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Effectiveness of Implementation of Mediation in Collecting Compilation Culture in Makassar Religious Courts

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Abstract: ***The purpose of this study is to know and analyze the effectiveness of mediation in the settlement of divorce cases in the Religious Courts and to know the efforts made by the Religious Courts to streamline mediation in solving the case of divorce. Mediation is an attempt to resolve the conflict by involving a neutral third party, which has no decision-making authority to help the parties to the settlement (solution) received by both parties. Matters to be considered in mediation are the following, structured, confidential and quick-paced steps, holding separate meetings and then joint meetings where possible or necessary, creating choices and finding favorable solutions for both disputing parties or win win solution.***

Keywords: Effectiveness, Implementation, Mediation

1. Introduction

Mediation is etymologically, derived from the mediare mediare which means being in the middle, because a mediator must be in the middle of a rival. In terms of terminology (term) there are many opinions that give different emphasis on mediation. While many argue about what mediation is, there are at least some limitations or definitions that can be used as a reference. One of them is the definition given by the National Alternative Dispute Resolution Advisory Council which defines mediation as follows: Mediation is a process whereby conflicting parties, with the help of a mediator, identify issues of disputation, develop options, considering alternatives and efforts to reach an agreement. In this case the mediator has no decisive role in relation to the content / material of the dispute or the result of the dispute resolution, but he (mediator) may advise or determine a mediation process to pursue a resolution / settlement.

Thus, it can be briefly described that mediation is a process of settling conflicting parties to achieve satisfactory settlement through a neutral third party (mediator). Mediation has an important position in Supreme Court Regulation No. 1 of 2016, since the mediation process is an integral part of the court process in court. With regard to the implementation of Supreme Court Regulation Number 1 of 2008 in the Religious Courts of Makassar, if any parties are litigants, the judge seeks to make a peaceful effort and obliges the parties to mediate. Religious courts also allow for the discretion of both parties to determine the mediator.

Mediators who come from mediation institutions, advocates or individuals must have a mediation certificate from the Religious Court of Makassar Class Ib. Formally, the mediator of the Religious Courts of Makassar Class IA facilitates mediators for two weeks (15 days) or more, if the parties require a mediation extension of up to 40 days. Nevertheless, the model of mediation work is almost similar to the form of advice and extracting problem data, regardless of a mature concept, as is the stage of mediation theory.

Supreme Court Regulation no. 1 year 2016 on Mediation Procedures in the Court is a refinement of the Supreme Court Regulation no. 2 of 2008 on Mediation Procedures in Courts. Completion is done because the Supreme Court Regulation No. Supreme Court. 2 of 2003 found some problems, so it is not effective its application in court. The Supreme Court issued Supreme Court Regulation no. 1 year 2016 as an effort to accelerate, simplify and facilitate dispute resolution and provide greater access to justice seekers. Mediation is an effective instrument for overcoming court cases in court as well as maximizing the function of the courts in resolving disputes, in addition to adjudicative litigation. Sugiri Permana also stated that the birth of mediation event through Supreme Court Regulation No. 1 of 2016 (hereinafter referred to as PERMA), is a reaffirmation of the previous Supreme Court Regulation, Supreme Court Regulation No. 2 of 2008.

The accumulation of cases within the jurisdiction, especially in cases of cassation, mediation is considered an effective instrument in the process of resolving disputes faster and cheaper, and can provide greater access to parties to find a satisfactory solution and meet the sense of justice.

The peace effort by the judge was used as the main capital in establishing this legal tool, which has been initiated since 2002 through Supreme Court Circular No. 1 of 2002 on First Level Empowerment Implementing the Peace Institution article 130 HIR / 154 RBg which then in 2008 is refined through PERMA number 2 of 2008 on Mediation Procedure in Court. The presence of Supreme Court Regulation No. 1 of 2016 is intended to provide certainty, order and smoothness in the process of reconciling the parties to settle a civil dispute. This can be done by intensifying and integrating the mediation process into court litigation procedures. Mediation has an important position in Supreme Court Regulation No. 1 of 2016, since the mediation process is an integral part of the court process in court. The judge shall follow the dispute resolution procedure through mediation, if the judge violates or is reluctant to apply mediation procedure, then the judge's decision is null and

void (Article 2 paragraph (3) of the Supreme Court Regulation).

2. Formulation of The Problem

Based on the background described above, it can be formulated problems in this study are as follows? How effectiveness of the application of mediation in solving divorce cases in the Religious Courts? What is the effort made in the effectiveness of mediation in solving divorce cases in the Religious Courts?

