

# **EFFECTIVENESS OF INHERITANCE DISPUTE RESOLUTION THROUGH NON-LITIGATION CHANNELS**

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**Abstract:** The effectiveness of law enforcement is closely related to the effectiveness of the law. In order for the law to be effective, law enforcement officers are needed to enforce these sanctions. A sanction can be actualized to the community in the form of compliance, with these conditions showing indicators that the law is effective. In resolving disputes through non-litigation, we have recognized the existence of alternative dispute resolution or Alternative Dispute Resolution (ADR), which is described in Article 1 number (10) of Law Number 30 of 1999 concerning Arbitration and ADR, which reads as follows: Alternative Dispute Settlement is an institution for resolving disputes or differences of opinion through procedures agreed upon by the parties, namely dispute resolution out of court by means of consultation, mediation, conciliation, or expert judgment. The approach used in this research is a qualitative approach. The type of research used in this study is a case study. Results In the method of village arbitration in the settlement of inheritance disputes 1) village heads and village officials have an important role in the settlement of inheritance disputes, namely as mediators, including: opening and leading the mediation process, explaining, providing advice and the best solution, deciding and determining what the parties have agreed upon. dispute, prevent the emergence of a larger dispute 2) settlement of inheritance disputes by arbitration is quite effective in resolving inheritance disputes in the village, in resolving

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disputes through mediation, the parties are able to reach an agreement between them, so that the benefits of mediation are felt with minimal costs. issued and the time that is not long also reduces conflicts between heirs.

Keywords: Effectiveness, Non Litigation, Inheritance Dispute

Abstrak: Efektivitas penegakan hukum berkaitan erat dengan efektivitas hukum. Agar hukum dapat berjalan efektif, diperlukan aparat penegak hukum untuk menegakkan sanksi tersebut. Suatu sanksi dapat diaktualisasikan kepada masyarakat dalam bentuk kepatuhan, dengan syarat tersebut menunjukkan indikator bahwa undang-undang tersebut efektif. Dalam penyelesaian sengketa melalui non litigasi, kita telah mengenal adanya alternatif penyelesaian sengketa atau Alternative Dispute Resolution (ADR), yang dijabarkan dalam Pasal 1 angka (10) Undang-Undang Nomor 30 Tahun 1999 tentang Arbitrase dan ADR, yang berbunyi sebagai berikut : Alternatif Penyelesaian Sengketa adalah lembaga penyelesaian sengketa atau beda pendapat melalui prosedur yang disepakati para pihak, yaitu penyelesaian sengketa di luar pengadilan dengan cara konsultasi, mediasi, konsiliasi, atau expert judgment. Pendekatan yang digunakan dalam penelitian ini adalah pendekatan kualitatif. Jenis penelitian yang digunakan dalam penelitian ini adalah studi kasus. Hasil Dalam metode arbitrase desa dalam penyelesaian sengketa waris 1) kepala desa dan perangkat desa memiliki peran penting dalam penyelesaian sengketa waris yaitu sebagai mediator, antara lain: membuka dan memimpin proses mediasi, menjelaskan, memberikan nasihat dan solusi terbaik, memutuskan dan menentukan apa yang telah disepakati para pihak. sengketa, mencegah timbulnya sengketa yang lebih besar 2) penyelesaian sengketa waris melalui arbitrase cukup efektif dalam menyelesaikan sengketa waris di desa, dalam penyelesaian sengketa melalui mediasi, para pihak dapat mencapai kesepakatan di antara mereka, sehingga kemaslahatan mediasi dirasakan dengan biaya minimal. dikeluarkan dan waktunya yang tidak lama juga mengurangi konflik antar ahli waris.

Kata Kunci: Efektifitas, Non Litigasi, Sengketa Warisan

## Introduction

Legal effectiveness is a theory that studies and analyzes the success, failure and factors that influence the application of rules. In order for a rule to be effective, it needs an enforcement apparatus. A punishment can be actualized on citizens in the form of compliance, which shows indicators that the rule is effective.<sup>1</sup> Non-litigation is a form of case settlement with alternative channels outside the court, commonly referred to as Alternative Dispute Resolution (ADR). This form of settlement is contained in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution and Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Court. The principle of a win-win solution that places the parties to the dispute in the same position, where no one wins and no one loses, is the main magnet for people to prefer to resolve their inheritance disputes through non-litigation channels.<sup>2</sup>

Settling a dispute through non-litigation channels creates advantages for those in dispute. The advantages of settlement through mediation include that it is cheap and

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<sup>1</sup> Soerjono Soekanto, *pokok-pokok Sosiologi Hukum* (Jakarta: PT Raja Grafindo Persada, 2007), 110.

