

Mediation Implementation in the Settlement of Divorce Cases in the Religious Courts

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Abstract—Mediation as an effort to reconcile the parties to the litigation is an obligation before the case is examined. Peace efforts are not only a formality but must be carried out seriously so that the problems between the two sides meet. The issuance of Supreme Court Regulation No. 1 of 2016 in the Court is expected to be an early milestone in the effectiveness of peace efforts or mediation within the court, not only on a theoretical level but also in practice. Mediation is a way of resolving disputes through the negotiation process to obtain the agreement of the parties with the assistance of the parties' mediator. Therefore, it is appropriate for the judges of the Religious Courts to realize and carry out the function of "reconciling". However fair the verdict is, a better and fairer peace outcome. As fair as the verdicts are handed down, judges will be considered and deemed fair by the winning party. Another case with peace, the results of a sincere peace based on mutual agreement of the parties to the dispute, free from the qualifications of winning and losing. They are both winners and winners or win-win solutions so that both parties recover in an atmosphere of harmony and brotherhood. Divorce itself means the abolition of marriage by a judge's decision or a claim by one of the parties to the marriage by filing a divorce request to the Religious Court. Mediation can lead the parties to the realization of a permanent and sustainable peace agreement, bearing in mind that dispute resolution through mediation puts both parties in the same position. The benefit of the dispute through mediation is very beneficial because the parties have reached an agreement that ends the dispute in a fair and mutually beneficial manner.

Keywords: *implementation, mediation, religious courts*

I. INTRODUCTION

Mediation is one non-litigation dispute resolution that has many benefits and advantages. The benefits and advantages of using mediation channels include disputes that can be resolved with a win-win solution. Mediation is not only beneficial for the parties to the dispute but also provides several benefits for the world of justice. First, mediation reduces the likelihood of an accumulation of cases being filed in court. Second, the small number of cases submitted to the court will facilitate oversight in the event of a delay or deliberate delay in the examination of a case for a particular purpose which is not commendable. Third, the small number of cases submitted to the court will also examine cases in the court run quickly.

The purpose of mediation is to resolve disputes between the parties by involving neutral and impartial third parties. Mediation can lead the parties to the realization of a permanent and sustainable peace agreement, given that dispute resolution through mediation puts both parties in the same position, neither party is won nor the party is defeated (win-win solution). In mediating the parties to the dispute are proactive and have full authority in decision making. The mediator does not have the authority to make decisions, but he only helps the parties in maintaining the mediation process to realize a peace agreement.

The problem is, how is the Implementation of Mediation in the Settlement of Divorce Cases in the Religious Courts.

II. RESEARCH METHODS

The research method used is normative juridical, including research on the principles of law is something very basic in law that can be guided. The nature of the research carried out is descriptive that is research that describes and explains in clear and detailed sentences. Data analysis in the research carried out through qualitative methods, namely the description of the data as outlined in the data was not analyzed using statistics or mathematics but analyzed the formulation and explanation.

III. RESULTS AND DISCUSSION

Article 1 of Law Number 1 of 1974 Concerning Marriage states that Marriage is an inner and outer bond between a man and a woman as husband and wife to form a happy and eternal home based on a Godhead [1]. From the above understanding, it can be understood that in principle a marriage is aimed at forming a happy and eternal family (household) based on the Godhead. Based on the provisions of Article 2 paragraph (1) of Law Number 1 of 1974 Concerning Marriage hereinafter referred to as Marriage Law, then a Marriage is valid if it is carried out according to the law of each of its religions and beliefs [1]. The marital relationship between husband and wife takes place a sacred covenant namely *Miitsaaqan ghalidhaan*, a sacred and sturdy covenant, forming a family that is eternally happy and eternal (*Al Qur'an Surah An Nisa': 19*). Islam encourages marriage, with the holding of marriage the fulfillment of religious orders to establish a *sakinah, mawadah*

and *warrahah* household specified in the *Ar-Rum verse 21*. If related to Islamic law as contained in Article 2 of Presidential Instruction No. 1 of 1991 Concerning Compilation of Islamic Law hereinafter referred to as KHI states “that marriage is a very strong contract or *mitsaaqon ghalidan* to obey God's commands and carry out them is worship”. Based on *QS. An-Nisa'*: 34, “men are the leaders of women because Allah has exalted some of them (men) over some of the others (women) and because they have devoted some of their property.”

The marriage is carried out forever and ever until the death of one of the husband and wife. This is what the Islamic religion wants. The rift and chaos of the household originated from the non-functioning of the rules set by God for the life of husband and wife in the form of rights and obligations that must be fulfilled by both parties. The principle of complicating divorce means that it is like an emergency exit on an airplane that does not need to be used except in an emergency to overcome a crisis. Divorce without control will harm not only both parties but especially children, families, and society in general [2]. Allah SWT, in the hadith of the Prophet Muhammad SAW, said which means “The most lawful deeds hated by God are divorce (*thalak*)”. (Reported by Abu Daud, Ibn Majah, and Al Baehaqy).

