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Implementation of Mediation in Settling Divorce Cases: A Research Conducted at Mahkamah Syar'iyah Suka Makmue

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Abstract

Article 39, Paragraph (1) of Law Number 1, 1975 Jo. Article 31 of Government Regulation Number 9, 1975 on the Implementation of Law Number 1, 1974, Articles 65 and 82 of Act Number 7, 1989 on Religious Justice about Article 115 of Presidential Instruction Number 1, 1991 on the Dissemination of the Compilation of Islamic Law, provides that judges are required to actively and efficiently promote reconciliation between the parties involved in each trial, to prevent divorce. The establishment of mediation in the Indonesian Court occurred in 2003, under the Rules of the Supreme Court of Indonesia Number 2, 2003, which governs the procedures for mediation in the Court. According to data acquired from the Shariah Court (hereinafter Mahkamah Syar'iyah) Suka Makmue, it is evident that there has been a rise in the frequency of divorce orders between 2019 and 2022. From 2019 to 2022, the court handled a total of 232 divorce cases. Out of them, 31 cases were effectively mediated, while 201 cases were not

successfully mediated. The research method employed in this study is the Yuridis empirical research method. This study aims to elucidate the utilization of mediation in resolving divorce cases in the Court. Based on the study findings, it is recommended to adhere to the existing legal regulations while implementing mediation in divorce situations. Mediation is an essential step that must be undertaken during the divorce proceedings. The effectiveness of mediation can be determined by evaluating its level of success, which can be classified into three categories: Unsuccessful, moderately successful, and successful (withdrawal totally). The success of mediation hinges on the mediator's role in its execution, as the mediator serves as the determining factor for its effectiveness. If the process of mediation fails to achieve a resolution or proves to be unsuccessful, it might be concluded that the mediation conducted was ineffectual in resolving the divorce issue.

Keywords: Mediation Implementation, Case Settling, Divorce

Introduction

Article 1, paragraph 2, of Act No. 1 of 1974 on Marriage (hereinafter referred to as Law Number 1, 1974), defines marriage as an inherent bond between a man and a woman to form a happy and eternal family based on the one and only Divinity ^[1]. In reality, however, the relationship between a husband and a wife is not always harmonious, except that sometimes the husband and the wife are unable to build their home because of some problems caused by internal or external factors and cannot cope with them until the end of the divorce.

Islam states that divorce is a lawful act, but God hates it. As the Hadith of Ibn Umar, the Prophet (peace and blessings be upon him) said, "The lawful deed that Allah hates most is divorce" (H.R. Abu Dawud dan Ibn Majah) ^[2]. Generally speaking, divorce is due to differences of opinion or disagreement in domestic affairs between the parties ^[3].

Divorce usually begins with persistent disputes and strife between husbands. Disagreements, strife, and disagreements arise because of internal and external factors that are common in the household, requiring patience in dealing with them, whether it be by the husband or the wife ^[4]. One of the reasons for divorce is because of family disharmony and also when rights and duties are beginning to be neglected, increasingly sophisticated technological developments make the appearance of third parties in the chain of marital love leading to divorce. Divorce is the last step that must be taken, given that living in a staircase is no longer possible, a life of peace and happiness ^[5].

Article 39 Paragraph (1) of Law No. 1 Year 1975 in relation with Article 31 of Government Ordinance No. 9 Year 1975 on the Implementation of Law Number 1 Year 1974 Jo. Articles 65 and 82 of the Law Number 7 Year 1989 on Religious Justice jo. Article 115 of Presidential Instruction No. 1, Year 1991 on the Dissemination of the Compilation of Islamic Law states that the judge is obliged to seek peace with the parties at each trial effectively and optimally to prevent the occurrence of divorce^[6].

The purpose of the peaceful endeavor in the matter of divorce is to influence the parties who wish to divorce may think back and decide to withdraw the lawsuit that has been brought to the Court so that the divorce does not occur^[7]. Mediation is a process that is private, confidential (not exposed), and cooperative in the resolution of a problem. A third-party mediator is an impartial third party who assists the parties (individual or institutional) in resolving the conflict and resolving or bringing the differences closer^[8].

Mediation in the Indonesian Court was established in 2003 under the Rules of the Supreme Court of Indonesia Number 2, 2003 on Mediation Procedures in the Court. The consideration is to reduce the accumulation of matters and is one of the ways to settle matters faster and cheaper, under Article 130 HIR or Article 154 R.bg. It is affirmed in Article 2 Perma (The Supreme Court Regulation) Number 02, 2003, that all civil matters brought before the Court of First Instance must be settled first by peace with the assistance of mediators^[9].

