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Effectiveness of the Mediation Process in Resolving Divorce Cases at the Depok Religious Court

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Abstract:

The issuance of the Supreme Court Regulation of the Republic of Indonesia Number 1 of 2016 concerning Mediation Procedures indicates that the mediation process has received special attention by the Judiciary Institution because this process is a process that has a positive impact on the parties and is linear with the principles of the judiciary, namely fast, simple and low cost. Mediation is a way of resolving disputes through a negotiation process to obtain an agreement between the parties assisted by a mediator. This study used qualitative research methods. The type of research used is a case study, by taking a survey approach and conducting direct observations as well as conducting interviews with mediators and litigants. The research consists of field studies and literature studies (Field Research and Library Research). The Depok Religious Court has carried out the Mediation Process in accordance with the rules Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2016 concerning Mediation Procedures in Courts. The mediation process at the Depok Class 1 A Religious Court in accordance with PERMA No.1 of 2016 is still not effective with a success rate of only achieved about 2% Success with the issuance of a peace certificate, 8% Success by revoking the divorce case and 23% succeeded in peace but still choose Divorce.

Keywords: effectiveness; mediation; divorce

A. INTRODUCTION

Marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family or household based on the Almighty Godhead. (UU. Number 1, 1974) Marriage is related to the rights and obligations that husband and wife must bear in order to perpetuate and realize noble ideals in a marriage bond.

The purpose of marriage is to build a family that is happy, full of love, prosperous and eternal. Husband and wife need patience in facing challenges and obstacles in their household in order to be able to maintain their domestic life. So that the goal of marriage is to create a household life that is *sakinah mawaddah warahmah* can be achieved. (KHI, Article 3)

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Divorce is the severing of the marriage bond between husband and wife based on a court decision which has sufficient reasons from the parties, both husband and wife will not be able to live together and be in harmony again as husband and wife. (UU. Number 1, 1974) in the lawsuit or petition process Divorce cannot be separated from disputes between husband and wife which are motivated by various polemics and often cannot be resolved in a family manner. At the first trial of a divorce case, an effort is certainly made to reconcile the disputing parties, this effort is called Mediation. Before examining a case, a judge is obliged to reconcile, because this is the principle of a judge's obligation to reconcile the parties involved in the case. (Yahya, 2009: 47)

The issuance of Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2016 concerning Mediation Procedures indicates that the mediation process receives special attention by the Judicial Institution because this process is a process that has a positive impact on the parties and is linear with the principles of the judicial institution, namely fast, simple and low cost. In Islamic concepts related to disputes or disputes. Islam always recommends that cases related to disputes or disputes can be resolved using *ishlah* methods. "*fa ashlihu baina akhwaikum*" in accordance with the word of Allah SWT:

إِنَّمَا الْمُؤْمِنُونَ إِخْوَةٌ فَأَصْلِحُوا بَيْنَ أَخَوَيْكُمْ وَاتَّقُوا اللَّهَ لَعَلَّكُمْ تُرْحَمُونَ

Meaning: "*Believers are truly brothers. Therefore, reconcile (improve relations) between your two brothers and fear Allah, so that you may receive mercy.*" Q.S Al-Hujurat (49): 10

Rasulullah SAW said:

عن عمرو بن عوف المزني رضي الله عنه ان رسول الله عليه وسلم قل : (الصلح جاز بين المسلمين إلا صلحا حرم حللا واحلا حراما ، والمسلمون رواه الترمذي وصححه . (عل شرو طهم، إلا شرطا حرم حللا واحلا حراما وانكروا عليه ؛ لأن روية كثير بين عبد الله حمر و بين عوف ضعيف . وكأنه إتيه بكثرة طرقه . ي ترمذ) (روه

"From Amar Ibn Auf al-Muzany Radliyallahu 'anhu that Rasulullah saa. Said: "Peace is halal between Muslims except peace which forbids what is haram or permits what is haram or makes lawful what is haram. Muslims are obliged to adhere to their conditions, except conditions that prohibit halal things or make lawful things that are haram." (H.R At: Tirmidhi)

By referring to the essence of the meaning contained in the verses of the Qur'an and Hadith above, the author believes that peace efforts in resolving disputes are very representative actions for realizing the essence of justice. However, if we look further into divorce cases, mediation efforts cannot be said to be effective in reconciling the two disputing parties, especially in divorce cases.

Then the author is interested in studying further the effectiveness of the mediation process in the Religious Courts in divorce cases. Therefore, the initial aim of this research is to analyze the effectiveness of the Mediation process in resolving cases, especially

divorce cases. Researchers will dig deeper into the effectiveness of the mediation process in resolving divorce cases which will focus their research location within the scope of the Depok Religious Court.

