

## **Bale Mediation As A Dispute Settlement Institution Outside The Court (Study On Bale Mediation, East Lombok Regency, West Nusa Tenggara)**

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### **Abstract.**

*The Supreme Court as the executor of judicial power has made various efforts to prevent these problems, including by increasing the number of justices from academics and other legal practitioners besides career judges, revamping the organization internally, empowering the oversight function to enforcing one roof for all matters. financial, organizational and administrative under the Supreme Court itself, but these efforts have not yet shown significant results. This condition certainly cannot be allowed to occur because it can trigger vigilante actions and can cause chaos in society. The solution to this problem is to develop alternative dispute resolution outside the court through non-formal channels, one of which is through mediation. Bale Mediasi is an institution that facilitates dispute resolution outside of court based on local wisdom, so that it can resolve various legal issues faced by the community without having to end up in court. The establishment of this institution is a form of government acknowledgment in providing protection, respect and empowerment for the existence of local wisdom through customary institutions in carrying out mediation functions, preventing and reducing conflicts or disputes in the community earlier, and holding dispute resolution in the community through mediation in order to create peaceful, orderly and harmonious atmosphere.*

**Keywords :** Bale Mediation, Institution and Court.

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## **I. INTRODUCTION**

One of the problems The biggest problem faced by the Indonesian nation in the field of law enforcement is the quality and quantity of disputes in court which tend to increase, but the ability to resolve them tends to be limited. Moreover, the institution of judicial power has recently been hit by a crisis of confidence in the midst of the many cases of bribery and buying and selling cases involving their employees, from the court of first instance to the supreme court.[1] The position of the judiciary as the executor of judicial power (*judicial power*) in a rule-of-law state is actually highly relied upon as a body that functions and plays a role in upholding truth and justice (*to enforce the truth and justice*). It's just that, in practice, the community still considers dispute resolution through the courts by the community as an ineffective and inefficient process.[2] This is because the conventional court system often results in one party winning and the other party losing. The losing party is always dissatisfied and finally submits a legal action to the high court up to the Supreme Court. The Supreme Court as the executor of judicial power has made various efforts to prevent these problems, including by increasing the number of justices from academics and other legal practitioners besides career judges, revamping the organization internally, empowering the oversight function to enforcing one roof for all matters. financial, organizational and administrative under the Supreme Court itself, but these efforts have not yet shown significant results.[3] This condition certainly cannot be allowed to occur because it can trigger vigilante actions and can cause chaos in society. The solution to this problem is to develop alternative dispute resolution outside the court through non-formal channels, one of which is through mediation.

The choice of dispute resolution outside the court by the community is caused by several factors including: 1) dispute resolution through the courts often creates new problems; 2) the time required for litigation is very long, it can be years; 3) expensive and immeasurable costs; 4) fear of being treated unfairly where the judge's decision tends to take sides; 5) settlement of disputes outside the formal channel by way of deliberation to reach a consensus referring to the values of customary law and religion. Therefore, the

process of resolving these disputes generally involves religious leaders, traditional leaders and village heads. Meanwhile, the most prominent advantages of settlement mechanisms through non-formal channels are the ease with which the community can access them, are fast, have low costs, and relatively restore harmony within society. When viewed in depth, dispute resolution outside the court through mediation has long been and is commonly practiced by Indonesian people. This can be seen from customary law which places the customary head as a figure who can resolve disputes among its citizens. In indigenous peoples who always crave a peaceful life, if there is a difference of opinion that causes a dispute, it is necessary to have a party to settle it. In societies where kinship and group relations are still strong and still adhere to customs, such as the Sasak people in Lombok, the choice of dispute or conflict resolution is directed at non-formal methods through a cultural approach of deliberation or consensus (mediation). Non-formal out-of-court dispute settlement institutions in the Sasak people are driven by people or groups of people who have social influence, or are referred to as *kerama huts*.

