

The Effectiveness of Mediation in Distribution of Inheritance Association Based on The Supreme Court Report 2016 to 2018

Muhammad Rizqi Fadhlillah^{1,2,*} Tetty Hariyati¹

¹ Student at the Faculty of Law, Universitas Tarumanagara, Jakarta, Indonesia

² Student at the Faculty of Law, Universitas Tarumanagara, Jakarta, Indonesia

*Corresponding author. Email: mrf091995@gmail.com

ABSTRACT

The number of Islamic inheritance disputes that enter the Court is increasing from year to year. This can be seen from the Supreme Court report data from 2017 to 2018. The number of disputes over Islamic inheritance shows that the mediation process has not been effective enough in resolving disputes over Islamic inheritance outside the Court. This paper will focus on the effectiveness of the mediation process in Islamic inheritance disputes. Furthermore, this paper will examine in depth the effectiveness of Supreme Court Regulation No. 1 of 2016 concerning Mediation Procedures in the Court regarding the handling of Islamic inheritance cases that occur in Indonesia.

Keywords: mediation, Islamic Inheritance

1. INTRODUCTION

Indonesian laws and regulations have provided a means for resolving disputes between parties in the business world. Things that can be taken by the parties include: through the General Judicial process (litigation) and through the process outside the judiciary (non litigation). The process of resolving disputes through court or litigation results in win and lose decisions that have not been able to embrace common interests, tend to cause new problems, settle them slowly, require expensive and unresponsive costs, and can cause hostility between the parties to the dispute. Because of some of the shortcomings of dispute resolution through the court, some people prefer to settle disputes outside the court.¹

The concept of *win-win solution* dispute resolution, such as mediation, is also known in the Islamic legal system. In the Islamic legal system known as what is called the term *islah* and *hakam*.² *Islah* is Islamic teaching which means more emphasizing the method of peaceful resolution or conflict by putting aside the differences that are at the root of the dispute. Besides *Islah*, also known as *hakam*, *hakam* has the same meaning as mediation. In the Islamic legal system it

usually functions to resolve marital and inheritance disputes. The Islamic recommendation to accelerate the settlement and distribution of inheritance does not mean that the heirs will automatically divide the asset based on the provisions of *furudh al-muqaddarah*, but what Islam wants is the settlement and clarity of each heir's right to inheritance.³ Turns peace (*Dading*) done by the parties to the dispute in the inheritance dispute mediation does not always go smoothly. Many inheritance disputes need to be resolved through the Religious Courts.

2. BACKGROUND

2.1. Theory Effectiveness of The Legal Theory

Bronislaw Malinowski analyzes the effectiveness of law in society. Society can be divided into two types, namely: modern society and primitive society. Modern society is a society whose economy is sophisticated technology. In modern society, the law made and determined by the authorized official is enforced by the police, court, and so on. Primitive society is a society that has a simple economic system. In primitive societies they do not know the instruments of power.

¹ Nazarkhan Yasin, *Mengenal Klaim Konstruksi & Penyelesaian Sengketa Konstruksi*. (Jakarta: PT Gramedia Pustaka Utama, 2008), hal. 84

² Nurnaningsih Amriani, *Mediasi Alternatif Penyelesaian Sengketa Perdata di Pengadilan*, (Jakarta: PT Raja Grafindo Persada, 2011), hlm. 119.

³ Syahrizal Abbas, *Mediasi dalam Hukum Syariah, Hukum Adat, dan Hukum Nasional*, (Jakarta: Prenada Media Group, 2011), hlm. 200.

Lawrence M. Friedman suggested three elements that must be considered in law enforcement. These three elements include the structure, substance and legal culture. The structure of the legal system consists of: elements of the number and size of courts, their jurisdiction (ie the types of cases they examine and how and why); how to appeal from one court to another; and how the legislature is organized, how many people sit on the Federal Trade Commission, what can and may not be done, procedures to be followed. Substantive includes rules, norms, and real human behavior within the legal system; products produced by people who are in the legal system that they are issuing, new rules they draft. Legal culture as attitudes and values that have a relationship with law and the legal system.

