law , article law , and the results research . [9]Legal materials tertiary is material law in the form of dictionary laws and other sources that can give information about material primary and secondary law . Collection technique material the law used in study This is with do search ingredients literature or related research libraries with discussion . Analysis material the law used in study This is with use analysis prescriptive , namely research that aims For get advice about What should done For overcome problem certain .[10]

## RESULTS AND DISCUSSION

### **Analysis Completion Inheritance Dispute Through Mediation Based on Provision Regulation Supreme Court Number 1 of 2016**

In Indonesia, there are a number of alternative settlement regulated dispute in Article 1 number 10 of Law no. 30 of 1999 concerning Arbitration and Alternatives Completion Dispute . Law This define Alternative Completion Dispute as a institution that completes dispute or difference opinion through procedures agreed upon by the parties , which include outside settlement court through consultation , negotiation , mediation , conciliation , or evaluation expert .[11] Regulation Supreme Court (PERMA) Number 1 of 2016 concerning Procedure Mediation in Court is refinement from PERMA Number 1 of 2008. [12]This is because of the previous PERMA considered not yet optimal in fulfil need implementation more mediation effective and efficient , as well as increase success mediation in court . In an effort perfecting PERMA Number 1 of 2008, PERMA Number 1 of 2016 concerning Procedure Mediation in Court give more provisions Details about a number of things that have not been done set up in a way complete in the previous PERMA , among others as following :

PERMA Number 1 of 2016 regulates the time limit more mediation short , namely 30 days since appointment of a mediator, compared with the previous PERMA setting a time limit of 40 days .





PERMA Number 1 of 2016 introduces draft agreement part parties (partial settlement) involved in dispute . This is different with PERMA Number 1 of 2008, where mediation considered fail If only part the parties to the agreement or No present .

PERMA Number 1 of 2016 regulates about obligations of the parties For attend meeting mediation with or without power law . However , there are a number of reason valid that can become exceptions , such as condition health that is not allow present , under guardianship , have place living abroad , or operate state duties , demands profession , or work that is not can abandoned .

PERMA Number 1 of 2016 confirms return the role of independent mediator For play a role more active in finish case or dispute outside court . The agreed mediation results can submitted to court through mechanism lawsuit .

Related with arrangement faith good and bad the law of the parties who are not in good faith Good In the mediation process , PERMA Number 1 of 2016 provides more explanation Details compared to with PERMA Number 1 of 2008.

Based on analysis writer against Article 23 of PERMA Number 1 of 2016, if plaintiff stated No in good faith Good in the mediation process as meant in Article 7 paragraph (2) of PERMA Number 1 of 2016, then lawsuit can stated No can accepted by the Examining Judge Matter of fact . This matter confirmed in Article 22 of PERMA Number 1 of 2016. The plaintiff who was declared No in good faith Good as referred to in paragraph (1) will also charged obligation payment Cost Mediation . The mediator will convey report plaintiff No in good faith Good to the Examining Judge Case accompanied by recommendation imposition Cost Mediation and calculation the magnitude in report failure or No can implementation mediation . Based on Mediator's report as referred to in paragraph (3), the Examining Judge Case emit the decision which is decision the end that states lawsuit No can accepted accompanied by punishment payment Cost Mediation and costs case . Cost Mediation as punishment to plaintiff can taken from deposit cost case or payment separately by the plaintiff and submitted to defendant through Secretariat Court .

Based on results analysis author , completion process dispute through mediation can walk fluent If done with faith good . With Thus , the settlement process dispute in court will become more effective . However , if seen in a way explicit , PERMA Number 1 of 2016 concerning Procedure Mediation in Court is implementation from the Civil Procedure Law . Basis for the application of Civil Procedure Law in practice justice is based on the principles of Civil Law stated in Burger King Wetboek (BW) or Civil Code (KUHPerdata ) and Judicial Law ( HIR and RBG). [13]HIR ( Herziene Inland Reglement ) and RBG ( Rechtsreglement voor de Buitengewesten ) is regulation legislation that regulates procedural law in court for individual , good civil and also criminal . Difference between both of them lies in the area of its application , namely HIR applies in Java and Madura, while RBG applies outside Java and Madura. Based on analysis author , PERMA Number 1 of 2016 concerning Procedure Mediation in Court Still own a number of shortcomings and differences with the Civil Procedure Law which is regulated in HIR and RBG. Some difference the among others:

The stated party No in good faith Good Still punished For pay cost mediation .