Kerama hut is a traditional institution which consists of formal leaders such as the head of the village administration and its officials, and non-formal leaders such as religious leaders, princes, traditional leaders, and intellectuals. The main function of these institutions is to deliberate on policies regarding customary cases that arise in society.[4] However, now the existence of a non-formal way of resolving disputes outside the court through mediation has begun to be institutionalized. This can be seen from the promulgation of West Nusa Tenggara Provincial Regulation Number 9 of 2018 concerning Bale Mediation. Referring to the regional regulation, it is clear that the institutionalization of a dispute resolution place outside the court or Bale Mediation aims to assist the implementation of dispute resolution through mediation in order to create a harmonious, orderly and harmonious atmosphere in society. In addition, the momentum for the formation of this institution was also based on the issuance of Supreme Court Regulation Number 1 of 2016 concerning Mediation in Courts which accommodates and recognizes the existence of mediators who are not certified. This is certainly a momentum to revive the role of community leaders/traditional leaders through customary institutions in each village and sub-district to take part in helping resolve disputes that occur in the community. Settlement of disputes or conflicts in conditions of society that are still simple, where kinship and group relations are still strong, then the choice of institutions to resolve disputes or conflicts that occur are directed to *folk institutions*, because traditional dispute or conflict resolution institutions mean as an institution that maintains order and restores magical balance in society.

## II. DISCUSSION

### Mediation as Local Wisdom of the Indonesian Nation

Mediation as a way to resolve disputes has been known for a long time in various Indonesian beliefs and cultures. This can be seen from the placement of the customary head as a mediator and giving customary decisions for disputes among its citizens. Especially in 1945, this procedure officially became one of the state's philosophies as reflected in the principle of deliberation for consensus. [5] Dispute resolution through mediation is considered as an alternative dispute resolution that can bring people to a balanced, harmonious, peaceful life and can create strong shared values in social life. [6]



Dispute resolution through deliberation and consensus in Indonesian society tends to use a familial approach. This pattern is applied not only to civil disputes but also to criminal ones. This can be seen from several indigenous peoples in Indonesia. Customary law communities prioritize dispute resolution through deliberation, which aims to create peace in society. The deliberation route is the main route used by customary law communities in resolving disputes, because in deliberations a peace agreement can be made that benefits both parties. The process of resolving disputes through mediation prioritizes deliberation and consensus by upholding the noble values that apply in the governance of community life (local wisdom). In the Sasak people on the island of Lombok, for example, dispute resolution is often carried out outside the formal courts by way of consensus deliberation. Dispute resolution is carried out by involving third parties such as teachers, religious leaders, traditional leaders and village heads. [7] In the Sasak Tribe community, the settlement of a dispute is first carried out by means of a warning or advice, if the warning is not heeded, it is resolved through deliberation to reach a consensus. Deliberations (Begundem) are carried out by customary institutions called Krama Adat according to their level and competence, namely krama huts for the neighborhood or hamlet level which are authorized to solve problems between neighborhood residents or between families in the neighborhood. Meanwhile, at the village level it is carried out by Krama Desa which consists of the Village Head as the Traditional Head, Writers, Village Leaders, Community Leaders and Keliang.[8]

Likewise with the Batak Karo community, in the Karo community every problem is considered a family problem and a relative problem, thus problems involving family or relatives must be discussed in a customary way and brought to a negotiation to find a solution through "Runggun". Runggun means holding meetings/negotiating by way of deliberation to reach consensus. Runggun was attended by Sangkep Sitelu in the Karo community. Runggun to the Karo community in resolving disputes does not require a long time, is not convoluted, inexpensive, kinship and harmonious. Runggun can be categorized as resolving disputes by mediation because it is done through the services of Anak Beru, Mondaya and Kalimbubu.[9] For other indigenous peoples, this method is also applied based on the *legal culture* and local values espoused by the community. The value of wisdom is a non-material object that is difficult to measure with material benchmarks, but in fact the cultural value commonly known as the value of wisdom can be felt as a guide for every person instinctively, intuitively and accurately towards virtue, including in resolving disputes in the midst of social life. another society. Thus, cultural values (wisdom) will be able to improve a person's quality if practiced and upheld in living the life of society and the state.[10]

### **Legal Basis for Application of Mediation as an Alternative Dispute Resolution**

Dispute is a universal legal phenomenon that can occur anywhere and at any time, because the dispute is not bound by space and time. As a legal phenomenon, every dispute requires settlement action and there is no dispute without a settlement. Every society has various ways of resolving disputes and conflicts to obtain agreement or peace. One way of resolving existing disputes is through mediation. The mediation process is a form of problem-solving negotiation, in which an impartial external party *works* with the disputing parties to seek a mutual agreement. In this case the mediator is not authorized to decide disputes, but only helps the parties to resolve issues that are delegated to him.[11] Etymologically, the term mediation comes from the Latin, *mediare* which means to be in the middle. This meaning refers to the role played by third parties as mediators in carrying out their duties to mediate and resolve disputes between the parties. 'Being in the middle' also means that the mediator must be in a neutral and impartial position in resolving disputes.[11] Meanwhile, according to Supreme Court Regulation Number 1 of 2016, mediation is defined as a way of resolving disputes through a negotiation process to obtain an agreement between the parties assisted by a mediator. The same definition is also given by the Black Law Dictionary which defines mediation as "*mediation is private, informal dispute resolution process in which a neutral third person, the mediator, helps disputing parties to reach an agreement*". Mediation is a negotiated problem-solving process in which an impartial and neutral outsider works with the disputing parties to help them reach a satisfactory agreement.

