



**The implementation of a peace agreement in the settlement of disputes in the court connected with supreme court regulation number 01 of 2016 regarding mediation procedures in court**

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Received: December 13, 2022; reviews: 2; accepted: January 26, 2023

**Abstract**

The Implementation of Peace Agreement in Dispute Resolution in Court is linked to the Supreme Court Regulation of the Republic of Indonesia Number 01 of 2016 concerning Mediation Procedures in Court. This research aims to inventory and understand various adequate and accurate information regarding the benefits or positive dimensions of dispute resolution through peace agreements and to find the most appropriate juridical mechanisms for ensuring that the agreed peace agreements can be implemented properly. This study utilizes a juridical-normative approach methodology, in which the law is regarded as a rule or norm that regulates human behavior, and in this case, legal provisions are used as the main parameters for conducting this study. This includes searching and discovering concepts and legal principles related to the creation of peace agreements in the resolution of a dispute in court. The results of this research indicate that resolving disputes through peace agreements is more beneficial for the disputing parties, as it can reduce lengthy time, high costs, and protracted or prolonged processes. To ensure the legal enforceability of the peace agreement and to prevent it from becoming illusory or non-executable, it is necessary to request the court to issue a separate decision on the outcome of the agreement or to incorporate it into the main judgment of the case. This is done to avoid any breach of promise or non-performance by either party who refuses to implement the agreed terms in the presence of the mediator.

## **Keywords**

Peace Agreement, Dispute Resolution, Mediation

### **1. Introduction**

Agreements or contracts established between parties bound by commitments often cannot be implemented as originally agreed. Parties who feel disadvantaged by the actions of the defaulting party typically seek assistance from the judicial institution, which is specifically established to resolve disputes or disagreements arising from an agreed-upon contract. Business transactions, whether on a global or domestic level, often bring forth unexpected circumstances. Agreements made between business partners often fail to be realized according to the agreed-upon terms. Contract breaches or defaults seem to be something that will always be associated with contracts, whether they are between individuals or across nations. Juridical protection for relations between individuals or transnational corporations can be done publicly or personally. Legal protection for relationships between individuals or companies that cross national borders can be done publicly or privately. Public protection is done by utilizing the protection facilities provided by public provisions, such as domestic legislation and international agreements, both bilateral and universal, intended for such purposes. Private protection can be done by utilizing private legal protection facilities, namely by contracting carefully." In the business world, the latter type of law is actually very popular. This type is widely used by businesses involved in cross-border transactions. The term "contract" or "perjanjian" is derived from the Dutch word "verbintenis," which is a translation of the term "obligation" in the French Code Civil, a term taken from Roman law. In addition to the term "verbintenis," the term "overeenkomst" is also known. "Verbintenis" is often synonymous with Indonesian terms such as "perikatan," "perutangan," and "perjanjian," while "overeenkomst" is synonymous with "perjanjian" and "persetujuan." The Civil Code does not explicitly define the meaning of "perikatan" (verbintenis/obligatio). There is not a single article that explains what exactly is meant by "perikatan." "Perikatan" is a legal relationship that arises from a legal event, which can be an act, an event, or a condition. "Perikatan" is a legal relationship between two individuals or two parties, based on which one party has the right to demand something from the other party, and the other party is obliged to fulfill that demand." Regarding dispute resolution mechanisms, generally, society perceives that disputes can only be resolved through the court system, and even legal professionals hold the same view. Until now, many of them are fixated on choosing the litigation route and overlook and neglect non-litigation methods of dispute resolution." Dispute resolution through the courts (litigation) involves a process of examination in front of a court based on applicable procedural law. Disputes can be resolved through adjudication or other alternative dispute resolution methods, either through hard

