

## Mediation Was Partially Successful in Divorce Cases Cumulating Wife's Right, Children's Rights and Child Care in Binjai Religion Courts

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### ABSTRACT

Writing this study aims to share knowledge and provide a perspective in the resolution of divorce disputes through litigation (mediation) partially successful in a divorce cases property wife's rights, children's rights and childcare in the religious court Binjai. Dispute resolution through mediation (peace) has been known in Islam. Islam teaches that the parties to the dispute do peace. In divorce cases the function of an attempt to reconcile the duty of the judge as a mediator to be done based on Supreme Court Regulation No. 01 of 20 16 on Mediation Procedures in Court. Therefore, sought peace through mediation in the Religious that couples wishing to divorce the attack and reconciliation. Mediation is a dispute resolution process through the negotiation process or the consensus of the parties, assisted by the mediator has no authority to decide or impose a settlement. In reality the application of mediation is less effective in resolving the case, proven by a case that was successful solved by mediation. But in 2022 successful mediation increased dramatically compared to previous years and partially successful mediation until June 2022 amount 7 (seven) cases is registration number 6, 173, 184, 188, 205, 228, and 230. Issues to be discussed in this study are about the effectiveness of mediation as a means of reconciling the case, the main goal of reducing the number of cases, and also to assess the success of mediation. Particularly in divorce cases that occurred in the Religious Court Binjai.

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### 1. INTRODUCTION

In the Collins English Dictionary and Thesaurus, it is stated that mediation is an activity bridging between two disputing parties to produce an agreement. Activity

This is done by the mediator as a party, which then helps look for various alternative dispute resolutions. The mediator's position in this case is to encourage the parties to look for agreements that can end the dispute. The explanation of mediation from a linguistic perspective (etymology) places more emphasis on the existence of the parties, which bridges the dispute between the parties (Hanifah, 2016).

At the first hearing, the judge is obliged to make peace efforts as determined by Article 130 HIR. With the issuance of Supreme Court Regulation Number 1 of 2016 concerning procedure mediation in court, the parties must go through procedure mediation (Indonesia, 2016).

The mediation was attended by both the petitioner and the respondent. The results of the mediation could be unsuccessful (failed), but there were also results for both parties, the applicant and respondent, who succeeded in achieving peace. However, there was also a little mediation that reached a partial peace agreement, as stated in the mediator's report to the case-examining judge. As loaded in Article 31 paragraph (1) of Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures, "*For mediation of divorce cases within the religious courts where the divorce claim is cumulated with other claims, if the parties do not reach an agreement to live in harmony again, the mediation continues with other demands*" (Indonesia, 2016).

Mediation, as in Supreme Court Regulation Number 1 (2016), is a method of resolving a dispute through negotiation process to obtain an agreement between the parties with the assistance of a mediator. During the mediation process, the parties were very cooperative and played an active role in finding the best solution for both of them. Even though the two of them did not succeed in getting back together, they were committed to separating amicably and will still be the best parents for their child.

During the mediation process, the mediator also provides guidance and advice regarding the obligations of parents to provide for and jointly care for and educate children in their growth and development until they become adults. Children are an investment in the future and a trust for which they will later be asked to be held accountable, so even though they chose to separate, the mediator emphasized to the parties not to ignore the interests of the child.

This research was conducted to discuss the husband's responsibilities towards his divorced wife, namely the rights of the wife and children. Then he also revealed that the mediation was successful in part because the parties understood their respective rights and obligations. A husband who wants to divorce his wife has obligations that must be fulfilled for his wife in the form of providing mut'ah and iddah maintenance.

## 2. FORMULATION OF THE PROBLEM

Based on the Introduction, which has been stated above, the formulation problem from the study is:

1. How effective is mediation in divorce cases at the Binjai Religious Court office?
2. What is the role of the mediator in the mediation process at the Binjai Religious Court?
3. What is the success rate of the mediation process in divorce cases at the Binjai Religious Court?

