

The Role of Judge Mediator in the Divorce Mediation Process at Masamba Religious Court North Luwu Regency

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ABSTRACT

This research aims to explain and analyse the mediation process at the Masamba Religious Court in implementing the mediation procedure and to identify the position and duties of the Mediator in resolving divorce disputes at the Masamba Religious Court, North Luwu Regency. The type of research used is descriptive quantitative and qualitative research by collecting data in the form of numbers and also by interviewing mediator judges so that data analysis can be collected. The results showed that the implementation of mediation in the Masamba Religious Court was in accordance with the procedures as stated in Supreme Court Regulation Number 1 of 2016 concerning Mediation in Court, but the effectiveness of the implementation of mediation could still not be said to be optimal, considering that the mediation process that was carried out was only a little with a minimal success rate. While the supporting factors and inhibiting factors for the success of mediation in divorce cases at the Masamba Religious Court are still not effective, due to factors that cause the failure of the mediation process in achieving peace in the jurisdiction of the Masamba Religious Court, including: First, the parties are not in good faith. Second, The conflict between the parties has been protracted and has become increasingly complicated. Third, the Competence of the Judge as a Mediator.

Keywords:

Role of Mediator,
Divorce, Mediation,
Masamba Religious
Court.

INTRODUCTION

A marriage contract according to Islamic rules is not just a civil matter, but a sacred relationship. Marriage in Islam is a strong contract or *mitsaqan ghalidhan* (Agus Toni, 2019). It can be interpreted from this meaning that marriage is an agreement between husband and wife that is serious, not a game. Thus, if someone who has entered into a marriage, the agreement must be properly maintained so that the marriage lasts because the purpose of marriage in Islam is the realisation of a prosperous family that is *sakinah, mawaddah wa rahmah*.

Marriage is the basic foundation for society, because in marriage a strong bond is formed between individuals. Marriage also gives birth to the ethics of family life and customs that are built together in addressing all the problems faced in life. Through marriage we learn the meaning of life, that in life we cannot live alone, of course we will need the help of others. However, it does not rule out the possibility that marriage in its journey may fail in the middle of the road.

The definition of marriage or marriage according to Law Number 16 of 2019 concerning Marriage which reads: "Marriage is a physical and mental bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on God Almighty."

However, the purpose of marriage can fail in the middle of the road, this is because the breakup of a marriage is a natural thing, because the basic meaning of a marriage is basically a contract. The consequences can be released so that it is said to be divorced. The basic meaning of divorce is to release the relationship or release the agreement.

Divorce is the most painful option for husband and wife, but divorce can be the best choice in solving various problems that arise in the household, and if it cannot be resolved in a family manner and also for the good of both parties. Therefore, a Muslim must certainly try to reconcile the couple, even if the problem is at the end of the line or the problem is at its peak.

Divorce in Islamic law is a permissible matter that is not favoured, therefore it is important to reconcile the two sides of the husband and wife who are in dispute so that the divorce plan does not occur. However, in married life we often find married couples complaining and complaining to other people or to their families, due to the non-fulfilment of rights that must be obtained or the non-performance of the obligations of one of the parties, or for other reasons that can result in a dispute between the two (husband and wife). It is not impossible that the dispute will lead to the breakup of the marriage bond (divorce). One of the reasons or causes for the possibility of divorce is the occurrence of protracted disputes or disputes between husband and wife (Abdul Ghofur Anshori, 2011).

Another thing that usually occurs in marriage is the background of the age of the married couple who are still underage. So that the number of divorces recorded at the Masamba Religious Court is increasing over time. Divorce cases that occur in North Luwu Regency continue to increase every year. Based on data from the Masamba Religious Court of North Luwu Regency for 2023 the number of divorce cases totalled 629 cases. That number rose from the previous year in 2022 which amounted to 592 cases.

This is a lesson for the North Luwu Regency government to deal with the problem of divorce. Especially for all Religious Affairs Offices (KUA) in the North Luwu area which are obliged to be the pioneers of providing marriage guidance, as a preventive effort to prevent divorce. The Masamba Religious Court has a counselling service in the divorce mediation process which is useful for minimising the divorce rate. Counselling services are commonly known as counseling or mediation in the Religious Courts.

Based on Supreme Court Regulation Number 1 of 2016 concerning Court Mediation Procedures, a rule is stipulated that in the first trial the parties to the dispute are required to take the mediation path process first. Mediation aims to make justice simple, fast and precise, cheaper costs, besides that case settlement through mediation also aims to provide access to justice for the parties.

