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The Nature of Divorce Mediation in the Legal Area of the High Religious Court of South Sulawesi

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ABSTRACT
The purpose of this study is to find out and analyze the nature of mediation for divorce cases in the legal area of the High Religious Court of South Sulawesi and to find out the effectiveness of mediation in divorce cases in the legal area of the high religious court of South Sulawesi and to explore the factors that support and hinder the success of mediation in cases divorce in the Legal Territory of the South Sulawesi Religious High Court. The method used by researchers here is that research generally can be classified into two types: empirical sociological research (field) and research conducted with an approach to legal reality in society. and normative research, namely research conducted with an approach to legal norms or substance, legal principles, legal theory, legal postulates, and comparative law. In this study, the authors combined the two studies; in this type of research, the researcher conducted research by combining the two types of research mentioned above in a study. (Syahruddin[1]Nawi, 2013). The nature of mediation for divorce cases in the legal area of the South Sulawesi Religious High Court is an effort made using a scientific approach in seeking a truth regarding the upholding of norms based on Supreme Court Regulation (PERMA) No. 1 of 2008, which has been revised and replaced by PERMA No. 1 of 2016 concerning mediation procedures in the Court to create peace and tranquility, the Effectiveness of Divorce Mediation in the South Sulawesi Religious Court is Not Yet Effective. And the factors that influence the effectiveness of divorce mediation in the legal area of the South Sulawesi Religious High Court are legal factors that are good enough, legal structure factors that need empowerment, and community cultural factors that are not yet supportive. The Religious Courts should provide tests and training in the ability to provide mediation so that the mediator judge can develop appropriate strategies so that the parties discourage their intention to divorce. For divorce cases where both parties both want a divorce, after being mediated, the judge will be better to continue the trial process without having to go through a mediation process for this to materialize faster and cheaper dispute resolution (PERMA considerations).

Keywords: Mediation of Divorce Cases, Court Law

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I. INTRODUCTION

As a method of peaceful dispute resolution, mediation has a great opportunity to develop in Indonesia. With eastern customs still rooted, the community prioritizes maintaining friendly relations between families or relationships with business partners rather than instantaneous gains in the event of a dispute. Resolving disputes in Court may pay off handsomely if you win, but relationships can also be damaged. Saving one's face or good name is an important thing that is sometimes more important in the process of resolving disputes in Eastern countries, including Indonesia. Mediation is an alternative dispute resolution or commonly known as "alternative dispute resolution" which grew for the first time in the United States. This mediation was born against the background of the slow process of resolving disputes in court. Therefore, this mediation emerged as a response to the growing dissatisfaction with the justice system, which boils down to time, cost, and ability to handle complex cases. Even though in the archipelago, dispute resolution through deliberation has long been practiced. The special term in court is called mediation. Mediation is tough to understand. The dimensions are very plural and unlimited. So many people say that mediation is not easy to define. "Mediation is not easy to definite". (Boulle[2], 1996:3). This is because mediation does not provide a model that can be described in detail

[1]Syahruddin, Nawi.Normative Legal Research Versus Empirical Legal Research. Makassar: PT. UmitohaUkhuwah Graphic, 2018
[2]Boulle, Laurence.Mediation: Principle, Process, Pratice. Sydney: Butterworths, 1996.

and differentiated from other decision-making processes. Mediation is very dependent on the play played by the parties involved in solving the problem. The parties involved are the mediator party and the parties involved in the dispute. In Supreme Court Regulation No. 1 of 2008, the meaning of mediation is stated in Article 1 point 6, namely: "Mediation is the settlement of disputes through a process of negotiation between the parties assisted by a mediator". Here the word mediator is mentioned, which must look for "various possibilities for dispute resolution" that are accepted by the parties. The definition of a mediator, mentioned in Article 1 point 5, namely: "A mediator is a party that is neutral and impartial, whose function is to assist the parties in seeking various possibilities for dispute resolution". The parties will make their own decisions on the basis of negotiations with the opposing party. Mediation in the Religious Courts is a process of conciliation between a husband and wife who have filed for divorce, where this mediation is mediated by a Judge appointed at the Religious Courts. In cases of divorce, mediation is highly recommended. In fact, the only dispute in Islam which is called direct resolution, is prioritized through mediation. Allah SWT Says in Surah an – Nisaa/4: 35:

لَّهَكَانَعَلِيمًاخَبِيرًااقَبَيْنِهِمَافَابْعَثُواحَكَمًامِنْأَهْلِهِوَحَكَمًامِنْأَهْلِهَاإِنْيُرِيدَاإِصْلَاحًايُوَفِّقِاللَّهُبَيْنَهُمَاۗ إِنَّاللَوَإِنْخِفْتُمْشِقَ