### RESEARCH METHODOLOGY

In presenting this research, the author uses empirical research using a qualitative approach. Meanwhile, the data collection method used is observation. The artist data method that the author uses in this research uses a descriptive qualitative analysis method. To find out clearly the level of success of mediation that occurred at the Binjai Religious Court using data obtained in field research. The presentation of this research is a descriptive analysis and uses normative legal research methods. As is generally known, legal research that has the character of normative legal research describes a form of legal research that discusses and examines a legal problem at the level of principles, norms, and existing legal doctrine (Benuf, 2020). Through a statutory approach (the statute approach), which will explore the regulations in the Constitution that are sustainable with a problem formulation, this research will examine Law Number 01 of 2016, the Religious Courts Law, and several other legal regulations. In writing this research, a conceptual approach will also be applied by linking problems with concepts, existing principles, and doctrines (Abdulkadir, 2014). The results found will then be presented in a descriptive report, namely by describing a mechanism for resolving divorce problems that is pursued through litigation (mediation).

## 3. FINDINGS AND DISCUSSION

### A. Effectiveness of Mediation in Divorce Matters

According to Christper W. Moore, as quoted by Desriza Ratman, mediation is a problem that can be helped [solved] by a third party that is acceptable to both parties, fair or not. They take sides and do not have the authority to make decisions, but they speed up the parties involved in the dispute so that they can reach a decision together from the problem (Ratman, 2012).

Apart from litigation (court), dispute resolution can also be resolved through non-litigation (outside of court), which is usually called alternative dispute resolution

(ADR) in America; in Indonesia, it is usually called alternative dispute resolution (hereinafter referred to as APS) (Usmani, 2012).

Mediation is a form of accommodation in the process of social interaction. Accommodation itself is the process of resolving a conflict that occurs as a result of a social interaction process carried out between two or several related parties, one of which is through effort mediation. So mediation is a way of resolving disputes through a negotiation process to obtain an agreement between the parties with the assistance of a mediator. What is meant by a mediator is a judge or other party who has a mediator certificate as a neutral party who assists the parties in the negotiation process in order to seek various possible dispute resolutions without using the method of deciding or forcing a settlement (Witanto, 2010).

A paraparty is two or more subject law parties who dispute and bring their dispute to court to obtain a solution. Naturally, mediation the use costs, namely costs incurred in the mediation process as part of case costs, which include costs for summoning the parties, travel costs for one of the parties based on actual expenses, meeting costs, expert fees, and/or other costs required in the mediation process. If a peace agreement occurs as a result of mediation, it is made in the form of a document containing provisions for dispute resolution signed by the parties and the mediator (Harahap, 2013).

It is mandatory for judges, mediators, and parties to resolve disputes through mediation, as regulated in Article 3 paragraph (1) of the Republic of Indonesia Supreme Court Regulation Number 1 of 2016 about Procedure Mediation in Court. thereby mandatory reconciliation

Paraparty through mediation is at the first level of examination; therefore, the role of the judge is very decisive in first-degree court. However, facing reality on the ground, which shows that 100% of the Court's decisions are conventional decisions with a pattern of win or lose (winning or losing), is rarely found in the practice of the same decision (win-win solution). So it requires the seriousness, ability, and dedication of judges to reconcile the parties as expected by the provisions of Article 130 HIR or Article 154 RBg. This is to avoid the predicate provisions of Article 130 HIR or Article 154 RBg formulation, which are dead (Harahap, 2013).

From the existing literature, it is stated that the success or failure of implementing the mediation procedure in court is influenced by judges, advocates, or legal representatives. There are those who think that failure to implement mediation

procedures is caused by the dominance of motivation and the role of the advocate or power law, which more tend directing dispute resolution through litigation.

There is also the opinion that failure implementation procedure mediation in court is caused by a lack of ability, proficiency, and dedication judge mediation channels, among others, is that dispute can be resolved with a win-win solution because, in principle, civil dispute is peace, time that is not prolonged, costs more light, and a steady maintained connection between two people, avoiding their problems from excessive publicity.

The mediation process must be completed within a maximum period of 30 working days from the election or appointment of the mediator. If both parties agree, the period time can be extended to 30 days. If mediation succeeds, agreement complete with clause revocation case or statement case has finished beside the hearing. The panel of judges will then confirm the agreement as a deed of peace, but if this fails, it is the mediator's duty to report it in writing to the Assembly Judge (M.Z, 2007).

