

The Authority of *Bale Mediasi* in the Settlement of Criminal Cases in West Nusa Tenggara Province (A Deliberative Approach)

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ABSTRACT

The settlement of criminal cases is the authority of law enforcement, in this case the police, prosecutors, and courts. In criminal law, penal mediation or diversion is also known, but the mediator is usually a law enforcement officer and is completed in law enforcement institutions, not in certain communities such as the West Nusa Tenggara *Bale Mediasi*. The research method used in this research is normative research with a statute approach and conceptual approach. The results of the research found that *Bale Mediasi* has the authority to resolve criminal cases as long as it does not conflict with statutory regulations, based on the spirit of restorative justice and diversion in Law Number 11/2012, local values, and handling cases through consensus procedures. So that an agreement between the parties is reached as referred to in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. The deed of peace in criminal cases produced through the mediation process at *Bale Mediasi* is final and binding. To strengthen the peace deed, it can be registered with the court to obtain executorial power. If no peace agreement is reached between the parties, the dispute settlement continues in accordance with applicable legal procedures in a professional and proportional manner. It is suggested that it needs to be clarified in regional regulation number 9 of 2019 concerning *Bale Mediasi* related to the type of religious civil disputes that can also be obtained to the religious court to obtain executorial power. In addition, it is necessary to hasten the signing of a memorandum of understanding between the Governor and the Head of the Regional Police, the High Prosecutor and the President of the High Court as the basis for the executorial deed of peace.

Keywords: *Bale Mediasi*, Cases, Crimes, Disputes

INTRODUCTION

The state has established dispute resolution institutions both through litigation and non-litigation. These legal institutions were formed as a forum for the community to propose a resolution of the disputes faced to seek justice. The dynamics that occur are varied conflicts that occur in society which lead to the emergence of disputes. Departing from the disputes that arise in society, of course, there are efforts to be resolved through a forum determined by the community itself, either litigation or non-litigation.

Regulations regarding dispute resolution through Mediation are only civil disputes. In its development, the mediation mechanism can be used in resolving criminal cases as regulated

in West Nusa Tenggara Provincial Regulation No. 9/2018 on *Bale Mediasi*. Criminal cases basically cannot be resolved through the Mediation mechanism. However, in practice, criminal cases are often resolved through mediation, which is an initiative of law enforcement as part of case settlement. Thus, in reality mediation can actually be implemented in the Criminal Justice System.

In dispute resolution, the community has independence in determining the desired dispute resolution path, either litigation or non-litigation. Non-litigation dispute resolution is often called ADR (alternative dispute resolution). According to the theory of Cochrane which says that the one who controls social relations is the community itself, meaning that basically the community itself is active in finding, choosing, and determining its own laws (Saptomo, 2001). As for the forms of alternative dispute resolution (ADR), including (Diringkas oleh Harahap 1997):

1. Arbitration
2. Compulsory arbitration system
3. Mediation
4. Conciliation
5. Summary jury trial
6. Settlement conference

In an effort to resolve disputes through non-mitigation, in this case through mediation, the West Nusa Tenggara Provincial Government on October 6, 2015 issued Governor Regulation Number 38 of 2015 concerning *Bale Mediasi* as the basis for the establishment of a community mediation institution called *Bale Mediasi* West Nusa Tenggara. Following up on this Governor's Regulation, on December 31, 2015 a Governor's Decree No. 734-926 of 2015 was issued on the Management of *Bale Mediasi* for the 2015-2020 service period, which was inaugurated by the Governor of West Nusa Tenggara on February 10, 2016. In the development of *Bale Mediasi*, the West Nusa Tenggara Provincial Government strengthened the arrangement of *Bale Mediasi* West Nusa Tenggara which is regulated by Regional Regulation Number 9 of 2018 concerning *Bale Mediasi*.

Bale Mediasi is a new institution in Indonesia, so it is interesting to study. There are many interesting arrangements to study, especially related to the authority of *Bale Mediasi* in dispute resolution, which in Regional Regulation Number 9/2018 concerning *Bale Mediasi* article 12 letter d that the mediation bale is authorized to resolve disputes through mediation.

The types of disputes that can be resolved by *Bale Mediasi* include civil disputes and criminal offenses as stipulated in Article 17 paragraph 2 of Regional Regulation No. 9/2018 on *Bale Mediasi* that the types of disputes that can be resolved by *Bale Mediasi* include civil disputes; and criminal offenses.