3. Theoretical Framework

Theory of Legal Effectiveness

According to Achmad Ali (2012: 379) in general, factors affecting the effectiveness of a legislation are professional and optimal implementation of the roles, authorities, and functions of law enforcement, both in explaining their duties and in enforcing the legislation. What is clear is that one awaits the provisions of legislation is due to the fulfillment of interest (interest) by the legislation.Law enforcement can be viewed from various perspectives, such as philosophical, juridical (normative) and sociological. Philosophically, the enactment of law if in accordance with the ideals of law, while the juridical if the law enforcement if in accordance with higher rules, or formation in accordance with the ways that are set while from a sociological perspective the point is the effectiveness **of law.**

According Soerjono Soekanto (2008: 8) there are 5 (five) things that affect the effectiveness or not of law enforcement are:

1) The legal or regulatory factors themselves (legislation)
   The possibility is that there is incompatibility in legislation regarding certain areas of life. Another possibility is that there is no statutory law with the unwritten law or customary law, sometimes the disagreement between the law and the customary law and so on.
2) Law Enforcement Factors
   The parties that make up and apply the law. The mentality of law enforcement officers includes Judges, Police, Prosecutors, Advocates, Correctional Officers and so on. If the law is good but mentally the person responsible for enforcing the law is still not steady, then the bias causes a disturbance in the legal system itself.
3) Factor Facilities or Facilities that support law enforcement.
   If the law is good and the mentality of the person in charge of upholding the law is also good but if the facilities are inadequate, then the law can not run in accordance with the plan.
4) Community Factors.
   The environment in which the law applies or sets. The community factor in question is public awareness of the existing law.
5) Cultural Factors
   The work, creativity, and taste that is based on human initiative in the social life. How the existing law can enter into and unite with the existing culture, so that everything works well.

Theory of Law Enforcement

Law enforcement is an effort made by law enforcement officers so that the existing laws and regulations can be done as well and as closely as possible.In general, enforcement can be interpreted as all efforts and activities undertaken by law enforcement so that the Law and the provisions of legislation are obeyed by every society in an effort to create security and public order (Kunarto, 1999: 54).

Related to that, Satcipto Raharjo (Achmad Ali, 1998: 41) states that law enforcement is the exercise of the law itself in everyday society Satjipto Raharjo also adds that law enforcement is a peruses to realize legal wishes become reality. The desire for desire is the minds of the legislatures formulated in the laws of law.

According Muladi (2002: 69) that simply can be said that law enforcement is an effort to enforce the norms of law and the rules of law as well as the values that exist dibelkangnya. Law enforcement officers should fully understand the legal spirit underlying the rule of law that must be enforced, related to the various dynamics that occur in the process of law making process.

One of the most common attempts to get people to comply with the rule of law is to include sanctions. The sanctions can be either a negative witness or a positive sanction, which implies stimulating people not to commit disgraceful actions or to commit unlawful acts. It takes certain conditions that must be met in order for the law to have an effect on human attitudes and actions or behavior. The conditions that must exist are among others that the law must be communicated. Legal communication is more focused on attitude, because attitude is a mental readiness so that a person has a tendency to provide good or bad, which then manifested in real behavior.

4. Discusion

Mediation is a peaceful method of dispute settlement, mediation has a great opportunity to develop in Indonesia. With indigenous eastern still rooted, the public prioritizes the continued intertwining of relationships between families or relationships with business partners rather than temporary advantages when disputes arise. Resolving a dispute in court may generate huge profits if it wins, but the relationship also becomes corrupted. Saving faces (face saving) or a person's good name is an important thing that is sometimes more important in the process of dispute resolution in Eastern cultured countries, including Indonesia.

Mediation is also one of the most effective instruments of non-litigation dispute resolution which has many benefits and advantages. Benefits and advantages of using mediation paths are that disputes can be resolved with win-win solutions, non-prolonged time spent, lighter costs, maintaining 2 relationships between two disputants and avoiding their problems from excessive publicity. Mediation is not only beneficial to the parties to the dispute, but also provides some benefits to the world of justice.

First, mediation reduces the possibility of accumulating the number of cases brought to justice. The number of

settlement cases through mediation, by itself will reduce the accumulation of cases in court. Secondly, the smallest number of cases filed in court will facilitate oversight in case of delays or deliberations to slow the examination of a case for a particular purpose that is not commendable. Thirdly, the minimum number of 1 case submitted to the court will also make the examination of the case in court run fast.

