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The Effectiveness of Mediation in Inheritance Law Disputes is Linked to Perma No. 1 of 2016 at the Karawang Religious Court

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Abstract: Mediation as an alternative dispute resolution mechanism outside of court has long been used in various business, environmental, labor, land, housing, and so on cases that are fast, effective and efficient. Mediation comes from the English "Mediation" or "mediation", namely resolving disputes by mediation. Inheritance issues are also a concern because they relate to social responsibilities entrusted to heirs. The formulation of the problem to be studied in the following research is the authority of the mediator judge at the Karawang Religious Court in resolving inheritance case disputes, how effective the mediator is in handling inheritance cases in Number: 2222/Pdt.G/2022/ PA. Karawang. And what are the obstacles that hinder the mediation process at the Karawang Religious Court? In this research the author uses an empirical juridical approach. The reason the author uses this method is because the main data used is primary data, namely in the form of data obtained based on field studies and supporting data is secondary data, namely in the form of data obtained based on literature studies, statutory regulations, legal principles relating to the problem that the author will discuss. To overcome these obstacles, the Karawang Religious Court can make efforts such as increasing public awareness about the benefits of mediation, increasing the number and quality of mediators, allocating sufficient resources for the mediation process, building trust from the parties concerned.

Keyword: Mediation, Inheritance Law, Religious Court.

INTRODUCTION

Mediation is one of the alternative mechanisms for resolving alternative disputes outside of court and has been used quickly, effectively and efficiently for many years in various environmental, business, land, labor, housing and other cases. Linguistically, mediation comes from the English word "mediation", which reflects the process of resolving conflict with a mediator who acts as an intermediary between the two parties. Etymologically, the term mediation comes from the Latin "*Mediare*", which literally means

"to be in the middle". This shows the role played by the mediator as a neutral mediator to resolve disputes by facilitating dialogue and finding solutions that help both parties .¹

Being an intermediary also means that the mediator needs to take a neutral and impartial stance during the dispute resolution process. A mediator is required to be able to protect the interests of both parties in a problem in a balanced and fair manner, in order to create trust between all participating parties. The basic principle of mediation is an out-of-court procedure in which the disputing parties negotiate with the help of a third party who is neutral (*non-intervention*) and does not take sides (*win-lose*). Apart from that, it is hoped that mediation in court can help overcome the problem of backlogs of cases by offering alternative solutions that are faster and more efficient. Thus, mediation not only provides a solution for the disputing parties, but also benefits the justice system by reducing the mounting caseload.² After the implementation of Supreme Court Regulation no. 1 of 2008 concerning Mediation Procedures in the Courts, mediation is an important part in all stages of case handling in the courts, including religious courts. Attention to mediation is increasingly being encouraged with the existence of mandatory provisions, such as the need to carry out mediation before considering a case, the possibility of canceling a court decision if it does not include mediation.

In the context of inheritance dispute mediation, the role of a judge is not only limited to efforts to resolve conflicts between disputing parties, but also involves proactive steps to prevent inheritance disputes from arising altogether. This emphasis on the preventive aspect reflects the importance of law not only as a reactive tool, but also as a forum for avoiding conflicts that could arise in the future. In the legal system, the stages of peace proceedings in formal procedural law have been determined by the law regarding inheritance. This law emphasizes that in the context of Islamic inheritance, the main principle underlying the distribution of assets is a person's death.³

Therefore, this legal regulation implies that inheritance issues will not arise without the event of death. However, when someone dies, this event often raises problems related to inheritance. This emphasizes the need for clear legal provisions and appropriate action from the courts, including judges, to manage and resolve inheritance disputes fairly and efficiently. Thus, proactive conflict prevention and resolution efforts can be a strong foundation in ensuring the continuity of legal order and peace in resolving inheritance disputes.⁴

Everyone has inheritance problems. In addition, inheritance law directly concerns property, and if certain provisions are not complied with, it is very possible that disputes will occur between heirs. Although the division of inheritance has been regulated in detail , both regulated in Islamic inheritance law and Indonesian inheritance law. Talking about inheritance, problems often occur that cause rifts between families. In practice, this can be seen from the unequal distribution of inheritance or the dissatisfaction of one or both parties regarding the division of inheritance according to the provisions of Islamic inheritance and inheritance in Indonesia.⁵

