Independence of Mediation Institutions as an Alternative to Settlement Divorce Disputes in Indonesia

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Abstract

This study examines divorce dispute mediation that is currently integrated into the court process according to Supreme Court Regulation (PERMA) No. 1 of 2016, with the aim of reformulating mediation into an independent institution separate from litigation to be more effective and aligned with Pancasila values, as well as providing regulatory recommendations and institutional support to the Government. The method used is a qualitative study with a normative analysis approach toward regulations and practices of divorce mediation in religious courts. The research results show that mediation regulated in PERMA has deviated significantly from the spirit of mediation, namely as an alternative dispute resolution. The mediation that has been implemented so far accommodates the provisions of Article 131 HIR and Article 154 R.Bg, namely the empowerment of peace institutions. However, the way this mediation is carried out does not align with the core principles of Indonesia, which include Pancasila emphasizing open discussion to achieve agreement. It is believed that the mediation process outlined in PERMA No. 1 of 2016 is more akin to a legal procedure that parties involved in divorce cases are required to follow in order to resolve their disputes. The implication of this research is the need for legal reformulation of divorce mediation that separates mediation from court litigation processes, by establishing an independent mediation institution supported by the government. This is expected to optimize the function of mediation as a dispute resolution method that is more effective, efficient, and in accordance with Pancasila values.

1. Introduction

This article focuses on the process of resolving divorce disputes in Indonesia according to the guidelines laid out in Supreme Court Regulation (PERMA) No. 1 of 2016 on Mediation Procedures in Court. The article revisits the legal framework for mediating divorce disputes within court proceedings. Mediation is often seen as a way to settle conflicts without involving the legal system, focusing on reaching agreement through discussion. In cases of divorce, though, mediation is combined with court proceedings. The law stipulates that divorce must be finalized in a court setting if attempts at reconciliation have failed. In connection with these provisions, religious courts have implemented by implementing the provisions of Article 4 of PERMA No. 1 of 2016. In the context of the article, mediation has deviated from the principle of voluntariness because it is something that must be done by the parties. Mediation of divorce disputes is pursued with the aim of reducing the accumulation of cases in court and producing an acceptable output or a win-win solution (Fajar & Jelani, 2022). Although religious courts have implemented mediation as an effort to resolve divorce disputes, in reality the success of mediation of divorce disputes is very low, still below 10%. This article specifically analyzes the low level of mediation in resolving divorce disputes in religious courts.

This research will focus on analyzing the inclusion of mediation in court proceedings, which has typically been viewed as a separate alternative to resolving disputes outside of the court system as outlined in Law No. 30 of 1999 on Alternative Dispute Resolution. The critique will specifically examine the independence of mediation institutions in handling divorce disputes in Indonesia, and how they function alongside the traditional court process. Regarding this question, mediation is not appropriate to be included in the process of proceedings in court. This occurs because mediation is being used as a substitute for settling disputes in court. At the same time, PERMA regulates litigation mediation. The original intent of mediation as a method of alternative dispute resolution through negotiation between the parties to come to a resolution has been compromised. This article criticizes the opposite that it should be reverted to independent mediation separate from mediation in court as the voluntary principle of mediation.

This article presents an original legal perspective on understanding the voluntary mediation principle as a non-court alternative for resolving divorce conflicts. Mediation reflects the deliberative consensus-building values inherent in Indonesia's foundational Pancasila legal framework. Nevertheless, current divorce mediation practices conflict with the mediation framework established in Article 1,