Unlike a judge or arbitrator, a mediator does not have the authority to decide disputes between the parties. However, in this case the parties authorize the mediator to help them resolve the problems between

them. The assumption is that third parties will be able to change the strength and social dynamics of conflict relations by influencing the personal behavior of the parties by providing more effective knowledge or information. Thus, the mediator can help the parties to resolve disputed issues. [12]A mediator in the mediation process plays a role in assisting the disputing parties by identifying the issues in dispute, developing options, and considering alternatives that can be offered to the parties to reach an agreement. The mediator in carrying out his role only has the authority to provide advice or determine the mediation process in seeking dispute resolution. The mediator only maintains how the mediation process runs so as to produce an agreement (*agreement*) from the parties.[13]There are several important elements of mediation, including: 1) mediation is carried out to resolve disputes by negotiation, 2) there is a third party, namely a mediator whose existence is accepted by the parties to the dispute, 3) the task of the mediator is to assist the parties to the dispute to seek a resolution to disputes that occur, 4) the authority to make decisions is by agreement of the disputing parties, 5) mediation has several characteristics, namely informal, private and *voluntary* (voluntary).[14]Mediation emerged as an answer to the bitter experience that has befallen the community due to an ineffective and inefficient justice system, the settlement of cases that take a long time, a lengthy process, an endless loop of legal proceedings, starting at the level of appeal, cassation and review. As an alternative to dispute resolution, arrangements regarding mediation can be seen from several laws and regulations including:

a) Article 130 *Het Herzine Indonesich Reglement* (HIR) and Article 154 *Rechts Reglement Buitengewesten* (RBg). The article regulates the obligation of the judge to first seek a peace process for the parties to the dispute;

b) Article 1851, Article 1855 and Article 1858 of the Civil Code. Several of these articles basically recognize peace efforts made by the parties as an alternative dispute resolution;

c) Law Number 48 of 2009 concerning Judicial Powers. Articles 58 and 60 of this law regulate the permissibility of out-of-court settlement of cases through arbitration and alternative dispute resolution;

d) Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. This law regulates that disputes or differences of opinion can be resolved by the parties through alternative dispute resolution by excluding litigation in court with the help of expert advisers or through a mediator;

e) Supreme Court Regulation (PERMA) Number 1 of 2016 concerning Mediation Procedures in Courts. Initially Articles 130 HIR and 154 RBg only provided a legal basis regarding the obligation for judges to seek a peace process for the parties to the dispute, it's just that the method has not been regulated. Therefore the existence of this Perma further emphasizes the existence of mediation and its implementation obligations in resolving disputes in court. When compared to the previous regulations, this Perma is more complete and even provides sanctions for parties who do not have good intentions in conducting mediation.

f) Prosecutor's Regulation of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. This regulation recognizes the existence of mediation/conciliation as an alternative in the settlement of criminal cases, especially in the prosecution process which is the duty and authority of the prosecutor's office with predetermined procedures and conditions; and

g) Republic of Indonesia Police Regulation Number 8 of 2021 concerning Handling of Crimes Based on Restorative Justice. This regulation also makes mediation/reconciliation of the parties an alternative in handling several criminal acts in the investigation process with strictly regulated terms and conditions;

Initially, out-of-court dispute resolution through mediation/peace could only be applied in civil disputes and could not be used for criminal cases, but now, due to the need for community law and reform of the criminal justice system, it is directed at the obligation to explore values the values of humanity, law and justice that live in society, the settlement of criminal cases in several criminal acts also uses a mediation/peace approach in an effort to restore them to their original state and balance the protection of the interests of victims and perpetrators of crimes.