The translation: *And if you are worried that there will be a dispute between the two, then send a judge from the male family and a judge from the female family. If the two hakam people intend to improve, surely Allah will give taufik to the husband and wife. Verily, Allah is all-knowing, all-knowing.*

One of the reasons for the possibility of divorce is syiqaq (the occurrence of protracted disputes or disputes between husband and wife). But long before in the Qur'an as mentioned in His word above, Allah SWT, has ordered that if it is feared that there is a dispute between the two (husband and wife), then send a judge (mediator) from the male family and a mediator from the male family. Woman. From this verse, it can be understood that one way to resolve disputes or disputes between husband and wife is by sending a judge "Mediator:" from both parties to help resolve the dispute. The mediator is appointed by the parties (directly or through a mediation institution) and is obliged to carry out their duties and functions based on the wishes and wishes of the parties. Even so, there is a general pattern that can be followed in general by mediators in the context of resolving disputes between the parties. As a party outside the case, who does not have coercive authority, the mediator is obliged to meet or bring together the disputing parties to seek input regarding the subject matter disputed by the parties. Based on the information obtained, only then can the mediator determine the case, the advantages and disadvantages of each disputing party, and then try to compile a settlement proposal, and then communicate it directly to the parties. To handle civil cases that go to court, Supreme Court Regulation (PERMA) No. 2 of 2003, has been revised and replaced by PERMA No. 1 of 2008 concerning mediation procedures in court. This PERMA is intended to provide greater access to the parties to find a satisfactory amicable settlement and fulfill a sense of justice. The fundamental question of this phenomenon is; Can a settlement of marital disputes (divorce) be carried out outside the court? Whereas the divorce process must be carried out in the Religious Court (Law Number 3 of 2006, Article 49), and if there is one, in what concept is the settlement of disputes outside the court carried out? In Article 76, paragraph (1) and (2) Law Number 7 of 1989 in conjunction with Law Number 3 of 2006) which reads:If the lawsuit for divorce is based on shiqaq reasons, then to get a divorce decision, the testimony of witnesses from the family or people close to the husband and wife must be heard. Whereas in paragraph (2) convicts the court after hearing witness statements regarding the nature of the dispute between husband and wife, it can appoint one or more members from the families of each party or other people to become judges.

However, in practice in the field, the mediation that was carried out in the legal area of the South Sulawesi High Court, namely Bone, Watansoppeng, Sinjai, Pinrang, and Makassar City, was that the Religious Court appointed one Mediator to bridge two conflicting people (husband and wife). One person is not enough to help someone in dispute but can refer to the concept of the letter AnNisa' 4: 35. Such mediation models are unfair because they are not objective for the following reasons. First, it is not objective because there is only one person, and there could be a tendency on one side of the conflicting people. Second, if those who tend to want to separate, while the others don't, then this is injustice, and even this can be said not from the Alternative Dispute Resolution (ADR). Because seeing the concept of hakam is not like that and presenting two representatives from the family. In this study, the authors made the Religious Courts in South Sulawesi as research subjects because the Religious Courts in South Sulawesi are located in big cities where the divorce rate continues to increase every year so that with this research it can be seen to what extent the roles and functions of mediation institutions in the Religious Courts in South Sulawesi plays an active role in reducing the number of divorces. In general, mediation can be applied by all judicial institutions, both at the first level, at the appellate and cassation levels, and Judicial Review (PK) is not limited to the Religious Courts. However, in practice, problems usually arise, both caused by the defendant and the plaintiff, as well as other obstacles from the court. Thus, the researcher hopes this dissertation can be additional scientific literature in civil law issues and enrich Islamic treasures.

II. RESEARCH METHOD

Research Type

Normative and Empirical Research, normative research, namely research conducted with an approach to legal norms or substances, legal principles, legal theory, legal arguments, and comparative law and sociological (field) empirical research, namely research with an approach to legal reality in society. This research is based on the presence of symptoms in the form of a gap between expectations (das solen) and reality (das sein) in the field of law.

Population and Sample

The population is the whole or set of research objects with the same characteristics. The population can be a collection of people, objects (living or dead), symptoms, behavior, statutory articles, legal cases, time or place, teaching tools, methods and so on, with the same characteristics and characteristics. The sample of this research is 50 people among 10 judges/mediators. For the sample of Justice Seekers, 20 people were taken from the public (10 plaintiffs and 10 defendants), 10 clerks and 10 advocates. Sampling was carried out by purposive sampling in the legal area of the South Sulawesi Religious High Court.

