



Proceeding of
The 1st Joint International Seminar

**ISLAM, SCIENCE, AND CIVILIZATION:
Prospect and Challenge for Humanity**

Organized by
Universitas Islam Negeri Walisongo and
Universiti Teknologi Malaysia

Published by



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**ISLAM, SCIENCE, AND CIVILIZATION:
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PREFACE I

Discussing the relation of Islam and science leads modern scholars to learn many distinguished muslim scientists in history such as al-Khawarizmi (780-850 AC) and Ibnu Sina (980-1037 AC). This two Uzbekistanian scholars inspired us to use science in accordance with the spirit of revelation. According to them, science is a responsibility to Allah and not a power to dominate others. As a father of astronomy, al-Khawarizmi wrote *Zij al-Sindhind* (Astronomical tables of Sind and Hind), an influencing work consisting of approximately 37 chapters on calendrical and astronomical calculations and 116 tables with calendrical, astronomical and astrological data. This work became the first Arabic calendar based on the Indian astronomical methods. The work contains tables for the movements of the sun, the moon and the five planets known at the time. This work marked the turning point in Islamic astronomy. Up to now, Muslim astronomers is owing him whenever studying astronomy. Until the current time the name of al-Khawarizmi is called whenever scholars trace the root of modern astronomy as well as they called Ibnu Sina in modern medicine.

Like al-Khawarizmi, Ibnu Sina, the father of modern medicine, wrote about 100 treatises. Some of them are tracts of a few pages. Others are works extending through several volumes. His 14-volume *The Canon of Medicine* was a standard medical text in Europe and the Islamic world until the 17th century. An Arabic edition of the *Canon* appeared at Rome in 1593, and a Hebrew version at Naples in 1491. Up to the year 1650, the *Canon* was still used as a textbook in the Western universities. In the museum at Bukhara, there are displays showing many of his writings, surgical instruments from that period and paintings of patients undergoing treatment. The attention of Ibn Sina cleared away the effect of the mind on the body. He wrote a great deal on psychology. He also introduced medical herbs that, in the current time, is growing tremendously.

After transforming from IAIN to UIN, UIN Walisongo has strong eager to educate youth generations in mastering science and technology in parallel to revelation. Such kind of paradigm we called as *the unity of sciences*. This paradigm views that all science are actually in unity eventhough their concern are differs each others. In the framework of this paradigm, all sciences must be understood as a tool to be close to God, to be responsible to Him, and to be pious in front of Him. This paradigm emerges

because of our awareness, that epistemologically, all sciences come from one God, whatever they are. Ontologically, all sciences learn everything created by God, whatever they are. Axiologically, all sciences have the same function namely helping human being to reach happiness for their life in the wordly life and the hereafter, whatever their nations and races.

Finally, I would like to express my appreciation to the committee of this 1st Joint International Seminar (JIS) for their hard efforts to publish this proceeding. My deep respect to all my colleagues from UTM Malaysia who have the common spirit to develop the new direction of science and technology with UIN Walisongo. Last but not least, from the deep of my heart, I would like to express my gratitude to all authors in this proceeding. I hope, this proceeding become a proof that we have the same responsibility to our civilization.

Semarang, 12 September 2015

Prof. Dr. H. Muhibbin, M.Ag.
Rector of UIN Walisongo

PREFACE II

The 1st Joint International Seminar on Islam, Science and Civilization: Prospect and Challenge for Humanity (ISCPCH 2014) was held in Semarang, Indonesia from November 18-20, 2014. The seminar provided an excellent international academic platform for all the researchers, practitioners, academicians, teachers and students in related fields to share their knowledge, experiences and results in re-exploring the values of science and civilization from Islamic perspective. ISCPCH 2014 features unique mixed topics delivered through four main themes: Humanization of Science and Technology, Unity of Sciences for Humanity, Muslim Contribution to Asian Civilization, and Science and Technology for Future Agenda. Apparently, the ISCPCH 2014 proceeding collects the up-to-date and state-of-art knowledge on Science, Technology, Sociology, Economics, Management, Culture, and Law. All the accepted papers have been submitted to stringent peer-review by two expert referees. The papers were selected based on originality, significance and clarity for the purpose of the seminar. The seminar program was extremely rich, insightful and featuring high-impact presentations of selected papers.

