

The Effectiveness of Mediation in Divorce Case at Denpasar Religious Court

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ABSTRACT

Mediation as one of Alternative Dispute Resolution having the ascendancy in the Indonesian Legal System. This mediation was considered as a way of dispute resolution humane because the mechanism for decision making within the authority of the parties in dispute and maintaining good relation and fair because the parties conveyed his intention and first each other and negotiated a way to the problem and the result obtained the agreement of the parties.

According to article 130 of Herzien Inlandsch Reglement and article 154 Rechtreglement voor de Buitengewesten mediation has known at Indonesian court. After that in 2008 the Indonesian Supreme Court with The Supreme Court Regulation (PERMA) No.1 in 2008 introduced a regulation requiring that all court should adopt a uniform mediation procedure. At 2016 Indonesian Supreme of Court make a revision in that regulation with The Supreme Court Regulation No. 1 in 2016. Therefore, the author interest to inspect how effectiveness the mediation with PERMA No.1 in 2016 in reducing made divorce in religion court.

This reseach used research law normative by adopting qualitative. The data used is secondary data by the use of primary and secondary as a basic source and analysis of data was qulitative. Processing by the use of deductive method.

Religion Court in Denpasar was chosen because moslem presentase in the Bali Province especially in Denpasar is lower between Hindu presentase. And then the presentase divorce case in religion court in Denpasar increasing every year. This research focus on the implementation of mediation in divorce after The Supreme Court Regulation No. 1 in 2016 and to finding the supporting and inhibitor factor on the mediation

Keywords: *Effective, Mediation, Divorce*

1. INTRODUCTION

This marriage is an institution that is very important in social life. The existance of an institution is the ministry of legalized legal relationship between a man with a woman and a bond born inner between man and a woman [6] as husband and wife with a view to forming families of a household) who happy and permanent based on the only one god. Marriage choose by people to make a happy family and permanent base on the belief in the only one god. There is mean people get to marriage for lasted a lifetime.

But we know on the fact, the dynamics of marriage life do not always happy after and to expected before. Many people choose to divorce with the partner because many case. And in Denpasar Religious Court many people choose to divorce and the percentase divorce in religious court in Denpasar is so much.

Several factors that affect the economic factors such as divorce is often the case when the husband could not give provisions, It disbelief to the husband or wife who make affair, some of them the age factors where the woman who are still too young to households want to build an independent households but in practice of the households interfered with b a third party.

In Indonesia, generally, provision regarding mediation is regulated under acts number 30 of 1999 on Arbitration and Alternative Dispute Resolution. But in 1999 not regulated further, even it is not mentioned as court connected mediation. And the mediation in religious court has followed the regulation to article 130 of Herzien Inlandsch Reglement and article 154 Rechtreglement voor de Buitengewesten. And then with regulated by supreme court Number 1 of 2008 introduced a regulation requiring that all court should adopt a uniform mediation procedure.

Mediation is an effective instrument to deal with disputes through the non-litigation and has many benefits and advantages. Mediation is completion the disputes through the process of negotiations to obtain agreement the parties assisted by a mediator. [3] Mediation was seen as a way for dispute mechanisms completion humanist a into decision-making within the authority of the parties to the dispute and maintaining good relations, system because the parties conveyed his intention and to accomodate each other and negotiated a way out of the problem and the result obtained in the form of agreement of the parties.

In Indonesia, an obligation of mediation in the judiciary in the system has been in effect and be integrated into court from attending the Indonesian Supreme Court No. 1 in 2008, and repair the system with the Indonesian

Supreme Court No.1 in 2016 of procedure mediation in court as a substitute for the supreme court before. And this paper will present how a mediation make an effectife some process at divorece case in Denpasar Religious Court.

1.1. The Research Problem Formulation

According to the introduces the paper, our research problem formulation is to know mediation can be an effective procedure in divorce case especially at Denpasar Religious Court.

1.2. Method

The research use normative legal research. The normative legal research is legal research that puts law as a norm system. According to Soerjono Soekanto say normative legal research is "...legal research carried out by examining literature or secondary data..." [10]

And the research method used is a normative jurisprudence by examining secondary data from related library material. Data sources is primary legal material is binding legal material, in this case the laws and the regulation or the provisions relating to this article such as civil code and supreme court regulation. Secondary legal materials are materials that provide explanations of primary legal material such as books, article and journals that related to the topic. And the las non legal material is legal material that aims to obtain an understanding or enrich the perspective of the subject under study, in case Indonesian dictionary and interviews with related parties. [11]

The data analysis technique is prescription. The researcher in analyzing the desire to provide a description of "right or wrong" or what should be in accordance with the law of facts or legal events from the result of research." In order to obtain information from various aspects of the issues that is being tried to find the answer, the researcher use statue approach that using legislation and regulation. And the researcher use case approach too, that need to know and understand the ratio acidendy or legal reasons that usually use by the judge to the verdict. [12]

1.2. Paper Structure

The rest of the paper is organized as follows. Section 2 introduces the background the research. Section 3 presents result and analysis on the research to this paper the last section 4 concludes the paper and presents direction for future research.