or soft negotiation techniques. Regarding the process of dispute resolution, adjudication is a method of resolving a dispute through the judicial system, while Alternative Dispute Resolution (ADR) refers to dispute resolution or difference of opinion through procedures agreed upon by the parties involved. This includes resolving disputes outside the judicial system through methods such as consultation, negotiation, mediation, conciliation, or expert determination. The business world highly values all possible dispute resolution options and requires assistance in utilizing them effectively. Dispute resolution can have a significant impact on productivity, business implementation, and profitability. In conventional litigation and arbitration systems, the winning party takes it all. In ADR or APS systems, cooperative resolutions are sought. Cooperative resolution is commonly referred to as a win-win solution, where all parties feel like winners. A win-win solution model can be illustrated with a traditional example of two girls who want and compete for an orange. In the diagram of the dispute resolution approach above, a win-lose solution occurs when one girl gets the entire orange while the other girl gets nothing at all. On the other hand, with a compromise solution, both girls may get half of the orange. A win-win solution seeks to identify the needs or interests of each conflicting party. It requires a cooperative attitude from all parties. Therefore, all parties are expected to broaden their thinking and seek creative solutions to fulfill the desires of the conflicting parties. Until now, society and even legal professionals have not utilized non-litigation methods extensively to resolve the disputes they face. Most of them are still fascinated by litigation as a means of resolution. Litigation has brought various disadvantages, prompting people to seek more beneficial mechanisms, and APS or ADR is considered a promising alternative dispute resolution mechanism. APS or ADR, especially arbitration, tends to be the choice for foreign entrepreneurs in resolving disputes. The selection of arbitration or alternative dispute resolution mechanisms is driven by several reasons. Firstly, foreign parties generally have limited knowledge of the legal system of another country. Secondly, there are doubts about the impartiality of local courts in examining and deciding cases involving foreign elements. Thirdly, foreign parties are uncertain about the quality and capabilities of developing country courts in handling international trade and technology transfer cases. Fourthly, there is a belief that dispute resolution through formal judicial channels takes a long time. If the chosen method for resolving disputes is through conventional litigation (district court or appellate court), according to Article 130 paragraph (1) of the Indonesian Civil Code (HIR) and Article 154 paragraph (1) of the Indonesian Code of Civil Procedure (R.Bg.), the judge is obligated to seek reconciliation among the parties if they are present in court.

However, this provision is not suitable because at the beginning of the trial, the judge may not yet know the true nature of the case. Only after the examination of the case has begun, the judge can have a better understanding of the facts and then find an appropriate time to reconcile the parties. Therefore, it has become a common practice in the judicial world that reconciliation efforts by the judge are

not limited to the first hearing but can continue before a judgment is rendered. Furthermore, Article 2 paragraph (2) of Supreme Court Regulation No. 01 of 2016 on Mediation Procedures in Court stipulates that every judge, mediator, and party must follow the mediation procedures outlined in the regulation. According to Article 2 paragraph (3) of the same regulation, the failure to pursue mediation procedures under this regulation is a violation of Article 130 of the Indonesian Civil Code (HIR) and/or Article 154 of the Indonesian Code of Civil Procedure (Rbg), resulting in a null and void decision. A mediator often provides an opportunity for the parties to settle their disputes outside the court, and if a peaceful agreement is reached and the parties wish to withdraw the case, that peaceful agreement will not be included in the District Court's judgment. Therefore, the implementation of such a peaceful agreement cannot be enforced. If one party fails to fulfill its obligations voluntarily according to the agreed-upon peace agreement, it will hinder the resolution of the dispute and create difficulties for the other party to enforce the settlement. Moreover, in a situation where the dispute resolution process is carried out through litigation in civil cases, which is then confirmed in a peace agreement by the court, attention should also be given to the content of the peace agreement to ensure its enforceability and avoid it being illusory or non-executable. From the above explanation, it can be understood that reaching an agreement through mediation is actually beneficial for the disputing parties as it allows for a fast and cost-effective procedural justice. However, some parties, driven by their idealism, may refuse to end their disputes through mediation. The successful outcome of mediation achieved by a mediator in court should not be illusory and non-executable. It should have legal validity, which requires a separate deed of settlement. However, sometimes, when the main case has been resolved, parties may neglect additional matters such as compensation, causing a delay in implementing the settlement. This aspect is worth exploring and discussing further in this writing.

