

Mediation in Settlement of Divorce Cases in Religious Courts

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Abstract

Divorce occurs if maximum peaceful efforts have been made, including mediation. Mediation is an effort to further increase the success of peaceful dispute resolution in court and increase community access to justice. This article is included as normative legal research with a statute approach. The legal basis for mediation is the Regulation of the *Peraturan Mahkamah Agung Republik Indonesia Nomor 1 Tahun 2016 tentang Prosedur Mediasi di Pengadilan* (Supreme Court of the Republic of Indonesia Number 1 of 2016 concerning Mediation Procedures in Court, hereinafter referred to as “*PERMA No. 1 Tahun 2016*”), whose position in the hierarchy of laws and regulations in Indonesia is recognized and has binding legal force. In this provision, the parties have the obligation to attend the mediation meeting in person in good faith. The plaintiff or parties are declared not to have good intentions in the mediation process, then the lawsuit is declared inadmissible. Mediators have a very important role in resolving divorce cases in religious courts to produce the best results for the parties.

Keywords:

Mediation; Divorce; Religious Courts.

Introduction

Law has objectives in the form of justice (*gerachtgkeit*), expediency (*zwegkmassigkeit*), and legal certainty (*rechtsicherheit*). Ideally, this should be considered in a balanced and professional manner between the three, although in practice this is difficult to achieve. In every decision that will be handed down, in order to end and resolve a case, it is necessary to pay attention to these 3 (three) essential things.¹

¹ Abdul Manan, *Penerapan Hukum Acara Perdata Di Lingkungan Peradilan Agama* (Jakarta: Kencana, 2012).

The *Mahkamah Agung Republik Indonesia* (Supreme Court of the Republic of Indonesia, hereinafter referred to as “*MARI*”) as the highest judicial authority and administrator of justice in Indonesia is starting to look for solutions to shorten the process of resolving disputes in court in order to realize the principles of justice that is simple, fast and low cost. This is as mandated by *Undang-Undang Republik Indonesia Nomor 48 Tahun 2009 tentang Kekuasaan Kehakiman* (Law of the Republic of Indonesia Number 48 of 2009 concerning Judicial Power).²

By continuing to provide results in accordance with legal objectives, one of the progressive ideas implemented is, among other things, optimizing mediation institutions to become an inseparable part of civil cases, especially divorce cases in religious courts. This is intended so that the parties in the case do not have to go through all the stages of the trial process as in civil procedural law, which has the impression that it takes a long time, but it is enough to only reach the pre-examination stage, if the parties succeed in reaching a peace agreement through mediation.³

According to Article 1 paragraph (1) of the *PERMA No. 1 Tahun 2016* it is stated that mediation is a way of resolving disputes through a negotiation process to obtain agreement between the parties with the assistance of a mediator. In general, mediation can be divided into 2 (two) parts, namely:⁴

- a. Mediation carried out in court (litigation). This was done because there was a civil lawsuit in court. Regulated in *PERMA No. 1 Tahun 2016* and is a form of peace based on Article 130 *Hetherziene Indonesische Reglement* or 154 *Rechtreglement Buiten Gewesten*.
- b. Mediation carried out outside court (non-litigation). Done without a case in court, the results of the agreement can be submitted to court to receive confirmation as

² One of the principles of administering judicial power is contained in Article 2 paragraph (4) of *Undang-Undang Republik Indonesia Nomor 48 Tahun 2009 tentang Kekuasaan Kehakiman* (Law of the Republic of Indonesia Number 48 of 2009 concerning Judicial Power), namely “*Peradilan dilakukan dengan sederhana, cepat, dan biaya ringan* (Judicial conduct is carried out simply, quickly and at low cost)”.

³ D.Y. Witanto, “Hukum Acara Mediasi: Dalam Perkara Perdata Di Lingkungan Peradilan Umum Dan Peradilan Agama Menurut PERMA Nomor 1 Tahun 2008 Tentang Prosedur Mediasi Di Pengadilan” (Bandung: Alfabeta, 2011), 24.

⁴ *Ibid.*, 18–19.

a deed of peace. Regulated in *Undang-Undang Republik Indonesia Nomor 30 Tahun 1999 tentang Arbitrase dan Alternatif Penyelesaian Sengketa* (Law of the Republic of Indonesia Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution).

