

Information Dissemination on Regulation of Supreme Court Number 1 Year 2016 Regarding Mediation in the Village of Maleber Bandung

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(Received April 6, 2022; Revised August 15, 2022; Accepted November 3, 2022)

Abstract

As mentioned by article 1 point 1 in Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2016, mediation is an alternative resort to solve disputes through negotiation used to reach a consensus in the presence of a mediator. Mediation as an alternative dispute resolution reflects the Fourth Precept of Pancasila as the nation's character which implies resolving disputes through deliberation. Prioritizing communication is a form of deliberation carried out with the purpose of re-agreements, where there will be a possibility to improve the relationship between the parties. Resolving conflicts through mediation is an attempt to end complicated issues through a process that is time-saving and relatively cheap in providing win-win solutions. In Indonesia, the existence of mediation is based on the Regulation of the Supreme Court of the Republic of Indonesia No. 1 of 2016. Mediation has also been set as a mandatory process in the path of resolving disputes in the civil court. The method of information dissemination is carried out to create awareness regarding the new law enforced, which includes lectures and interaction. The research team in collaboration with the Maleber Village held an information dissemination activity based on the Supreme Court Regulation Number 1 of 2016 concerning Mediation. This activity would be very useful for all the parties facing conflicts as well as advisors or for third parties (mediators), such as the village apparatus, families, traditional leaders, community leaders, and other parties who are becoming completely aware of the negotiation and mediation.

Keywords: *mediation; dispute; information dissemination*

How to Cite:

Syailendra, M. R., Aprilia, I. S., Gunawan, A. S., & Shrishti (2022). Information Dissemination on Regulation of Supreme Court Number 1 Year 2016 Regarding Mediation in the Village of Maleber Bandung. *Journal of Innovation and Community Engagement*, 3(4), 199-214.
<https://doi.org/10.28932/ice.v3i4.4097>

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Introduction

The world community including Indonesia, have different backgrounds, cultures, and thoughts. These differences that are so inherent in the community creates unbreakable bonds despite having to face conflicts or disputes that always accompany them. This conflict or dispute is caused by different opinions and perceptions and conflicting interests. Ultimately causing the parties to finally see each other as a party that prevents them from fulfilling their needs and also views the other party as a nuisance in an effort to achieve their goals. Dispute according to Ali Achmad Chomzah is a conflict because of differences of opinion regarding interests and property rights which for both cause legal consequences (Chomzah, 2003). These disputes make people try to find dispute resolution efforts. In law, the process of resolving general cases is known to be resolved in court. However, resolving conflicts through litigation often results in a very slow process, a long time, and costly. Therefore, this alternative non-litigation dispute resolution is finally used as a solution to the powerlessness of the litigation route in resolving cases. Efforts to resolve disputes through the courts are oriented towards victory, but it turns out that this method makes the parties try to make every effort to win and there is one party who loses and is harmed. This is different from dispute resolution with alternative dispute resolution that prioritizes communication in order to reach a win-win solution. The existence of mediation, which is used as an effort to resolve disputes or conflicts based on the values of the Indonesian people, namely deliberation and tends to be more flexible and can be resolved peacefully (win-win solution).

There are several forms of alternative dispute resolution (Alternative Dispute Resolution (ADR) namely consultation, negotiation, mediation, conciliation, arbitration (Emirzon, 2001). The difference between mediation and other types of dispute resolution is that there is a third party who mediates as a neutral party to bridge the two disputing parties to reach an agreement, but does not have the authority to decide over the dispute. Dispute resolution is in the hands of the disputing parties and the mediator only helps resolve their problems (Usman, 2003). Mediator as the party in the middle (neutral) must not take sides and apply fairness so that the litigants could trust the mediator (Yahrizal Abbas, 2009).

According to Ruth Carlton, the principle of mediation are:

1. The principle of confidentiality, that all discussions during mediation must be kept confidential both by the disputing parties and the mediator, may not be broadcast to the press, and must respect the confidentiality of the mediation process.
2. The principle of willingness, that mediation is carried out based on mere wishes without coercion from outside.
3. The principle of empowerment, that there is actually an assumption that the litigants have the ability to negotiate and find solutions to resolve their own problems. Therefore, the settlement must come from both parties, divided and without coercion.
4. The principles of neutrality and impartiality (not taking sides), that the mediator is only a facilitator, that is, only as an intermediary in negotiations, must be neutral (in the middle), and impartial. The contents of the mediation remain in the hands of the parties as well as the settlement held by the parties.
5. The principle of unique solutions, that solutions are based on the wishes of the parties, by empowering both disputing parties so that the results of mediation do not have to refer to laws and regulations and the results of mediation are the results of the creativity of the parties.