<sup>2</sup> Lina Nur Anisa, "Implementasi Prinsip Neutrality Dalam Proses Mediasi", *Jurnal Al-Mabsut*, Vol. 9:1 (Juni, 2015), 2.

certainly does not require a long time. Law of the Republic of Indonesia Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, article 1 number 1 emphasizes that arbitration is a way of resolving a civil dispute problem outside the judiciary using a written arbitration agreement between the parties to the dispute. The existence of this written arbitration agreement will negate the right of the parties to submit the settlement of dispute issues to the District Court. The District Court is not authorized to hear disputes between parties that have been bound to an arbitration agreement.<sup>3</sup>

Based on Law No. 30 of 1999, arbitration is a way of resolving a civil dispute outside the court based on a written arbitration agreement of the parties to the dispute. Dispute resolution through arbitration is a way to resolve disputes or civil disagreements between parties through other means of dispute resolution based on good faith to the exclusion of litigation settlement in the District Court.<sup>4</sup>

Villages are the smallest formal form of government in Indonesia. As of 2016, there were approximately 73,000 (seventy-three thousand) villages and approximately 8,000

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<sup>3</sup> Grace Henni Tampongongoy, *Arbitrase Merupakan Upaya Hukum Dalam Penyelesaian Sengketa Dagang Internasional, (Lex Et Societatis, Vol. Iii/No. 1/Jan-Mar/2015)*, 162.

<sup>4</sup> Pasal 77 Ayat (2) Uu No. 30 Tahun 1999

(eight thousand) urban villages. These villages are divided into ordinary villages and customary villages. In this regard, there are two types of citizens according to the structured division, namely villagers and customary citizens. The violation of the existence and cultural self-evidence of citizens of customary rules occurred after the birth of Law No. 5 of 1979 concerning Village Government. This was when all village governance structures in Indonesia were homogenized, disregarding the diversity of village circumstances and the provisions of customs that still apply. For example, village administration in Java, which is territorial in nature, recognizes residents with customary rules. As a result, genealogical territorial villages, nomadic communities and/or customary rule communities, which still existed outside of Java over a long historical period, have been eliminated.<sup>5</sup>

Basically, every dispute in the village community does not always have to end up in court. In exclusive cases, any dispute involving the village community should ideally be resolved as soon as possible at the village level. Moreover, if the dispute is still classified as a family dispute, then the solution

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<sup>5</sup> Donny Michael, *Revitalisasi Sistem Pemerintahan Desa Dalam Perspektif Undang-Undang No. 6 Tahun 2014 Tentang Desa Di Provinsi Sumatera Barat*. Jurnal Hak Asasi Manusia Volume 7 No. 1, Juli 2016, 22

should also be resolved in a family manner through the intermediary of a village head. The task of resolving every conflict that arises in the village is not a new burden for the village head, but rather an inherent obligation and authority as the village head as well as the head of the village government.

Provisions regarding the rights and privileges granted are the authority of the village head. This needs to be emphasized in order to effectively use this authority to realize a village administration that can ensure community peace, security, and order.

The above explanation encourages the author to examine further the legal force of inheritance dispute settlement. In line with this background, the author focuses on the problem of efforts to resolve inheritance disputes by non-litigation and its effectiveness in Puger Kulon, Jember Regency.

## **Discussion**

### **Efforts to Settle Inheritance Disputes by Non-Litigation Methods**

In Law No. 6 of 2014 Article 18 concerning the authority of the village, namely the field of village administration, village development, village community development, village

community empowerment.<sup>6</sup> In the administration of one Village in connection with the three functions of the Village government, namely first, providing services to the community (public services), second, performance Development (development services), third creation Peace, order and security of the community (protection services).

This is in accordance with the researcher's observation that the Head of Puger Kulon Village facilitates his citizens in the event of an inheritance dispute with the following mechanism.

- a. Submit to the Head of Puger Kulon Village

According to Law No. 6 of 2014 Concerning Villages, the Village mayor is stated according to article 26 paragraph 1 The Village Head is responsible for the organization and administration of the Village government 1 Year 2014 Law No. 6 Article 18 Village Development, Village Community Development and Strengthening Village Communities. While in paragraph (2) the Village Authority is as follows Promote the life of the Village Population; promote peace and social order of the Village. Regarding the duties and authorities of the Village Head mentioned above, in carrying out the mission of developing the Village community to fulfill their social functions, namely promoting peace and order in

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<sup>6</sup> Pasal 18 Undang-Undang Nomor 6 Tahun 2014

the Village Community, the Village Head has several obligations according to Law No. 6 of 2014 concerning Villages If one of the obligations is to resolve disputes between Villagers.<sup>7</sup>

The explanation of the theory above is also in line with what was conveyed by the mediator that one of the parties to the dispute complained to the Village or Village Head, from the Village gave an invitation to family deliberations to the parties to the dispute at the Village Head's office.<sup>8</sup> So it can be concluded that the Village Head has carried out his duties as a Village Head where the Village Head is ready and always open to complaints about problems that occur in the community.

a. The Village Head presents the disputing parties

From the results of researcher observations and interviews with the Village Head that after the invitation is received by the parties to the problem or dispute, the parties to the dispute are brought together at the Village office to be asked for information / clarification regarding the object in dispute.<sup>9</sup> Dispute resolution through mediation has the

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<sup>7</sup> Haw Widjaja, 2003, *Otonomi Desa Merupakan Otonomi Yang Asli*, Bulat Dan Utuh (Jakarta. Raja Grafindo Persada), 4.