2. BACKGROUND

2.1. Definition of Mediation

Under Article 1 paragraph (1) of The Supreme Court Regulation No. 1 in 2016, Mediation is the method of resolving dispute with negotiation process to get the agreement of the parties, and support by the mediator. According The interpretation mediation by the national alternative disute advisor council resolution [4]:

"Mediation is a process in which the parties to a dispute, with the assistance of a dispute resolution practitioner (a mediator), identify the dispute issues, develop option, consider alternative and endeavour to reach an agreement. The mediator has no advisory or determinative role in regard to the content of dispute or the outcome of its resolutions, but may advise on or determine the process of mediation whereby resolution is attempted."

Mediation obviously involves the existence of a third party (either an individual or in the form of an instituion independent) that introduce neutral and impartial, which serves as a mediator. As a neutral third party, independent, and impartial and been assigned by the parties, a mediator empowered to carry out tasks and functions the knowledge so you can offer and wishes of the parties.[5] As for the job of the judge mediation one of them to reconcile the parties to the dispute. This regulation the supreme court about mediation bridge judge mediation as well as a mediator will be to reconcile the parties litigant in order to create a judicial process as simple, fast and light, cost And mediation has known in article 130 HIR "that if the day as the set both sides absent, if so the to reconcile them". [1]

Theoretically, mediation model can be classified into settlement model/compromise, facilitative model, therapeutic style, and evaluative model. The strictly categorization acceptance of those models in Indonesia leads to a court mediation distortion in evaluative model. Susanti Adi Nugroho determines that court mediation gives more attention on evaluative model. This model is marked by: (a) the parties come and expect the mediator to give an understanding that if the case is continued, the party who wins or loses will be determined, (b) more focus on rights and responsibilities, (c) usually the mediator is an expert in certain field, or an expert in law because the focus of the approach is the rights. Mediator tends to provides a solution and information about the law in order to lead to a proper final result, (d) give suggestions or advices for the parties in the form of legal advice or a solution offered by the mediator, so that it contains some weaknesses, (e) the parties feel that they do not own the final result that is signed by all parties. [7]

2.2. The Effectiveness Theory by Soerjono Soekanto

The resolutions of disputes by mediation significant impact. Benefits the resolution by mediation relatively effective compared with the judicial process, cause the judge a mediator can evaluate the case by potential. The theory by Soerjono Soekanto make 4 aspect to know effective. There are:

1. Legal Factor

The function of law such as for justice, certainty and expediency. In the practice of law enforcement in the field there are times when there is a conflict between legal certainty and justice.

Legal certainty is concrete tangible, while justice is abstract so that when a judge decides on a case by applying the law, there are times when the value of justice is not achieved. So when meet the problem about the law, at least justice is a top priority. Because law is not merely seen from the perspective of written law.

2. Law Enforcement

In the function of the law, the mentality or personality of law enforcement are important role, if the regulation is good, but the enforcement is not good, there is a problem. During this time, there is a strong tendency in the community to interpret the law as an law enforcer, meaning that law is identified with the real behavior of law enforcement. Unfortunately, in carrying out their authority, problem often arise because attitudes or treatments that are seen as exceeding authority or other actions are considered to fade the image and authority of law enforcement. This is caused by the low quality of law enforcement.

3. Supporting Facilities Factor

Supporting facilities there are include software and hardware. According to Soerjono Soekantor say that law enforcers cannot work properly, if they are not equipped with proportional vehicles and communication devices. Therefore, facilities have a very important role in law enforcement. Without these facilities its not possible for law enforcement to harmonize their roles with their actual roles.