The settlement of criminal cases is the authority of law enforcers, in this case the police, prosecutors, and courts. In criminal law, penal mediation, diversion are also known, but the mediator is usually a law enforcement officer who is resolved in law enforcement institutions, not in *Bale Mediasi* or in the community. By looking at the contradictory authority of *Bale Mediasi*, the author is interested in examining the authority of *Bale Mediasi* in resolving corruption cases.

It is necessary for researchers to divide the literature review and the novelty of this research into two main themes. The *first* is research on legal entities and criminal law. Ahmad Yamin and Geatriana Dewi in their research found a strategic role of customary law institutions that can develop the independence and welfare of indigenous women. With a note that the role and authority of the institution can be respected and carried out in accordance with the rules set by the institution (Yamin & Dewi, 2022). Furthermore, Kamaluddin and Geatriana in their research on efforts to enforce the law and overcome cockfighting in Sumbawa can be pursued with the approach of penal policy and non-penal policy (Kamaluddin & Dewi, 2023). The results of this study explain that in some cases law enforcement efforts can be resolved by not involving law enforcement officials.

The second theme is research on the theory of authority and alternative dispute resolution. Indroharto argues that authority is obtained by attribution, delegation, and mandate (Indroharto, 1993). Philipus M. Hadjon, said that every government action is required to be based on legitimate authority (HR, 2013).

Research on alternative dispute resolution from M. Yahya which explains that dispute resolution is resolved through cooperation outside the court. In criminal cases, it is known as penal mediation. Penal Mediation that applies Restorative Justice values is not new to Indonesian society, in fact now this justice is said to be a progressive approach as stated by Marc Levin (Zulfa, 2011). Various reasons for the use of penal mediation in resolving criminal cases have also been examined by Barda Nawawi Arief (Nawawi, 2000).

The aforementioned studies were selected and reviewed as the state of art in this research. Unlike other studies, this research specifically addresses the authority of *Bale Mediasi*

in resolving criminal cases and measures the strength of the peace deeds born through *Bale Mediasi*.

PROBLEM STATEMENT

Based on these issues, it is interesting to study; *First*, how is the authority of *Bale Mediasi* in resolving criminal cases, and *second*, does the peace deed born through *Bale Mediasi* in criminal cases have executorial power?

RESEARCH METHOD

This research will use a statute approach, researchers will examine all laws and regulations related to the legal issues addressed, especially in West Nusa Tenggara provincial regulation number 9 of 2019 concerning *Bale Mediasi*. Furthermore, researchers will use a conceptual approach, by combining practical concepts that can be implemented into a particular point of view and become a solution to the problems that occur, especially those related to authority, mediation, criminal acts.

The research method used in this research is normative research by reviewing the text of laws and regulations related to the object under study using a statute approach, especially West Nusa Tenggara provincial regulation number 9 of 2019 concerning *Bale Mediasi* and conceptual approach, especially those related to authority, mediation, criminal acts.

All data - both primary and secondary - will be collected by all members of the research team and then compiled into a unified whole. The data that has been obtained is then critically tested for authenticity and credibility by researcher one, then grouped according to the topic of discussion of each theme. At this stage, research member one will sort the data according to the research needs. In the next stage, researcher two will try to formulate the raw concepts that will be used in the research to answer the problem statements.

In the next stage, all research members divide the topic of discussion, then analyze it by implementing the concepts that have been made according to the topic of discussion. Furthermore, concept testing is carried out by discussing with experts or experts in related fields to find the advantages and disadvantages of the concepts that have been made. Furthermore, the results of the test are re-analyzed to be adjusted to the research needs. In the final stage, research conclusions are drawn.

DISCUSSION

Theory of Authority

Conceptually, the term authority is often aligned with the Dutch term “*bevoegdheid*” (which means authority or power). Authority is a very important part of Constitutional Law (Administrative Law), because the new government can carry out its functions on the basis of the authority it has obtained. The validity of government actions is measured based on the authority regulated in laws and regulations. Authority can be seen from the State Constitution which provides legitimacy to Public Bodies and State Institutions in carrying out their functions. Authority is the ability to act granted by the applicable law to carry out legal relations and actions (SF, 1997).