<sup>8</sup> Nurhasan, Interview, Jember 12 July 2021.

<sup>9</sup> Observasi, jember 15 juli 2021



following characteristics or elements:<sup>10</sup>

- 1) Mediation is an out-of-court dispute resolution process that is based on negotiation.
- 2) The mediator is engaged and accepted by the disputing parties during negotiations.
- 3) The mediator helps the parties to the dispute to find the best solution.
- 4) Passive mediators act as facilitators for the parties to the conflict, so they do not participate in the drafting and development of the proposed agreement.
- 5) The mediator has no decision-making authority during the negotiations.
- 6) Mediation aims to achieve or reach an agreement. Accepted by the parties.

This summoning of the Village Head aims to sit both or the parties to the dispute with the aim that the existing problems can be resolved in a family manner without any dispute.

- b. Collecting data in dispute Evidence is the submission of evidence that is valid according to the law. To the judge investigating a case to establish certainty about the truth of the events described. 283 RBg / 163 HIR It says: "A person

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<sup>10</sup> Suyud Margono, *Penyelesaian Sengketa Bisnis: Alternative Dispute Resolution (Adr)* (Ghalia Indonesia, Ciawi-Bogor, 2010), 54-55.

who claims to have a right or Take action or take action to enforce that right Denial of the rights of others must prove the existence of such acts In civil cases, it is one of the obligations of the judge Check whether the complaint is based on a legal relationship Whether it really exists or not This legal relationship must exist If the plaintiff wants to win the trial.<sup>11</sup>

The explanation of the theory above is also in line with the interview with Mr. Syaiful, the Village Secretary, namely the Village Head asks both parties for information about the lineage of the disputed land, who is the original owner of the disputed land and who is involved in the land. if the disputed object is inherited land if the object of dispute is not land such as a car, information will be asked about the origin of the car ownership. This data collection of course aims to facilitate the flow of family deliberation / arbitration in Puger Kulon Village for someone who has rights or not in the inheritance.

The legal basis for the settlement of inheritance disputes through arbitration by the Puger Kulon Village government using alternative Mediation Dispute Resolution is Article 1331 of the Civil Law Law where the agreement

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<sup>11</sup> Riduan Syahrani, *Buku Materi Dasar Hukum Acara Perdata* (Pt. Citra Aditya Bakti Bandung, 2004), 83.

applies as law so that there is no enforcement power like a court decision. Peace agreements do not include administrative authority Through the Village government, this is sometimes an opportunity for goodwill Not good for the parties to the conflict, especially those who are not satisfied.

c. Family deliberation

Legally, the concept of mediation can only be found in the first issue of perms Article 1 Paragraph 7 of 2008 states: Mediation is a way to resolve disputes through a negotiation process bringing about the agreement of the parties with the help of an intermediary. "From the definition of arbitration, it looks like this: A mediator is involved in the mediation process He is in charge of assisting the conflicting parties in negotiating.<sup>12</sup>

In general, Indonesia has several alternative dispute resolution mechanisms. What is meant in Law No.30 Article 1 Point 10 Year 1999 Arbitration and alternative dispute resolution Alternative dispute resolution and the importance of various dispute resolution courts. Alternative dispute resolution is a system of Resolving disputes or differences with agreed procedures Settlement out of court

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<sup>12</sup> Article 1 Verse 7, Number 1, 2008

by the parties, namely advice, Negotiation, mediation, arbitration or expert opinion.<sup>13</sup>

The explanation of the theory above is also in line with the opinion of Mr. Nurhasan as a mediator in the Puger Kulon Village Non-Litigation method. Puger Kulon Village after the data is collected the files relating to both parties are gathered back in the village for family deliberations mediated by the Village Head. Not only inheritance Used to resolve disputes through arbitration Pugerkulon village may depend on the consent of the parties to the dispute.

In resolving inheritance disputes based on amicable agreements Mediation does not always go smoothly, but there are still limitations due to certain factors that occur. for Dispute resolution is difficult, but mediation can help. Some of the benefits of Mediation:

- 1) A Mediation aims to resolve disputes quickly and easily. It is relatively cheap compared to going to court.
- 2) Mediation allows the parties to stay focused on their interests. Don't do that, according to their real needs and emotional or psychological legal demands alone.

