



# Dispute Resolution of Shared Asset Through Mediation at the Muara Bungo Religious Court

Sarmiar<sup>(✉)</sup>, Umar Hasan, Suhermi, and Rosmidah

Faculty of Law, Universitas Jambi, Jambi, Indonesia  
sasmiar@unja.ac.id

**Abstract.** Dissolution of marriage due to divorce will result in shared assets. According to the Marriage Law, the division of joint assets is divided according to their respective laws. Differences of opinion that occur between husband and wife regarding the distribution of joint assets, then the settlement can be carried out in non-litigation (outside court) and in litigation (judicial institutions). For litigation settlement according to PERMA Number 1 of 2016 concerning Mediation, the Court must first seek a settlement through mediation. At the Muara Bungo Religious Court in the period from 2019 to 2022 there were 17 joint property cases that underwent mediation. The formulation of the problem in this study is how effective is the resolution of joint property disputes by mediation at the Muara Bungo Religious Court and what are the obstacles to implementing joint property dispute mediation at the Muara Bungo Religious Court. The research method used in this research is to use a non-doctrinal research type using primary data and secondary data. The results showed that community factors were the determining factor for not optimal mediation at the Muara Bungo Religious Court, the lack of knowledge and understanding of the community about mediation made them reluctant to resolve joint property disputes through mediation in court. In addition, the role of the mediator also determines the success of mediation. Mediators can conduct several mediation sessions within a 30-day period and thirty extensions. From the data obtained at the Muara Bungo Religious Court, out of 9 cases that were unsuccessful, 4 cases. The meeting was only held in one session, so the meeting time was not optimally utilized. Obstacles in the implementation of joint property dispute settlement by mediation at the Muara Bungo Religious Court were the bad intentions of the disputing parties to participate in mediation and the factor of not being carried out by the caucus when mediation was deadlocked.

**Keywords:** Mediation · Religious Court · Shared Asset

## 1 Introduction

One of the legal consequences of marriage is the emergence of marital assets. According to Law Number 1 of 1974 concerning Marriage (hereinafter referred to as the Marriage Law), marital assets consist of inherited assets, acquired assets and joint assets. Joint property reflects the existence of property owned by several people. According to Jono, as quoted by Muhammad et al. [1], shared asset in marriage includes joint property that is bound, the use of joint property that is bound cannot be used without permission from the other party. It cannot be indicated for each part, but each party has the right to the property [2].

Dissolution of marriage due to divorce will have an impact on the position of husband and wife, on children, and on joint assets. According to the Marriage Law, shared assets are divided according to their respective laws, namely religious law, customary law and other provisions. According to [3], this provision indicates that different laws will be treated for the distribution of joint assets when a divorce occurs, depending on variations in customary law and religious law. It is very important to determine the status of joint property ownership in order to obtain certainty of each share [4].

Joint property is also regulated in the Compilation of Islamic Law (KHI). According to KHI, *syirkah* is joint property of husband and wife or each other if they are bound by marriage and do not see the property in the name of the husband or in the name of the wife. Article 97 KHI stipulates that in the event of a divorce each one is entitled to half of the joint property. Wijarko Agus Wibowo [5] states that the concept of sharing after divorce, namely half for the husband and half for the wife, is based on the provisions of Article 35 of the Marriage Law, that property will become joint property if the husband and wife acquire the property throughout the marriage.

Differences of opinion that occur between husband and wife regarding the distribution of joint assets if the marriage breaks up, then the settlement can be carried out in non-litigation (outside court) and in litigation (judicial institutions). For those who are Muslim, a litigation settlement is submitted to the Religious Court. Before the examination of the main case is carried out, the court must seek peace or mediation.

