



Effectiveness and Efficiency of Divorce Mediation

Siti Khoiriah^(✉), Dwi Pujo Prayitno, and Dewi Septiana

Faculty of Law, Lampung University, Lampung, Indonesia

{siti.khoiriah,dwipujo.prayitno,Dewi.septiana}@fh.unila.ac.id

Abstract. After publishing Regulation Supreme Court Number 1 of 2016 concerning Procedure Mediation in Court is set faith good as one determinant in determine succeed whether or not mediation. Mediation is a solution process more disputes fast and cheap, as well could give more access big to the parties find satisfactory solution and fulfill a sense of justice. Study this will take pictures how effectiveness and efficiency in implementation procedure mediation.

Keywords: court · mediation · procedure · regulation

1 Introduction

Mediation in Big Indonesian Dictionary is the process of participation party third in solution something dispute, whose position is only as advisor, he have no authority for give decision for complete dispute that.

Mediation is instrument effective solution non- litigation dispute (*Alternative Dispute Resolution/ADR*) which has and benefits. Benefits and advantages use track mediation among others are that dispute could solved with *win-win* solution, time spent no prolonged, cost more light, steady maintenance connection Among two people who have a dispute and avoid it problem they from excessive publication. Amount solution case through Mediation, with alone will reduce accumulation case in Court [1].

2 Discussion

A. Definition of Mediation

Definition mediation by terminology many experts who put it forward, including: a) Jimly Joses Sembiring, stated mediation is the completion process dispute with intermediary party third, namely the party who gave input to the parties for complete dispute them. b) Garry Goopaster, give definition mediation as a negotiation process solving problem where party outside that doesn't work impartially same with disputing party for help they get deal agreement with satisfactory. c) According to Joni Emerzon, mediation is effort solution parties dispute with deal together through a mediator who behaves neutral, and not make decision or conclusion for the parties but support facilitator for implementation of dialogue between party with atmosphere openness, honesty, and exchange opinion for achievement consensus.

© The Author(s) 2023

R. Perdana et al. (Eds.): ULICoSS 2022, ASSEHR 740, pp. 611–618, 2023.

https://doi.org/10.2991/978-2-38476-046-6_60

Mediation, is a resolution process dispute alternative where party third requested his help for help with the resolution process dispute character passive and equal very no entitled or authorized for give something input, more again for decide disputes that occur. So in mediation, mediator only working as [5]. Connector tongue from the disputing parties. Such an intermediary sometimes of course needed, ok in terms of the disputing parties no possible for meet alone because various factors that are outside ability them, or because second split the “ *intentionally* “ party indeed no want to meet one with the others, though they could meet, if of course desired. So in Thing this is so clear that results end institution solution dispute alternative in form mediation this bow down completely on the agreement of the parties.

B. *Regulations of Mediation*

Each problem incoming civil to Assembly law Required carry out the mediation process, if mediation not carried out by the judge until problem the null and void, as poured in the Regulation Supreme Court No.1 of 2008 Article 2 paragraph (2) and (3) which report if: each of the judges, mediators and parties must explore procedure solution dispute past arranged mediation in the regulation this (2) if no go through procedure mediation sourced from regulations this is violation to condition Article 130 HIR funds or Article 154 RBg which causes verdict null and void (3). After did amendment regulation Supreme Court Number 1 of 2008 became Regulation Supreme Court Number 1 of 2016 concerning procedure mediation in the Court of one the difference is time solution mediation changed more short that is up to 30 days.

Things to emphasize in PEMA Number 1 Year 2016 is emphasizes the existence faith good from the parties, with existence faith good expected mediation process will walk with effective and efficient. If no intend good so will get consequence the law that is so lawsuit no could accepted by the examining magistrate case as contained in Article 22 paragraph (1) and Article 23 paragraph (1) explain if party defendant declared no intend good worn obligation payment cost mediation. The perma is regulation about procedure in mediate in the Court in which load conditions in implementation mediate, including that provision regarding judges certified as mediators as neutral party [4].

