



Problems of Mediation by Judges against Divorce Cases in Gorontalo Religious Court Class 1A

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Abstract: The purpose of this study was to determine what factors influence the mediation process in the settlement of divorce cases at the Gorontalo Religious Court Class 1A. The type of research used is Sociological Juridical research, using data types consisting of primary data, secondary data, and tertiary data. Data collection techniques were carried out using interviews, observation, and library techniques. Then the data were analyzed descriptively and provided an overview or explanation of the subject and object of research as the results of the research conducted. The results of this study indicate that the problem with the delay in the mediation process for divorce cases at the Religious Courts of Gorontalo City Class 1A is caused by several factors including the desire of the parties, namely to be clean and hard to choose divorce, so the parties do not have good faith to resolve the dispute peacefully, the openness factor which is usually influenced by the shame and prestige of the parties to reveal personal problems in the mediation process, the mediator factor in the sense that the imbalance between the incoming mediation cases and the human resources in the Gorontalo religious court class 1A. based on data in 2021 there are 153 mediation cases but the available human resources are only 8 Judges and mediators so it will be difficult to handle with limited human resources, and environmental factors in the sense that the parties become discouraged and feel prestige when deciding to make peace because if this party made an amicable decision while the case was already in court, they were worried that they would become a laughing stock and also become the subject of stories by friends from both sides.

Keywords: Problematics; Mediation; Divorce.

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1. Introducing

Humans are social beings who cannot stand alone, under any circumstances humans will still need the help of others, and cannot be separated from social life. In social life, it is a collection of people in which there are different behaviors and interests of each person, in such circumstances disputes and disputes and even conflicts will often arise. Conflicts or disputes that occur between communities are quite broad in dimensions. Conflict is a human nature that is common in human life. When humans were first created in the world, the first concern that arose was the emergence of physical conflict (*yasfiqud dima'*).¹ Conflicts or disputes that occur between humans are quite broad in scope. This conflict or dispute can occur in public or private areas. Conflicts in the public domain are closely related to the public interest in which the state has an interest in defending the public interest. This is different from the case of private law areas, where the emphasis of interest lies in individual (private) interests.

This private scope is quite broad in scope which includes the dimensions of family law, inheritance, wealth, agreements (contracts), business, and others. In Islamic law, the civil dimension contains human rights that can be maintained through a peace agreement between the disputing parties.²

Islam has established the foundations and established the basis for building a family and protecting marriage from disputes that can create an uncomfortable atmosphere and even lead to disputes or conflicts within the family. Disputes and conflicts or can have the impact of fighting can even lead to divorce. Divorce is a separation or separation between a man and a woman which causes the loss of the husband and wife relationship.³ Divorce may be carried out if the reconciliation efforts between husband and wife who are litigating no longer produce goodness and divorce are considered to contain benefits.⁴

Mediation is a method of resolving cases in court by utilizing a third party who is considered capable of providing the best view of the parties and trying to influence the way of thinking so that the views that are patterned in the thoughts of the parties, namely seeing their respective opponents negatively turn into mutual understanding and can see the best in the settlement of the parties.⁵ Mediation is a problem-solving negotiation process in which an impartial and neutral outside party works with the disputing parties to help them reach a satisfactory agreement.⁶ Mediation encourages the parties to resolve their problems or conflicts with the assistance of a neutral or impartial third party.

¹ Muhammad Saifullah, *Mediasi Dalam Tinjauan Hukum Islam Dan Hukum Positif Di Indonesia* (Semarang: Walisongo Press, 2009). Hal. 3

² Syahrizal Abbas, *Mediasi Dalam Perspektif Hukum Syariah Hukum Adat Dan Hukum Nasional* (Jakarta: Kencana, 2009). Hal. 21

³ Hilman Hadikusuma, *Bahasa Hukum Indonesia* (Bandung: Penerbit Alumni, 1992). Hal. 92

⁴ Christofora Megawati Tirtawinata. (2013). Mengupayakan Keluarga Yang Harmonis. *Humaniora*, 4(2): 1143.

⁵ Wirhanuddin. (2016). Deskripsi Tentang Mediasi Di Pengadilan Tinggi Agama Makassar. *Al-Fikr*, 20(2): 300.

⁶ Rizqah Zikrillah Aulia. (2015). Penyelesaian Sengketa Perceraian Melalui Mediasi Oleh Pengadilan Di Pengadilan Agama Pekanbaru. *JOM Fakultas Hukum*, 2(2): 5

A mediator only tries to encourage the parties to be open, negotiate, and find the best solution.⁷

Dispute resolution through mediation can be taken in court or out of court. Mediation carried out in court is a series of legal processes in court, while if mediation is carried out outside the court then the mediation process is a separate part that is independent of court procedural law procedures.

