

## The Effectiveness of Mediation Process to Press Divorce Rates

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### ABSTRACT

*This study aims to determine and analyze how the effectiveness of mediation in overcoming divorce in the Palopo Religious Court and what are the factors to be successfully for the resolution of divorce cases in Palopo Religious Court. This study was conducted in Palopo Religious Court. The research method used empirical normative approach, the source of research data was field research and library research such as interviews and literature review of literature books and scientific works. The results of this study indicated that the effectiveness of mediation to overcome the divorce in the Palopo Religious Court is quite effective because it has been carried out with procedures in the mediation process. The successful factors of the divorce case in the Palopo Religious Court were good faith from both sides, the ability of a mediator to provide an explanation to the parties, and time also.*

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### 1. Introduction

A marriage is a form of fulfillment of human nature in the world that humans are social beings who need each other. Based on Regulation No. 1 of 1974 Article 1, marriage or is defined as a physical and spiritual bond between a woman and a man as husband and wife with the aim of forming a happy and eternal family (household) based on the Godhead of the Almighty.

In Islam marriage is a worship for a Muslim to be a perfect his faith and religion. By marrying someone has assumed the mandate and great responsibility for his/her family to bring them to the way of truth. Marriage has big advantages for social interests.

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However, in Indonesia especially in Palopo, divorce rates are rising. This divorce rate dominated by young couples that their marriages are short in time. Many of its problems are because of economic reasons and domestic violence.

Besides that, social media can affect marriage life. If there's a dispute, social media are used by them as a place to throwing their emotions and frustration that is being faced by the couple. The conveying and telling stories about their marriage life, it creating some statements or rumors from some other users which actually can trigger some dispute.

Due to lack of communication, loss of trust in a partner, and the growing of hatred are some of the early stages of the failure for marriage life and thus creating motivation for divorce. The inability of problem-solving within a couple can lead them choosing divorce as a solution. The impact is a change in the role and status in which the wife becomes a widow and the husband becomes a widower and lives alone. Divorce can also affect their children because children are somewhat excluded or even forgotten. If the children are accustomed to a happy life it would disrupt their cognitive value. Divorce will become a critical part of their life.

## **2. Method**

The method of research is empirical legal research.<sup>3</sup> The location used for the research is Palopo City. This location is chosen because, at that very place, divorces become a common practice. Premier and secondary data are achieved using *sylogism*. *A syllogism* is a way of analysis in which the data in line with the theory used so that researcher can understand nature, character, property, that applies both positive and normative. Then, in a manner of descriptive consist of describing and explaining according to which problems/cases that linked to this research.

## **3. Legal Basis for Divorce Mediation Process in Palopo Religious Court**

Achmad Ali believes that if we want to know how effective the law is, we must first be able to measure "to what extent the rule of law is being obeyed or not." Achmad Ali further stated that generally, the most influencing factor in effectivity is professional legislation that is optimal in its application, authority, and function from the law enforcer, either in running their duties or in upholding the legislation.<sup>4</sup>

According to Soerjono Soekanto, the effectiveness of a law is defined by 5 things which is:<sup>5</sup>

- 1) The law itself (constitution);
- 2) Law enforcement, parties which creating or enforcing such law;
- 3) The medium or some facilities that supports law;
- 4) Public communities, where the law applies; and
- 5) Culture.

The effectiveness of the mediation process on overcoming divorce in Palopo Religious Court is when the mediator can achieve one goal, in which the parties are choosing a peace solution. Hence the mediation process that happened at Palopo Religious Court has been effective as in case No. 216/Pdt.G/2019/PA.Plp. which are succeeded.

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<sup>3</sup> Butarbutar, Elisabeth Nurhaini. (2018). *Metode Penelitian Hukum (Langkah-Langkah untuk Menemukan Kebenaran dalam Ilmu Hukum)*, Bandung: PT. Refika Aditama, p. 95.

<sup>4</sup> Ali, Achmad. (2010). *Menguak Teori Hukum dan Teori Peradilan*. Jakarta: Kencana, p. 375.

<sup>5</sup> Soekanto, Soerjono. (2008). *Faktor-Faktor yang Mempengaruhi Pengakuan Hukum*. Jakarta: PT. Raja Grafindo Persada, p. 8.

Based on an interview with Muh. Ghazali Yusuf, a deputy chief judge in the Palopo Religious Court which also act as a mediator, the mediation process has been effective because it worked as intended based on Article 17 section:

