As-Siyasi: Journal of Constitutional Law
E-ISSN 2798-3528, Vol. 4 No. 1 (2024)
DOI: http://dx.doi.org/10.24042/as-siyasi.v4i1.21667

The Mediation Existence and Opportunities of State Administrative Court in Supreme Court Regulation

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Received: 2024-03-26 Revised: 2024-04-23 Accepted: 2024-06-09

Abstract

The implementation of mediation in the Indonesian judiciary is regulated in Supreme Court Regulation (PERMA) No. 1 of 2016 on Mediation Procedures in Courts. However, the PERMA only regulates the practice of mediation in District Courts and Religious Courts, not in the State Administrative Court. Nevertheless, the PERMA allows the State Administrative Court to conduct mediation by the provisions of the legislation. However, practical guidelines governing mediation at the State Administrative Court are not detailed. In practice, this legal vacuum has led to a lack of optimisation of mediation as an instrument of dispute resolution at the State Administrative Court. The research aims to analyse the extent of the opportunities provided by the Supreme Court in PERMA No. 1 of 2016 to implement mediation procedures at the State Administrative Court. This research is normative juridical and analytical descriptive conducted by literature review. The data was collected using the documentation technique to be analysed using the normative analysis method. The analysis indicated no specific rules regarding the implementation of mediation at the State Administrative Courts. Still, the opportunity is wide open when viewed from the type of case, which is generally included in the civil case type. Furthermore, then PERMA is not the only absolute legal basis for the implementation of mediation at the State Administrative Court, as confirmed in Article 130 HIR and Article 154 RBg. The PERMA only fills the legal vacuum related to mediation procedures not explained in the previous regulations. Therefore, it is necessary to reform the law related to mediation at the State Administrative Court to achieve a court with integrity, speed, simplicity and low cost.

Keywords: Mediation; Supreme Court Rules; State Administrative Court

Introduction

Mediation[1] has become one of the instruments optimized to enhance the effectiveness and efficiency of case resolution in courts. Integrating mediation into court proceedings is expected to be an effective tool in addressing the case backlog in courts and to strengthen and maximize the function of non-judicial institutions for dispute resolution alongside adjudication processes.[2] Moreover, mediation is anticipated to expand access for parties to achieve justice[3] because it is designed to complement several shortcomings of litigation-based dispute resolution.[4]

The existence of mediation in the judiciary has a legal basis in the Supreme Court Regulation No. 1 of 2016 on Mediation Procedures in Courts.[5] Regarding the classification of cases that must undergo mediation, Article 4 paragraph 1 of PERMA No. 1 of 2016 stipulates that all civil disputes brought before the court must undergo mediation, including opposition (verzet) cases against default judgments and opposition by parties to the case (partij verzet) or third parties (derden verzet) against the execution of final and binding judgments unless otherwise stipulated by the PERMA.[6]

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[1] Mediation in PERMA No. 1 of 2016 is defined as a method of dispute resolution through a negotiation process to obtain an agreement between the parties with the assistance of a mediator. See Septi Wulan Sari, "Mediasi Dalam Peraturan Mahkamah Agung Nomor 1 Tahun 2016," *Ahkam* 5, no. 1 (July 2017): 8.

[2] Indriati Amarini, "Penyelesaian Sengketa yang Efektif dan Efisien Melalui Optimalisasi Mediasi di Pengadilan," *Jurnal Kosmik Hukum* 16, no. 2 (June 2016): 93.

[3] Dian Maris Rahmah, "Optimalisasi Penyelesaian Sengketa Melalui Mediasi di Pengadilan," *Jurnal Bina Mulia Hukum* 4, no. 1 (September 2019): 13.

[4] Dwi Sriyantini, "Prinsip Mediasi Nonlitigasi sebagai Alternatif Penyelesaian Sengketa Perdata di Indonesia" (Tesis, Jember, Universitas Jember, 2011), xi.