If a paraparty wants to use a mediator from the court, then there is no charge at all. Whereas if the parties use an outside mediator, the parties are charged fees according to the case handled.

There is something called process peace in court, which is arranged in provision as a form of filling legal gaps and complementing the provisions of Article 130 HIR/154 RBg. Especially for Article 23 PERMA Number 1 Year 20-16, a study needs to be repeated specifically regarding procedures for confirming peace agreements outside of court and also regulating the form of rejection. The existence of freedom of choice for dispute resolution is a form of respect for human freedom (Saifullah, 2009).

Supreme Court Regulation Number 01 of 2016 (hereinafter referred to as PERMA Mediation Procedures in Court) is expected to provide an opportunity for the parties to play a role in taking the initiative to use finish dispute, Which helped party third as mediator. PERMA Procedure Mediation in Court has become standard general guidelines for the implementation of intensified inward mediation litigation procedures in the religious courts. Mediation has an important position in PERMA because, because of the process, mediation is part of the process that is not inseparable from a process dispute in court. Because of that, implementation mediation with results agreement and failure, which achieved as well as factoring in the cause, becomes a material consideration main for evaluating its effectiveness.

The legal basis for implementing mediation in Indonesia is one of the ADR (Administrative Alternative Dispute Resolution) systems, which is as follows:

1. Pancasila and the 1945 Constitution imply in their philosophy that the principle of dispute resolution is deliberation to reach consensus.
2. In Law No. 4 of 2004 concerning Basic Provisions of Judicial Power, the explanation of Article 3 states: "Settlement: "Cases outside of court, on the basis of peace or through a referee, are still permitted."
3. Law Number 1 of 1974 in conjunction with Article 39, Law Number 7 of 1989 in conjunction Law number 3 of 2006 JO Law number 50 of 2009 concerning Religious Courts Articles 65 and 82, PP Number 9 of 1975 Article 31, and KHI Articles 115, 131 paragraph (2), 143 paragraphs (1) and (2), and 144
4. Supreme Court Circular Letter (SEMA) Number 1 of 2002 concerning Empowerment of Courts of First Instance to Implement Peaceful Institutions (Ex Article 130 HIR/154 RBg)
5. Supreme Court Regulation (PERMA) Number 01 of 2016 concerning Mediation Procedures in Court
6. Mediation, or APS, outside the court is regulated in Article 6 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (Ema, 2016).

Relating to mediation arrangements that are partial and distributed in nature under 23 (23) regulation legislation, what are the basic principles of non-litigation mediation that underlie its existence? Besides that, this condition is possible inconsistencies, especially relating to non-litigation mediation as regulated in Article 6 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution and Article 23 of Perma Number 1 of 2016 concerning Mediation Procedures in Court, that is, arranging the confirmation of the peace agreement outside of court to obtain a peace deed.

### **B. Role Mediator in Process Mediation at the Binjai Religious Court**

Succeed or not, mediation depends on the process executed. If the process is good, it will achieve peace between the parties to the lawsuit. But otherwise, what is not good can be the cause of mediation failure. The following custody-natural stages of the mediation process are regulated by PERMA No. 1 Year 2016:

- 1) Stages of pre-mediation

Plaintiffs register the lawsuit in secretariat court, and then the chairman of the court appoints the panel of judges who will examine the matter. The obligation to mediate arises. If on the judge first, paraparty present. The assembly judge conveys to the plaintiff And defendant about procedure mediation, they obliged to live it (Fanani, 2012).

After providing an explanation regarding mediation, the panel The judge gives the parties the opportunity to choose a mediator from the list of mediators prepared by the court. Besides, that's para Parties are permitted to select their own mediator, provided that the mediator is certified. However, if there is no judge certified, the wrong one-member judge can be a mediator (Fanani, 2012).

## 2) Formation Forums

Within five days after the parties appoint a mediator, which has been agreed upon, or after the parties fail to choose a mediator, the parties can submit a resume of the case to the mediator, who has been appointed by the Assembly Judge (A resume is a document created by the parties that contains the problem or proposed settlement. See Article 1 Paragraph 10 PERMA No. 1 of 2016).