According to the large Indonesian dictionary, the word authority is equated with the word authority, which is defined as the right and power to act, the power to make decisions, order and delegate responsibilities to other people / agencies (Hidjaz, 2010).

According to H.D Stout, authority is a notion derived from the law of government organization, which can be explained as all the rules relating to the acquisition and use of government authorities by public law subjects in public law relations (Ridwan HR, 2013).

Hassan Shadhily clarifies the translation of authority by providing an understanding of “delegation of authority”. Delegation of authority is the process of transferring authority from a leader (manager) to his subordinates (subordinates) accompanied by the onset of responsibility for carrying out certain tasks. The delegation of authority process is carried out through steps, namely: determining the duties of the subordinate; the transfer of authority itself; and the onset of the obligation to carry out the tasks that have been determined (HR, 2013).

The source of authority according to Indroharto, suggests that authority is obtained by attribution, delegation, and mandate, each of which is explained as follows: Authority obtained by attribution, namely the granting of new government authority by a provision in the legislation. So, here a new government authority is born / created. In delegation, there is a delegation of an existing authority by a State Administrative Board or Office that has obtained a governmental authority attributively to another State Administrative Board or Office. Therefore, a delegation is always preceded by an attribution of authority. In a mandate, there is neither a grant of new authority nor a delegation of authority from one State Administrative Board or Office to another (Indroharto, 1993).

Philipus M. Hadjon, said that every government action is required to be based on legitimate authority. The authority is obtained through three sources, namely attribution,

delegation, and mandate. The authority of attribution is usually outlined through the division of state power by the basic law, while the authority of delegation and mandate is the authority derived from delegation. Then Philipus M Hadjon basically makes a difference between delegation and mandate.

In the case of delegation regarding the procedure of delegation from one government organ to another government organ by legislation, with responsibility and liability passing to the delegatee. The delegator cannot exercise the authority again, except after revocation by adhering to the principle of “*contrarius actus*”. This means that any changes, revocation of an implementing regulation, is carried out by the official who stipulates the regulation in question, and is carried out by an equivalent or higher regulation. In the case of a mandate, the delegation procedure is in the framework of a routine superior-subordinate relation. The responsibility and accountability remain with the mandate giver. At any time the mandate giver can use the delegated authority himself (HR, 2013).

Alternative Dispute Resolution

Dispute resolution that is resolved through cooperation (cooperation) outside the court is usually referred to as alternative dispute resolution (ADR). This out-of-court dispute resolution first appeared with the term alternative dispute resolution (ADR) in the United States. This arose because the people of the United States felt that dispute resolution through the litigation process (judicial bodies) could not fulfill a sense of justice and dissatisfaction with the judicial system for the people who were the parties to the dispute. As for the forms of alternative dispute resolution (ADR) that are favored and popular in the United States:

1. Arbitration
2. Compulsory arbitration system
3. Mediation
4. Conciliation
5. Summary jury trial
6. Settlement conference

This difference in out-of-court dispute resolution is an alternative that can be chosen in resolving disputes that arise due to the development of existing conflicts. This method continues to develop in various countries around the world, which finally arrived in Indonesia, also

growing rapidly along with the development of technology that continues to spread in people's lives.

In criminal cases it is known as penal mediation. Penal Mediation that applies Restorative Justice values is not new to Indonesian society, in fact now this justice is said to be a Progressive approach as stated by Marc Levin "Approaches that were once declared obsolete, old-fashioned and traditional are said to be progressive approaches" (Diringkas oleh Harahap, 1997). According to Barda Nawawi Arief, the reason for using penal mediation in the settlement of criminal cases is because the idea of penal mediation is related to the problem of criminal law reform (Penal Reform), also related to the problem of pragmatism, other reasons are the idea of victim protection, the idea of harmonization, the idea of restorative justice, the idea of overcoming rigidity (formality) and the negative effects of the criminal justice system and the prevailing punishment system, as well as efforts to find alternative punishment efforts (other than imprisonment) (Nawawi, 2000).

Diversion based on Law Number 11 of 2012 concerning the Juvenile Criminal Justice System in Article 1 is defined as the transfer of case settlement from the criminal justice process to a process outside of criminal justice.