Religious courts are actors of judicial power, because they are one part of the judicial body which is under the *MAR*'s. Religious courts have absolute authority in examining, deciding and resolving cases at the first instance between people who are muslim in the field of marriage.⁵

A marriage can break up, one of which is due to divorce.⁶ Divorce is a form of dispute in the field of marriage, which is the absolute authority of the religious courts. The forms of divorce are talak divorce and contest divorce. Divorce can only be carried out in front of a court hearing after the court concerned has tried and failed to reconcile the two parties, as regulated in Article 65 of *Undang-Undang Republik Indonesia Nomor 7 Tahun 1989 tentang Peradilan Agama* (Law of the Republic of Indonesia Number 7 of 1989 concerning Religious Courts) *jo* Article 39 of *Undang-Undang Republik Indonesia Nomor 1 Tahun 1974 tentang Perkawinan* (Law of the Republic of Indonesia Number 1 of 1974 about Marriage).

From the description above, it can be seen that divorce will occur if maximum peaceful efforts have been made, including mediation. Mediation is an effort to further increase the success of peaceful dispute resolution in court and increase

⁵ The absolute authority of religious courts is regulated in Article 46 of *Undang-Undang Undang-Undang Republik Indonesia Nomor 3 Tahun 2006 tentang Perubahan atas Undang-Undang Republik Indonesia Nomor 7 Tahun 1989 tentang Peradilan Agama* (Law of the Republic of Indonesia Number 3 of 2006 concerning Amendments to Law of the Republic of Indonesia Number 7 of 1989 concerning Religious Courts), namely "*Pengadilan agama bertugas dan berwenang memeriksa, memutus, dan menyelesaikan perkara di tingkat pertama antara orang-orang yang beragama Islam di bidang: (a) perkawinan; (b) waris; (c) wasiat; (d) hibah; (e) wakaf; (f) zakat; (g) infaq; (h) shadaqah; dan (i) ekonomi syari'ah* (Religious courts have the duty and authority to examine, decide and resolve cases at the first level between people who are Muslim in the areas of: (a) marriage; (b) inheritance; (c) will; (d) grants; (e) waqf; (f) zakat; (g) infaq; (h) sadaqah; and (i) sharia economics)".

⁶ It is regulated in Article 38 of *Undang-Undang Republik Indonesia Nomor 1 Tahun 1974 tentang Perkawinan* (Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage) which explains that "*Perkawinan dapat putus karena: (a) kematian; (b) perceraian; dan (c) atas keputusan pengadilan* (A marriage can be dissolved due to: (a) death; (b) divorce; and (c) upon court decision)".

community access to justice. Mediation is carried out to resolve disputes in a win-win solution, which is a form of the purpose for which the law was created, which ultimately leads to a peaceful dispute resolution process. It is interesting to discuss mediation in resolving divorce cases in religious courts.

The results of the background identification above are formulated in 2 (two) problem formulations. First, the position of mediation in resolving divorce cases in religious courts. Second, the role of the mediator in resolving divorce cases in religious courts.

Relevant Previous Studies

First, Mardalena Hanifah's research entitled "Kajian Yuridis: Mediasi sebagai Alternatif Penyelesaian Sengketa Perdata di Pengadilan". According to this research, mediation in court is considered a faster and relatively cheaper dispute resolution process, thus providing a positive contribution in fulfilling a sense of justice and providing satisfactory results for the parties to the dispute, because the integration of the mediation system prioritizes a consensus approach in reconciling the interests of the parties to the dispute.⁷

Second, Tomy Saladin's research entitled "Penerapan Mediasi dalam Penyelesaian Perkara di Pengadilan Agama". According to this research, every civil case examination in court must seek peace and mediation itself is an extension of peace efforts to bridge the parties in resolving deadlocked problems in order to reach or obtain the best solution for them.⁸

Third, Ivana Gloria Ompusunggu's research entitled "Mediasi dalam Penyelesaian Perkara Perdata di Pengadilan". According to this research, *PERMA No. 1 Tahun 2016* has binding force and coercive power for parties litigating in court as well as mediators as neutral parties who assist parties in the negotiation process

⁷ Mardalena Hanifah, "Kajian Yuridis: Mediasi Sebagai Alternatif Penyelesaian Sengketa Perdata Di Pengadilan," *Jurnal Hukum Acara Perdata ADHAPER* 2, no. 1 (2016): 1–13.

