

Effectiveness Mediation in Completion Divorce at Metro Religious Court

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ABSTRACT

Study This aiming For analyze effectiveness mediation as mechanism alternative settlement dispute in case divorce at Metro Religious Court . Mediation is one of required efforts in the religious court process according to with Regulation Supreme Court (PERMA) Number 1 of 2016 concerning Procedure Mediation in Court . Research This using secondary data in the form of documents related. Results study show that level success mediation at the Metro Religious Court is still ongoing relatively low . Factors that influence effectiveness mediation covering lack of awareness and commitment of the parties towards the mediation process , the low quality communication between the mediator and the disputing parties , as well existence pressure social and emotional that complicates effort reach agreement . Although Thus, success mediation can improved through improvement mediator competence , targeted training , and approach based on need disputing parties. Research This recommend the need strengthening mediator capacity , optimization facility mediation in court , as well as campaign awareness about importance mediation as solution peace in settlement dispute divorce . With Thus , mediation can play a role more significant in reduce conflict and create fair and sustainable settlement for the parties .

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1. INTRODUCTION

Completion dispute can done through two processes, namely the litigation process within court and settlement process dispute through Work same outside court . Settlement process dispute outside court produce agreement of a nature satisfying second split parties, guarantee its confidentiality, avoiding slowness procedure administration, settlement problem in a way comprehensive in togetherness and stay guard connection OK. In the divorce process that takes place in the Religious Court, both parties split the party as husband wife must undergo the mediation process that has been set. Mediation Not only beneficial for the disputing parties, but also provides several benefits for the world of justice.¹ And for make it easier access public to justice through mediation. Mediation is one of the method settlement the dispute that exists within House stairs that are based on the base law which are contained in the Al-Quran surah Al-Nisa verse 35 for to obtain satisfactory resolution as well as fair .

¹ Sri Hariyani, “Efektifitas Mediasi Dalam Penyelesaian Perkara Perceraian Di Pengadilan Agama Pasuruan” (2020).

In the context of bureaucratic reform The Supreme Court of the Republic of Indonesia which is oriented towards the vision the realization of a great Indonesian judicial body, one of element Supporter is Mediation as instrument for increase access public to justice at a time implementation principal organization simple, fast and low- cost justice light. ² In its implementation, mediation in court often experience failure or No achievement agreement peace between the parties to the lawsuit. Implementation Regulation The Supreme Court can it is said not enough so optimal that what to expect Not yet can achieved . The resulting product justice in settlement the case filed to him dominated by the decision conventional patterned win or lose . Rarely found settlement based on draft You're welcome win. ³ Mediation gives a better alternative fast and economical in settlement disputes, allowing the parties to reach a satisfactory and fair solution.⁴

Mediation in court can carried out by judge mediators and non-judge mediators who have follow education special mediator profession in institutions that already exist accredited by the Supreme Court of the Republic of Indonesia. Judges, mediators and the parties must For follow procedure settlement dispute through mediation . ⁵As set up in Regulation Supreme Court of the Republic of Indonesia Number 1 of 2016 concerning Procedure Mediation in Court (Perma PMP) regulates about mediation is method settlement dispute through the negotiation process For to obtain agreement of the parties with assisted by a Mediator.⁶ However, in fact fundamental need understood that the capabilities of the parties see A alternative in finishing the case at hand usually limited, so that need to be pushed For can see and know ways that are not thought and imagined previously.⁷

Teachings peace that becomes character Indonesian nation and sourced from from the process of religion to embryo in system court . court before do action adjudicative must always invite the parties For make peace . This is based on : 1) HIR article 130 (Article 154 RBg , Article 31 Rv., 2) Law No. 1/1974, PP No. 9/1975, Law No. 7/1989, and KHI and 3) SEMA No. 1 of 2002 (Ex . 130 HIR / 154 RBg) and Discussion Results Commission II National Working Meeting limited MARI. 4) PerMA No. 2 of 2003, then revised through PerMA No. 1 of 2008 and most recently PERMA Number 1 of 2016 concerning Procedure Mediation in Court.⁸ Dotted reject from Article 7 paragraph (4) and the explanation of Article 7 paragraph (4) of the Law Number 10 of 2004, with firm stated that PERMA includes in category regulation legislation. When viewed considerations of PERMA Number 01 of 2016 concerning Procedure Mediation in Court , can known that one of base arranged mediation in PERMA is The revised Indonesian Regulations (HIR) Staatsblad 1941 Number 44 and the Procedural Law Regulations for Areas Outside Java and Madura (RBg) Staatsblad 1927 Number 227. Article 130 paragraph (1) HIR reads: If on the appointed day that, second split party come, then the district court tried with intermediary the chairman will reconcile they That.⁹

Study This aiming for evaluate how far is mediation capable reduce conflict, speed up the resolution process, and produce a fair solution as well as sustainable for second split parties. Through analysis this , writer usually will give recommendations , for example increase training for mediators, strengthening socialization mediation to society , or review repeat existing regulations to be more support effectiveness mediation in the Religious Court.