We sincerely hope that the seminar would not only show the participants a broad overview of experiences, practices and the latest research results on related fields, but also provide them with a significant platform for academic connection and exchange. This seminar provides opportunities for the presenters and delegates to exchange new ideas and experiences face-to-face, to establish research relations and to find global partners for future collaboration. The seminar is jointly organized by two universities, Islamic State University of Walisongo, Semarang, Indonesia and Universiti Teknologi Malaysia, one of the five research universities in Malaysia. Many academicians, professors and students played an important role in the successful holding of the seminar, so we would like to take this opportunity to express our sincere gratitude and highest respects to them. They have worked very hard to meet the deadline in reviewing papers and making valuable suggestions for the authors to improve their work. Their dedicated and outstanding works help ease the tasks of editors of the seminar proceeding. We also would like to express our sincere gratitude to the external reviewers, for rendering extra assistance in the reviewing process, and to the authors for contributing their research result to the seminar. Our deepest thanks also go to the volunteers and staffs for their long-hours of work and generosity they have

given to the seminar. At the same time, we also express our sincere thanks for the understanding and undivided support of every author of the paper. Owing to time constraints, imperfection is inevitable, and any constructive criticism is very much welcome. Last but not least, we would like to thank each and every of the authors, speakers, participants and volunteers for their great contributions to the success of ISCPCH 2014.

Assoc. Prof. Dr. Hamdan bin Said

Deputy Director (Relations) UTM International

INTRODUCTION

Muslim had contributed greatly to science and the world's civilization, although some people denied it. The fall of Baghdad in 1258 began the weakness of Islamic civilization and science influence. The European Renaissance occurred in 15th century, made European experiencing kinds of science and civilization consolidation that lead to the emergence of modern science and technology. Up to the 21st century, the world's civilization had generated the modern science and technology achievement, which is actually established on the values and life experiences of Western society, as civilization's reference with all of its weakness and advantages.

One of the Western science and civilization shortcomings is that they are away from the value of divinity (secularism). It was a result of Western civilization experience in establishing science that was away from the church. As result, science and civilization established had no any soul of divinity. The science and civilization which were absent from those values made a major impact on human civilization journey in the following time.

One effect of that situation is the emergence of humans and nations that conquer science and civilization, but they are actually in a humanitarian crisis. They just make science as power rather than responsibility. The real impact of this situation is the emergence of desire to dominate, control, and exploit other nations and even destroy nature. If this continues to happen, the science without the deity value would be a dangerous weapon for humanity and civilization. It can be proved with the high natural damage caused. Since modern science was found, the damage on earth in the last 200 years decayed more severe than that in the previous 2000 years. Global warming and weather anomaly are two facts that are undeniable.

The modern science and civilization have not only drawbacks but also advantages. They make humans lives easier through various technological inventions. However , the all advantages factually are not commensurate with the threat generated considering to the advantages are only secondary (*hajiyyah*), and even tertiary (*tahsiniyyah*), meanwhile the threats are primary (*dharuriyyah*), that meant threatening lives and destructing human civilization.

Surely, an effort to reexplore divinity-based science foundation is urgent in order to find out a friendly science paradigm for human civilization. This effort is highly

needed for the sake of humanity. The science threatening humanity just like a black magic that leads to a regret. Consequently, to those are gifted with science should be getting involved in this search.

This International Seminar is intended and aimed at reexploring the values of modern science that have been lost. Considering the current crisis of modern civilization, constructing principles of modern science which are based on divinity and humanity is a must as well as formulating spiritualized frame-work of modern science. Therefore, this proceeding identifies not only the agenda of modern science and technology which are based on divinity principles, but also extensive strategic networks for Islamic science development that are useful for civilization development. Through this proceeding, UIN Walisongo in cooperation with UTM Malaysia performs civilizational duty to discuss some important topics such as the humanization of science and technology, the unity of sciences for humanity, Muslim contribution to Asian civilization, and science and technology future agenda. The target of this proceeding is to compile strategic formula in the face of prospects and challenges for the efforts to fulfill the divinity values to modern science.

Editors

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Religion, Ethnicity And Conflict (Considering Mediation as a Way for Peace Building and Conflict Resolution in Indonesia)

Musahadi

UIN Walisongo Semarang

Abstract

Mediation is relatively less known by the Indonesian people. As a potential country with wide conflicts, mediation can be an alternative in conflict resolution. In the history of Indonesia, the founding fathers had known the potency of conflict, especially religion and ethnicity based conflict, so they built a concept of unity in diversity. But lately those conflicts often occur. Indonesian society grew up into a society that does not respect differences in various spheres: social, politic, religion and ideology. Most of those conflicts are largely finished in the courthouse. Mediation that is expected as a way to give win - win solution is less appreciated. There are many obstacles for implementing mediation. This paper tries to examine the role of mediation in conflict resolution in the contemporary Indonesian society.