⁸ Saladin Tomy, "Penerapan Mediasi Dalam Penyelesaian Perkara Di Pengadilan Agama," *Mahkamah: Jurnal Kajian Hukum Islam* 2, no. 2 (2017): 146–161.

to find various possibilities for resolving disputes.⁹

Some of the research mentioned above has similarities with this research, as far as mediation practices in court are concerned. However, the difference is that some of these studies only discuss something more general in nature, namely mediation as an alternative for resolving disputes in courts or religious courts, while this research more specifically discusses mediation in resolving divorce cases in religious courts. This research is new and different from previous studies, because it is a follow-up to previous studies.

Method

This research is normative legal research related to the disclosure of truth in an ipso jure manner, namely truth according to the necessity of a rule or teaching.¹⁰ This normative legal research uses a statutory approach, namely examining a statutory regulation and regulations related to the legal issue being formulated.¹¹ The sources in this research use primary legal materials in the form of related and relevant laws and regulations. Supported by secondary legal materials in the form of books, journal articles, other publications.

The work steps in normative legal research include: (1) identifying legal facts, eliminating irrelevant matters, and determining legal issues; (2) collection of legal materials; (3) reviewing the legal issues determined; (4) draw conclusions that answer legal issues; and (5) provide prescriptions.¹²

The Position of Mediation in Settlement of Divorce Cases in Religious Courts

Mediation is an alternative dispute resolution that is used as an option and is one of the stages in the process of resolving disputes through court (litigation). Mediation in

⁹ Ivana Gloria Ompusunggu, "Mediasi Dalam Penyelesaian Perkara Perdata Di Pengadilan," *Lex Crimen* IX, no. 2 (2020): 70–77.

¹⁰ Soetandyo Wignjosoebroto, *Hukum: Konsep Dan Metode* (Malang: Setara Press, 2013).

¹¹ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Prenadamedia Group, 2013).

¹² Moch Choirul Rizal, Fatimatuz Zahro', and Rizki Dermawan, "Metode Penelitian Hukum Normatif," in *Ragam Metode Penelitian Hukum*, ed. Moch Choirul Rizal (Kediri: Lembaga Studi Hukum Pidana, Excellent 12: Solidaritas untuk Penelitian Hukum, dan Pusat Studi Hukum dan Hak Asasi Manusia Fakultas Syariah IAIN Kediri, 2022), 34–38.

court is a form of strengthening peaceful efforts as mandated by civil procedural law based on Article 130 HIR or Article 154 RBg.

Mediation is promulgated through *PERMA No. 1 Tahun 2016*, among other things, to overcome the problem of backlog of cases in the judiciary. On the other hand, mediation is carried out because it is seen as a quicker and cheaper way of resolving disputes and is expected to expand the parties' access to a sense of justice. Therefore, the institutionalization of mediation into the justice system can strengthen and maximize the function of judicial institutions in resolving disputes.¹³

Position *PERMA No. 1 Tahun 2016* in the hierarchy of statutory regulations in Indonesia, is one type of statutory regulation whose existence is recognized. Apart from that, it also has binding legal force as long as it is ordered by higher laws and regulations or is formed based on authority.¹⁴

Before 2016, the *MAR*'s had issued regulations regarding mediation, namely *PERMA No. 2 Tahun 2003* and *PERMA No. 1 Tahun 2008* which regulates

¹³ Mochammad Agus Rachmatulloh, "Mediasi Dan Lembaga Peradilan," *Opini Hukum dan Hak Asasi Manusia* 1 (2021): 11–16.