Mediation conducted by the parties with the assistance of a mediator aims to reach an agreement between the parties that is mutually beneficial (win-win solution) and satisfactory for the parties to the dispute and is problem solving, not to find a win or loss. Therefore, in a mediation, the mediator is only a facilitator who assists the parties in clarifying their needs and desires, preparing guidelines to assist the parties in straightening out differences in views and working towards a binding settlement acceptable to the parties (Bustamam Usman, 2018).

The mediator serves as an intermediary to obtain a mutually beneficial outcome. The role of the mediator is very important in a mediation, because a mediator must be clever in dealing with a problem he handles. Surely the problems between one another can be different, the litigants are also different, therefore a mediator must be able to handle all these problems in the hope that the result is peace.

Looking at the phenomenon of divorce in the Masamba Religious Court, with a fairly large number that is very contrary to the principles in marriage that expect a harmonious and peaceful life. Although it is possible to occur, divorce must be carried out in front of the court based on the footing and attempts to reconcile the litigants by the judge through instructions in the mediation process. The effort to reconcile and resolve a problem is a matter that must be tried by each party to the dispute in order to always maintain communication and organise various aspects of life in the world properly between fellow human beings. Although in practice, the divorce rate at the Masamba Religious Court is still difficult to reduce in number.

METHOD

The research method used in this study is a qualitative research method, namely by focusing on the general principles that underlie the manifestation of units of symptoms in human life (Burhan Ashshofa, 2004).

The type of research used is a case study, which is a survey approach by making direct observations and conducting interviews with judges appointed as mediator judges and litigants. Research consisting of library research and field research, to obtain information on respondents related to this research so that valid and accountable data can be obtained. Because this research uses a qualitative approach, the techniques used in collecting data are through interviews and documentation.

While the data analysis technique in this study uses a qualitative descriptive method, namely analysing by describing and describing the results of the interviews obtained. So that researchers obtain a conclusion that is objective, logical, consistent and systematic in accordance with the objectives carried out in this study.

RESULTS AND DISCUSSION

a. The Divorce Mediation Process Applied by the Masamba Religious Court in accordance with PERMA No. 1 of 2016

The word mediation is familiar in a trial process, especially the trial of a civil case including divorce cases. Mediation is one way to resolve cases in a peaceful, effective and appropriate manner for the parties to the case (Sri Samudji, 2017). With the aim of providing a sense of justice to the parties. In Indonesia itself, one of the functions of legal aid institutions aims to realise a great judicial institution. With this legal aid institution, it is hoped that the community will have no difficulty in seeking justice (Dian Maris Rahmah, 2019).

After the implementation of PERMA Number 1 Year 2016, mediation has become an obligation that must be carried out by the parties who are litigating in court. If the parties do not want to go through the mediation process, then their case will be in danger of being rejected, therefore, all parties must still go through the mediation process before proceeding to the next trial. The mediation process applied in divorce cases is no different from the mediation process applied in other civil cases. Likewise, the application of mediation applied in the Masamba Religious Court is no different from mediation applied in other Religious Courts and District Courts because the legal basis used is PERMA Number 1 of 2016. So that in practice there is also no significant difference, only the difference in the mediation process carried out by the Mediator.

As is well known, mediation is an intervention into a negotiation or conflict by an impartial third party. Therefore, mediation is often seen as an extension of the negotiation process. This is because parties who are unable to resolve their own disputes utilise the services of a neutral third party to help them reach an agreement (Hilman Fauzi, 2018).

As stated by the Judge Mediator at the Masamba Religious Court, the implementation of mediation at the Masamba Religious Court has been implemented based on Perma No. 1 of 2016 which determines that if on the day of the first trial and attended by the litigants the judge examining the case requires the parties to take mediation. But because in the Masamba Religious Court there is no Mediator from outside the Court, the parties choose a mediator at the Masamba Religious Court provided that he is not the judge who examines the case (Fariq Al Faruqie, 2022).

Basically, the mediation process is expected to overcome the problem of the accumulation of cases in court. Where the court adheres to the principles of simple, fast, and light costs, meaning that in carrying out justice it is expected to be completed as soon as possible and in the shortest possible time. If all parties are able to resolve their own disputes without the need for a judge, the number of cases that judges have to hear will also decrease, and the problem of the accumulation of cases in court will be slightly reduced. On the other hand, if the case is decided by a judge, then the decision is the result of the judge's views and judgement which are not necessarily in line with the views of the parties, especially the losing party, so that the losing party always takes legal remedies of appeal and cassation.