The legal basis for mediation is contained in Article 130 HIR - Article 131 HIR (Java and Madura) and Article 154 RBG - Article 155 RBG. In addition, the legal basis applies as a form of concrete implementation of mediation which is accommodated through the Constitution of the Republic of Indonesia Number 30 of 1999 (APS Law), as well as Supreme Court Regulation Number 1 of 2016 (Perma 1/2016). Referring to Article 1 number 1 Perma 1/2016, mediation can be interpreted as an alternative dispute/conflict settlement by way of negotiation to reach consensus for the parties involved through a mediator (BN.2016/No.175, 2016). Based on the definition above, it shows that mediation is actually an alternative to conflict/dispute resolution that reflects the fourth principle of Pancasila as the character of the nation which means resolving disputes through deliberation. The character of mediation that prioritizes communication and discussion for re-agreement so that there is a possibility to improve the relationship of the disputing parties. If one look at the APS Law, one can review the advantages of mediation, as follows:

Advantages of Mediation

1. **Based on Article 6 paragraph (3) and paragraph (4) of the APS Law** which explains that mediation consists of parties, and a mediator who is based on good faith and voluntarily in finding dispute resolution, it can be concluded that the advantages of mediation are:

- The existence of a **neutral third party / mediator** who acts as a neutral discussion leader, maintains the rules of mediation and the emotions of the parties, so that mediation can take place smoothly, well, and conducive so that the parties can compromise, encourage weak parties to be able to express his opinion, helping to find a middle ground so that the interests of the parties involved can meet, supporting the parties involved to analyze the basis of the conflict/dispute and solving the problem, bridging so that an agreement occurs without breaking, taking sides or forcing.
- The meeting of the parties and the mediator in good faith and voluntarily can provide an opportunity for the parties **to express their respective interests** .
- Because mediation only uses a mediator and the parties, the **process and costs are relatively cheaper and easier, as well as minimal bureaucracy** than if through litigation.
- **The results of the agreement will be more easily accepted by the parties**, because they feel involved in making the agreement and their interests are equally accommodated.
- **Is open** to analyze the basis of the problem.
- Because decisions are based on the opinions of the parties involved and are an elaboration of the interests of the parties involved, the **agreements obtained are always unique, win-win solutions and there is no win-lose or punishment**.
- comprehensive decisions and results that satisfy all parties because the two interests are intertwined.

2. The mediation implementation time is relatively short when compared to litigation:

- A maximum of 7 days is mandatory to have initiated mandatory mediation efforts.

Basis: Article 6 paragraph (5) of the APS Law

- At the latest 30 days, consensus must be reached and stated in writing.

Basis: Article 6 paragraph (6) of the APS Law

- The signed peace agreement is registered no later than 30 days from the date of signature.

Basis: Article 6 paragraph (7) UU APS

- Executed no later than 30 days from registration

Basis: Article 6 paragraph (8) of the APS Law

3. The result of the agreement is final and binding, when compared to negotiation the binding force is stronger, moreover, if mediation is carried out through an alternative institution or arbitration institution, it must be registered in a district court.

Basis: Article 6 paragraph (7) UU APS

4. Confidential / adhere to the principle of confidentiality

Basis: Article 6 paragraph (6) of the APS Law

Successful mediation and reaching an agreement will be registered with the district court to be confirmed by the panel of judges in the product of the revocation decision. Meanwhile, if reconciliation is carried out on a matter whose object is property, the panel of judges makes a settlement deed of reconciliation. If one looks at national law in Indonesia, the principles of simple, fast, and inexpensive are contained in the Constitution of the Judiciary, and mediation is an effort to resolve disputes that really reflect this principle. Examination with a mediator certainly makes the inspection process faster because it does not have to follow the formal procedures determined by laws and regulations. Through mediation, it also only involves the mediator and the parties without any other parties, and thus the examination process will be simpler so that the costs and time incurred are certainly less. In addition, the inspection process is also based on the voluntary basis of the parties and good ethics from both parties. Volunteering and good ethics are what will determine the speed or duration and success or failure of mediation. In addition, mediation also produces a win-win solution agreement which is actually an effort so that every community can obtain maximum justice that can satisfy each party. In a peace agreement, there is actually no principle of victory (there are winners and there are losers), but in mediation, decisions must be based on compromise results that can provide a satisfactory decision for the parties.