Data source

1. Data Primer
   Primary data sources are a number of respondents who are called research informants. This informant is taken in a certain way from the parties who, because of their position or ability, are considered to be able to present the problem that is used as the object of research. The techniques used to determine informants include:
   a) Purposive Sampling Technique is a way of determining the number of informants before the research is carried out by clearly stating who the informant is and what information is desired from each informant.
   b) The Snow Ball Technique is a way of determining informants from one informant to another, which is carried out when the research is carried out until a number of informants are reached who are considered to have represented the various information needed.
2. Data Seconds
   The second data source used by researchers is secondary data, namely data obtained not directly from the object of research, but through a second person either in the form of an informant or through relevant literature, namely literature, theory, books, documents, internet, print media, and legislation.

Data Collection Techniques

Data collection is the recording of events or things and descriptions or characteristics of some or all elements of the population that will support or support research. In order to obtain the data as expected, the data collection process is the researcher will collect data in two ways, namely:

1. Library Research Method (Library). This method is a research conducted to collect some data by reading and exploring the literature related to the problem being discussed.
2. Field Research Method (Field Research). Field research method (Field research) is research conducted in the field with direct observation in three ways, namely:
   a) Observation, namely systematic observation and recording of the symptoms studied. Direct observation was carried out on the subject as it was in the field, in this study observations were made at the South Sulawesi Religious Court of the mediator judge in handling mediation. Observations used by researchers in this study are unstructured observations.
   b) In-depth interviews, namely, the author conducts questions and answers and direct dialogue with parties directly related to the issues discussed. The type of interview that will be used by the researcher is an open interview, the researcher uses this interview so that the informant's conversation is free to explore the intent of the questions asked. Of course, researchers are still looking for the focus of the problem in question. In this process the researcher also felt that the answers to be given by the informants outside the questions were additional data.
   c) Documentation, that is, researchers collect data by observing documents and archives provided by related parties, in this case the South Sulawesi Religious Court.

Data Analysis Techniques

The most important factor in research to determine the quality of research results is data analysis. The data that has been obtained after going through the data processing mechanism then determines the type of analysis so that later the collected data can be more accountable. In this research, the data analysis technique used is a qualitative deductive data analysis technique. According to Jhonny Ibrahim, deductive qualitative

analysis is concluding a general problem to concrete societal problems. The data collected from research results, both primary and secondary, are then analyzed qualitatively and discussed in the form of elaboration by giving meaning according to the applicable laws and regulations.

III. RESEARCH RESULTS AND DISCUSSION

The Nature of Mediation Against Divorce Cases in the Legal Area of the South Sulawesi Religious High Court

Settlement of family disputes through the judiciary in Indonesia is part of the long history of religious courts during the time of the archipelago's Islamic kingdoms. In the VII century, Islam was embraced by most of the people of the archipelago. According to Hamami, the application of Islamic law in the life of the people of the archipelago in terms of solving problems;muamalah, munakahat, and punishment resolved through religious courts. Even though in writing, the juridical institution of the religious courts does not yet exist, in practice, there has been the application of religious courts in the process of settling these cases.

The legal system in Indonesia, including the applicable marriage law, is constantly changing and developing according to the conditions of the times and the development of society and politics. This is as explained by Mahfud MD regarding legal politics legal policy or official (policy) lines regarding laws that will be enacted either by making new laws or by replacing old laws to achieve state goals. This can be seen in the history of renewal of marriage law in Indonesia before independence and after independence. KhoiruddinNasution explained the development of post-independence marriage law in Indonesia by dividing 3 (three) development phases; First, the old order period; Second, the New Order era; Third, the reform period until now.

In the matte family disputes in the Religious Courts, the Dutch colonial government first strengthened it in 1882 with the stipulation of rules for the formation of Javanese and Madurese religious courts in Staatsblad 1882 No. 152. The birth of this religious court was based on a decision of the King of the Netherlands, which came into force on August 1, 1882. In 1974 the Indonesian government enacted Law Number 1 of 1974 Concerning Marriage which clearly stated that any disputes or disputes related to family law were settled in the Religious Courts. In addition to Law Number 1 of 1974 concerning Marriage, Indonesia also has Islamic law regarding family dispute resolution, which has been codified and enforced by the government as a material source within the religious courts, namely Presidential Instruction of the Republic of Indonesia Number 1 of 1991 concerning Compilation of Islamic Law (KHI).[5] Thus the researcher argues that; Applicability of legal policy In the family law order in Indonesia, it began with the enactment of the Staatsblad 1882 No. 152 by the Dutch colonial in 1882, in which the provision contains; The authority of the religious courts in the Java and Madura regions to resolve disputes among Javanese and Madurese regarding marriage or distribution of property and so on must be decided according to Islamic law and resolved by Islamic jurists.