[5] The Supreme Court has issued several PERMA on mediation, beginning with PERMA No. 2 of 2003 on Court Mediation Procedures, then Perma No. 1 of 2008 on Court Mediation Procedures, then PERMA No. 1 of 2016 on Court Mediation Procedures (hereinafter referred to as PERMA No.1 of 2016), and finally PERMA No. 3 of 2022 on Electronic Court Mediation. See Maria Rosalina, "Pelaksanaan Mediasi dalam PERMA Nomor 1 Tahun 2016 dan PERMA Nomor 3 Tahun 2022 (Suatu Perbandingan)," *Jurnal Hukum Kaidah: Media Komunikasi dan Informasi Hukum dan Masyarakat* 22, no. 3 (2023): 385.

[6] Nur Iftitah Isnantiana, "Mediasi sebagai Alternatif Penyelesaian Sengketa," dalam *Prosiding Seminar Nasional Prodi Hukum Ekonomi Syariah* (Peran Hukum Ekonomi Syariah dalam Pembangunan Ekonomi Nasional, Purwokerto: Fakultas Agama Islam Universitas Muhammadiyah Purwokerto, 2018), 40.

Furthermore, Article 1 paragraph (14) of PERMA No. 1 of 2016 explains that the entities authorized to conduct mediation procedures are "The court of first instance within the general judiciary and religious judiciary".[7] This explanation indicates that first instance general judiciary refers to district courts, and first instance religious judiciary refers to religious courts,[8] which have the capacity and mediators to conduct mediation procedures to achieve swift and simple justice and produce win-win solutions. It means that PERMA only regulates mediation procedures within the scope of the general and religious judiciary, including civil cases. However, other judicial bodies, such as the State Administrative Courts, have no specific regulations governing mediation or alternative dispute resolution methods.

Although there are no specific regulations requiring State Administrative Courts to conduct mediation or other alternative dispute resolution methods, Article 2 paragraph (2) of PERMA No. 1 of 2016 provides an opportunity for mediation. This article states that "Courts outside the general judiciary and religious judiciary as referred to in paragraph (1) may implement mediation based on this Supreme Court Regulation as long as it is allowed by statutory provisions."[9] With this provision, any civil case adjudicated in State Administrative Courts has the potential to be mediated.

The establishment of State Administrative Courts is part of legal development aimed at resolving conflicts of interest, disputes, or disagreements between state administrative bodies or officials and the public.[10] State Administrative Courts was established to provide protection to justice seekers who feel aggrieved by a state administrative decision.[11] The existence of State Administrative Courts within the judicial power in Indonesia is affirmed in Article 18 of Law No. 48 of 2009 on

[7] Article 1 paragraph (14) of Supreme Court Regulation No. 1 of 2016

[8] Article 2 paragraph (1) of Supreme Court Regulation No. 1 of 2016

[9] Pasal 2 ayat (2) Peraturan Mahkamah Agung nomor 1 tahun 2016

[10] Khoiruddin Manahan Siregar, "Kedudukan Pengadilan Tata Usaha Negara di Indonesia," *Jurnal Al-Maqasid: Jurnal Ilmu-Ilmu Kesyariahan dan Keperdataan* 6, no. 1 (2020): 88.

[11] Budi Aspani, "Eksistensi Peradilan Tata Usaha Negara dalam Penyelenggaraan Pemerintahan," *Jurnal Universitas Palembang* 17, no. 2 (May 2019): 114.

Judicial Power.[12] Meanwhile, cases adjudicated in State Administrative Courts are classified as civil cases. This instance can be seen from the regulation in Law No. 5 of 1986 on Administrative Courts in Article 1 paragraphs (3), (4), (5), and (6) as well as Chapter IV on Procedural Law.[13]

In civil dispute resolution, there is often an imbalance between the plaintiff and the defendant, a state administrative official. Plaintiffs are often in a weaker position because the defendants hold public authority. Moreover, the process in Administrative Courts is lengthy and costly.[14] This situation makes mediation highly necessary for resolving disputes in State Administrative Courts.

