

VIRTUAL MEDIATION IN DIVORCE CASES AT UJUNG TANJUNG RELIGIOUS COURT

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ABSTRACT

The mediation process was initially carried out outside the court institution (non-litigation) for the parties to the dispute, but with the times and changes in behavior, a mediation process was made in court that was inseparable from the court institution (litigation). The mediation process is an obligation that must be carried out by the judge before carrying out the next trial. If you look at PERMA No. 1 of 2016, there are many advantages why mediation is used in court. The purpose of this study is to understand the problems faced in virtual mediation at the Ujung Tanjung Religious Court and describe the efforts made by law enforcement of the Ujung Tanjung Religious Court in handling virtual mediation problems in terms of the effectiveness of Soerjono Soekanto. qualitative approach. The conclusion of this study is that the low success of the community itself is that not all parties in this case use the services of advocates, and the average level of education of the parties is low. The Ujung Tanjung Religious Court in carrying out its duties and functions has carried out a mediation process based on PERMA No.1 of 2016, the results of the litigants in conducting the mediation process are still low and the parties' strong desire to divorce. The Ujung Tanjung Religious Court has made efforts to resolve the issue, but it still requires awareness and responsibility. The online mediation process itself if referring to the Supreme Court Rules, the process can be done using audio-visual media such as video calls that are already available in many applications. In other words, the role or function of this paper is expected to be able to be a social construction to find the level of effectiveness of mediation in divorce cases in religious courts.

Keywords: *Mediation, Virtual, Divorce and Religious Court*

INTRODUCTION

The family as the smallest institution in a society plays an important role in the formation of a quality young generation. Marriage is intended to achieve happiness and peace in human life, whereas according to Shar'i, through the command of Allah SWT, marriage shows how much He loves humans and how broad is Allah's knowledge of human needs. Realizing the happiness of family life filled with peace and love in a way that pleases Allah SWT. The demands of ideality and reality do not always go hand in hand. In marriage, we are always faced or seasoned with various problems, both small and big, and with various factors. In solving this problem, each household has its own way of coping and solving it, so that the original home life built on love is not just an illusion. The implication is that Islam regulates the mechanism of severing the relationship between husband and wife, namely separation or talaq (divorce).(Islam 1985)

For parties in divorce cases, mediation is the first step that must be done by the judge in hearing a case submitted to him. Efforts to reconcile the parties are considered fair in ending a dispute, because in reconciliation there are no losers and winners and still create kinship and harmony. (Harahap 2008) Overcoming the domestic polemic faced by husband and wife, the families of both parties really need to reconcile the husband and wife who are in this polemic. If unsuccessful, then the divorce proceedings are submitted to the Religious Court. Indonesian laws and regulations explicitly adhere to the principle of complicating divorce, namely by requiring people who want to divorce to go through procedures in predetermined legal institutions. For Muslims, divorce is filed in the Religious Court. This is intended to narrow down the potential for divorce. (Emna 2022)

Basically, mediation is a dispute resolution effort in which the parties to the dispute agree to bring in an independent third party to act as a mediator (mediator). Mediation, as an out-of-court dispute resolution process, is currently being used by the courts as a dispute resolution process. Furthermore, mediation is defined as a problem-solving negotiation process in which impartial and neutral outsiders work with the disputing parties to help them get a satisfactory agreement. (Rachmadi 2003)



This paper aims to explain the problems faced in virtual mediation at the Ujung Tanjung Religious Court and describe the efforts made by law enforcement at the Ujung Tanjung Religious Court in handling virtual mediation problems, with socio-legal research, namely research that refers to legal norms in laws and regulations. -legislation relating to court mediation as a form of dispute resolution. A systematic discussion begins with the background to show the focus and originality of the writing. With this effort, it is hoped that mediation and its role will be able to resolve family problems for litigants before the case is processed in court. Finally, the article ends with a concluding note.

