



MEDIATION IN THE EFFORTS OF THE PROCESS OF ADDRESSING THE CONFLICT OF HUSBAND-WIFE

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ABSTRACT- Marriage is a birth bond between a woman and a man which is expected to create a sakinah, mawadah and warohmah family. However, currently Indonesia is said to be one of the countries with the highest divorce rate. One of the reasons or reasons for the possibility of divorce is the occurrence of a dispute / dispute between husband and wife which dragged on between husband and wife. One way to resolve disputes / disputes between husband and wife is by sending a mediator as the "mediator". However, before a husband and wife divorce / separate, there is a main role for BP4 to mediate. in this case BP4 will issue a statement letter to the Religious Courts stating that the parties have previously made mediation efforts. The method used in this paper is a doctrinal normative method by promoting a concept of mediation in overcoming divorce. The end of this paper is to determine the role of mediation in the process of resolving marital conflicts.

Keywords : Mediation, Conflict, Husband-Wife

I. BACKGROUND

Marriage is a physical and mental bond between a man and a woman which is expected to create a sense of sakinah¹⁾, mawaddah and mercy. To achieve this, it is necessary to have mutual understanding and mutual understanding of the interests of both parties, especially those related to rights and obligations.²⁾ In domestic life we often find people (husband and wife) complaining and complaining to other people or to their families, as a result of not fulfilling the rights that must be obtained or not carrying out the obligations of one party, or for other reasons, which can result in a dispute. between the two (husband and wife).³⁾ It is not impossible that the dispute will lead to a break in the marriage bond (divorce). Indonesia is one of the countries with a high divorce rate. This is proven by the data recorded in the court and district courts.⁴⁾ Jakarta as the capital city of Indonesia contributes a large number in divorce cases. According to BPS (Central Bureau of Statistics), insya, in 2012 to 2015, DKI contributed a fairly high divorce rate, namely 40,381 cases of divorce and divorce and not a single pair of divorce cases were recorded to be reconciled.

Divorce Growth Rate in 2014-2017⁵⁾

No.	Regency/City	Marriage	Divorce
1	KepulauanSeribu	180	-
2	South Jakarta	16.025	98
3	East Jakarta	21.894	112
4	Center Jakarta	7.330	44
5	West Jakarta	13.664	37
6	North Jakarta	8.136	63

Based on these data, South Jakarta is in the second position regarding the high divorce rate in DKI Jakarta, which in this case was recorded in the submission of mediation at BP4 South Jakarta from 2015 to 2018, there were 229 cases. Of all divorce cases in Jakarta, there are seven categories of why they are filed a divorce suit, including unhealthy polygamy, Ahlaq crisis and jealousy, abandonment of obligations, economic affairs, and no responsibility from either partner.

Besides that, one of the reasons or reasons for the possibility of divorce is the protracted dispute / dispute between husband and wife.⁶⁾ However, when referring to Islamic law, namely in Surah surah an-Nisaa verse 35, Allah Almighty has ordered that if there is a concern that there is a dispute between the two (husband and wife), then send a mediator (mediator) from a male family and a mediator (mediator) from a woman's family.⁷⁾ From the above verse, it can be understood that one way of resolving disputes / disputes between husband and wife is by sending a mediator as the "mediator" of both parties to help resolve the dispute.⁸⁾

Mediation in divorce disputes has its own sublime value, without prejudice to the nobility of mediation in other civil disputes.⁹⁾ By achieving peace between husband and wife in divorce disputes, it is not only the integrity of the marriage bond that can maintain and foster children normally, harmony between the extended family of the two parties can continue, joint property in marriage can be avoided from disturbances in social relations.¹⁰⁾ Mental and mental growth of children avoid feelings of isolation and inferiority in social life. In order for the mediation function to be carried out more effectively, as far as possible the mediator will try to find the factors behind the dispute. Especially divorce disputes for reasons of disputes and quarrels, it is highly demanded by the security and policy of the mediator to find background factors that promise disputes and contentions.¹¹⁾ So that it takes the skills of a mediator in mediating the dispute over the case.

The mediator referred to in the Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Courts in Article 1 paragraph (2) are:

"Mediator is a Judge or other party who has a Mediator Certificate as a neutral party who assists the Parties in the negotiation process in seeking various possible dispute resolutions without using decisions or forcing a settlement."