The lack of regulations on mediation in State Administrative Courts within PERMA No. 1 of 2016 results in mediation being unfamiliar or not well recognized. Devi Anes Junilia, in her research, revealed that although legal mediation can be conducted in State Administrative Courts, it is difficult to implement effectively due to the lack of follow-up from the Supreme Court regarding the mediation opportunity and the minimal understanding among disputing parties about the mediation opportunities provided in Article 2 paragraph (2) of the Mediation PERMA.[15]

The same obstacles are encountered in other dispute resolutions, such as mediation in State Administrative Courts and within the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN). The facilitation of mediation often does not proceed effectively in practice because mediators cannot act as intermediaries due to the lack of alternative dispute resolution formulas. Mediators often leave the process to the parties involved.[16]

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[12] Dahlia Ririyanti Siregar, Lendy Siar, dan Marthin L. Lambonan, "Wewenang Peradilan Tata Usaha Negara dalam Menilai Penyalahgunaan Wewenang Pejabat Tata Usaha Negara," *Lex Privatum* 13, no. 3 (2024): 1.

[13] Dian Aries Mujiburohman, *Hukum Acara Peradilan Tata Usaha Negara* (Yogyakarta: STPN Press, 2022), 12.

[14] Hervina Puspitosari, "Mediasi dalam Rangka Asas Peradilan Cepat Biaya Murah dalam Upaya Penyelesaian Terjadinya Sengketa di Peradilan Tata Usaha Negara," *Ratu Adil* 3, no. 2 (2014): 2.

[15] Devi Anes Junilia, "Efektivitas Mediasi di Pengadilan Tata Usaha Negara Bandar Lampung" (Skripsi, Lampung, Institut Agama Islam Negeri Metro, 2021).

[16] Mujiburohman, *Hukum Acara Peradilan Tata Usaha Negara*, 38.

Based on the above explanation and description, the researcher identifies an ambiguity in a normative legal product issued by the Supreme Court. On one hand, PERMA No. 1 of 2016 provides ease in dispute resolution. On the other hand, the opportunities offered by PERMA cannot be fully utilized by State Administrative Courts due to the absence of specific regulations provided by the Supreme Court.

The topic of mediation implementation in State Administrative Courts has been studied by several previous researchers. The concept of mediation as a dispute resolution instrument in State Administrative Courts based on justice, swift judiciary, and low-cost has been discussed by Puspitosari[17] and Mulyani.[18] Junilia studied the effectiveness of mediation in State Administrative Courts, where her research revealed that the implementation of mediation in State Administrative Courts is not optimal due to regulatory gaps.[19] Meanwhile, the implementation of mediation in land disputes in State Administrative Courts has been studied by Boboy[20], Hajati[21], dan Susanto.[22] In another case, Budi Utama examined the mediation mechanism for resolving public information disputes in the State Administrative Courts Denpasar.[23] This article fills the gap in previous research by examining PERMA No. 1 of 2016 as a universal basis for mediation and exploring the legal certainty of mediation in State Administrative Courts.

Thus, after reading, examining, and reviewing the facts through previous research related to PERMA No. 1 of 2016 on mediation and the application of

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[17] Puspitosari, "Mediasi dalam Rangka Asas Peradilan Cepat Biaya Murah dalam Upaya Penyelesaian Terjadinya Sengketa di Peradilan Tata Usaha Negara."

[18] Tri Mulyani, Sukimin, dan Wahyu Satria Wana Putra Wijaya, "Konsep Mediasi Dalam Penyelesaian Sengketa Tata Usaha Negara Berbasiskan Nilai Keadilan Pancasila," *Jurnal Ilmiah Galuh Justisi* 10, no. 1 (Maret 2022).

[19] Junilia, "Efektivitas Mediasi di Pengadilan Tata Usaha Negara Bandar Lampung."

[20] Juwita Tarochi Boboy, Budi Santoso, dan Irawati, "Penyelesaian Sengketa Pertanahan Melalui Mediasi Berdasarkan Teori Dean G. Pruitt dan Jeffrey Z. Rubin," *Notarius* 13, no. 2 (2020).

[21] Sri Hajati, Agus Sekarmadji, dan Sri Winarsi, "Model Penyelesaian Sengketa Pertanahan Melalui Mediasi dalam Mewujudkan Penyelesaian yang Efisiensi dan Berkepastian Hukum," *Jurnal Dinamika Hukum* 14, no. 1 (2014).

[22] Ari Susanto, "Penyelesaian Sengketa Pertanahan, Mediasi, Pengadilan Negeri dan Pengadilan Tata Usaha Negara" (Tesis, Jakarta, Universitas Kristen Indonesia, 2018).

