

Effectiveness of Mediation Implementations in the Religious Courts of Indonesia

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Effectiveness of Mediation Implementations in the Religious Courts of Indonesia

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Mediation, as one of the Alternative Dispute Resolutions, is seen as a way to resolve disputes that is humanist and just. Through Supreme Court Regulation No. 1 of 2008, which was later amended by PERMA Number 1 of 2016, mediation has been integrated into the court system. Every civil case must be resolved first through mediation. Any decision by a judge that does not go through mediation in advance is considered null and void by law. Mediation of the Mediator in the Religious Court is carried out by either the Judge Mediator or the Non-Judge Mediator. The mediator has a decisive role in a mediation process. The success of mediation is largely determined by the role of the mediator and also the active role of the principal. Mediation, if applied effectively, is certainly very beneficial for the parties of a dispute, especially in divorce cases. This is because the religious court institution also indirectly helps with the realisation of the objectives of a marriage, which are sure, mawaddah, wa rahmah, and eternal. Divorce cases occupy the highest rank in the Religious Courts; however, such efforts need to be evaluated and corrected because in reality, the application of mediation is still less than effective. This paper discusses (1) How effective is the application of Mediation in the Religious Courts? and (2) What are the obstacles that arise in the implementation of PERMA Number 1 of 2016 in the Religious Courts? This study is a juridical-empirical research paper.

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Key words: *Effectiveness, mediation, mediator, Religious court.*



Introduction

The Supreme Court has changed the paradigm by which lawsuits and disputes are adjudicated and resolved. Civil case dispute resolution through litigation is becoming obsolete and has been changed to Alternative Dispute Resolution/ADR (mediation). This is regulated by the Supreme Court (hereinafter referred to as PERMA) No. 2 of 2003, then amended by PERMA Number 1 of 2008 and lastly amended by PERMA No. 1 of 2016 on Mediation Procedure of the Court. These measures by the Indonesian government are informed by the developed countries that have managed to resolve disputes through mediation, such as Japan, Singapore, the United States, Canada, the Netherlands, and Australia (Fatahillah, 2012).

The court, as an instrument of law enforcement, has been carrying out mediation since 2008, but its success is still below 20%.¹ This shows that the integration of the mediation procedure into the court system has not been effective. The effectiveness of mediation does not entirely depend on the implementation of law enforcement (judges, court). According to Lawrence M. Friedman, the legal system can work well if the three elements of the legal system, law enforcement, rule of law, and legal culture, are mutually supportive. Law enforcement can work well if there are good and clear legal rules, and if these rules are complied by the legal community. If the three elements are not mutually supportive, the rule of law (law enforcement) becomes ineffective (Achmad, 2009).

Religious Courts are institutions of judicial power that have the competence to receive, examine, adjudicate, and resolve any matter submitted to the Islamic Shari'a. The scope of this competence includes marriage, inheritance, wills, grants, endowments, charity, donation, sadaqah, and economic disputes Shari'ah. Based on the data from the Religious Courts on case type, divorce cases are the most common. In religious Court (especially in Java), divorce cases account for 80% - 95% of all cases.²

Article 49 of Act No. 3 of 2006 on the Amendment of Act No. 7 of 1979 on Religious Courts (hereinafter written Religious Courts Law), in conjunction with Act No. 50 of 2009 concerning the Second Amendment to Act No. 7 of 1989 on Religious Courts (hereinafter referred to as Law Second Amendment Religious Court) states that the Religious Court has the duty and authority to examine, decide, and resolve cases at the first level in the field of dispute of Islamic economics. In addition, it has the authority over disputes of marriage and family for moslem. The explanation of Article 49 letter (i) Act No. 3 of 2006, which refers to Islamic economics, says:

¹ Data from the Directorate Research and Development Law of the Supreme Court.

² Annual Report on Religious Court of respondents.



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The act or the business activities carried out according to Islamic principles, including a) Islamic Bank, b) Takaful, c) Reinsurance Sharia, d) Mutual Funds Sharia, e) Islamic Bonds and Securities Futures K-Sharia, f) Securities Sharia, g) Sharia financing, h) Islamic pawnshop, i) Islamic Financial Institutions Pension Fund, j) Islamic Business, and k) Microfinance Institutions Sharia.