## **2. Research Methodology**

In this study, the author utilizes a descriptive-analytical method, which is a way to solve or address the problem at hand by collecting and analytically classifying data in order to create an objective overview of a situation. The approach used in this research is a normative juridical research method, which is a research method that involves gathering material from a specific event and linking it to relevant literature to address the research problem and then presenting it in the form of a journal article. To support the chosen method, complete data is necessary. Therefore, the following data collection techniques are employed:

1. **Library Research:** This involves gathering books and data to obtain:
  - a. **Primary Legal Materials:** These are legally binding materials consisting of legislation and regulations related to the researched problem.
  - b. **Secondary Legal Materials:** These materials provide explanations for primary legal materials and consist of literature books related to the discussed subject matter.

2. Field Research: This type of research is conducted through the following methods:
  - a. Observation/Fieldwork: This involves direct and systematic observation of social phenomena and disturbances, followed by recording.
  - b. Interview: This method involves question and answer sessions to obtain information and legal opinions. The interview technique used is a semi-structured interview, allowing for comprehensive and in-depth responses using writing tools.
  - c. Tertiary Legal Materials: These materials provide guidance on primary and secondary legal materials and include dictionaries, encyclopedias, magazines, and articles.

### **3. Discussion**

In that context, the problems to be examined are identified as follows:

1. Why is dispute resolution through a peace agreement more beneficial for the disputing parties?
2. How can the peace agreement be implemented to have legally binding force for the disputing parties?

An agreement can be defined as a legal relationship that arises from a legal event, which can be an act, an occurrence, or a condition. Additionally, an agreement can be understood as a legal relationship between two individuals or parties, based on which one party is entitled to demand something from the other party, and the other party is obliged to fulfill that demand. For an agreement to be valid and binding, it must fulfill the provisions and requirements as regulated in Article 1320 of the Civil Code, both in terms of subjective and objective conditions. Subjective conditions include the presence of mutual consent between the parties entering into the agreement (meeting of minds, consent), and the parties involved in the agreement being legally capable (competent) and not under guardianship (minor, underage). The presence of such legal capacity is significant from a legal perspective because it determines the responsibility for implementing what has been agreed upon by the parties. Objective conditions include a specific subject matter and a valid legal cause. If an agreement fails to meet the subjective conditions, the legal consequence is that the agreement can be annulled (voidable) if the parties so desire. On the other hand, if the objective conditions of an agreement are not fulfilled as required by Article 1320 of the Civil Code, then from a legal perspective, the agreement is null and void (void, invalid). This means that the agreement should be considered never to have existed from the beginning. In cases where an agreement is not voluntarily implemented by the parties as agreed, the dissatisfied party can resolve it through litigation or non-litigation channels. Some advantages of pursuing dispute resolution through litigation include the enforceability of court decisions, which can be enforced regardless of the unwillingness or consent of the losing party. Therefore, in the litigation process, there is a losing party that will undoubtedly be greatly disadvantaged by the court's decision. That risk must be borne by the losing party. For the losing party, there are legal remedies available, including both ordinary and extraordinary legal