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<sup>13</sup> Abdul Halim Talli, “*Mediasi Dalam Perma Nomer 1 Tahun 2008*(Vol. 2 No. 1, Jurnal Al-Qadanu, Makasar, 2015), 83.

- 3) Mediation provides an opportunity for direct and informal participation of the parties in dispute resolution.
- 4) Mediation gives the parties the opportunity to exercise control. For both process and outcome.
- 5) Mediation can change the outcome, which is difficult in processes and arbitration. Reliable predictability with consensus.
- 6) Mediation provides testable results and can create good mutual understanding between the conflicting parties as they decide for themselves.

### **Effectiveness of Settlement of Inheritance Disputes by Non-litigation Methods**

Lately, discussions about alternatives in dispute resolution have been increasingly discussed, and even need to be developed to overcome the accumulation of cases in the courts and the Supreme Court. Dispute resolution through non-litigation is much more effective and efficient, which is why in recent times, various out-of-court settlement methods have developed, known as ADR in various forms.<sup>14</sup> The following is about a case that occurred

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<sup>14</sup> Yahya Harahap, *Hukum Acara Perdata Tentang Gugatan, Persidangan, Penyitaan, Pembuktian, dan Putusan Pengadilan*, (Sinar Grafika, Jakarta, 2009), 236.

in Puger Kulon Village through family deliberation/Arbitration in Puger Kulon Village as stated by the Village Head.<sup>15</sup>

- a. Case of inherited land which is fully controlled by his brother who has partial rights to the land and house.

With the chronology of the object of dispute is a house and land originating from the Village book or the name of Sukur Jasman as the great-grandfather of Khoirul Basyar. The emergence of the problem when khoirul basyar as the heir of sukur jasman did not want to occupy the object of the house and land which is now in dispute. Well it was occupied by H. Syamsul and his in-laws who claimed to be relatives of Khoirul Basyar.

At this time Khoirul Basyar as the heir of Sukur Jasman wanted to claim his rights which were occupied by H. Syamsul and his in-laws, so a dispute problem arose. When the problem is brought to the village, it is resolved in the village with the intermediary of the Village Head as a mediator along with officials who suggest compensation or sale and purchase.

In this problem finally ended in the village with an agreement recommended by the village with

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<sup>15</sup> Nurhasan, Interview, Jember 15 July 2021

compensation or sale and purchase. The legal basis of the division of inheritance using the Compilation of Islamic Law (KHI), namely by dividing equally between men and women in Chapter II of the Law of Inheritance Article 183.

In this case, the settlement was successful because it was in line with the theory of legal effectiveness, namely the community factor. This means that legal effectiveness also depends on the willingness and legal awareness of the community. Low awareness of the community will make it difficult for law enforcement.<sup>16</sup> In this case, both parties want to be resolved in a family manner with an agreement that has been made by both parties.

Also in accordance with the effectiveness of the law put forward by Lawrence Meir Friedman's theory of legal structure, the law will not function properly without reliable, competent and independent law enforcement officials. No matter how good a legal product is, if law enforcement officials do not maximize their potential in the process of carrying out their duties, justice will only be a dream. In this case, the Village Head of Puger Kulon, Jember Regency, and his apparatus were able to reconcile

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<sup>16</sup> Soerjono Soekanto, *pokok-pokok Sosiologi Hukum* (Jakarta: PT Raja Grafindo ersada,2007), 110.

the two parties in dispute properly.

- b. Rukmini's control of inherited land over her brother who was entitled to receive his share.

Sahlan has a sister Rukmini and a brother Rohim - male, Sahlan did not marry and died having left behind 4 plots of rice fields. The problem is that Rukmini controls her brother Sahlan's land, while other siblings feel that they must get a share of the inherited land. Finally, this case was brought to Puger Kulon Village, mediated by the Village Head and completed with the division of the agreement between the entitled siblings. The legal basis that is used, the division of inheritance using the Compilation of Islamic Law (KHI), namely by dividing equally between men and women. In Chapter II of the Law of Inheritance Article 183. In this case, the settlement was successful because it was in line with the theory of legal effectiveness, namely the community factor. This means that legal effectiveness also depends on the willingness and legal awareness of the community. Low awareness of the community will make it difficult for law enforcement.<sup>17</sup> Which in this case both parties realize each other by wanting to divide in a family manner

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<sup>17</sup> Soerjono Soekanto, *pokok-pokok Sosiologi Hukum* (Jakarta: PT Raja Grafindo ersada,2007), 112.



according to the agreement.

Legal culture becomes an atmosphere of social thought and social forces that determine how to use, avoid or abuse the law. This legal culture is associated with public awareness of the law. If the community knows the regulations and is willing to comply with them, then the community will become a facilitator, otherwise the community will become an obstacle to the enforcement of the regulations concerned.<sup>18</sup> In this case the two parties to the dispute want to divide the inheritance with the agreement made de, this is in accordance with the theory put forward by Lawrence Meir Friedman If the community knows the regulation of the law and is willing to comply with it, then the community will become a facilitator.