Mediation is said to be a way of resolving "non-litigation" disputes, namely resolutions that are carried out outside the court.¹²⁾ However, the dispute resolution process is not always carried out through mediation, purely taken outside the court. One example, namely in divorce disputes on grounds, or on the basis of syiqaq, where the method of mediation in this matter is no longer seen as a way of resolving disputes outside the court, but is also part of the dispute resolution process in court. Therefore in this study the author will try see and discuss the extent to which the role and authority of the mediator (mediator) in helping to resolve disputes over husband and wife conflicts.

II. DISCUSSION

As we know, that there are two ways of dispute resolution, namely dispute resolution by means of litigation (through the Court), and settlement by means of non-litigation, one of which is the "Mediation" method, where the person who runs it is usually called a "mediator" which is also the substance of this study. The fundamental difference between the two methods of dispute resolution, as many people know is that the "litigation" method is a "formal" way of resolving disputes (through the Court) and has procedures and rules that must be fulfilled. Meanwhile, the "non-litigation" settlement method is the opposite (not through court channels).

The word mediation comes from English which means "mediation", which means dispute resolution involving a third party as a mediator or intermediate dispute resolution.¹³⁾ Mediation is a peaceful process in which the disputing parties submit their settlement to a mediator to achieve a fair final result, without wasting too much cost, but still being effective and fully accepted by both parties in a dispute voluntarily. Mediation is a good faith procedure in which the disputing parties submit suggestions through the channels of how the dispute will be resolved by the mediator, because they themselves are unable to do so. Louie's freedom was made possible by the mediator to provide innovative solutions through a form of settlement that the court could not do, but the disputing parties received mutually beneficial benefits.¹⁴⁾

As for the juridical basis for Mediation in Courts is contained in Article 130 HIR, Article 39 of Law Number 1 of 1974 concerning Marriage, Article 65 and Article 82 of Law Number 7 of 1989 concerning Religious Courts, Article 31 of Government Regulation Number 9 of 1975 concerning Implementation Law Number 1 of 1974 concerning Marriage and Compilation of Islamic Law Article 115, Article 131 paragraph (2), Article 143 paragraph (1) and (2) and Article 144.

The juridical basis for out-of-court mediation is regulated in Article 1851 of the Civil Code, namely:

“Peace is an agreement in which both parties by handing over, promising or withholding an item, terminate a case that is currently dependent or prevent a case from arising.”

Mediation arrangements or alternative dispute resolution outside the court mentioned in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution as stated in Article 1 point 10 are:

“Alternative dispute resolution is a dispute settlement institution or difference of opinion through a procedure agreed upon by the parties, namely the settlement of disputes outside the court by means of consultation, negotiation, mediation, conciliation or expert judgment”.

Based on the results of research at the Marriage Advisory, Guidance and Preservation Agency (BP4) in Bandung City, the effectiveness of this non-litigation institution or BP4 in mediating efforts in the divorce process is very ineffective, due to the lack of socialization or counseling to the community, this results in the lack of public awareness with the existence of BP4, many people only know that KUA is able to help solve problems in the household, so they don't come to BP4 but to KUA. This mandatory activity is carried out for prospective brides in pre-marriage, many people still do not take this opportunity because of ignorance of the existence of BP4 which is used to foster prospective brides in order to improve marital quality in a household and avoid divorce. The factors that make the absence of socialization or counseling are due to the absence of a budget for carrying out the event, BP4 which is located in Sukajadi District, Bandung can be said to have not achieved its goals due to lack of budget, this is what makes BP4 Bandung city become an obstacle to maximize this non-litigation agency. Not only for socialization, the mediators who provide advice and guidance to guests who come to BP4 also do not get honoraria, this also reduces the effectiveness of BP4 in the city of Bandung.

The increasing number of divorces that have occurred in Bandung City according to the latest 2018 data from January to December there are 6000 married couples who have divorced. With this, there is a great need for institutions like BP4, namely in order to improve the quality of marriage, continuous and consistent marriage guidance and advice is needed in order to create a *sakinah, mawaddah and rahmah* household or family. Increase marriage consultation and improve services for troubled families through counseling, mediation and advocacy activities.

The role of BP4 is to provide advice and guidance to both pre-wedding and post-wedding parties due to the fact that there are more and more days of marriage and divorce. So BP4 is formed to foster those who are not married to be given an overview of how household life is so that when they are married they will not be surprised by the problems in the household, and guidance for post-marriage when they come, then consult BP4 because they have problems in the household then BP4 tries to provide a solution so as not to go to the Religious Court.