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Under the provisions of Article 49 of Act No. 3 of 2006, the Religious Courts now have absolute competence in the settlement of disputes in the field of Islamic banking, civil disputes in Islamic families, and property rights disputes or civil disputes among people who are Muslims.

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Based on PERMA No. 1 of 2016, to reduce the number of cases to be tried and sentenced by the Superior Court Judges of Religion, all civil disputes in the Court of First Instance shall first attempt resolution through peace, with the help of a mediator. Mediation is part of the initial process of the settlement of civil disputes in court. It is a practical embodiment of the obligation of the judge to reconcile the parties of the dispute, as per the provisions of Article 130 HIR/154 RBg (Syahrizal, 2011). The institutionalisation of mediation into the judicial process is expected to expand the access of all parties and afford each of them a sense of justice. A sense of justice need not only be obtained through litigation; it may instead be obtained through a process of deliberation between parties that provides the opportunity to jointly seek, and find, a final result. Mediation also aims to strengthen and maximize the functions of the judiciary system in resolving disputes.

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The authors are interested in reviewing the implementation of Mediation in the Religious Courts because: (1) From the beginning, the breath of dispute resolution, according to Sharia, is to seek peace through Al Shulh consensus. This means that mediation is not new to Religious Court and should therefore be better optimised than in the District Court. (2) The number of cases in the PA is compared to the number of judges, which begs the question: how is time management related to the principles of cheap, fast, and low-cost dispute resolution. What's more, the trial hearing is bound by time limits and applicable procedural law. If the mediator is the Judge, of course, there will be many choices because such mediation attracts no additional costs. With a limited number of judges, it becomes a important whether or not judges can effectively manage the dual role of mediator. (3) 85% of Religious Court cases of divorce and family disputes. These matters relate to the "Heart", and mediators must apply more intense patterns and approach techniques to ensure the success of these mediations. (4) The atmosphere of the trial often creates emotional and psychological tension for the parties in a dispute. Divorce cases brought to court this are usually already in climax, making it difficult for mediators to find a peaceful meeting point. (5) It is difficult to conduct a "caucus" (a meeting which is only attended by one litigation party without the other party present) to find facts that are necessary for and relevant to the mediation. Data



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from the Supreme Court shows that the success rate of mediation in the Religious Court has reached only 20%.

Comprehensive research and examination are required to develop an effective and fair Mediation model in the Religious Courts. Such a model would prove useful in encouraging a successful, win-win resolution of parties' disputes in the Religious Courts, especially in sharia economic disputes cases. These resolutions prevent the case from having to proceed to the Judge examination stage. This is in line with the strategic plan of the Institute of Research and Community Services at the University of Sahid, in the field of Humanities Clusters based on the main scientific patterns of Sahid University, namely tourism, and entrepreneurship aimed at constructing the concept of sustainable development and based on competitiveness.

Problems

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1. How effective is the implementation of Mediation in the Religious Courts in Indonesia?
 2. What are the factors that support the success of Mediation in the Religious Courts?

Research Methods

This research uses a juridis-empirical research method. This research rests on legal norms and systematics and is supported by primary data obtained through field research. Primary data are the results of interviews with respondents from the Religious Courts, as well as several related advocates. Using purposive sampling, a sample of 199 people was obtained for this study. The economic, legal, and social factors that obstruct the application of Mediation were analysed.

Results and Discussions

Effectiveness of Mediation at the Religious Court

Each civil case filed in court has to be resolved first through mediation. Court mediation is conducted by mediators, who are either judges or non-judges who have studied the Special Education Professional Mediator (PKPM) at an institution that has been accredited by the Supreme Court. In carrying out their duties and functions, mediators must comply with the perma ketantuan No. 1 of Year 2016 and the Code of Mediator Conduct made by the Supreme Court. Implementation of Mediation in the Religious Courts reflects the results of field research by researchers, which has been mandated by the Supreme Court, for the resolution of civil cases by mediation.

This study considered cases registered by 10 respondents from the Religious Courts (Bogor Religious Court, Cibinong Religious Court, Depok Religious Court, East Jakarta Religious



Court, Central Jakarta Religious Court, PA South Jakarta, PA Tangerang, Banjarmasin, Napier Religious Court and Surabaya Religious Court) over three years (2016 until in 2018) that went through mediation. Its success rate has been found to be very small. In Cibinong Religious Court, mediation resolved only 25 of the 6708 divorce cases filed in 2017. In Surabaya Islamic Court, mediation resolved only 22 of its 8094 registered cases. In the Religious Makassar, mediation resolved only 3 of the 2464 cases filed in 2017. This success rate is still far from that of the Supreme Court.

