

Mediation Agreement in A Contested Divorce Case in Cibinong District Court

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Abstract. *This research aims to analyze the consideration of amicable agreements in the mediation process in cases of contested divorce at the Cibinong District Court and identify the factors that influence the success and failure of mediation. As an alternative dispute resolution method, mediation has a strategic role in creating more humane and sustainable solutions. The results showed that amicable agreements in mediation are based on the principles of justice and benefit, which provide solutions more quickly, flexibly, and reduce emotional conflict compared to the litigation process. Mediation is an effective alternative for resolving disputes in divorce cases, especially regarding sensitive issues such as child custody and division of joint property. The success of mediation is influenced by several key factors, including the willingness of both parties to compromise, the competence of the mediator, and a conducive mediation atmosphere. The professionalism of the mediator is crucial to the success of this process, as they act as a neutral facilitator who helps the parties find a common solution. On the other hand, mediation failure is often caused by high emotional conflict, distrust, lack of commitment to resolve the dispute, and the absence of one of the parties. This study concludes that mediation can be an effective instrument in resolving divorce cases when supported by good communication, the commitment of the parties, and the support of a professional mediator. These findings make an important contribution to understanding the importance of strengthening the mediation process to improve the efficiency of the justice system and reduce the negative impact of divorce.*

Keywords: Agreement; Divorce; Mediation; Peace.

1. Introduction

Marriage is a fundamental institution in society that binds a man and a woman together as husband and wife. The main goal is to form a happy and eternal family or household based on the Almighty God, as stated in Law No. 1 of 1974

concerning Marriage¹. However, the reality of domestic life is often not in line with these ideals. Various factors such as character incompatibility, economic problems, infidelity, and domestic violence can trigger divorce². In Indonesia, the divorce rate shows an alarming trend³. This phenomenon not only affects the divorced couple, but also the children and society at large. Therefore, the handling of divorce cases in court becomes very crucial to minimize the negative impacts that may arise.

In the Indonesian legal system, divorce can be done through two mechanisms, namely divorce and contested divorce. *Cerai talak* is a divorce filed by the husband, while *cerai gugat* is a divorce filed by the wife against the husband through the court⁴. Interestingly, the data shows that the number of cases of contested divorce tends to be higher than that of divorce, 307,778 of which are contested⁵. This phenomenon shows a shift in social dynamics where women are increasingly brave to take the initiative to end a marriage that is no longer considered harmonious. In the divorce judicial process, including contested divorce, Indonesia applies a system that prioritizes peace efforts. This is reflected in the provisions of Article 65 and Article 82 of Law No. 7 of 1989 concerning Religious Courts which obliges judges to try to reconcile the two parties in every examination of divorce cases⁶. Furthermore, the Supreme Court strengthened this peace effort through Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Court⁷.

Mediation in divorce cases has special characteristics compared to mediation in other civil cases. This is because divorce involves strong emotional aspects and affects not only the divorcing couple, but also the children and extended family. Therefore, mediators in divorce cases are required to have special expertise in handling family conflicts and understand the psychological aspects of the parties. The Cibinong District Court, as one of the judicial institutions in Indonesia, also applies the mediation process in handling divorce cases, including contested divorce. As a court located in a buffer zone of the capital city, the Cibinong District Court faces its own challenges in handling divorce cases. The high rate of urbanization and the complexity of urban life in the Cibinong area and its

¹ Law No. 1 of 1974 concerning Marriage, Article 1

² Amato, P. R., & Previti, D. (2003). People's reasons for divorcing: Gender, social class, the life course, and adjustment. *Journal of Family Issues*, 24(5), 602-626.

³ Central Bureau of Statistics. (2016). *Statistics Indonesia 2016*. Jakarta: BPS.

⁴ Law No. 7 of 1989 concerning Religious Courts, Article 73.

⁵ Supreme Court of the Republic of Indonesia. (2019). *Annual Report of the Supreme Court of the Republic of Indonesia 2018*. Jakarta: Supreme Court of the Republic of Indonesia.

⁶ Law No. 7 of 1989 concerning Religious Courts, Article 65 and Article 82.