section 10 of Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution. This law defines alternative dispute resolution as a mechanism for resolving conflicts or disagreements through mutually agreed-upon procedures, specifically through out-of-court settlements via consultation, negotiation, mediation, conciliation, or expert evaluation. At the same time, the parties are required to participate in mediation once the conflict is filed in court. This represents a departure from the concept of voluntary mediation being used instead of settling disputes outside of legal proceedings (Abbas, 2017). This article proposes a reconsideration of the legal framework governing divorce mediation, particularly with regard to Article 39 paragraph (1) of Law No. 1 of 1974 on Marriage, which appears to conflict with the principles outlined in Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution. The discussion aims to advocate for a return to the original spirit of mediation as a voluntary, non-litigation mechanism for dispute resolution distinct from the formal court-based mediation process currently mandated within the judicial system. The legal issue to be analyzed and developed is the independence of divorce dispute mediation as an independent mediation institution separate from the court proceedings that have been carried out as stipulated in PERMA No. 1 of 2016 concerning Mediation Procedures in Court (Rizqian & Martana, 2022).

This article uses a comparative legal approach method that regulates mediation by linking the principle of voluntariness with the obligation to pursue mediation as stipulated in Article 39 paragraph (1) of Law No. 1 of 1974 and Article 1 number 10 of Law No. 30 of 1999. This article employs normative research methodology, which is a scientific approach to uncovering truth based on legal scientific reasoning from a normative perspective. The scientific rationale in normative legal research is founded on scientific fields and the mechanisms of normative law (Ibrahim, 2010). Adrian Vermeule describes the normative position as focusing on determining the most effective methods to achieve specified goals, as well as identifying which goals would be beneficial to pursue. This viewpoint challenges the status quo by examining and critiquing established beliefs rather than blindly accepting them (Kurnia, 2023). This is critical of the provisions of Article 39 paragraph (1) of Law No. 1 of 1974 and Article 4 paragraph (1) of PERMA No. 1 of 2016.

This article normatively criticizes the meaning of mediation from the perspective of legal science that regulates mediation from different points of view from different points of view. The difference in perspective is mediation according to PERMA as an integrated part of the court proceedings, while on the other hand mediation is an alternative to dispute resolution outside of court, as stipulated in Law No. 30 of 1999. These differences are in stark contrast to each other, which of course affects the outcome of mediation in resolving divorce disputes. Mediation is a type of

conflict resolution that takes place outside of the courtroom. The goal of mediation is to help parties come to a resolution with the help of a neutral mediator. The most important factor in resolving disputes is the willingness and sincerity of the parties involved to put an end to their conflict.

This article examines normatively the mediation of divorce disputes that are integrated in the process of proceedings in court, in this context it is not in accordance with the voluntary principle of mediation (Gustami & Marpaung, 2024). The integration ratio is a comparison of integrating mediation as alternative dispute resolution in a non-litigation manner into the litigation process that will be analyzed philosophically. This integration analysis is important in examining the mediation of divorce disputes regulated in PERMA No. 1 of 2016. This article challenges the notion that divorce disputes should only be resolved through mediation between the parties involved and incorporated into court proceedings. Mediation is generally understood as a voluntary process and an alternative mechanism for resolving disputes outside the formal court system. However, a distinction must be made between mediation integrated within judicial divorce proceedings and mediation as an independent alternative dispute resolution method. From a philosophical and legal science perspective, this distinction reveals a fundamental inconsistency: the principle of voluntariness, which underpins mediation, appears to be compromised when mediation becomes a mandatory step within court proceedings for divorce disputes (Siregar et al., 2023).

The first discussion of this article begins with a review of the mediation of divorce disputes that are integrated in the process of proceedings in court as stipulated in PERMA No. 1 of 2016. Furthermore, the implementation and factors that cause the low success of divorce dispute mediation in religious courts will be discussed. The failure of divorce dispute mediation is evidenced by the high level of divorce in Indonesia.

2. Research Method

This research uses a juridical normative approach based on literature study of applicable legal norms, including legislation, legal principles, and doctrines developed in legal science. This research seeks to conduct a comprehensive analysis of divorce mediation's role within Indonesia's legal framework, with particular emphasis on how mediation institutions maintain their autonomy as extrajudicial dispute resolution mechanisms. The study concentrates its investigation on mediation guidelines found in three key legal instruments: Supreme Court Regulation (PERMA) No. 1 of 2016 on Court Mediation Procedures, Law No. 1 of 1974 on Marriage, and Law No. 30 of 1999 on Arbitration and

Alternative Dispute Resolution.