Crime

Crime is essentially a term derived from the translation of the Dutch word *Strafbaarfeit*, which is defined as a criminal act. According to Simon, the definition of *Strafbaarfeit* is behavior that is threatened with punishment, which is against the law, which is related to guilt and which is committed by a person who is capable of being responsible. Meanwhile, according to Van Hammel, *Strafbaarfeit* is defined as the behavior of a person formulated in the Wet, which is against the law, which deserves punishment and is committed with fault.

One type of criminal sanction is deprivation of liberty which is popularly known as imprisonment and confinement. The application of criminal sanction of deprivation of liberty contains more negative aspects than positive aspects.

- a. Dehumanization of offenders:
 1. The first purpose of imprisonment is to ensure the security of prisoners and the second is to provide opportunities for prisoners to be rehabilitated.
 2. The nature of the prison function mentioned above often results in the dehumanization of criminal offenders and ultimately causes harm to

prisoners who are too long in the institution, in the form of the inability of prisoners to continue their lives productively in society (Muladi & Arief, 1984).

b. Prisonization of inmates.

The process of prisonization of inmates begins when the inmate enters the correctional institution. The correctional institution contains prison life as an informal social system called the inmate subculture. This inmate subculture has a major influence on the life of individual inmates, especially the process of socialization of these inmates into the inmate community which Clemmer refers to as prisonization. In the process of prisonization, the new comer must familiarize himself with the rules that apply in the prison society. In addition, he must learn the beliefs and behaviors of the community, which in turn creates a criminal mentality (Muladi & Arief, 1984).

The Authority of *Bale Mediasi* in the Settlement of Criminal Cases

Every community wants a safe, orderly and peaceful life. It cannot be denied that there are often civil and criminal disputes that tend to be resolved through judicial institutions which require high costs, long time and disrupt harmony and relationships between them. Based on data from the Supreme Court (['http://leip.or.id/statistik-data-perkara-mahkamah-agung/'](http://leip.or.id/statistik-data-perkara-mahkamah-agung/), n.d.) that the number of cases per year based on the type of case in 2018 was 17,475 cases. The number of cases increased from the previous year which was only 15,911 cases.

The West Nusa Tenggara Provincial Government responded to the accumulation of cases in the courts by strengthening customary or community institutions as a forum for dispute resolution at the community level. As a form of response, the West Nusa Tenggara provincial government has issued Governor Regulation No. 38/2015 on *Bale Mediasi* as the basis for the establishment of a community mediation institution called *Bale Mediasi* West Nusa Tenggara. Following up on this Governor's Regulation, on December 31, 2015 a Governor's Decree Number 734-926 of 2015 was issued concerning the Management of *Bale Mediasi* for the 2015-2020 service period, which was inaugurated by the Governor of West Nusa Tenggara on February 10, 2016. In the development of *Bale Mediasi*, the West Nusa Tenggara Provincial Government strengthened the regulation of *Bale Mediasi* West Nusa Tenggara which is regulated by Regional Regulation Number 9 of 2018 concerning *Bale Mediasi*.

Bale Mediasi is a new institution in Indonesia for out-of-court dispute resolution based on consensus based on local wisdom that grows and develops in the communities of West Nusa Tenggara. In the general provisions of point 5 of the West Nusa Tenggara Regional Regulation Number 9 of 2018 concerning *Bale Mediasi* defines that *Bale Mediasi* as an institution that carries out the functions of mediation, guidance and coordination in the implementation of mediation in the community in accordance with local wisdom.

Initially, the purpose of the establishment of *Bale Mediasi* as regulated in Governor Regulation No. 38 of 2015 is to assist the implementation of dispute resolution through mediation in order to create a harmonious, orderly and harmonious atmosphere in the community with the duties of *Bale Mediasi*, among others:

- a. Encouraging the establishment of mediation institutions at the village level;
- b. Collecting data on institutions that perform mediation functions;
- c. Creating a data base of certified and non-certified mediators;
- d. Facilitating socialization, education, research, training, seminars, workshops, workshops on mediation;
- e. Reconstructing and revitalizing customary institutions that perform mediation functions;
- f. Facilitating institutions that carry out the mediation function to register the results of peace agreements in court;
- g. Developing the Articles of Association and Bylaws of the Mediation Bale;
- h. Developing and stipulating the Standard Operating Procedure (SOP) of the Mediation Bale;
- i. Submitting a report on the implementation of its duties and authority;
- j. Developing Norms, Standards, Procedures and Criteria for the implementation of dispute resolution carried out by institutions that carry out mediation functions; and
- k. Coordinating with institutions and agencies related to the implementation of their duties