Efforts that can conducted in solution dispute, one of them is mediation. Mediation is method solution dispute through the negotiation process for reach agreement of the parties with assisted by a mediator. In Islamic teachings the term mediation known with term *ishlah*. *Ishâh* is something a contract that produces peace or something contract with meaning for end something dispute Among two mutual parties dispute.

In the mediation process a mediator must capable create conducive atmosphere for creation compromise between second split disputing party for get mutual results profitable. In general, the mediator will To do scoping with introduce procedures and steps mediation, however the role no more as neutral booster in the process of the interaction of the parties, this generally covers that mediation is a process in which the parties with mediator race set alone conditions every solution.

Mediation is one of the most effective instruments for resolve accumulation case in court as well as maximizing function institution court in complete case. As mediation no only just formality talk mere but give opportunity for reconcile, but the judge must play a role active strive peace. Effort benefits solution dispute with mediation can really

feel for parties who can reach expected agreement. Even in failed mediation, though not yet there is settlement reached, mediation process capable clarify problem and narrow dispute [6]. With so the parties could decide solution like what can they accept than chasing other things that are not clear. In addition, the benefits mediation other is a fast process, the event fast, secret guaranteed, the costs incurred not expensive, more give a sense of justice for the parties and successful good in solution problem without problem with period time relative solution short, the intended result same win free emotions and revenge, the relationship of the parties cooperative, and who resolves dispute are the parties alone [8].

According to Constitution Number 1 of 1974 Marriage is bond born inner Among a Men with a woman as husband wife with destination shape family (home ladder) that is happy and eternal based on Supreme Godhead. Wedding have very noble goal that is shape that family sakinah, mawaddah wa rahmah, which is based on desire for build house harmonious and happy stairs as well as committed strong for maintain and build wholeness house stairs to avoid from ran aground connection house ladder leading to divorce [9].

Legal Basis of Mediation, peace in Islamic law is highly recommended. Because, with existence peace will avoid from break up split friendship (relationship love dear) at once enmity between disputing parties will could terminated. As for the base the law confirms about peace could seen In the Qur'an, Surah Al-Hujurat verse 10 which means: "Indeed, the believers that brothers, because that make peace among second your brother (who is in dispute) and be pious to Allah so that you get grace" [12].

As for the number of regulation legislation that becomes base juridical for apply mediation in court is. 1) HIR Article 130 and RBg 154 BW paragraph (1) if on the day that has been determined that, second split party come, then district court with help chairman try reconcile them. Paragraph (2); if such peace that could achieved then at time convened, made a letter (deed) about that, in which two split party punished will keep the agreement made that) which letter will be strong and will run as usual verdict. Paragraph (3) such a decision no run on appeal. Paragraph (4); if at time try will reconcile second split party, need worn a interpreter language, then regulation next article obeyed for it. 2) In its development The Supreme Court of the Republic of Indonesia for empower articles the at first has issue a circular Supreme Court (SEMA) Number 1 of 2002 concerning Empowerment of Peace Institutions in Article 130 HIR/154 RBg, hereinafter poured in form Regulation Supreme Court (PERMA) No. 2 of 2003 concerning Procedure Mediation in Court, Regulation Supreme Court Number 1 of 2008 concerning Procedure Mediation in Court, which in the end perfected with Regulation Supreme Court (PERMA) RI Number 1 Year 2016 Regarding Procedure Mediation in Court.

Related with Theory mediation no limited to posita and petitum lawsuit in accordance with Article 25 paragraph (1) PEMA Number 1 of 2016, if occur deal so lawsuit the could changed day that too [15]. However there is a number of dispute exempt civil from obligation solution through mediation as the following: Disputes whose examination in court determined grace time the solution in provision regulation legislation (such as application cancellation decision arbitration). Dispute whose examination conducted without presence plaintiff or the defendant who has called by proper; lawsuit return

(reconvention) and entry party third in something case (intervention). Dispute about prevention, rejection, cancellation and validation marriage. Dispute filed to Religious Court after strive for outside solution Court through Mediation with Court registered Certified Mediator bantuan local but declared no succeed based on a statement signed by the Parties and a certified Mediator [17].