The obligation to carry out mediation on civil cases that go to court is one of the interesting provisions of Supreme Court Regulation Number 1 Year 2016 Article 2 Paragraph (3), this provision should not be ignored and should be noticed by various parties, because some court decisions can be canceled by law if not performing mediation procedure based on Supreme Court Regulation No. 1 of 2016 Supreme Court Regulation No. 1 of 2016 tries to provide more comprehensive, more complete, and more detailed arrangement related to mediation process in court. He directed the parties in litigation to pursue the peace process in detail, also accompanied by giving a consequence for violation of the procedure that must be done, namely sanction of decision void by law for a judge decision that does not follow or ignore Regulation of Supreme Court Number 1 of 2008 this.

The Supreme Court Regulation No. 2/2008 does not impose sanctions on mediation in court, while Supreme Court Regulation Number 1 of 2016 contains sanctions in its implementation. In the Supreme Court Regulation Number 2 of 2008 is not regulated on mediation at the appeal and cassation level, while the Supreme Court Regulation Number 1 of 2016 Article 21 Paragraph (1) regulates the possibility of it. The parties, on the basis of their agreement, may pursue peace efforts on cases that are under appeal, cassation or judicial review or on cases examined at appeals, cassations and appeals as long as the case has not been decided.

Fundamental changes in the Supreme Court Regulation No. 1 of 2016, can be seen in Article 4, ie the limitation of any case that can be mediated. However, these provisions have not yet determined the specific criteria of what matters can be mediated and can not be mediated. This Supreme Court Approach is a very broad approach.

This Regulation of the Supreme Court, all cases have not been included in the excluded criteria are required to take mediation in advance, not least the case of divorce in the Religious Courts. The obligation of mediation for parties with significant litigation is vital, parties are required to mediate in settling all civil cases as long as they are not excluded in Article 4. Unless cases are resolved through commercial court procedures, industrial relations courts, objections to the decision of the Consumer Dispute Settlement Board and objections to the decision of the Business Competition Supervisory Commission, all civil disputes submitted to the First Level Court shall first attempt to settle through peace with the assistance of the mediator.

The Supreme Court Regulation Number 1 of 2016 does not look at the value of the case, does not see whether the case has a chance to be settled through mediation or not, does not see the motivation of the parties, does not see what underlies the willingness of the parties to file the case, does not see whether the parties have sincerity (willingness or sincerity to mediate or not). Do not see and the problem of how many parties involved in the case and where the existence of the parties, so that it can be said that the Supreme Court Regulation No. 1 of 2016 has a very broad approach.

It is fundamental that if the litigants have no desire or willingness to mediate, it will result in an ineffective situation or situation against the necessity of mediation. Fundamentally, however, it should be understood that the ability of the parties to see an alternative in solving the case is usually limited, so it is necessary to be encouraged to see and know the unforeseen and imaginable ways. Under these conditions, it is hoped that the parties will be able to find and see the positive side of the mediation process offered. In the era of Supreme Court Regulation No. 2 of 2008, many parties used mediation because of the demands of this Supreme Court Regulation although only as a formality because there is no sanction. Now the situation can happen again, the parties follow the mediation process not out of lust, not because they see there is a good chance of dispute resolution process through mediation or see the advantage of mediation, but more because of the fear their decision will be null and void if not follow the mediation process.

According to Fatahillah A. Gratitude, (2012: 4), Mediation is a peaceful method of dispute resolution, mediation has a great opportunity to develop in Indonesia. With indigenous eastern still rooted, the public prioritizes the continued intertwining of relationships between families or relationships with business partners rather than temporary advantages when disputes arise. Resolving a dispute in court may generate huge profits if it wins, but the relationship also becomes corrupted. Saving faces (face saving) or a person's good name is an important thing that is sometimes more important in the process of dispute resolution in Eastern cultured countries, including Indonesia.

Mediation is also one of the most effective instruments of non-litigation dispute resolution which has many benefits and advantages. Benefits and advantages of using mediation paths are that disputes can be resolved with win-win solutions, non-prolonged time spent, lighter costs, maintaining 2 relationships between two disputants and avoiding their problems from excessive publicity.

Implementation of mediation and benefits is still not effective, many people who understand mediation simply meet with third parties as mediators, but they do not see any further benefit from the mediation process, so understanding of mediation becomes very important. The process should provide an understanding of the benefits of settling cases through mediation (socialization), should be done in advance so that the public gain understanding and knowledge of the importance of the process of settling the case through mediation, ideally before the Supreme Court Regulation No. 1 of 2016 is enacted.