¹⁴ Look, Article 7 paragraph (1) of *Undang-Undang Republik Indonesia Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-undangan* (Law of the Republic of Indonesia Number 12 of 2011 concerning the Formation of Legislative Regulations) determines the types and hierarchy of statutory regulations consisting of: *Undang-Undang Dasar Negara Republik Indonesia Tahun 1945* (The 1945 Constitution of the Republic of Indonesia), *Ketetapan Majelis Permusyawaratan Rakyat* (Decree of the People's Consultative Assembly), *Undang-Undang/Peraturan Pemerintah Pengganti Undang-Undang* (Law/Government Regulations in Lieu of Laws), *Peraturan Pemerintah* (Government Regulations), *Peraturan Presiden* (Presidential Regulations), *Peraturan Daerah Provinsi* (Provincial Regional Regulations), and *Peraturan Daerah Kabupaten/Kota* (Regency/City Regional Regulations). In paragraph (2) it is explained that the legal force of statutory regulations is in accordance with the hierarchy as intended in paragraph (1). Furthermore, Article 8 confirms: types of statutory regulations other than those referred to in Article 7 paragraph (1) include regulations stipulated by: Majelis Permusyawaratan Rakyat (the People's Consultative Assembly), *Dewan Perwakilan Rakyat* (the People's Representative Council), *Dewan Perwakilan Daerah* (the Regional Representative Council), *Mahkamah Agung* (the Supreme Court), *Mahkamah Konstitusi* (the Constitutional Court), *Badan Pemeriksa Keuangan* (the Supreme Audit Agency), *Komisi Yudisial* (the Judicial Commission), Bank Indonesia, *Kementerian* (Minister), agency, institution or commission of the same level established by *Undang-Undang* (Law) or the Government by order of *Undang-Undang* (Law), *Dewan Perwakilan Rakyat Daerah Provinsi* (Provincial Regional People's Representative Council), *Gubernur* (Governor), *Dewan Perwakilan Rakyat Daerah Kabupaten/Kota* (Regency/City Regional People's Representative Council), *Bupati/Walikota* (Regent/Mayor), *Kepala Desa atau yang setingkat* (Village Head or equivalent). These statutory regulations are recognized for their existence and have binding legal force as long as they are ordered by higher statutory regulations or are formed based on authority.

mediation procedures in court. The *MARI's* realized that these regulations had obstacles in their implementation, such as there being no obligation for the parties to attend the mediation meeting in person, so it could be said that it was not successful as expected, because the parties did not have the good faith to attend the mediation process. Then, these regulations were considered not optimal to fulfill the implementation of mediation more effectively and able to increase the success of mediation in court.

In 2016, the *MARI's* issued regulations regarding mediation, namely *PERMA No. 1 Tahun 2016*. As technical guidance for this policy, the Supreme Court supplemented it with the *Keputusan Ketua Mahkamah Agung Republik Indonesia Nomor 108/KMA/SK/VI/2016 tentang Tata Kelola Mediasi di Pengadilan* (Decree of the Chairman of the Supreme Court of the Republic of Indonesia Number 108/KMA/SK/VI/2016 concerning Governance of Mediation in Courts). Then, it is also complemented by *Peraturan Mahkamah Agung Nomor 3 Tahun 2022 tentang Mediasi di Pengadilan Secara Elektronik* (Supreme Court Regulation Number 3 of 2022 concerning Electronic Mediation in Court).

Several considerations were the background to the birth of *PERMA No. 1 Tahun 2016*, among other things, are: (1) mediation is a method of peaceful dispute resolution that is appropriate, effective, and can open wider access for the parties to obtain a satisfactory and fair resolution; (2) in the context of reforming the Supreme Court's bureaucracy which is oriented towards the vision of realizing a great Indonesian judicial body, one of the supporting elements is mediation as an instrument to increase public access to justice as well as implementing the principles of simple, fast and low-cost justice administration; (3) the provisions of the applicable civil procedural law, Article 154 RBg and Article 130 HIR encourage the parties to pursue a peace process that can be utilized through mediation by integrating it into court procedures; and (4) mediation procedures in court being part of civil procedural law can strengthen and optimize the function of judicial institutions in resolving disputes.¹⁵

¹⁵ Look, the preamble "Menimbang..." from *PERMA No. 1 Tahun 2016*.

Mediation as a method of peaceful dispute resolution has a great opportunity to develop in Indonesia. With eastern customs still deep-rooted, Indonesian people prioritize maintaining friendly relations between families or relationships with business partners rather than immediate gain if a dispute arises.¹⁶ Mediation is considered capable of peacefully resolving disputes that are appropriate, effective, and can open wider access for the parties to obtain a satisfactory and fair resolution, including in divorce cases and those that accompany them, such as maintenance, *hadhanah*, and joint assets.