Keywords: Religion, Ethnicity, Mediation, Conflict Resolution, Building Peace

Introduction

Indonesia is multi-ethnic country where many tribes spread throughout the archipelago. Koentjaraningrat¹ mentioned that there are no less than 151 ethnic groups in Indonesia. The figures probably is smaller than that actually exists because our difficulty to mark a clan clearly. Moreover, a particular ethnic group mainly consists of small groups which have complex identities. It is different when compared to countries known as homogeneous country such as Austria, Germany, Somalia and Denmark.²

The presence of many ethnic groups, one thing that cannot be avoided is raising the diversity of their ideas concerning on the way of life (*weltanschauung*), values, orders, and ethnic

¹ Koentjaraningrat, *Pengantar Ilmu Antropologi*, Jakarta: Aksara Baru, 1993, p. 30.

² In a multi-ethnic of Indonesian society, ethnic and ethnicity are idea and a reality that exists in everyday life. Our community members were born, educated and raised in the primordial atmosphere. In that atmosphere, the distinction between who "I am" and who "he/she is or you are" and who "we are" and "they are" are clearly demarcated, always repeated and reinforced, produced and reproduced in culture; and the boundaries are the boundaries of ethnicity. In the scope of ethnicity boundaries, *stereotype* and *prejudice* grow and established in unlimited period of inter-ethnic relations. Theoretically, when the two groups interact, it cannot be avoided three possibilities, i.e. cooperation, conflict and accommodation. The potency of conflict will be greater when ethnocentrism is used as perspective, which is an attitude that sees his culture as the one and only good culture. Misbah Zulfa Elizabeth, "Multi Etnisitas Indonesia dan Potensi Konflik di Dalamnya" in Musahadi HAM (ed.), *Mediasi dan Resolusi Konflik di Indonesia: Dari Konflik Agama hingga Mediasi Perdilan*, Semarang: WMC IAIN Walisongo, 2007, p. 9-13.

rules. Those diversities also appear in their behavior patterns and activities. In short, multi-ethnicity of Indonesia spawned cultural diversity that makes this country as a multicultural country.

Furthermore, Indonesia is also known as a multi-religious country. In addition to six official religions, those are Islam, Catholicism, Christianity, Hinduism and Buddhism, Indonesia is occupied by exuberate local religions, especially in the rural communities. As a result of the dynamics between religious doctrines and history, each religion expresses different religious understanding as well as various religious sects. There is no single face in religion.

The diversity, on one hand is a blessing as it actually reflects the wealth of cultural treasures. For it, Satjipto Rahardjo had a conclusion that Indonesia is well-equipped and promising laboratories for social sciences and humanities research. But on the other hand, diversity is a dangerous potency for conflict especially when the diversity is not able to be managed well.

Based on the empirical reality, the last one is often happened. The evidence suggests that conflict and dispute became everyday realities, ranging from political, economics, ethnic, to religious conflict. The number of those conflicts seem to increase after reformation era coincides with the negative excesses of freedom of expression that is not supported by spirit or awareness of civilized life.

Religion, Ethnicity and Conflict

As a multiethnic and multireligious nation, Indonesia has had “cushion culture” –a phrase from Anas Saidi, which is formulated in a common will, i.e. the ideology of *Pancasila*. The principle of *Bhinneka Tunggal Ika* (unity in diversity) represents Indonesian ideals of multiculturalism. Unfortunately, at the end of *New Order* era, and moreover, in the early of *Reformation* era till today, social conflicts have been emerging in various regions of the country. Those conflicts show that primordial ties as a susceptible factor, and frequently it is supported by egoistic religious spirit. Because of that, the ongoing conflict based on religious ideology has been running in the country.

Among many conflicts, religious conflict is interesting to research considering that the conflict has taken a lot of attention. Although many people are unwilling to mention conflicts in Ambon, Maluku, and Poso as religious conflict, but in reality those conflicts are caused by religious ideology, or at least, religion is the very important variable involved. In addition to the tremendous impact including the decline of social trust, religious conflict is generally difficult to solve, because it involves deeply psychological sentiments.