With the mediation, it is hoped that it will reduce the number of cases that are being processed in court, so that there is no buildup. Although mediation is considered a “peace route”, when it is confirmed as a peace deed, the peace deed is actually binding and is as binding as a judge's

decision. The peace deed is also called final because no legal action can be taken. The binding power of this peace deed also has executive power and is coercive if one of the parties violates it.

Dispute settlement through the court contains many drawbacks such as bureaucratic barrier, time consuming effort, and cost (Hajati et al., 2014). But unfortunately, although mediation has been made a mandatory step to resolve civil conflicts/disputes in the District Courts and Religious Courts, it seems that people are still reluctant to do mediation as a major step taken in resolving disputes. As stated by Yahya Harahap, in reality judicial products rarely reflect a peace agreement that contains win-win through compromise, but usually judicial products show the winning and losing parties (Harahap, 2017). However, if we look at the data in 2018, there were 86,814 cases that succeeded in reaching a peace agreement (Nofriandi, 2019).

The less than optimal implementation of mediation is due to the lack of information dissemination regarding the benefits and procedures of mediation in regions in Indonesia. Information dissemination carried out by the government is often focused on big cities and capitals, but in areas that are not big cities there is still very little awareness related to mediation so that people in the area are still unfamiliar with the term mediation, even though mediation is in fact very closely related to culture which they have lived for many years, by deliberation. Therefore, the implementation of mediation cannot be carried out only on the shoulders of the government, but also information dissemination carried out by various levels of society to support this mediation awareness. In order for awareness about mediation to be more evenly distributed and reach areas in Indonesia, the team chose Maleber Village as one of the regions in Indonesia that still lacks awareness related to mediation to carry out mediation related information dissemination. Apart from the lack of awareness related to mediation in Kelurahan Maleber, we also see that actually in Kelurahan Maleber there are already several factors that can support the effectiveness of the implementation of mediation. The first factor is the existence of regulations that support the implementation of mediation, namely Perma Number 1 of 2016. The second factor is the existence of village officials, various community leaders and various traditional and religious leaders in Maleber Village who can be used as mediators to handle disputes in the village as his territory. The third factor, namely the culture in Meleber Village, is actually very thick with the value of deliberation which is actually the main basis for the implementation of mediation. The culture of the community in Maleber Village which

is very close to the value of deliberation is the most important driving factor for the effective implementation of mediation.

Therefore, it is necessary to have a team that conducts information dissemination and introduces mediation in Maleber Village in accordance with Perma 1/2016. The research team in collaboration with Maleber Village, Bandung City was holding an information dissemination activity for Supreme Court Regulation Number 1 of 2016 concerning Mediation. This information dissemination activity was carried out in the form of providing information, information dissemination legal rules, documents, consulting or legal advice. The target to be achieved through the community empowerment program was to disseminate and develop mediation knowledge to the community in Andir District, Bandung. The output target to be achieved from the mediation information dissemination activity as an alternative in resolving community disputes in Andir District, Bandung is the formation of a community that is aware of the benefits of mediation and can handle conflicts/disputes through mediation. In addition, it is expected that the output specifically is to develop an understanding of mediation for the community through information dissemination of mediation as an alternative in resolving community disputes in Andir District, Bandung by publishing it in the form of Proceedings or Journals accredited by Directorate General of Higher Education.

Methods

Implementation steps/stages

Information dissemination is a series of activities that aim to achieve high legal awareness in society so that every member of the community realizes and lives up to their rights and obligations as citizens in terms of law enforcement, justice and protection of human dignity, order, legal provisions and certainty as well as the formation of behavior for every Indonesian citizen who is aware of the law.

Information dissemination is a means of disseminating information and understanding of applicable legal norms and statutory regulations in order to realize and develop public legal awareness so as to create a legal culture in the form of legal order and obey or comply with legal norms and legislation in force for the sake of upholding the rule of law.

When a regulation is ratified and promulgated, automatically at that time all citizens are considered to know the law. Here arises the question whether it is true that when a law is enacted in the state, everyone already knows and understands the contents of the legislation.

However looking back at the reality, there is just a handsome amount of people who are aware about the law in action (mostly those who work or study in the law field). In this case comes the need of information dissemination in order to make sure the entire nation is aware of the rules and regulations regardless of whether they are new or old.