The enactment of the Supreme Court Regulation Number 1 of 2016 on mediation procedures in the courts can be an attempt to resolve civil disputes, so the settlement of civil disputes through mediation becomes the primary choice.

Because it can negotiate the parties' wishes by way of peace, mediation efforts will of course also benefit the court as it will reduce the pile of cases.

Mediation for the parties in litigation in divorce is the first stage a judge should take in bringing a case to him. Attempts to reconcile the parties are deemed fair in ending a dispute, because reconciliation is not there who loses and who wins and still manifest kinship and harmony. The judge's obligation to reconcile the litigants is also in line with the teachings of Islam that order that resolving any disputes between human beings should be resolved by way of peace (ishlah).

The judge's actions in reconciling the parties to the dispute are to stop the dispute and seek that the divorce does not take place. The judge who has a stake in peace is the judge in the divorce proceedings when the court proceedings begin, whereas the mediator is a judge appointed by an assembly judge to seek peace for parties outside the court pursuant to the agreement of the parties. The mediator has a decisive role in a mediation process. Failure of mediation is also strongly determined by the role that mediators perform. Mediators play an active role in bridging a number of meetings between the parties.

Mediation if applied effectively would be very beneficial for the parties to the dispute or dispute, especially in divorce cases, because with the realization of it, the judicial institution indirectly also helps in realizing the goal of marriage sakinah, mawaddah, wa rahmah, and eternal.

Mediation is not only beneficial to the parties to the dispute, but also provides some benefits to the world of justice. First, mediation reduces the possibility of accumulating the number of cases brought to justice. The number of settlement cases through mediation, by itself will reduce the accumulation of cases in court. Secondly, the smallest number of cases filed in court will facilitate oversight in case of delays or deliberations to slow the examination of a case for a particular purpose that is not commendable. Thirdly, the small number of cases filed to the court will also make court proceedings in court run fast.

The implementation of Mediation in the Religious Courts needs to be evaluated and improved when the fact that the divorce case in the Makassar Class IA Religious Court, for example, is attempted to be settled peacefully, but is still ineffective. From the information that the authors get, the divorce cases that are accepted end in peace are still very few, so it is worth elaborating the reasons why mediation is still not effective as a method of settling divorce cases, so that later can be found ways for mediation to be effective in solving divorce cases, especially in Religious Court of Makassar Class IA. Implementation of Mediation in Religious Courts Makassar Class IA allegedly has not succeeded in accordance with the expectations of where from 2015 until the year 2017 lawsuit cerule entered into as many as 5,083 cases and divorce divorce cases that enter as many as 1797 cases and the mediation of 1,768 cases and succeed with peace through Mediation only about 34 Cases or about 3% only.

The realization of media proclamation is peace through different court sessions with peace outside the court, peace through court proceedings is held when the case is processed in front of the court (lawsuit is running). In the provisions of legislation it is determined that before the proceedings are processed, the judge recommends that the parties to the dispute be at peace.

If the conciliatory effort is successful then the case is repealed with the agreement of both parties, and therefore it is impossible to establish a provision or condition that intends to prohibit either party from committing a particular act, for example prohibited from torturing and others or requiring either party to do so something for example must love the wife. It is not possible to create a peace deed, because if the provision is violated, the verdict (peace deed) can not be executed, because the result of the case does not result in the breaking of marriage. If one party wants a divorce, then the only way is to file a new case.

In the event of a peace, divorce cases are revoked and a determination is made by a judge stating that the case has been revoked because the parties' peace is still in marriage bonds based on the marriage certificate issued by the religious affairs office, this determination can not be sought for the remedies because peace has been made between both sides.

According to Abdul Manan (2001: 118) if there is peace then the case must be revoked, And this there are two ways that can be taken are:1. Simply recorded in the minutes of the trial and the case is omitted from the list of cases / case registers;2. Not enough with news events only, but need to be made a product of determination or verdict.In the case of a divorce decision, an appeal or appeal is required, no divorce has occurred, since a new divorce occurs after the divorce verdict has permanent legal force or after the vow of pledge is pronounced before the hearing.

5. Conclusion

1) Mediation is an attempt to resolve the conflict by involving a neutral third party, which has no decision-making authority to help the parties to the settlement (solution) received by both parties.
2) Matters to be considered in mediation are the following, structured, confidential and quick-paced steps, holding separate meetings and then joint meetings where possible or necessary, creating choices and finding favorable solutions for both disputing parties or win win solution.

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