Mediation is actually conducted at the first meeting if both parties to the dispute are present at the hearing. However, if both parties are not present, then the mediation can be conducted at the second or third meeting. In a trial attended by both parties, the panel of Judges will try to reconcile the two parties, but if it is unsuccessful, the two parties who want to divorce will be encouraged to take the mediation route first. The time limit in the mediation process has been slightly reduced after the implementation of PERMA Number 1 Year 2016. Prior to the implementation of PERMA Number 1 Year 2016, the time limit for the completion of the mediation process was 40 days and then changed to 30 days and could increase according to the agreement of both parties.

The mediation process is one of the peace processes between the two parties which will be led by one or more mediators. After the Judge encourages the parties to participate in mediation, sometimes one or both parties who want to divorce or litigants are reluctant to follow the mediation process. Then the Mediator will later report the matter to the Judge and at the second hearing the Judge will reprimand both parties and threaten the case will be rejected if they do not participate in mediation because they have violated Article 7 Paragraph (2) PERMA Number 1 Year 2016 regarding good faith in mediation. After the threat of case rejection due to violation of the PERMA mentioned above, the parties will usually follow the mediation process in good faith at the next mediation meeting. Of course, the mediation process will not always be able to cancel the divorce proceedings.

However, with this mediation process, it is hoped that the relationship between the married couple, which was previously filled with the emotional nature of each party, will now become a little calmer and the relationship between fellow Muslims will also be well maintained. In practice, mediation is expected to be able to resolve

several cases related to the main case they filed. As in divorce cases, for example, even if the divorce is not successfully mediated, at least cases such as child custody, joint property and so on are successfully mediated. So that the process of deciding the outcome of the trial will be faster without having to re-trial the cases that were previously successfully mediated.

There are several stages of case mediation conducted at the Masamba Religious Court, namely:

1. Within a maximum of 5 (five) working days after the parties appoint an agreed mediator, each party may submit a case resume to each other and to the mediator.
2. Within a maximum of 5 (five) working days after the parties fail to select a mediator, each party may submit a case resume to the appointed mediator judge.
3. The mediation process shall last for a maximum of 40 (forty) working days from the time the mediator is selected by the parties or appointed by the chairman of the panel of judges.
4. Based on the agreement of the parties, the mediation period may be extended for a maximum of 14 (fourteen) working days from the expiry of the 40 (forty) days.
5. The period of the mediation process does not include the period of case examination.
6. If necessary and based on the agreement of the parties, mediation may be conducted remotely using communication tools.

After a divorce case enters the Masamba Religious Court, or enters pre-mediation, the President of the Court and the Chief Clerk form a Panel of Judges and set a trial date. In the first session the Panel of Judges must first reconcile the two parties who want to divorce, if not then the Religious Court appoints one person who will be the Judge Mediator in the divorce process.

Before conducting mediation, the Mediator invites the parties to draft an agreement in writing and establishes the nature of the mediation and the form of relationship between the parties successfully, then the parties are encouraged to follow the mediation procedure. The mediation process conducted will be led by one Mediator from the Masamba Religious Court. Before conducting the mediation, the Mediator invites the parties to draft a written agreement and establish the nature of the mediation and the form of relationship between the parties. The obligations of the trial judge are as follows:

1. At the time of the scheduled hearing, the examining judge shall oblige the parties who have attended to conduct a mediation process first.
2. The presence of all parties as described in paragraph (1) was in accordance with a valid summons.
3. When the parties were not present during the first hearing, the Court shall summon the parties once again in accordance with the procedural law.
4. In the event that there is more than one party, mediation shall still be conducted after a valid summons has been issued in accordance with the mediation procedure, even if all parties are absent.
5. If the absence of the defendant who does not have a significant interest does not hamper the mediation process.

6. The examining judge shall explain the procedures of the mediation process to all parties.
7. The explanation referred to in paragraph (6) shall include:
 - a) The definition and benefits of mediation
 - b) The obligation of the parties to attend the mediation meeting in person and the legal consequences of not acting in good faith in the mediation process.
 - c) The high costs usually incurred by the use of non-judge mediators who are not employees or workers of the court.
 - d) The option of following up the peace agreement through a deed of peace or the withdrawal of the lawsuit, and
 - e) The obligation for all parties to sign the mediation notification form.
8. The judge hearing the case gives the mediation process form to all parties stating that all parties:
 - a) Have had the mediation procedure explained in detail by the judge hearing the case
 - b) Understand well and correctly the mediation process.
 - c) Be ready to follow the mediation process properly.
9. The mediation explanation form described in paragraph (8) shall be signed by the parties and/or their lawyers immediately after obtaining an explanation from the judge examining the case and shall constitute an integral part of the case file.

b. The Role and Duties of the Mediator in Mediating Divorce Cases at the Masamba Religious Court

According to PERMA Number 1 of 2016, a mediator is a neutral party who assists all parties in the conversation process in order to choose various possibilities of resolving disputes without using the method of deciding and forcing it to be resolved.