Through the Faculty of Law (Fakultas Hukum, FH), Tarumanagara University (Universitas Tarumanagara, UNTAR) has decided to conduct an information dissemination program on the regulations concerning mediation as a method of dispute resolution. As members of the faculty of law, the team highly recommend the use of mediation based on the key benefits of it such as: costs, time, and friction associated with mediation are generally far less than with litigation or arbitration. The Supreme Court Regulation Number 1 of 2016 concerning mediation has been excellently drafted, however, its implementation is yet to be seen. Based on the data collected from the District Court of Bandung, only 8% of cases go through mediation, from which less than 1% is successful (data of 2019). One of the main reasons is people aren't aware of the process of mediation. When a conflict occurs, both sides strive to win the case no matter what. With information dissemination, the team intend to change the perspectives of the people of Malabar specifically in order to encourage them to use non-litigation methods which are much more simpler compared to the litigation ones.

Information dissemination activities regarding Supreme Court Regulation Number 1 of 2016 concerning Mediation in Maleber Village, Bandung are based on the principles of openness, participation, coordination, and integration. This information dissemination must be able to describe various important aspects of mediation, advantages of mediation, procedures for becoming a mediator, as well as various other technical provisions. The method of information dissemination is done by presenting the material and the existence of negotiations and questions and answers between the presenters and the participants of the program.

As an evaluation of the activity, the team found out the number of people aware regarding the process of mediation and other alternatives was only 2%, whereas the implementation was nearly 0. As near the end of the community service activity, it was observed that a number of people from the crowd interested in solving disputes via mediation. Since a change could not be brought in a day therefore the team intended to have another session of information dissemination later.

Partner participation in community service activities

Maleber Village, Bandung City as a partner in community service activities assisted the team in providing place and facilities, as well as publicize information about the activity held. Partners also assigned village officials to participate in this activity. The team realized that the implementation of activity could not accommodate everyone, therefore the Village Head from Maleber Village as a community service partner took the initiative to try to gather representatives from the society; there were various religious leaders, RT and RW heads, and representatives of local organizations. All of these representatives participated in this community service activity and actively interacted with the team. These representatives who would later spread the knowledge gained through this activity more widely and further in their respective environments. These representatives would be at the forefront to disseminate information in a sustainable and widespread manner.

Description of the expertise and duties of each team member

Materials delivered in this information dissemination include:

1. Implementation of Perma 1/2016 by Moody R. Syailendra, S.H., M.H.
2. Moderator by Anggraeni Sari Gunawan
3. Administration Team by Shrishti

Results and Discussions

Results

This community service was held on September 17, 2021 at the Maleber Village Office, Bandung Regency. Implementation was carried out at 08.00-11.00 local time. There were various kinds of audiences who attended this activity such as; Village Apparatus, Head of RT/RW and residents in Maleber Village. There were many things discussed in this activity, one of which was the lack of public knowledge regarding Supreme Court Regulation Number 1 of 2016 concerning Mediation. The community believed that the lack of publication from the government had resulted in a lot of ignorance in the community. The community thought that this kind of publication needs to be done, and really appreciated the team from FH UNTAR who had carried out the information dissemination about Supreme Court Regulation 1/2016.

Discussions

During the discussion, the team discussed that the essence of mediation actually rests on the values of deliberation, that is the existence of communication between parties and the mediator as an impartial (neutral) third party as the foundation of the mediation process. In line with the values contained in deliberation, in mediation it is also not allowed for parties involved in the mediation process to force other parties to agree or disagree with the proposals discussed in mediation. Everything that is produced through mediation must get a voluntary agreement from all parties involved in mediation. The team also provided knowledge about the benefits of mediation which produces a win-win solution which ultimately results in mediation that can create a consensus that does not burden any party, which of course is very different from a court decision that only wins one party and burdens the other party. The team also explained that mediation is able to maintain the relationship between the disputing parties so that the dispute does not deepen. This of course can maintain family relations between villagers. A very simple, light, and uncomplicated explanation of the stages of mediation. The ease of implementation of this mediation would be more visible if it is compared with litigation which is very costly, time-consuming, and can even last for months or even years. In this stage the team also explained that mediation gives them the freedom to choose the place and time to carry out mediation freely depending on their agreement, and the mediator chosen would be released to the parties depending on the convenience of the parties. In mediation, the mediator can easily met and asked for their willingness to become a mediator such as religious leaders, and community leaders.