From a formal juridical point of view, the Religious Courts became an institution or as a judicial body related to the state system for the first time born in Indonesia (Java-Madura) on August 1, 1882. This birth was based on a decision of the Dutch king (Royal resolution), namely King Willem III dated January 19, 1882, number 24, which was published in the 1882 Staatsblad number 152, in which regulation was stipulated regarding religious justice under the name"Piesterraden" for Java and Madura. In Dutch I,t is called"Regulation Concerning Priest Councils in Java and Madura",[6] or abbreviated by nameCouncil of Priests(CouncilReligion). This decision of the King of the Netherlands was declared effective from August 1, 1882, contained in the 1882 Staatsblad number 153, so tt can be said that the date of birth of the Religious Courts in Indonesia was August 1, 1882.

Staatsblad 1882,number 152 in the original text, did not formulate the authority of the Religious Courts nor make a clear dividing line between the authority of the Religious Courts and that of the District Court. This is due to the Staatsblad 1882, number 152, assuming that the authority of the Religious Courts already exists in the Staatsblad 1835, number 58. Also, the Dutch regulations issued in 1848 wore operationally concernedwith the exercise of authority in the Religious Courts, namely by imposing administrative rules in implementing marriage and inheritance, such as costs and litigation processes, registration of marriages, as well as several other provisions regarding death. This regulation was actually addressed to the Religious Courts in Rembang and Blora, but was later followed by other regions in Java and Madura.

However, in principle, the authority of the Religious Courts at that time was not limited, therefore the court itself determined the cases that it saw as belonging to its sphere of authority, namely matters related to marriage, all types of divorce, dowry, maintenance, lawful whether or not children, guardianship, inheritance, grants, sadaqah, and endowments. Thus, in a nutshell, it can be said that what became the authority of the Religious Courts at that time were matters relating to marriage law and Islamic inheritance law.

Along with the development of positive law in Indonesia, which is of course motivated by the needs and behavior of the people in Indonesia, it has also made various shifts in the paradigm of family law in efforts to resolve existing disputes. This is accommodated by Law Number 30 of 1999 concerning Arbitration and

Alternative Dispute Resolution, which in this provision makes; Dispute resolution methods in Indonesia can be done in two ways, the first can be carried out with litigation (dispute settlement through court institutions) and the second with non-litigation (dispute resolution outside the court) or also known as APS as well as ADR (alternative dispute resolution). /alternative dispute resolution).

Litigation is a process of resolving disputes in court, all parties to the dispute face each other to defend their rights. The end result of a dispute resolution through litigation is a decision declaring that one party wins and the other party loses.[7] Settlement of disputes by way of litigation is the final means (last resort) after other alternative dispute resolution has not yielded results.[8] Non-litigation or out-of-court dispute resolution which is also known as alternative dispute resolution as explained in Law Number 30 of 1999 says: Alternative dispute resolution is a dispute settlement institution or dissent through procedures agreed upon by the parties, namely settlement outside the court by way of consultation, negotiation, mediation, conciliation, or expert judgment.The litigation method in resolving disputes is currently still the choice of many people, but the conditions of an increasingly developing era demand alternative dispute resolution outside the judiciary. There are several criticisms addressed to the judiciary for the weaknesses of the judiciary in resolving disputes. Criticism of the judiciary does not only occur in Indonesia, but throughout the world's courts. Some of the criticisms of the weakness of the judiciary in resolving disputes include:

1. Slow dispute resolution, in general, dispute resolution through the litigation process is slow (waste of time) this is caused by a very formal and technical inspection process (formalistic and technically), also the increasing number of matters that go to court will increase the burden of the court to resolve the matter (overload).In Indonesia, the Supreme Court in 1992 issued a policy through SEMA Number 6 of 1992, so that every case handled by the courts of first instance (PN) and appellate (PT) must be completed within 6 (six) months. However, what happened after the policy was implemented, the flow of cases was getting faster and faster up to the cassation level. In the end, the Supreme Court was overwhelmed by the overflow of cases that were pouring in from below.
2. Expensive case costs, the parties consider that the costs incurred in resolving a case are very expensive, especially when it is associated with the length of time the dispute is resolved, the longer it takes to settle a case, the greater the costs that will be incurred.
3. Court decisions do not solve problems, often court decisions cannot resolve problems and do not satisfy the parties. This is because in a decision there are parties who feel they win and lose (win-lose), where the existence of a sense of winning and losing will not provide peace to either party, but will grow the seeds of revenge, hostility and hatred.
4. The generalist ability of judges, the end of the 20th century and the beginning of the 21st century is the era of science and technology (IPTEK). In this era, there was a general opinion that the figure of a judge was only a generalist human being. On the other hand, the development of science and technology has brought about various complex problems so dispute-resolution methods based on professional expertise are needed. As a generalist human being, judges may only be able to have superficial knowledge. Therefore, it is difficult to expect a good and objective resolution of complex disputes from the judges.
5. The judiciary is not responsive; the court is often considered less responsive and less responsive (unresponsive) in solving cases. This is because the court is considered less responsive to defending and protecting the interests and needs of the litigants and the general public (society). The court is often considered to be unfair (unfair).