remedies. Ordinary legal remedies include Opposition, Appeal, and Cassation, while extraordinary legal remedies include Judicial Review. Ordinary legal remedies are directed at decisions that have not attained legal force and effect (not final and binding). Extraordinary legal remedies are aimed at decisions that have attained legal force and effect, meaning decisions that have become final and binding. Therefore, the existence of the extraordinary legal remedy of Judicial Review, from a formal legal perspective, does not suspend the implementation of the decision (execution). Another advantage of resolving disputes through litigation is the presence of legal certainty. This means that the implementation of the decisions made does not need to consider non-legal aspects, such as considerations related to a sense of justice, which are often not to be ignored because the truth sought in a case is a formal truth (formal justice). It must be acknowledged that in the current practice of justice, there seems to be a longing for moral justice even though it is recognized that it is highly subjective and often lacks precise parameters. Furthermore, there are other advantages to pursuing resolution through litigation. Those who possess sufficient formal evidence or have the ability to influence the court have a chance to win a disputed case. This is because the litigation process adheres to the formal provisions of procedural law. As a result, even if a party is entitled to a disputed item, they may still suffer defeat if they do not have enough evidence. The advantages of mediation with Supreme Court Regulation Number 1 of 2016 include: a) Mediation is expected to resolve disputes quickly and relatively inexpensively compared to bringing the dispute to court or arbitration. b) Mediation focuses the attention of the parties on their real interests and their emotional or psychological needs, so mediation is not solely focused on their legal rights. c) Mediation provides an opportunity for the parties to participate directly and informally in resolving their dispute. d) Mediation gives the parties the ability to have control over the process and its outcome. e) Mediation can change the outcome, which is difficult to predict in litigation and arbitration, with certainty through consensus. f) Mediation provides durable results and can create better mutual understanding among the disputing parties because they themselves make the decision. g) Mediation can eliminate the conflicts or hostilities that almost always accompany any coercive decision made by a judge in court or an arbitrator in arbitration. According to the author, the benefits and objectives of mediation are seen as a means to resolve disputes in a balanced manner and without giving rise to new disputes. Mediation is defined as a peaceful or non-litigation resolution involving a third party, similar to the resolution of syiqaq cases, which involve a third party called a hakam. Hakam (حَكَم) according to the dictionary means arbitrator, arbiter. Hakam is also defined as a peacemaker, someone who is sent by both husband and wife when there is a dispute between them, without knowing who is right or wrong between the two spouses. Disputes between husband and wife in Islamic terminology are called syiqâq, which means disputes, quarrels, and enmity that arise and occur between the husband and wife together. Although this term is often mentioned in fiqh books, detailed studies on hakam or mediator are

lacking. This is indicated by: a) The limited number of Islamic legal studies in fiqh books that touch on mediation issues. b) The weak level of socialization and application of dispute resolution in Muslim society using hakam. Hakam or mediator is only found in the chapter on marriage concerning syiqâq, where hakam becomes crucial when conflicts arise between husband and wife. In this context, hakamain is needed, which refers to two individuals appointed by the husband and wife as facilitators in resolving their problems. The disadvantages of pursuing dispute resolution through litigation are that it takes a relatively long time, involves significant costs, and the process is no longer simple. Moreover, the private details of the issue may become known to the public, thereby not reflecting the principles of quick, simple, and inexpensive justice, as stated in Article 2, paragraph (4) of Law Number 48 of 2009 on Judicial Power. Other disadvantages, especially for business owners, include the loss of customer trust, which is crucial in the business world. Trust plays a significant role in business, as it determines the cost and time required to complete a transaction. A lack of trust will consume additional time and increase costs. On the other hand, high trust speeds up the process of resolving a matter and reduces the required costs.

In the context of this research, the framework is built upon

1. Article 1320 of the Civil Code

According to Article 1320 of the Civil Code, a contract must meet the terms and conditions specified in order to be valid and binding. There are legal consequences that arise if these provisions and conditions are not fulfilled. First, the contract will be voidable if the subjective requirements of the agreement are not met. Second, it will be void or null if the objective requirements of the agreement are not fulfilled. The provisions and conditions fulfilled by the parties involved in the contract will form the legal basis for the contract, especially since they serve as the initial foundation for implementing a consensus. Without a consensus that complies with the applicable legal requirements, it cannot be effectively implemented, as it may be exploited by parties acting in bad faith to deny the consensus. This clearly disadvantages the party acting in good faith

Aligned with the principle of consensus as the spirit of Article 1320 of the Civil Code, an agreement made orally is not an issue as long as the parties voluntarily agree to fulfill the substance of the consensus. An exception to this is when the applicable law requires the agreement to be documented in a more specific form and conditions. In such cases, a contract is not merely required to meet the provisions of Article 1320 of the Civil Code, which emphasizes the consensus itself. In essence, other conditions are necessary and should be observed by the parties.

2. Principle of Freedom of Contract

The principle of freedom of contract, as stated in Article 1338 of the Civil Code, asserts that anyone can enter into an agreement on any matter as long as it does not contradict the law, morality, public order, and jurisprudence. Thus, Article 1338 of the Civil Code adopts an open system that allows for various forms of agreements, even those that were not known at the time the Civil Code was enacted.