B. METHODE

This research adopts qualitative research methods. Qualitative research is a research procedure that produces descriptive data in the form of speech or writing as well as the behavior of the people being observed. (Sujarweni, 2018:19) The type of research used is a case study, namely the study of a particular case to understand various legal aspects by taking a survey approach, making direct observations, and conducting interviews with mediators and litigants (Marzuki, 2016:134). The research consists of field research and library research (Field Research and Library Research), aimed at obtaining respondent information that is relevant to this research to obtain valid and reliable data.

The way to solve the problems that will be discussed in this research is to use the following method: normative approach this model solves problems by examining the legal principles contained in the laws and regulations that apply in society based on primary legal materials. (Songonuo, 2011: 184) Phenomenological method It is a method of observing symptoms or facts that occur in a subject and understanding the significance of these events in relation to ordinary people in certain situations. (Yahya, 2005:5)

C. RESULTS AND DISCUSSION

1. Mediation Process in Resolving Divorce Cases at the Depok Religious Court

In implementing PERMA Number 1 of 2016, the Depok Religious Court took flexible steps based on the principles of simplicity, speed and low costs, namely that mediation was carried out after the judge had determined the mediator or the parties had determined the appointed mediator. Both parties in the case were called to meet with a mediator later that day to jointly determine a time for mediation, and the judge adjourned the trial. Apart from making things easier for litigants, this also aims to reduce costs and save time. However, the Depok Inquisition continues to follow PERMA guidelines Number 1 of 2016 concerning conciliation procedures.

Based on the author's observations, the Depok Religious Court's mediation procedures in practice adopt PERMA Regulation Number 1 of 2016 concerning Mediation Procedures which is currently in effect. This procedure contains Article 3 PERMA No. 1 of 2016 which contains the following: Every Judge, Mediator, parties and/or legal representatives are obliged to follow dispute resolution procedures through mediation

- a. The Case Examining Judge in considering the decision must state that efforts have been made to reconcile the case through mediation by mentioning the name of the mediator.
- b. The case examining judge who does not order the parties to undergo mediation, so that the parties do not mediate, has violated the provisions of the laws and regulations governing mediation in court.
- c. In the event of a violation of the provisions as referred to in paragraph 3, if legal action is proposed, the Court of Appeal or Supreme Court by decision orders the Court of First Instance to carry out a mediation process.
- d. The head of the court appoints a judge mediator who is not the judge examining the case who makes the decision.
- e. The mediation process as intended in paragraph 4 is carried out no later than 30 days from the receipt of notification of the decision of the High Court or Supreme Court.
- f. The chairman of the court submits a report on the results of the mediation along with the case files as intended in paragraph 6 to the High Court or Supreme Court.
- g. Based on the report as intended in paragraph 7, the judge examining the case at the High Court or Supreme Court issues a decision. (PERMA, No.1 of 2016).

The principles in PERMA No.1 of 2016 contain ten principles for using integrated mediation in court, namely as follows:

- a. Mediation must involve conciliation, before the Judge makes a decision, the parties to the dispute must go through a conciliation process first. If mediation is reviewed and decided by a judge, the law determines that the decision is null and void. As regulated in article 2 paragraph 3 PERMA No.1 of 2016.
- b. The parties have autonomy, the parties have the right to decide and influence the achievement process based on consensus between the parties and the media/third parties.
- c. During the mediation process, the parties are required to act in good faith throughout the mediation process.
- d. Time efficiency, PERMA Number 1 of 2016 regulates time limits for parties in the process of selecting a mediator from among the options mentioned in Article 3 paragraph 6.
- e. Mediator certificate. Mediators must have a certificate after completing training from an organization recognized by the Supreme Court of the Republic of Indonesia.
- f. Responsibilities of the consolidator or mediator, the consolidator has duties and responsibilities related to procedures and facilitation.
- g. Confidentiality: in principle the mediation process is kept secret to the public unless the parties allow it to be open and transparent.
- h. Financing, funding sources related to the mediation process include: available mediation space, mediator fees, expert fees, and transportation costs.
- i. Repetition of mediation, authorizes the Judge to review the case again to continue to encourage the parties to reach a settlement after the mediation process fails.

j. Out-of-court peace agreement, a peace agreement outside of court which is strengthened by an act of peace by the court.