² Ria Zaitullah, "Efektivitas Mediasi dalam Penyelesaian Perkara Perceraian di Pengadilan Agama Menurut Peraturan Mahkamah Agung (PERMA) No. 1 Tahun 2016," *Al-Manhaj: Journal of Indonesian Islamic Family Law*, 2020, <https://doi.org/10.19105/al-manhaj.v2i2.3417>.

³ Farhan Asyhadi, "Efektivitas Mediasi Dalam Perkara Perceraian Di Pengadilan Agama Karawang," *Justisi Jurnal Ilmu Hukum* 4, no. 1 (2019): 32–48, <https://doi.org/10.36805/jjih.v4i1.642>.

⁴ Sakirman, "Analisis Profesi Hakim dalam Epistemologi Hukum Islam," *Ijtihad : Jurnal Wacana Hukum Islam dan Kemanusiaan* 17, no. 1 (1 Juni 2017): 135–54, <https://doi.org/10.18326/ijtihad.v17i1.135-154>.

⁵ Aldy Darmawan Darmawan, Elfia Elfia, dan Zulfan Zulfan, "Kontribusi Mediator Nonhakim dalam Penyelesaian Konflik Rumah Tangga," *Al-Qisthu: Jurnal Kajian Ilmu-Ilmu Hukum* 21, no. 2 (2023): 110–25, <https://doi.org/10.32694/qst.v21i2.2970>.

⁶ Abd. Mukhsin Dyta Ayu Irmadani Marpaung, "Efektivitas Mediasi dalam Upaya Penyelesaian Perceraian di Pengadilan Agama Sei Rampah," *Amnesti: Jurnal Hukum* 6, no. 2 (2024): 186–96, <https://doi.org/10.37729/amnesti.v6i2.5323>.

⁷ Arum Kusumaningrum dkk., "Efektivitas Mediasi Dalam Perkara Perceraian Di Pengadilan Negeri Semarang," *Diponegoro Law Journal* 6, no. 1 (2017): 1–10.

⁸ Dessy Sunarsi, Yuherman Yuherman, dan Sumiyati Sumiyati, "Efektifitas Peran Mediator Non Hakim Dalam Penyelesaian Perkara Perceraian Di Pengadilan Agama Kelas 1a Pulau Jawa," *Jurnal Hukum Media Bhakti* 2, no. 2 (2018): 138–51, <https://doi.org/10.32501/jhmb.v2i2.32>.

⁹ Rahmat Fauzi, "Efektivitas Mediasi Dalam Menyelesaikan Sengketa Perceraian (Study Di Pengadilan Agama Bukittinggi Dan Pengadilan Agama Payakumbuh Tahun 2015-2017)" 1 (2018): 314–34.

2. METHOD

This research applies a qualitative approach, which means a scientific research that aims to understand a phenomenon in natural social contact by prioritizing the process of in-depth communication interaction between the researcher and the phenomenon to be discussed.¹⁰ Study This done in natural conditions, with researcher as instrument main in collect data. Data obtained generally in the form of words, not numbers, so that produce rich description of meaning and nuance. Data analysis is inductive, starting from specific data going to to more generalization wide. The main purpose study qualitative is For understand meaning, develop theory, explain a process, and reveals perspective subject research. This method is very useful for dig more information in-depth and complex. Data collection is carried out using the library study method by collecting information from books, articles, journals, websites and documents other.