⁷ Supreme Court Regulation Number 1 of 2016 on Mediation Procedures in Court.

surroundings have the potential to increase the number and complexity of divorce cases handled.⁸

The mediation process and the achievement of amicable agreements in contested divorce cases at the Cibinong District Court have their own characteristics that need to be studied further. The considerations used in reaching an amicable agreement, the effectiveness of the mediation process, and the factors that influence the success or failure of mediation are important aspects that need to be studied. This is important given that the agreement reached must fulfill the principles of law and justice, and be in line with applicable regulations. Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Courts has regulated in detail the mediation process, including in divorce cases. This regulation covers various aspects such as the obligation to participate in mediation, mediation procedures, mediator qualifications, and sanctions for parties who do not make good faith in the mediation process⁹. However, the implementation of this regulation in practice at the Cibinong District Court, especially in cases of contested divorce, needs to be studied further. This is to ensure that the mediation process and the agreement reached are in accordance with the applicable provisions and fulfill a sense of justice for the parties.

Based on this background, this research will examine more deeply the "Mediation Agreement in Plaintiff's Divorce Case at Cibinong District Court". The results of this research are expected to contribute to the development of legal science, especially in the field of family law and alternative dispute resolution, as well as provide input for legal practitioners and policy makers in an effort to increase the effectiveness of mediation in divorce cases.

2. Research Methods

This research uses a conceptual approach, namely an analysis of the basic concepts underlying mediation in divorce. This research is a type of Normative Juridical research, which refers to legal norms and principles contained in or outside legislation to find an understanding of their application in the real world. This understanding is in line with Ali Z.'s (2021) thinking that normative juridical research, one of which consists of research on legal principles.¹⁰

The normative juridical approach obtains data by means of library research such as conducting research on positive legal provisions and legal principles, books and other documents related to the research being studied.¹¹

⁸ National Development Planning Agency. (2018). Indonesia Population Projections 2015-2045. Jakarta: Bappenas.

⁹ Supreme Court Regulation Number 1 of 2016 on Mediation Procedures in Courts, Articles 7, 17, 13, and 22.

¹⁰ Ali, Z. (2021). *Legal research methods*. Sinar Grafika

¹¹ Ibid

This research uses qualitative data analysis techniques by describing in detail and systematically to answer how the consideration of peaceful agreements for mediation of contested divorce and how the factors that cause the success and failure of the mediation legal process in contested divorce cases at the Cibinong District Court. Qualitative data analysis techniques use inductive data analysis, starting with the stages of data collection, data classification, data presentation and conclusion drawing.

The data sources in this research consist of primary legal materials that have authority and permanent legal force. In this case, it includes Supreme Court Regulation (Perma) No. 1 of 2008, Supreme Court Regulation (Perma) No. 1 of 2016, Law No. 1 of 1974 concerning Marriage (and its amendment to Law No. 16 of 2019). In addition, it also uses secondary legal materials as an explanation of primary legal materials consisting of books containing the opinions of legal experts related to the research title, scientific journals containing research results and there are elements of relevant literature. Finally, there are sources of tertiary legal materials that provide explanations to primary legal materials and secondary legal materials in the form of legal encyclopedias, legal dictionaries and *online* news.

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3. Results and Discussion

3.1. Consideration of an amicable agreement in a mediated dispute resolution at the Cibinong District Court

The existence of mediation in divorce cases aims to be able to reconcile the parties who want to divorce, although in the end the results of the mediation process are very dependent on the desire of the parties to mediate. In this regard, the mediator is required to be a party who has neutrality so as to increase the likelihood of success in the mediation process while reducing failure in the mediation effort.

Based on Perma No. 1 of 2008, it explains that "Mediation is a way of resolving disputes through a negotiation process to obtain an agreement between the parties assisted by a mediator". The mediating party in this case must be neutral and impartial to any party, namely referred to as a mediator who has the responsibility to find an effective solution that the parties can agree on.

The implementation of mediation has none other than the main objective of obtaining an agreement through a process of communication and dialogue

between the parties involved in the divorce case effectively. This can make the parties have active participation in expressing their wishes and arguments so that it is hoped that the parties involved in the divorce case can effectively gain an understanding of each other. The mediator judge in this case must strive for solutions that arise so that the household that is involved in a problem can be intact again. If the worst happens and the parties cannot get along again, it is still hoped that there are other things that can be agreed upon through the mediation effort.