Religious conflicts occur both in different religion (known as interreligious conflict) and in one religion (known as *intra religious* conflict) as in the case of Ahmadiyah, Lia Aminuddin, Shi'i, and so forth.³ As a non-partisan institution, government that is expected to dampen the conflict

³ Based on his observations, Peter Suwarno, identified several factors that contribute to religious conflict, i.e. religious fundamentalism, monolithic interpretation of religious texts, immature religious understanding, miss-communication among believers, and the reduction of public sphere for the development of moderatism. Another factors accounted by Suwarno are power syndrome of religious elite, the lack of separation between religion and state, no religious freedom, violence and judgment in the name of religion, the lack of supremacy of law, sectarianism and economic gap. Moreover, religious community tends to emphasize the importance of *fiqh* of the moral and the religious purification of the religious compassion. Suwarno seems to say that religious conflict is not really something *mono-causal*. The causes are very complex. See Peter Suwarno, “Konflik antar Agama: Kemungkinan Penyebab Penanggulangan dan Penyelesaiannya” in Musahadi HAM (ed.), *Ibid.*, p. 21-26.

in reality is not quite productive. In religious conflicts, the government often failed to play its role as a fair mediator.

In the study of conflict, it will be interesting to connect variables of state, religious freedom, and religious conflict. All of these three variables are related to one another. State should contribute to realize the principles of religion freedom in the life of society as part of human rights. This religious freedom should be supported by awareness of pluralism. State should guarantee that religious freedom will not be abused, which can lead to religious conflict.

Here, the state should take a role to arrange plural society, including religious plurality. The arrangement is not in religious belief but how each person can express his belief and in the same time does not damage other belief. The corridor is important because the state often let a radical group do what they want. It is the same with that the state permits it or even as sponsor in radical doing. In this context, the state often becomes a part of the conflict, not part of the solution to the conflict that occurs in society.⁴

Social histories in the world are never out of the conflict, whether they are from or caused by religious differences or non religious differences such as ethnicity, politics, economics, and culture. Lewis A. Coser⁵ in his book entitled *The Function of the Conflict* said that conflict is usual for all people who are experiencing social and cultural change. Referring to the reality of conflict in human history, philosophers such as Thomas Hobbes said that the conflict leading violence is a state of nature.⁶

In the Indonesian context, there are two strong variables coloring communal conflicts with the large loss of life and property such as Ambon case and other big cases in West Kalimantan. Two of those variables are religion and ethnicity. It is undeniable, a series of major conflicts seized the attention from the world after the fall of the Suharto regime often cannot be separated from religion and ethnicity variables.

David Bloomfield and Ben Reilly, after conducting a series of in-depth research and study in various horizontal conflicts in the Third World countries concluded that there are two fundamental elements that often combine and lead to a prolonged conflict. First, the identity element, namely the mobilization of people in communal identity groups based on race, religion, culture, language and so on. Second, distribution element which is related to economic resources, social and political in a community.⁷ Bloomfield and Reilly's research appears clearly underlines that religion and ethnicity are important factors behind the major conflicts involving communal identity element since they are the most explicit communal identity. Especially if both factors are met collaboratively with unequal distribution of resources, conflict potentially grows "very fertile".

Understanding Conflict Reality

Conflict is not static because the characteristics are expressive, dynamic and dialectical. Conflict is defined in various ways depending on the angle of view. Conflict is an explosion of

⁴ Musahadi HAM, "Peran Negara dalam Kebebasan Beragama dan Resolusi atas Konflik bernuansa Agama" in Musahadi HAM (ed.), *Ibid*, p. 47-57.

⁵ Lewis Coser, *The Functions of Social Conflict*, New York: The Free Press, 1956.

⁶ Nur Sholihin, "Agama, Konflik dan Teologi Baru", <http://groups.yahoo.com/group/wanita-muslimah/message/13000> accessed on 19th January 2010.

⁷ See David Bloomfield dan Ben Reilly as cited by Rusmin Tumanggor, Jaenal Aripin and Imam Soeyoeti, "Dinamika Konflik Etnis dan Agama di Lima Wilayah Konflik Indonesia", <http://www.depsos.go.id/Balatbang/Puslitbang%20UKS/PDF/rusmin.pdf>

disputes, competition or struggle for two or more parties on the same thing or more, either in the form of objects or positions. Albert F. Eldridge quoted by Eep Saifulloh Fatah⁸ states that conflict is usually defined as a form of difference or disagreement of ideas, opinions, and interests in understanding between two or more parties. Conflicts can be either in non-physical form or physical form, be in the form of high levels of violence or be in the low levels that do not use violence.