Inheritance issues are also related to the social responsibilities imposed on heirs. According to Islam, assets and property are seen as gifts from Allah SWT, and heirs are obliged to manage them responsibly and wisely. Fair distribution of inheritance can enable

¹ Bambang Sutiyono, *Arbitration Law and Alternative Dispute Resolution*, Yogyakarta:Gama Media, 2008, p56

² Joni Emerzon , *Alternative Dispute Resolution Outside of Court: Negotiation, Mediation, Conciliation and Arbitration*, Jakarta: Gramedia Pustaka Utama, 2001 p. 69

³ Ahmad Azhar Basyir , *Islamic Inheritance Law* , Yogyakarta 2013 p. 3

⁴ Syahrizal Abbas , *Mediation in Sharia Law, Customary Law and National Law*, Jakarta: Kencana, 2009, p.1.

⁵ Suhrawardi K Lubis and Komis Simanjuntak, *Islamic Inheritance Law*, Jakarta Sinar Graphic 2008 p 39

heirs to meet their family's needs and help those in need in social life, thereby stimulating sustainable economic and social stability.⁶

Settlement of inheritance disputes requires quite in-depth and comprehensive consideration of the issue of dispute resolution methods. To ensure legal certainty of inheritance, research is needed from a number of groups to determine the factors that hinder dispute resolution through mediation in order to carry out its function of legal certainty of inheritance.⁷

In the inheritance case that the author studied at the Karawang Religious Court, the Plaintiff filed a lawsuit at the Karawang Religious Court regarding an inheritance in the form of 1 Honda CRV car where complete documents relating to the Heir were in the hands of the Defendant. So, the formulation of the problem to be studied in the following research is how the authority of the mediator judge at the Karawang Religious Court is in resolving inheritance case disputes, how effective the mediator is in handling inheritance cases in Number: 2222/Pdt.G/2022/PA.Karawang. And what are the obstacles that hinder the mediation process at the Karawang Religious Court?⁸

METHOD

In the following research, the author uses a normative juridical approach. The reason the author chose this method is because the main data used is primary data, which was obtained based on field research, and the supporting data is secondary data, namely data obtained through library research, statutory regulations, relevant legal principles related to the problem being discussed by the author. .

The data sources used in this research were obtained by searching various legal materials or literature, such as court decisions, official documents and books. These secondary data sources include primary, secondary and tertiary legal materials.

1. Primary legal materials are legal materials that compile a country's legal policies in stages, including the 1945 Constitution, statutory policies, government regulations and other statutory regulations.
2. Secondary legal materials are legal sources that provide interpretation or explanation of primary legal sources, such as official documents, research results, books, legal experts and journals.⁹
3. Tertiary legal materials are legal documents that complement primary and secondary legal documents and provide additional explanations.

Next, the data collected is then analyzed qualitatively through the use of systematic interpretation techniques. Systematic interpretation is an interpretation that links articles to relevant laws and other laws.

RESULTS AND DISCUSSION

The word mediation comes from the Latin "mediare", which means "in the middle". This meaning refers to the role of a third party as an intermediary when carrying out its function to pressure the parties to resolve the dispute between them. Being an intermediary also means that the mediator needs to take a neutral and impartial stance during the dispute resolution process. A mediator is required to be fair and impartial so that both parties to a dispute can rely on him as a mediator.

Based on the KBBI, the word "mediation" means the process of involving a third party in resolving a dispute as an advisor. The meaning contained in the KBBI contains 3

⁶ Effendi Wargan, *Inheritance Law*, Bandung: Pustaka Setia 2008 p 13

⁷ <https://www.kompasiana.com/nusaibahayufebriani7781/662f95b7c57afb119565fd52/perprobleman-waris> accessed on 6 May 2024 at 10.11 WIB.