Previously there was PERMA No. 1 of 2008 on Mediation Procedures in the Court as a replacement for PERMA No. 2, 2003 on mediation procedures. The settlement of civil disputes is one of the primary options in the case of divorce through mediation, as it can negotiate the wishes of the parties by peaceful means, mediation efforts will be beneficial to the courts as the use of mediation is expected to solve the problem of accumulation of cases.

Mediation has an important position in PERMA, because the mediation process is an integral part of the litigation process in the court. And mediators have a vital role in the success of mediation^[10]. Therefore, the judge Inspector Per Cases in consideration of the judgment must mention that the case has been pursued peace through Mediation by mentioning the name of the mediator (Article 2 paragraph (3) PERMA No. 1 Year 2016).

Mediation into legal proceedings in court according to PERMA No. 01 of 2008 has not been able to reduce matters that enter trial. There has not been a significant change in the number of matters that have entered the trial process so the achievement has not met expectations. In this case, it can be seen that the mediation process carried out by the judge of the Sharia Court is not running effectively, it may be said that the interim result that the author obtains in the Sharia court is a divorce case tends to experience improvement. Starting from the original objective of mediation, one of its objectives is to reduce the number of divorce cases in the Sharia court.

However, the statement explains that in 2019 there were 46 mediation cases, 4 cases were mediated, and 42 cases were not mediated. In 2020 there were 53 cases, 3 cases were Mediated, and 50 cases were non-mediated. Then in 2021, there were 61 cases, 9 cases, and 52 cases that were not Mediated. And in 2022 there were 72 cases, 15 and 57 cases that were not.

Based on data obtained from the Shariah Court Suka Makmue it is known that the average divorce rulings from 2019 to 2022 have an increase in the occurrence of divorces. The total of all divorce cases in the shariah court Sukas Makmui vulnerable during the last 4 years from the year 2019 to 2022, as many as 232 cases, and that successfully mediated as many as 31 cases, whereas the unsuccessful Mediated as 201 cases. It shows that 80% of divorce cases failed to be mediated. The purpose of this study is to explain the implementation of mediation in the settlement of divorce matters in the Shariah Court of Suka Makmue.

Research Method

This type of research is Juris-empirical research, that is, a study conducting comparative studies by performing observations and local direct interviews of the research, to complement this research is also carried out bibliographic investigation such as studying several premises related to the problems studied which are secondary material in this research. The method of sampling is based on the ability to take samples in terms of time, location, and cost. As for the samples taken and the estimated portion of the population that represents the entire population, the respondents and informants are involved^[11]. It is intended to obtain clarity about the Implementation of Mediation in the Settlement of Divorce Matters at Mahkamah Syariah Suka Makmue.

Results and Discussions

Following the decision of the Indonesia Supreme Court to revise PERMA Number 2, 2003, a Working Group was formed to examine the various weaknesses in PERMA and to prepare a draft PERMA resulting from the revisions, the result of which is PERMA Number 1, 2008 on mediation procedures. Mediation is a process that is carried out when two parties are present in the case only of the lawsuit because in the matter of the appeal can not be done, it is also under PERMA Number 1, 2016.

According to Perma, there are things in it that can and cannot be reached through the path of mediation. One of the things that can be reached through mediation is divorce. Mediation can be done before entering into the agenda of the trial that deals with the substance of the matter, but the mediation effort can be made in the middle of the trial, this may be done by the judge's assembly^[12].

If one of the parties is unwilling to follow the mediation process then the matter registered in the court can be decided NO by the judge's assembly. The first step in the mediation process is the appointment of a mediator who may be appointed by the court or by the parties to the dispute. A mediator is a neutral party that helps the parties in the negotiating process to find a variety of possible settlements of a dispute without using the means of terminating or forcing a settlement. This form relates to mediation information such as the obligation to carry out mediation in divorce cases, and the consequences arising if the mediation process is not carried out. After filling out the form, the parties will be directed to the mediation room.

The mediator will first explain the nature of the mediation, once the explanations are received by the parties, then the mediating process will be carried out by the mediator in the mediation room. The mediation process is mandatory within 30 days. If the mediation succeeds, the parties have the right to report before the trial to the judge's assembly so that the

case is withdrawn with a record that the parties will proceed to the household. However, even if the mediation has succeeded, the assemblies will still examine the authentic evidence submitted by the mediator as long as it is not contrary to the general validity and the rule of law.

