

IMPLICATIONS OF IMPLEMENTING MEDIATION AS A MEANS OF DIVORCE CASE SETTLEMENT**(IMPLIKASI PENERAPAN MEDIASI SEBAGAI SARANA PENYELESAIAN PERKARA PERCERAIAN)****Zavira Aulia**Fakultas Hukum, Universitas Tarumanagara
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miah@fh.untar.ac.id**ABSTRACT**

Mediation is a humane and fair way of resolving disputes as an alternative to dispute resolution (ADR) because mediation in making decisions through a peace agreement allows the disputing parties to maintain a harmonious and fair relationship. After all, both parties can negotiate a settlement to solve problems, and the result is a win-win solution. As the organizer of the Supreme Court of the Republic of Indonesia, the Supreme Court has provided several ideas to facilitate the process of resolving disputes in court to obtain the best results. A fairly progressive idea is to optimize mediation institutions in resolving civil cases. Mediation in the Religious Courts is a bridge, a process of conciliation efforts between couples who file for divorce. In divorce mediation, this procedure is carried out by an appointed judge by a religious court.

Keywords: *Divorce, Effectiveness, Settlement of Divorce Cases Through Mediation*

ABSTRAK

Mediasi merupakan cara penyelesaian sengketa secara manusiawi dan adil alternatif penyelesaian sengketa (ADR), karena mediasi pengambilan keputusan melalui perjanjian damai menjadikan para pihak yang bersengketa untuk memelihara hubungan yang harmonis dan adil, karena keduanya Para pihak Keduanya dapat menegosiasikan solusi untuk menyelesaikan masalah, dan hasilnya adalah solusi yang saling menguntungkan. Sebagai pengurus Mahkamah Agung Indonesia, Mahkamah Agung telah memberikan beberapa gagasan untuk mempermudah proses selesainya sengketa di pengadilan agar mendapatkan hasil yang terbaik. Ide yang cukup progresif adalah mengoptimalkan lembaga mediasi dalam penyelesaian perkara perdata. Mediasi di pengadilan agama merupakan jembatan, proses upaya damai antara pasangan yang telah mengajukan gugatan cerai. Dalam mediasi perceraian, prosedur ini dilakukan oleh hakim yang ditunjuk oleh pengadilan agama.

Kata kunci : *Perceraian, Keefektifan, Penyelesaian Perkara Perceraian Melalui Mediasi*

I. INTRODUCTION

Based on Marriage Law Number 1 of 1974, marriage is a bond that aims to form a harmonious, happy, and eternal family based on the values of the Almighty God.

Meanwhile, in Islam, marriage is regulated by sharia. However, often marriages do not go as expected, and unwanted problems occur.

Problems between husband and wife can sometimes improve over time, but these

problems can get worse over time. If the marriage is at a point where no solution can be found, Islam gives the option of divorce. Divorce is defined as the relationship between husband and wife that has been destroyed.

In the judicial process, peaceful resolution of disputes is a principle that is prioritized by judges within the scope of justice. In carrying out peaceful dispute resolution, one route that can be taken is mediation. Mediation has become one of the efforts that must be carried out in civil cases in court based on Article 4 of PERMA no. 1 of 2016. Especially in divorce cases, judges are required to repeatedly reconcile the parties. In this case, the judge must show his sincerity and dedication to reconcile the two parties through a mediator.

II. RESEARCH METHODS

The author used a normative legal approach in writing this research, namely reviewing library sources or secondary data, including primary legal materials and secondary legal materials. The analytical method used by the author is qualitative, namely through qualitative analysis of the data obtained to obtain clarity regarding the discussion

III. DISCUSSION

3.1 Understanding Divorce

Divorce comes from the term "divorce" which refers to divorce, separation, or dissolution of a couple, while divorce refers to divorce (between husband and wife) or separation. Divorce in Islam is called talaq, etymologically it means breaking off a relationship. Another definition of divorce is the termination of a marriage through a judge's decision or at the request of the parties to the marriage, in this case, it does not cause divorce due to death.¹ Coverage in divorce includes:²

1. Divorce is the definition of divorce. Divorce is a divorce where the husband takes the initiative to file a divorce suit in a religious court. Since the divorce is announced, the divorce is considered to have occurred and all its legal consequences (sworn beforehand). court) applies. religious courts.³
2. Divorce referred to as divorce prosecution is a divorce filed by a religious court where the wife voluntarily files for divorce from the wife, deemed to have occurred and to be effective from the time the decision comes into force, and accompanied by all its contents. legal consequences. Religious courts with permanent legal effect.⁴

¹ Subekti, Pokok-Pokok Hukum Perdata, (Jakarta: PT. Internusa, 1985),, p. 42

²Law Number 1 of 1974 Article 38 and Article 39 jo. PP No. 9 of 1975

³PP No. 9 of 1975 Articles 14 to 18

⁴PP No. 9 of 1975 Articles 20 to 36

Through the definitions above, it can be concluded that divorce is the breakdown of the marital relationship between husband and wife.