⁸ Decision number: 2222/Pdt.G/2022/PA.krw

⁹ Soerjono Soekanto, *Introduction to Legal Research*, Print 3, University of Indonesia, Jakarta, 2021, p 12

(three) important elements. First, mediation is the stage of resolving a dispute or dispute between two or more parties. Second, the parties who participate in dispute resolution are parties outside the parties to the dispute. Third, the parties to the dispute serve as advisors and do not have the authority to make decisions.¹⁰

Article 1 point 1 of PERMA Number 1 of 2016 defines mediation as a way of resolving disputes through negotiation efforts in which an agreement is reached between the parties through the help of a mediator. Mediation comes from English which means dispute resolution through mediation. Mediation is a negotiation effort in which an impartial external party collaborates with the parties involved to reach an agreement. The mediator does not have the authority to decide disputes, but only helps the parties in resolving their problems through mediation efforts.¹¹

Christopher W. Moore, in his book Bambang Sutiyo, explains that mediation is acceptable third party intervention in negotiations and disputes. Third parties must be impartial and neutral and must not have the authority to make decisions in favor of the parties to the dispute. Third party intervention can help support voluntary agreements in resolving disputed issues. Mediation is a stage where the parties, with the help of one or more people, systematically discuss the dispute at issue and look for alternative solutions that meet the needs of the parties.¹²

Mediation is a way of resolving disputes through negotiation stages in order to reach an agreement between the mediator and the parties involved in the dispute, as stated in Article 1 paragraph (1) of Supreme Court Decision No.1/2016. Mediation has various benefits, including:

1. Speed up the stages of resolving disputes
2. Low cost
3. Provide an opportunity to find a solution that leads to an agreement that can be accepted by all parties so that the parties concerned do not carry out cassation or appeal efforts.

Effectiveness Mediation On Dispute In Court Religion Karawang

Mediation is an effective and peaceful method of resolving disputes. In mediation, the mediator, who is a neutral judge approved and chosen by the parties concerned, has no interest or is a favored party in the dispute. The mediator's job is to help find a satisfactory solution for the parties involved in the dispute. This is in line with Article 130 HIR (Herziene Inlandsch Reglement) and Articles 27 and 28 of MA Regulation No.1/2016 regarding mediation mechanisms in court.

1. Premediation Stage

The first pre-litigation hearing is read and attended by the parties involved in the dispute. The panel of judges will ask both parties to choose mediation. Based on Article 17 paragraph (3) of MA Regulation No.1/2016, parties who do not attend the first hearing will be summoned once before the lawsuit is read out by the panel in accordance with judicial procedural law practices. This allows relevant parties to participate in mediation under Article 17(1). The judge who hears the case will require the parties to undergo mediation.¹³

2. The process of carrying out mediation

¹⁰ Dictionary Compilation Team for the Center for Language Development and Development, "Big Indonesian Dictionary," Department of Education and Culture, Jakarta 1988. Pg 569

¹¹ Republic of Indonesia Supreme Court Regulation Number 1 of 2016 concerning Dispute Resolution Through Mediation

¹² Siti Juwairiyah, "Portrait of Mediation in Islam", via www.badilag.net accessed 29 April 2024 at 23.00 WIB

¹³ Law no. 50 Year 2009 about Justice Religion PERMA Republic Indonesia article 24 (2) article 17 paragraph (3) Number 1 Year 2016 about court mediation procedures

The relevant parties involved will provide a summary or resume of the case to the appointed mediator. Then, the mediator judge will be given 30 days, in accordance with Article 24 paragraph (2), starting from determining the mediation schedule agreed to by the mediator and related parties. Before mediation begins, the mediator judge will study the contents of the lawsuit to find a peace agreement for the parties involved. If a tense situation occurs during the mediation stage, the mediator judge must stop the mediation for a moment to calm the atmosphere until conditions return to calm .

3. Mediation reports did not reach an agreement

If the mediation does not reach an agreement or is unsuccessful during the negotiation process, the mediator will prepare a written report regarding the failure of the mediation. This report is then submitted to the panel of judges who have authority over the trial and examination of the case.

4. Mediation Report Reaches Agreement

If the mediation is successful and both parties reach an agreement, then in line with Article 27 paragraph (1), they are required to formulate the agreement in writing. This agreement is usually referred to as a "Deed of Peace" or "*Deed of Vandading*". In this deed, the parties, with the help of a mediator, detail what they have achieved. This deed is signed by all parties involved: the mediator and the disputing parties who support the mediation procedure.