One of the factors causing disputes in the community as expressed by the audience of activity, is that most of them are about inheritance. In addition, disputes regarding infidelity, debts and marital problems are also kinds of disputes that often occur in people's lives. There were several problems that they raised in the discussion regarding the obstacles to the deliberation process that often occur in the community, which is the unwillingness of one party to accept another's opinion. In fact, sometimes the results of deliberation are not carried out properly in the community. One of the community leaders also said that often when there are problems between individuals, people are more often emotional so that it is difficult to communicate, and even results in quarrels between parties. These questions were answered by the Untar FH Team based on mediation techniques that are generally used by mediators in reconciling the

two parties. The team also briefly discussed the techniques and skills commonly used by mediators, such as the caucus technique, and the ways in which a deadlock can occur. The description of mediation techniques was carried out in simple language so that people could understand the material provided.

It must be acknowledged that the implementation of mediation does not always run smoothly and deadlocks are often found. The occurrence of this deadlock is due to the emergence of one's ego to win disputes and an attitude of giving up in carrying out mediation. Therefore, in the researcher's opinion, in this activity, it is necessary to change the mindset of the community in viewing mediation and dealing with disputes. Changes in the mindset of the people who are more inclined to win cases through the courts are carried out by presenting the reality, that in fact, the settlement of cases in court often takes a lot of time, energy, money to drain the emotions of both parties. In fact, often the costs incurred for litigation in court are not proportional to the value of the lawsuit which is relatively small. One example is the lawsuit with case number 312/Pdt.Sus-PHI/2020/PN.Jkt.Pst which had been registered since early November 2020, until April 2021, it was still only at the stage of proving the defendant. Meanwhile, if it is compared with mediation in terms of the efficiency of money, energy and time spent, then mediation is much more beneficial and far more efficient than litigation in court. Courts, which often take months to years, are in contrast to mediation which only takes about 3 months. The high cost of courts is something that people often complain about. In fact, the current reality shows that there are still many parties who are unable to take care of brand divorce due to the costs that must be incurred, this is based on data released by the Head of the West Kalimantan Family Heads Union which states that 9 out of 10 widows are unable to take care of their divorce because of cost. In addition, what must be instilled in the community is that the main orientation in mediation is forward-looking, that dispute resolution efforts are carried out to maintain relations so that it is hoped that their relationship in the future can continue to improve, even if a dispute occurs during business, it is hoped that the business cooperation can continue to run between the two parties. In the implementation of cases in court that prioritizes win-lose, often the relationship between the two parties become damaged. Even though it should be possible, the relationship between the two parties may be improved and continued as it should be. This is especially true in the case of an inheritance lawsuit, where the sibling relationship should still be maintained by accommodating the interests of both parties through a win-win solution offered through mediation. Even based on research conducted by the Dispute Resolution Survey: 2020 Final Report (SIDRA Survey) it shows that

the satisfaction felt through mediation is 65 percent related to costs and 68 percent related to speed, while for courts it is only 45 percent for speed and 48 percent for costs.

Based on Law no. 30 of 1999, there are various alternative dispute resolutions other than mediation, as follows:

a. Consultation

Meetings between disputing parties and consultants with a personal nature. The consultant gives opinion (legal) based on his knowledge as required and required by his client. The consultant's role in resolving disputes is not dominant, the final decision will still be taken independently by the disputing party. This is because the consultant's advice is not legally binding and can be ignored by the parties/clients.

b. Negotiation

Henry Campbell Black's definition of Negotiation is a process of submission and consideration of offers until acceptable offer is made and accepted (Talib, 2013). "*Process of submission and consideration of offers until an acceptable offer is made and accepted*" (quoted). With negotiations, the disputing parties can carry out a process in which the rights and obligations of each party will be deepened which will benefit and provide concessions for the rights they have based on the principle of reciprocity. The results of the negotiations are then written down and signed by both parties to be implemented. However, the negotiation process is not the most appropriate effort to resolve a problem. This is because the position of the parties is not balanced, where there is often an emphasis on the weak party. The process can take a lot of time due to the hard nature of the parties on the stand.

c. Conciliation

Henry Campbell Black, defines conciliation as: "*The adjustment and settlement of a dispute in a friendly, un-antagonistic manner*". The conciliation commission/conciliator as a third party actively brings together the litigants in order to meet the point of peace and provide solutions. Conciliation is one of the institutions of settlement an out of court dispute involving a third party or more, where the third party is involved for resolving disputes as a professional and its realibility has been proven. The concilliator is in the process this conciliation, has a significant role, therefore regarding the issue of the problem or dispute that face (Widodo, 2016).

d. Expert Rating

The opinion given to the disputing parties by someone who has expertise in the problem area is an Expert Assessment. In litigation, expert judgment serves as a guide in finding solutions to the main dispute. Based on Law no. 8 of 1981 expert judgment is also known as expert testimony given by expert witnesses (Article 1 number 28).