The development that occurs is very dynamic, *Bale Mediasi* along with the needs of the community in dispute resolution is not only formed only for the realization of peace and order but more than that the mediation bale is formed with a more massive purpose as stipulated in

the Regional Regulation on the mediation bale, that the mediation bale is formed for the purpose of (Article 3 ...):

- a. Government recognition as a form of protection, respect and empowerment of the existence of customary institutions in carrying out mediation functions;
- b. Preventing and reducing conflicts or disputes in the community early; and
- c. The implementation of dispute resolution in the community through mediation in order to create a harmonious, orderly and harmonious atmosphere.

Efforts to strengthen *Bale Mediasi* are not only on the purpose of establishing mediation but in relation to the duties of *Bale Mediasi* are more concretized in regional regulations as stipulated in article 11 that *Bale Mediasi* has duties, among others (Article 11 of West Nusa Tenggara Regional Regulation Number 9 of 2018 concerning *Bale Mediasi*, Supplement to the Regional Gazette of West Nusa Tenggara Province Number 137):

- a. Creating a data base of certified and non-certified mediators;
- b. Facilitating socialization, education, research, training, seminars, workshops, workshops on mediation;
- c. Developing and establish a Standard Operating Procedure (SOP) for *Bale Mediasi*;
- d. Submitting reports on the implementation of their duties and authorities;
- e. Assisting the implementation of dispute resolution carried out by institutions that carry out the mediation function; and
- f. Coordinating with institutions and agencies related to the implementation of their duties.

The West Nusa Tenggara Governor Regulation No. 38/2015 does not clearly mention the authority of the mediation bale. By looking at the dynamics and population of villages or sub-villages in West Nusa Tenggara, the *Bale Mediasi* is in need of strengthening in its regulation. If you look at the current data, the population of villages in West Nusa Tenggara is 1,137 villages. This number is spread across 2 (two) islands, namely Lombok Island and Sumbawa Island. A total of 539 villages are located on Sumbawa Island, spread across 5 (five) regencies/cities, including West Sumbawa Regency 64 villages, Sumbawa Regency 165 villages, Dompu Regency 81 villages, Bima Regency 191 villages and Bima City 38 villages. Meanwhile, 598 villages are located on Lombok Island, spread across 5 (five) regencies/municipalities, including West Lombok 122 villages, North Lombok 33 villages,

Central Lombok 139 villages, East Lombok 254 villages and Mataram City 50 villages. Based on the dynamics and population of villages in West Nusa Tenggara, *Bale Mediasi* is strengthened in the Regional Regulation on *Bale Mediasi* by containing provisions related to the authority of *Bale Mediasi* in dispute resolution as stipulated in Article 12 that *Bale Mediasi* is authorized to:

- a. Strengthening the capacity of institutions that carry out mediation functions in the community;
- b. Increasing the capacity of mediators;
- c. Coordinating with institutions that carry out mediation functions; and
- d. Resolving disputes through mediation.

It is interesting to observe the provisions that regulate the types of disputes that can be handled by *Bale Mediasi*, including civil disputes and criminal offenses as stated in article 17 paragraph (2) that the types of disputes that can be resolved by *Bale Mediasi* include:

- a. Civil disputes; and
- b. Criminal offenses.

In the Explanation of Article 17 paragraph (2) letter a of Local Regulation No. 9/2018 on *Bale Mediasi*, what is meant by civil disputes includes all customary civil, general civil and religious civil disputes. For customary or general civil disputes, the peace agreement can be registered with the district court to obtain an executable peace deed as stated in the provisions of article 20 paragraph 3 of regional regulation No. 9/2018 on *Bale Mediasi* that the peace agreement can be registered with the local district court to obtain an executorial decision, but for religious civil disputes, the results of the peace agreement are not regulated on how to obtain the executorial power of the peace agreement on religious civil disputes. However, Supreme Court Regulation No. 1 of 2016 on mediation in courts of law stipulates in general that if there is an out-of-court settlement, it must be registered by filing a lawsuit with the court to obtain a deed of peace that has executorial force.