- c. The son of the first wife claimed the inheritance rights of his father which were held by the second wife.

Haji Khodori was married to Arsiah with 2 children but showing nusyuz (disobedience). Thus, Haji Khodori was eventually remarried to Artiyah with 2 kids of Artiyah's previous marriage. Haji Khodori then had a problem as his children with Arsiah requested for his wealth in the form of

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<sup>18</sup>Lawrence M.Friedman, *Sistem Hukum: Perspektif Ilmu Sosial The Legal System A Social Science Perspectiv*, (Nusamedia, Bandung,2009), 34.

a piece of ground. Haji Khodori, through a mediation, eventually found a solution that children of his previous marriage get a car with money of IDR 150.000.000.

The legal basis that is used is the division of inheritance using the Compilation of Islamic Law (KHI), namely by dividing equally between men and women. In Chapter II of the Law of Inheritance Article 183. In this case the settlement was successful because it was in line with the theory of legal effectiveness, namely community factors.

This means that the effectiveness of the law also depends on the willingness and legal awareness of the community. Low awareness of the community will make it difficult for law enforcement. Which in this case both sides are aware of each other.<sup>19</sup>

In Lawrence Meir Friedman's theory, it is said that the structural system determines whether a law can be applied correctly. The law will not function properly without reliable, competent and independent law enforcement officers. No matter how good a legal product is, if law enforcement officials do not maximize their potential in the process of carrying out their duties. In the case of the son of the first wife asking for

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<sup>19</sup>Soerjono Soekanto, *pokok-pokok Sosiologi Hukum* (Jakarta: PT Raja Grafindo ersada,2007), 112.

inheritance rights from his father which were controlled by the second wife, this was completed in the village thanks to the Head of Puger Kulon Village, Jember Regency as a mediator judge and village officials. Who maximized their authority as a village official to protect their community when there was a dispute.

- d. There was control of the land between the adopted son named Danar and the nephew of the testator where the land was sold by the adopted son.

In this case, it is not left in the village, because there are problems that are not under the authority of the village, namely the need to determine the adopted child, which is the authority of the religious court. From here it can be seen in accordance with the theory of legal effectiveness regarding legal factors that one of the weaknesses of Village arbitration is that the scope is not so broad where legal factors In the practice of its application, it is not uncommon for there to be conflicts between legal certainty and justice.

Legal certainty is concrete, while justice is abstract, so when a judge decides a case by applying the law alone, there are times when the value of justice is not achieved. So, when looking at a

problem regarding the law, at least justice is a top priority. Because the law is not solely seen from the angle of written law, but also takes into account other factors that develop in the dispute.<sup>20</sup>

In Lawrence Meir Friedman's theory, legal substance is said to be a system that basically decides whether or not the law can be implemented. As a country that adheres to the civil law system or the continental European system, the system is considered as written rules while unwritten rules cannot be declared as law.<sup>21</sup> Where in this case requires the need for the determination of adopted children which is the authority of the religious court, and this proves that the settlement of inheritance disputes with arbitration in Puger Village, Jember Regency is limited because there are some that are not its authority.

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<sup>20</sup> Soerjono Soekanto, *pokok-pokok Sosiologi Hukum* (Jakarta: PT Raja Grafindo ersada,2007), 110.

<sup>21</sup> Lawrence M.Friedman, *Sistem Hukum: Perspektif Ilmu Sosial TheLegal System A SocialScience Perspectiv*, (Nusamedia, Bandung,2009), 35.

As for according to Soerjono Soekanto, the factors that affect the effectiveness of the law itself.<sup>22</sup>

a. Legal Factors

The law contains elements of justice, certainty, and convenience. In fact, legal certainty and justice. When judges apply the law and decide cases, there are certainly times when the value of justice is not achieved. At that time, at least look at the issues that correspond to the law's top priority. Because the law is not only seen in terms of the law. Consider other factors and write Makmur in conflict. In accordance with the opinion of Mr. Nurhasan as a mediator in the Puger Kulon Village family / arbitration meeting when resolving disputes over inheritance disputes in Puger Kulon Village, Jember Regency, seen from two sides, namely legal justice and legal certainty, not only seen from legal certainty itself.

b. Law Enforcement Factors

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<sup>22</sup> Soerjono Soekanto, *pokok-pokok Sosiologi Hukum* (Jakarta: PT Raja Grafindo Persada, 2007), 110.