[23] I Made Bayu Ari Budi Utama, Ida Ayu Putu Widiati, dan Luh Putu Suryani, "Mekanisme Penyelesaian Sengketa Informasi Publik di Pengadilan Tata Usaha Negara Denpasar," *Jurnal Preferensi Hukum* 1, no. 2 (September 2020).

mediation in State Administrative Courts, the researcher is interested in conducting normative legal research on the existence and opportunities of mediation in the State Administrative Courts (Normative Juridical Analysis of PERMA No. 1 of 2016 on Mediation Procedures)."

Research Method

This research is of a normative juridical and descriptive-analytical nature, which involves legal literature research by examining or studying library materials or secondary data to obtain theories, concepts, and principles related to the research topic.[24] This study will juridically analyze the existence and opportunities of mediation in Administrative Courts under the provisions of PERMA No. 1 of 2016 on Mediation Procedures. The data sources for this research consist of two types of legal materials. First, primary legal materials, specifically PERMA No. 1 of 2016 on Mediation Procedures in Courts. Second, secondary legal materials such as books, academic research results, and works from legal experts related to the normative juridical analysis of PERMA No. 1 of 2016 concerning mediation opportunities in Administrative Courts. The data collection method employs documentation techniques and is analyzed using normative analysis methods.

Position of PERMA in the Hierarchy of Indonesian Legislation

Based on Hans Kelsen's theory regarding legislation, which states that laws and regulations are formed based on or sourced from higher regulations.[25] Indonesia's legal system also establishes regulations to accommodate all types of legislation according to their hierarchy.[26]

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[24] Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatf* (Jakarta: Raja Grafindo Persada, 2003), 13.

[25] Diding Rahmat dkk., "The Urgency of Administrative Law in Light of Ius Constituendum Regarding the Role of Village Heads," *Volksgeist: Jurnal Ilmu Hukum dan Konstitusi* VII, no. 1 (2024): 58.

[26] Maria Farida Indrati Soeprapto, *Ilmu PerundangUndangan: Jenis, Fungsi, dan Materi Muatan* (Yogyakarta: Kanisius, 2010), 41.

Referring to Hans Kelsen's viewpoint, regulations issued by the Supreme Court are distinguished from those made by legislative bodies. Implementing justice under Law No. 3 of 2009 concerning the Supreme Court is only a part of procedural law overall. The Supreme Court does not intervene in or exceed general regulations concerning the rights and obligations of citizens, nor does it regulate the nature, strength of evidence, assessment, or burden of proof.[27]

Regulations issued by the Supreme Court do not fall within the hierarchy of legislation. This is because the Supreme Court's authority to establish regulations is limited to the administration of justice, as explained in Article 79 of Law No. 3 of 2009 concerning the Supreme Court. This article stipulates that regulations issued by the Supreme Court shall not include provisions that regulate the rights and obligations of citizens. Therefore, Supreme Court regulations are not considered legislation that falls within the hierarchy of Indonesian legislation. If there are Supreme Court regulations that regulate the rights and obligations of citizens, such regulations would exceed what is outlined in the law.[28]

Based on the above discussion, the Supreme Court plays a role as an independent judicial institution and has the authority to create regulations (PERMA) to facilitate judicial proceedings in cases of legal deficiencies or gaps. Article 79 of Law No. 3 of 2009 concerning the Supreme Court explains that: "If there are deficiencies or gaps in the law in the course of judicial proceedings, the Supreme Court has the authority to create regulations as supplements to fill these deficiencies or gaps."

It can be concluded that one of the authorities held by the Supreme Court is the authority to enact legislation (Regelende Functie), which forms a legal normative product (rule-making power) commonly known as Supreme Court Regulations (PERMA). Although Supreme Court Regulations are not part of the

[27] Moh. Yuslan Al Fariq, "Tinjauan Yuridis Terhadap PERMA Nomor 14 Tahun 2016 Tentang Tata Cara Penyelesaian Perkara Ekonomi Syariah (Studi Perbandingan Hukum Acara Perdata Umum Tentang Penggunaan Bantuan Teknologi Informasi Dalam Pembuktian)" (Undergraduate Thesis, Tulungagung, Universitas Islam Negeri Sayyid Ali Rahmatullah, 2018), 93.

