



## ARMA Update: 9 August 2022

### **Electronic Mediation in Courts**

#### **General Overview**

According to Indonesian civil procedural law, prior to the process of examining the main case, the judges in charge of the dispute is obliged to reconcile the parties through the mediation process as a manifestation of the implementation of a simple, fast, and low-cost judiciary proceedings. Currently, due to the development of technology, the Supreme Court has made improvements to Indonesian civil procedural law through Supreme Court Regulation No. 3 of 2022 concerning Electronic Mediation in Courts (“**SC Reg 3/2022**”) which essentially provides the basis for the mediation process to be carried out electronically by the courts as an alternative to conventional mediation procedures.

This ARMA update will discuss the substance and procedure stipulated in SC Reg 3/2022.

#### **Electronic Mediation Administration**

In principle, electronic mediation is carried out voluntarily without coercion from the disputing parties. Further, electronic mediation is positioned as an alternative procedure for mediation in court, notwithstanding that the parties also could have conventional mediation by mutual agreement.<sup>1</sup> Prior to examining the case, the judges in charge of the dispute is required to provide an explanation and also recommend the disputing parties to take electronic mediation. In the event that the disputing parties agree to choose electronic mediation, then the judges in charge of the dispute will provide acceptance form to the disputing parties.<sup>2</sup> If the disputing parties do not agree, then the mediation will be carried out conventionally in court.<sup>3</sup>

The disputing parties are allowed to choose a mediator in the list of mediators in court<sup>4</sup>, choose a non-judge mediator, or the judges in charge of the dispute will choose a mediator. In the event that the mediator has been appointed, the judges in charge of the dispute will issue a decree on the appointment of a mediator and an order to conduct electronic mediation and notify the mediator through a deputy registrar.<sup>5</sup>

Preliminary to electronic mediation agenda, the mediator will submit a proposal to the disputing parties to determine an application that can be used in meetings and sending electronic

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<sup>1</sup> Article 3 SC Reg 3/2022

<sup>2</sup> Article 6 SC Reg 3/2022

<sup>3</sup> Article 5 (2) SC Reg 3/2022

<sup>4</sup> Article 8 (1) SC Reg 3/2022

<sup>5</sup> Article 8 (2) SC Reg 3/2022



documents<sup>6</sup>, if the disputing parties have agreed on the determination of the application to be used, it shall be stated in a written agreement.<sup>7</sup>

### **Electronic Mediation Meetings**

After the administrative stage is completed, the disputing parties shall conduct an electronic mediation meeting that must be conducted in an application virtual room that has been agreed upon by the disputing parties and the costs must be borne by the disputing parties.<sup>8</sup> Further, the schedule for an electronic mediation meeting should be determined by the mediator after being proposed by the disputing parties.<sup>9</sup> The mediator is also required to summon the disputing parties to the electronic mediation meeting through electronic media and the said summons should contain both the address of the virtual room and the code of conduct that will apply during the electronic mediation meeting.<sup>10</sup>

SC Reg 3/2022 stipulates the code of conduct of electronic mediation, as follows:<sup>11</sup>

- a. The the electronic mediation must be conducted in a private space and not in public;
- b. The room used for electronic mediation should be quiet and comfortable;
- c. The disputing parties must use proper clothing during electronic mediation meetings; and
- d. The disputing parties must request permission from the other parties present or the mediator if they wish to leave the room and must disclose their reasons for doing so.

Moreover, if it is necessary the disputing parties could present experts and/or other parties who are deemed to be able to assist resolving the disputes.<sup>12</sup> The presence of experts and/or other parties must be based on mutual agreement of the Parties, also it is required to deliver the identity of the other party and/or experts by registered mail or other communication instruments to the mediator and other parties.<sup>13</sup>

### **The Results of Electronic Mediation**

Following the electronic mediation process, the Mediator shall submits a statement whether that the electronic mediation is successful or unsuccessful to the judges in charge of the dispute electronically through the Court Information System.<sup>14</sup> In the event that the parties have succeed

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<sup>6</sup> Article 10 (1) SC Reg 3/2022

<sup>7</sup> Article 10 (3) SC Reg 3/2022

<sup>8</sup> Article 11 (1) SC Reg 3/2022

<sup>9</sup> Article 16 SC Reg 3/2022

<sup>10</sup> Article 17 SC Reg 3/2022

<sup>11</sup> Article 15 SC Reg 3/2022

<sup>12</sup> Article 22 (1) SC Reg 3/2022

<sup>13</sup> Article 22 (2) SC Reg 3/2022

<sup>14</sup> Article 17 SC Reg 3/2022



in achieving reconciliation by electronic mediation, the disputing parties should prepare the settlement agreement with the assistance of the mediator through electronic instruments.<sup>15</sup>

Moreover, for the sake of completion of electronic mediation, the execution of the settlement agreement by the disputing parties and the mediator can be conducted electronically by using electronic signature.<sup>16</sup> However, if the Parties do not have a validated electronic signature, the signing of the settlement agreement can be conducted by face-to-face meeting between the disputing parties and the mediator.<sup>17</sup>

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<sup>15</sup> Article 24 (1) SC Reg 3/2022

<sup>16</sup> Article 24 (2) SC Reg 3/2022

<sup>17</sup> Article 24 (3) SC Reg 3/2022