2.2. Result and Analysis

2.2.1 Research Data Result

Case	2016	2017	2018
From The Religious Court	946	962	919
Cassation Level Inheritance Case	134	143	149
Case Of Inheritance Review Level	45	39	36

If seen from 3 years before 2019, based on data on the state of the cases that entered the Supreme Court's Religious Chamber, the cases that were tried by the Chamber of Religion in 2016 amounted to 946 cases. Consisting of cases received in 2016 as many as 945 cases and the remaining cases in 2015 as many as 1 case. Cases that were decided in 2016 amounted to 946 cases, so that the rest of the cases at the end of 2016 are zero. In the number of inheritance cases handled by the Religious Courts at the Cassation level in 2016 were 134 cases or 16.38% and for inheritance cases at the review level were 45 or 36.59%. In 2017 there were 962 cases that entered the Religious Court, by completing cases on the Special Cassation level for inheritance cases with the number of cases increasing to 143 and at the Review level as many as 39 cases. In 2018 the number of cases received by the Chamber of Religion was reduced by 4.47% compared to 2017, in 2018 the number of cases completed by the Chamber of Religion was 919 cases, with settlement of cases at the Cassation level for the Inheritance case at 149 and at the Review level as much as 36.

2.2.2 Analysis

The issuance of Supreme Court Regulation No. 1 of 2016 mediation has become a necessity in the settlement of civil cases including religious cases. Successful mediation is usually supported by the parties signing a document that

outlines some of the requirements for dispute resolution. But what if mediation does not succeed in resolving the dispute between the parties. If this is the case, then the case continues on the court table. Data from the results of the Supreme Court's final report, which has been summarized from 2016 to 2018, shows that each year an increase in the case of inheritance is increasing. In this case the application process. Mediation in the case of inheritance should be set in more clear detail because inheritance disputes often lead to things that are not desired. Benchmarks for the success of a mediation can be seen the number of disputes that enter the Court both first level and up to the level of Cassation and Review.

This research will discuss more specifically about the effectiveness of mediation when viewed from these data. That the role of mediation in the courts in 2016-2017 is ineffective because the number of cases entered in 2016-2017, especially in the case of inheritance at the cassation level, has increased, but at the Judicial Review the number of cases has decreased. Whereas in 2017-2018 the mediating role is quite good because the incoming cases are reduced, however the mediating role in inheritance cases is not effective because the number of cases at the Cassation level is increasing even though at the Judicial level is decreasing, which means the mediation role in the court is inconsistent and even tends to tend ineffective in carrying out its duties. Usually ineffectiveness that occurs due to several factors. Social and economic factors. We associate this with the theory of legal effectiveness explained by Bronislaw Malinowski analyzing the effectiveness of law in society. Society can be divided into two types, namely: modern society and primitive society. Modern society is a society whose economy is sophisticated technology. In modern society, the law made and determined by the authorized official is enforced by the police, court, and so on. Primitive society is a society that has a simple economic system. In primitive societies they did not recognize the instruments of power.

The role of a Mediator is considered as a very important tool for the creation of a collective agreement. According to the author in this case there needs to be a personal approach undertaken by a Mediator. Not many people know that the approach is a tool to listen to the desires of both parties to the dispute where the conclusion will be created.

3. CONCLUSION

Based on the data presented by the author adapted from the Supreme Court report 3 years prior to 2019, the effectiveness of the Mediation role when viewed from the Religious Court, especially in the Case of Inheritance according to the author is inconsistent even tends to be not optimal, because when viewed from cases that enter the Religious Court in 2016, the number of cases entered was 946 but in 2017 it increased to 962 cases. At the level of cassation in inheritance cases, in 2016 there were 134 increased in 2017 to 143 cases. However, in 2018 the number of cases that entered the Religious Court decreased from 2017, which means the role of mediation was quite successful although not yet optimal,

but for the level of cassation in inheritance cases the number increased to 149 from the previous year 2017 which amounted to 143, but at the Review level Again the number decreased to 36 cases which previously in 2017 amounted to 36

If referring to Perma No. 1 of 2016, the role of mediation in the case of inheritance has not been explained in detail, so that many cases of inheritance that enter the court of religion, especially in matters of inheritance, which means the role of mediation cannot be utilized to the fullest.

Therefore, the authors conclude the need for revision of Perma No.1 of 2016 which regulates in detail the role of mediation in religious courts and based on the data presented the authors consider that the mediating role in the Religious Courts, especially in the case of inheritance is considered to be inconsistent and ineffective in carrying out their duties. Improvements and better training for mediators is needed so that their role in carrying out mediation can be consistent and maximal in carrying out their duties.

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