The mediator in this case is required to have various competencies so that the mediation carried out runs optimally, especially the ability to listen to and understand the wishes of each party, come up with effective solutions to the problems that occur and try to create a conducive atmosphere in the mediation process.¹²

If the communication process in mediation is difficult to obtain an agreement, the mediator is expected to make a causal effort, namely a heart-to-heart dialog process that will be conveyed to the opposing party. This effort is also carried out in the mechanism of divorce cases in the district court which are convention or cases between two parties. However, it must be emphasized that the efforts of the mediator in relation to his/her responsibilities during the mediation process and his/her aim to reach an amicable agreement between the parties depend on the wishes of the parties involved in the divorce case. The mediator in the end can only accept what is the agreement or agreement of each party so that it remains open to the possibility that the mediation process fails or does not achieve success.

In 2021, the Cibinong District Court Class IA successfully resolved 16 cases through mediation out of a total of 202 mediated cases. However, the majority of cases, 171 cases, did not reach an amicable agreement¹³. At the end of 2021, there were still 9 cases in the mediation process. The realization of the success of mediation at the Cibinong District Court in that year was recorded at 8% (Report on the Implementation of Activities in 2021 Cibinong District Court Class IA), indicating that despite mediation efforts, the success of dispute resolution through mediation is still relatively low.

In 2022, the Cibinong District Court recorded 244 cases that went through the mediation process. Of these, 15 cases were successfully resolved amicably (Report on the Implementation of Activities in 2022 Cibinong District Court Class IA)¹⁴. Although this success rate is lower than the number of cases mediated, it shows that mediation remains one of the alternative dispute resolutions used by the

¹² Muh. Takdir, Nurul Fajriani, Ulfah, "The Role of Mediation *Counseling* in Overcoming Divorce," *Indonesian Journal of Islamic Counseling* Vol. 5, No. 2, 2023: p. 83-98. DOI:

¹³ Report on the Implementation of Activities in 2021 Cibinong District Court Class IA

¹⁴ Activity Implementation Report 2022 Cibinong District Court Class IA

courts. Until the end of 2022, there were still a number of cases that had not reached a settlement through mediation.

In 2023, the Cibinong District Court successfully resolved 24 cases through mediation out of a total of 267 cases mediated (2023 Activity Implementation Report of Cibinong District Court Class Ia).¹⁵ This success rate shows an increase compared to the previous two years. Even so, the number of cases successfully resolved through mediation is still relatively small compared to the total number of cases mediated, but it illustrates that mediation efforts continue to be improved and become a relevant alternative dispute resolution in court.

The peace agreement in the mediation process of a contested divorce at the Cibinong District Court is an important part of the civil dispute resolution system. Based on Article 130 HIR/154 Rbg, judges are required to offer peace to the parties in dispute before proceeding to trial (Ramdhani, 2024). In the case of a contested divorce, this effort is the first step in seeking reconciliation between the plaintiff and defendant. The implementation of mediation in the Cibinong District Court is also based on Supreme Court Regulation (Perma) Number 1 of 2016 concerning Mediation Procedures in Courts. Article 27 and Article 30 of Perma Number 1 Year 2016 regulate the stages of the mediation process, starting from determining the mediator, conducting mediation, to submitting the mediation results to the judge examining the case. The agreement reached in mediation can cover part or all of the object of the dispute, which will then be stated in the ruling or deed of peace.

The mediation process conducted by the mediator judge at the Cibinong District Court includes several strategic stages. The judge first elicits the opinions of both parties to identify the root of the problem. This stage aims to make the mediator understand the wishes and perspectives of each party. This stage is carried out based on the precautionary principle to ensure that the proposed middle ground is truly relevant and acceptable to both parties.

After that, separate interviews were conducted with each party. This stage provides space for the parties to speak openly without pressure. This is in accordance with the principles of mediation as stipulated in Article 31 of Perma Number 1 of 2016, which emphasizes the importance of listening and understanding each party in depth. This approach allows the mediator to design a solution that considers the best interests of both parties (Dewa, 2019).