The existence of provisions that allow agreements to be made according to the will of the parties involved is beneficial, particularly in responding to the aspirations and dynamics that develop within society. In this context, the law should not hinder development. The law should serve as a means of social engineering, making the world a suitable place to live in.

### 3. Pacta sunt servanda

Is a principle introduced by Hugo Grotius, stating that promises that have been made must be fulfilled. This principle applies universally and eternally, as no civilized society, wherever and whenever, would violate it. It is highly applicable in the business world and serves as a moral foundation, leading individuals to willingly abide by their agreements. Every contract will always involve two attributes: rights and legal duties. Legal duties refer to the commitment to fulfill obligations towards the other party, while rights or benefits provide the competence to demand what has been agreed upon in the contract. Therefore, in every contract, each party must honor their promises by fulfilling their obligations and, at the same time, respect the rights of the other party. Hugo Grotius sought the basis of this consensus in Naturalistic Law by stating that "promises are binding" (*pacta sunt servanda*) and "we must fulfill our promises" (*promissorum implendorum obligati*). With good faith (*te goede trouw*), individuals will not take advantage of the difficulties of others, as it is not part of the agreed-upon terms.

In Grotius' view, the principle of *pacta sunt servanda* arises from the premise that contracts are naturally and inherently binding based on two arguments. First, the simplicity of human interaction and cooperation necessitates trust among individuals, which, in turn, fosters honesty and loyalty. Second, every individual has rights, and the most fundamental of these is the right to property, which can be transferred. If an individual has the right to relinquish their property, there is no reason why they should be prevented from relinquishing their rights through a contract. This is possible because an owner, without undermining the validity of the social function principle, can do anything with their property, including but not limited to giving it to another party as they wish. Logically, this is acceptable considering that the law also grants freedom to those who have expended their energy to acquire wealth and, therefore, it is logical to provide them with the freedom to fulfill their desires with that wealth. The effectiveness or validity of the *pacta sunt servanda* principle applies not only in local business contexts but also on a global scale. Thus, Article 26 of the Vienna Convention on the Law of Treaties of 1969 states that every treaty binds the parties and must be performed in good faith. The parties are obliged to fulfill a contract as agreed, even if the implementation becomes unfavorable or challenging for one party. This provision constitutes a basic rule of "*lex mercatoria*" intended to guarantee trade.

### 4. Non-litigation mechanisms

The issues that may arise as a result of a contract can vary greatly. This diversity aligns with technological advancements, information, or, in short, the dynamics that grow and develop within society. In relation to these issues, it is



believed that there are several mechanisms capable of providing solutions, both rigid solutions as provided by conventional litigation and more flexible and dignified solutions as offered by Alternative Dispute Resolution (ADR). In the traditional decision-making system (through courts and arbitration), the winning party takes it all. In the ADR system, the resolution is sought to be as cooperative as possible, known as win-win solutions, where all parties feel like winners. Translate "Win-win solutions" with a traditional example where two girls want and compete for an orange. In that context, a win-lose solution would occur when one girl gets the entire orange, while the other girl gets nothing at all. On the other hand, with a compromise (win-win solution), each girl would receive half of the orange. Win-win solutions require creativity from the parties involved to understand and recognize their needs and find creative solutions that fulfill the desires of the disputing parties. In empirical reality, many societies and legal practitioners have not utilized these non-litigation mechanisms to resolve their disputes. It seems that they are still fascinated by resolving disputes through litigation, even though experience has shown that the chosen mechanism can be relatively costly. This situation is further reinforced by the fact that dispute resolution systems developed so far tend to prioritize litigation as the preferred method of resolution. Furthermore, for legal practitioners, resolving a dispute through litigation opens up opportunities to receive more tempting honorariums, which are difficult to obtain through non-litigation processes. The undeniable fact is that resolving disputes through litigation provides a clearer determination of the amount of honorarium. Therefore, it is not surprising that conventional methods are chosen for dispute resolution rather than non-litigation mechanisms, even though the latter are considered alternative mechanisms that should be better and more favorable. The success of resolving disputes through non-litigation, especially through peace mechanisms, will undoubtedly be more advantageous for the parties involved. At the very least, because it aligns with the Indonesian national identity and the principles outlined in the Judicial Power Act (Law Number 48 of 2009), namely simplicity, speed, and low costs. The spirit of these principles will undoubtedly be highly sought after by businesspeople, especially because it aligns with the character of businesspeople, who are always professional and practical. This is also what happened in the case under study. The failure of the mediation process did not immediately discourage the parties from remaining committed to what they had agreed upon, as the dispute resolution ultimately ended in peace. Mediation in court is conducted because it involves civil matters (individuals), and therefore, mediation is still considered a fairer form of reconciliation than court judgments that result in winners and losers. Hence, the Supreme Court's efforts to implement the mediation process are outlined in Supreme Court Regulation Number 2 of 2003, subsequently updated by Supreme Court Regulation Number 1 of 2008, and most recently, with the Amendment to Supreme Court Regulation Number 1 of 2016 Regarding Mediation Procedures in Court. The updates made by the Supreme Court in the mediation phase aim to reduce the backlog of cases in the High Court and Supreme Court.