Can be found amount principle mediation. Principle the basic *principle* is base philosophical from held activity mediation. Principle or philosophy this is framework must work known by the mediator, so that in operate mediation no go out from direction underlying philosophy leave behind birth institution mediation. David Spencer and Michael Brogan refer to Ruth Carlton 's view of the five principles base mediation. Five principles this known with five bases philosophy mediation. Fifth principle the are; principle confidentiality, principle voluntary (*volunteer*) principle empowerment, principle neutrality (*neutrality*), and the principle a unique solution (*a unique solution*).

In Regulation The Supreme Court Number 1 of 2016 contains ten principle Settings about use mediation integrated in court (court connected mediation). Ten principle the is as following. *First*, Mediation Required taken, before dispute decided by the judge of the parties Required more formerly go through mediation. *Second*, the autonomy of the parties. Principle autonomy of the parties is principles attached to the mediation process. Because in mediation of the parties chance for determine and influence processes and outcomes based on mechanism consensus or consensus of the parties with help party neutral. Principle this known with designation self-determination, that is, the parties have the right or authorized for determine in the sense of receiving or reject all something in the mediation process. *Third*, mediation with faith good. Mediation is a solution process dispute through discussion consensus or consensus of the parties who will could walk with good if based on faith for complete dispute. *Fourth*, Time Efficiency. Problem time is one factor important in complete a dispute or case. Draft time is also related with certainty law and availability or utilization source existing power. *Fifth*, mediator certification. Regulation The Supreme Court Number 1 Year 2016 encourages the birth of professional mediators. Trend this look from existence provisions. *Sixth*, Mediator Responsibilities. The mediator has duties and responsibilities answer that is procedural and facilitative. Tasks this reflected in provision Article 14 Regulation Supreme Court Number 1 of 2016. *Seventh*, confidentiality. Different with a litigation process that is open for general, the mediation process in principle closed for general except the parties want another. *Eighth*, financing. Related financing with a mediation process at least covers things as following: availability spaces mediation, fees for mediators, fees for experts if required, and the transportation costs of the parties who come to meetings or sessions mediation. *Ninth*, repetition mediation. Article 17 paragraph (1) Regulation The Supreme Court Number 1 of 2016, provides authority to the examining judge case for permanent encourage the parties so that go through peace after failure of the mediation process at the stage beginning or at stage before inspection case started. *Tenth*, deal peace outside court. Regulation Supreme Court Number 1 of 2016 basically more meant for set 35 principles and procedures use mediation to case or dispute civil law that has been submitted to court (court-connected mediation).

Mediation Flow in PERMA Number 1 of 2016, the presence of the parties litigation. If two litigants present, or when the parties litigation more from one and there of those who

don't present, after the parties called by legal and appropriate in court then the examining judge case Required explain procedure mediation to the parties cover understanding and benefits mediation, obligations of the parties for attend direct meeting mediation, possible costs arise consequence use of non-judge and non judge mediators employee court, choice for follow up deal peace through deed peace or revocation lawsuit and so on deliver form explanation mediation to the parties for signed [18].

Mediation process, Appointed Mediator determine day and date meeting mediation, and if mediation done in the building the Religious Courts, the mediator performs summons of the parties with help bailiff or interpreter confiscate substitute. Parties required attend by direct meeting mediation with or without accompanied by power law, except there is reason legitimate like condition poor health allow present in meeting mediation based on letter description doctor; below forgiveness; have the place stay, residence or position abroad; or operate state duty, demands profession or job that doesn't could abandoned. If one party no present as much twice without valid reason after called for attend mediation so the party who doesn't present declared no mean ok, with consequence law if not mean good is Party Plaintiff.

Mediation declared succeed if achieved deal Among party litigated and poured in form deal in writing signed by the parties and the mediator. Deal Peace no can load provisions that: contradict with law, order general, and or decency; harmful party third; or no could implemented.

Mediation on cases Civil law in the General Court is a mediation process with strive as much as possible realize achievement deal peace between the parties. community or justiciabel very interested will solution simple and efficient dispute, good from side time nor cost. Consolidation and knowledge will the importance of the legal process recommend for seekers justice for could act to get truth true without experience loss good material or non- material. Awareness law Public in context this could seen from more increase case specifically case civil law accepted by the Court level first (District Court) of year to year. With the more a lot of cases civil law filed by the parties for examined and tried by the Court. Consequence from cases that accumulate in the Court, then cases filed by the parties must eat long time for could examined and tried by a judge.