This Mediation Process is regulated in the Regulation of the Supreme Court of the Republic of Indonesia No. 1 of 2008 concerning Mediation Procedures in Court which is a refinement of the Regulation of the Supreme Court of the Republic of Indonesia No. 2 of 2003 concerning Mediation Procedures in Courts.

"Efforts to reconcile are an imperative judge's obligation, especially in divorce disputes for reasons of quarrels and disputes, the efforts taken by judges must be real and optimal efforts, even if they fail at the first trial, they can continue to be pursued as long as the case has not been decided and in the process. the judge can ask for help from the appointed mediator".

This provision is of course in line with what is contained in Article 4 PERMA No. 1 of 2008 concerning Mediation procedures in court, namely:

"That all civil disputes submitted to the court of the first instance must first be resolved through reconciliation with the help of a mediator, except for cases that are settled through commercial court procedures, industrial relations courts, objections to decisions of the consumer dispute settlement agency, and objections to decisions of the supervisory commission. business competition".

If seen, the Act does not provide a clear definition or definition of mediation or mediator. Mediation is a negotiation that involves a third party who has expertise in effective mediation procedures and can help in conflict situations to coordinate their activities, making it more effective in the bargaining process.

The provisions of Law no. 48 of 2009 article 10 concerning judicial power, namely:

- 1) Courts are prohibited from refusing to examine, try, and decide on a case submitted on the pretext that the law does not exist or is unclear, but are obliged to examine and try it.
- 2) The provisions as referred to in paragraph (1) do not close the amicable settlement of civil cases.

The Gorontalo City Religious Court class 1A is an institution authorized to handle civil cases of Muslims in the Gorontalo City area, this institution is an institution that has resolved the cases included in it. One of the procedures in the settlement of civil cases in the Religious Courts is mediation. Mediation is expected to be the most appropriate way to mediate cases because mediation is one of the procedures that must be carried out in the proceedings. However, the success rate of mediation in resolving a case is still very low.

⁷ Septi Wulan Sari. (2017). Mediasi Dalam Peraturan Mahkamah Agung Nomor 1 Tahun 2016. *Ahkam*, 5(1): 2

Table 1. Recapitulation of Mediation Data for the Religious Courts of Gorontalo City Class 1A, 2018-2021.

| Year | Number of Cases | Successful Mediation | Mediation Doesn't Work |
|------|-----------------|----------------------|------------------------|
| 2018 | 131 | 13 | 118 |
| 2019 | 155 | 11 | 144 |
| 2020 | 143 | 10 | 133 |
| 2021 | 153 | 9 | 144 |

Source: Data on mediation reports at the Gorontalo Religious Court Class 1A.

Meanwhile, human resources (HR), in this case, are judges as mediators at the Gorontalo city religious court class 1A, with as many as 8 judges, including:

- 1) Drs. Sahrul Fahmi, M.H.
- 2) H. Hasan Zakaria, S.Ag., S.H.
- 3) Dra Hj. Hasnia H.D, M.H
- 4) Drs. Muh. Hamka Musa, M.H.
- 5) Drs. Burhanudin Mokodompit
- 6) Drs. Moh. Hafidz Bula, M.H.
- 7) Drs. Syafrudin Mohamad, M.H.
- 8) Djufri Bobihu, S.Ag., S.H.

Next, the writer will discuss the perspective of the Mediator Judge himself on the magnitude of the failure rate in the mediation process at the Gorontalo Religious Court class 1A, namely analyzing the factors behind the low success of mediation.

2. Methodology

The type of research used in this article is a type of empirical law research using a qualitative approach. The data collected will then be analyzed using descriptive methods, namely research that guides researchers to explore and photograph situations that will be examined thoroughly, extensively, and in depth.

3. Judge Problems in Divorce Cases at the Gorontalo City Religious Court Class 1A

Mediation is a process to reconcile the disputing parties. Mediation is an alternative and a method of resolving a dispute in which the disputing parties submit their settlement to a mediator to obtain a fair result acceptable to the disputing parties.⁸ In the implementation of mediation at the Gorontalo Religious Court Class 1A, several factors determine the success of mediation, namely internal and external factors. The internal factor is from the disputing parties and the case that is the dispute between the parties, while the external factor is from a third party, namely the mediator.