The mediation procedure begins with an introduction of the mediator, then gives the parties the opportunity to introduce themselves to each other and the mediator's comments include: (results of an interview with Mr. M. Kamal Syarif, S.Ag, M.H, as Mediator Judge at the Depok Religious Court).

- a. The mediator explains the meaning of mediation, objectives and benefits achieved.
- b. Explain the principles and regulations and establish rules during the mediation process.
- c. Confirm that the mediator is neutral and does not take sides with one party.
- d. Arrange the parties' schedules.
- e. Give the parties an opportunity to express their problems
- f. Help the parties create a peace agreement.

The mediation process based on PERMA Number 1 of 2016 is 30 days. Based on the results of the author's observations and interviews, the mediation steps used in resolving divorce problems at the Depok Religious Court include:

a. Pre-mediation Stage.

Before mediation begins, there is a stage where the mediator must make a number of arrangements and preparations before the mediation will actually begin. The pre-conciliation stage is of course very important because it will determine whether the mediation process will continue or not. Then at this stage the mediator takes several steps, including building trust, contacting the parties, studying and providing initial information about mediation, focusing on the future, coordinating both parties in the case, being aware of cultural differences, determining who will attend, determining the purpose of the meeting. , agree on a time, location and create a sense of security for both parties when meeting and discussing their disputes. (Kraybill, 2006: 63)

Based on the results of the author's interview with a Mediator Judge at the Depok Religious Court, namely, Mr. M. Kamal Syarif, S.Ag, M.H, he stated that in selecting a mediator, although the parties have been given the opportunity to choose their own mediator who will lead the mediation process in their case. However, here the parties mostly hand over their authority to the case examining judge to choose a mediator to lead their mediation process. This is also because the parties do not know the mediators.

At this pre-mediation stage, the next step the mediator must take is to ask a question that indirectly invites the parties to think about their future and not get lost in thinking about the factors that caused them to be drawn into the conflict or dispute. The mediator must be able to direct them to take a stand so that they can work together towards a better and more peaceful future. The mediator can design a number of questions, for example, what are the losses faced by the parties if the case is allowed to drag on, how to resolve the problem and what happens if the problem cannot be resolved, not only the impact on the parties experiencing the dispute, but also other parties such as their family, relatives and children.

b. Mediation Implementation Stage.

The mediation implementation stage lasts a maximum of 30 working days after the conciliator is selected by the parties or appointed by the Chief Judge. Based on the agreement of the parties, the mediation period can be extended up to 14 working days after the end of the 30 day period. This was calculated from the time the panel of judges tasked with hearing the case announced the postponement of the trial, thereby increasing the maximum time limit to 44 days. Therefore, this time limit is not counted for document inspection.

At this mediation stage, the mediator asks each party to provide an initial statement or explanation. This claim is usually submitted by the plaintiff, but it is not a fixed price, but in certain conditions it could be otherwise. In this statement, the parties usually directly state their concept of peace.

In carrying out mediation to make peace between couples who want to divorce, mediation is carried out not briefly or only once, only twice. Because the mediator's role here is to explore and find out the reasons for their divorce, they must always provide advice to them regarding the consequences, negative impacts that they and their children will experience after the divorce occurs if the parties are not serious about maintaining their marital relationship.

The role of the mediator here is also to find, look for and research what problems are raised by the parties in the divorce situation, first, find what problems have been agreed upon by both parties that cannot be discussed anymore, secondly, problems that have not been agreed upon in terms of the problems that still being prepared or remaining in the list of problems in this case, then compiled and made into an agenda of problems that will be resolved and a middle way can be taken.

c. Final Stage of Mediasite Implementation

Parties in divorce cases who have participated in the mediation process and have succeeded in amicable settlement can both obtain a peace deed by submitting an application to the local court. Applying to court must be completed by providing documents relating to the divorce case starting from filing a lawsuit/talak and attachments to the agreement to make peace in the ongoing mediation process.

After the parties have carried out mediation, the parties may make an agreement, desire, or wish to decide to make peace. Then the mediator summarizes their agreement and puts it into documents, containing points according to their interests and wishes. In accordance with PERMA no.1 of 2016 article 23 paragraph 3 concerning mediation procedures in the Religious Courts, it is explained that the requirements for fulfilling a Peace Agreement, firstly must be in accordance with both parties, secondly must be in

accordance with legal regulations, thirdly it does not harm the third party, fourthly it can be executed, fifthly have good intentions.

2. The Effectiveness of the Mediation Process in Resolving Divorce Cases at the Depok Religious Court

With the report that the author has compiled, it can make it easier for us to understand how many cases have been handled with mediation or not, along with the success rate. This case is a divorce which the author has summarized and compiled from data collected for 1 year at the Depok Religious District Court, in 2022.

