

RESEARCH ARTICLE

Inheritance Dispute Settlement through Mediation with the Bale Mediasi of East Lombok

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Abstract

This study in the pursuit of the purposes and objectives to identify and analyze the processes, strategies and constraints of the Bale Mediasi of the East Lombok in implementing inheritance dispute mediation. Bale Mediasi of the East Lombok received 60 cases with 40 cases resolved, the most cases going to the Bale Mediasi of the East Lombok dominated by land and inheritance disputes. The research method used is a juridical empirical with statute approach, conceptual approach and a sociological approach. The implementation of mediation begins with a request from one of the litigating parties until it ends with a peace agreement being drawn up if the parties make peace, the strategy used is to involve influential figures in the community, to explain how the complexity and cost of litigation in court, flexible time and place and caucuses. The obstacles that writers faced are the absence of one of the parties, the involvement of third parties and the value factor in society. The conclusion of this research is that the mediation process is in accordance with the mandate of the East Lombok Regent's Regulation Number 37 of 2019 concerning Bale Mediasi, but there are still some issues.

Keywords: *Mediation, Inheritance Dispute, Bale Mediasi*

1. INTRODUCTION

Inheritance law is a collection of regulations governing the law regarding wealth due to the death of a person, namely regarding the transfer of wealth left by the deceased. So, in other words, the delegation or transfer of assets left by the deceased is when someone with a blood relationship dies, all of his inheritance will be inherited by his closest blood relationship, for example, that is passed on to his children (Bate et al., 2021).

Inheritance law in Indonesia is still plural. The pluralism of inheritance law is marked by the enactment of 3 (three) inheritance law systems, namely, inheritance law based on western civil law in this case, namely the Civil Code (Shinta Andriyani et al., 2021),), Islamic inheritance law listed in the Compilation Islamic Law, (Syarief Husein, 2018) and Customary Inheritance Law based on the kinship system, which is in accordance with the values adopted by the community. In terms of the distribution of inheritance, the three legal systems of inheritance can be chosen and agreed to be used by the heirs.

The complexity of the division of inheritance, often creates conflicts between the heirs, even with third parties. Conflict over the distribution of inheritance in Indonesia is a problem that has always emerged. The number of inheritance problems can be seen in inheritance disputes in East Lombok Regency which is a fairly dominant problem, this is indicated by the high number of inheritance cases received through litigation by the Selong Religious Court each year, with detailed data in 2012 amounting to 80 cases, In 2013 there were 86 cases, (Badilag Mahkamah Agung, 2019) in 2014 there were 94 cases, in 2015 there were 80 cases, in 2016 there were 69 cases, in 2017 there were 57 cases, in 2018 there were 70 cases, in 2019 there were 61 cases, in 2020 there are 61 cases and in 2021 there are 67 cases (Republika, 2022). It can be seen that inheritance cases in East Lombok are never less than 50 cases, meaning that inheritance cases

in East Lombok are quite significant every year. According to the Chair of the Selong Religious Court, H. Gunawan, "the inheritance case is the toughest case to be handled, there are quite a few parties involved, this inheritance case is indeed quite energy-consuming. Five to six cases per month. If it is shared with all the judges, everyone has a burden" (Suara NTB, 2019).

The significant number of cases and the complexity of inheritance cases in East Lombok Regency are one of the reasons for the establishment of an institution or agency based on the customs and socio-cultural values of the community, to resolve a civil case through consensus deliberation to reach an agreement called Bale Mediasi. Bale Mediasi was formed based on East Lombok Regent Regulation Number 37 of 2019 concerning Bale Mediasi. In Article 1 point 5 of the East Lombok Regent's Regulation Number 37 of 2019 concerning Bale Mediasi, it is explained that Bale Mediasi is an institution that carries out the function of fostering and coordinating the implementation of mediation in the community in accordance with local wisdom. In early 2020, Bale Mediasi of The East Lombok received 60 cases with 40 cases resolved, with the most cases going to Bale Mediasi of The East Lombok dominated by land and inheritance disputes (NTB Pos, 2021).