## 3) Deepening

The way for mediators to explore problems is by caucus. Caucus is a meeting between the mediator and the wrong party that is not attended by the other party. In this way, the mediator can process data and develop information, do exploration interest para interests of the parties, give an evaluation of the interests that have been inventoried, and finally herd the parties to the settlement bargaining process.

## 4) Completion, End, and Determination Results

On stage solution, finally, the paraparty will convey his will based on his interest in the form of an item-by-item agreement. The mediator will accommodate the paraparty in notes. And write it down in the document agreement. In Chapter 23 paragraph (3), PERMA No. 1 year 2016 stated that the conditions that must be fulfilled in an agreement of peace are as follows: a) in accordance with the parties; b) no contradiction with the law; c) no harm to the third party can be executed; and d) with faith, which is good.

## 5) Deal in Outside

In Chapter 23, paragraph (1), PERMA No. 1 year 2016 mentioned that a paraparty with help from a certified mediator who succeeds in finishing a dispute in an outside court with agreement peace can submit agreement peace to a competent court to get deed peace with a method of submitting a lawsuit.

#### 6) Involvement Expert in Process

Chapter 16 paragraph (1) PERMA No. 1 year 2016 mentions that top agreement para party or power Power Law, mediator can invite a or more in field certain to give explanation and consideration which can help finish happen difference opinion in between para party.

#### 7) The ending

The mediation process is said to end in two forms. First, mediation ends by producing points of agreement between the parties. The peace process will be followed up by confirming the peace agreement into a peace deed, which contains a strong decision judge and has permanent legal force (BHT or Incracht). Second, the mediation process hit a roadblock dead-end and ended with failure. process mediation in court, which fails, will next be heard in court.

#### 8) Mediation on Stage Effort

Paraparty on base agreement together, can go through effort peace to the case that is currently in process of appeal, cassation, review return, or regarding the case being examined throughout the case. Not yet disconnected.

Thereby, stages of mediation, which have been arranged in PERMA No. 1 Year 2016 About Mediation Procedure in Court, show what the mediator's role actually is in resolving divorce cases in the religious courts.

### **C. Level Success Process Mediation in Case Divorce**

The mediation process in the religious courts can be implemented to achieve maximum targets and objectives. If so far efforts to reconcile the parties are conducted formally by the judge who examined the case, but now the panel of judges is obliged to postpone it to give him a chance, the mediator reconciles the parties, the litigant. For divorce matters, mediation is actually only a formality. However, mediation in the religious court must still be held because if mediation is not carried out first, it will be null and void by law (Abbas, 2011).

In the Binjai Religious Court, mediation is usually carried out only for 10–15 minutes. For a short time in mediating between the disputing parties, of course, peace efforts undertaken will not bring maximum results and will not be useful to both parties involved in the dispute.

In this regard, judges must be called upon by their conscience optimally to strive for peace, not just get caught up in business and look for fact-quality disputes that



alone, whereas he does not know what factors were behind the quarrel. Especially if it's the judges in striving for peace, is just that at a glance? (Manan, 2000).

Mediation in the religious courts cannot be separated from its role as a mediator in striving for peace. For the role referred to in PERMA, this is a mediator who carries out his duties in court. A mediator who serves in court may come from court judges or mediators from outside the court, but must have a certificate as a mediator. The mediators coming from judges are judges who have acquired skills by going through a number of trainings or coachings, while non-judge mediators are those who own skills mediation and also have their own certificate from the court (Abbas, 2011).

Judge at the Binjai Religious Court who plays the role of mediator, who does not yet have a certificate because there is no opportunity yet, and just attend training seminars to become mediator. And to make it easier for the disputing parties to choose a mediator judge or non-judge, in the Binjai Religious Court, there are only 2 (two) certified judges and 2 (two) certified non-judges, while the other 2 (two) are non-certified judge mediators.