- 1) On the day of the hearing that has been determined and attended by the parties, the case review judge requires the parties to take mediation.
- 2) The presence of the parties as referred to in paragraph (1) is based on a valid and proper summons.
- 3) The parties in which are not present on the first hearing can be required again once again according to law practice.
- 4) The mediation process will still be held even not all parties are present.
- 5) The absence of defendant parties that are not significant, does not get in the way of the mediation process.
- 6) The case review judge should explain the procedure to the parties.
- 7) The explanation referred to in paragraph (6) includes:
  - a) Definition and benefits of mediation.
  - b) The obligations of the parties to attend directly the following mediation meetings as a result of the law on behavior in good faith in the mediation process.
  - c) Costs that may arise from the use of non-judge mediators and outside of court employees.
  - d) Choice of following through on a peace agreement through a peace deed or charges removal.
  - e) The obligations of the parties to sign the mediation explanation form.
- 8) Case review judge submits mediation explanation forms which contain statements that following parties:
  - a) Obtain a complete explanation of the mediation procedure from the case review judge.
  - b) Understand the mediation procedures well.
  - c) Willing to take mediation with a good intention
- 9) The mediation explanation form as mentioned in section (8) signature by the parties and/or the attorney received an explanation immediately from the case judge and it is a unity and inseparable from the case file.
- 10) Information about the explanation by the case judge and the form assignment of the mediation explanation as mentioned in section (9) must be published in the minutes of the trial.

Mediator has accomplished the duty and function in the mediation process as mentioned in section 14:

- 1) Introducing oneself and giving an opportunity to the other parties in introducing themselves.
- 2) Explaining the intention, goal, and the type of mediation to the parties.
- 3) Explaining the mediator's position and a role that is neutral and does not decide anything.
- 4) Making the rules for the mediation implementation with the parties.
- 5) Explaining that the mediator is able to have an appointment with one of the parties without another party's attendance.
- 6) Arranging mediation scheduled with the parties.
- 7) Filling the mediation schedule form.
- 8) Giving an opportunity to the parties to deliver the conflict and peace proposal.

- 9) Filing the conflict and scheduling discussion based on a priority scale.
- 10) Facilitating and pushing the parties:
  - a) Browsing and discovering the parties' interests.
  - b) Searching the best options to solve the conflict.
  - c) Cooperating to accomplish a solution.
- 11) Helping the parties in making a proposal of peace and agreement.
- 12) Delivering the succeed report, failure, and/or unable to mediate to the case judge.
- 13) Stating that one of the parties does not have a good intention and delivering that to the case judge.
- 14) Other duties in running the duty.

As ruled in the Supreme Court Rules (PERMA) number 1, 2016 for changes in Supreme Court Rules (PERMA) number 1, 2008 about the mediation procedure in court that the first one, the applicant has fulfilled the reasons for divorce as ruled in Laws and Regulations. Second, before the panel of the judge points a mediator for mediation, the panel of the judge advises the applicant to remove the divorce intention and return to build up the household. However, if it does not succeed, so to maximize the peace proposal effort suits with article 17 section (1) The Supreme Court Rules (PERMA) number 1 2016 for changes in Supreme Court Rules number 1 2008 about mediation procedure in court, *“on the day of the trial based on the agreement and attended by the parties, the case judge requires the parties to do mediation.”*

Article 17 section (7) states that the case judge requires the parties at the day or at 2 next working days the most to discuss in choosing mediator including the cost that will probably appear because the chosen mediator is not the judge's recommendation and is not the court staff. The mediator is not the judge means the mediator has trained and graduate in verified training in Supreme Court. After that, the parties deliver the mediator they have chosen immediately to the Panel of the Judge's leader. The Panel of the Judge's leader will notify the chosen mediator to run the duty. After a certain period of time, the parties cannot agree to choose a mediator, so the parties must deliver the failure in choosing a mediator to the Panel of the Judge's leader. After receiving this notification about the parties fail to choose a mediator, the panel of judge leaders points another certified judge in the same court to be a mediator. If there is no other certified judge at the same court, the case judge with or without certification must do the duty as a mediator under the panel of the judge's order. In article 24 section (1) states, *“in the 5 days the most since the establishment as mentioned in article 20 section (5), the parties can submit the case resume to another party and mediator.”*

The mediation process lasts for 30 days in accordance with article 24 section (3) Supreme Court Rules (PERMA) number 1 2016 for changes in Supreme Court Rules (PERMA) number 1 2008 about mediation procedure. After that, the mediator arranges an appointment scheduled between the parties to mediate and accomplish an agreement, and if the parties want to make the next appointment, then they arrange a schedule again as long as it does not exceed the period time determined by the article 24 section (3) Supreme Court Rules (PERMA) number 1 2016 for changes in Supreme Court Rules (PERMA) number 1 2008 about mediation procedure. After the mediation process and results from a peace agreement, the parties with help from the mediator must write the agreement and signed by the parties and the mediator, and then submit it to the Panel of Judge's leader.

#### **4. The Indicator of the succeed of the mediation process in settling divorce case in Palopo Religious Court**

The mediator is the third party that helps to settle the parties' conflict, and it does not intervene in making a decision.<sup>6</sup> It can be known that the mediator involvement in negotiation is "help" the disputing parties.<sup>7</sup>

The mediator helps the parties to understand each other's point of view and help to locate the problems which are considered important to them. The mediator simplifies the information exchange, pushes discuss the different interests, perceptions, and interpretations of a situation and problems and also helps the parties to prioritize the problems and emphasize the discussion about aims and public interests.<sup>8</sup>

The mediator is a judge or other party that has mediator certificate and as a neutral party to help the negotiation process to find any possible settlement without becoming the one who decides or forces a settlement.<sup>9</sup>