Table 1: Religious Court Data

| No. | Name Of Religious Court | Total Case in 2017 | Judge Mediator | Non Judge Mediator |
|-----|---------------------------------|--------------------|--|---|
| 1. | Cibinong Religious Court | 6708 | Mediator Judge Specially for Sharia Economics + Hereditary | 5 persons |
| 2. | Bogor Religious Court | 2022 | Specially for Sharia Economics + Hereditary | 4 persons |
| 3 | Depok Religious Court | 4144 | Specially for Sharia Economics + Hereditary | 3 persons |
| 4 | Purbalingga Religious Court | 2846 | Mediator Judge | 5 persons |
| 5. | Surabaya Religious Court | 8094 | Waris special Islamic Economics + | 3 persons |
| 6 | Banjarmasin Religious Court | 2332 | Mediator Judge | 8 persons |
| 7. | Makasar Religious Court | 2464 | Mediator Judge | N/A |
| 8 | East Jakarta Religious Court | 5267 | - | 8 Persons |
| 9 | Central Jakarta Religious Court | 2801 | - | 4 persons |
| 10 | South Jakarta Religious Court | 5056 | - | 3 permanent mediator and 1 person for Sharia Economic |
| 11 | North Jakarta Religious Court | 2225 | - | 5 persons |
| 12 | West Jakarta Religious Court | 3334 | - | 4 persons |
| 13 | Tangerang Religious Court | 2673 | - | 4 persons |



| | | | | | |
|----|--------------|-----------|------|---|-----------|
| 14 | Bekasi Court | Religious | 3922 | - | 4 persons |
|----|--------------|-----------|------|---|-----------|

Source: Data is compiled from the Religious Court Respondents

Most of the Religious Courts in Java that perform mediation have used the services of ⁵ Non-Judge Mediators. This is done to reduce the workload of the judges, given that the number of cases that are submitted each month and each year are very much increasing, while the number of judges remains very limited. Religious Courts outside Java still use Mediator Judges because of a lack of Non-Judge Mediator availability.

Table 2: Summary of Religious Court Respondents Regarding Mediation in 2016

| No | Name of Religious Court | Number of Cases | Cases that cannot be mediated | amount Case mediated | Mediation Settlement Report | |
|----|---------------------------------|-----------------|-------------------------------|----------------------|-----------------------------|-------------|
| | | | | | Success | Not Success |
| 1. | Cibinong R. Court | 5248 | 4499 | 749 | 171 | 592 |
| 2. | Banjarmasin R. C | 2260 | 1899 | 349 | 3 | 346 |
| 3. | Bogor R. Court | 1829 | 1566 | 266 | 13 | 243 |
| 4. | Depok R. Court | 3818 | 3294 | 524 | 98 | 420 |
| 5. | Surabaya R. Court | 7803 | 6649 | 1354 | 23 | 1331 |
| 6. | Makasar R. Court | 2529 | 1785 | 744 | 2 | 498 |
| 7. | Jakarta Timur RC | 4936 | | | 399 | |
| 8 | Jakarta Utara RC. | 2267 | 1796 | 471 | 296 | 148 |
| 9 | Jakarta Selatan Religious Court | 4495 | 3479 | 1016 | 14 | 1002 |
| 9 | Purbalingga RC | 2531 | 2306 | 222 | 0 | 222 |
| 10 | Tangerang RC | 2619 | 2241 | 378 | 3 | 375 |



| | | | | | | |
|----|-----------|------|--|--|--|--|
| 11 | Bekasi RC | 3706 | | | | |
|----|-----------|------|--|--|--|--|

Source: data processed from PA Annual Report

Table (2) shows that the average of successful mediations in matters of divorce vs. number of cases mediated is still low. This can be seen in Cibinong Religious Court (23%), Banjarmasin Religious Court (1%), Bogor Religious Court (5%), Surabaya Religious Court (2%), South Jakarta Religious Court (1%), Purbalingga Religious Court (0%), and Tangerang Religious Court (1%). The success of mediation is higher than 20% only in Cibinong Religious Court (23%), North Jakarta Religious Court (63%), and Depok Religious Court (30%). From these results, it can be concluded that the average is still below 15%.