3. RESULTS AND DISCUSSION

3.1. Definition of Mediation

Mediation in English called Mediation which means finish dispute with mediate. A mediator is a person who becomes mediator. In etymology, term mediation originate from Latin, *mediare* meaning in the middle. Meaning This refers to the role played party third as a mediator in operate his job mediate and resolve dispute between the parties. Being in the middle also means that the mediator must be in position neutral and not take sides in finish dispute. He must capably guard the interests of the disputing parties in a way fair and equal, so that he grow trust from the disputing parties. In the Complete Indonesian Dictionary, the word mediation interpreted as a process of participation party third (as a mediator or advisor) in settlement a dispute.¹¹

Mediation in Islamic Law literature can equated with draft Arbitration which is etymological means make somebody as party third or what Hakam calls mediator a dispute. Mediation In Islam it is also usually called *Ishlah*, that is is meaningful Islamic teachings more highlight method settlement dispute or conflict in a way peace with to put aside the differences that become root dispute. The point is that disputing parties ordered For to let go each other's mistakes and each other's forgive. In its development, use term This used in a way widespread among Islamic society, both for finish dispute or disputes, in the form of divorce, cases business, economics and others.¹²

Mediation in Indonesian legislation contains provisions in Article 6 paragraph (3), (5), Law No. 30 of 1999 concerning Arbitration and Alternative Completion Dispute. SEMA No. 1 of 2002 concerning empowerment Court of First Instance implementing Peace Institutions and Regulations Supreme Court No. 2 of 2003 concerning procedure Mediation in Court and the last one Regulation Supreme Court No. 1 of 2008 concerning Procedure mediation in Court. In Article 7 of the Regulation Supreme Court No. 1 of 2008 determines that on the day the trial that has been determined to be attended second split parties, the Judge obliges the parties for to go through mediation.”¹³

3.2. Mediation Model

In Lawrence Boulle's theory there are 4 mediation models used in finish problem. Fourth theory the will discussed One one by one For get a good mediation model used in finish case divorce in court. section.

1. Settlement mediation model

Settlement mediation is known as mediation compromise is mediation with the aim of the main thing is for push realization compromise from demands second split the party in question conflict. In this model of mediation the type of mediator desired is the one with the status high, even though No too expert in processes and techniques mediation. The role played by the mediator is determine the “bottom lines” of disputes and in general persuasive push second split party clash For together lower position they to point compromise. Mediation model This used when conflict of the parties difficult find point meet Because

¹⁰ Ruangguru Tech Team, “Qualitative Research Methods: Definition, Types, & Examples,” April 25, 2024, <https://www.brainacademy.id/blog/metode-penelitian-kualitatif>.

¹¹ Sakirman, “Urgensi Undang-Undang Perkawinan dalam Membentuk Keluarga Harmonis,” *Justicia Islamica: Jurnal Kajian Hukum dan Sosial* 13, no. 1 (15 Oktober 2016): 91–112, <https://doi.org/10.21154/justicia.v13i1.458>.

¹² Dian Mustika, “Efektivitas Mediasi Dalam Penyelesaian Perkara Perceraian Di Pengadilan Agama Jambi,” *Negara dan Keadilan* 9, no. 1 (2020): 62, <https://doi.org/10.33474/hukum.v9i1.7492>.

¹³ Mochamad Samsukadi dan Ahmad Abdu, “Efektifitas Mediasi dalam Menyelesaikan Konflik Pernikahan di Pengadilan Agama Jombang Tahun 2013-2014,” *Jurnal Hukum Keluarga Islam* 1, no. 1 (2016): 1–15.

No Anyone want it back down so that the mediator determines the bottom lines of disputan . In case conflict husband mediator judge's wife can bring in figure public or figure custom or religious figures who have role important in arrange life society , which is listened to and respected by both party in finish the dispute that occurred between husband wife the .

2. Facilitative mediation model

Facilitative mediation, also called as mediation based on interest -based and problem solving that aims For avoid the disputing parties from position them and negotiate needs and interests of the parties from their legal rights in a way rigid . In this model the mediator must expert in the process of mediation and control techniques mediation , although mastery material about matters in dispute No too important . The mediator must can lead the mediation process and promote constructive dialogue between the disputing parties , and increase efforts negotiations and efforts agreement . The mediator works on the issues articulated by the client , facilitates the process, then deliver decisions and agreements in hand partner dispute .¹⁴

3. Evaluative mediation model

Evaluative mediation, known as as mediation normative . It is a mediation model that aims to For look for agreement based on the legal rights of the disputing parties in the area anticipated by the court . The role that can run by internal mediators matter This is give information and advice as well persuasi to the disputants and provide prediction about the results that will be obtained .