Not all contradiction is conflict. Fedyani Ahmad Saifuddin⁹ explained that a contradiction called as conflict when it is direct, signed by reciprocal interaction between the conflicting parties. The conflict also requires the contradiction based by awareness that they are different or opposite each other. In more detail, Ted Robert Gurr¹⁰ mentioned a number of indicators can be referred as conflict: first, it involves two or more parties. Second, the parties attract each other in action (mutually opposing actions). Third, the parties tend to run coercive behavior to confront and destroy the other. Fourth, the interaction of the opposition is in a state of strict, so the existence of the conflict can be detected easily by observers who are not involved.

There are three key words that need to be understood correctly associated with this conflict: "different", "dispute", and "conflict". The "different" is a human nature, while the "dispute" occurs when two or more parties (can be individual or group) compete with each other to claim an object or position. Henceforth, the "conflict" is a situation that occurs when two or more parties demonstrate practices to eliminate rights of other regarding the disputed object or position.¹¹

In the conflict, there are two key elements that will determine the winner. The first is the power, and the second is the level of awareness. Through these two elements, the movement of conflict and conflict resolution opportunities can be seen and projected as illustrated in the matrix.

Based on the matrix above the developments of conflict resolution are divided into four main stages. In box number 1 in the matrix, conflicts are latent or hidden, because people are not aware of an imbalance of power and the injustices that affect their lives. In this case, education for critical awareness is needed. The role of Education facilitator should be directed to improve the sensitivity and awareness of unbalanced relationships.

The increasing of conflict awareness will create change, and in the box number 2 is described as a confrontation. Basically, this confrontation is a series of options for how the conflict will be expressed and resolved. The choice is between violence and non-violence, or a combination of both. The changes will create a balance of strength, and in that relationships will create a mutual recognition of the existence of both parties, as well as lead to a conflict resolution. Recognition or admission will raise the participation of weak groups to bring basic needs and to legitimize its concern.

⁸ Eep Saifulloh Fatah, *Konflik, Manipulasi dan Kebangkrutan Orde Baru: Manajemen Konflik Malari, Petisi 50 dan Tanjung Priuk*, Jakarta: Burungmerak Press, 2010, p. 26-27.

⁹ Achmad Fedyani Saifuddin, *Konflik dan Integrasi: Perbedaan Faham dalam Agama Islam*, Jakarta: Rajawali Press, 1986, p. 7.

¹⁰ Ted Robert Gurr, "Introduction" in Ted Robert Gurr (ed.), *Handbook of Political Conflict: Theory and Research*, New York: The Free Press, 1980, p. 2.

¹¹ Boedhi Wijardjo, etc., *Konflik, Bahaya atau Peluang?, Panduan Latihan Menghadapi dan Menangani Konflik Sumber Daya Alam*, Bandung: Mitra-mitra BSP Kemala, 2001, p. 18.

In the box number 3 confrontations moved towards negotiations, and in this case, both parties have been aware of conflict, the mutual recognition, and mutual respect. Mutual recognition and respect shape the balance of power for negotiation.

In the box number 4, the successful of negotiation will conduct parties to get conflict resolution and refinement relation. This condition is called as sustainable living (survive) which justice and peace are exist.

Matrix: Four Phases of the Development of Conflict Resolution

		STABLE ←---→ UNSTABLE ←-----→ DINAMIC		
POWER	BALANCED		3. NEGOTIATION	4. SURVIVE
	UNBALANCED	1. EDUCATION Hidden Conflict	2. CONFRONTATION Open Conflict	
		LOW ←-----→ HIGH		
		AWARENESS OF CONFLICT		

Source : Wijardjo¹² adapted from Adam Curle¹³

The Importance of Mediation as Alternative Conflict Resolution

Many figures, including religious leaders and institutions, hope that the civil society can play as a power to acquire conflict resolution which is certainly not through litigation procedures. They should optimize alternative dispute resolution such as mediation procedure. As one of the alternative dispute resolution, mediation is going to important option recently. It is caused by at least two factors. First, the main procedure, that is litigation, often does not work effectively. Second, mediation can be assessed to cover the deficiencies of litigation in the dispute resolution.