Mediators act as facilitators in the conflict resolution process, providing a safe and open environment in which disputing parties can communicate effectively. They listen attentively to each party's interests and needs, help them understand each other's perspectives , and encourage cooperation and empathy. By maintaining a neutral attitude, the mediator does not take sides with either party, thereby allowing the negotiation process to take place in a fair and balanced manner. In addition, the mediator does not use force or pressure to force the parties to accept an agreement, but rather helps them voluntarily reach a mutually beneficial solution. This creates space for disputing parties to find mutually acceptable solutions, avoids conflict escalation, and creates a foundation for improving future relationships.¹⁴

Based on the effectiveness theory explained by Soerjono Soekanto, legal effectiveness is influenced by 5 main, interrelated aspects. The first factor is the legal factor itself. In the following research, this aspect refers to Supreme Court Regulation No.1/2016 concerning Mediation Mechanisms in Courts. This regulation is a very important normative guideline for the implementation of mediation in the judicial process. The existence of regulations that are clear, comprehensive and easy to understand is very important so that the law can be implemented effectively. At the Karawang Religious Court, the implementation of mediation procedures has been carried out in accordance with the provisions stipulated in the Supreme Court regulations, which indicates a strong commitment to carrying out the judicial process with good integrity and efficiency. This reflects the seriousness of the Karawang Religious Court in achieving an effective and fair resolution for the parties involved in the dispute, and emphasizes the importance of respecting the law and the applicable legal process.

The second factor is law enforcement, which refers to the performance and integrity of law enforcement officers at the Karawang Religious Court. For law enforcement to be effective, officers must understand the law and apply it consistently and fairly. The integrity and professionalism of judges, mediators and other officials is very important to implement regulations as intended. Consistency and fairness in every legal decision are the keys to maintaining public trust in the justice system. Only by ensuring that law enforcement is

¹⁴ <https://www.Hukumonline.com/klinik/a/apa-itu-mediator-dan-tas-anggaran-cl1945/> accessed 16 May 2024 at 08.00 WIB

carried out with high integrity and fairness, the Karawang Religious Court can fulfill the community's expectations for justice and legal certainty.

The third factor is the facilities and means that support law enforcement. This includes physical infrastructure such as court buildings, mediation rooms, as well as supporting technology such as information and communication systems. Without adequate and modern facilities, the law enforcement process can be hampered and inefficient, thereby reducing the effectiveness of the law itself. At the Karawang Religious Court, facilities such as mediation rooms are available in sufficient numbers, with two rooms specifically provided for mediation activities. This facility is well designed to support the mediation process, creating a conducive environment for the parties involved who contribute to the resolution of the case. The use of sophisticated technology and adequate information systems also contributes to providing comfort for the people carrying out mediation. With complete facilities and supported by modern technology, the Karawang Religious Court provides a clear commitment to facilitate the mediation process effectively and efficiently, ensuring that the interests of the parties are guaranteed and the legal process is carried out smoothly.

The fourth factor is society, namely the social environment in which the law is implemented and applies. Legal awareness and community participation are very important in ensuring the law operates effectively. People who have an understanding and respect for the law tend to be more obedient and cooperative in the legal process, making law enforcement easier. The Karawang Religious Court must take an active role in providing education to the general public regarding the importance of complying with the mediation process. Through outreach programs and educational campaigns, the public can be given a better understanding of the benefits of mediation in dispute resolution. By better understanding the mediation process, the public can gain in-depth insight into how mediation can be an effective alternative in resolving disputes, avoiding long and expensive litigation processes. Thus, the educational efforts carried out by the Karawang Religious Court will help build a stronger legal culture in society, where an understanding of the importance of peaceful resolution can be widely instilled.