### **Legal Basis for Formation of Bale Mediation as an Alternative to Dispute Resolution Outside the Court The**

enactment of Supreme Court Regulation (Perma) No. 1 of 2016 concerning Mediation in Courts which has recognized and accommodated the existence of uncertified mediators is seen as a momentum to revive the role of community leaders/figures adat to take part in helping settle cases and as part of how to maintain and care for local wisdom that grows and develops in the midst of society, especially for people who have kinship and group relations that are still strong. Even this step was taken by the Province of West Nusa Tenggara (NTB) by forming an institution based on Regional Regulation Number 9 of 2018 concerning Bale Mediation. This institution is a forum that facilitates out-of-court dispute resolution based on local wisdom, so that it can resolve various legal issues faced by the community without having to end up in court. Settlement of disputes in this way is an alternative to settling cases outside the court.

In communities that have kinship and group relationships that are still strong and still adhere to their customs, such as in West Nusa Tenggara (NTB), the choice of dispute or conflict resolution is directed at non-formal methods through a cultural approach of deliberation or consensus (mediation). This is done because dispute resolution is interpreted as an effort to maintain order and implement spiritual values that exist in society. The presence of the "Bale Mediation" institution is an implementation of re-empowerment and strengthening of customary institutions (village karma/kelurahan karma) which were formerly known as village peace judges (*dorps sacten*). [15] The establishment of this institution is a form of government recognition in providing protection, respect and empowerment of the existence of local wisdom through customary institutions in carrying out mediation functions, preventing and reducing conflicts or disputes in the community earlier, and the implementation of dispute resolution in the community through mediation for the sake of creating a harmonious, orderly and harmonious atmosphere. In subsequent developments the establishment of this mediation institution has spread to various regencies and cities in the West Nusa Tenggara region including: [16]

- a) The establishment of the Sasak Traditional Krama and the Formation of Mediation Bales in the City of Mataram are based on Mataram City Regional Regulation Number 3 of 2015 concerning Traditional Krama Sasak and Mataram Mayor Regulation Number 40 of 2019 concerning Bale Mediation;
- b) Establishment of Village Krama Council guidelines in North Lombok Regency through North Lombok District Head Regulation Number 20 of 2017 concerning Village Krama Assembly Guidelines;
- c) Formation of Mediation Bales in East Lombok Regency through East Lombok Regent Regulation Number 37 of 2019 concerning Formation of Mediation Bales;
- d) Formation of Mediation Bales in West Lombok Regency through West Lombok Regent Regulation Number 47 of 2019 concerning Formation of Mediation Bales;
- e) Formation of Paruga Mediation in Dompu Regency through Regional Regulation of Dompu Regency Number 47 of 2019 concerning Paruga Mediation; and
- f) Establishment of Mediation Bales in West Sumbawa Regency through Regional Regulation Number 2 of 2021 concerning Bale Mediation;

#### **Dispute Resolution Procedures at the East Lombok Mediation Bale**

This institution is given the authority to resolve disputes in the community including civil disputes and certain criminal acts, more details as follows: [17]

<b>Types of Disputes That Can Be Resolved by the East Lombok District Mediation Bale</b>	
All civil disputes that arise in the community, including: default, unlawful acts, gono like this, debts and so on.	Criminal Disputes include: <ol style="list-style-type: none"> <li>1) Minor theft regulated in Article 364 of the Criminal Code;</li> <li>2) Light embezzlement regulated in Article 373 of the Criminal Code;</li> <li>3) Minor fraud regulated in Article 379 of the Criminal Code;</li> <li>4) Light collection regulated in Article 482 of the Criminal Code;</li> </ol>

	5) Mild abuse of animals regulated in Article 302 of the Criminal Code; 6) Mild humiliation regulated in Article 315 of the Criminal Code; 7) Mild maltreatment regulated in Article 352 of the Criminal Code; 8) Domestic violence; 9) Customary crimes/customary offences which are contained in the Criminal Code Criminal 10) acts committed by children which carry a maximum penalty of 7 (seven) years; 11) Early marriage is an "attractive" traditional marriage institution in Sasak customary law where both the bride and groom are underage; 12) Abandonment as a complaint offense is regulated in Article 49 <i>juncto</i> Article 51 and Article 52 of Law Number 23 of 2004 concerning the Elimination of Domestic Violence.
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Based on interviews conducted with the management of Bale Mediation, East Lombok Regency, NTB, information was obtained regarding the strategies used in resolving disputes submitted to Bale Mediation, namely:

1. The mediator who resolves community issues at Bale Mediation, East Lombok Regency, NTB consists of several elements including, religious leaders, community leaders, youth leaders, traditional leaders, academics and practitioners.
2. The determination of the mediator and the number to settle the issues submitted to the Mediation Bale depends on the type of case and the level of complexity. This is done to facilitate the resolution of the case/dispute.
3. The approach taken by the Bale Mediasi institution in East Lombok Regency, NTB in solving community problems is by taking a direct approach to the parties and even conducting visits to the residence of each party to the litigation. [18]