Unfortunately, the strengths of civil society cannot sufficiently reliable in this context. Religious leaders and religious institutions, generally, do not have adequate knowledge of the importance of the process of mediation in religious conflict resolution. Considering to Daniel

¹² Boedhi Wijardjo, etc., *Konflik, Bahaya atau Peluang?*, Panduan Latihan Menghadapi dan Menangani Konflik Sumber Daya Alam, Bandung: Mitra-mitra BSP Kemala, 2001, p. 18.

¹³ Adam Curle, *Making Prace*, London: Tavistok Press, 1971.

Nuhamara¹⁴, our understanding of the concept of mediation, especially in the context of religious conflict, remains finite that causes mediation is not popular as religious conflict resolution. Based on the experience of conflict in Ambon, Nuhamara concluded that the mediation process in relation to religious conflict in Indonesia still face obstacles, especially the loss of trust each other. Still, the process was a very valuable experience that we can do the better mediation in the future, or we can create our model itself.

Indeed, mediation can be understood and practiced differently depending on community's character. Achmad Gunaryo¹⁵ provided the conceptual categories of mediation, that are modern mediation and traditional mediation. The differences are as below:

Tabel
The differences of Modern Mediation and Traditional Mediation

	Modern Mediation	Traditional Mediation
Mediator	Educated in mediation	Uneducated in mediation
Mediator and disputant relation	Equal	Dominant, patron-client
Goal	Recognition, empowerment, conflict resolution	Conflict resolution
Strategy	Following firm rules	No standart
Value	Neutrality	Tend to biased
Norm	Written rules	Tradition
Operator	Institution or individual	Individual
Orientation	<i>Forward-looking</i>	<i>backward-looking</i>

What is reflected in table above indicates some fundamental differences between traditional mediation and modern mediation. Based on many experiences, Gunaryo conclude that mediation in Indonesia can be categorized as traditional mediation. The real indicator of this kind of mediation is the mediator has never received training in the field of mediation. For him, mediation is such as other forms of deliberation. Mediators are very dominant in determining the direction and the result. More than the condition, the relationship is like *patron-client*. The sole purpose of this mediation is to reach a final settlement so encouraging biased resolution. Another indicator is no strict rules in this mediation. The success of mediation is determined by the social position of mediator. The higher of the social position a mediator has, the higher probability of success in mediation he gets. Mediators are considered and treated as the most people know, and therefore they only need to be obeyed.

Mediation is defined by Christopher W. Moore¹⁶ as: "*the intervention in a negotiation or conflict of an acceptable third party who has limited or no authoritative decision making power, but assists the parties in voluntarily reaching a mutually acceptable settlement of issues in dispute*". While J. Folberg and A. Taylor¹⁷ defined mediation as: "the process by the which the participant, together with

¹⁴ Daniel Nuhamara, "Mediasi dan Konflik Agama di Indonesia: Pengalaman Kristen" in Musahadi HAM (ed.), *Op.Cit.*, p. 78-89.

¹⁵ Achmad Gunaryo, "Mediasi Peradilan di Indonesia" in Musahadi HAM (ed.), *Ibid.*, p. 103-104.

¹⁶ Christopher W. Moore, *The Mediation Process: Practical Strategies for Resolving Conflict*, San Francisco: Jossey-Bass Publisher, 1996, p. 15.

¹⁷ Folberg J and Taylor A., *Mediation: A Comprehensive Guide to resolving Conflict without Litigation*, Cambridge: Cambridge university Press, 1984, p. 7.

the assistance of a neutral persons, systematically isolate dispute in order to develop options, consider alternatives, and reach a consensual settlement that will accommodate their needs”.

To achieve a mutually acceptable settlement or consensual settlement would requires modal, and the major modal is the desire and the good faith of the parties to ending their dispute, and sometimes, it needs third party to be implemented. Referring to the definition from Folberg and Taylor Moore above, it can be understood that mediation is a form of dispute resolution involving a neutral third party or impartially to assist the parties for finding options to the collective agreement as well as the mutually beneficial.