Based on the description above, Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution also contains several types of alternative dispute resolution that apply in Indonesia, namely; Arbitration; Consultation; Negotiation; Mediation; Conciliation; Expert Assessment. Among the 6 (six) alternative dispute resolutions above, there are only 2 (two) types that have been explained and regulated more fully by law or other laws and regulations. First, Arbitration is regulated in Law Number 30 of 1999. Second, Mediation as regulated in Supreme Court Regulation (PERMA) Number 1 of 2016 concerning Mediation Procedures in Court as a substitute for PERMA Number 2 of 2003 and PERMA Number 1 of 2008, which also regulates the Mediation Procedure in Court.

With the enactment of Regulation of the Supreme Court of the Republic of Indonesia (PERMA) Number 1 of 2016 concerning Mediation Procedures in Courts, there has been a fundamental change in judicial practice in Indonesia. Mediation as an effort to reconcile the parties in a case is not only important, but must be carried out before the case is examined. Peace efforts are not just a formality, but must be carried out in earnest so that the problems between the two parties can meet common ground. By Perma Number 1 of 2016 mediation must be taken as one of the stages in the litigation process within the general court and religious court. The implementation of mediation here must be seen as the implementation of the HIR and RBG provisions, so that if the PERMA procedure is not followed, it means that it is RBG. The legal sanction is an examination by law orvoidable, meaning that there has never been an examination and decision of a case.

Every civil case examination in court must seek peace and mediation itself is an extension of peace efforts. Mediation will bridge the parties in resolving deadlocked issues in order to reach/obtain the best solution for them. PERMA Number 1 of 2016 concerning Mediation Procedures in Courts has binding legal force and there is coercive power for the community. The juridical basis of PERMA Number 1 of 2016 is statutory regulations so that their existence is recognized and has binding legal force. PERMA is a complement to existing laws and regulations. So it aims to fill the legal void. Applicability of PERMA as long as it does not conflict with laws and regulations.

The Religious Courts are one of the court institutions / judicial bodies under the auspices of the Supreme Court. As an institution carrying out judicial tasks, of course the Religious Courts have duties as set forth in Article 49 and Elucidation number 37, Article 49 of Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts. The Religious Courts have the duty and authority to examine, decide and settle cases at the first level between people who are Muslim in the fields of; Marriage; Inheritance; Will; Grant; Waqf; Zakat; Infaq; Sadaqah; and Islamic economics.

In carrying out this task, the Religious Courts are bound by provisions, namely absolute competence and relative competence. Absolute competence in a Religious Court as stated in Article 49 of Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts. Relative competence in the Religious Courts, in a simple sense is the authority of the Religious Courts at one level or one type based on the jurisdiction. For example, in the Makassar Class 1A Religious Court and the Class 1A Watampone Religious Court. In this case, the Makassar Class 1A Religious Court and the Class 1A Watampone Religious Court are of one type in one environment and one level, namely the first level.

The relative competence that applies to each judiciary is seen in the procedural law used, in this case the Religious Courts in its procedural law is the Civil Procedural Law. Article 54 of Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts explains that; The Religious Courts apply civil procedural law that applies to the General Courts. For this reason, the basis for the relative competence of the Religious Courts is Article 118 Paragraph 1 HIR or Article 142 R.Bg in conjunction with Article 73 Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts.

Article 118 Paragraph 1 HIR states that a lawsuit must be filed in accordance with the jurisdiction where the defendant is located. But in this case, there are exceptions as in Article 118 Paragraph 2, Paragraph 3, and Paragraph 4, namely:

a. If there are 2 defendants, the lawsuit can be filed in one of the two districts where the defendant is located.
b. If the defendant is unknown, the lawsuit is filed in the plaintiff's area.
c. If the lawsuit is related to immovable objects, the lawsuit is filed where the immovable object is located.
d. If a residence is mentioned in a contract, the lawsuit is filed at the place chosen in the contract.

The settlement of family disputes in Indonesia is still litigative, meaning that family disputes in Indonesia are mostly resolved through litigation mechanisms in court. As is well known, the dispute resolution mechanism in court is based on an adversarial system, namely a dispute settlement mechanism in which there is a process of mutually disabling opposing evidence (contradiction) and produce win-lose solutions (win-lose solution).

The characteristics of dispute resolution in this way regarding family disputes were initially well received and were seen as capable of resolving disputes in the field of family law. The litigative culture that is still firmly attached and developing in society causes the desire to look at other forms of dispute resolution outside the court is still lacking, so that the resolution of family disputes remains focused on this mechanism. The result is predictable, even though the dispute has been decided by the court, but the dispute has not been fully resolved by the court, because in reality the implications of the decision are not accommodated, and even tend to be ignored.