Mediation is a way of resolving disputes through a negotiation process to obtain an agreement between the parties assisted by a mediator. The parties play a role in determining the contents of the agreement assisted by the mediator. It is very important to mediate so that an agreement is reached, and the proceedings are not continued. According to Maisa [6], disputing parties are actively involved and given the opportunity to express their feelings to seek their basic interests to produce an agreement that is acceptable to the parties. The achievement of a peace agreement in the mediation process is expected to avoid the accumulation of cases, reducing cases of filing appeals. If the mediation stage is carried out in good faith, the case can be resolved in a short time and does not require a large amount of money [7]. However, according to Mardalena Hanifah [8] there are still people who do not understand mediation and its benefits.

Mediation is regulated in PERMA Number 1 of 2016 concerning mediation procedures in court (hereinafter referred to as PERMA Mediation). With this PERMA it is hoped that there will be certainty, order and smoothness to reconcile the disputing parties. This can be done by integrating the mediation process into court procedures [9]. According to Fatilah [10], integrating mediation with the Court can avoid the large

number of cases being resolved through the procedural process. The integration of mediation into the proceedings in court has in fact not been able to reduce the number of joint property cases that are resolved through court proceedings.

Several studies related to this were obtained from journal searches, as follows: Reza Ahmad Zahid's research, Ahmad Badi, (2020) [11] with the research title "The Role of the Mediator in Settlement of Gono Gini Asset Disputes Due to Divorce Cases (Case Study of the Religious Courts of Kediri Regency)". In conclusion, it turns out that the mediator has not carried out his role as it should. This is because there are still uncertified judges who act as mediators. Bahrin, Syahrizal Abbas, Iman Jauhari [12] with the title "The Role of the Mediator in Resolving Post-Divorce Joint Property Disputes at the Sharia Court". This research was conducted at the Banda Aceh Sharia Court. The results of the study concluded that mediation was not optimal due to the limited number of mediators. Moh. Nafri and Moh. Didi Permana [13] with the title "Effectiveness of Mediation in Cases of Sharing Joint Assets as a Result of Divorce at the Religious Court of Palu". The conclusion of this study is that the ineffective settlement of joint property cases through mediation is due to the lack of several mediators and the mediators who are not optimal in carrying out mediation.

From journals that discuss the mediation of joint assets in court, generally discuss the role of the mediator in determining the success of mediation. The research that will be studied will be different from previous research in that apart from examining the role of the mediator in the mediation of the Muara Bungo Religious Court, it will also examine community factors or the role of the disputing parties in carrying out the mediation process, facilities and infrastructure factors, cultural factors in supporting the achievement of mediation.

The Muara Bungo Religious Court, in the period from 2019 to May 2022 there were 17 cases of joint property disputes that took mediation. Of the number of joint property disputes, there are cases that are not resolved through mediation and cases that can be resolved through mediation. The problems in this study are: How effective is the settlement of joint property disputes by mediation at the Muara Bungo Religious Court, and what are the obstacles to implementing joint property dispute mediation at the Muara Bungo Religious Court.

## 2 Research Methods

This research was conducted in Bungo Regency, with the reason that there were cases of joint property that were submitted to the Muara Bungo Religious Court which were not resolved through mediation. This research is non-doctrinal research, namely legal research, which is carried out by examining primary data, namely data obtained directly from the public [14]. The population of this research is the parties who filed joint property lawsuits at the Muara Bungo Religious Court for the 2019-May 2022 period as many as 17 joint property mediation cases that have been decided. The sample in this study was carried out by means of purposive sampling, namely the sample is based on certain criteria or considerations [15]. The sample of this research is joint property disputes which cannot be resolved through mediation. Thus, the sample of the study as many as 9 cases. Respondents consist of: Plaintiff, Defendant, and Mediator.

### 3 Result and Discussion

#### 3.1 The Effectiveness of Joint Property Mediation at the Muara Bungo Religious Court

The PERMA for mediation was established, so the practice of proceeding in court underwent a fundamental change. The court must make every effort to mediate between the litigants. Rachmadi Usman [16], states the elements of mediation include:

- a. The parties are negotiating
- b. A third party (mediator) helps find a solution
- c. Disputing parties have the authority to determine the agreement
- d. Mediation agreement for the benefit of both parties.