After the author collected the data and summarized it, the author also conducted an interview with a mediator judge at the Depok Religious Court. Mr. M. Kemal Syarif S.Ag, he said that there were 4 types of mediation results that had been carried out, the first was about successful mediation, which means that the married couple who wanted to decide to divorce changed their wishes after attending mediation, while the second was This type of mediation was partially successful, where the couple reconciled with each other but still continued the divorce, the reconciliation was carried out because of considerations regarding child custody and child support which the couple had agreed between both parties. Third, there was unsuccessful mediation, that is, the couple remained adamant about their decision to divorce, they did not consider the mediation they were carrying out, fourth, the mediation was not carried out, that is, during the mediation process one of the parties did not come.

Based on data we received after submitting to the Depok Religious Court in 2022 regarding divorce cases that have been mediated, including:

No	Month	Number of Divorce Cases	Number of Cases Being Mediated
1	January	620	52
2	February	674	49
3	March	782	68
4	April	624	51
5	May	712	49
6	June	859	77
7	July	730	54
8	August	723	60
9	September	716	44

10	October	652	52
11	November	649	60
12	December	417	38
Total		4115	654

Source: divorce case report filed at the Depok Religious Court

The reports we received in 4 types of mediation at the Depok Religious Court in 2022 include:

No	Month	Succeed	Partially Successful	Not Successful	Case Withdrawn	Not Implemented
1	January	1	10	31	6	2
2	February	-	15	28	4	2
3	March	4	13	44	8	1
4	April	1	11	33	6	-
5	May	-	13	31	5	-
6	June	1	17	54	5	-
7	July	-	8	39	5	1
8	August	1	12	40	7	1
9	September	-	11	30	2	-
10	October	1	11	35	1	5
11	November	2	17	37	2	2
12	December	-	18	19	4	1
Total		11	152	421	55	15

Source: report on the results of the divorce case mediation process at the Depok Religious Court.

In 2022 the author has analyzed data from research results of divorce cases at the Depok Religious Court with a total of 4115 that have been handled, as for those that have been mediated at the Depok religious court with a total of 654, of the total 4115 divorce cases that have been handled through the mediation process amounting to 16% . Adjusted by PERMA No.1 of 2016, it was concluded that of the total 654 divorce cases that received a peace deed after following the mediation process in 2022, there were 11.

Then, there were 55 in the category of successful mediation until the divorce case was released. Meanwhile, in the unsuccessful mediation category, there were 152 divorce cases, and 15 divorce cases that fell into the mediation category were not carried out and continued to trial, because one of the parties did not come with the reason of refusing to mediate. Calculating the percentage of a total of 654 divorce cases, it can be concluded that only 2% of divorce cases were successfully handled by mediation until they obtained a peace deed, 8% were successful by releasing the divorce case, and 23% were only partially successful, namely choosing peace but still divorced. What is regulated by PERMA, considering the aim of mediation, is not yet said to be fully effective because the aim of mediation has not been achieved, as can be seen from the results of research at the Depok Religious Court.

D. CONCLUSION

We can draw a conclusion from the explanation that the author has explained above that in resolving divorce cases at the Depok Religious Court the mediation process was carried out in accordance with the 2016 regulations of the Supreme Court of the Republic of Indonesia regarding mediation procedures in the Court. In resolving divorce cases at the Depok Religious Court, the mediation process cannot be said to be effective because of the percentage of success of mediation that has been carried out. 2% were successful in getting a peace deed. Only 8% succeed in releasing the divorce files in court. And only 23% chose to reconcile but the divorce was still carried out. The author really hopes that the research that the author has created will be useful for the academic activities of Ibn Khaldun Bogor University, the Government or Depok Religious Court, and other Religious Courts as well as people who seek justice in Religious Courts and Muslims in general. by providing certain suggestions, namely: The author hopes that the government will make regulations that are higher and have greater legal force than the regulations of the Supreme Court of the Republic of Indonesia of 2016 Number 1 regarding mediation procedures which are still less effective, Mediation has a very important role in handling divorce disputes, so the mediator must make as much effort as possible in carrying out his duties, The parties to the dispute are expected to be more cooperative and follow the rules of the mediation process as regulated in the 2016 Supreme Court of the Republic of Indonesia Regulation Number 1, because mediation is very important for present and future life. Finally, future researchers who use the same theme should also research mediation in other civil laws such as inheritance, child custody and others.

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