The implementation of mediation in the community is a manifestation of the policy of preserving and developing customs and socio-cultural values of the community as regulated in the Indonesian Minister of Home Affairs Regulation no. 52 of 2007 concerning Guidelines for the Preservation and Development of Customs and Socio-Cultural Values of the Community. Patterns of dispute resolution amicably and peacefully persist in Indonesian customary law communities today. In the Batak community, for example, they still rely on "*Runggun Adat*" forums, which in essence resolve disputes through deliberation and kinship. In Minangkabau society, it is also known that the Minangkabau Peace Judge Institution generally acts as a

mediator and conciliator. In the Minang community, a tradition has developed that if a dispute occurs, including a trade dispute, they look for various alternatives which are more effective if the case must be resolved immediately in court or out of court. With a few considerations, many trade cases in Minang have been resolved through mediation or conciliation (Mufid, 2020).

In resolving disputes in communities that have strong cultural values, the people who are asked by the parties as mediators generally come from traditional leaders, community leaders or scholars. Basically, they have interpersonal skills and skills in carrying out mediation because they are community leaders. The ability of mediators arises because of long experience in leading and resolving conflicts in the community. On the other hand, they are respected, respected, and obeyed by their advice by the community (Abbas DS, 2017).

The problem that often occurs in dispute resolution through customary mechanisms or consensus deliberation is that cases are often resolved, but not resolved. This is because the settlement through customary mechanisms has not yet become a "*Technocratic Imperative Institution*" as a final solution. Ways of settlement such as habits that occur in society are often not considered by positive law, so cases can sometimes be revived through positive legal mechanisms, such as filing a lawsuit to the Court (Simanjuntak, 2016).

Based on the problems above, researchers are interested in studying more deeply related to the process, strategies, and obstacles in the implementation of settlement of inheritance cases by Bale Mediasi of the East Lombok, as a means of initial information for compilers who want to research the same field of study as well as for planners and law enforcers with the concepts they carry. respectively and this research can be a reference for law enforcement organizations in general.

2. METHOD

This research is empirical legal research, the research conducted is to see how the implementation of alternative dispute resolution through mediation is carried out by Bale Mediasi, East Lombok. This study uses a statutory approach, a conceptual approach, and a sociological approach. By using primary and secondary legal sources (Muhaimin, 2020). Data was collected by means of a literature study, and interviews with resource persons, namely the Bale Mediasi Manager and Mediator of the East Lombok Regency. Determination of sources is done by purposive sampling. Purposive sampling is a sampling technique of data sources with certain conditions, making it easier for researchers to explore the object or social situation being studied (Soekanto, 1986). In this study, researchers used qualitative descriptive analysis, namely, presenting data descriptively and analyzing qualitatively. The data obtained through field research and literature are processed and presented in the form of a series of words or sentences that can obtain a clear picture of the problem being studied, so that it is further analyzed and presented in descriptive form to obtain conclusions from the problems studied.

3. RESULT AND DISCUSSION

A. The mediation process for inheritance disputes carried out by Bale Mediasi of the East Lombok

Mediation is an effort made by the parties to resolve their dispute by mutual agreement with the help of a neutral mediator who does not tend to take sides with either party and does not make decisions for the parties' disputes. Mediation can also be interpreted as a process of deliberation of the parties to reach consensus so that existing problems can be resolved (Isnantiana, 2018). In the district of East Lombok, efforts to resolve community conflicts through consensus deliberation are a characteristic that has existed for a long time. For this reason, the Regional Government has formed a mediation institution called Bale

Mediasi which can be a facilitator so that existing problems can be resolved based on deliberation and consensus.

Bale Mediasi in East Lombok is a non-structural institution within the Indonesian National Unity and Domestic Politics Agency, which was formed based on Regent Regulation Number 37 of 2019 concerning Formation of Bale Mediasi (hereinafter referred to as Regent Regulation Number 37 of 2019). The task and function of Bale Mediasi is to resolve disputes at the village level or between communities. According to Article 1 point 5 of the Regent Regulation Number 37 of 2019 concerning the Formation of Bale Mediasi, the meaning of Bale Mediasi is: "Bale Mediasi is an institution that carries out the function of mediation, guidance and coordination in the implementation of mediation in the community in accordance with local wisdom."