The fifth factor is culture, which includes the values, norms and habits of society. Culture influences people's perceptions of the law and its enforcement. Cultural values that support justice and order foster effective law enforcement. These values determine what is considered good and must be obeyed and what is considered bad and must be avoided. Therefore, harmony between law and local culture is very important for the effectiveness of the law. Cultural factors and normative values in the Karawang Religious Court are important to understand how the local community views and applies mediation. Courts need to consider society's views on mediation: whether it is valued or not. In developing mediation, sensitivity to local cultural values and norms, such as the importance of deliberation and mutual cooperation, is important. By taking this into account, the Court can create a mediation approach that is more acceptable to society, increasing its effectiveness in resolving disputes in accordance with society's values.¹⁵

According to Karawang Religious Court Judge Drs. H. A Syuyuti, M.sy Mediation in the Religious Courts So far this has been carried out as well as possible by professional mediator judges. Many cases have succeeded in reaching a peaceful agreement thanks to the performance of the mediator judges and the public's understanding of mediation. According to him, the success of mediation mainly depends on the role of the parties concerned in discussing problems and finding solutions. Mediation can only be successful if the parties involved are honest. The mediator's role is to prepare the terms of the agreement which will then be outlined in a peace deed (*Vandading Deed*).¹⁶

¹⁵ Soerjono Soekanto, *factors influencing law enforcement*, p5

¹⁶ Interview Results of Mediator Judge at Karawang Religious Court Drs. H. A Syuyuti, M.sy

Table 1. Mediation in inheritance cases at the Karawang Religious Court

NO	YEAR	ENTRANCE CASE	MEDIATION	INFORMATION	
				FAIL	SUCCEED
1	2020	7	5	5	0
2	2021	8	6	4	2
3	2022	11	7	6	1
4	2023	14	14	11	3

In 2020, there were 7 inheritance cases submitted and 5 who carried out mediation, the success percentage was 0%. In 2021, there were 8 inheritance cases submitted and there were 6 who carried out mediation, the success percentage was 33%. In 2022, there will be 11 inheritance cases submitted and 7 mediation will be carried out, the success percentage is 10%. In 2023, there will be 14 inheritance cases submitted and 14 mediation will be carried out, the success percentage will be 21%

Judging from the data obtained by the author, the level of success of mediation in inheritance disputes is still not effective because in the past 4 years it has not yet reached a comparable percentage of success and failure or reached 50%. And we can also see that only a few inheritance cases have been registered, different from disputes such as divorce lawsuits. However, the success of mediating inheritance disputes in the Religious Courts has been carried out well and professionally by the mediator judges.

In inheritance case No: 2222/Pdt.G/2022/PA.karawang, mediation was carried out by the Defendant and Plaintiff, accompanied by Mediator Judge Drs. Syafi'udin, SH, MH, succeeded in reaching a peace agreement where the heirs were willing to divide the inheritance according to Islamic law. The peace deed stated an agreement to share one Honda CRV car, with details of the license plate number, frame, engine and BPKB, in accordance with the provisions of Islamic inheritance law. The First Party (Plaintiffs) and the Second Party (Defendants) or Parties stated that the dispute had been resolved through peaceful consensus deliberation, ending the dispute in the Inheritance Lawsuit Case at the Karawang Religious Court, Number 2222/Pdt G/2022/PA. Krw. States that on June 30 2022 a Peace Agreement was reached between the Defendant and Plaintiff, as stated in the Deed of Peace Agreement (*Vandading Deed*). Pay attention to Article 130 HIR and Articles 27-28 MA Regulation No.1/2016, concerning Mediation Mechanisms in Court . As stated by the Mediator. then the parties also agreed that they would discuss this case by way of deliberation and consensus and would not continue the lawsuit. The parties must also comply with the mutually agreed decision signed by the parties.¹⁷

Obstacles to mediation at the Karawang Religious Court

Although conflict resolution is difficult, it is not impossible. The most important capital in resolving a dispute is the will and good faith of the parties concerned to resolve the dispute. These good intentions and desires may require the help of a third party to be realized.¹⁸

The reasons for the failure to materialize the agreement include:

1. No agreement was reached.
2. If one of the parties does not attend two consecutive mediation conferences based on the agreed schedule or does not attend two consecutive mediation conferences without good reason.
3. Exceeding the agreed time between the parties, unless the parties concerned agree or request that the duration of the mediation be extended.