The first interview result with one of the judges that becomes a mediator in a case that the author examined the indicator of the success of the mediation in settling divorce case in Palopo Religious Court, as follows:

- 1) The good intention of both parties. The mediation process must be held by the disputing party with full honesty or good intention. In the provision article 7 section (1) Supreme Court Rules (PERMA) number 1 2016 states that the disputing party is obliged to take the mediation process with good intention. This matter is due to mediation that can result from success if the disputing parties have the same intention to make peace. Hence, without good intention from both parties, peace will not be accomplished because the good intention is the key to the succeeds of mediation.
- 2) The proficiency of a mediator in implementing mediation. It means a mediator is capable of being catalysator which is in a mediation process a mediator is able to make a constructive situation to discuss and not the opposite that can cause misunderstanding between parties; a mediator is capable of being an educator, understands the will of aspirations of work procedure, the political limitation and effort constraints from the parties; a mediator is capable of being a translator that can deliver and make a proposal from one party to another with language or utterance that can be understood by other parties without decreasing the meaning.
- 3) The time range of separation factor is also one of the success keys of the mediation process because it is considered as not too severe. As on the case that the author examined, the time range of separation is only 3 months, so that the chance to reconcile both parties is still great.

From the second interview with the mediator judge Azimar Rusydi, he has become a mediator judge in mediation and stated that the most determining factor of the success of mediation is a mediator must have special tricks. A mediator is obligated to remember some factors:

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<sup>6</sup> Abbas, Syahrizal. (2009). *Hukum Adat dan Hukum Nasional dalam Perspektif Hukum Syariah*. Jakarta: Kencana Prenada Media Group, p. 57.

<sup>7</sup> Amriani, Nurnaningsih. (2011). *Mediasi Alternatif Penyelesaian Sengketa Perdata di Pengadilan*. Jakarta: Rajawali Pers, p. 62.

<sup>8</sup> Usman, Rachmadi. *Mediasi di Pengadilan dalam Teori dan Praktik*. Jakarta: Sinar Grafika, p. 83.

<sup>9</sup> PERMA No. 1 Tahun 2016, section 1(2).

- 1) Religious factor. A mediator must remember that divorce is halal but hated the most by Allah.
- 2) Children factor. A mediator must remember about the parties' children if the parties are divorced. Most of the parties feel the warmth in their hearts if the mediator reminds them of their children.
- 3) Conflict factor. A mediator must be skilled in analyzing and digging the conflict between both parties, and also capable of reading the atmosphere and the parties' mood.

The third interview result, by the judge mediator who is Hapsah, he said that the important factor for the result of mediation is the mediator itself. The mediation must analyze and know the core of problem itself and the mediator find the answer of the problems that he faced it. In the mediation process, both sides are hard to deal with the problems, the mediator conducted the caucus taht is the meeting between mediator with one of the sides without attending by other sides.

From the result of interviews, the researcher assumes that the effectiveness in conducting mediation has been effective enough because the mediation process is conducted by the mediators based on the Supreme Court Regulation (PERMA) No. 1 of 2016 year on the changed of Supreme Court Regulation (PERMA) No. 1 of 2008 year concerning procedures mediation. There are many factors that can be success of mediation. The factors consist of internal factor that is the parties and problems to be the cause of existing both sides. While external factor is the mediator.

From the results of interviews conducted, researchers assume that effectiveness in conducting mediation is already effective because the mediation process carried out by mediators is in accordance with Supreme Court Regulation (PERMA) No. 1 of 2016 on changes to the Supreme Court Regulation (PERMA) No. 1 of 2008 concerning procedures mediation. There are several factors that can determine the success of mediation. These factors consist of internal factors originating from the parties and the problems that are the cause of the dispute between the two parties. While external factors come from the mediator itself.

Firstly, the party in dispute factor. There must be a good thing from the parties based on article 7 paragrah (1) of the Supreme Court Regulation (PERMA) No. 1 of 2016 year, the parties in dispute must carry out a mediation process in good faith. It is because the mediation will be only successfully when the parties in dispute have intention to make a peace. Secondly, the problem that caused the dispute between the two parties' factor. The severity of the problem faced by the parties can also determine the success of a mediation. Thirdly, factors from the mediator. It is needed the reliable skills from a mediator. A mediator will assist the parties in solving problems that need to be solved together.

#### **4. Conclusion**

The effectiveness of mediation in overcoming in Palopo Religious Court can be said to be quite effective because it has been based on Supreme Court Regulation (PERMA) No. 1 of 2016 on amendments to the Supreme Court Regulation (PERMA) No. 1 of 2008 concerning mediation procedures in court.

The indicators to be successfully of a mediation of divorce cases in Palopo Religious Court are:

- 1) Internal factor is from the parties themselves which is the awareness of the parties in solving problems through mediation stages it can have a meeting point in the dispute between the two parties.
- 2) External factor is from the mediator who plays an important role in the process of implementing mediation in reaching mutual agreement.

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#### **Conflict of Interest Statement:**

The author declares that the research was conducted in the absence of any commercial or financial relationships that could be construed as a potential conflict of interest.

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