Integrating mediation into the court process for civil cases can strengthen and maximize the function of judicial institutions in resolving disputes and is in accordance with the main task of the court which is adjudicative. Article 130 HIR or 154 RBg states that before a case is examined by a panel of judges, peace is first sought between the parties by the panel of judges.¹⁷ According to Article 2 paragraph (1) and Article 3 paragraph (1) *PERMA No. 1 Tahun 2016*, the provisions regarding mediation procedures apply in court proceedings, both in the general court and religious court environments, with the provisions that every judge, mediator, parties and/or legal representatives are obliged to follow the dispute resolution procedure through mediation.

In Article 4 paragraph (1) *PERMA No. 1 Tahun 2016* states that “*Semua sengketa perdata yang diajukan ke Pengadilan termasuk perkara perlawanan (verzet) atas putusan verstek dan perlawanan pihak berperkara (partij verzet) maupun pihak ketiga (derden verzet) terhadap pelaksanaan putusan yang telah berkekuatan hukum tetap, wajib terlebih dahulu diupayakan penyelesaian melalui mediasi, kecuali ditentukan lain berdasarkan Peraturan Mahkamah Agung ini (All civil disputes submitted to the Court, including cases of resistance (verzet) to the verstek decision and resistance of the litigants (partij verzet) or third parties (derden verzet) to the implementation of decisions that have permanent legal force, must first seek resolution through mediation, unless otherwise specified. otherwise based on this Supreme Court Regulation)*”. This shows that the stages and process of

¹⁶ Ivana Gloria Ompusunggu, “Mediasi Dalam Penyelesaian Perkara Perdata Di Pengadilan,” *Lex Crimen* IX, no. 2 (2020): 72.

¹⁷ Nugroho, “Manfaat Mediasi Sebagai Alternatif Penyelesaian Sengketa.”

mediation in religious courts must be carried out in divorce cases, because this is also based on *PERMA No. 1 Tahun 2016* which is a manifestation of the peace efforts mandated by Article 130 HIR or Article 154 RBg, except if the divorce case is examined without the presence of the plaintiff or defendant who has been properly summoned.¹⁸

The nature of the mediation process according to Article 5 paragraph (1) *PERMA No. 1 Tahun 2016* is basically closed, unless the parties wish otherwise. This is in accordance with the procedural law of religious courts where there are exceptions regarding the process of examining divorce cases being closed.¹⁹

The obligation to attend for the parties is regulated in Article 6 paragraph (1) *PERMA No. 1 Tahun 2016* which states that parties are required to attend the mediation meeting in person with or without being accompanied by a legal representative. To strengthen this article, Article 7 paragraph (1) emphasizes that the parties and/or their legal representatives are obliged to undertake mediation in good faith. Furthermore, paragraph (2) states that one of the parties or parties and/or their legal representatives can be declared not in good faith by the mediator if the person concerned:

- a. Failure to appear after being properly summoned 2 (two) times in a row at a mediation meeting without a valid reason;
- b. Attended the first mediation meeting, but never attended the next meeting even though he had been properly summoned 2 (two) times in a row without valid

¹⁸ This is one of the disputes that is exempt from obligations through mediation. Look, Article 4 paragraph (2) *PERMA No. 1 Tahun 2016*, "*Sengketa yang dikecualikan dari kewajiban penyelesaian melalui Mediasi sebagaimana dimaksud pada Ayat (1) meliputi: ...*" huruf b "*Sengketa yang pemeriksaannya dilakukan tanpa hadirnya penggugat atau tergugat yang telah dipanggil secara patut* (Disputes that are excluded from the obligation to resolve through mediation as intended in Paragraph (1) include: ..." letter b "Disputes where the examination is carried out without the presence of the plaintiff or defendant who has been duly summoned").