The mediation process at BP4 is very easy for post-marriage by only coming on a working day to the local BP4 and registering himself for consultation, if indeed on that day the mediator from BP4 is willing it will be carried out on that very day. Otherwise, the parties who have registered are waiting for a call from BP4 to attend, this activity is usually carried out once a week until finally the parties reach an agreement. The process of calling the registrants did not take more than one week to wait. And for those who are pre-married are determined by the KUA to get guidance from BP4, the registration will be when they register for marriage. It is mandatory for pre-marriages to get guidance regarding marriage from BP4.

The mediation process at BP4 is to obtain advice, guidance and preservation of marriage, if the mediator at BP4 fails to reach a decision to make peace, according to the agreement, they will choose to proceed to the Religious Court in the divorce process. BP4 will issue a statement letter to the Religious Court that the parties prior to conducting a trial for divorce the parties have gone to BP4 first, on the grounds that they have various statements that they are unable to reconcile.

Based on the results of research at the BP4 Bandung Office that mediated at BP4 by husband and wife, 60% (percent) were able to be reconciled again 40% (percent) failed because there were several factors that made them insist on staying divorced, including:

1. Economic factors, by 40% (percent);

2. Most of the affairs, due to Science and Technology (IT) through social media or internet social networks, for example (Facebook), amounted to 40% (percent)
3. There is no match between husband and wife in household principles, by 20% (percent)

Successful mediation at BP4 will not be followed up at the Religious Court. BP4 in Bandung City plays an important role in reducing divorce, especially in the regions. Even though divorces still occur, at least BP4 can reduce the divorce rate to find solutions to reduce the occurrence of divorce in society. The legal power possessed by a prospective husband and wife is a course certificate for the prospective bride and groom issued by BP4 based on the Regulation of the Director General of Islamic Community Guidance, Ministry of Religion of the Republic of Indonesia number: DJ.II / 491 . 2009, December 10, 2009, this activity is an obligation that must be done for the bride and groom to get guidance before getting married in order to improve the quality of their household to avoid divorce. For the parties who mediate at BP4 and succeed in achieving peace or mediation, they must make an agreement and agreement on a stamp duty that is known to the KUA, for example:

1. If the problem in the household is due to an affair, then the agreement will be made not to commit the act again;
2. If the husband does not provide for the wife, then the agreement is made not to be negligent in providing for the wife.

The agreement is made in front of the head of the KUA and the parties concerned, but if the agreement is not fulfilled, then according to the agreement made in the agreement, the party who has promised is ready to sue and will proceed to the trial process at the Religious Court to proceed with the divorce process.

The Marriage Guidance and Preservation Advisory agency (BP4) is an organization of socio-religious associations as partners to the Ministry of Religion and other relevant agencies in an effort to improve the quality of marriage for Muslims in Indonesia to guide, foster and protect Muslim families throughout Indonesia. BP4 which aims to enhance the quality of anguna marriages to create a *sakinah* family according to Islamic teachings to achieve an advanced, independent, happy, material and spiritual prosperous society and Indonesian nation.

The role of the mediator as in resolving husband and wife disputes can also be seen in the explanation of article 76 paragraph (2) of Law no. 7/1989, in which the appointment of a mediator in divorce cases on the basis of *syiqaq*, is carried out after the process of examining witnesses and the evidence presented by the parties. After the Court or the judge gets a thorough description of what and how disputes and disputes between husband and wife and the factors that influence them, and is of the opinion that there is a possibility that it can be reconciled through a mediator who is close and influences the husband and wife. From the explanation above, in the opinion of the researcher, the role of the mediator as in resolving husband and wife disputes is very useful in helping, providing input and consideration to the court or judge in order to decide and resolve disputes that occur. What is meant by the authority of the mediator in resolving divorce disputes on the basis of *syiqaq*, is none other than the mediator's authority to make a decision.

The mediator does not bind the judge in making a decision.¹⁵⁾ The law in this case also does not give the mediator the authority to make decisions. The mediator regulated in article 76 paragraph (2) of Law no. 7/1989 focuses more on obligations than on authority. The mediator is obliged to try to find a solution, but is not authorized to decide and resolve disputes by himself, namely disputes between husband and wife. In accordance with its function and role, the law gives the mediator the right to propose or submit an opinion to the judge who appointed him, and it is not binding on the judge.¹⁶⁾ In this case it appears that the law gives the judge complete freedom to judge the mediator's proposal.¹⁷⁾ Indeed, on this matter there are two opinions, where there are those who argue that the mediator does not absolutely have the authority to make decisions. However, there is also an opinion that the mediator has the authority to make decisions, and the decisions passed by the mediator are binding on husband and wife. But apart from all that, and by not intending to deny the existing opinion, the writer considers that although in principle (according to the rules) the mediator's proposal is not binding, if the proposed proposal is supported by logical and reasonable reasons, it is lacking. It seems wise that if the judge ignores it, at least the proposed opinion of the mediator must be considered by the judge in making a decision.