One important characteristic of mediation is self-empowerment. That was why Zatzel and Wixted¹⁸ provided an interesting illustration of the mediation, namely: *a process that emphasizes the participant's own self-responsibility of making decisions that affect their lives. It is therefore a self-empowering process.*” In this way “*coersive, backward-looking, adversarial, and rights-based*” which has been the hallmark of a formal dispute resolution can be avoided.¹⁹

As one form of ADR (Alternative Dispute Resolution), mediation can provide a number of advantages such as²⁰: (1) to resolve a disputes quickly and relatively inexpensive compared to the path of litigation; (2) it is not restricted to the legal right of parties in conflict, mediation focuses on their real interests and emotional or psychological needs; (3) gives the parties an opportunity to participate directly and informally in their dispute resolution; (4) gives the parties an ability to control over the process and the result; (5) can change the results in through a consensus; (6) gives strong results and will be able to create a better understanding among the parties because the decision is made by themselves; and (7) to eliminate the conflict or hostility and it is different from adjudicative decision by a judge where hostility often still exists even though the dispute has been decided.

As a problem solving based on *win-win solution*, mediation is not well socialized and explored yet. Not many agencies take part in the process of conflict mediation in this country whereas in other countries such as the United States, South Africa and several European countries has been conceiving and practicing it. In fact, when compared to those countries, the potential for conflict in Indonesia is larger and more complex.

Many people believe that conflicts and disputes can only be resolved through the courts. Tragically, the Indonesian judiciary is not reliable for resolving their conflicts and disputes. The law enforcement, police, prosecutors, judges and lawyers are often incapable so think out the pejorative phrase such as “*If you have a dispute for a goat, do not take it to court, because you will not only lose the goat, but also a cattle*”. This expression describes social trust that decline to the judiciary, and in the context, it is important to promote alternative and efficient conflict resolution.

So, the litigation is not the only way to resolve the dispute. Many ways can be taken in resolving the dispute. One alternative is through mediation. Culturally, this alternative solution has been long known and used by our traditional society. This method is effective and still alive in our community, and because of that, mediation has a strongly socio-cultural base.

¹⁸ G.W.K. Zatzel and S. Wixted, *A Trainer's Manual for Parent Child Mediation*, Mass: The Children's Hearing Project, 1984, p. 7-8.

¹⁹ G. Goodpaster, *A Guide to Negotiation and Mediation*, New York: Transnational publishers Inc., 1997, p. 204.

²⁰ Syahrizal Abbas, *Mediasi dalam Perspektif Hukum Syariah, Hukum Adat dan Hukum Nasional*, Jakarta: Kencana Prenada Media Group, 2009, p. 25-26.

Court Mandated Mediation in Indonesia

Mediation is a process involving neutral third party to negotiate and to resolve the problem among disputing parties. The main goal is a compromise to resolve a dispute through private process, confidential, and cooperative. As an neutral third party, the mediator helps the parties (individuals or institutions) to take a resolve for their conflict by juxtaposing different interests of the parties.

In the process of mediation, all parties met privately with the mediator in the same time or in a different meeting. In this meeting, all parties share information, statement and explanation relating the problems faced and exchanging documents. All efforts essentially are directed to achieve “win-win”, not to direct a win for client like a role as advocate.

Mediator does not impose a solution or binding conclusion but empower the parties to determine solutions they want. Mediator encourages and facilitates dialogue to help the parties in clarifying their needs and desires, to prepare a guide, to assist the parties in rectifying the differences of opinions and to work for something that can be received by the parties to find the binding settlement.

As a form of dispute resolution, mediation has a major scope in the private or civil area such as dispute in family, property, contracts, inheritance, business, banking, and so on. The mediation can be reached by either the court or out of court.²¹ In Indonesia, mediation recently was formalized as an alternative dispute resolution in the Judiciary at least in the beginning of 2003.

Indonesian Institute for Conflict Transformation (IICT) in collaboration with the Centre for Research and Development of the Supreme Court (*Pusat Penelitian dan Pengembangan Mahkamah Agung*) supported by The Asia Foundation on July 24th 2003 in the Ballroom Aryaduta Jakarta has organized a seminar on “Supreme Court Legal Draft on Mediation Procedure in Court” (*Rancangan Peraturan Mahkamah Agung tentang Prosedur Mediasi di Pengadilan*). This seminar is a series of research activities “Mediation Integrated with the Court” (*Mediasi Terintegrasi dengan Pengadilan*) conducted by the three institutions mentioned above.

The need for institutionalization of mediation in the judicial system according to the results of the seminar was based on several arguments. Firstly, it is an effort to help the courts to reduce case accumulation. Secondly, it is important for the Indonesian legal system to provide broad access to people in resolving their conflicts and bring them to justice. This goal can be achieved when the legal system provides various forms of dispute resolution, including mediation. Thirdly, some of the advanced democratic countries such as Japan, USA, Canada and Australia have institutionalized mediation as a dispute resolution in addition to the adjudicative court process.

