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The Mediation Process at the Soreang Religious Court Becomes a Means of Reconciliation in Divorce Cases in Soreang, Bandung Regency Based on Supreme Court Regulation Number 1 of 2016

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Abstract: Divorce is an event that often involves various conflicts and complex issues, both from a legal and social perspective. Religious Courts have a key role in handling divorce cases and mediation has been one of the approaches applied to seek amicable solutions in these cases. This study aims to find out how the Soreang Religious Court handles divorce cases in Bandung Regency in accordance with Supreme Court Regulation No. 1 of 2016. This research adopted a qualitative method. The process of collecting information through literature study. Once the data was collected, analysis was conducted in three stages: data reduction, data presentation, and conclusion drawing. The research shows that the Soreang Religious Court uses mediation as the final step to resolve divorce cases in Bandung Regency. Most divorce cases have been successfully resolved through this mediation approach. In addition, there are several factors that influence the success of mediation at the Soreang Religious Court, such as the willingness of both parties to follow the mediation process, the mediator's ability to understand and resolve the problems faced by the parties, and also the support of various related parties such as judges, clerks, and other parties involved in the mediation process.

Keyword: Mediation, Religious Court, Divorce

INTRODUCTION

Divorce is the end of a marriage and does not have the status of a husband and wife relationship. They also no longer live in the same house as a family (IFKI, 2023). Divorce is a complex event and generally involves a variety of issues, both from a legal and social perspective. From a legal point of view, divorce involves the process of formal termination of the marriage bond before the competent judicial institution. This can involve issues such as division of joint property, childcare, and financial aid. On the social side, divorce also often has an impact on the emotional and psychological life of the divorced couple, the children involved, and even the wider social environment.

The Religious Court plays a central role in handling divorce cases in the community, this is due to the legal authority it has to process and adjudicate divorce cases in accordance

with applicable Islamic family law (SUSYLAWATI, 2018). When handling divorce cases, religious courts often try to reach a peaceful and equitable settlement. One of the approaches applied by the Religious Courts in reaching a peaceful settlement is mediation.

Mediation refers to out-of-court conflict resolution led by a neutral and trained mediator. As mediators, they help disputing parties to find common ground for consensus between the parties involved (Imran et al., 2022). In the case of separation, mediation in the Religious Court intends to avoid the long and expensive journey into the trial and reduce conflict between divorced couples. Mediators usually help couples to negotiate on issues such as childcare, division of joint property, and financial support (Afsari & Andini, 2019). Thus, mediation has become an effective tool in pursuing an amicable settlement in divorce cases and reducing the workload of Religious Courts.

Previous research by (Hermanto et al., 2021) explored the function and position of mediation in religious courts, and found that so far, the mediation process has been carried out by courts with judges as mediators. Because judges have an important role and set policies, it is very difficult for them to settle cases out of court. In addition, cases submitted to court are usually cases that have been handled through family, community and even customary, and unfinished approaches which are then referred to the court.

Another study by (Kautsar, 2018) investigated the role of judges as mediators with the results of his research indicating that the mediator strategy carried out by judges uses a group advisory approach, which allows a deeper understanding of the problems faced by parties who want to divorce. Once the problem is identified, counseling is done with a focus on the issues that arise. The supporting factor involves open communication between the parties involved, facilitating the mediation process. However, there are inhibiting factors, such as the escalation of the severity of the problem or the limitation of limited time. The impact of the judge's role as a mediator in the Bandung Religious Court is the limited time the judge has due to the many cases he must face in the trial.

The absence of research that examines the position of mediation in the Soreang religious court in handling divorce cases in Bandung Regency based on Supreme Court regulation number 1 of 2016 is a novelty in this study. The results of this study can help increase public understanding of the importance of mediation in resolving divorce cases. The public can realize that mediation is a better alternative to a lengthy court process. The purpose of this study was to determine the position of mediation in the Soreang Religious Court in handling divorce cases in Bandung Regency based on Supreme Court Regulation Number 1 of 2016.