Prosecution is related to the forming party and the application of the law (criminal prosecution). Part of law enforcement is law enforcement officials who can benefit from the law with certainty, justice, and proportionality. Terminal Law enforcement includes the concept of law enforcement and in the sense of law enforcement officers, law enforcement officers Work together with police, prosecutors, judiciary, legal counsel, etc. Local prison officers. From the results of researcher observations, the Head of Puger Kulon Village has provided law enforcement to its citizens by solving problems related to the law through the settlement of inheritance disputes by non-litigation in Puger Kulon Village, Jember Regency.

c. Legal Facility Factor

Support facilities can be easily formulated as means to achieve goals. The range is mainly physical means It acts as an additional element. Supporting facilities include staff Qualified educated people, good organization, proper and

adequate financial equipment. In addition to availability Maintenance is also very important for sustainability. From the results of observations, the researcher saw that the non-litigation method in Puger Kulon Village, Jember Regency facilitated the good faith of an existing dispute by bringing together and providing bargaining space - bargaining well - which was directly monitored by the Village Head of Puger Kulon and in the observation of researchers, the Village Head here became a very important actor in the implementation of the settlement of inheritance sengekata through non-litigation methods which became a mediator in the settlement, but the facilities and facilities were still inadequate because when the deliberations took place the place in the village head room did not have its own room.

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and providing bargaining space in a good manner which was directly monitored by the Village Head of Puger Kulon and in the observation of researchers, the Village Head here became a very important actor in the implementation of the settlement of inheritance disputes through non-litigation methods which became a mediator in the settlement, but the facilities and facilities were still inadequate because when the deliberations took place the place in the village head room did not have its own room.

d. Community Factors

Law enforcement agencies aim to achieve inner peace in public. People have specific opinions about the law. In other words, the validity of the law is the will General awareness of rights. Low public awareness Makes it difficult for law enforcement agencies to decide what measures to take Socialization by incorporating social class and power Law enforcement agencies themselves. Legal wording Pay attention to the relationship between social change and what the law is for



Finally, law can be effective as a means of regulating human behavior.

e. Community cultural factors

Cultural factors that are actually related to societal factors are consciously distinguished. In the discussion, value issues that are at the core of culture are presented. Not mental or important. This is characterized by the fact that law as a system (or subsystem of a social system) includes: Structure, substance social system), and law includes: Structure, substance and culture. The structure contains the container The format of the system includes, for example, a sequence of institutions. Formal law, the law between these institutions, rights and obligations etc.

The legal action stance applies in the following cases: Other attitudes, actions, or actions towards a desired goal, that is, if the other party complies with the law. Law can the role of law enforcement officers is close to what is legally expected, On the other hand, if the role is performed by the executor, it will be invalid. The

law is far from what the law expects.<sup>23</sup>

According to Lawrence M. Friedman. the success or failure of law enforcement is dependent:<sup>24</sup>

a. Legal Substance of Law

Lawrence Meyer Friedman's theory is that the substance of law is basically a system to judge whether or not you can enforce the law. This system is considered a country that adheres to the civil law system or the European continental system. As written rules, you cannot make unwritten rules Declared as laws.

b. The Structure of Law

According to Lawrence Meir Friedman, the system refers to a structure to determine a true regulation with no specific media, then law will unlikely apply well. A reliable, competent, and independent law firm with the best legal product but with no trust from legal authority will unlikely function optimally in the duty. Justice is just a dream, and it is a successful force toward personal law firm.

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<sup>23</sup> Soerjono Soekanto, *Faktor-Faktor Yang Memengaruhi Penegak Hukum* (Jakarta: PT Raja Grafindo Persada, 2005), 9.

<sup>24</sup> Lawrence M.Friedman, *Sistem Hukum: Perspektif Ilmu Sosial The Legal System A Social Science Perspectiv*, (Nusamedia, Bandung, 2009), 32

### c. Legal Culture

According to Lawrence Meir Friedman, legal culture is an attitude A law born from a belief system Values, ideas, and expectations that have developed into one. Legal culture becomes an atmosphere of social thought and social power Use, solution, or Misuse of law. This legal culture is General legal awareness. If people know the rules If you are willing to comply, society will become an intermediary, If not, society will become an obstacle to rule enforcement. From a series of processes for resolving inheritance dispute issues in Puger Kulon Village, besides still leaving some weaknesses, on the other hand, inhibiting factors also have several circumstances as a driving factor in the performance of resolving inheritance disputes in Puger Kulon Village. From the results of researcher observations on the other hand, inhibiting factors also have several circumstances as factors driving performance, namely:

#### A. Good Intention

From the results of observations, researchers saw that the non-litigation method in Puger Kulon Village, Jember Regency facilitated the good faith of an existing dispute

by bringing together and providing bargaining space in a good manner.