The plaintiff stated No in good faith Good can cause his lawsuit No accepted .

The mediator judge can become an examining judge Matter , which can influence verdict .

Absence support advocate for the parties in mediation .

A number of factors that become obstacle in implementation mediation in court among others:

Factors of the parties that are not own faith Good .



Factor no existence faith Good from one of party .

incompetence factor .

Factor no existence support advocate

In implementation mediation , the role of the mediator is very important in assist the parties reach agreement . However , there is still many mediators do not own certificate or Not yet follow training certification mediation .

## **Analysis Completion Inheritance Dispute Through Mediation In Makassar Religious Court Class I A.**

Man is creature social that has trend For life in togetherness . However , in life social , conflict can arise , including in matter inheritance . Conflict inheritance can caused by several things , like one of them the controlling party full on right expert inheritance other or sell distribution treasure inheritance without to the best of my knowledge expert inheritance mentioned . Mediation can be one of method For finish dispute inheritance . Mediation is a process of completion dispute through deliberation and consensus with mediator assistance . In the context inheritance , mediation can assist the parties For reach agreement about distribution treasure inheritance . inheritance can interpreted as ownership assets that arise Because existence death . Inheritance issues own influence big in transfer treasure from one person to other people, and can cause dispute If No completed with Good .[14]

Religious Court has duties and authorities For check , decide and complete matters religious , including matters inheritance . [15]In finishing matters said , the Religious Court uses procedure mediation . Procedure mediation in the Religious Court consists of from three stages , namely :

Stage Pre-Mediation : Stage This is stage before implementation of the mediation process , which includes explanation about obligations of the parties For present and in good faith both in mediation , selection of mediators, and summoning of the parties .

Mediation Process : Stages This is stage implementation of the mediation process , which includes assistance to the parties by the internal mediator dig and finish interests of the parties .

Stage : Stage This is stage after the mediation process completed , which includes making report mediation and settlement matter .[3]

In implementation mediation at the Makassar Religious Court , there is a number of obstacles , such as existence attitude selfish and not existence faith Good from the parties . However , mediation Still can done and considered effective if the parties own faith good and want finish case in a way peace .

## **CONCLUSION AND SUGGESTIONS**

Research conclusion This is that Regulation Supreme Court (PERMA) Number 1 of 2016 is still there is mismatch with the Civil Procedure Law applicable in Indonesia , especially in matter cost mediation , the role of the mediator judge, and sanctions for parties that hinder the mediation process . The settlement process dispute inheritance at Class I A Religious Court own three stage procedure , namely stage pre-mediation , mediation process , and stages end implementation mediation . The success of the mediation process is greatly influenced by factors obstacles , such as parties who do not want to mediation and hinder the mediation process . Based on the conclusion above , researchers give advice that need done socialization about benefit settlement dispute inheritance through mediation based on PERMA Number 1 of 2016 and necessary made rule about



sanctions for parties that hinder the mediation process . In addition , the parties involved with dispute inheritance through the mediation process must more notice situation and can do faith Good for the parties so that the mediation process can walk smooth and not happen cancellation of the mediation process .