RESEARCH METHODS

Basically, this research is a field research, where a number of data were obtained by direct research from the Simpang Benar Javanese Community at the Ujung Tanjung Religious Court, Riau. Consisting of 18 sub-districts, the address is Jalan Lintas Riau-Sumatera Utara, Tanah Putih Regency, Rokan Hilir, Riau 28953. While the problem approach used is Soerjono Soekanto's theory of effectiveness. The effectiveness related to Law No. 16 of 2019 whether or not it applies is regulated by 5 factors. First, the legal factor itself. Second, law enforcement factors. Third, the facility factor. Fourth, the community factor. Fifth, cultural factors. Looking at the culture of community compliance with mediation carried out before the trial of divorce cases, the author tries to see the problems faced in virtual mediation efforts carried out by law enforcement so that they can see the effectiveness of virtual mediation implementation at the Ujung Tanjung Religious Court.

The type of data needed in this study consists of primary data and secondary data. Primary research data is obtained directly from informants, by conducting interviews, observations, interviews or direct observations in the field. Interview is one of the methods that will be used to obtain in-depth data, then the researcher collects data from the opinions, feelings, of the research subjects about the situation in their own words. While secondary data is obtained from legal sources by studying laws and regulations, jurisprudence, books and journals or print media and other media related to filing a divorce to the Ujung Tanjung Religious Court.(Sugiyono 2017)



Researchers will try to obtain subjects from the people or societies under study that are believed to represent something they want to examine. Researchers choose research subjects that are believed to be very suitable to provide information, views, and a broad understanding of what is being researched, ranging from experience and knowledge to select a sample of participants who are believed to be able to provide relevant information about the topic to be discussed.

The collected data and information are then analyzed using qualitative analysis techniques. Data is meaningless if we just store it, but it will have a lot of meaning when it has been analyzed. Thus it can be determined how important data analysis is, especially in meaningful qualitative research. In this case, the data that have been obtained both from in-depth interviews with informants, observations, documentation and other data are then collected as a whole. Based on the results of the analysis, conclusions are drawn deductively, namely ways of thinking based on general facts and then special conclusions are drawn.

RESULTS AND DISCUSSION

The word mediation comes from the English "mediation", which means a way of resolving disputes by engaging a third party to mediate dispute resolution. The etymological meaning of mediation comes from the Latin word *mediare* which means to be in the middle. (Rachmadi 2003) Wahbah Az-Zuhaili argues that mediation is a peace agreement between the parties concerned, demonstrating a broader understanding of mediation that leads to the purpose of mediation itself. A mediator performs his duties as a third party to help resolve disputes between parties by conditioning himself to be neutral, not taking sides with either party. A mediator must be able to protect the interests of the disputing parties fairly, thus creating a sense of trust between the parties. Wahbah Az-Zuhaili argues that mediation is a peace agreement between the parties concerned, demonstrating a broader understanding of mediation that leads to the purpose of mediation itself. (Abbas 2011)

Mahkamah Agung as the highest judicial authority in Indonesia as mandated by the 1945 Constitution views the importance of integrating mediation in the judicial system. For



this reason, Supreme Court Circular Number 01 of 2002 was issued on January 30, 2002 concerning the Empowerment of Level I Courts to Implement Institutions Peacefully. Furthermore, in 2003, the Supreme Court issued Supreme Court Regulation (PERMA) Number 2 of 2003 concerning Procedures for Mediation in Court. Thus, mediation becomes integrated into the judicial system and is coercive, but still voluntary so as not to encourage the parties to intensively force the settlement of cases first through peace. (Mustika 2015)

Virtual mediation referred to here is a mediation meeting through remote audio-visual communication media where the parties can see and hear the mediation process. (2016 2016) Mediation according to Gatot Supramono is a dispute resolution process through a negotiation process or consensus of the parties assisted by a mediator who does not have the authority to decide or force a settlement. (Kesek 2015)

The people of Ujung Tanjung Riau based on observations, that the phenomenon that is developing today, in the case of wives who first file for divorce from their husbands, has decreased during the pandemic, while the filing of divorce lawsuits by husbands has increased. Research data from 2018 to 2020, can be seen from the initial data conducted as follows:

Year	Divorce Divorce	Divorce
2018	173 cases	498 cases
2019	159 cases	526 cases
2020	204 cases	522 cases