Table 3: Mediation in Religious Courts from Respondents Report in 2017

| No | Name of Religious Court | Amount Case accepted | Cases that cannot be mediated | amount Case mediated | Mediation Settlement Report | |
|----|-----------------------------|----------------------|-------------------------------|----------------------|-----------------------------|-------------|
| | | | | | Success | Not Success |
| 1. | Cibinong RC | 6708 | 5918 | 790 | 147 | 590 |
| 2. | Banjarmasin RC | 2332 | 2074 | 287 | 15 | 267 |
| 3. | Bogor RC | 2022 | 1779 | 243 | 10 | 232 |
| 4. | Depok RC | 4144 | 3375 | 769 | 167 | 538 |
| 5 | Purbalingga Religious Court | 2846 | 2673 | 173 | 2 | 128 |
| 6. | Surabaya R Court | 8094 | 6947 | 1181 | 22 | 1159 |
| 7. | Makasar R.Court | 3024 | 1981 | 481 | 3 | 300 |
| 8. | Jakarta Timur RC. | 5267 | 5453 | 933 | 37 | 896 |
| 9 | Jakarta Selatan R.C. | 5056 | 4017 | 1039 | 18 | 1021 |
| 10 | Tangerang R.Court | 2673 | 2246 | 427 | 9 /29 | 365 |
| 11 | Bekasi R. Court | 3922 | 580 | 770 | 190 | |
| 12 | Jakarta Pusat R.C. | 2801 | 2512 | 289 | 19 | 270 |

Source: data processed from PA Annual Report

Table (3) shows that the average of successful mediations in matters of divorce vs. number of cases mediated is still low. This can be seen in Cibinong Religious Court (19%), Banjarmasin Religious Court (5%), Bogor Religious Court (4%), Surabaya Religious Court (2%), South Jakarta Religious Court (2%), Purbalingga Religious Court (1%), Tangerang Religious Court (9%), Jakarta Timur Religious Court (4%), and Central Jakarta Religious Court (7%). The



success of mediation is above 20% only in Bekasi Religious Court (25%) and Depok Religious Court (22%). From these results, it can be concluded that the average is still below 10%.

Table 4 : Recapitulation of Mediation in Religious Courts from Respondent Reports in January to August/September of 2018

| No. | Name of Religious Court | Amount Case accepted | Cases that cannot be mediated | amount Case mediated | Mediation Settlement Report | | | |
|-----|-------------------------|----------------------|-------------------------------|----------------------|-----------------------------|----------------------|-------------|-----------------------|
| | | | | | Successfully All Over | Partially Successful | Not Success | Cannot be implemented |
| 1. | Cibinong RC | 4189 | 8732 | 457 | 28 | 73 | 295 | 27 |
| 2. | Banjar masin RC | 1341 | 1190 | 151 | 3 | 0 | 145 | 2 |
| 3. | Bogor RC | 950 | 837 | 113 | 17 | - | 95 | - |
| 4. | Depok RC | 212 | 1689 | 413 | 20 | 22 | 321 | 2 |
| 5. | Surabaya RC | 4783 | 8959 | 638 | 22 | | 616 | |
| 6. | Makasar RC | 1935 | 1603 | 1042 | 13 | | 238 | |
| 7. | Purbalingga RC | 2600 | 3006 | 380 | 25 | 73 | 221 | 2 |
| 8. | Jakarta Selatan RC | 3974 | 524 | 733 | 24 | | 707 | |
| 9 | Jakarta Timur RC | 3386 | 3006 | 380 | 25 | 73 | 221 | 2 |

Source: Data processed from Annual Reports of Religious Court Respondents

From tables (2), (3) and (4), it can be seen that of the total cases received, only a small portion are resolved by mediation. The number of cases that could be mediated ranges from 10% to 30% of the total number of cases received. In Depok PA, 2017 cannot be implemented = 134 cases. This is due to a case filed by default judgment litigants (absence of counterparty).

In mediated cases, the rate of success is still very low (below 12%), and only a few courts achieved a success rate of 15% - 25%. Even then, these courts counted a half success where peace was achieved as a result of the divorce issue.

Specifically for sharia economic disputes, there are still no cases that have been successfully reconciled through mediation (success rate = 0%).