For example, in the settlement of divorce disputes. Based on the results of interviews with researchersMr. Andi Zainuddin, MH, States that; The court that has decided on the divorce case allows the implications of the dissolution of the marriage to have not been properly resolved. For example, with regard to raising children, providing a living, joint property issues, and most importantly, the good relationship between ex-husband and ex-wife. The latter is something that is almost difficult to find in every family dispute settlement in court. Almost every decision on divorce disputes is characterized by hostility and non-respect between ex-husbands and ex-wives. The good relationship that previously existed between husband and wife when they were still married became lost when the marriage was broken up.

In the settlement of family law disputes (divorce cases) in the Religious Courts, in general, the judge who examines the case is obliged to prioritize mediation with the disputing parties. Mediation itself is a legal institution of peace, using the services of a third party as a mediator or peacemaker. In civil cases, the judge acts as an arbiter between the two parties to a dispute or dispute. Mediation is a legal institution of peace, using the

services of a third party as a mediator or peacemaker. In civil cases, the judge acts as an arbiter between the two parties to a dispute or dispute. [13]

The judicial process that has been pursued so far in resolving civil cases tends to take a long time and cost a lot of money, not to mention coupled with decisions that are not satisfactory to both parties. In this context, mediation is needed as an alternative to the standard (pattern) that has been applied so far that the principle of justice is simple, fast and low cost.

The principle of dispute resolution actually rests on the postulate that peace is the highest goal of law (al shulhu sayyid al ahkam). Peace is the best way to resolve disputes between litigants. With peace, litigants can explore a mutually beneficial resolution (win win solution). This is because, in peace the emphasis is not on the legal aspect alone, as well as on how both parties can still get the maximum benefit from the agreed choices. Here it can also be seen that with peace, settlement actually emphasizes humanity and the desire to help and share. There are no losers or winners, there are only parties who win together.

The application of the concept of mediation to family law disputes (divorce cases) has certainly been found in the legal system in Indonesia. Indonesia is a constitutional state with a legal system.mix legal system" or a mixed legal system, because in reality Indonesia enforces; Legislation that is characteristic of the Continental European legal system; Customary Law which is a feature of Customary Law or the type of legal system that is widely applicable in the African region, and; Islamic law and the existence of the Religious Courts in Indonesia which are the characteristics ofMuslim Law System which are widely applied in Muslim-majority countries, whether the application of the Islamic legal system in total or in part, as well as; Indonesian judges in practice follow Jurisprudence which is a feature of the legal systemCommon Law with a foundationdecided as is the case in many English-speaking countries.

The position of Islamic law in the Republic of Indonesia, in general, is not only in Article 20 or Article 24 of the 1945 NKRI Constitution but specifically stated in Article 29 Paragraph (1) of the 1945 NKRI Constitution. In Article 29 Paragraph (1) of the 1945 NKRI Constitution it is clearly stated that the state is based on Belief in the One and Only God. According to Hazairin, the fundamental principles in Article 29 Paragraph (1) can be interpreted in six ways. Three of them are relevant to this discussion, the point is:

First, in the country of Indonesia, there cannot be or cannot be a law that is contrary to the religious rules that apply to the followers of the religion in our homeland. This first interpretation has been used as a justification for Muslims' rejection of the Marriage Bill (Marriage Bill) proposed by the Minister of Justice in 1973, because in the Bill there are 19 issues that are contrary to Islamic religious law. Among them is the one formulated in Article 2 of the bill which reads "Marriage is valid when performed in front of a marriage registrar". This concept and formulation is completely in accordance with the western individualistic and secular legal pattern, which sees marriage as just a civil relationship between a man and a woman, which has nothing to do with religion. According to Islamic law, marriage is only valid if it is performed after the conditions and pillars are met. Registration of marriage according to classical Islamic jurisprudence is not a pillar that determines the fault of marriage, the registration is necessary and indeed useful for the benefit of the husband and wife or for the benefit of the administration of marriage in order to maintain public order or the interests of the husband and wife themselves and their children in the future.