According to the Supreme Court Regulation, the mediation phase is conducted outside of the trial with a judge or professional mediator serving as a mediator in the process. However, in reality, most of the disputing parties still prefer the litigation process over seeking reconciliation through the mediation phase. A problem arises in the implementation of the execution/peace settlement that has been decided by the parties through a mediator and has been agreed upon. However, it is not requested from the court for the approval of the peace settlement or for it to become a deed of settlement (*akta van dading*), nor is it decided in the main case. For example, in a divorce case in court, whether it's a divorce by *talak* or divorce by litigation, the opposing party, whether it's the husband as the defendant or the wife as the petitioner, raises an objection by filing a compensation claim regarding the division of joint assets. The problem arises when one party suddenly refuses to implement the agreed-upon terms of the settlement in the presence of the mediator and before the main case is examined. Because in the decision of the main case, such as a divorce case, the panel of judges does not establish or include the terms of the agreement in their ruling. The execution of the compensation claim cannot be carried out, and the aggrieved party must file a new lawsuit or petition requesting the court's intervention. The party refusing to implement the terms of the agreement must be willing to comply and adhere to the agreement made in the presence of the mediator. Contrary to Agustina's opinion, a notary in the city of Banjar, West Java, emphasizes that a notary does not assist in changing/transferring ownership in a certificate concerning the settlement of joint assets if the ruling does not explicitly and implicitly explain the disputed object that has been agreed upon by the parties and the ruling that states that the parties must comply and adhere to the agreed-upon settlement made in the presence of the mediator.

#### **4. Conclusion and Recommendation**

#### **5. Conclusion**

Based on the explanation above, it can be concluded that resolving disputes through a peace agreement is more beneficial for the disputing parties as it can reduce time, costs, and prolonged or protracted processes. To ensure that the peace agreement has legal binding force for the disputing parties, it is advisable to request a separate ruling on the outcome of the settlement from the court or have it determined together in the main decision of the submitted case. This is to prevent breach of promise or non-performance by one party who refuses to implement the agreed-upon terms made in the presence of the mediator.

#### **6. Recommendation**

According to the author, there are three aspects that need to be considered in conducting mediation or facilitating the parties' reconciliation:

1. Substantive aspect: The success of mediation involves the specific satisfaction obtained by the parties in resolving their dispute.
2. Procedural aspect: This aspect refers to the satisfaction experienced by the parties throughout the mediation process, from the beginning to the end. Procedural satisfaction is marked by fair treatment between the parties in negotiating the dispute. The parties should be on an equal footing, and no party should be demeaned or belittled.
3. Psychological aspect: This aspect concerns the emotional satisfaction of the parties, maintaining mutual respect, and being open and transparent. The attitudes displayed by the parties to resolve the dispute amicably can encourage psychological satisfaction among them. Feeling valued in the mediation forum or among the involved parties can contribute to the success of the mediation process.

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