Once all the information has been collected, the mediator judge brings the parties back together in a mediation forum to discuss the proposed solution. This discussion is conducted in an open manner, with the mediator acting as a neutral facilitator. The principle of win-win solution becomes the main guideline as stipulated in Article 36 of Perma Number 1 of 2016. At this stage, the mediator

¹⁵ Ibid

also explains the legal consequences of the agreement reached or the potential losses if the mediation fails.¹⁹

The success of mediation largely depends on the willingness and awareness of the parties to find a solution together. If the parties are in good faith, it is likely that mediation will result in an amicable agreement. Conversely, if one of the parties is reluctant to compromise, the chances of mediation success are very small so that the legal awareness of the parties in making mediation a solution to the problem is needed.

The agreement reached in mediation has strong legal force if it is legalized in the form of a peace deed¹⁶. Article 36 of Perma No. 1 of 2016 confirms that an agreement set out in a deed of peace has executorial power, equivalent to a court decision that has permanent legal force (Mulyana, 2022). This ensures that the agreement can be effectively implemented by both parties. The mediating judge also has an important role in encouraging the parties to understand the advantages of mediation over the long and tiring process of litigation. In mediation, the parties have more control over the outcome of the dispute than if the decision is left entirely to the trial judge¹⁷.

The Cibinong District Court tries to apply the principles of mediation by promoting restorative justice in line with the spirit of Law No. 48/2009 on Judicial Power, which emphasizes the importance of resolving disputes peacefully and avoiding violence. This provides a strong legal foundation for mediation efforts in the civil sphere. As part of the civil law system, mediation can also find its legal source in Law No. 1 of 1974 concerning Marriage which has been updated to Law No. 16 of 2019.¹⁸ Article 31 of the Marriage Law regulates deliberation in resolving household conflicts before proceeding to the divorce process (Ratnawaty, 2024). Mediation requires a systematic and structured approach so that an amicable agreement in a contested divorce case can be reached with maximum effort from the mediator judge, and must be supported by existing legal instruments.

3.2. Factors Causing the success and failure of the mediation legal process in the case of contested divorce at the Cibinong District Court?

Factors Causing the Success of the Mediation Legal Process in Plaintiff's Divorce Cases at the Cibinong District Court. There are several factors that have

¹⁶ Dedi Mulyana, "Improving the Legal Status of Peace Agreements by Mediators Outside the Court into Peace Deeds," *ADHAPER: Journal of Civil Procedure Law* Vol. 8, No. 1, 2022: p. 19. DOI:

¹⁷ Dede Anggraini Elda, *The Effectiveness of Perma No. 1 of 2016 concerning Mediation Procedures in Courts Against Divorce Cases in the Palembang Religious Court I* (Thesis, UIN Raden Fatah Palembang, 2017).

¹⁸ G. S. B. P. Dewa, I. N. P. Budiarta, A. S. L. Dewi, "Application of PERMA No. 1 of 2016 concerning Mediation Procedures at the Badung Religious Court in the Revocation of Divorce Cases," *Journal of Legal Analogy* Vol. 1, No. 1, 2019: p. 130-136.

contributed to the success of the mediation legal process in contested divorce cases at the Cibinong District Court, including:

a. Professional Role of the Mediator

Mediators have an important role in determining the success of mediation. Based on Article 13 Paragraph (1) of Perma No. 1 of 2016, mediators are required to have certification that guarantees their competence in carrying out the mediation process professionally (Elda, 2017). The success of mediation occurs if the mediator can create a conducive atmosphere, position the parties equally, and help them find the best solution peacefully. A trained mediator is able to explore the underlying issues of the parties and create a productive discussion space, which in turn increases the chances of peace.

b. Good Faith of the parties

The success of mediation is greatly influenced by the goodwill of the parties, as stipulated in Article 5 Paragraph (2) of Perma No. 1 Year 2016. If the parties come with the intention to resolve the conflict amicably, the mediation process tends to be more effective. Couples who still have the intention to maintain the marriage relationship, especially in cases involving economic issues or miscommunication, are more likely to reach an agreement through mediation.

c. Awareness of the Benefits of Mediation

Parties who understand that mediation offers a faster, cheaper and friendlier solution than litigation are more likely to cooperate. The success of mediation is also influenced by the mediator's efforts in explaining these benefits to the parties. This is especially important in overcoming the perception that the court is only a conflictual legal battleground (Winna, 2017).

d. Simplicity and Uncomplexity of the Case

Cases with less complex root causes, such as jealousy or miscommunication, are more easily resolved through mediation. This factor suggests that the simpler the issue in dispute, the more likely mediation is to succeed (Adam, 2024).

e. Family or Third Person Involvement

The presence of family or community leaders who can serve as advisors is often a catalyst in successful mediation. The presence of a neutral third party helps strengthen the mediator's position, especially in positively influencing the parties to support the peaceful resolution of the dispute (Takdir, 2023).

f. Supportive Legal Culture

A positive legal culture in the community, such as public awareness of the importance of peace, can have a significant impact on the success of mediation.