Basically the stages of dispute resolution used in the East Lombok Regency Mediation Bale are the same as the procedure as contained in Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Courts. Based on the Standard Operating Procedure (SOP) for Dispute Handling at the East Lombok District Mediation Bale and interviews conducted with the Deputy Head of the East Lombok District Mediation Bale, the following are the several stages of dispute resolution at the East Lombok District Mediation Bale:

1. Request for Mediation. At this stage, people who feel their civil rights and criminal rights are being disturbed by other village communities and/or by civil legal entities with other civil legal entities must first request mediation on cases in writing or verbally. If submitting an oral request, the Mediation Bale officer will assist in making a mediation request letter;
2. Registration of Application for Mediation. Communities who have previously made a mediation request will be guided to register a mediation request. This application contains at least the full name, place of residence or position of the parties, type of dispute or case, the request is addressed to the Mediation Bale for mediation, a summary of the dispute or case, and submits a photocopy of the KTP and supporting documents or evidence. At this stage the party registering the mediation application will be charged a fee during the mediation process. The amount of the fee will be determined by the distance and location of the two parties to the dispute;
3. Mediator Appointment. After carrying out a review of the dispute being requested, the Bale Mediation dispute resolution coordinator at this stage will then appoint a mediator who has previously coordinated with the Bale Mediation chairman in accordance with the dispute to be handled;

4. Notice of Mediator Appointment Letter. After the appointment of the mediator is complete, then the Bale Mediation administrative staff will notify the mediator appointment letter to the mediator in the Bale Mediation;
5. Mediator Receives Mediator Appointment Letter. The selected mediator will analyze based on the letter given by the applicant to be analyzed first to find out the root causes of the two parties to the dispute;
6. Notice of Summons for Mediation. After knowing the root cause of the two parties to the dispute, a summons was made to hear the statements of the two parties to the dispute;
7. Mediation begins with a listening agenda. If the parties agree and are willing to resolve the dispute through mediation, at this stage the mediator will begin the mediation process with an agenda to listen to the suggestions and wishes of the two parties to the dispute;
8. Caucus (Meeting). If deemed necessary, the mediator will hold a meeting with one of the parties without the presence of the other party which will then be considered by the mediator
9. Caucus Results. After the caucus is held, the mediator will formulate the results of the caucus
10. Discussion of the results of the caucus formulators. At stage the mediator will align the wishes and suggestions of both parties.
11. Peace Agreement (If Mediation Succeeds). When the mediation process is successful, the mediator will help make a balanced that aims not to harm both parties without any coercion from the mediator.
12. Reconciled or Not (Deadlock). At this stage an agreement will be obtained between the two parties to the dispute because the settlement time is 30 days; however, if it is felt that there is potential for reconciliation, then the time for settlement of the case will be added 30 days until both parties reconcile;
13. Mediation ends If Deadlock. If the two parties do not find a bright spot in resolving the dispute, the mediation process will be terminated;
14. Signing of Minutes of Mediation. At this stage, if the mediation is successful step by step, Bale Medias will make a Minutes of the results of the mediation that must be signed by both parties;
15. Agreement Result Report. After the agreement is signed, the two parties, the mediator will report the results of the agreement to the Chairman of the Bale Mediation
16. Submission of the Agreement to the Local Court. The next stage is the filing of a peace agreement between the two parties in the jurisdiction or local court.
17. Mediation Results

### III. CONCLUSION

Bale Mediasi is an institution that facilitates dispute resolution outside of court based on local wisdom, so that it can resolve various legal issues faced by the community without having to end up in court. The establishment of this institution is a form of government acknowledgment in providing protection, respect and empowerment for the existence of local wisdom through customary institutions in carrying out mediation functions, preventing and reducing conflicts or disputes in the community earlier, and holding dispute resolution in the community through mediation in order to create peaceful, orderly and harmonious atmosphere.

Dispute resolution through the Bale Mediation institution is directed to non-formal ways through a cultural approach to deliberation or consensus (mediation). This is done because dispute resolution is interpreted as an effort to maintain order and implement spiritual values that exist in society. The presence of the "Bale Mediation" institution is an implementation of re-empowerment and strengthening of traditional institutions (village karma/kelurahan karma) which were formerly known as village peace judges (*dorps sacten*).

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