## References

1. L. Nul Hakim, I. Bayyinah, N. Raden Fatah Palembang, and P. Pesantren Nurul Muhajirin Banyuasin, "ETIKA SOSIAL PERSPEKTIF MUFASSIR NUSANTARA: KAJIAN QS. AL-HUJURAT AYAT 9-13 DALAM TAFSIR AL-IBRIZ," 2023.
2. D. Nur Azra, F. Annisa Qutrunnadaa, Y. Simamora, R. Dio Wijatmika, F. Siswajayanthi, and U. Pakuan Bogor, "Lisensi: Creative Commons Attribution ShareAlike 4.0 International License (CC BY SA 4.0) 65 Perkembangan dan Pembaharuan Terhadap Hukum Perdata di Indonesia Beserta Permasalahan Eksekusi dan Mediasi." [Online]. Available: <https://ejournal.yayasanpendidikandzurriyatulquran.id/index.php/AlZayn>
3. H. Hasbi, "Alternatif Penyelesaian Sengketa Pertanahan Melalui Proses Mediasi di Badan Pertanahan Kota Makassar," *PLENO JURE*, vol. 9, no. 1, pp. 36-46, Apr. 2020, doi: 10.37541/plenojure.v9i1.299.
4. F. H. A. D. W. L. Rendi Gue, "KEKUATAN HUKUM AKTA PERDAMAIAN DALAM KASUS PERCERAIAN MELALUI MEDIASI DI PENGADILAN MENURUT PERSPEKTIF HUKUM PERDATA," *Lex Privatum*, vol. 11, no. 2, Feb. 2023.
5. Salmawati Salmawati, "EKSISTENSI TANAH WAKAF DALAM PEMANFAATANNYA," *Jurnal Cendekia Hukum*, vol. 4, no. 2, pp. 153-165, Dec. 2019, doi: 10.3376/jch.v4i2.106.
6. Fitra Dewi Nasution Ferry Aries Suranta, "PENYELESAIAN SENGKETA PERDATA DENGAN MEDIASI MENURUT PERATURAN MAHKAMAH AGUNG NOMOR 1 TAHUN 2008," *Mercatoria*, vol. 5, no. 1, pp. 35-46, Jan. 2012.
7. M. F. Ramadhan, A. Asis, and A. M. Muin, "Law Enforcement Of The Crime Of Illegal Fishing In The Waters Area Of Pangkajene Regency And The Islands," *Legal Brief*, vol. 11, no. 3, pp. 2722-4643, 2022, doi: 10.35335/legal.
8. L. Marsuni, "Efektivitas Pengalihan Hak Atas Tanah Milik Tionghoa Menurut Peraturan Menteri Keuangan Nomor: 62/PMk.06/2020," *Journal of Lex Philosophy (JLP)*, vol. 5, no. 2, 2024.
9. A. Angkutan, U. Risman, H. Mustafa, M. Pawennai, and M. Mursyid, "Peretasan Terhadap Sistem Elektronik Pada," 2020.
10. Meray Hendrik Mezak, "Jenis, Metode dan Pendekatan Dalam Penelitian Hukum," *Law Rev*, vol. 5, no. 1, pp. 85-97, Mar. 2006.
11. M. M. F. ramadhan. Andi Muhammad Fikri, "Law Enforcement in Child Fighting Crimes That Result in Death," *Jurnal Hukum: HorizonPublicLegal Studies*, vol. 4, no. 1, pp. 1-30, Feb. 2024, doi: 10.15294/panjar.v4i1.55017.
12. Dwi Dasa Suryantoro, "TINJUAN YURIDIS TERHADAP PERATURAN MAHKAMAH AGUNG NOMOR 1 TAHUN 2016 TENTANG MEDIASI," *legal studies journal*, vol. 3, no. 2, pp. 91-110, Feb. 2023.
13. P. Minuman Keras Terhadap Timbulnya Kejahatan Di Kota Makassar Muh Azham Ilham, K. Kunci, and M. Keras, "Indonesia Journal of Criminal Law (IJoCL) Artikel dengan akses terbuka dibawah lisensi CC BY," vol. 2, no. 1, pp. 65-75, 2020, doi: 10.31960/ijocl.v2i1.392.
14. A. Aswari, "Peran Ganda Administrator sebagai Mediator dalam Sengketa Transaksi Ponsel Bekas secara Online," *Jurnal Ilmiah Kebijakan Hukum*, vol. 12, no. 3, p. 259, Dec. 2018, doi: 10.30641/kebijakan.2018.v12.259-274.
15. A. P. Buana, A. Tjolleng, and A. Aswari, "Legal Aspects The Use of Dashboard Cameras as an Effort to Develop Traffic Law," *Golden Ratio of Law and Social Policy Review*, vol. 1, no. 1, pp. 26-31, Dec. 2021, doi: 10.52970/grlspr.v1i1.163.