The approach used includes three types: first, the statute approach to examine relevant legal regulations; second, the conceptual approach to study philosophical and juridical concepts of mediation principles, particularly the principles of voluntariness and deliberation for consensus; and third, the comparative law approach by comparing mediation regulations in Indonesia and other countries that have effectively implemented independent mediation systems.

The research utilizes various sources of data, including primary legal documents like laws and court regulations, secondary legal resources such as legal literature, academic articles, and past studies, and tertiary legal references like legal dictionaries and encyclopedias. The collection of data involves examining legal texts and related documents, while the analysis of data involves describing and analyzing legal arguments based on relevant regulations.

This research is critical in evaluating the inconsistency between mediation principles as a voluntary mechanism and its implementation in the context of litigation obligations as regulated in PERMA No. 1 of 2016. Thus, the findings of this study are anticipated to add to the conversation surrounding the creation of mediation organizations that operate autonomously, distinct from the legal system, as well as recommend regulatory reformulation to realize a dispute resolution system that is more humane, swift, and in accordance with Pancasila values.

3. Results and Discussion

Implementation of the Divorce Dispute Mediation Process in Religious Courts

Mediation involves resolving conflicts by engaging in negotiations with the help of a mediator who acts as a neutral third party and does not have the power to make decisions or enforce agreements on behalf of the parties involved (Gusriyanda et al., 2024). From a philosophical standpoint, mediation embodies the idea of reaching a mutual agreement through discussion, which aligns with the fourth value of Pancasila. Therefore, the outcomes of mediation should be derived from the consensus of all parties involved, without any form of pressure or coercion. The mediator plays an important role as a facilitator who leads the negotiation process and helps the parties find common ground, while maintaining neutrality, building good relationships, and serving as a bridge between parties (Anggriawan et al., 2014). Mediation in the litigation path is regulated in PERMA No. 1 of 2016 as an effort to increase public access to justice that is simple, fast, and low-cost.

Mediation in courts, particularly in divorce disputes, is mandated according to

Article 39 paragraph (1) of Law No. 1 of 1974 concerning Marriage, which requires reconciliation efforts through mediation before the case proceeds to trial. This PERMA aims to reduce the case burden in courts and is considered more efficient compared to ordinary litigation processes. However, the success of divorce mediation remains low, with a success rate of less than 10% based on data from 9 Religious High Courts in Indonesia. Marriage represents a sacred covenant (*mitsaqon gholidan*) uniting a man and woman as husband and wife, designed to establish a joyful and lasting family foundation rooted in monotheistic faith. Through this institution, Allah SWT sanctifies the union between men and women. Given marriage's profound significance and its aspirations for permanence, dissolution should only occur through divorce as a final resort. According to Article 39, section (1) of Law No. 1 of 1974 on Marriage, divorce proceedings may only take place within a court setting after the respective court has attempted reconciliation between both parties and such efforts have proven unsuccessful.

According to Positive Law, a husband's talaq given outside of court is considered invalid. Article 39 paragraph (1) of the UUP states that divorce must be done through a court hearing, especially for Muslims in the Religious Court. Referring to the Article 114 of the Compilation of Islamic Law ("KHI"), a marriage can be ended through divorce by either the husband pronouncing talaq or the wife initiating a divorce lawsuit. This article specifically mentions that the termination of a marriage can result from talaq or a divorce case. Thus, divorce, both divorce due to talaq and divorce due to lawsuit, can only be carried out and legally valid if it goes through a trial process at the Religious Court that covers the wife's residence (Fitri et al., 2023).