In the Alternative Dispute Resolution route, the parties meet face-to-face first to find a point of reconciliation. The process is given a maximum of 14 days. If successful, the agreed agreement will be stated in a written agreement and if it fails, the dispute will be resolved through the assistance of experts or mediators with a maximum time limit of 14 days. If this fails, the disputing parties are allowed to submit an application to the arbitration institution or alternative dispute resolution. The agreement between the parties taken jointly is final and has binding force. The decision must be registered with the District Court within 30 days after the decision is announced. If the dispute persists, according to a written agreement, the disputing party may use an effort to apply for dispute resolution to an arbitration institution or ad-hoc arbitration.

Each alternative dispute resolution has its own unique characteristics and differs accordingly with its advantages and disadvantages. Based on these characteristics, the parties can choose the most appropriate institution in resolving their disputes by providing solutions that are beneficial to the parties.

Finally, the community believes that this activity will not just stop, but will continue to produce tangible results. The community service participants have an important mission to convey back to the surrounding community the information that has been obtained from this activity. In addition, on the occasion of the activity, the Head of Maleber Village asked FH UNTAR to assist him in implementing mediation in the Maleber area.

Appreciation was conveyed directly by the Head of Maleber Village for the information dissemination carried out by the UNTAR FH Team. The lurah (one of village official) was of the opinion that public awareness regarding the stage of dispute resolution through mediation was still rather low. With the information dissemination held, the collaboration between FH UNTAR and the Maleber Village Head has provided information and education to the community in the village regarding changes to the rules for conducting mediation and the stages and disputes that can be resolved with them. The people who attended this activity have

become agents of change in their respective environments by conveying and disseminating the information that has been received in this activity, to the community in their surrounding environment. It is hoped that the dispute resolution process, the mediation, can resolve problems in the Maleber Village area properly and effectively.

Conclusion

The conclusions and suggestions that the team can draw regarding the implementation of these information dissemination activities are that the method of resolving disputes through mediation has not been understood by many people. One of the main factors for this is the very high number of uneducated citizens. One of the factors causing disputes in the community as expressed by the audience of community service activity is that most of them are about inheritance. In addition, disputes regarding infidelity, debts and marital problems are also disputes that often occur in people's lives. This activity also revealed concerns as well as a form of distrust of settlement through mediation due to a lack of understanding about mediation. By holding this community service, it is hoped that information regarding problem solving through mediation can be used properly so that the parties agree to use non-litigation channels, that is through mediation.

Information dissemination needs to be held to provide knowledge about how to resolve disputes through mediation, the role and objectives of mediation, and what are the impacts and outcomes of mediation. The method used in the community service was the presentation of the material followed by questions and answers, including legal consultation. These methods were carried out according to expertise in the team's respective fields. The question-and-answer is a method that is used for people who take part in this activity to ask questions about everything they do not understand in the form of legal consultations and free legal assistance to the community (probono). So much enthusiasm from the community regarding this community service activity, the community expects to provide further material. The organization of this event was concluded in the category of no obstacles, both in terms of administration and in the implementation of information dissemination.

The team suggestion is for the government to be able to carry out information dissemination to the public regarding dispute resolution through alternative dispute resolution such as mediation so as not to accumulate files in court and to resolve disputes based on simple, fast and low-cost

principles. In addition to this, the government is expected to convey material regarding the process of conducting mediation properly and correctly which is very important for the public to know.

Acknowledgments

We would like to thank Abdimas UNTAR who has supported us in carrying out this community service. We also convey our appreciation to the people of Maleber Village who have participated in the information dissemination activity well and with high enthusiasm. Finally, we would like to thank the Head of the Maleber Village, Traditional Leaders, Religious Leaders and the Maleber Village PKK for the participation and assistance that has been given to us in carrying out the dissemination of Supreme Court Regulation No. 1 of 2016 concerning Mediation in Maleber Village, Bandung.

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