[28] Fariq, 94.

hierarchy of legislation, they have a legally binding force on judicial institutions under the jurisdiction of the Supreme Court.

As an independent judicial institution, the Supreme Court also has the authority to create specific and binding regulations, as stated in Article 8 paragraph (2) of Law No. 15 of 2019 concerning the Formation of Legislation. This means that Supreme Court Regulations apply to all judicial institutions under the supervision of the Supreme Court, as long as they do not restrict the freedom of judges to examine and decide cases. They must also align with the hierarchy of lower legislation and not contradict higher legislation in the context of regulations issued by the Supreme Court.[29]

From the explanations above, it can be concluded that PERMA is a legal product of the Supreme Court created to facilitate the judicial process and fill legal gaps. PERMA has legal authority that applies to judicial institutions under the supervision of the Supreme Court, including District Courts, Religious Courts, Administrative Courts, and Military Courts. This applies as long as PERMA does not conflict with higher laws, restrict the rights of judges to examine and decide cases, or regulate the rights and obligations of citizens.[30]

Position and Types of Cases in the Administrative Court

Administrative justice in Indonesia is administered by the Administrative Court (Pengadilan Tata Usaha Negara), whose position is explicitly regulated in the post-amendment 1945 Constitution, specifically in Article 24 paragraph (2). This article states: "Judicial power shall be vested in a Supreme Court and lower judicial bodies under it in the general judiciary, religious judiciary, military judiciary, administrative judiciary, and a Constitutional Court."

Like other judicial jurisdictions, the Administrative Court holds absolute authority or competence. The absolute competence of the Administrative Court is

[29] Yuliandri, *Asas-Asas Pembentukan Peraturan Perundang-Undangan Yang Baik* (Jakarta: Raja Grafindo Persada, 2010), 67–68.

[30] Agus satory and Hotma Pardomuan Sibuea, "Problematika Kedudukan Dan Pengujian Peraturan Mahkamah Agung Secara Material Sebagai Peraturan Perundang-Undangan" *PALAR (Pakuan Law Riview),* vol 06, no.01,(January 2020): 18

regulated in Article 47 of Law No. 51 of 2009 concerning the Second Amendment to Law No. 5 of 1986 concerning the Administrative Court, which stipulates that the court is tasked and authorized to examine, decide, and settle administrative disputes. According to Article 1 number 4, administrative disputes are disputes arising in the field of public administration between individuals or legal entities and public administration bodies or officials, both centrally and locally, as a result of administrative decisions, including employment disputes based on applicable legislation.[31]

Over time, the competence of the Administrative Court has undergone many developments. For example, the authority to adjudicate employment disputes and disputes concerning public information disclosure. In Law No. 30 of 2014 concerning Government Administration (UUAP), the competence of the Administrative Court extends not only to Administrative Decisions but also to adjudicating Administrative Actions. However, these powers are perceived as not yet sufficiently capable of ensuring protection of the rights of citizens, which also include human rights. Thus, there is a need for a much more comprehensive law that not only guarantees the rights of citizens but also serves as a reference for state officials in policymaking.

To expand legal protection to the public and prevent abuse of governmental authority, Law No. 30 of 2014 concerning Government Administration was enacted in 2014. This law expands the competence of the Administrative Court, which now not only adjudicates administrative disputes but also has jurisdiction over other cases related to state administration. The State Administrative Court is empowered to adjudicate whether there is abuse of authority in decisions or actions of public administration officials, issues concerning positive fictitious decisions, and other competencies that increase in complexity both quantitatively and qualitatively.[32]

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[31] Despan Heryansyah, "Pergeseran Wewenang Absolut PTUN Dalam Sistem Hukum Indonesia," *Jurnal Hukum Novelty* 8, no. 1 (February 2017): 37.

[32] Ridwan, Despan Heryansyah, dan Dian Kus Pratiwi, "Perluasan Kompetensi Absolut Pengadilan Tata Usaha Negara dalam Undang-Undang Administrasi Pemerintahan," *Jurnal Hukum Ius Quia Iustum* 2, no. 25 (May 2018): 343.