¹⁷ Decision Number: 2222/Pdt.G/2022/PA.karawang

¹⁸ Eddi Junaidi, *Dispute Resolution through Mediation* , Jakarta: 2011 p59

4. One of the parties wants to end the mediation stage.
5. One of the parties does not show good faith at the mediation stage.¹⁹

According to Drs. H. A Syuyuti, M.Sy is always the mediator judge at PA Karawang. The mediation process at the Religious Courts has been going well and is carried out by professional mediator judges who have been certified by the Supreme Court. The Religious Court itself has carried out the mediation stages as best as possible and has followed the rules made. As for the mediation case itself, why is it less effective because inheritance cases themselves are complicated matters because none of the parties involved are willing to give in. As we know, inheritance cases themselves are sensitive cases. The division of Islamic inheritance can also be said to be different from civil inheritance. This ineffectiveness occurred due to the parties' own decisions, because the mediator had tried his best to reconcile the parties concerned. However, mediation decisions must also be based on the decisions of the mediator parties only as a middle way.²⁰

The Karawang Religious Court as a dispute resolution institution in the field of religious law has a crucial role in resolving disputes that occur in society. One of the methods used by the Karawang Religious Court to resolve disputes is through a mediation process. However, like other stages of case resolution, mediation at the Karawang Religious Court also has obstacles that can hamper the dispute resolution process. The weaknesses of mediation include:

1. Mediation can only be carried out effectively if the parties concerned have the awareness to resolve the problem by consensus. Mediation will not be successful if one of the parties is unsportsmanlike.
2. Distrust or Fear of the Parties Involved in the Dispute fear of the parties involved in the dispute towards the mediator or the mediation process itself. The parties involved may feel less trust in the mediator because they do not know them well or have had bad experiences with previous mediators. Apart from that, there are parties who are afraid that the results of the mediation will not be favorable for them.
3. There are parties who do not comply with the mediation schedule and stall for time so that the mediation does not run according to the session.
4. Some cases cannot be mediated, such as cases involving issues of ideology or core values where there is no room for compromise between parties.
5. Normatively, mediation can only be carried out in private law and not in the context of criminal law.²¹

To overcome these obstacles, the Karawang Religious Court can make efforts such as increasing public awareness about the benefits of mediation, increasing the number and quality of mediators, allocating sufficient resources for the mediation process, building trust from the parties concerned.

CONCLUSION

The effectiveness of inheritance dispute mediation at the Karawang Religious Court is an effective, appropriate and peaceful way to resolve disputes and achieve satisfactory justice and peace. The mediator agreed and appointed by the parties concerned is a judge who is neutral, does not interfere in anyone's affairs, has no obligation to decide the dispute, and the main goal is to find a solution for the disputing parties. Please pay attention to Article 130 HIR and Articles 27-28 Supreme Court Regulation No.1/2016 concerning Mediation Procedures in Court.²² The Karawang Religious Court as a dispute resolution institution in

¹⁹ Rajawali Press ,312 PERMA Number 2016.

²⁰ Results of interviews with mediator judges at the KRW Religious Court Drs.H Asep.A.Syuyuti.,M.Sy

²¹ The article " *Obstacles in Implementing Mediation in Religious Courts* " by Ahmad Basir, et al. (Journal of Islamic Law, Vol. 5, No. 1, 2017).

²² Article 130 HIR and Article 27 and Article 28 Supreme Court Regulation No.1 of 2016, concerning

the field of religious law has an important role in resolving disputes that occur in society. One of the methods used by the Karawang Religious Court to resolve disputes is through a mediation process.

However, like other dispute resolution processes, mediation at the Karawang Religious Court also has obstacles that can hamper the dispute resolution process. To overcome these obstacles, the Karawang Religious Court can make efforts such as increasing public awareness about the benefits of mediation, increasing the number of and the quality of the mediator, allocating sufficient resources for the mediation process, building trust from the parties concerned. In inheritance case Number: 2222/Pdt.G/2022/ PA.karawang Mediation carried out by the defendant, plaintiff and mediator judge Drs. in accordance with Islamic law as conveyed by the Mediator and agreed upon by the parties.

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