In the Explanation of Article 17 paragraph (2) letter b of Regional Regulation No. 9/2018 on *Bale Mediasi*, *Bale Mediasi* can resolve criminal cases as long as it does not conflict with laws and regulations based on the spirit of restorative justice and diversion in Law No. 11/2012 as well as local values and handling cases through deliberation procedures to reach consensus agreement between the parties as referred to in Law No. 30/1999 on Arbitration and Alternative Dispute Resolution. That if the dispute agreement is not reached by the parties, the

dispute settlement continues in accordance with applicable legal procedures in a professional and proportional manner. The criminal cases referred to are contained in the following articles:

- a. Article 364 of the Criminal Code (petty theft),
- b. Article 373 of the Criminal Code (petty embezzlement),
- c. Article 379 of the Criminal Code (minor fraud),
- d. Article 482 of the Penal Code (minor embezzlement),
- e. Article 302 of the Penal Code minor offences against animals,
- f. Article 315 of the Penal Code minor insults,
- g. Article 352 of the Penal Code Simple offences against physical integrity,
- h. Domestic Violence Crime,
- i. Customary Criminal Offenses/Indigenous Crimes that have equivalents in the Criminal Code,
- j. Criminal Acts committed by children which carries a maximum penalty of 7 years,
- k. Early Marriage includes the customary marriage institution “Merariq” in Sasak customary law where both the prospective bride and groom are underage,
- l. Article 49 of the Law on Domestic Violence on the Crime of Neglect in conjunction with Article 51 and Article 52 as a complaint offense, the victim of the crime may withdraw his/her report to the authorities if a settlement has been reached between them within 3 months after the complaint was filed (Article 75 of the Criminal Code).

Non-litigation dispute resolution using negotiation is explained in Qur’an Surah An-Nisa verse 135. Deliberation when viewed from various laws in both Islamic law and positive law, no one explains the system in detail so that litigants can take new ways or forms of deliberation in resolving disputes (Ilyas, 2018). Some of the benefits of deliberation as an alternative to non-litigation dispute resolution include:

- a. The dispute resolution system is informal, simple and flexible.
- b. Using low costs because the settlement of sharia economic disputes is resolved by the litigants themselves.
- c. Victory is obtained from both parties so that *silaturahmi* is maintained for the realization of social justice *rahmatan lil alamin*.

- d. The parties resolve the conflict properly and the results can be accepted by both parties to the dispute.

Explained in tafsir al-Misbah, surah an-Nisa' verse 59 also explains the importance of individual or group competence in deliberation. This is because they are the ones who will guide the deliberations to produce benefits and happiness for the community (restorative justice) (Fiandika, 2022). In this case, *Bale Mediasi* is an adequate institution in carrying out efforts to negotiate dispute resolution through a deliberative process.

The Executorial Power of Peace Deed Established through *Bale Mediasi* in Criminal Cases

Problems occur because of the many problems that are brought into the realm of law. Where the judicial process in Indonesia turns out to show ineffectiveness and inefficiency in the legal process that takes years to complete. Whereas the justice-seeking community needs a fast resolution process that is not formalistic or informal procedure and be put into motion quickly (Harahap, 1997). Mediation is one of the alternatives used to reduce the accumulation of civil cases in the Court. The term mediation comes from the Latin "mediare" which means to be in the middle.

With mediation, settlement can be done quickly, so the time spent is shorter, of course, it will reduce the cost of expensive cases. The result of mediation is also a mutual agreement by both parties to the dispute mediated by this mediator which will certainly be very helpful if it can be carried out properly. However, mediation is often futile because one of the parties does not participate voluntarily, so many parties question the legal certainty of the mediation process, which is one of the alternative dispute resolutions.

Supreme court regulation number 1 of 2019 concerning Mediation in Court contains provisions on out-of-court peace Article 36 paragraph (1) Parties with or without the assistance of a certified Mediator who successfully resolve disputes outside the Court with a Peace Agreement can submit a Peace Agreement to the authorized Court to obtain a Peace Deed by filing a lawsuit. Paragraph (2) determines how the filing of a lawsuit as referred to in paragraph (1) must be accompanied by a Peace Agreement and documents as evidence showing the legal relationship between the Parties and the object of the dispute. The Judge Examining the Case in the presence of the Parties will only strengthen the Peace Agreement into a Peace Deed, if the Peace Agreement complies with the provisions of Article 27 paragraph (2), namely that the

Peace Agreement does not contain provisions that are contrary to law, public order, and / or decency, harming third parties, cannot be implemented.