Regarding family disputes, for example, specifically related to divorce cases, peace efforts are regulated in Article 65 and Article 82 paragraph (1) of Law Number 7 of 1989 concerning Religious Courts which have been amended by Law Number 3 of 2006 and the second amendment by Law Number 50 of 2009. Article 65 states: "A divorce may only be consummated before a court hearing after the court concerned has tried and failed to reconcile both parties." While Article 82 paragraph (1) states: "In the first hearing of the divorce lawsuit hearing, the Judge tries to reconcile both parties". So it seems clear that

peace is the commander-in-chief of law, the best solution in solving problems. (Indonesia 2009)

In terms of scholars, opinions differ in giving a definition of divorce. In the Islamic encyclopedia it is stated that according to the Hanafi and Hambali schools, talaq is the immediate release of the marriage bond or the release of the marriage bond in the future. It directly means without having anything to do with anything and the law applies immediately when divorce is declared by the husband. Meanwhile, according to the Maliki school, talaq is a feature of the law that causes the abolition of the halal relationship between husband and wife. (Dewan Redaksi Islamic Encyclopedia 2001) According to the Shafi'i school, talaq is the release of a marriage contract with the pronunciation of talaq or the equivalent of that pronunciation In the Compilation of Islamic Law, the meaning of divorce is contained in Article 117 which states: Divorce is a promise of the husband before a religious court which is one of the reasons for divorce.

Divorce as a path that must be taken by married couples when there are problems in their marital relationship that cannot be resolved properly. Divorce is not the ultimate goal of a marriage, but a disaster that befalls a marriage between husband and wife. Fiqh does not specifically regulate the grounds for permissible divorce or divorce. But there are at least three possibilities that can trigger divorce in domestic life, namely:

a) The occurrence of Nusyuz from the wife's side

Nusyuz comes from Arabic which means to rise or lift. If a wife nusyuz is said to her husband, it means that the wife feels superior to her husband, so she no longer feels obliged to obey her husband. Nusyuz wife is defined as the wife's disobedience to her husband in terms of carrying out what is obligatory upon him.(Amir Syarifuddin 2003)

b) The occurrence of Nusyuz on the husband's side.(Mardani 2017)

Nushuz's husband implies the husband's disobedience to God because he abandons his obligations towards his wife. The possibility of

husband nusyuz can occur in the form of the husband's negligence to fulfill obligations on the part of the wife both physically and mentally. The causes of husband nusyuz are avoiding the wife, being rude, leaving her to accompany her, reducing his life, or various other heavy burdens for the wife.

c) Syiqaq



The word Syiqaq comes from the Arabic word, Syiqaq which means: side, dispute, al-khilaf means: division, enmity. al-adawah: quarrel or dispute. In Malay it translates as fight. Syiqaq means quarrel, this word is usually associated with husband and wife so it can be interpreted as a quarrel that occurs between husband and wife that cannot be resolved by both. Shiqaq usually occurs when a husband and wife or both do not carry out their respective obligations.(Abdul Shomad 2012)