The formation of the Bale Mediasi in East Lombok is a mandate from the Regional Regulation of the Province of West Nusa Tenggara Number 9 of 2018 concerning Bale Mediasi (hereinafter referred to as Regional Regulation Number 9 of 2018). The impetus for the formation of Bale Mediasi is an attempt to use patterns of dispute resolution that are closer to the community, namely by reviving local values or community customs.

The formation of Bale Mediasi in East Lombok is a momentum to revive and strengthen the role of community leaders/customary leaders through traditional institutions in each village and sub-district to take part in helping to resolve disputes that occur in the community. This can be done by re-enacting the function of the traditional "*Krama Desa*" institution.

In the Lombok community (Sasaknese) dispute resolution is often carried out outside the formal channels by means of deliberation and consensus and refers to the values of customary law and religion (local wisdom). Therefore, the dispute resolution process generally involves religious leaders (Tuan Guru), traditional leaders and

village heads. In communities where kinship and group relations are still strong and still adhere to customs such as the Sasak people of Lombok, the choice of dispute resolution or conflict is directed at non-formal ways through a cultural approach of deliberation or consensus (mediation). This is done because dispute resolution is interpreted as an effort to maintain order and the implementation of spiritual values that exist in society (Harfin et al., 2018). Meanwhile, the most prominent advantages of alternative dispute resolution mechanisms or through non-formal channels are that they are easy to access by the community, are fast and inexpensive, and relatively restore harmonization in the community.

The presence of Bale Mediasi of the East Lombok is an effort to facilitate and provide a way for the community to hold dispute resolutions that are more concerned with common interests or harmony by not putting aside personal interests, namely by bringing together the disputing parties to hold consensus deliberation, so that the point of the problem can be immediately identified. and given a way out.

The purpose of establishing Bale Mediasi based on Article 3 of Regents Regulation³⁷ concerning Bale Mediasi is to strengthen and recognize customary institutions in carrying out mediation functions, prevent and reduce conflicts that exist in society as early as possible and create a means of resolving disputes in a more harmonious, orderly, and harmonious society. In essence, the mediation process to be achieved is not seeking the truth and or the legal basis applied but to solving the problem "*the goal is not truth finding or law imposing but problem solving*" Not looking for who is wrong but fixing and completing what is wrong.

Based on the application for mediation in 2022 which is included in the Bale Mediasi in East Lombok, the most dominant dispute is the dispute over inheritance. In 2022, the latest data for mediation requests that went to Bale Mediasi in East Lombok, from January 3 to June 20 of the

2022, 30 applications have been received, from a total of 30 requests there are ten cases regarding inheritance disputes, this means one third or 33 percent of the total cases are filled with disputes regarding inheritance, with details of 3 cases being successfully reconciled, three cases failing or deadlocked, 4 cases still in the mediation process.

Inheritance dispute conflicts in society have positive and negative values, well-managed conflicts will become positive-value conflicts, otherwise poorly managed conflicts will result in more damage and losses (Azizah, 2021). For this reason, the point is how the problems related to inheritance disputes are managed properly by Bale Mediasi, so that the inheritance disputes are resolved, in the sense that the parties have reconciled, and peaceful disputes do not surface again.

Bale Mediasi in carrying out the mediation process refers to Regents Regulation Number 37 of 2019 and standard operating procedures for Bale Mediasi. The stages of mediation by Bale Mediasi are: (1) People who feel that their inheritance rights have been harmed can apply for mediation to Bale Mediasi, East Lombok. Applications can be made in writing or orally. If the application is made orally, the Bale Mediasi officer will make the request in writing.

For every application that goes to the Bale Mediasi, the application is registered in the case register book. And based on Article 31 paragraph (2) of Regents Regulation Number 37 of 2019, no later than three days from the date the application is registered, Bale Mediasi submits an answer to the request of the applicant. If the application has been received, then within one week or 7 (seven) days the parties are invited by letter by Bale Mediasi, with the letter copied to the Village.

The mediation administrative costs that must be carried out by the community to take the mediation route at Bale Mediasi East Lombok are determined by the location or distance of the residence of the parties to be mediated with

the Bale Mediasi East Lombok office. With a cost range of two hundred thousand rupiah to six hundred thousand rupiah, this means two hundred thousand rupiah for the closest distance and six hundred thousand rupiah for the furthest distance.