Since sharia economic dispute cases are held until they are decided, their average duration is more than 5 (five) months. This is because the sharia economic disputes in the Religious Courts have generally taken the mediation path outside the court and failed to reach a peace agreement, so a judge's decision through the Religious Courts are the parties' last resort to get justice.



Other causative factors are that the address of the parties are different, so the process of summoning them to the Religious Court in the area of the concerned party's domicile takes more than one month, which delays the trial. Getting from the first hearing to the mediation process took, on average, 2 (two) months, meaning that the trial stage began in the third month, with the mediation report agenda. Another factor is that the defendants oftentimes comprise more than 2 (two) parties. The mediation process itself can be carried out over a maximum of 30 (thirty) days, as specified in PERMA No. 1 of 2016.

Considering the complexity of the interests of the parties in Islamic economic disputes, the mediator appointed to mediate an Islamic economic dispute is directly handled by the judge mediator, and a panel of judges form a special assembly for Islamic economic disputes, which is established by the head of the relevant Religious Court. Judges and judge mediators who are appointed to handle sharia economic disputes are judges who are already certified in sharia economic dispute training.

Sharia economic disputes with claims under Rp. 200,000,000 (two hundred million rupiahs) must be carried out through a simple legal procedure.

According to Article 3 PERMA No. 2 of 2015, it is stipulated that:

- (1) A simple lawsuit shall be filed against a case of injury and/or illegal acts with a material claim value of at most Rp. 200,000,000 (two hundred million rupiah).
- (2) What are not included in a simple lawsuit shall be:
 - a. Cases whose dispute settlement are carried out through a special court, as stipulated in the laws and regulations; or
 - b. Disputes over land rights.

The period of completion is taken from Article 5 sub-article 3, which states: Completion of a simple claim shall be no later than 25 (twenty five) days from the first proceeding day. The judge, in this case, is obliged to achieve peace for all parties. In these cases, a simple claim has fulfilled the principle of peace, as referred to in the function and purpose of mediation. This means that the success of the judge in reconciling the parties in sharia economic disputes includes the success of the court in achieving peace; however, unfortunately, these are not recorded as successes in the mediation report.



Mediation Success Factors

The success of mediation is determined by many factors, including the willingness of the parties to resolve the issue by peaceful means, the ability of the mediator, and the duration of the mediation process.

The standard measure of the success of Mediation in Divorce Cases is that no divorce happens between husband and wife, which is realised through a retraction by the plaintiff. This provision is very difficult to fulfill in settling disputes through mediation. Divorce settlement is done in a peaceful way, and if the result of the deal is divorce (because it is considered more maslahah), it is considered contrary to the harmony and peace of the divorce case. Some of the rules (Marriage Law, Islamic Law Compilation / KHI, and the Guidelines for the Implementation and Administration of Justice Task Religion) do not recognise divorce between a husband and wife as a peaceful agreement. Marriage Law No. 1 of 1974, in Article 39 states: "(1) Divorce can only be done before the court after the concerned court attempt and not succeed to reconcile both parties. (2) To make divorce, there must be sufficient grounds that husband and wife will not be able to live peacefully as husband and wife." Based on this article, divorce is not considered a concord (peace). Peace occurs when the married couple returns intact (not separated). This measure of the success of mediation is not in line with the principles developed in the science of mediation. The agreement between husband and wife may involve coming to terms with how separation (divorce) is best for both parties. Peaceful solutions by means of a divorce can maintain the relationship between the family and the children, and the divorce process can be done quickly, easily, and inexpensively. It was categorized as "Mediation success of a proportion". The standard for the successful mediation of a divorce case being the cancellation of a divorce claim makes "success" difficult to achieve. Marriage is a matter relating to feelings and the heart, as well as the subject of divorce. Mediation of divorce cases is made difficult due to the relevance of physical violence (Domestic violence), infidelity, economic impacts, and heartache. Domestic conflicts associated with pain are generally difficult to resolve because, like someone who is sick, he was his deathbed al-death (mortality peak). In general, almost all of the plaintiffs who filed a lawsuit to the court were at a climax where peace efforts had failed. So, if mediation, in the sense of reconciliation (the marriage become whole), would be difficult to achieve, because in general, parties will insist (insist) on divorce. So, the divorce cases filed in the court were ultimately solved through litigation. This is different to disputes of property (such as inheritance and community property), which are easy to resolve peacefully.