The characteristics and characteristics of mediation are the neutral third party and the mediator chosen by the disputing party [17]. It is relatively easier to resolve cases through mediation than through the procedural process. When viewed from the mediation process with a procedure that is not complicated and is “final and binding”, it is an advantage in resolving disputes with litigation. However, there are weaknesses in mediation dispute resolution such as, dispute resolution through mediation will be carried out effectively if the parties consequently resolve their disputes and carry out the resulting agreement.

According to Takdir Rahmadi [7], there are two things that cause mediation to be unsuccessful, namely the failure to produce an agreement after the maximum time has elapsed and the failure of mediation can also be caused by the lack of good will from the parties. Then the judge examines the case in accordance with the provisions of the applicable procedural law. If an agreement is reached, a peace agreement is made. Peace agreements can be comprehensive or partial. The peace agreement can be strengthened by a deed of settlement, or the plaintiff withdraws his lawsuit. (Article 27 Paragraph (5) PERMA Mediation).

Based on the results of the research, 17 cases of joint property that were mediated at the Muara Bungo Religious Court until May 2022, as shown at Table 1.

The Table 1 indicated that among of the 17 share asset cases that conducted the mediation method, 8 cases were successfully resolved, and 9 cases could not be resolved through mediation. The success or failure of mediation was determined by several factors. Soerjono Soekanto [18] suggests about several factors that influence the effectiveness of the law, namely legal factors, law enforcement factors, facility factors, community factors and cultural factors.

##### 1. Legal Factors (Acts)

One of the successes of mediation is influenced by statutory factors. The regulation is PERMA Number 1 of 2016 concerning Mediation Procedures in Courts. The regulations regarding mediation have undergone several changes. This shows the seriousness of the Supreme Court in handling civil cases in court to be resolved amicably rather than through a decision process. The dispute was resolved peacefully, initially it was regulated in Article 130 HIR and Article 154 RBg. According to M. Yahya Harahap [19], most judges apply this article as a mere formality, so that conciliation decisions are rarely found. In order to be more effective, MA modifies in a more compulsive direction.

**Table 1.** Cases of shared asset that were undergoing mediation at the Muara Bungo Religious Court from January 2019–May 2020

No	Case Registration Number	Mediation Date	Result	
			Successful	Unsuccessful
1	184/Pdt.G/2019/PA.Mab	03-07-2019 08-07-2019 11-17-2019		V
2	222/Pdt.G/2019/PA.Mab	25-07-2019		V
3	258/Pdt.G/2019/PA.Mab	22-08-2019		V
4	351/Pdt.G/2019/PA.Mab	02-01-2020		V
5	101/Pdt.G/2020/PA.Mab	17-06-2020 01-07-2020		V
6	230/Pdt.G/2020/PA.Mab	21-07-2020		V
7	237/Pdt.G/2020/PA.Mab	06-08-2020	V	
8	233/Pdt.G/2021/PA.Mab	24-06-2021	V	
9	294/Pdt.G/2021/PA.Mab	25-08-2021 27-08-2021 08-09-2021		V
10	297/Pdt.G/2021/PA.Mab	01-09-2021		V
11	393/Pdt.G/2021/PA.Mab	07-10-2021 08-10-2021	V	
12	468/Pdt.G/2021/PA.Mab	17-11-2021 24-11-2021 29-11-2021 02-12-2021 08-12-2021 10-12-2021	V	
13	486/Pdt.G/2021/PA.Mab	30-11-2021 01-12-2021	V	
14	8/Pdt.G/2022/PA.Mab	07-11-2022	V	
15	1/Pdt.G/2022/PA.Mab	19-01-2022 24-01-2022 26-01-2022		V
16	63/Pdt.G/2022/PA.Mab	02-02-2022 09-02-2022 15-02-2022 21-02-2022	V	
17	201/Pdt.G/2022/PA.Mab	24-05-2022 30-05-2022	V	
	Total		8	9