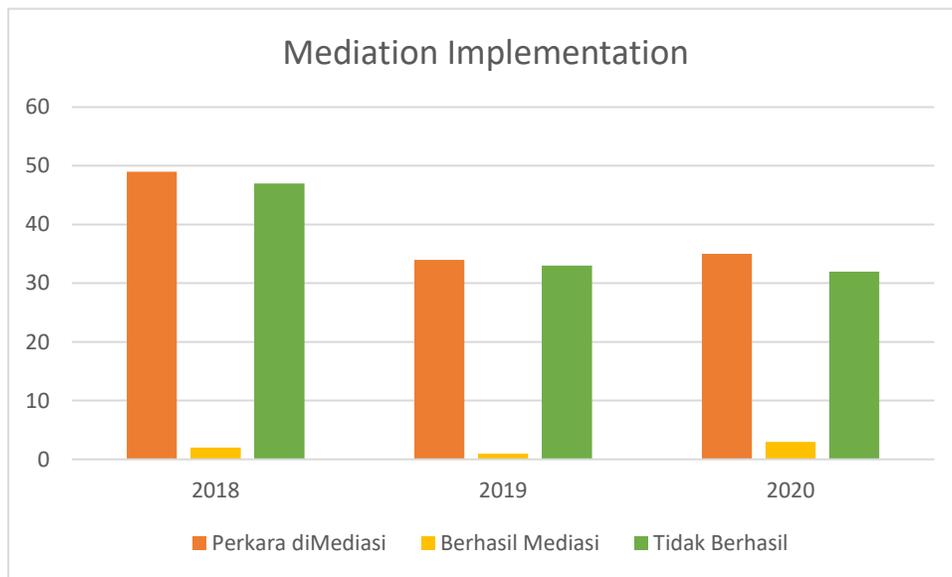
The mediation process was initially carried out outside the court institution (non-litigation) for the parties to the dispute, but with the times and changes in behavior, mediation was made a trial process in a court that was inseparable from the court institution (litigation). The mediation process is an obligation that must be carried out by the judge before carrying out the next trial. If you look at PERMA No. 1 of 2016, there are several advantages why mediation is used in court, first, the mediation process is seen as faster in resolving disputes and cheaper than the trial process. Second, mediation can provide wider access for parties to obtain justice. Third, the mediation process is closed and confidential. Fourth, strengthen and optimize the function of the judiciary in resolving disputes.(Mukhlis 2020)

Theoretically, out-of-court dispute resolution has advantages, including; 1) reduce congestion and accumulation of cases in court, 2) increase community involvement or empower disputing parties in the dispute resolution process, 3) smooth the path of justice in the community, 4) provide opportunities to reach dispute resolution that results in decisions that are acceptable to all parties so that the parties do not use appeals and cassation, 5) settlement of cases faster and at lower costs, 6) Secretive and confidential, 7) have a higher deal rate. Juridically, the practice of mediation in the judiciary is reconstructed from article 130 HIR Article 154 RBg which recognizes peaceful efforts. Also regulated in Law No. 1 of 1974 Article 39, Law No. 3 of 2006 Article 65, KHI Article 115, 131 paragraph 2 and PPNO 9 of 1975 Mediation arrangements are reregulated through PERMA Number 1 of 2008 concerning Mediation. (Wahtu Sururie, n.d.)

The fact of the ineffective implementation of mediation in divorce cases at the Ujung Tanjung Religious Court after the enactment of PERMA No. 1 of 2016, the revision of



PERMA No. 1 of 2008 is shown by the high number of cases received and the small number of divorce cases that have been successfully mediated. Mediation at the Ujung Tanjung Religious Court in 2018, the number of divorce cases received was 49 divorce cases that were successfully mediated by 2 cases or 4.0% of cases that were successfully mediated. In 2019, 34 cases were received and 1 case was successfully mediated (2.9%) and finally in 2020, 3 cases were successfully mediated or equivalent to 8.5% (the highest achievement).



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The Ujung Tanjung Religious Court conducted a virtual mediation process that was only carried out during the Covid-19 pandemic even though regulations regarding virtual mediation existed before the Covid-19 pandemic. It is also adapted to the current mediation needs. When previously many people were infected with Covid-19, mediation was only carried out directly using face-to-face as generally done by mediators. Initially, the mediation process was postponed and the Ujung Tanjung Religious Court implemented a lockdown so that the mediation process and the trial were postponed, the mediation process was still carried out face-to-face without using audio-visual or visual media. Although there has been an online trial process through the e-court application, the virtual mediation process has only been carried out some time after the Covid-19 pandemic occurred, so there has been no special application such as e-court. However, researchers gave great appreciation because the Ujung Tanjung Religious Court was very maximal in using e-court.

Based on PERMA No. 3 of 2018 dated April 4, 2018 concerning electronic administration of cases and refined again with perma No. 1 of 2019 dated August 6, 2019, SK-KMA number 122 / KMA / VII / 2018 dated July 9, 2019 concerning guidelines for managing registered users of the Court information system and the Decree of the Director General of Religious Courts (Dirjen Badilag) Number 1294 / DjA / HK.00.6 / SK / 05/2018



dated May 28, 2018 concerning the implementation of Perma Number 3 of 2018. So that in the Ujung Religious Court until December 31, 2020, 291 cases have entered the E-Court cases and 249 cases were stopped and 42 cases remained.