¹⁹ Look, Article 68 paragraph (2) *Undang-Undang Republik Indonesia Nomor 7 Tahun 1989 tentang Peradilan Agama* (Law of the Republic of Indonesia Number 7 of 1989 concerning Religious Courts), "*Pemeriksaan permohonan cerai talak dilakukan dalam sidang tertutup* (Examination of applications for divorce and divorce is carried out in a closed session)" *jo* Article 80 paragraph (2), "*Pemeriksaan gugatan perceraian dilakukan dalam sidang tertutup* (Examination of divorce lawsuits is carried out in closed sessions)". Look also, Mochammad Agus Rachmatulloh and Moch Choirul Rizal, *Diktat Peradilan Agama Di Indonesia* (Kediri: Fakultas Syariah IAIN Kediri, 2021), 2–5.

reason;

- c. Repeated absences that disrupt scheduled mediation meetings without valid reasons;
- d. Attending mediation meetings, but not submitting and/or not responding to the other party's case resume; and/or
- e. Not signing the draft peace agreement that has been agreed upon without a valid reason.

The legal consequences for parties who do not have good intentions, namely for plaintiffs, are regulated in Article 22 *PERMA No. 1 Tahun 2016* as follows:

- a. If the plaintiff is declared not to have good faith in the mediation process as intended in Article 7 paragraph (2), the lawsuit is declared inadmissible by the case examining judge;
- b. Plaintiffs who are declared not to have good intentions as intended in paragraph (1) are also subject to the obligation to pay mediation fees;
- c. The mediator submits a report that the plaintiff is not acting in good faith to the judge examining the case, accompanied by a recommendation for charging mediation fees and calculating the amount in the report on the failure or inability to carry out mediation;
- d. Based on the mediator's report as intended in paragraph (3), the case examining judge issues a decision which is the final decision stating that the lawsuit cannot be accepted accompanied by a penalty for payment of mediation fees and case costs; and
- e. Mediation costs as punishment for the plaintiff can be taken from the down payment of case fees or a separate payment by the plaintiff and handed over to the defendant through the court clerk's office.

For defendants and if the parties (plaintiff and defendant) do not act in good faith, it is regulated in Article 23 *PERMA No. 1 Tahun 2016* as follows:

- a. Defendants who are declared not to have good intentions as intended in Article 7 paragraph (2) are subject to the obligation to pay mediation fees;
- b. The mediator submits a report of the defendant's failure to act in good faith to the judge examining the case, accompanied by a recommendation for charging

mediation fees and calculating the amount in the report on the failure or inability to carry out the mediation;

- c. Based on the mediator's report as intended in paragraph (2), before continuing the examination, the judge examining the case in the next determined trial is obliged to issue a decision stating that the defendant is not acting in good faith and punishing the defendant to pay mediation costs;
- d. Mediation costs as referred to in paragraph (3) are part of the case costs which must be stated in the final decision;
- e. In the event that the defendant as referred to in paragraph (1) wins the decision, the decision states that the mediation costs are borne by the defendant, while the court costs are still borne by the plaintiff as the losing party;
- f. In divorce cases in the religious court environment, the defendant as referred to in paragraph (1) is sentenced to pay mediation costs, while the court costs are borne by the plaintiff;
- g. Payment of mediation costs by the defendant which will be handed over to the plaintiff through the court clerk's office following the implementation of the decision which has permanent legal force; And
- h. In the event that the parties are jointly declared not to have acted in good faith by the mediator, the lawsuit is declared inadmissible by the judge examining the case without a penalty for mediation costs.

If mediation reaches an agreement, then according to Article 27 *PERMA No. 1 Tahun 2016* the following things can be done:

- a. If the mediation is successful in reaching an agreement, the parties with the help of the mediator are obliged to formulate a written agreement in a peace agreement signed by the parties and the mediator;
- b. In helping to formulate a peace agreement, the mediator is obliged to ensure that the peace agreement does not contain any provisions:
 1. contrary to law, public order and/or morality;
 2. harm third parties; or
 3. cannot be implemented;
- c. In the mediation process represented by a lawyer, the signing of a peace

agreement can only be carried out if there is a written statement from the parties containing approval of the agreement reached;

- d. The parties, through a mediator, can submit a peace agreement to the judge examining the case to be confirmed in the peace deed;
- e. If the parties do not want the peace agreement to be confirmed in the peace deed, the peace agreement must contain the withdrawal of the lawsuit;
- f. The mediator is obliged to report in writing the success of the mediation to the judge examining the case by attaching a peace agreement.