After the application is received by Bale Mediasi, the application is then reviewed or reviewed by the Special Team, to find out the main issues in the inheritance dispute, and as a basis for determining the mediator. In the event that the application has been reviewed, the head of the Mediation Bale appoints a mediator as well as coordinates with the appointed mediator. For inheritance cases, the appointed mediator usually consists of religious figures, legal experts or academics and involves the village head or the head of the sub district. This means that in the implementation of inheritance case mediation, Bale Mediasi uses a community mediator in its implementation. This is as Article 1 Number 1 Regent's Regulation 37 concerning Bale Mediasi, the definition of Community Mediator is several people consisting of traditional leaders, religious leaders, and community leaders in carrying out the mediation function.

The parties are summoned (written) by the mediator through the Mediation Bale for their statements to be heard. Calls made by the mediator can be made by one party first, then followed by the other party, to obtain initial information. Summons can also be made to the parties simultaneously. The ways in which these summonses are called depend on how the mediator views the case.

In the mediation of inheritance disputes, the calling of the parties tends to be easier, because the parties are still in one family bond. So that it is easier for Bale Mediasi officers to identify and find the disputing parties (Interview with Lalu Dhodik Martrha Sumarna, 2022, Bale Mediasi Officer East Lombok). The ease of summoning the disputing parties is one of the things that can support the smooth implementation of mediation.

The implementation of mediation which is attended by the parties begins with hearing the wishes and suggestions of the parties related to the subject matter. The proposals and wishes of the parties are then linked and explained by the mediator to the parties based on Islamic inheritance law or civil inheritance law, or customary inheritance law. This is done to create awareness and options for the parties to resolve the issue. The explanation regarding the laws of inheritance is adjusted to the subject matter of the parties. If the mediation is successful, a deed of agreement will be made, if the mediation does not find an agreement, the case is closed or deadlocked. The mediation process lasts for 30 (thirty) days, but the mediation process can be extended for another 30 (thirty) days if the mediator and the Head of Bale Mediasi in East Lombok Regency see the potential for peace (Ihsan, 2022).

The peace agreement that has been made by the parties is final and binding as stated in Article 32 paragraph (3) of Regent's Regulation 37 of 2019. For this reason, the parties are obliged to comply with the peace agreement that has been made in good faith. the peace agreement made by the parties assisted by the mediator must not contain the provisions as stated in Article 32 paragraph (2) of Regent's Regulation 37 of 2019, namely: Contrary to law, public order, and community customs; harm third parties; or cannot be implemented.

When the parties reconcile, Bale Mediasi also monitors the implementation of the results of the mediation. Monitoring the implementation of this mediation is important to ensure that the written agreement of the parties is carried out properly as agreed by the parties in the peace agreement letter (Interview with Lalu Dhodik Martha Sumarna, 2022, Bale Mediasi Officer, East Lombok).

The mediation process carried out by Bale Mediasi in East Lombok is guided by Regent's Regulation Number 37 of 2019, but there are differences with the settlement steps adopted by Law Number 30 of 1999 concerning Arbitration

and Alternative Dispute Resolution (Law Number 30 of 1999). This difference can be seen in the different provisions related to the registration of the peace agreement letter to the Court. Article 6 paragraph (7) requires the peace agreement letter within 30 (thirty) days of being signed to be registered with the Court, in contrast to Article 32 paragraph (4) Regent's Regulation Bale Mediasi East Lombok which makes registration of peace agreement the choice of the parties. parties, so that the parties can choose not to register their peace agreement with the Court.

B. Inheritance Dispute Mediation Strategy carried out by Bale Mediasi of The East Lombok

1) Involve Tuan Guru or Ulama

Tuan guru (ulama) is a compound word consisting of two syllables, namely "master" and "guru". "Master" in etymology (Jihad et al., 2020.) Sasak (a tribe on the island of Lombok), means a person who has performed the pilgrimage to the Baitullah (Makkah al-Mukarramah), and "guru" means a person who teaches. In Sasak terminology, Tuan Guru is an expert in the field of religious science (Islam) who teaches and guides congregations, or their students in a formal institution (assembly) in madrasas or Islamic boarding schools and or non-formal institutions such as mosques, and surau.