The Supreme Court's commitment to promoting mediation is evident in the establishment of PERMA No. 1 of 2016, which incorporates mediation into the court process. This method involves resolving disputes through negotiation facilitated by a mediator. A mediator is someone who has expertise as a third party who must be neutral in directing and arranging the achievement of an agreement in resolving disputes. A third party mediator lacks the power to make a final decision in a case, but can still encourage disputing parties to agree on a resolution. Before proceeding to court hearings, mediation should be attempted. This requirement is outlined in PERMA Number 1 of 2016, which is a reflection of the Supreme Court's emphasis on promoting mediation. The obligation of the parties to go through mediation is in the hope that they will be able to minimize the accumulation of a case handled by the Supreme Court. On the other hand, the purpose of mediation so that the parties to the dispute get justice and satisfaction in resolving disputes at the court stage can be obtained through mediation (Adi & Johan, 2022).

However, in reality, the birth of PERMA Number 1 of 2016 does not guarantee that

the mediation carried out by the mediator can run smoothly or in other words end peacefully. Mediation has not been able to meet expectations as a good solution in resolving disputes. The ineffectiveness of mediation in handling divorce disputes is evident in the following examples:

Table 1. Data on Mediation of Divorce Disputes in Several Provinces

PTA (Religious High Court)	Number of Items	Mediation Results				
		Successful with Deed	Successful with Revocation	Partially Successful	Unsuccessful	Unworkable
Bandung	126.583	153	561	2292	4658	255
Medan	21.916	73	231	349	1752	81
Banten	23.964	22	113	213	1750	41
Pontianak	9.362	23	105	71	929	19
Palembang	15.085	32	218	393	1121	36
DKI Jakarta	23.500	78	290	596	1676	60
Semarang	95.807	144	499	1950	6757	158
Surabaya	121.410	263	1452	3387	7500	125
Lampung	18.545	34	213	622	504	65

Source: Data obtained from the Supreme Court of the Republic of Indonesia, Directorate General of the Religious Courts Agency

The legal system will run well influenced by 3 (three) factors, namely: legal substance factors, legal structure and legal culture (Rahyu & Sugitanata, 2022). Likewise, mediation will go well by looking at these factors. Examining mediation will run well by looking at the context of mediation from the substance of the law, namely as stipulated in PERMA No. 1 of 2016, then the legal structure is judges and mediators in court and legal culture is the attitude and behavior of the parties litigating in court.

The Religious Court has implemented dispute resolution through mediation in divorce cases, which is now integrated with the judicial process in divorce cases. In practice, civil procedure law in Indonesia has implemented mediation institutions as part of the litigation process. Mediation is basically not mandatory. However, Article 130 HIR/154 Rbg stipulates that resolving conflicts through peaceable methods is an integral component of the judicial dispute settlement process (Saifullah, 2015). During the trial, it is important for the judge to work towards resolving the conflict between the parties involved. If both parties agree to take a peaceful path, then the judge must immediately mediate between the two sides so that they themselves find some form of agreement that can resolve their dispute.

The philosophy of peace regulated in Article 130 of the Criminal Code, Article 154 of the Criminal Code, and Law No. 30 of 1999, if applied in divorce cases, the meaning of peace gives rise to a philosophical meaning is for material disputes. If

the court succeeds in reconciling, a deed of peace (*acta van dading*) will be made which is confirmed by a court decision. However, on the other hand, if the court is unable to bring about reconciliation, the court hearing will be adjourned, the verdict of which must be a losing and winning party (Bahri, 2022).

According to Article paragraph (1) of PERMA No. 1 of 2016, every civil case brought before the Court must undergo mediation as a preliminary requirement before proceeding to trial. This mandatory mediation requirement applies broadly to all civil litigation, encompassing objections to default judgments (*verzet*), party objections (*partij verzet*), and third-party objections (*derden verzet*) against the execution of final court decisions. The only exceptions to this mediation requirement are those specifically outlined within this Supreme Court Regulation. Divorce disputes are required to undergo mediation before proceeding to court hearings, as stipulated in the article. This mandate is in accordance with the law, specifically Article 39 paragraph (1) of Law No. 1 of 1974, which emphasizes the importance of seeking reconciliation through mediation in such cases.