Source Muara Bungo Religious Court (September 2022)

In 2002, SEMA Number 1 of 2002 concerning Empowerment of Peace Institutions was issued, then PERMA Number 2 of 2003 concerning Mediation Procedures in Courts, PERMA Number 1 of 2008 concerning Mediation Procedures in Courts. This regulation was apparently not optimal in increasing the success of mediation, so the Supreme Court in 2016 perfected it with PERMA No. 1 of 2016 concerning Mediation Procedures in Courts (PERMA Mediation). Substantial differences from this PERMA Mediation include that the judge is required to explain mediation, the parties are required to be present during the mediation process, have good faith in mediation, and sign a mediation explanation form.

## **2. Law Enforcement Factors**

Law enforcers who handle cases also determine the success of mediation. Law enforcers in the settlement of joint assets are the Panel of Judges and Mediators. Law enforcers in carrying out their duties are guided by the Perma Mediation.

Based on the results of the research, the judge handling joint property dispute cases at the Muara Bungo Court has carried out what is regulated in the Perma Mediation. At the first hearing, the examining judge ordered the parties to mediate under the guidance of a mediator. The examining judge of the case at the Muara Bungo Religious Court not only ordered mediation to be carried out but also explained the benefits of mediation and explained that the parties had good intentions in carrying out mediation and the legal consequences if mediation was not carried out in good faith.

Law enforcers who also determine the success of mediation are Mediators. The mediator in conducting mediation is neutral and tries to help the parties to formulate an agreement to be reached.

The Mediator's duties are:

- a. Prepare mediation meeting schedule
- b. The parties are encouraged to be active in conducting mediation
- c. If necessary, conduct a caucus
- d. Looking for resolution options.

The mediator must have expertise, therefore the requirements of the mediator can be seen from the internal and external sides. The internal side is related to the ability of the mediator. A mediator must have good communication skills to convey messages or ideas and build trust for both parties, the mediator must have empathy or care in resolving disputes for both parties. The skill of the mediator in providing advice and suggestions is one that determines the success of mediation so that the parties can consider the decisions they make. One of the requirements from the external side is to have a mediator certificate which is obtained after attending training. For the ability of mediators, the benchmark is formally seen from the mediator's certification.

Based on an interview with one of the Muara Bungo Religion Mediator judges, the Mediator who resolved joint dispute cases in the 2019–2022 period has a mediator certificate. Even though the mediator who handles the mediation has fulfilled the formal requirements, namely having a certificate, there are still mediations that fail to reach an agreement.

### **3. Facility Factor**

Facilities and facilities include one that supports the implementation of the law. Implementation of mediation in court based on Article 11 PERMA Mediation, mediation is carried out in the Mediation Room of the Court or other places outside the Court as agreed by the parties. If the mediator acting as a mediator is a judge or court employee, mediation must be carried out in the court mediation room.

The Muara Bungo Religious Court has facilities in the form of a special mediation room that is adequate and appropriate to support the success of the mediation process, so that the parties can feel comfortable and calm in carrying out the mediation process at the Muara Bungo Religious Court.

### **4. Community Factors**

The higher the legal awareness of the community, the higher the possibility of law enforcement. The lower the legal understanding and awareness of the community, the lower the level of effectiveness of law enforcement. Based on interviews with respondents, that there is still a lack of understanding and public awareness about mediation conducted in court. Lack of understanding of the parties that through the help of the mediator they are the ones who formulate an agreement together so that neither party wins or loses and the relationship between the parties is maintained properly. The parties' unawareness about the benefits of mediation makes peace difficult to achieve because the parties often defend their own wishes. This is why the parties undergoing mediation are only formal procedures.

### **5. Legal Culture Factors**

The tradition of dispute resolution in customary law communities tends to use customary patterns or in other terms it is often called the familial pattern. Dispute resolution mechanisms according to customary law are carried out through deliberations which take the form of mediation, negotiation, and arbitration [9].