⁸ Sophar Maru Hutagalung, *Praktik Peradilan perdata dan Alternatif Penyelesaian Sengketa*, (Jakarta: Sinar Grafika, 2012), Hal. 322

The following are some of the factors that influence the mediation process that is used as a measuring tool for this research, and the following is a description of the analysis of mediation success factors:

1) The Desire of The Parties

The desire of the parties or the good faith of the parties, namely the parties intend to make peace without being selfish and caring about the interests of others. The presence of the parties in the mediation process will determine the success of the mediation because it is impossible for the mediation process to be carried out if one of the parties/parties is not present at the scheduled meeting. The presence of the parties shows good faith in pursuing the peace process so that if the parties/one of them does not want to attend the scheduled meeting, it can be seen that the parties do not have good faith to resolve the dispute peacefully.

This good faith arrangement is already in PERMA No.1 of 2008, but the description is not detailed. PERMA No. 1 of 2016 requires the parties to have good intentions when mediating. If not, then there will be legal consequences for those who do not have good faith in the mediator's report in the form of an unacceptable claim decision accompanied by a penalty for payment of mediation fees and court fees. The purpose of mediation is to resolve disputes peacefully, therefore without the goodwill of the parties, peace will not be achieved. To prevent parties from being uncooperative, the good faith of the parties is the key to successful mediation. This principle of good faith can be a benchmark for the disputing parties to continue or not to pursue peace through mediation in court.⁹

Based on the results of interviews with Drs. Burhanudin Mokodompit as the mediator judge at the Gorontalo Religious Court Class 1A that the factors of unsuccessful mediation originating from the parties were caused by several things, including the absence of the parties in the mediation process, the lack of willingness of the parties to resolve their cases peacefully, the nature of mutual self-win and feel the most right (selfish), the parties often do not focus on the case and like to bring up the past which in the end causes the dispute to escalate. Usually, those who come to the *Sengeti* Religious Court to file for divorce are people whose marriages have reached a breaking point. Under these conditions, it is certainly difficult for mediators to solve problems that are already so complicated. Like a thread, the thread is tangled and tangled. Moreover, divorce cases are matters of the heart or feelings and are related to the self-esteem, dignity, and honor of their respective extended families, so most are difficult to reconcile through the mediation process, besides that sometimes the parties have mutually agreed to divorce.

This is in line with the opinion of Drs Sahrul Fahmi, M.H. that the main problem with the failure of mediation is that people who file for divorce generally have complex problems as if a sick person has reached a chronic stage. Sometimes when advised, the parties become misresponsive, such as feeling that they have been blamed by the mediator judge who gives the advice to reconcile. So if you are reconciled in the sense of not getting divorced, it is a very difficult thing to achieve. If the parties have insisted on a divorce,

⁹ Rachmadi Usman, *Mediasi di Pengadilan dalam Teori dan Praktik*, (Jakarta: Sinar Grafika, 2012), Hal. 157

according to what was conveyed by Mr. Rahmatullah Ramadhan D, no matter how good the mediation is, it will not lead to domestic harmony again, moreover, those who register their cases in court have the stance, determination, and purpose to divorce, not to ask for advice. get back together.

This statement indicates that divorce cases are different from other civil cases. Divorce cases are more dominant in matters of the heart and feelings, heart problems that hurt each other and even revenge, self-esteem and dignity that have been elevated, even "disgrace" which each of them has exposed to the public, makes this divorce case more complicated to mediate compared to other divorce cases. other civil cases.

In the Gorontalo Religious Court, based on field facts, the divorce case handled by the Mediator judge was dominated by the issue of the wishes or intentions of the parties who wished to continue to process the case based on several reasons. In one of the divorce cases where the divorce case by Zidan Ramadhan and Nurviyarti Talib the main reason the plaintiff filed for divorce was because there were frequent disputes and fights caused by the attitude of the defendant who did not provide a decent living to the plaintiff, the defendant had a habit of getting drunk, the defendant often left the house without the reason is that after approximately 1 year the plaintiff and the defendant separated from their residence and the defendant had no communication and carried out their obligations as a husband.

2) The openness factor

The attitude of openness from the parties. This attitude also strongly supports the success of mediation because it is from this nature that the mediator can understand the problems of the parties clearly without anything to be covered up. From this nature, the party will feel the burden is reduced so that the person feels light on the problems he faces. In addition, this open nature can lead to effective communication with the opposing part/mediate so that they better understand what is meant in the conversation. The problems faced are sufficiently explained based on the facts they face to assist the mediator in finding a way out of the mediation process.

Regarding this factor, especially in Gorontalo Religious Court class 1A, almost every couple who wants to divorce is reluctant to open up and wants to tell the problems they are facing. Usually, this is influenced by the shame and prestige of the parties to reveal personal problems in the mediation process.