BPS notes amount divorce in Indonesia in 2021 reached 447.743, with details 110.400 divorced divorces and 337.343 divorces sue. This figure more taller from two year previously, namely 291.677 in 2020 and 493.002 in 2019. Available data in report the only covers divorce for Muslim citizens. BPS says, divorce data this obtained from Director General of the Religious Courts and the Supreme Court. Data from Tanjungkarang Religious Court Class IA in 2021 case divorce a total of 1,872 and which was decided as many as 1,678. Case divorce in the Tanjung Karang District Court class IA in 2021 amounted to 59.

During the COVID-19 pandemic, the Supreme Court issued Regulation Supreme Court Number 3 of 2022 concerning Mediation in Court By Electronics, mediation by electronic through a number of stages, namely: a) Initial Stages. Verification Identity; Though no set by assertive in Perma No. 1 year 2016, in practice Thing this has enforced by the mediator for confirm the identity of the parties and whether power law they authorized for represent them. If the parties is a legal entity, then, this process will cover attachments and checks deed establishment, budget basics, and documents identification

directors them. Based on Perma No. 3 year 2022, verification could be conducted through means electronic or by straight away. Perma No. 3 year 2022 no arrange by clear to how enforceability verification pre-mediation electronic done (for example, does that involve virtual meeting with parties or submission document by electronics). Weigh that verification in practice involve inspection thorough to document identification of the parties (i.e., comparing original with copy verified), the mediator can choose for to do verification direct before gerund with virtual session. Choose Digital Applications; The mediator must propose to the parties digital application that will used for stage session virtual mediation and sending document electronics. Until moment this, the Indonesian court does not operate the platform alone for stage virtual trial and in the past using an independent video conferencing program moment organize hearing virtual court. In addition, the system Existing e-Courts not yet facilitate possibility delivery document mediation. parties will determine application to be they Use based on deal written, and they will bear cost maintenance room virtual meeting for organize session mediation. b) Submission Statement Mediation; Based on Perma 3/2022, the statement mediation (case resume) should be be delivered by electronic to the mediator. If the parties has chosen for use system e-Court since beginning, statement mediation they will be delivered through e-Court system. In terms of they no choose for use system e-Court but agree for to do mediation by electronic, statement mediation they will be delivered by electronics. However, system Existing e-Courts not yet add feature delivery statement mediation, and if the parties no choose for use system e-Court, still not yet clear how should statement mediation be delivered by electronics. c) Agreement Settlement; If the parties by peace complete dispute they through e-mediation, they could arrange agreement solution they by electronic with mediator assistance. While waiting guidelines for implement it, this could be conducted through e- mail exchange, such as how composing agreement solution has been conducted in practice. Signing agreement solution can also be conducted with use sign hand electronics that have validated. That is, sign hand electronic must be validated in accordance with regulation applicable laws, namely: Regulation Government Number 71 of 2019 concerning System and Transaction Operation Electronics. In terms of the parties no could give sign legitimate hands, they must meet by physique for sign agreement settlement before the mediator. The mediator then will report results mediation to the panel of judges through system *e-Court* [19].

3 Conclusions

Benefits and advantages use track mediation is that dispute could be solved with win-win solution, time spent no prolonged, cost more light, steady maintenance connection Among two people who have a dispute and avoid it problem they from excessive publication. Mediation is one of the most effective instruments for resolve accumulation case in court as well as maximizing function institution court in complete case. Mediation declared succeed if achieved deal among party litigated and poured in form deal in writing signed by the parties and the mediator. With application mediation in court so standard success mediation the benchmark be measured from so or no so continue things that are realized with revocation lawsuit by the plaintiff.