Factors that affect the low success of the divorce dispute mediation process.

The independence of divorce dispute mediation can be carried out through changes in the national legal system including the substance of the law, legal structure and legal culture (Kautsar & Muhammad, 2022). Optimizing the mediation of divorce disputes in court needs to be done through changes in the legal system both related to written law and legal rules. When it comes to the legal aspect, mediation for divorce disagreements must adhere to PERMA Order No. 1 of 2016 regarding Mediation Procedures in the Court and Article 39 paragraph (1) of Law No. 1 of 1974 about Marriage which stipulates that divorce should only occur during a court session if attempts at reconciliation have failed.

Mediation of divorce disputes regulated in PERMA is litigation mediation because it is taken after the parties file a lawsuit with the court (Asyhadi, 2019). Therefore, the mediation regulated in the PERMA is not in line with the spirit of mediation which is firmly rooted in the culture of Indonesian society as an option to settle disagreements related to divorce without having to go to court hearings. If studied more deeply, the mediation has its own advantages that produce a win-win solution for the parties to the dispute. However, in Indonesian society, mediation has not been cultured, especially for both the parties to the dispute and the mediator judge because mediation is seen as just a formality in the trial.

Mediation regulated in PERMA No. 1 of 2016 emphasizes the importance of good faith for the disputing parties. The success or failure of mediating a divorce dispute can be determined by the sincerity of the parties involved. Genuine intentions play a crucial role in empowering individuals to resolve their issues and come to a mutually satisfying agreement through mediation. Those participating in

mediation possess the capability to address their own concerns and ultimately reach a desired resolution. Therefore, basically dispute resolution must come from their own empowerment without any coercion from outside (Abbas, 2017). The empowerment of the parties to the dispute is very important so that the purpose of mediation of divorce disputes succeeds in accordance with the agreement they want. Through the concept of empowerment, it will definitely aid in the establishment of an effective legal framework aimed at improving the resolution of divorce conflicts in the judicial system.

In addition, the formation of a good legal system has a subsystem of legal substance and legal structure. Examining the substance of the law, the mediation rules regulated in PERMA No. 1 of 2016 are the rules for mediation of civil disputes in general, which do want peace. Furthermore, mediation regulations serve to decrease case backlogs within the court system. The mediation process enables disputing parties to achieve amicable settlements (*dading*) that conclude their conflicts. Regarding divorce mediation in religious courts, the effectiveness remains consistently poor, with success rates typically falling under 10%. The divorce provisions in Article 39, section (1) of Law No. 1 of 1974 on Marriage stipulate that divorce proceedings may only occur in court after judicial reconciliation attempts have been unsuccessful. This article's intent requires parties to complete mediation before formal court proceedings begin. Mediation is fundamentally understood as an extrajudicial dispute resolution approach founded on inter-party negotiations aimed at reaching mutual agreement. This demonstrates that mediation principles align with the Fourth Precept of Pancasila, which emphasizes resolving all conflicts through collaborative discussion to achieve consensus (Rizqian & Martana, 2022). Mediation failure in divorce cases is a significant issue that needs to be addressed by revisiting mediation that aligns with Pancasila values. This includes promoting the principle of consensus deliberation to uphold the unity of the family.

The effectiveness of resolving divorce disputes through mediation in religious courts is not only affected by legal factors, but also by the roles of mediators and the parties involved in the dispute. The mediator plays a crucial role in guiding the parties towards reaching a mutually agreed upon settlement (Purnamasari et al., 2021). The practice of using mediation to resolve divorce disputes is not commonly used due to the high divorce rates. However, it is believed that mediators can play a crucial role as neutral facilitators to improve the success rate and decrease failures in the mediation process for divorce cases. Mediation assists parties in reaching agreements by enhancing communication patterns and problem-solving skills. Thus, it will make the parties active to convey their interests by understanding and listening to each other (Khairunisa et al., 2022).