METHOD

The method used is a normative juridical legal research method with a qualitative approach. Normative juridical legal research or normative legal research is basically an activity that will examine the internal aspects (to solve problems that exist in) positive law (Benuf & Azhar, 2020). While the qualitative approach according to Moleong (2013) is a type of research that focuses on understanding various phenomena experienced by research subjects thoroughly by utilizing a variety of natural methods in the context of the original environment.

The data analysis method is carried out by collecting data through the review of literature materials or secondary data which includes primary legal materials, secondary legal materials and tertiary legal materials, both in the form of documents and applicable laws and regulations relating to normative juridical analysis of the mediation process in court. The information, collected through a literature study obtained from Google Scholar, covers the period 2013-2023. Once the data is collected, the analysis is carried out in three stages: data reduction, data presentation, and conclusion drawing.

RESULTS AND DISCUSSION

When individuals and social groups meet each other, social processes are seen, which determine the system and form of relationships. Marriage is one form of social process that allows social interaction (Manna et al., 2021). Marriage is part of cultural heritage and an important part of the circle of human life. This is the starting point of the formation of the family as a unit, is a group of individuals who are emotionally attached, live together, and work together in one environment. The goal is to build a family that is respected, full of love, integrity, mutual support, builds, cares, and maintains kinship attachments (Oktarina, 2013).

Regulation regarding marriage in Indonesia is regulated through Law Number 1 of 1974 concerning Marriage and Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage. The age requirement as stipulated in Law Number 16 of 2019 is different from Law Number 1 of 1974, namely the age as regulated in Law 2019 is 19 years both male and female (Sriono & Pakpahan, 2023).

Marriage will not always go smoothly. However, some disputes can be resolved, and some others can go on to lead to divorce. In the end, the peace efforts of both parties were not as expected (Dewi, 2020). The court that has the authority to evaluate, make decisions, and adjudicate divorce cases for a Muslim is the Religious Court as the rules contained in Article 115 of the Compilation of Islamic Law (KHI) read, "Divorce can only be carried out before a Religious Court session after the Religious Court has tried and failed to reconcile both parties" (Khosyi'ah & Jundan, 2020). Meanwhile, according to article 114 KHI which explains that: "The breakup of marriage caused by divorce can occur due to talaq or based on a divorce lawsuit" (Nurdin, 2018). Article 39 of the Law on Marriage states that:

- a. Divorce can only be done before a court hearing after the court concerned has tried and unsuccessfully reconciled both parties.
- b. To do the divorce there must be enough reasons, that between husband and wife it will not be able to live in harmony as husband and wife. This means that the Law on Marriage adheres to the principle of making it difficult for divorce to occur. To allow divorce there must be certain reasons and must be done before a court hearing.

According to the decision of the Constitutional Court No. 38 / PUU – 9/2011 states that the reason for divorce due to continuous disputes and quarrels between husband and wife in the Explanation to Article 39 paragraph (2) point f of the Marriage Law has different impacts on Indonesian citizens.

After the registration of the divorce suit, the court will scrutinize the documents to assess the validity of the arguments used in the lawsuit. At the first hearing, if both parties are present, the judge will try to arrange peace first. In divorce cases, peace efforts become a fundamental principle in religious justice procedures, and judges have the responsibility to ensure this is manifested at every stage of the examination. Judges should try to defuse conflicts, especially in divorce cases that tend to be full of disputes and quarrels. Although attempts at peace at the first hearing were unsuccessful, both had to undergo mediation assisted by mediators (Handayani & Syafliwari, 2017).

As a judge, the Soreang Religious Court is supposed to help two parties who want to reconcile to achieve peace. Because regulations are made to be implemented, as shown by Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Court (Supardi & Hanifiyah, 2018). Since 2003 the Supreme Court has only integrated mediation into the civil procedural law replacing the peace procedure that has been in force since the issuance of Article 130 HIR / 154 RBg as a peace procedural law in civil court proceedings since colonial times until the age of Indonesian independence is approaching 58 years. Also since 2003 PERMA on mediation has been amended two (2) times, namely PERMA No. 1 of 2008 and PERMA No. 1 of 2016 (Imron et al., 2023).