The Chairman of the Religious Court agreed that the success of mediation should be measured by a peace deal, agreed upon by the plaintiff and the defendant, regardless of



whether that agreement is to divorce.³ Generally, people who file for divorce are experiencing complex problems, and their pain is already in a chronic stage. So, reconciliation, if it is termed as “no divorce”, is difficult to achieve. Those who register their case to court have the goal of getting a divorce, not of asking for advice or reconciliation. Divorce agreements between husband and wife is seen as more *maslahah* for litigants, but a final peace agreement by way of a divorce should be recognized as a form of mediation success. The concept of divorce in Islam is something that is *kosher* but hated by God. Divorce is allowed in religion because it is seen as a positive solution to conflict that will stop the conflict from being deeper and more prolonged. So, divorce is not regarded as a defect (*mafsadah*) but is instead seen as a benefit (for the party). If divorce is better (*maslahah*), then the divorce should be taken to avoid further damage, such as chronic strife, violence, and/or the psychological disturbance of children. Based on the above analysis, the standard measure of mediation success needs to be revamped. If this standard is not revised, the Religious Court will not be able to implement the mandate of Perma No. 1 2016, where mediation is expected to reduce the accumulation of cases.

Article 31⁷ PERMA No. 1 of 2016 provides for the half-success of mediation, especially in cases of divorce:

Subsection (1) For Mediation Divorce cases in the religious court which demand a divorce accumulated with other demands, if the Parties do not reach an agreement to have reconciliation, mediation followed by other demands.

Subsection (2) In the event that the Parties reach an agreement on other charges referred to in paragraph (1), settlement set forth in the Half Settlement Agreement, by adopt relating clause with divorce cases.

Subsection (3) Half Settlement Agreement on other charges referred to in paragraph (2) can only be implemented by the decision of the Examining Judge.

Even though Non-Judge Mediators cannot prevent the principal matter of a divorce claim, they can mediate settlement agreement solutions in child custody, temporary marriage, and child living expenses. Usually, the principal lawsuit only contains a request for marriage breakup, but women, in particular, are not aware of the rights of children or themselves. Mediators who are focused and professional in their time with caucuses (successful unilateral meetings) can search for the potential roots of issues. Typically, in cases of divorce, both parties, wives and husbands, find it difficult to communicate. Here, it is the role of mediators to bring together and build communication between both parties.

³ Summary of indept interview with Chairman of Religious Court Respondent



To succeed, a mediator make an earnest effort to mempetemukan and facilitate the litigants. In addition, they must study the values of Islam; they provide knowledge about the rights and obligations of a husband who has left his wife. Finally, they must be able to connect with a child, so that the child's soul will not be split as a result of his parents' divorce. Examples of harmonious family and mawadah are also given by according hadith the prophet Muhammad. The mediator's persistence in their communication with their stakeholders is also a factor that cannot be ignored. Persuasive communication techniques and styles can make parties want to tell their mediator about their interests and priorities.

Another factor in mediation success is time; mediation must be intense and long. Mediation sessions should be at least 1 (one) hour long, and in each case, the mediation process should be done over at least 2 (two) meetings. This is to maximise the opportunity for the parties to express themselves to their heart's content.

Good communication techniques and being a good listener are a must if one is to mediate the parties of a dispute. The merit of a non-judge mediator is based on their skill and art in getting people to come to terms. A mediator must ask relevant questions to determine a party's identity and job activities, so as to understand that party's environmental and psychological factors. One of the judges in the Religious Makassar found that an effective ways to build communication with the parties of the dispute is to consider the choice of words used. Of course, this is not wrong, but to be effective, efforts are better focused on exploring the factors causing major conflict (root causes), rather than the triggers of conflict (triggers). When there is no judge mediator in Surabaya Islamic Court, the non-judge mediators emphasise the psychological aspects that are captured during the mediation process.

Inhibiting Factors to Success Rate of Mediation

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Based on the results of data mining and the analysis of researchers, the lack of effectiveness of mediation in the Religious Research Object is caused by the following:

Court mediation is conducted by mediators who are judges and non-judges. Someone who functions as a mediator must have a certificate obtained from attending a Special Education Professional Mediator (PKPM) institution that is accredited by the Supreme Court. But if there is no certified judge or minimum number of certified judges at the court, the court judge can function as a mediator. Therefore, for a judge who is not/has not been certified can still perform the function of a mediator.