3) Mediator's Factor

A mediator who is assigned to mediate in the mediation process must have the ability to manage conflict and communicate so that he can seek a meeting point between the parties to encourage peace. Therefore, the ability of a mediator will affect the success of mediation. During the mediation process, the mediator will try to reconcile the parties and does not see the mediation process as just a formality in court. The mediator has a good goal to reconcile the parties because when they are at peace, there are fewer cases that must be decided by litigation.

Based on an interview with Drs. Sahrul Fahmi, M.H that the success of peace through mediation is not only determined solely by the good rule of law regarding mediation, as PERMA Number 1 of 2016 but is also determined by the objective conditions in the field, namely in the Religious Court of Gorontalo City Class 1A, such as the professionalism of the mediator who carries out mediation, because although the rules are good but unprofessional mediators are also an obstacle to achieving goals.

Furthermore, the implementation of mediation only lasts between 15 to 30 minutes by advising the parties to make peace and make peace again as husband and wife and if the parties state that they no longer want to makeup, the mediator usually ends the mediation process and sometimes some allow thinking first and then the mediator delays for one week. At the second meeting, the mediator usually receives a report from the parties on whether they can still live in harmony or not, after which the mediator makes a report on the success or failure of the mediation.

Mediator judges, especially in the Gorontalo Religious Court, can be ascertained to have been professional and skilled in carrying out the mediation process by the applicable law and with the mediation methods owned by the mediator judge himself based on experience in handling mediation cases, but in this case, there is no balance between incoming mediation cases and HR in the Gorontalo religious court class 1A. based on data in 2021 there are 153 mediation cases but the available human resources are only 8 Mediator Judges so it will be difficult to handle with limited human resources.

4) Environmental factor

From the results of interviews with Drs. Burhanudin Mokodompit as the mediator judge at the Gorontalo Religious Court Class 1A, the factors that hinder the success of mediation in obtaining a peace agreement are based on the wishes of the two parties themselves who insist on continuing the case to litigation, then there are also environmental factors, namely the influence of the family, and not least also some influence from friends.

Not only the influence factor from family and friends, usually both parties feel prestige because both parties feel that they have entered the realm of the court, therefore both parties are reluctant to make peace because of concerns that if the two sides make peace, they will also be laughed at by friends. the theme and also become story material in each party's environment, because of these conditions, sometimes some parties do not get a peace agreement.

Based on the statement above about the factors of the low success of mediation, apart from the mediator judge factor itself, the litigants are also very influential in the success of this mediation, the parties are required to have good faith and have openness when the mediation process takes place so that the judge The mediator as a neutral party can know and be able to analyze the main problems faced by the litigants.

In addition, environmental factors are also very influential, such as family and friends from both sides, from these environmental factors the parties become discouraged and feel prestige when deciding to make peace because if these parties make a peaceful

decision while the case has been entered in court they are worried will become a laughing stock and also become the subject of stories by friends from both sides.

The parameter for the success of mediation is the achievement of agreements between the litigants in resolving the disputes they face. However, this does not mean that the success of mediation in a case is only measured by the agreement of the parties. If this parameter has been used so far, the success rate of mediation in cases will not show a significant number.

So the success factor that can determine the success of a mediation process is the desire of the parties to make peace. This desire to make peace, or it can be said in good faith, is the starting point for successful mediation. In addition, the skills and competence of a mediator can also determine the success of mediation. Because without a mediator the parties will not negotiate in one assembly, one time, and one space so that they can tell all their problems to the mediator. The mediator must also be able to bridge and provide advice and try to make good communication with the disputing parties or parties with different views to build a dialogue that can help the parties to think positively.

4. Conclusion

Based on the discussion above, it can be concluded that the problem with the delay in the mediation process for divorce cases at the Religious Courts of the City of Gorontalo Class 1A is caused by several factors which include the desire of the parties, namely being clean and hard to choose divorce, so the parties do not have good faith to settle the dispute peacefully, the openness factor which is usually influenced by the shame and prestige of the parties to reveal personal problems in the mediation process, the mediator factor in the sense that the imbalance between the incoming mediation case and the human resources in the Gorontalo religious court class 1A. based on data in 2021 there are 153 mediation cases but the available human resources are only 8 Judges and mediators so it will be difficult to handle with limited human resources, and environmental factors in the sense that the parties become discouraged and feel prestige when deciding to make peace because if this party made an amicable decision while the case was already in court, they were worried that they would become a laughing stock and also become the subject of stories by friends from both sides.

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