Fourthly, the mediation is often assumed to be an efficient dispute resolution. Fifthly, in the procedural law, the judge has to encourage the parties for negotiation first in order to resolve the dispute. But then the function of judge is for to encourage, not facilitate, so the parties have not been optimally explored the benefits of the negotiating process.

These efforts finally paid off with the release of the Indonesian Supreme Court Regulation Number 2/2003 on Mediation Procedures in Court. Besides that, the mediation has has also been

²¹ See Syahrizal Abbas, *Mediasi dalam Perspektif Hukum Syariah, Hukum Adat dan Hukum Nasional*, Jakarta: Kencana Prenada Media Group, 2009, p. 22-23.

used in the handling of disputes in the banking system based on Bank Indonesia Regulation Number 8/5/PBI/2006 on Banking Mediation released on January 30, 2006. However, the effectiveness of the regulations is still in a big question related to the limited expert in the field of mediation, lack of mediating institutions, as well as related to the socialization of mediation as an alternative dispute solutions are still very limited.

Supreme Court Regulation Number 2/2003 makes mediation as part of the court proceedings, as an integral part in the settlement of disputes in the court. Mediation in court strengthen peace efforts as procedural law article 130 HIR or article 154 R.Bg. It is confirmed in Article 2 of Supreme Court Regulation Number 02/2003, that is all civil cases filed in the first level court shall be to first be resolved through peace with the help of a mediator. But there is no consequence for the parties that refuse mediation or for the judge who does not offer mediation. Practically, the regulation is weak.

To remedy the weakness, there are released the Supreme Court Regulation No. 1/2008 on Mediation Procedure at the Court which is a refinement of the Supreme Court Regulation No. 2/2003 on Mediation Procedures in the Court. The enhancement is needed because in the Supreme Court Regulation No. 2/2003 found some problems, so it has not effective application in the court. The Supreme Court issued Regulation No. 1/2008 as an effort to speed up, to make cheaper and to facilitate the dispute resolution and to provide wider access to the justice seekers.

The judge of civil case has to follow the procedures of dispute resolution through mediation. If the judge reluctant to implement mediation procedure, it will make the judge's decision null and void (Article 2 Paragraph (3) Supreme Court Regulation). Therefore, in consideration of its decision the judge must declare that the conflict of parties has been pursued through mediation by mention name of mediator.

The releasing of the Supreme Court Regulation as already described, according to Gunaryo²² actually intended to address the major problems in the Supreme Court, namely that the buildup of cases in the courts can be significantly reduced. Besides that, a number of values is also to be fought, for example the dispute resolution that more humane, faster and cheaper than litigation procedure. The element of empowerment seems also expected to be achieved because in this mediation the disputants are encouraged to find their own way to the resolution by their selves or acceptable mutual agreement.

Nonetheless, Muchyidin's research²³ showed that the idea has not been effectively realized yet. A number of problems encountered in the practical, such as: many judges who have never been trained as a mediator but they play a role as a mediator as well as they only assume that their task is to decide the case. They assume that mediation is not part of their job so they expect fee for the role of mediation.

The impact of the reality above is serious. It means mediation is not implemented surely and in the many cases of mediation, the parties are often represented by a lawyer. In fact, there is a tendency among lawyers to reject this dispute resolution model. For them, based on a study by Gunaryo²⁴, the practice of mediation gives negative effect to their income.

²² Achmad Gunaryo, *Ibid.*, p. 93-94.

²³ A. Muchyidin, *Mediasi sebagai Upaya Penyelesaian Sengketa di Luar Pengadilan*, Semarang: Thesis Program Pascasarjana IAIN Walisongo, 2006.

²⁴ Achmad Gunaryo, *Ibid.*, p. 99-100.

Conclusion

Mediation, both within and outside the judiciary, is part of the conflict resolution. Mediation does not presume to touch “pre-conflict conditions”, because before a conflict or dispute occurs, mediation is not required. Actually there is an important noble task done before the conflict occurred, at the time of the conflict to post-conflict occurs. The Important duty is peace building. The concept of peace building is not only touch *manifest dimension*, but also the internal dimensions of humans, through inner transformation, such as the formation of perceptions, perspectives, thoughts and attitudes related with conflict and violence and how to use peaceful ways in resolution. Nonetheless, mediation occupies an important position as one of alternative dispute resolution.

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