III. CONCLUSIONS AND SUGGESTION

Based on the above, effectiveness in the Marriage Advisory, Guidance and Preservation Agency (BP4) is still ineffective, especially in mediation efforts in the process of resolving husband and wife conflicts, this is due to the lack of socialization or counseling to the community regarding guidance, especially regarding marriage, which makes it less effective also due to cost factors because there is no budget to carry out these activities. It is very unfortunate because the role of BP4 is very influential for both prospective brides and those who are married in order to prevent divorce. Even in terms of legal force in using mediation at BP4, this is only limited to an agreement between husband and wife who must sign on a stamp which is known by the KUA. Because this mediation activity only requires a mediator to only advise and guide the parties who are trying to find a solution to the problem so that they do not end in divorce and must go to the Religious Court. However, if the peace made by the parties is canceled, and if they want to follow up on the divorce process, BP4 will issue a statement letter to the Religious Court stating that the parties had previously made mediation efforts at the local BP4.

As for the proposed conclusion for BP4 to function as it should be, the Ministry of Religious Affairs is required to spend money or budget, because BP4 is a socio-religious organization as a partner of the Ministry of Religion and other relevant agencies in an effort to improve the quality of marriage of Muslims in Indonesia to guide, foster and protect Muslim families throughout Indonesia. Besides that, socialization activities were also carried out. It is important especially for adolescents who are not yet full, the urgency is that they can find out about how to settle down and knowledge about marriage.

REFERENCES

1. Ahmad Azhar Basyir. *Hukum Perkawinan Islam*. (Yogyakarta: UII Press. 2000).
2. Ahmad Rofiq. *Hukum Islam di Indonesia*. (Rajawali Pers: Jakarta. 2004).
3. Data BPJS tahun 2015 sampai dengan tahun 2018 yang diambil melalui akses <https://karta.BPS.go.id/statistictable/2017/01/30/149/registrasi-kelahiran-kematian-perkawinan-perceraian-dan-pengesahan-pengakuan-anak-menurut-kabupaten-kota-adm-2015-lembar.html>.
4. Hilman Hadikusuma. *Hukum Perkawinan Indonesia: Menurut Perundang-undangan. Adat dan Hukum Agama*. (Bandung: CV Mandar Maju. 2000).
5. *Majalah Hukum Varia Peradilan Tahun XXXI Nomor 360 November 2015*. Ikatan Hakim Indonesia (IKAHI). Jakarta. 2015.
6. Mohammad Daud Ali. *Hukum Islam dan Peradilan Agama*. (Raja Grafindo Persada: Jakarta. 2000).
7. Mukti Arto. *Praktek Perkara Perdata Pada Pengadilan Agama*. (Pustaka Pelajar. Yogyakarta: 2007).
8. K. Wantjik Saleh. *Hukum Perkawinan Indonesia*. (Jakarta: Ghalia Indonesia. 2000).
9. Priyatna Abdurrasyid. *Arbitrase dan Alternatif Penyelesaian Sengketa Suatu Pengantar*. (Fikahati Aneska dan Badan Arbitrase Nasional Indonesia: Jakarta. 2002).
10. Priyatna Abdurrasyid. *Arbitrase dan Alternatif Penyelesaian Sengketa Suatu Pengantar*. (Fikahati Aneska dan Badan Arbitrase Nasional Indonesia. Jakarta. 2002).
11. Rachmadi Usman. *Pilihan Penyelesaian Sengketa Diluar Pengadilan*. (Citra Aditya Bakti: Bandung. 2003).
12. Roihan A. Rasyid. *Hukum Acara Peradilan Agama*. (Raja Grafindo Persada: Jakarta. 2013).
13. Syayuti Thalib. *Hukum Keluarga Indonesia*. (Jakarta: Universitas Indonesia. 1986).
14. Syahrizal Abbas. *Mediasi Dalam Hukum Syari'ah. Hukum Adat dan Hukum Nasional*. (Kencana Prenada Media Group: Jakarta. 2011).
15. Soemiyati. *Hukum Perkawinan Islam dan Undang-undang Perkawinan*. (Liberty: Yogyakarta. 2009).
16. Yahya Harahap. *Kedudukan Kewenangan dan Acara Peradilan Agama Undang- Undang Nomor 7 Tahun 1989. Second Edition*. (Sinar Grafika: Jakarta. 2007).