References

1. N. C. Idham, "Indonesian Architecture and Earthquake Vulnerability: the Development of Building Safety through the Civilization," *MATECWebConf*, vol.280,p.01004,2019,doi: <https://doi.org/10.1051/mateconf/201928001004>.
2. Departemen Agama RI, *Al-Qur'an dan Terjemahnya*, Bandung, CV. Penerbit Diponegoro, 2003.
3. Garry Goopaster, *Negosiasi dan Mediasi: Sebuah Pedoman Negosiasi dan Penyelesaian Sengketa Melalui Negosiasi*, Jakarta: ELIPS Project, 1993.
4. Gerry Goodpaster, *Panduan Negosiasi dan Mediasi*, Terjemahan Nogar Simanjuntak, Elips, Jakarta: 1999.
5. Gunawan Widjaja dan Ahmad Yani, *Hukum Arbitrase*, Seri Hukum Bisnis, Raja Grafindo Persada, Jakarta: 2010.
6. Kamus Bahasa Indonesia, Pusat Bahasa, Jakarta, Pusat Bahasa, 2008.
7. Syahrizal Abbas, *Mediasi Dalam Perspektif Hukum Syariah, Hukum Adat dan Hukum Nasional*, Jakarta: Kencana, 2009.
8. Takdir Rahmadi, *Mediasi penyelesaian sengketa melalui pendekatan mufakat*, PT Raja-Grafindo Persada, Jakarta: 2011.
9. Septi Wulan Sari, *Mediasi Dalam Peraturan Mahkamah Agung Nomor 1 Tahun 2016*, AHKAM, Volume 5, No. 1, Juli 2017.
10. Supardi & Zahrotul Hanifiyah, *Penyebab Kegagalan Mediasi Dalam Proses Perceraian (Studi Kasus di Pengadilan Agama Kudus periode Januari-April 2017)*, *Jurnal Pemikiran Hukum dan Hukum Islam*, YUDISIA, Vol. 8 No. 1, Juni 2017.
11. Gunawan Widjaja, *Seri Hukum Bisnis: Alternatif Penyelesaian Sengketa*, Jakarta: PT RajaGrafindo Persada, 2002.
12. Habibunnas, *Efektivitas Mediasi Dalam Perceraian Setelah Berlakunya Peraturan Mahkamah Agung (Perma) Nomor 1 Tahun 2016 di Pengadilan Agama Bandung*, Volume II, No. 1, Maret 2021.
13. Djulia Herjanara, "Lembaga Mediasi Sebagai Instrumen Pemenuhan Rasa Keadilan," *Jurnal Mimbar Hukum dan Peradilan*, No. 76, 2013.
14. Kusumaningrum, dkk, "Efektivitas Mediasi dalam Perkara Perceraian di Pengadilan Negeri Semarang." *Diponegoro Law Journal* 6.1, 2017
15. Jimly Josep Sembiring, *Cara Menyelesaikan Sengketa di pengadilan (Negosiasi,konsiliasi & Arbitrase)* (Cet.1; Jakarta: Visimedia, 2011.
16. Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan
17. Peraturan Mahkamah Agung Nomor 1 Tahun 2016 tentang Prosedur Mediasi di Pengadilan.
18. Peraturan Mahkamah Agung Nomor 3 Tahun 2022 tentang Mediasi di Pengadilan Secara Elektronik.
19. Aspek Yuridis Terhadap Alternatif Penyelesaian Sengketa Melalui Mediasi Elektronik Di Pengadilan Berdasarkan Peraturan Mahkamah Agung Nomor 3 Tahun 2022 Tentang Mediasi Di Pengadilan Secara Elektronik – Magister Of Law (Univpancasila.Ac.Id)

Open Access This chapter is licensed under the terms of the Creative Commons Attribution-NonCommercial 4.0 International License (<http://creativecommons.org/licenses/by-nc/4.0/>), which permits any noncommercial use, sharing, adaptation, distribution and reproduction in any medium or format, as long as you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons license and indicate if changes were made.

The images or other third party material in this chapter are included in the chapter's Creative Commons license, unless indicated otherwise in a credit line to the material. If material is not included in the chapter's Creative Commons license and your intended use is not permitted by statutory regulation or exceeds the permitted use, you will need to obtain permission directly from the copyright holder.