Mediation is one way of resolving conflicts that does not involve litigation, meaning that it is not through the court process. However, the divorce mediation process is no longer seen as the only method of out-of-court settlement; In contrast, mediation is not always conducted exclusively outside the realm of the courts (Usman, 2018).

In its implementation, the mediation process is divided into two stages, namely the Pre-Mediation stage and the Mediation Process.

a. Pra Mediasi.

Based on Pasal 130 paragraph (1) Het Herzienne Inlandsch Reglement (HIR) or Pasal 154 paragraph (1) Rechtsreglemen voor de Buitengewesten (RBg), the judge's duty is to attempt to mediate peace between the two parties. The first hearing discussed the mediation procedure, including the definition and benefits of the parties being present and behaving properly during the process, and the signing of the mediation explanation form. In mediation, parties may attend in person or through a special power of attorney to represent their presence. However, if the mediator wishes to hold a caucus, the parties involved must be present in person. In this context, caucus refers to the meeting of a mediator with one party in the absence of the other.

Once the Mediator is appointed, he or she is the one who arranges the meeting schedule for Mediation. Within the framework of the law, the bailiff summons the parties without the need for a power of attorney from the Judge. The cost of a call for mediation is treated as a cost to be taken care of in advance by the Plaintiff through the upfront costs of the case. Since this summons can be made without the need for a specific power of attorney, the court officer must ask either the Magistrate or non-judge Mediator to invite both parties.

b. Mediation Process.

At the beginning of Mediation, the parties are given a review of the rules of the Mediation and jointly agree on the rules that will govern subsequent meetings or scheduling. This agreement between the parties and the mediator is not explicitly stipulated in Supreme Court Regulation Number 1 of 2016. According to Pasal 26, Mediation can include Experts and Community Leaders if all parties agree. The definition of Expert in PERMA is not described in detail, so it can be interpreted that the criteria for becoming an expert are based on extensive education or experience in a professional field over a certain period of time.

If in Mediation, the parties do not reach consensus within 30 days or the extension period, and one of the parties does not make serious efforts to complete the mediation, then the Mediator is required to declare that the mediation attempt failed and report it to the Judge handling the case. The mediator is also required to convey in writing to the Judge handling the case that the mediation cannot be resolved. Data from the Soreang Class 1B Religious Court found that from 2019 -2023 there were 1023 cases and around 450 successful cases were successfully mediated by mediators.

The results of mediation at the Soreang Religious Court have shown success in resolving some divorce cases by peaceful means. The success of this mediation is strongly influenced by a number of factors, including:

- a. The willingness of the divorced parties to participate in the mediation process with the intention of resolving the dispute.
- b. The mediator's ability to understand and resolve problems faced by the parties.
- c. Support from various related parties, such as judges, clerks, and other parties.

The results of this analysis can be concluded that the Soreang Religious Court of Bandung Regency has shown success on mediation advice in divorce cases. So that mediation is considered as an alternative to resolving divorce cases that encourage peace in the family context.

CONCLUSION

Mediation at the Soreang Religious Court, Bandung Regency, based on Supreme Court Regulation Number 1 of 2016 has an important position in handling divorce cases. Mediation is considered a last resort to resolve divorce disputes before entering a longer and more formal court process. The results of mediation at the Soreang Religious Court have shown success in resolving some divorce cases by peaceful means. The success of this mediation is strongly influenced by a number of factors, including the willingness of the divorced parties to participate in the mediation process with the intention of resolving disputes, the mediator's ability to understand and resolve the problems faced by the parties, as well as support from various related parties, such as judges, clerks, and other parties. Thus, mediation at the Soreang Religious Court is not only an effective alternative in resolving divorce cases, but also encourages efforts to create peace in the context of family law.

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