4. Transformative mediation model

Transformative mediation, known as as mediation therapy and reconciliation . This model of mediation emphasize For look for underlying cause emergence problem between the disputing parties , with consideration For increase the relationship between they through recognition and empowerment as base resolution conflict from existing disputes .¹⁵

3.3. Effectiveness Mediation In Case Divorce at Metro Religious Court

Mediation process in case divorce in the Religious Court , including the Metro Religious Court , is one of the method For finish dispute in a way peace before the judge gives verdict . Success mediation can rated from a number of indicators , such as amount successful case completed through mediation , level satisfaction of the parties on the process and results mediation , as well as impact term long from the agreement that was produced. Divorce law in Indonesia is gathering the regulations stated in document officially authorized by the state, with Constitution divorce become the part that regulates procedures divorce in family.¹⁶

Constitution divorce give base fair and just law for the couple who decided For end wedding they . Regulations this also aims protect right as well as welfare all parties involved , incl wife and children . Divorce law in Indonesia stipulates that all processes must be done in a way fair , and divorce only can done in front of hearing court after effort reconcile disputing parties No successful . Divorce must based on clear reasons , namely inability husband wife For life harmony . If executed with effective , mediation can give benefit big for the disputing parties , in particular in case divorce .

Based on information obtained , it appears Still A little very case divorce that ended peace . Therefore that, need explained Why mediation Not yet effective as method settlement case divorce, and looking for method for ensure that mediation effective in settlement case divorce, especially in the Metro Religious Court. Mediation for disputing parties divorce is step the first thing to do conducted by the judge in to judge matter. The judge's obligation to reconcile the disputing parties are also in line with teachings Islam regulates that dispute between man must completed with road peace .

Mediation , if implemented with ok , can give benefit big for the disputing parties , especially in case divorce. However , based on available data , only A little case successful divorce completed in a way peace . Therefore that , mediation need applied in every dispute For reduce burden case divorce in court . Mediation

¹⁴ M Aris Rofiqi, Sitti Hartinah DS, dan Mulyani, "Peran Konseling dan Mediasi dalam Antisipasi Peningkatan Kasus Perceraian," *Jurnal ...* 4, no. 5 (2022): 8497.

¹⁵ Andi Hartawati, Sumiati Beddu, dan Elvi Susanti, "Model Mediasi Dalam Meningkatkan Keberhasilan Penyelesaian Perkara Perceraian Di Pengadilan Agama," *Indonesian Journal of Criminal Law* 4, no. 1 (2022): 59–73.

¹⁶ Sakirman, "Urgensi Masalah dalam Konsep Ekonomi Syariah," *Palita: Journal of Social Religion Research* 1, no. 1 (16 Agustus 2018): 17–28, <https://doi.org/10.24256/pal.v1i1.58>.

become effective solution Because allow settlement conflict in a way peace with help party third, without must direct submit lawsuit to court, so that can prevent more quarrels big. Based on Regulation Supreme Court (PERMA) Number 1 of 2016, mediation aiming speed up settlement dispute in a way more cheap, simple, and provides more access Good to the seekers justice. Rules This designed For guard security, order and smoothness of the mediation process in finish dispute civil law. However, the reality faced Indonesian society today This is weakness in system justice. Although effectiveness mediation in the Religious Court shows good development, level his success Still Not yet consistent.

Conflict House related stairs with Sick heart This generally difficult completed because in general, almost all lawsuit filed to court is climax from effort failed peace, So if mediated in understanding harmonious back (marriage) become intact) of course difficult For done, because in general they insist (be adamant) on divorced.¹⁷ Standard success mediation case divorce measured from No the result divorce between husband with the wife who is manifested with revocation lawsuit by the plaintiff. Provisions this is very difficult For filled in settlement case through mediation. Settlement case divorce is done with method peace and results the deal is divorced (because viewed more *maslahah*), is considered contradictory with a number of understanding harmonious and peaceful in case divorce. Pay attention a number of regulations (Marriage Law, Compilation of Islamic Law/KHI, and Guidelines Implementation Duties and Administration Religious Courts), no know agreement peace between husband and wife For divorced. Law Article 39 of Marriage Law No. 1 of 1974 states: (1) Divorce only can done in front hearing court after the court concerned try and not succeed reconcile second split party, (2) For do divorce must There is Enough the reason, that between husband and wife That No will can life harmonious as husband wife.