Tuan Guru in Lombok society has an important and strong position. The central position of the masters is due to their dedication and consideration in maintaining stability and security. They are involved in various aspects of community life, not limited to religious matters, but involve various aspects of life. The Tuan Guru occupies a strong position in the Sasak community who are capable and legitimized to provide advice, guidance, and advice in all aspects of community life, not to be left behind in the realm of culture and political commitment to the community.

Tuan Guru is a respected and respected figure in Lombok society. Tuan Guru is an influential figure in

society, often in various social issues, Tuan Guru is a person who is often asked for his opinion. The role of Tuan Guru in society has always been very central, his opinions are often followed because Tuan Guru is a respected figure (Jihad et al., 2020).

Bale Mediasi in carrying out mediation of inheritance cases, dominantly uses mediators consisting of several mediators, namely Legal Experts, Religious Leaders (Tuan Guru), Community Leaders (Interview with Lalu Dhodik Martha Sumarna, 2022, Bale Mediasi Officer East Lombok). The arrangement of the mediators means that inheritance cases are more dominant using Community Mediators, namely several people consisting of traditional leaders, religious leaders, community leaders as stated in Article 1 number 7 of Perbup Number 37 of 2019.

2) Explaining the Expensive and Complicated Litigation in Court

In unlocking the potential for resolving inheritance dispute cases through consensus deliberation, the mediator also explains to the parties that it is long, complicated, and quite expensive to resolve disputes through the courts, so that the community is expected to be able to immediately resolve their disputes through the mechanism of deliberation and consensus in a peaceful manner. (Interview with Mustamim Hasyim, 2022, Mediator Bale Mediasi for East Lombok Regency).

Mediator Bale Mediasi in East Lombok also explained the advantages of resolving cases through mediation. Not only in terms of the costs incurred, but also how the effect of the family relations of the parties, because basically the parties to the inheritance dispute mostly have a family relationship.

The effect of dispute resolution through mediation is not only to resolve the subject matter of the dispute, but also to improve and harmonize the family relations of the parties. On the other hand, the court route brings together the

parties as opponents, so that the results of the settlement are more win and lose, as a result the case is completed. But family relationships can be bad.

3) Place and Time are Flexible

The mediation conducted by Bale Mediasi in East Lombok is also not bound by place and time in a reasonable sense. In this case, the location of the mediation is not only held at the Bale Mediasi Office, but anywhere, with a place and time that the parties agree on.

The implementation of mediation which is carried out without being bound by place and time is carried out so that the potential for the meeting of the parties can be wide open, by meeting the parties, mediation can take place immediately, the subject matter can be immediately identified, and the parties can immediately determine a solution to the problem (Interview with Lalu Muhammad Kabul, 2022, Bale Mediasi Mediator for East Lombok Regency).

4) Caucus

Caucus is a method commonly used in dispute resolution through mediation. A caucus is a meeting of a mediator with one party without the presence of the other party. The caucus is conducted with the consideration of the mediator, each mediator has his own reason for holding the caucus (Lubis, 2022).

At Bale Mediasi, East Lombok, a caucus is held so that the parties are more open to convey their problems, so that the Mediator has a strong foundation to be able to help the mediation process run well and be able to open the potential for peace for the parties to be wider. (Interview with Lalu Taupikurrahman, 2022, Mediator for Bale Mediasi in East Lombok Regency) Of course, the caucus will be conducted with prior notification to the disputing parties that Bale Mediasi in East Lombok can meet at any time without the

presence of the other party as stated in Article 27 letter e Perbup 37 of 2019.

C. Bale Mediasi in East Lombok Constraints in carrying out the inheritance dispute mediation process

1) Absence of the Parties

The obstacle that is often experienced by Bale Mediasi is the parties who are not present in the mediation process. Sometimes one of the parties is not present at the mediation. The most serious obstacle is when the party requested for mediation rejects the mediation letter given by the Bale Mediasi Officer in East Lombok and this sometimes happens when mediation has taken place (Interview with Mustamim Hasyim, 2022, Mediator Bale Mediasi, East Lombok Regency).