Mediators can set strategies by applying the right methods to help the mediation

process. Divorce disputes are a dispute of the heart, certainly different from civil disputes in general. The mediation process aims to allow the parties to resolve disputes based on agreement and not necessarily resolve issues through court. The mediator should possess the essential expertise, such as the capacity to comprehend, observe, follow and ask questions with fine language during the mediation process. This can be achieved by paying attention to the attitudes and behaviors of the parties by communicating with each party during the mediation process (Fitriyah et al., 2024).

The success or failure of divorce dispute mediation does not solely depend on the mediators, but also on the attitudes and sincerity of the parties involved. Mediation aims to find a mutually beneficial agreement for all parties involved, leading to a positive outcome for everyone. Ultimately, the key to successful divorce dispute mediation lies in the willingness of the disputing parties to resolve their differences in good faith (Kamaruddin, 2019).

Concerning marriage termination, Article 38 of Law No. 1 of 1974 specifies that marriages may end through: a) Death of a spouse; b) Divorce proceedings; and c) Judicial decree. Divorce proceedings must follow the protocol established in Article 39 of the Marriage Law, which stipulates that: (1) Divorce may only be conducted during court proceedings after the relevant court has attempted but failed to achieve reconciliation between both spouses. (2) For divorce to be granted, adequate grounds must exist demonstrating that the husband and wife cannot maintain a harmonious marital relationship. (3) The procedural requirements for divorce proceedings in court are outlined in additional legislation and regulations.

In addition, Article 115 of the KHI (Compilation of Islamic Law) outlines the rules for divorce and highlights the importance of following Article 39 of Law No. 1 of 1974. According to this law, Muslim couples can only seek divorce in a religious court session after attempts at reconciliation have been unsuccessful. The process of reconciliation involves mandatory mediation outlined in PERMA No. 1 of 2016 before moving forward with court proceedings.

When examining the legal rules governing mediation within the legal system, the low success rate of divorce dispute mediation is closely related to the subsystems of legal substance, legal structure, and legal culture.

Further, it was stated by Soerjono Soekanto that the factors that are very influential in law enforcement are closely related to each other. In addition, these factors are a benchmark for the effectiveness of law enforcement through the role and influence of judges and mediators in reaching a peaceful agreement in divorce disputes, in particular. These factors include: (Kamaruddin, 2019)

(1) The legal factor itself. The meaning of this factor is in the laws and regulations

related to mediation. Good regulations must have a philosophical, sociological and juridical meaning, namely fulfilling the elements of legal certainty, usefulness and justice. Legal regulations apply juridically if they apply in a pyramidal manner, namely from high norms, abstract, and the lower the concrete. A rule is considered to have sociological implications when it is acknowledged, embraced, and brings advantages to the society that align with its focus. In addition, regulations also provide philosophical meaning, so regulations must be in accordance with the ideal of the law with us as the highest positivity law. If a regulation does not contain these three elements, then the legal regulation becomes a dead regulation.

(2) Law enforcement factors, namely the parties who form and implement the law. Factors that affect law enforcement consist of all elements, both directly and indirectly, related to law enforcement, namely parties that play a major role in determining whether or not law enforcement is successful in society, including: police, prosecutors, judges, lawyers, mediators and so on.

(3) The support systems necessary for the success of law enforcement are essential. Without these crucial elements such as well-trained staff, efficient organization, proper equipment, and adequate funding, law enforcement efforts will not be effective. These factors play a pivotal role in ensuring the proper execution of law enforcement.

(4) Community factors, such as the setting in which laws are enforced, have a significant impact on the enforcement process. The level of legal awareness within a community plays a crucial role in this regard. When the public has a strong understanding of the law, law enforcement tends to be more effective. Conversely, difficulties may arise when there is a lack of legal awareness within the community. Law enforcement involves the active promotion and implementation of legal standards as guidelines for behavior in various aspects of societal and state life (Amanda, 2023).