After expanding its competence, the types of cases under the jurisdiction of the State Administrative Court can be classified as follows. *First*, lawsuit cases: land disputes, employment disputes, licensing issues, environmental cases, tendering/procurement of goods and services, legal entities/political parties, village chief and village officials, regional heads, electoral processes, and other. Second, petition cases**:** positive fictitious cases and requests for examination of abuse of authority. Third, special administrative court cases: public information disclosure (Law No. 14/2008), land acquisition for public purposes (Law No. 2/2012), abuse of authority petitions (Law No. 30/2014, Article 21), and positive fictitious petitions (Law No. 30/2014, Article 53).[33]

Based on the description, it can be understood that cases handled by the State Administrative Court fall under civil litigation. Civil law, according to Wirjono Prodjodikoro, comprises a series of laws governing rights and obligations between individuals or legal entities.[34]

The litigation types within the State Administrative Court can be observed from various perspectives of substantive law and procedural law. First, regarding its absolute competence, as affirmed in Article 1 number 4, administrative disputes arise within the domain between individuals or legal entities and public administration bodies or officials. From the parties' perspective, cases in the Administrative Court can be classified as civil litigation.

According to Article 1 number 5 of the Administrative Court Law, a lawsuit is a petition containing claims against a public administration body or official filed in court to obtain a ruling. Furthermore, Article 1 point 12 of the same law defines a defendant as a public administration body or official that issues decisions based on its authority or delegated authority, which is sued by individuals or legal entities.

According to the provisions of the law regarding the subjects of the State Administrative Court, the following parties are involved:

[33]https://www.ptun-yogyakarta.go.id/index.php/tentang pengadilan/kepaniteraan-perkara/klasifikasi-perkara-tun.html

[34]Yulia, *Hukum Perdata* (Lhokseumawe: CV. BieNa Edukasi, 2015), 2.

(1) Plaintiff**:** Any legal entity, individual, or legal entity who feels their interests are harmed by the issuance of an Administrative Decision by a State Administrative Body or Official, whether at the central or regional level (Article 53 paragraph (1) in conjunction with Article 1 number 4 of Law No. 51 of 2009 Regarding the Second Amendment to Law No. 5 of 1986 Regarding the Administrative Court).
(2) Defendant**:** The Defendant is the State Administrative Body or Official who issues decisions based on their authority or delegated authority (Article 1 number 6 of Law No. 51 of 2009 Regarding the Second Amendment to Law No. 5 of 1986 Regarding the Administrative Court).
(3) Interested Third Party**:** According to Article 83 of Law No. 51 of 2009 Regarding the Second Amendment to Law No. 5 of 1986 Regarding the Administrative Court, third parties may be involved during the proceedings.[35]

The terms "Plaintiff" and "Defendant" refer to the parties in civil proceedings, particularly in lawsuit cases. The parties can represent themselves directly in court or appoint legal representatives with specific powers of attorney.[36] Regarding the involvement of these parties, the Administrative Court is clearly categorized under civil litigation.

Based on the above description, it can be concluded that cases handled in the Administrative Court are civil litigation cases. The Administrative Court provides a judicial avenue to assess executive actions and ensure legal protection for the public, alongside administrative oversight within the government's framework. The presence of the Administrative Court establishes a foundation for the judiciary to evaluate executive actions and regulate legal protection for the public.

[35] Fence M. Wantu, *Hukum Acara Peradilan Tata Usaha Negara* (Gorontalo: Reviva Cendikia, 2014), 23.
[36] Endang Hadrian dan Lukman Hakim, *Hukum Acara Perdata di Indonesia: Permasalahan Eksekusi dan Mediasi* (Yogyakarta: Deepublish, 2020), 15.

The Opportunity for Mediation in Resolving Administrative Disputes by Supreme Court Regulation No. 1 of 2016

Fundamentally, the opportunity to apply mediation in resolving administrative disputes in the State Administrative Court has been affirmed in Article 2(2) of Supreme Court Regulation No. 1 of 2016 concerning Mediation. This provision expressly states that courts outside the realm of general courts and religious courts may implement mediation based on the Supreme Court regulation, provided it complies with statutory provisions.

a. Opportunities for Mediation in Various Case Types

In the civil law system of Indonesia, the use of mediation to resolve civil disputes within the courts is pursued through a dispute resolution institution. The obligation of mediation in civil cases is also affirmed in Supreme Court Regulation No. 1 of 2016 concerning Mediation, specifically in Article 4 (1). In relation to this article, the opportunity for mediation in the State Administrative Court can be determined by the types of cases belong to its absolute jurisdiction, such as land disputes, abuse of authority, and government administrative actions.