Second, the state is obliged to carry out the sharia of all religions that apply in Indonesia, if to carry out the sharia it requires the assistance of state power. This means that the state is obliged to regulate and implement laws originating from religious teachings for the benefit of the Indonesian nation (which adheres to the religion concerned) if its implementation requires the assistance of state administrators. This means that the state is obliged to implement religious law for the benefit of adherents of religions whose existence is recognized within the Republic of Indonesia. Shari'a originating from the Islamic religion, for example, what is called Islamic Shari'a does not only contain the laws of prayer or prayer, zakat, fasting and pilgrimage, but also contains "conventional laws" both civil and public that require state power to implement them perfectly. What is meant is, for example, property law, waqf law, organizing the pilgrimage, violations of marriage and inheritance laws, violations of Islamic criminal rules such as adultery, which require judicial powers or special courts, in this case the Religious Courts to implement them. This (special) judiciary can only be held by the state in the framework of carrying out its obligations to carry out shari'ah originating from the Islamic religion for the benefit of Muslims who are citizens of the Republic of Indonesia. Islamic Shari'a, which is intertwined with faith and decency (morals or morals), is very important to uphold in order to uphold legal norms originating from the Islamic religion. According to Hazairin, the Republic of Indonesia is a country that consists of a balance between law and morality (law and morality or decency). According to Hazairin, law without decency or morals is tyranny, decency without law is anarchy or utopia. Execution of law without decency or morals will lead to animalistic fairies. Only laws that are supported by or rooted in decency can uphold humanity. ***Therefore,*** according to Hazairin, within the Republic of Indonesia, decency (morals/morals) that is contrary to religious law cannot be allowed to develop.

Third, Shari'a which does not require state power to implement it because it can be carried out by each adherent of the religion concerned (such as prayer and fasting for Muslims) is the personal obligation of the adherents of that religion to carry it out according to the provisions of their respective religions. This means that laws originating from religions recognized in Indonesia can be carried out independently by each adherent of the religion concerned according to the beliefs of that religion, as stated in Article 29 paragraph (1) of the 1945 Constitution. Since Indonesia's independence until now there have been many laws and regulations whose values are taken from the norms contained in Islamic law and all of these regulations are in line with and in harmony with the values contained in the philosophy of Pancasila and the 1945 Constitution.

Formally, mediation in Indonesia is inspired by Articles 130 HIR and 154 RBg which explain the obligation of a judge to reconcile the parties to a dispute. The role of reconciling the disputing parties is more important than the function of the judge who makes a decision on a case he is trying. When peace can be implemented, it is much better at ending a dispute. Efforts to reconcile the disputing parties are a top priority and are seen as fair in ending a dispute because reconciliation can end in that there is no one who loses and who wins, but the establishment of kinship and harmony.

The civil procedural law for religious courts also contains special clauses regarding reconciliation contained in Article 65, Article 70, Article 82, Article 83, in Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts. Since 2003 the Supreme Court has only integrated mediation into civil procedural law to replace the procedural peace law, which has been in force since the issuance of Article 130 HIR/154 RBg as a procedural peace law in civil court proceedings from the colonial era until the age of Indonesian independence was approaching 58 years. Also, since 2003 the PERMA regarding mediation has undergone changes two (2) times, namely PERMA Number 1 of 2008 and finally PERMA Number 1 of 2016, in which this regulation legalizes that mediation must also be carried out in dispute resolution in courts in procedural law civil PERMA Mediation.

In PERMA Number 1 of 2016 concerning Mediation Procedures in Court,only one paragraph in Article 23 clearly states matters of family law, namely in divorce cases. Furthermore, Article 23 Paragraph (6) explains the sanctions for Defendant to pay mediation costs for not having good faith in the trial. Meanwhile, the case costs are still being paid by the Plaintiff or Petitioner as stipulated in Article 89 Paragraph (1) of Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts. Furthermore, Article 4 PERMA Number 1 of 2016 explains that all civil disputes submitted to the Court must undergo a mediation process, including cases of family disputes, except for disputes regarding the prevention, rejection, cancellation, and legalization of marriages. Thus the presence of PERMA Number 1 of 2016 to mediate divorce cases to achieve peace between husband and wife who are getting divorced because it can lead to things that are not good for their children and also for the extended family of both sides party. Furthermore, another form of the presence of PERMA Number 1 of 2016 is to provide certainty, fairness, order, and smoothness in the peace process of the parties in resolving civil disputes as the implementation of Article 130 HIR/154 Rbg is to reduce the accumulation of cases in the Religious Courts. In essence, the judges of the Watampone District Religious Court are trying to achieve peace between husband and wife who are getting divorced, because it can lead to things that are not good for their children and also for the extended family of both parties. Although one of the obligations of a judge in a divorce case is to make peace between a husband and wife who are about to divorce, the judges of the Watampone Religious Court always take care not to make the peace efforts seem forced. Based on the above, the researcher can conclude that; The essence of mediation for divorce cases in the South Sulawesi Religious Court is a form of effort made by using a scientific approach in seeking a truth regarding the upholding of norms based on Supreme Court Regulation (PERMA) Number 1 of 2008, which has been revised and replaced by PERMA Number 1 of 2016 concerning mediation procedures in court so as to create peace and tranquility in society.