The Bungo people are generally bound by customary law. In the event of a dispute, Bungo's customary law stipulates that if a dispute occurs, it must first be resolved by deliberation through the household. Tenganai house is elder in the family and responsible for matters in the family [20].

Based on interviews with respondents, that before they filed a joint property dispute lawsuit to the Muara Bungo Religious Court, they had first held a deliberation through the house, but no agreement was reached, therefore if the case has been submitted to the Court, the community assesses that joint property disputes are resolved through a process proceeding, where it is the Judge who determines who is entitled. There is a belief that the court is the institution that decides.

Based on the factors above, the community factor is one of the factors that determines that mediation at the Muara Bungo Religious Court is not optimal, the lack of knowledge and understanding of the community about mediation makes people reluctant to resolve joint property disputes through mediation in court. In addition, the role of the mediator also determines the success of mediation. Mediators can organize mediation sessions. Mediation meeting sessions can be held several times within a period of 30 days and thirty extensions. From the data obtained at the Muara Bungo Religious Court, out of 9

**Table 2.** Development status of joint property dispute mediation at the Muara Bungo Religious Court 2019-May 2022

No	Year	Number of Cases	Result		Percentage of Successfulness
			Successful	Unsuccessful	
1	2019	4	1	3	25%
2	2020	3	1	2	33%
3	2021	6	4	2	66%
4	2022	4	3	1	75%

Source: Data Analysis

cases that were unsuccessful, 4 cases. The meeting was only held in one session, so the meeting time was not optimally utilized.

Even though mediation at the Muara Bungo Religious Court has not been carried out effectively, if one looks at its progress there has been an increase in the success of mediation, as shown in the Table 2.

### 3.2 Obstacles in Implementing Joint Property Dispute Mediation at Muara Bungo Religious Court

Good faith is the key to successful mediation. It is said to have bad faith if:

- a. absence following mediation,
- b. attended but the resume of the other party's case was not responded to
- c. draft peace agreement not signed

With the good faith of the parties, the mediation process will run effectively. The absence of good faith from the parties to participate in mediation is more due to the desire of the parties to resolve cases through the trial process.

Based on the results of the study, the failure of mediation at the Muara Bungo Religious Court was due to the absence of participating in mediation and the disputing parties attended the mediation meeting that had been scheduled by the mediator but in the mediation process it turned out that it was difficult to reach an agreement because each party still maintained its wishes.

If the mediation deadlock the mediator can do caucus. One characteristic of the mediation process is that it is carried out by a caucus. A caucus is a meeting between one of the parties and a mediator without the presence of the other party. The functions of the caucus are:

- a. Give one party the opportunity to express his wishes without being overheard by the other party
- b. Looking for additional information
- c. The mediator can understand the motivation of the parties
- d. Provide an opportunity to express feelings to the mediator
- e. Make the parties aware to be willing to make peace.



Based on the results of the research, the mediator never held separate meetings with the parties for caucuses and provided an opportunity for the parties to express their feelings and wishes without being heard by the parties. At the time of the caucus the parties or the parties feel freer to convey their wishes to the mediator as a neutral party.

## 4 Conclusion

Accomplishment of shared property disputes through mediation in court in the period 2019–2022 has not been carried out effectively, due to community factors, namely the lack of public knowledge and understanding of mediation conducted in court. Besides that, the mediator is still not optimal in utilizing the time to mediate by scheduling meeting sessions.

Obstacles in the implementation of joint dispute resolution through mediation at the Muara Bungo Religious Court, was the lack of good will from the parties to resolve it peacefully and caucuses were not carried out in mediation which experienced a deadlock.

We suggest that it is necessary to increase socialization regarding Perma Number 1 of 2016, so that the public knows, understands and is aware of the benefits of mediation, so that joint property dispute cases in court can be resolved simply, quickly and at low cost.

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