As discussed in the preceding section, cases in State Administrative Courts are classified as civil cases. Therefore, mediation can be applied in resolving disputes in the State Administrative Court. However, it is important to emphasize issues concerning disputes over public information because Article 4(2) of Supreme Court Regulation No. 1 of 2016 specifies that disputes exempted from mandatory mediation include those where the trial process has a defined timeline for resolution, such as objections to decisions of the information commission.

Yet, under different regulations, researchers have found provisions that open opportunities for mediation in disputes related to public information. Articles 39 and 40(1) of the Republic of Indonesia Law No. 14 of 2008 concerning Public Information Disclosure (KIP) explicitly provide for mediation in KIP disputes.

Based on the discussion, the principle of *lex specialis derogat legi generali* applies, which states that a specific law (*lex specialis*) overrides a general law (*lex generalis*). In this context, Supreme Court regulation on mediation as a general

rule is overridden by the specific provisions of the Public Information Disclosure Law, indicating that mediation can be applied as a dispute resolution solution in public information disputes.

b. Mediation as Application of the Principle of Fast and Inexpensive Justice

In administrative law, there exists a principle that as long as an administrative decision is not challenged, it is considered legally valid. Therefore, a plaintiff faces significant challenges in asserting that an administrative decision is invalid because they must present preliminary evidence convincing the judge of the decision's invalidity. Due to the imbalance between the plaintiff and the defendant, often a public official, plaintiffs are often in a weak position. The judicial process in administrative courts is characterized by lengthy proceedings and high costs.[37]

One of the reasons for the weak implementation of the State Administrative Court decisions is the absence of an enforcement body with coercive power, making the execution of the State Administrative Court decisions dependent on the awareness and initiative of administrative officials. Thus, mediation represents an appropriate dispute resolution method through negotiation to reach agreements among parties. Mediation can be utilized in resolving administrative disputes in administrative courts considering that these courts currently do not adhere to the principles of swift justice and low costs in their proceedings.

The Position of PERMA as the Legal Basis for Mediation Regulation in the State Administrative Court

Articles 130 of HIR and Article 154 of RBg state that judges are required to first attempt a reconciliation process. However, the procedures for mediation in the judiciary have not been regulated, creating a void that needs to be addressed by the Supreme Court. To optimize the application of these provisions, SEMA No. 1 of

[37] Wantu, *Hukum Acara Peradilan Tata Usaha Negara*, 42.

2002 was issued, mandating all panels of judges adjudicating cases to earnestly pursue reconciliation by applying the provisions of Articles 130 of HIR / 154 of RBg, not merely as a formality of advocating reconciliation.[38]

Based on the explanation, mediation existed in Indonesia's judicial system before the issuance of PERMA No. 1 of 2016. The issuance of PERMA aims to optimize the peaceful dispute resolution process to seek formal truth in civil cases.

The substance of mediation under PERMA No. 1 of 2016 can lead parties to achieve a permanent and sustainable peaceful agreement, as mediation places both parties on equal footing without a winner or loser (win-win solution). The purpose of issuing PERMA No. 1 of 2016 is not to establish a new institution or legal product but merely to provide technical rules for the peaceful institution previously regulated in HIR and RBg, and its substance remains guided by the fundamental rules that serve as its source.[39]

Although PERMA No. 1 of 2016 is not part of the hierarchy of legislation in Indonesia, its existence is acknowledged and must be complied with and enforced. This is because through PERMA, the Supreme Court does not intervene or exceed regulations concerning the rights and obligations of citizens in general.

Article 79 of Law No. 3 of 2009 concerning the Supreme Court grants limited legislative power to the Supreme Court to make regulations (rule making power) related to procedural law for the smooth conduct of judiciary where no provision is available. These regulations are known in two forms: Circulars of the Supreme Court (SEMA), which guide judicial administration. Second, Regulations of the Supreme Court (PERMA) are legal procedural provisions applicable across specific judicial jurisdictions.