Based on the recognition of some judges in three of Central Java's Religious Courts, mediation is an additional task for the judge that may instead result in increased accumulation of cases. Therefore, the mediation process is done in a short time and is regarded as mere



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formality to comply with the provisions of Article 2 of PERMA Number 1 of Year 2016. Acting as both the mediator and the judge of a trial is quite a heavy task. Furthermore, the availability of judges is very limited because of the large number of cases and trial reports that require attendance. This means that the mediator judge has minimal time to operate. The average Mediator Judge also has no knowledge of "caucus", that is, a unilateral meeting to explore hidden secrets.

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One significant constraint for mediation in court is the matter of the mediator themselves. The Religious Court established a separate unit which specialised in providing mediators (in this case, mediators especially for sharia economic disputes) that have been certified (PERMA No. 1 of Article 5 also requires this certification). The mediator should not come from the Religious Court judges but from other professionals who have gone through the necessary training and certification to become a mediator in Islamic religious court, in accordance with PERMA No. 1. In fact, according to the Chairman of the National Mediation Center (PMN), in the Court, non-judge mediators have been found to be ineffective at performing their duties because if a dispute is submitted to the Court and mediated, the preference is always for the dispute to be mediated by the Judge. The provision of non-judge mediator personnel is possible through the cooperation of the Financial Services Authority (FSA) and the National Mediation Center (PMN).

Litigants more likely to choose a mediator judge because there is no additional burden (free). Besides the above reasons, the Religious Courts outside of Java get less use out of non-judge mediators. If the Religious Court judges utilise non-judge mediators, as is done in the Jakarta, Depok, Bogor, and Cibinong Religious Courts, and in some Religious Court in East Java, it will ease the burden of the concerned Religious Court Judges. In court, after the first trial is completed, the process of mediation can be conducted by non-judge mediators who occupy the mediator's office and subsequent mediation conducted in the mediation.

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Mediation fees range from Rp. 100,000 - Rp. 200,000 per case. These fees are charged to litigants. The costing is to avoid any public perception that a mediator is an advocate; however, litigants are afraid to choose a non-judge mediator because the cost is high, similar to the fees of lawyers. Another advantage is that court judges will not be burdened by their duties as mediators.

Mediations of the Religious Court Respondents were all done in special rooms that were used for the mediation process; however, based on observation, these mediation spaces are still inadequate because, among other reasons, they were found to use glass-walled, open rooms that can be seen from the outside. Take the Religious Court of Surabaya for example: 1 mediation room is divided into 2 with simple divider; if two parties are being mediated, both parties will be able to hear each other. Besides this, basic supports, such as air



conditioning and room atmosphere, are inadequate. There are no available laptops, drinking equipment, or tissues, for when the parties weep during a divorce mediation.

Conclusions

1. Mediation of divorce cases in the Religious Courts is still ineffective. The mediation success rate is 10%-15%. The implementation of Islamic economic dispute mediation cases in the Religious Courts has a relative success rate of 0% (zero percent). This is because the parties have mediated outside the court, and when bringing the case to court, have forgone the final dispute resolution in favour of obtaining a judge's decision.
2. Factors that influence the role of the Mediator and the success of mediation are:
 - (a) The mediator's understanding of procedural law in Religious Court.
 - (b) Sincerity and focus to help the parties in finding the best solution.
 - (c) Having insight into social psychology
 - (d) Having the ability to listen and communicate techniques effectively, according to the mystical atmosphere of the parties.

The factors that support the success of mediation in the resolution of Islamic economic disputes in the Religious Courts are:

- (a) Professional mediator. Professional mediators who master all aspects of sharia business have a very positive influence on the success of mediation.
- (b) Implementation of the Caucus and the role of the parties to find solutions that are in good faith and that resolve the disputes concerned.

Based on this conclusion, the authors suggest:

1. The Supreme Court should facilitate training to enrich the ability of mediators to negotiate periodically and continuously.
2. The Supreme Court should work closely with the Financial Service Authority (OJK) and the National Mediation Centre to intensively conduct training to improve the quality of mediators of Islamic economic disputes.
3. To reduce the burden of judges, who already have a number of cases to handle, by professional, non-judge mediators need to sought through a strict and high-quality selection process.



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