Furthermore, in Article 28 *PERMA No. 1 Tahun 2016* states:

- a. After receiving the peace agreement as intended in Article 27 paragraph (6), the case examining judge immediately studies and examines it within a maximum period of 2 (two) days;
- b. In the event that the peace agreement requested to be confirmed in the peace deed does not meet the provisions as intended in Article 27 paragraph (2), the judge examining the case is obliged to return the peace agreement to the mediator and the parties accompanied by instructions regarding matters that must be corrected;
- c. After holding a meeting with the parties, the mediator is obliged to submit the revised peace agreement again to the case examining judge no later than 7 (seven) days from the date of receipt of the revised instructions as intended in paragraph (2);
- d. No later than 3 (three) days after receiving a peace agreement that meets the provisions as intended in Article 27 paragraph (2), the case examining judge shall issue a determination of the trial date to read out the peace deed; And
- e. A peace agreement that is confirmed by a peace deed is subject to the provisions on disclosure of information in court.

Apart from reaching a complete agreement, in *PERMA No. 1 Tahun 2016* also contains the term partial peace agreement. Specifically for divorce cases in the religious court environment, this is regulated in Article 31:

- a. For mediation of divorce cases in a religious court environment where divorce demands are cumulated with other demands, if the parties do not reach an

- agreement to live in harmony again, the mediation continues with other demands;
- b. In the event that the parties reach an agreement on other demands as intended in paragraph (1), the agreement is stated in a partial peace agreement by including a clause relating to the divorce case;
 - c. A partial peace agreement for other claims as intended in paragraph (2) can only be implemented if the decision of the case examining judge granting the divorce claim has permanent legal force;
 - d. The partial settlement agreement for other claims as intended in paragraph (2) does not apply if the case examining judge rejects the claim or the parties are willing to reconcile during the case examination process.

If mediation is unsuccessful or cannot be carried out, the mediator is obliged to declare that it was not successful or cannot be carried out and notify this in writing to the judge examining the case as regulated in Article 32 of *PERMA No. 1 Tahun 2016*.

The Role of the Mediator in Settlement of Divorce Cases in Religious Courts

Mediators have a very important role in resolving divorce cases in religious courts. What is meant by mediator in *PERMA No. 1 Tahun 2016* is a judge or other party who has a mediator certificate as a neutral party who assists the parties in the negotiation process to seek various possible dispute resolutions without resorting to deciding or forcing a settlement.²⁰

The word “neutral” is always associated with the capacity and position of a mediator between the interests of the parties, so how do you actually determine the mediator's neutrality in the mediation process? Neutral simply means that a mediator has no relationship or interest with the parties. However, it is also not absolute, because if in one case it turns out that the parties agree to choose a mediator who still has a family relationship with one of the parties or the choice of mediator in court is only limited to those who have a family relationship, it is still permissible.

²⁰ Look, Article 1 paragraph (2) *PERMA No. 1 Tahun 2016*. What is meant by a mediator certificate is a document issued by the *MAR*'s or an institution that has obtained accreditation from the *MAR*'s stating that a person has attended and passed mediation certification training. See, Article 1 paragraph (3) *PERMA No. 1 Tahun 2016*.

This results in the definition of neutral actually being more about the function and role of the mediator in the mediation process, namely focusing more on the implementation process in a balanced manner or not taking sides with one of the parties and not solely because of his personal position with family or kinship relations. Thus, the mediator is a third party whose position is neutral apart from those involved in the dispute and enters into the parties' problems in order to facilitate reaching a peace agreement.

To become a mediator, a person must have good skills so that the mediation process can run smoothly and according to the procedures that have been set and produce a win-win solution for the parties. In *PERMA No. 1 Tahun 2016* states that every mediator is required to have a mediator certificate which is obtained after participating in and being declared to have passed mediator certification training held by the *MAR*'s or an institution that has obtained accreditation from the *MAR*'s. In addition, based on the decision of the head of the court, non-certified judges can carry out the function as mediators in the event that there are no or limited numbers of certified mediators.²¹

In carrying out their duties and functions, mediators are obliged to comply with the mediator code of conduct established by the *MAR*'s. In addition, it is not permitted for a mediator to double as a judge who examines and adjudicates the mediated case.