The legal breakthrough through the establishment of PERMA aims to resolve procedural law stalemates or gaps, providing both a legal basis and benefits

[38] Israr Hirdayadi dan Hery Diansyah, "Efektivitas Mediasi Berdasarkan Perma No. 1 Tahun 2008 (Studi Kasus Pada Mahkamah Syar'iyah Banda Aceh)," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 1, no. 1 (Juni 2017): 212.

[39] I Komang Wiantara, "Penyelesaian Perkara Perdata di Pengadilan Berdasarkan Peraturan Mahkamah Agung Republik Indonesia Nomor 1 Tahun 2016," *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 7, no. 4 (Desember 2018): 462.

for law enforcement. However, this legal innovation by the Supreme Court comes with important notes. Firstly, the regulation within PERMA contains substantial material aimed at addressing the shortcomings of the law. Secondly, legal breakthroughs through PERMA should be based on a legal gap or an unregulated area. If the legal need is urgent, the resolution through PERMA can be considered effective.[40]

PERMA No. 1 of 2016 is essentially not the only absolute legal basis for implementing mediation in the Administrative Court. This is because the obligation for mediation has already been emphasized in Article 130 HIR and Article 154 RBg. The presence of PERMA fills the legal gap regarding the procedures for mediation not specified in previous regulations.

Based on the above explanation, it should be highlighted that PERMA No. 1 of 2016 on Mediation Procedures also reinforces the opportunity for mediation in the Administrative Court. This is based on the normative juridical analysis conducted previously, that Administrative Court cases are civil cases, thus requiring mediation before case examination. Moreover, mediation in the Administrative Court also aims to implement the principle of simple, quick, and low-cost justice.

In practice, however, implementing mediation to achieve simple, quick, and low-cost justice in the Administrative Court is considered ineffective and unimplemented since the issuance of PERMA No. 1 of 2016 on Mediation Procedures by the Supreme Court. This statement was derived from prior research, which explains the factors for the non-implementation of mediation in the Administrative Court, including:

First, the Supreme Court's legal product PERMA No. 1 of 2016 on Mediation Procedures only mandates mediation for Religious and District Courts. It only provides an opportunity for the Administrative Court in Article 2, paragraph (2) of PERMA No. 1 of 2016 on Mediation Procedures. Second, the procedural law of the Administrative Court requires judges to be rigid in examining and responding

[40] Septiana Anifatus Shalihah, *Kedudukan Peraturan Mahkamah Agung Dalam Hierarki Peraturan Perundang-Undangan di Indonesia* (Skripsi, Universitas Islam Indonesia, 2018), 45.

to cases, leading to a lack of innovation and no follow-up from the Supreme Court regarding mediation opportunities in the Administrative Court.[41]

Conclusion

Based on the discussion in the previous chapters, it can be concluded that the opportunity to implement mediation in resolving disputes in the Administrative Court has been affirmed in Article 2, paragraph (2) of PERMA No. 1 of 2016 on mediation procedures in courts. This opportunity can at least be seen from the types of cases handled by the Administrative Court, which are classified as civil cases and thus are required to go through mediation. Additionally, mediation in the Administrative Court is necessary to implement the principle of simple, quick, and low-cost justice. PERMA No. 1 of 2016 is not the only absolute legal basis for implementing mediation in the Administrative Court, as this obligation is already emphasized in Article 130 HIR and Article 154 RBg. The PERMA serves to fill the legal gap regarding mediation procedures that were not explained in previous regulations. According to Article 24A of the 1945 Constitution, the authority to conduct a material review of regulations below the level of laws against laws lies with the Supreme Court, which has the power to amend or judicially review PERMA.

Authors' Contributions

I.A.M, as the main author of this article, was responsible for research activities, such as data collection, presentation, and writing the report and manuscript. N.A.S & A.N.P are co-authors of this article. They contributed to this research by collecting data and writing the report with the main author.

[41] Devi anes junilia, *Efektivitas Mediasi di Pengadilan Tata Usaha Negara Bandar Lampung* (Skripsi, Institut Agama Islam Negeri Metro Lampung, 2021), 57.

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