(5) Cultural elements are shaped by the activities, productions, and preferences that stem from everyday experiences.

In divorce cases, the mediation process consists of various stages, including the initial pre-mediation phase. The mediator schedules a suitable time for the mediation session that both parties are required to attend. The mediator's primary task is to facilitate reconciliation between the conflicting parties, which holds greater significance compared to the judge's role in issuing a verdict in a case they preside over. According to the stipulations outlined in Law No. 14 of 1970 regarding the Fundamental Principles of Judicial Power, Article 14 paragraphs (1) and (2) state the following:

1) In paragraph (1): Courts cannot decline to review and decide cases brought before them under the justification that applicable laws are ambiguous or insufficient, but must fulfill their duty to examine and rule on such matters.
2) In paragraph (2): The requirements in paragraph 1 do not eliminate opportunities for achieving amicable resolution of civil disputes.
3) Article 154 of the Legal Procedure Regulations for Territories Outside Java and Madura (*Reglement Tot Regeling Van Het Rechtswezen In De Gewesten Buiten Java En Madura, Staatsblad* 1927:227) and Article 130 of the Revised Indonesian *Reglement* (*Het Herziene Inlandsch Reglement, Staatsblad* 1941:44) promote parties to engage in settlement processes that can be facilitated through mediation by incorporating it within court litigation procedures.
4) Article 81 paragraphs (1) and (4) of Law No. 7 of 1989 concerning Religious Courts, states that:
    1. In paragraph (1) : During the initial court session for the divorce case, the Judge made an attempt to bring the two parties to a mutual agreement.
    2. In paragraph (4) : Efforts towards reconciliation can continue during each hearing until a decision is reached in the case.
    3. Compilation of Islamic Law (KHI) Article 143 paragraphs (1) and (2):
        (1) In paragraph (1) : During the divorce case proceedings, the Judge assists in settling the differences between the two parties involved.
        (2) In paragraph (2): Reconciliation attempts can be made at each hearing until a decision is made on the case.

The implementation of divorce dispute mediation in religious courts has not given optimal results due to several things, including:

Legal Substance Aspect

In accordance with Article 39 (1), divorce proceedings must take place during a court session only after attempts at reconciliation have been unsuccessful. This rule mandates that mediation must be attempted before the case is brought to court for a hearing. Reviewing these provisions, mediation is carried out after the parties file a lawsuit with the court. Based on these provisions, mediation has lost its spirit as an alternative to resolving disputes outside the court. This causes the success of mediation to be very low, because the legal provisions governing the mediation of divorce disputes are not in line with the principle of consensus deliberation as in the principle of deliberation in Pancasila (Febriyanti & Ningasih, 2024). The requirement calls for the judge to attempt to bring the parties together before making a decision on the case. This requirement does not directly address mediation as a method of resolving conflicts. Furthermore, the mediation guidelines outlined in Article 4 of PERMA No. 1 of 2016 state that all civil disputes brought to court must first go through mediation. As a result of this guideline, mediation in divorce cases is no longer considered a choice for resolving conflicts

but is now part of the court proceedings.

Legal Structure Aspects

The legal structure is the law enforcer related to the implementation of the divorce dispute mediation procedure, namely the judge as the mediator. There is an obligation to mediate divorce disputes, so the judge gets an additional task as a mediator. According to the findings of the study, the extra responsibilities are seen as overwhelming as the primary focus should be on reviewing and resolving cases as outlined in Law No. 14 of 1970 on the Principles of Judicial Power. The number of judges with mediation certificates is significantly lower in comparison to the volume of divorce cases being brought to religious courts.