This culture encourages parties to prioritize peaceful resolution, rather than taking the conflict to full litigation (Adam, 2024).

Factors Causing the Failure of the Mediation Legal Process in Plaintiff's Divorce Cases at the Cibinong District Court. There are several factors that cause the success of the mediation legal process in the case of a contested divorce at the Cibinong District Court,¹⁹ which include:

g. Absence or Non-compliance of Parties

The absence of one of the parties during the mediation process is a major factor in mediation failure, as mentioned in Article 7 Paragraph (2) of Perma No. 1 of 2016 (Elda, 2017). This absence not only shows a lack of good faith but also hinders the smooth running of the mediation process. Absence can be caused by the perception that mediation is a mere formality.

h. Complex and Sensitive Cases

Divorce cases involving domestic violence, infidelity or substance dependence are difficult to mediate. These issues usually bring up deep emotional pain, which makes one or both parties reluctant to reconcile (Adam, 2024).

i. Mediator Incompetence

Mediators who lack interpersonal skills or understand the dynamics of divorce conflicts tend to fail to reach an agreement. Many of the mediators have not fully met the professional standards mandated by Perma No. 1 of 2016, so they are unable to create an atmosphere conducive to the mediation process (Elda, 2017).

j. Strong desire to separate

If one or both parties have a strong desire to divorce, the mediation process tends to become a formality. This is especially the case if one of the parties sees the court as an avenue for an uncompromising breakup. Such couples resist all attempts by the mediator to reach an amicable agreement (Winna, 2017).

k. Intrigue and Hidden Agendas

Intrigue or hidden agendas of one of the parties are often an obstacle in mediation. Article 7 Paragraph (2) of Perma No. 1 Year 2016 prohibits this practice, but in reality, some parties use mediation as a tool to delay the process or pressure the other party. This clearly hinders the success of mediation.

¹⁹ Nisrina M. Adam, Nur Mohamad Kasim, Dolot Alhasni Bakung, "Supporting and inhibiting factors for mediators in conducting mediation for bed separation offenders at the Gorontalo Class 1A Religious Court," *Politika Progresif: Journal of Law, Politics and Humanities* Vol. 1, No. 2, June 2024: p. 66-79.

I. Lack of Awareness of the Importance of Mediation

The parties' ignorance of the importance of mediation as a conflict resolution tool often results in apathy during the process. Many parties still view mediation as a procedural stage that has no real impact, so they do not actively participate. Lack of socialization on the importance of mediation is the main cause of this problem (Adam, 2024).

4. Conclusion

The consideration of an amicable agreement in the mediation of a contested divorce at the Cibinong District Court is based on efforts to create a solution that prioritizes the principles of justice and benefit for both parties. Amicable agreements are often considered because they can accelerate the resolution of disputes without going through lengthy and tiring court proceedings. In addition, mediation provides space for the parties to resolve issues in a more personalized and flexible manner, especially in sensitive matters such as child custody and division of joint property. The success in reaching an amicable agreement also reflects the importance of maintaining good communication and mutual understanding during the mediation process. Thus, mediation becomes a more effective alternative to reduce emotional conflict and other negative impacts of divorce. The success and failure of the mediation process in a contested divorce case at the Cibinong District Court is influenced by various factors. The success of mediation is often supported by the willingness of both parties to compromise, the mediator's ability to facilitate constructive dialog, and a conducive mediation atmosphere. In contrast, mediation failure is generally caused by high emotional conflict, mistrust between parties, and a lack of willingness to cooperate. Other factors that can hinder mediation are the absence of one of the parties or incompatibility with the appointed mediator. Therefore, successful mediation requires a professional approach, a neutral atmosphere, and a strong commitment from both parties to resolve the dispute amicably.

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