The principle of integrity itself has two implications: Sincerity in the objective sense that an agreement has been reached It must be carried out in accordance with the rules of dignity and dignity, which means that the agreement must be implemented Do not let either party get hurt. Confidence Good in the subjective sense, that is, an inherent sense of integrity in my head. In the law of things, this honesty Can be interpreted as honest. twenty-one the honesty of the parties is the key to successful mediation Because without the goodwill of the parties, they will not succeed. Providing opportunities for negotiation is a legal dispute Promoting success in the negotiation process Dispute resolution through mediation.<sup>25</sup>

a. Clear Subject Case

As a source of data or information from the researcher The research he conducts must emphasize data here You can also get from the target through interaction

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<sup>25</sup> Subekti, *Hukum Perjanjian*, (Jakarta: Citra Aditya Bakti, 1983), 25.

Identification of information found by the research subject. In that case, the dispute arises according to the information provided by the parties to the dispute. It is clear in chronological order so that the mediator can mediate the dispute can follow the existing law. In accordance with the results of the interview with the Head of Puger Kulon Village as a mediator that a clear subject is certainly a supporting factor where with a clear subject along with letters related to the object.<sup>26</sup>

#### b. Role of Judge Mediator

A mediator is a judge or other party who assists in arbitration. In the middle of adjudicating during negotiations to find alternative options to resolve disputes without a decision or imposing a settlement.<sup>27</sup> In the Indonesian Dictionary of Law, a mediator is an intermediary, a third party as a separator, or a peacemaker between conflicting parties to support the success of the arbitration process, the mediator must have the requirements to elaborate on this, which can be seen from

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<sup>26</sup> Nurhasan, Interview, Jember 15 July 2021.

<sup>27</sup> Article 1 verse (2) Ketentuan Umum Peraturan Mahkamah Agung (PERMA) Nomor 1 Tahun 2016 Tentang Mediasi.

two aspects: internal needs and external needs. External requirements. The internal requirements of a mediator have the following format: Personal ability to carry out the duties of a mediator, namely:

1. Ability to build trust between Conflict stakeholders.
2. Empathy and ability to demonstrate empathy.
3. Friendly, polite and attractive to look at. 23 Article 1 (2) General Provisions of Supreme Court Order (PERMA) Number 1 of 2016 concerning mediation.
4. Do not immediately judge Show a positive nature and attitude However, the parties' statements Maybe he deviates because he thinks it is inappropriate.
5. Have a lot of patience, especially when you are listening to both parties' discussions.

The external requirements of the mediator are other requirements. With respect to the parties and the issues during the dispute from them. These requirements are:<sup>28</sup>

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<sup>28</sup> Runtung, *Pemberdayaan Mediasi Sebagai Alternatif Penyelesaian Sengketa di Indonesia*, (Medan: Universitas Sumatera Utara, 2006), 15.

- 1). Ability to build trust between Conflict stakeholders.
- 2). Empathy and ability to show empathy. c. plan Friendly, polite and attractive to look at. 23 Article 1 (2) General Provisions of Supreme Court Order (PERMA) Number 1 Year 2016 on mediation.
- 3). Do not immediately judge.
- 4). Show a positive nature and attitude However, the parties' statements may be distorted by him because he thinks they are inappropriate.
- 5). Have a lot of patience, especially when you Listen to the discussions of both parties.

From the observations of researchers, the mediator judge or referee in disputes at the Puger Kulon Village arbitration agency has sufficient knowledge in the field of law and existing procedures so that he can facilitate or protect the parties to the dispute.

The arbitration process relies heavily on the Mediator's skills to convince and reconcile the two parties

As claimed, the mediator has an important role to play which can include:<sup>29</sup>

- 1). Conducting early diagnosis of conflicts that occur.
- 2). Addressing critical issues and benefits.
- 3). Creating an agenda.
- 4). Managing and promote communication.
- 5). Explaining the negotiation process and position to the parties.
- 6). Supporting parties in gathering important information.
- 7). Providing options for solving problems.
- 8). Diagnosing disputes to facilitate problem solving.

The success or failure of mediation depends on the mediation process. A good mediation process alone does not guarantee an amicable agreement between the parties. Of course, you can ignore the correct arbitration process This will lead to the failure of the arbitration.

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<sup>29</sup> Witanto, Hukum Acara Mediasi dalam Perkara Perdata di Lingkungan Peradilan Umum dan Peradilan Agama Menurut Perma No.01 Tahun 2008 tentang Prosedur Mediasi di Pengadilan, (Bandung, Alfabeta, 2010), 102



### c. The Bargaining Process

The negotiation process is an activity and approach by parties and intermediaries. The negotiation process Refers to a state or situation in which a party is present offering. Negotiation or negotiation Form of decision discussed by two or more parties try to balance each other's interests their debate.<sup>30</sup> From the results of the author's interviews with collective bargaining agents Often carried out by the parties through the arbitration judge, or the mayor of Puger Kulon has strategic steps in the leadership of the mediation process. One of them includes another meeting (caucus) and also brings the two together.