If a marriage is no longer tenable, then the procedure for divorce is regulated, namely, in Article 39 the Marriage Law states: “Divorce is only considered valid if it is carried out in a court hearing”. With the sound of the article, it can be understood that divorce conducted outside a court hearing is considered invalid.

Mediation is a way of resolving disputes through a negotiation process to obtain the agreement of the parties with the assistance of the mediator [3]. The form of case settlement by mediation which is now practiced is integrated with the judicial process [4]. The settlement of cases by way of mediation that is currently practiced in court has a peculiarity, which is done when the case has been registered in court (court-connected mediation) [5].

IV. RECOGNITION

The implementation of Supreme Court Regulation No. 1 of 2016 concerning Mediation Procedures in the Court can be an effort to resolve civil disputes so that the settlement of civil disputes through mediation becomes the main choice because it can negotiate the wishes of the parties by way of peace. Mediation efforts will certainly benefit the court as well because they use of mediation is expected to be able to overcome the problem of case buildup [6].

The judge's action in reconciling the parties to the dispute is to stop the dispute and try to prevent divorce. Judges who have a stake in seeking peace are judges in divorce cases when the trial begins, while the mediator is a judge appointed by the panel of judges to seek peace for the parties outside the court hearing based on the agreement of the parties. The mediator has a decisive role in the mediation process. The failure or absence of mediation is also largely determined by the role that the mediator presents. The mediator plays an active role in bridging some meetings between the parties.

Mediator is a judge or other party who has a mediator certificate as a neutral party that helps the parties in the negotiation process to find various possible solutions to the dispute without using a way of deciding or forcing a settlement (a person who arranges a meeting between two or more disputing parties) to achieve results a fair end without wasting too much money, but it remains effective and is fully accepted by both parties to the dispute voluntarily [3].

Divorce itself means the abolition of marriage by a judge's decision or a claim by one of the parties to the marriage [7]. In terms of a divorce, divorce is divided into two, first, divorce by the husband, that is, the divorce committed by the husband against the wife. Second, divorce by the wife is divorced by the wife by submitting a request for divorce to the Religious Court, divorce cannot occur before the Religious Court officially decides.

Certification of mediators becomes important to understand basic principles, theories, and hone the ability to mediate. Besides, the certified mediator has the privilege and recognition of the court for the making of the *acte van dading* by the court which makes the peace agreement as strong as the court's ruling [8].

KHI also emphasized the existence of peace: “As long as the case has not been decided, reconciliation efforts can be made at each hearing” [9]. From the various provisions of the law, it turns out to be by the principles adopted by the Religious Courts in Indonesia, namely 'the principle of reconciliation' that must be followed by the judges who handle cases. Thus, the principle of the obligation of judges to reconcile the parties to the litigation is following the provisions of Islamic moral teachings. Islam always orders to resolve any disputes and disputes through the Islamic approach. Therefore, the Religious Court judges are aware of and carry out the function of reconciliation. Because after all the fairness of the decision, but will be better and more equitable results of peace.

V. CONCLUSION

Mediation has not been able to overcome the accumulation of cases in the Religious Courts, the professionalism of judges who carry out the function of mediators influences the success of mediation in the Religious Courts because judges also handle other cases, and there is a court that does not have non-judge mediators and the judge is not yet a certified mediator. Facts on the ground that not all people or judges have the talent and skills to carry out their duties as mediators, especially those who have never received professional training.

REFERENCES

- [1] Law Number 1 of 1974 about Marriage
- [2] A. Sosroatmodjo, *Hukum Perkawinan di Indonesia*. Jakarta: Bulan Bintang, 1998, p. 47-48.
- [3] the Supreme Court Regulation No. 1 of 2016 concerning Mediation Procedures in the Court.
- [4] B. Manan, “Peran Sosok Hakim Agama sebagai Mediator dan Pemutus Perkara serta Keagamaan Masyarakat terhadap Keberadaan Lembaga

- Peradilan” speech by the Chief Justice of the Supreme Court on the handover of the Chair of the High Court, Medan 22 Agustus, p. 4, 2003.
- [5] M. Hidayat, “Keberadaan Lembaga Perdamaian (Dading) setelah Berlakunya Perma 2 Tahun 2003 tentang Prosedur Mediasi di Pengadilan,” Unpublished.
- [6] T. Rahmadi, *Mediasi Penyelesaian Sengketa melalui Pendekatan Mufakat*. Jakarta: Raja Grafindo Persada, 2010, p. 143.
- [7] Subkti, *Pokok-Pokok Hukum Perdata*. Jakarta: PT Intermedia, 2003, p. 42.
- [8] A.A. Syahrizal and L. Aunie, “Mediasi dalam perspektif hukum syariah, hukum adat, & hukum nasional,” Kerja sama Canadian International Development Agency, Departemen Agama Republik Indonesia, McGill University Montreal Canada, [dan] IAIN Ar-Raniry Banda Aceh, 2009.
- [9] Arkola, *Undang-Undang Perkawinan di Indonesia dilengkapi Kompilasi Hukum Islam*. Bandung: Citra Umbara, p. 216.