IV. Research Findings

In chapter V, the researcher will explain the research findings. The findings of this study are a description of the data obtained in field data collection through interviews, observation, and literature review. The findings in this study were the result of in-depth interviews with informants, then made observations in the interaction activities of the informants with their environment to find the necessary data and carried out a literature review. The description of the research results is prepared based on the information obtained from the main informants and basic informants. In CHAPTER V some of the findings of researchers will be presented as a result of research from data collection and processing of data found in the field. All data obtained by researchers is of course in accordance with the problems that are the focus of research. The research results obtained from the field are described and analyzed as a basis for drawing conclusions from the initial objectives of the research. The purpose of this study as stated in CHAPTER I, that this study aims to: (1) To find out and analyze the nature of mediation for divorce cases in the South Sulawesi Religious Court.

(2) To find out the effectiveness of mediation in divorce cases at the South Sulawesi Religious Court.

(3) To explore the factors that support and hinder the success of mediation in divorce cases at the South Sulawesi Religious Court.

Based on the results of interviews and observations, several findings were found: *"Basically, the Mediator always tries to mediate in the mediation process, so it cannot be one-sided, yes indeed it cannot take sides because it can harm one of the parties being mediated. But apart from being a mediator, I am also a judge who has responsibility for trials that must be resolved. So, mediation is my second responsibility, according to the instructions from the leadership ".*

"Not to mention that the most common thing is that one party or both parties feel the most right. So Mediators have difficulty exploring the problem, because of their unfriendly attitude during the mediation process. Being more selfish is a common thing that often arises in the parties. Before the parties enter the case examination at trial, they usually agree to break the marriage bond whatever happens. So that when mediation is carried out, it is very difficult to achieve peace. In other words, mediation has failed.

Asked about the influence of the Mediator Judge, gave his comments as follows:*"If we talk about the influence of the Judge-Mediator in a mediation process, it must have quite a big influence, especially if the mediator is a member of the board of judges, you know for yourself how many lawsuit cases the judge has to hear. Besides that, the mediator judge also has his own activities outside the court, for example the family.*

"The psychological factor of the mediator itself can also indirectly influence the final outcome of the mediation. Once again a judge does not only have the task of mediating cases but also many other things that must be resolved. But still in the ongoing mediation process, we are trying our best to provide the best solution, so that the case can be resolved properly."

Regarding the influence of the judge, the mediator on the success of mediation said:

"In my opinion, judges who are also mediators do not really affect the final outcome of mediation. Yes, it does affect but a little chance. Because in mediating we will still try to optimize as much as possible, but in practice, the emotional factors of the parties cannot be defeated. Yes, as referees, we only lead to the best final agreement. Many of the failures that have occurred so far have been the result of disputes between the litigants themselves.

"If asked about his connection with other activities such as trials, or other matters outside the court, in my opinion, it has nothing to do with it. Session time is trial mediation time is mediation"

Based on the results of the interviews above, the researcher found research findings and argued that judges who are also mediators have a considerable influence on the success rate of mediation. The dualism of the function of a judge who also doubles as a mediator has an effect on the psychology of the judge himself which makes mediation not optimal. With so many cases being handled by the Watampone Religious Court, as well as other issues outside the Court that are the responsibility, it is common for the intermediary judge to be a bit constrained by this.

CLOSING

Conclusion

Based on the explanations described in the previous chapters, with regard to the effectiveness of divorce mediation in the legal area of the South Sulawesi Religious High Court, it can be concluded as follows:

1. The nature of mediation for divorce cases in the legal area of the South Sulawesi Religious High Court is an effort made using a scientific approach in seeking the truth regarding the upholding of norms based on Supreme Court Regulation (PERMA) No. 1 of 2008, which has been revised and replaced by PERMA No. 1 of 2016 concerning mediation procedures in court so as to create peace and tranquility
2. The Effectiveness of Divorce Mediation in the Legal Area of the South Sulawesi Religious High Court Has Not Been Effective due to various reasons. The first is the low level of awareness of the litigants due to the dispute. Egoism and the lack of good faith in trying to resolve cases peacefully are the main factors that cause mediation to be ineffective.
3. Factors Influencing the Effectiveness of Divorce Mediation in the Legal Area of the South Sulawesi Religious High Court, The Legal Factors Are Good Enough, The Legal Structure Factors Need Empowerment, and The Community Culture Factors Are Not Supportive

Suggestion

In this final section, the author provides suggestions addressed to the parties concerned as follows:

1. It is hoped that in the future, PERMA Mediation can be implemented optimally and can run effectively. Particularly at the South Sulawesi Religious High Court and generally at all judicial institutions throughout Indonesia. As the hope issued by the PERMA, namely to reduce the divorce rate.
2. The Religious Courts should provide tests and training in the ability to provide mediation, so that the intermediary judges can develop appropriate strategies so that the parties discourage their intention to divorce.

3. For divorce cases where both parties both want a divorce, after being mediated, the judgewill be better to continue the trial process without having to go through a mediation process for this to materializefaster and cheaper dispute resolution (PERMA considerations).

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