In Article 17 paragraph (6), paragraph (7), and paragraph (8) *MAR*'s states that before the mediator carries out his role, on the appointed hearing day and attended by the parties, the judge examining the case is obliged to provide an explanation of the mediation procedure to the parties, including: (a) the benefits of mediation; (b) the obligation of the parties to attend the mediation meeting in person along with the legal consequences for behavior not in good faith in the mediation process; (c) costs that may arise from the use of non-judicial mediators and non-court employees; (d) the choice of following up the peace agreement through a

²¹ Look, Article 13 paragraph (1) and paragraph (2) *PERMA No. 1 Tahun 2016*. Regarding further provisions regarding the requirements and procedures for mediator certification and granting accreditation to mediator certification institutions, these are determined by the Decree of the Chief Justice of the Supreme Court. Look Article 13 paragraph (3) *PERMA No. 1 Tahun 2016*.

peace deed or withdrawal of the lawsuit; and (e) the obligation of the parties to sign the mediation explanation form. Specifically, the explanation form contains a statement that the parties have: (a) received a complete explanation of the mediation procedures; (b) understand the mediation procedure well; and (c) willing to undertake mediation in good faith.

The role of the mediator is reflected in its function in carrying out the duties contained in Article 14 *PERMA No. 1 Tahun 2016*, namely:

- a. Introduce yourself and give the parties the opportunity to introduce themselves to each other;
- b. Explain the purpose, objectives and nature of mediation to the parties;
- c. Explain the position and role of a mediator who is neutral and does not make decisions;
- d. Make rules for implementing mediation with the parties;
- e. Explain that the mediator can hold meetings with one party without the presence of the other party (caucus);
- f. Arrange a mediation schedule with the parties;
- g. Fill out the mediation schedule form;
- h. Provide opportunities for parties to convey problems and peace proposals;
- i. Inventory problems and schedule discussions based on a priority scale;
- j. Facilitate and encourage parties to:
 1. Tracing and exploring the interests of the parties;
 2. Looking for various settlement options that are best for the parties; and
 3. Work together to reach a solution;
- k. Assist the parties in creating and formulating a peace agreement;
- l. Submit a report on the success, failure and/or inability to carry out mediation to the case examining judge;
- m. Declare that one or the parties are not acting in good faith and convey this to the judge examining the case; and
- n. Other duties in carrying out its functions.

The time period for the mediation process is regulated in Article 24 paragraph (2), paragraph (3), and paragraph (4) *PERMA No. 1 Tahun 2016* which states that

the mediation process mentioned above lasts a maximum of 30 (thirty) days from the stipulation of the order to conduct mediation. However, based on the request and agreement of the parties, the period can be extended by a maximum of 30 (thirty) days from the end of the first period.

The existence of mediators in carrying out their duties is also regulated in Article 35 paragraph (4), paragraph (5) and paragraph (6) *PERMA No. 1 Tahun 2016*. If during the mediation process there are notes from the mediator, then when the mediation process has ended these notes must be destroyed. Apart from that, the mediator cannot be a witness in the trial process of the case in question. The mediator cannot also be subject to criminal or civil liability for the contents of the peace agreement resulting from the mediation.

Conclusion

Mediation is an alternative dispute resolution that is used as an option and is a stage in the process of resolving disputes through court (litigation). The role of mediation in resolving divorce cases in religious courts is a form of strengthening peaceful efforts as mandated in civil procedural law based on Article 130 HIR or Article 154 RBg. The main legal basis for mediation in religious courts is *PERMA No. 1 Tahun 2016*. Position of *PERMA No. 1 Tahun 2016* in the hierarchy of laws and regulations in Indonesia its existence is recognized and has binding legal force. The parties have the obligation to attend in person in good faith the mediation meeting with or without being accompanied by a legal representative. The plaintiff or the parties together are declared to have not acted in good faith during the mediation process, so the lawsuit is declared inadmissible by the judge examining the case.

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 to find various possible dispute resolutions without resorting to deciding or forcing a resolution. Neutral is meant to focus on an implementation process that is balanced or does not take sides with either party in order to facilitate reaching a peace agreement. Mediators have a very important role in resolving divorce cases in religious courts. To become a mediator, a person must have good skills so that the mediation

process can run smoothly and according to procedures and produce a win-win solution for the parties.

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