4. Cultural Factor

Law enforcers come from the community and aim to achieve peace in the community. Every citizen or group more or less has legal awareness. The problem that arises is the level of legal compliance, namely high, moderate, or lacking legal compliance. The degree of community legal compliance with the law, is one indicator of the functioning of the law in question. Culture basically includes the values that underlie applicable law, which values are abstract concepts about what is considered good (obeyed) and what is considered bad (so as to avoid)

3. RESULT AND ANALYSIS

As normative the fourth supporting factors effectiveness by Soerjono Soekanto theory has been there in Denpasar religious court, there are the regulations and The Supreme of Court No. 1 in 2008 and The Supreme Court No. 1 in 2016. On the Supreme Court No.1 in 2016 known that the Mediation mediation is a dispute resolution process of negotiations to obtain agreement the parties assisted by a mediator. [3] Mediation as an effort to reconcile the litigants required done in judicial in Indonesia before his trial just because he examined. This work is done reach a point resolution meeting the problems both sides. Existence The supreme court No. 1 in 2016 are stated that the mediation is obliged to travel in the process of litigants in the vicinity of the judicial general and fair the religion of its essence same with the effort to mediation in rbg forbidden and. This mediation can bridge the parties to the parties so as to achieve the best solution on the parties. And this case are to make best solution within a parties who want to divorce or marital reconciliation.

The second to know how far an effectiveness the mediation is law employee in the court. In The Supreme Court No. 1 in 2016 in said to there are a mediator is the or other parties that have a certificate a mediator as the party neutral who assists the parties in negotiating process in order to look for a great variety of chances with the resolution of disputes without use methods involving decide upon or impose a settlement under. And a mediator or judge or other parties have a cerifivate issued by The Supreme Court or other institution who have Supreme Court authority of Certifying that a person has following and pass the training certification of mediation. And if the mediator have no a training certification if mediation he cant make the best solution for the parties in that mediation. Because that is an impact to the sucess or failure this mediation. As the mediator, the judge and he neutral qualified is able to locate and mediate the problem, and there are so as to find a way out of the parties.

Third, is support facilities in Religios Court in Denpasar, there are have One Service Centre for registration the case, court, and also a mediation room. [9] There is own one room to required to take mediaton pocess with the court room fasilitation for the process of mediation, but that room is very small for 700 in divorce case .

Fourth are compliance the comunity and the culture of the people. As for the latest data on divorce in Denpasar, from Denpasar Religion Court in Januari 2019 at the Denpasar Religious Court accept 277 case at divorce. And in 2018 according to mediator in Denpasar Religious Court says more than 700 case in divorce case [9] And than, according Munawar a clerk of a court The divorce factore are economic factor, the education of people, distrust to the wife or husband that cause the affair some of them the age factors where the woman who are still too young to households want to build an independent households but in practice of the households interfered with b a third party. In six month after Juli 2018 a divorce case is totaling 274. If we compared, the divorce case rate for the Januari of 2019 is

higher than the six months after July 2018. And the case is expected to continue and grow.

4. CONCLUSION

The implementation of mediation in divorce cases in Denpasar Religious Court is not effective. It can be concluded that the supporting factors in Indonesia have the regulation in mediation that is The Supreme Court No 1 in 2008 and The Supreme Court No 1 in 2016, the second in Indonesia have the court facilities to the mediation. The mediator in Denpasar Religious Court is a good mediator because the mediator has a training on the mediation process and has the certificate. But the inhibitor is a culture of the people, that we know divorce cases to continue and grow month by month because many factors, like economic factor, distrust between wife and husband and more

[9] Interview with the Mediator in Denpasar Religious Court on 24th of September 2019

[10] Soerjono Soekanto and Sri Mamudi, *Penelitian Hukum Normatif*, PT. Raja Grafindo Persada Jakarta, 2006.

[11] Mukti Fajar and Yulianto Achmad, *Dualisme Penelitian Hukum Normatif dan Empiris*, First edition, Pusaka Pelajar Yogyakarta, 2010.

[12] Peter Mahmud Marzuki, *Penelitian Hukum*, Revised Edition, Kencana Jakarta, 2005.

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REFERENCES

- [1] Indonesia (1987) the Civil Code
- [2] Indonesia (2008) The Supreme Court No.1 in 2008
- [3] Indonesia (2016) The Supreme Court No. 1 in 2016
- [4] David Spencer and Michael Brogan, *Mediation Law and Practice*, Cambridge University Press, 2006.
- [5] Gunawan Widjaja, *Alternatif Penyelesaian Sengketa*, Raja Grafindo Jakarta, 2001.
- [6] Salim HS, *Pengantar Hukum Perdata Tertulis (BW)*, Sinar Grafika, 2005.
- [7] Susanti Adi Nugroho, *Mediasi sebagai Alternatif Penyelesaian Sengketa*, First Edition, PT. Telaga Ilmu Indonesia Jakarta, 2009
- [8] <https://bali.tribunnews.com/2019/06/19/belum-genap-setahun-sudah-terdapat-256-janda-baru-di-kota-denpasar>