Tujuan negosiasi adalah untuk membuat kesepakatan atau kesepakatan dengan pihak lain. WHO Siapapun dengan persetujuan mendapat keputusan hasil Dengan persetujuannya, sesuai dengan keinginannya Anda harus menahan diri untuk tidak menyetujui keputusan hasil yang tidak disetujui Dengan petunjuk bahwa mereka

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<sup>30</sup> Herdian Maulana, *Gumgum gumelar, Psikologi Komunikasi dan Persuasi* (Jakarta : Akademia Permata 2013), 12.

saling mendukung Dalam hukum positif atau hukum Islam.

The negotiator is the person who builds the bridge between the two parties and is expected to provide and understand the solution of the will of both parties so that it can be resolved properly. In both cases, the negotiator is very important for both parties, but the outcome must be fair for both parties as well. The successful performance of the mediator is required to make a win-win solution for both parties, so everyone has prejudice and fairness.<sup>31</sup> There are communication factors that support successful negotiations, which are in addition to effective communication Be a good listener between the two.

There are three factors inhibiting non-litigation methods in Puger Kulon Village, Jember Regency:

a. Place of Mediation

A convenient location is one of the factors in mediation. Taking care of the parties to the conflict in a comfortable place is also very helpful We will publicize information about the problems they face. From the author's

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<sup>31</sup> Roy J. Lewicki dkk, *Negosiasi*, (Salemba Humanika, Jakarta 2015), 7.

observations and results in the Village room used in the implementation of dispute resolution in consultation with the parties, the place is not comfortable. The parties complained for various reasons, including: it was hot, no one other than the parties was allowed in the room. This serves as an intermediary to maintain confidentiality.

The success or failure of mediation largely depends on the process for mediation. establishing a good arbitration process also guarantees an amicable agreement between the parties. This can happen if you do not follow a proper arbitration process.

b. Limited number of mediators

Mediator should support the success of mediation process. Some requirements for long-distance vision into two aspects: Internal need and external need. Internal need refers to personal qualification. During the action, a mediator should:<sup>32</sup>

- 1). Ability to build trusting relationships with Conflict stakeholders.
- 2). Empathy and ability to demonstrate empathy.
- 3). Friendly, polite and appealing to the eye.
- 4). Don't jump to judgment.

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<sup>32</sup> Runtung, *Pemberdayaan Mediasi Sebagai Alternatif Penyelesaian Sengketa di Indonesia*, (Medan: Universitas Sumatera Utara, 2006), 15.

- 5). Show positive traits and attitudes however, the statements of the parties may be distorted by him as he finds them inappropriate.
- 6). Have a lot of patience, especially when you are listening to both parties' discussions.

External requests to the mediator in the form of requirements. Other matters relating to the parties and the business are denied by them. The requirements are as follows:<sup>33</sup>

- 1) There is an intermediary that has been agreed upon by both parties.
- 2) I have no family relationship in the form of blood relationship or marriage of one of the parties.
- 3) You do not have a business relationship with any party.
- 4) There is no financial or other interest on the agreement of the parties.
- 5) Not interested in the negotiation process not just the outcome.

From the results of researcher observations where only the Village Head and the Village Secretary have more knowledge or master the field of law or from an existing

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<sup>33</sup> Runtung, *Pemberdayaan Mediasi Sebagai Alternatif Penyelesaian Sengketa di Indonesia...*, 16.

dispute problem. Where a mediator can be the key to the settlement of a dispute.

c. Absence of a Party or Parties in the Mediation Process

The absence of the parties or one of the parties in the process of the mediation process greatly hampers the implementation of mediation or deliberation, which becomes longer and can slow down its completion. While Mr. Nurhasan's statement as the Head of Puger Kulon Village, there are several obstacles to dispute resolution in non-litigation ways in Puger Kulon Village, Jember Regency, one of which is the absence of one of the parties to the dispute which will make a long time in its resolution.<sup>34</sup>

The purpose of the non-litigation method in Puger Kulon Village, Jember Regency is to resolve a dispute more easily, save costs and also save time. Settlement using non-litigation is quite effective with more cases resolved in Puger Kulon Village, Jember Regency than those that are not resolved in this village. In accordance with what has been described above.

## Conclusion

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<sup>34</sup> Runtung, *Pemberdayaan Mediasi Sebagai Alternatif Penyelesaian Sengketa di Indonesia*, (Medan: Universitas Sumatera Utara, 2006), 19.

The settlement of inheritance disputes by means of non-litigation in Puger Kulon Village, Jember Regency outside the court to resolve inheritance disputes is very effective in resolving village inheritance disputes and in resolving disputes through non-litigation in accordance with several cases resolved in the village as listed above. The parties were able to reach an agreement. The benefits of mediation are significant at low cost and reduce their conflict in a short period of time. If mediation fails, it has not been able to reach an agreement, but going through the mediation process beforehand can clarify questions and narrow the dispute. This is evidenced by the lack of inheritance disputes in Puger Kulon reaching the court.

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