Based on the Supreme Court Regulation, a peace agreement made through non-litigation has executorial force if the peace agreement is submitted to the court by filing a lawsuit by the parties so as to obtain a deed of peace decided by a judge whose decision is the same as a judge's decision in another case.

The provisions of the process of executing the decision or peace deed produced by the parties which in article 20 paragraph 4 of regional regulation number 9 of 2018 concerning *Bale Mediasi* explain that the Peace Deed as referred to in paragraph (3) can be registered with the local District Court to obtain an executorial decision. However, for the execution of this peace deed, it still refers to the Supreme Court Regulation Number 1 of 2016 concerning mediation in court, which must follow the usual judicial process by registering a lawsuit by the defendant until the mediation process is carried out by a mediator in court so that mediation carried out at the mediation bale or customary institution or community does not seem to apply and opens up space for denial of the results of the parties' agreement. It can also be interpreted that the settlement agreement resulting from the mediation at the mediation center is registered with the court to obtain executorial force as a strengthening of the deed of peace.

In exercising its authority, the mediation bale to resolve disputes through mediation will produce an agreement as outlined in a peace deed which is binding and final as stipulated in 20 paragraph (3) The results of the peace agreement as referred to in paragraph (2) are poured into a Peace Deed signed by the parties, the mediator and known by the Chairman of *Bale Mediasi* which is final and binding. This can be interpreted that only *Bale Mediasi* can resolve disputes whose decisions in the form of peace deeds are final and binding because the peace deed is signed by the parties, the mediator and is known by the chairman of *Bale Mediasi*. However, Article 3 letter a explains that one of the objectives of the mediation bale is government recognition as a form of protection, respect and empowerment of the existence of customary institutions in carrying out mediation functions. Article 3 can be interpreted that the government recognizes the existence of other customary institutions that carry out the mediation function, but this regional regulation does not regulate whether the nature of the peace deed produced by customary institutions or communities is binding and final because the peace deed is not known to the head of *Bale Mediasi*.

There is no clear regulation on the nature of the decision made by a customary institution or community that performs the function of mediation, whether it is binding and final or not, but the provisions of Article 20 paragraph (3) of the local regulation on the mediation bale apply *mutatis mutandis* to customary institutions or communities that perform the function of mediation even though the deed of peace signed by the parties and the mediator is not known (signed) by the head of *Bale Mediasi*. This is based on the provision that the authority of *Bale Mediasi* can only coordinate with institutions that carry out mediation functions, strengthen the capacity of mediators, and become one of the dispute resolution institutions through mediation.

The types and qualifications of criminal cases that can be mediated will be regulated in a Memorandum of Understanding between the Governor and the Head of the Regional Police of the Republic of Indonesia, the High Prosecutor and the President of the High Court. *Bale Mediasi* can resolve criminal cases as long as it does not conflict with the laws and regulations based on the spirit of restorative justice and diversion in Law Number 11 of 2012 as well as local values and handling cases through deliberation procedures to reach consensus on the agreement of the parties as referred to in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. That if the dispute agreement is not reached by the parties, the dispute settlement continues in accordance with applicable legal procedures in a professional and proportional manner (Explanation of Article 17 paragraph (2) letter b of West Nusa Tenggara Regional Regulation number 9 of 2018 concerning *Bale Mediasi*).

CONCLUSION

Bale Mediasi has the authority to resolve criminal cases as long as they do not conflict with the laws and regulations based on the spirit of restorative justice and diversion in Law Number 11 of 2012 as well as local values and handling cases through deliberation procedures to reach consensus on the agreement of the parties as referred to in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. Any peace agreement resulting from mediation through a mediation bale or customary institution that carries out mediation functions can be registered with the court to obtain a deed of peace so that it can be executed.

Any peace agreement resulting from mediation through a mediation bale or customary institution that carries out mediation functions can be registered with the court to obtain a deed of peace so that it can be executed.

It needs to be clarified in regional regulation number 9 of 2019 concerning mediation centers related to types of religious civil disputes can also be obtained to the religious court to obtain executorial power. It is necessary to hasten the signing of a memorandum of understanding between the Governor and the Head of the Regional Police of the Republic of Indonesia, the High Prosecutor and the President of the High Court as the basis for the execution of the peace agreement.

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