The absence of these parties is certainly a major problem because mediation cannot be carried out if one of the parties is not willing to meet. The non-meeting of the parties resulted in the inability to hold mediation, so that the potential for the case to lead to peace was reduced, while the duration of the mediation was quite short, namely 30 (thirty) days and could be extended for another 30 (thirty) days if the mediator and the Chair of the Mediation Bale saw there is potential for peace between the parties (Ihsan, 2022).

2) Third Party Presence

The implementation of mediation can also be hampered by the presence of a third party, such as a legal representative, or a party involved by one of the parties or the parties to assist him in the mediation process. Third parties often exert influence that can hinder the process of settling inheritance cases and therefore reduce the potential for peace between the parties. The reduced potential for peace has disrupted the function and purpose of mediation that has been proclaimed by Bale Mediasi in East Lombok as stated in Article 3 of Regent's Regulation Number 37 of 2019.

(Interview with Mustamim Hasyim, 2022, Mediator for Bale Mediasi in East Lombok Regency).

Referring to David Spencer and Michael Brogan refer to Ruth Carlton's view of the five basic principles of mediation, namely the principle of confidentiality, the principle of volunteerism, the principle of empowerment, the principle of neutrality, and the principle of a unique solution. Of course, if you refer to this principle, the presence of a third party also has the potential to violate the basic principles of mediation.

The principle that has great potential to be violated by the presence of a third party is the principle of confidentiality, this principle means that only the disputing parties and the mediator attend the mediation process, while other parties are not allowed to participate in the mediation. The principle of confidentiality is needed so that the problems of the parties are not influenced by other parties (Rumadan, 2017) which can lead to interests that minimize the potential for peace of the parties, and the principle of confidentiality also means that problems between the parties do not spread, thus maintaining the good name of the parties. them in social life.

3) Values Factors in Society

The values contained in society often affect the law enforcement in society. The issue of what is considered good and bad by the community influences how the mediation is carried out by Bale Mediasi, East Lombok. Some people think that applying for mediation to Bale Mediasi in East Lombok is like spreading their own disgrace or lowering their self-esteem. This community perception certainly affects how the Bale Mediasi of The East Lombok runs in carrying out the mediation process (Ihsan, 2022).

4) Peace Agreement Not Registered with the Court

The peace agreement letter signed by the parties and witnessed by the dominant mediator is not requested for a

court order (Interview with Lalu Dhodik Martrha Sumarna, 2022, as Bale Mediasi Officer, East Lombok). This happens because the parties consider it sufficient only with a letter of agreement under the hand. The peace agreement letter is indeed binding on both parties, but the agreement letter has not yet had permanent legal force and does not yet have executive power, as a result the peace agreement letter is still prone to be disputed in court in the future (Mulyana, 2019). It is different if the peace agreement letter is requested to the court to be confirmed through a judge to become a peace agreement letter with permanent legal force, then the peace agreement letter cannot be appealed or cassed, to ensure legal certainty for the parties to the dispute.

4. CONCLUSION

Settlement of inheritance disputes through mediation carried out by Bale Mediasi in East Lombok is in accordance with the mandate of Regent's Regulation Number 37 of 2019. Furthermore, even though in Regent's Regulation Number 37 of 2019 the mediation process carried out by Bale Mediasi of East Lombok stops until peace is proven by a deed of agreement. For peace, the East Lombok Mediation Bale also sometimes monitors the implementation of the mediation results, this is done to ensure the implementation of the peace agreement letter, but in Regent's Regulation Number 37 of 2019 the provisions regarding the registration of the peace agreement letter of the parties are optional, while Law Number 30 of 1999 requires the registration of the peace agreement letter to the Court within a maximum period of 30 (thirty) days from the signing of the peace agreement letter. To seek peace, Bale Mediasi carried out several strategies, namely involving Tuan Guru as a respected figure, explaining the cost and complexity of litigation in court, providing flexibility in the place and location of mediation and caucuses. Of course, behind the processes and strategies that have been carried out, there are several obstacles, namely the absence of the parties or one of the

parties, the involvement of third parties, the value factor in society and the peace agreement letter which has not been legally binding.

5. DECLARATION OF CONFLICTING INTERESTS

Data collection to analysis and writing of this article was only carried out by one author.

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*Conflict and resolution are
two sides of the same coin.*

Haresh Sippy