Matters based on Perma are compulsory for mediation, but if a judge does not mediate then the judge will be sanctioned with unprofessional conduct so that a judgment ruled in a trial that did not carry out the mediation process in its entirety will be void by law. This is because mediation is formal, i.e. the legal stage of trial must be appropriate and followed fully by every law enforcement agency. Mediation does not fully resolve the divorce matter, because the mediation process could only reach an agreement between the parties. The mediator is expected to provide facilities in the middle of the road so that the parties find a solution to the divorce problem.

Mediation is a process of peace between husband and wife who have filed a divorce claim, where this mediation is bridged by a judge appointed in the Religious Court. This mediation process can be said to have been carried out in the religious court in 2007 under the Supreme Court Regulation No. 1 of 2007 (Perma Number 1, 2007).

Mediation is the process of settling a dispute through negotiation or agreement of the parties with the help of a mediator who does not have the authority to terminate or enforce a settlement. The main feature of the mediation process is negotiations whose essence is the same as the settlement or consensus process. Everything needs the consent of the parties.

The legal basis for the implementation of mediation in the courts is the Rules of the Indonesian Supreme Court Number 1, 2008 on the Mediation Procedure in the Courts, which is the result of the revision of the Regulations of the High Court Number 2, 2003. This PERMA still has many normative weaknesses that make Perma fail to reach the desired maximum target, as well as various inputs from the judges on the issue of PERMA.

Mediation is one of the instruments considered to be effective in dealing with the accumulation of cases in the courts as well as maximizing the function of the judiciary in the settlement of cases. Mediation is not just an arbitrary formality but is also expected to provide an opportunity for peace, and it is here that judges must play an active role in the pursuit of peace. However, there were many failures in its implementation. There is a gap between reality and hope, due to the presence of some obstacles that cause it.

Divorce claims settled through mediation are not all reconcilable or can sustain the marital relationship. It can be seen that there are 25 (twenty-five) things not mediated successfully, 20 things that succeeded partially, and only 8 (excess) things that succeeded with withdrawal or successfully. The Shariah Court Suka Makmue in the implementation of mediation in 2023 failed to carry out mediation with a total of 25 (twenty-five) cases out of the total of 53 (fifty-three) divorce cases litigated. External factors are the primary causes, in particular the influence of public opinion on the marriage of the parties.

When it comes to divorce claims, mediation is one of the important stages in which a dispute is expected to be resolved without having to go through lengthy court proceedings. The role of the mediator in the implementation of this mediation is crucial. A mediator is a neutral party that helps the parties in the negotiating process to find a

variety of possible settlements of a dispute without using the means of terminating or forcing a settlement. As has happened several times in the Sharia Court, Suka Makmue said that the parties do not want the mediation process, because the parties only want divorce while the rule requires that mediation should be carried out in divorce cases. Such events continued even though the judge at the Sharia Court Suka Makmue did not justify the parties' wishes. The essential attributes of the mediator are neutral, assisting the parties, and without using the means of interrupting or forcing a settlement.

Based on the above, it can be said that the role of the mediator is only to help the parties by not interrupting or imposing their views or judgments on issues during the mediation process on the parties. The result of an interview with Achmad Selaku Shariah Court Judge Suka Makmue said that there are five mediation properties among others as follows. That is Love, Secret, Effective, Easy Access, and Safe.

Based on the nature of mediation, it can be said that the role of the mediator fully follows the wishes of the parties without any element of coercion on the part of the mediator himself in terms of a peace agreement. The parties must be genuinely happy and willing for the decisions they communicate to the mediator. The secrecy of mediation is intended for all parties involved in the mediation process to keep the substantive confidentiality of both parties, the plaintiff/applicant and the defendant or appellant. If the issues of the parties submitted in the implementation of the mediation process are known to other parties than the parties in the mediation then will disclose the confidentiality of the process of mediation. Thus, a third-party mediator in the implementation of the mediation is expected to remain close to the issues of the parties before.

Conclusion

The implementation of mediation in divorce issues must adhere to the current legal regulations. Mediation is an essential step that must be undertaken during the divorce proceedings. The effectiveness of mediation can be determined by evaluating its level of success. There are three possible outcomes: Unsuccessful, moderately successful, and successful (with resolution). The mediator plays a crucial role in determining the effectiveness of mediation, as their actions and involvement directly impact the outcome of the process. If the process of mediation fails to achieve a resolution or proves to be unsuccessful, it might be concluded that the mediation conducted was ineffectual in resolving the divorce issue.

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