Among the non-judge mediators who are certified and have performed training as mediators, however, success in mediation is not related to a certificate but is based on the ability of someone who works for peace. That is why a mediator is required in the process of becoming a negotiator. A negotiator also requires a number of expertise or skills that will help the parties involved truly resolve the dispute at hand. These skills can include communication skills, the ability to bring parties to the negotiating table, and various other abilities.

The use of mediation as a way of resolving disputes peacefully (a win-win solution) is motivated by many factors. Mediation is expected to reduce accumulation matters and maximize institutional functions in the judiciary.

In a problem divorce, No Possible must use a system solution dispute outside court, but the parties still must follow stages of the litigation process in court. In divorce cases, mediation is found as a forum to consider possibilities that may happen between husband and wife so that they can expect to obtain something and change attitude between them. And divorce as an alternative solution to household problems can be undone.

However, in divorce disputes, there is an obligation to reconcile the parties, which is imperative, and the Panel of Judges must give the parties the opportunity to make efforts peacefully outside the court (Results of a Personal Interview with Mrs. Helmilawati, S.H.I., M.H., Chair of the Binjai Religious Court, on June 22, 2022).

In this matter, this judge mediator holds a role important in reconciling the parties, which are currently litigious. Existence mediation in court is absolutely necessary because:

1. Can reduce problem accumulation
2. It represents the wrong one process solution dispute, which is considered more fast and cheap, as well as giving access to the widest possible paraparty dispute to obtain justice, and strengthening and maximizing the function of the institution court in solution dispute in side process.

Mediation at the Binjai Religious Court has not been successful. To use with target that you want to achieve, that is push amount case that was litigated. Then, from the side of economics, mediation is precisely considered no economical and considered add cost, which must be issued to paraparty litigants because for them this is just a condition that must be passed. Because most of them come to the Binjai Religious Court already with determination for divorce, it is difficult for mediation. Especially in divorce matters, this is very difficult to mediate because it is a matter of feelings.

Will but seen from success mediation from a 2-year final later In the years 2021 and 2022, as success in mediation progresses, it is hoped that mediation judges and mediators will continue to improve their success, whether overall or partially successful in the mediation, as well as the performance of the judges as well as mediators, so that it can be optimized in carrying out mediation. So that the target of Supreme Court Regulation (PERMA) Number 1 of 2016 can be achieved, namely controlling the case being litigated, That way, PERMA Regarding mediation, it can be said to be effective at the Binjai Religious Court.

In 2022, mediation carried out has increased successfully compared to previous years, and mediation was partially successful until June 2022, with a total of seven (seven) cases with Register Numbers 6, 173, 184, 188, 205, 228 and 230. The problems that will be discussed in this paper are about the success of mediation as a means of reconciling cases, the main aim of which is to reduce the number of cases and also to determine the level of success of mediation. Especially in divorce cases that occur at the Binjai Religious Court.

#### **4. CONCLUSION**

Implementation of the mediation process in divorce cases in court Religion Binjai strives for peace between para parties in accordance with what is regulated in PERMA No. 1 Year 20-16 and HIR. And on PERMA Chapter 7, paragraph 1, about Obligation Judge The examination of cases and legal representation is on the day of

the trial determined to be attended by both parties, and the judge obliges the parties to undergo mediation. With this PERMA, the judges thought that the implementation of mediation was more focused and orderly, so they felt that after the issuance of PERMA No. 1, Year 20, 16 About Mediation, it would be very helpful for the judge to do his task. And a para judge can also give an understanding of more about mediation.

The success rate of mediation in divorce cases in the Religious Courts Binjai, if seen from the implementation of mediation, is effective and appropriate with PERMA No. 1 Year 20-16. However, for the results of the mediation successfully carried out by the mediator, the judge still has not shown any results, specifically in the case of divorce. For the para judge appointed as judge mediator in the process, mediation has been done optimally. Even though there haven't been any significant changes,

As for success factors in mediation, there is good intention from the parties themselves who want to make peace; there is assistance from the parties close family who can direct the creation of peace; there is a comfortable place comfortable for the mediated parties; and of course, the ability, skill, and expertise of the mediator judge in resolving problems can be with Be patient in face-to-face parties who are litigious for achieving peace.

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