Legal Culture

The legal formulation will become dysfunctional if it is not supported by the mindset of the community, in this case the divorce perpetrator to use it as the ideal medium in resolving the divorce case that he commits. Divorce is the last resort taken after all the efforts and efforts that have been made to improve.(Irawa et al., 2023) The awareness, positive perception and seriousness of divorce actors in Friedman's theory is called legal culture in following the mediation process as an important element of the success of judicial mediation. However, the reality so far that has happened in the mediation room, the divorce actors remain adamant about their intentions. In the event of a peace agreement, it can save the marriage and can save the future of the children and extended family of both sides. Efforts to reconcile the parties to the dispute are a top priority and are seen as fair in ending a dispute (Salam, 2020).

The Influence of Mediation Integration in the Judicial Process on the Success of Divorce Dispute Resolution

This article is a futuristic thought that the rules in the future must be different from the rules in the past. In addition, it is in the form of a scientific discourse in the form of criticism of PERMA No. 1 of 2016 which regulates the obligation of mediation in the process of proceedings in court. Mediation should be an alternative to resolving disputes outside of court, not included in the litigation process. The reason why mediation often fails in divorce cases in religious courts is because one of the parties involved is adamant about going through with the divorce instead of trying to reconcile through mediation. They believe that going to court is solely for the purpose of having a legal judgment on their divorce, rather than attempting to find a resolution through mediation.

Criticism of court-embedded mediation goes against the essence of voluntary mediation, which aims to facilitate agreement between parties without coercion.

Therefore, the integration of divorce dispute mediation in the court proceedings is inappropriate from a legal perspective. The ineffectiveness of divorce dispute mediation in religious courts is apparent. This ineffectiveness can be attributed to the shortcomings in the legal system, including deficiencies in legal substance, legal structure, and legal culture. The recommendation in this article is that it is necessary to reformulate the divorce dispute mediation law in Indonesia. Thus, the mediation of divorce disputes is separate from the process in court. In order to restore the spirit of mediation that reflects the inner atmosphere of the Indonesian people based on the philosophy of the Indonesian state Pancasila, it is necessary to establish an independent mediation institution separate from litigation mediation. The independent mediation is fully supported by the government, both from regulations and funding, so that people will get used to resolving divorce disputes through mediation, of course, free of charge.

Divorce dispute mediation is kept distinct from the trial process to enhance its effectiveness, emphasizing mediation as a method for resolving conflicts outside of court through consensus-based discussions. The subsystem of the legal structure of the mediation process with the limitations of mediator judges, therefore, mediation is carried out through an independent mediation institution separate from the judicial process. Thus, through mediation, it can maintain the integrity of the household and save children and extended families from the parties. The foundation of a country lies within its households, as preserving these households ultimately preserves the nation. The results of this study provide recommendations to the government to make regulations related to the need for an independent divorce dispute resolution institution separate from the litigation mediation that has been enforced so far. This is done in order to restore the spirit of mediation imbued with the noble values of the Pancasila philosophy.

4. Conclusion

After examining normative studies and carefully analyzing mediation regulations in divorce cases in Indonesia, it is clear that combining mediation with the litigation process according to Supreme Court Regulation (PERMA) No. 1 of 2016 has changed the core concept of mediation from being solely voluntary and participatory to something more. Mediation, originally intended as an alternative to court proceedings, has now become a procedural obligation that tends to be formalistic, thereby disregarding the principle of voluntariness and the values of deliberation and consensus that characterize Indonesia's Pancasila-based legal culture.

The low success rate of divorce mediation in religious courts which empirically below 10% indicates the failure of the litigation-oriented approach in achieving the

goals of restorative justice and peaceful resolution. This condition is worsened by weak legal structures, the limited number of certified mediators within the judicial system, and the low legal awareness of the parties regarding the importance of amicable settlement through mediation.

Therefore, this study recommends the need to reformulate divorce mediation regulations by establishing an independent mediation institution separate from the court process. Such an institution should be supported by the state through a strong legal framework and adequate funding, enabling it to serve as an effective, humane dispute resolution mechanism that reflects the values of deliberation and social justice within the philosophical framework of the Indonesian state. This approach is believed to improve the success rate of divorce mediation, preserve family integrity, and strengthen the role of law as a civilized instrument for conflict resolution.

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