Basically, a mediator functions as a guide who helps the parties to resolve the dispute they face. A mediator also wants to help the parties to frame the case in a problem that needs to be experienced together, of course, the dispute resolution option must be acceptable to both parties and can also satisfy both parties. At least the main position that must be carried out by a mediator is to bring together the interests of different interests in order to reach a meeting point that can be used as the basis for solving the case.

The effort to reconcile is an obligation embedded in a judge appointed as a mediator. The judge seeks to provide peace to the parties in every case examination process that he handles. A mediator judge mediates a case in which he is not involved in the Religious Court that examines and tries the case he mediates.

In the notification and approach efforts made are given to the judge. There is no legislation that specifically regulates the method of approach that judges should use in providing advice. The mediators at the Masamba Religious Court, both those who have been certified and those who have not, certainly in conducting mediation have a temporary concept in supporting the success of mediation and this is determined by the scientific capacity possessed by the mediator judges.

Mediator judges are basically not people who know everything, but every time they carry out their duties as mediators, at least mediators must master the

procedures and understand the disputed material faced by the parties. In this way the mediator can find the point of the dispute that occurred, then from there the Mediator will be easier to advise and try to reconcile for the two opposing parties. (Laila Syahidan, 2022). The duties of the Mediator, namely:

1. The mediator is obliged to prepare a proposed mediation meeting schedule for the parties to be discussed and agreed upon.
2. The mediator shall encourage the parties to directly participate in the mediation process.
3. If deemed necessary, the mediator may conduct caucuses or separate meetings during the mediation process.
4. The mediator shall encourage the parties to explore and explore their interests and seek the best settlement options for the parties.

A mediator has the task of assisting all parties in understanding each other's principles and helping to discover what issues are important to them. A mediator facilitates the exchange of information, perceptions, and emotions. Thus, an arbiter not only acts as a mediator who works as an organiser and leads the deliberations, but must also help the parties to design a dispute resolution to reach a mutual agreement.

Referring to PERMA Number 1 of 2016 concerning Mediation Procedures in Court, in facilitating the parties the mediator holds a meeting in a special room with the aim of bridging and deliberation and asking about the subject matter of the disputed parties.

The judge as a mediator who mediates divorce cases makes every effort to achieve peace between the disputing husband and wife, but the decision is ultimately returned to both parties. The final conclusion is still decided by both parties, because the mediator only guides and asks what the two disputing parties want.

The mediator judge if mediating all parties always tries to provide input and recommendations so that all parties reconsider the advantages and disadvantages of divorce, then all decisions are left to all parties, whether they want to reconcile or continue (Sulastri Suhani, 2022).

Regarding the mediation process at the Masamba Religious Court which carries out the duties of a mediator as an educator, the researcher directly sees the mediation process where a mediator becomes an educator and provides various kinds of knowledge and provides clarity on the impact of divorce.

The mediator judge in carrying out his duties as an educator of the mediation process which can be used as an advisory medium, because it not only reconciles all parties to the dispute and can advise and share additional knowledge for the parties. In addition, the mediator will also explain the impact of divorce from a legal, social and religious perspective. From the legal side, if the marriage has been blessed with children and there is a divorce, then the children remain the responsibility of both parents, the social consequences of divorce are becoming the subject of public discussion and changing status, and the consequences from the religious side, including divorce is an act that is permitted but very hated by Allah. The problem of divorce is one of the efforts to form reconciliation for husbands and wives who want to separate, but the mediator judge of the Masamba Religious Court still protects so that the marriage relationship is not interrupted and tries to make peace even though it seems forced.

Based on the data obtained, within 5 years the Masamba Religious Court was able to educate and mediate couples who wanted to divorce. This can be seen from the data on the results of court decisions which have decreased from the data on cases submitted by registrants.

CONCLUSION

From the results of research conducted by researchers at the Masamba Religious Court, the researchers concluded that the implementation of Perma Number 1 of 2016 concerning Mediation in Court, in the mediation procedure at the Masamba Religious Court has been carried out in accordance with the procedures and provisions without releasing the factors in the Perma, but the development of the level of effectiveness in the application of Perma concerning Mediation in Court has not been effective, because the level of mediation success shown is still far from the expected expectations.

Mediators have an important role in supporting the success of mediation, so the role of judges in charge of mediators is carried out to the maximum in order to produce successful communication with all parties. Successful communication with all parties can be established, if the judge is able to master the psychological conditions for all parties, and can create closeness and trust between each other. Judges are also required to be able to maintain health and fitness so that they always look their best, given the large number of cases that must be resolved, in order to provide maximum performance in carrying out their roles and functions as mediators.

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