Based on chapter this, then divorce considered No harmony (peace). Peace happen If partner husband wife the return intact (not separate). Size success mediation like This not enough in line with principles developed in knowledge mediation. Agreement between husband and wife For make peace with method separated (divorced) can become road best for both of them. Peaceful solution with method divorce can guard connection between family and children, and the divorce process can done with fast, easy and cost effective light.¹⁸

Inhibiting factors mediation and efforts the solution

On the way mediation there is a number of factor the inhibitor that is:

- a. absence factor is one of the party in mediation
Presence the parties to the case very much important in the way mediation However with absence This make inhibitor mediation.
- b. Desire factor strong For divorce
Emergence they are in the religious court usually happen consequence failure effort peace family so that the parties have strong determination For divorce.
- c. Dispute family who already No Can maintained
Inhibiting factors this is very big because the mediator has difficulty For reconcile because the parties have the problem that causes House the stairs Already No can maintained.
- d. Psychological factors or mental disappointment or mental health
This factor is one of the party experience sick feeling heart to his partner Because feeling Sick heart That make whether or not peace between the parties Because chuckle For separate.
- e. Lack of knowledge mediation between the parties Weakness knowledge information about mediation among public make the parties to the dispute indifferent to existence mediation This. Selfish nature between the parties, lack of communication or become disconnected That make the parties not enough obedient to the way or procedure about mediation.
- f. No good faith Good
In the factor inhibitor This aimed at to the mediator Where if one of them party indicates that mediator no in good faith okay then the panel of judges who will consider main case Already duly follow PERMA Regulation Number 1 of 2016.
In the factor the there is effort the solution mediation that is:

¹⁷ Achmad Asfi Burhanudin Mohammad Muizzudin, "Efektivitas Mediasi Dalam Penyelesaian Perkara Perceraian Di Pengadilan Agama kota Kediri," *MAGISTRA Law Review* 5, no. 02 (2024): 71, <https://doi.org/10.56444/malrev.v5i2.5194>.

¹⁸ Muhammad Saifullah, "Efektivitas Mediasi Dalam Penyelesaian Perkara Perceraian Di Pengadilan Agama Jawa Tengah," *Al-Ahkam* 25, no. 2 (2015): 181, <https://doi.org/10.21580/ahkam.2015.25.2.601>.

- a. Given guidance and counseling
Given motivation or guidance towards the disputing parties .
- b. The parties active / open For finish case
With effort these are the parties can each other open For tell problem so that the mediator is easy in find solution the solution .
- c. Give counseling importance mediation
With existence counseling This public become understand that mediation in every problem That important Because prevent existence quarrel or domestic violence in House ladder Because can being talked about fine or in a way family .
- d. Mediator skills
Listed mediators in Perma Number 1 of 2016, namely all mediators must Undergo and pass the Training Mediator Certification from recognized institution Supreme Court , because important mediator skills in to finish case dispute .
- e. Facility means mediation
Availability facility means mediation also becomes factor affecting effort success mediation . Purwodadi Religious Court This have room or supporting facilities convenience of the mediation process .
- f. Mediation electronic
Procedure mediation in court has open possibility the holding of hearing mediation in a way electronic through audiovisual media considered as presence direct with progress electronic This make it easier for the disputing parties Can present in a way direct .¹⁹

4. CONCLUSION

Implementation Mediation in cases divorce at the Religious Court Metro Religious Court has not yet effective Because Not yet in accordance with Meaning publication Regulation Supreme Court on Procedure Mediation in court . Not yet effective mediation This due to Because executor mediation Not yet completely (in maximum) do mediation and still impressed only fulfil formality , standard size success mediation case a difficult divorce achieved , and culture public in respond peace efforts in court. In case divorce in court ReligionMetro , still face Lots challenges , including desire strong For divorce , difficult dispute completed, and the lack of understanding public about importance mediation . Factors This hinders success mediation to reach peace truly. For overcome obstacle mentioned, it is necessary effort like guidance and counseling, outreach about mediation, improvement mediator competence through training certification, provision facility adequate mediation, as well as utilise technology electronic For expand access mediation. With good implementation, mediation can become an alternative settlement effective conflict, especially in case divorce, use guard harmony connection social and family.

THANK-YOU NOTE

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¹⁹ Della Ayu Tsafitri Kunarto , Budi Prasetyo, "Evektifitas Mediasi Dalam Penyelesaian Perkara Perceraian Di Pengadilan Agama Purwodadi" 05, no. 02 (2024): 71–79.

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