There are two (2) types of divorce, namely divorce and divorce. Talak divorce is a form of divorce carried out by a husband against his wife which fails the marriage. A husband who wants to divorce his wife first applies to the Religious Court. Meanwhile, legal divorce is a form of divorce based on the wife's lawsuit against the husband. In this way, the marriage breaks up. A wife who wants to divorce her husband must first apply to the religious court.

3.2 Understanding Mediation

Alternative dispute resolution refers to dispute resolution institutions or procedures agreed upon by the parties to resolve differences, namely through negotiations, negotiation, mediation, conciliation, and expert assessment to resolve disputes outside of court, which provides more inspiring opportunities. For those seeking justice Satisfactory access to justice through a mediator. The mediator acts as a collector and channel of hope and seeks to find a way for both parties to resolve the dispute. Applicable procedural law always provides the option for the parties in a case to choose to resolve the case through a peace process, so that the case can be resolved optimally through integration

in the mediation process. Mediation can resolve disputes more quickly and cheaply so that the parties have a greater opportunity to find a satisfactory solution and achieve a sense of justice.

Mediation refers to the process of resolving disputes through negotiation or consideration by the parties through a mediator who does not have the power to decide or resolve compulsorily. The main characteristic of the mediation process is negotiation, which is consistent with deliberation or consensus. Therefore, the mediation process must comply with the nature of negotiations, negotiation, or consensus, that is, there is no mandatory element of accepting or rejecting ideas or solutions in the mediation process, and everything must be agreed upon by the parties.

3.3 Settlement of Divorce Cases Through Mediation

Mediation is a means of resolving problems outside of court which has a legal umbrella from the Supreme Court. This is proven by the issuance of Law No. 30 of 1999 concerning Alternative Dispute Resolution (ADR), and reinforced by PERMA No. 1 of 2016 concerning Mediation Procedures in Court. The types of cases that can be resolved through mediation include divorce cases.⁵ All civil disputes that have been submitted to the Court of First Instance must first be resolved

⁵ PERMA Number 1 of 2016 concerning Mediation Procedures in Court Article 4

through the mediator's mediation method. A mediator is a neutral party who helps the parties explore various possible dispute resolution methods during the negotiation process without the need to adopt any method to resolve it. Decide or resolve resolution cases.

The aim of divorce mediation is usually to reconcile the two parties (couple) and encourage divorce in a good way.

Since the divorce is irreconcilable, the divorcee can mediate the legal consequences of the divorce. For example, agreements regarding child custody, child custody, and joint assets. To achieve the best and most successful mediation process and achieve consensus and reconciliation, religious court mediation judges play a very important role in making the mediation process a success. Completing the mediation process for divorce cases will automatically reduce the number of cases and the number of divorce cases, due to lawsuits being filed the judge will withdraw the return after the party has finished it. The mediator judge tries to optimize the mediation of divorce cases, including:

1. Carry out the mediation in a closed room so that other people do not know.
2. Explanation of the aims, objectives, and benefits of mediation.
3. The mediator judge must appear as a mediator who does not side with either party.

4. The mediator judge must appear as a friend who does not side with either party.
5. Provide solutions to the problems they face.
6. Advise the parties to maintain the integrity of their household.
7. By holding a caucus.
8. Carry out mediation at least 2 times.
9. Make a mutual agreement through a letter of agreement signed by both parties.

10. The Effectiveness of Mediation as a Means of Resolving Divorce Cases

As a law enforcement tool, the courts have been conducting mediation since 2008. However, the success rate of mediation is still less than 4%. This shows that in the justice system, the integration of mediation is still not effective. The effectiveness of mediation does not depend entirely on the enforcer (judge, court).

There are many obstacles to implementing divorce mediation. One of them is the defendant's absence from the mediation process which hampers the mediation process in court, especially in divorce cases. Many divorce cases even involve parties, but one of the parties does not want mediation, which would overturn the judgment. Ineffective religious court mediation is caused by the following aspects, including:

1. The number of mediators judges is still very small, even though they have

attended national-level mediation training (certified mediators). Therefore, this has an impact on the low quality of mediation and the level of success of mediation.

2. More and more cases are coming to court, and the number of judges is very limited, so mediation judges cannot carry out mediation procedures optimally.
3. The parties involved in the trial are emotional, and they have a strong will and determination to divorce.
4. Both courts of first instance and courts of appeal are increasingly entering religious courts. Therefore, the mediation efforts of the mediation judge are not the greatest.
5. Both parties only intend to divorce and do not understand the importance of mediation.
6. Less active parties in the mediation process.

In divorce cases, the parties lack openness to public issues.

The ego of each party is large so the parties only prioritize their interests and emotions.

IV. CONCLUSION

Mediation cases in religious courts usually involve divorce, major disputes (inheritance, joint property), and Sharia law and economics related to clients' Sharia banking disputes. However, there is usually

more mediation in divorce cases than in other cases. Even though there is more mediation in divorce cases than in other cases because the mediation implementers do not mediate adequately (to the maximum extent) and give the impression that they are still only carrying out formal procedures, divorce mediation does not achieve the best results. is the standard method for successful mediation. Divorce cases to resolve peacefully failures in court and divorce in societal culture. For mediation to be effective, improvements and changes need to be made including the mediation implementer, community rules, and culture, as well as working together to support each other.

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