The development and progress of the world begins with education. Education is the basic capital to improve the mindset of the community and one of the factors that support the progress of a region. For this reason, local residents must be able to see the development of science and technological developments that exist, namely by the way many people are required to follow the nine-year study program launched by the government. Community education in Ujung Tanjung Kepenghuluan is relatively good with the average final education of the community is high school and community life which is also classified as good, lower middle school.(Tanjung 2021)

Based on the level of education, it is explained that based on the level of education, the population with the most education is elementary school with a total of 4,561 people. While the least occupational education is tertiary education with a total of 305 people. This shows that the level of education in the upstream of Ujung Tanjung is classified as a stage of development, while the level of education of the population in universities is low in Ujung Tanjung.

Mediation carried out by the parties with the help of a mediator aims to achieve a win-win solution for both parties. To achieve this, the mediator must have knowledge, understanding, experience and skills as a mediator. As stated by Irwansyah (Pengadilan Agama judge Ujung Tanjung), "The mediator judge always tries very hard in assisting the litigants in the domestic mediation of divorce cases, in line with the task of reconciling the parties who are already attached to the judge, but the mediation process certainly takes time for judges who already have a lot of work, even though there are non-judge mediators in the Pengadilan Agama Ujung Tanjung, however, the party is charged with the cost of the mediation process.

The strong desire to divorce from the parties greatly affects the success rate of mediation, if the parties' desire for divorce is strong, of course the peace or mediation efforts carried out will only be a mere formality and will make it difficult for the mediator



himself to seek peace, but if in the hearts of the parties still have affection, love and want to make up, then the possibility of peace will be realized.

Mediated failed divorce cases are usually cases caused by domestic violence, the resolution through mediation will usually fail. In addition, divorce cases caused by no longer feeling love and infidelity are cases that often fail in mediation. However, sometimes there are cases that are successfully mediated. Divorce cases that are usually successfully mediated are usually cases motivated by jealousy, inability to earn a living, mistreatment of the spouse and violations of the behavior and words of one of the parties.

The causes of divorce include factors of drunkenness and drunkenness, economy, leaving one of the parties, physical and mental cruelty, being sentenced to imprisonment for committing crimes, drugs and disharmony. The high economic factors that have caused divorce cases in Pengadilan Agama Ujung Tanjung in the past year have caused disharmony to be the most common and frequent cause.

The number of cases involving the absence of the parties or known as *verstek* is also an obstacle to the implementation of virtual mediation. Therefore, the dissemination of information by religious courts that can be done when the bailiff delivers a letter to the person concerned is one way for the public to get information so that mediation can be carried out virtually.

The virtual mediation mechanism applied by mediators varies from one mediator to another, using media commonly used in the community such as zoom and whatsapp as well as applications that provide video call and audiovisual features. Islamic civil cases conducted through mediation at the Ujung Tanjung Religious Court are divorce claims, talaq divorces, polygamy applications, child custody claims, and inheritance claims. The virtual mediation mechanism for each case where there is a dispute is different so the virtual mediation process is different for each case.

Virtual mediation is not a guarantee of success or failure, but is a means used to bridge parties who cannot mediate in person. Although the final report of virtual mediation does not succeed in uniting the hearts of the parties in the case, the mediator usually tries to minimize the consequences of divorce. Irwansyah (mediator) explained that this fact



shows that if the effectiveness of mediation is measured by the success of minimizing the number of cases, it can be said that mediation of divorce cases at the Ujung Tanjung Religious Court has not been quantitatively effective.(Irwansyah 2022)

On one occasion the mediator judge stated that: "There are several situations or conditions in which online mediation is carried out, namely when one of the parties is sick, one of the parties is out of town, one of the parties is abroad, due to work abroad and abroad." Then I mediated virtually because the trial was also conducted online and in the courtroom.

For religious courts that handle family cases dominated by divorce cases, mediation provides benefits by increasing the various forms of peaceful remedies that can be offered to prevent divorce. With mediation, peace efforts before divorce are getting stronger. The position of peace or peaceful efforts before further divorce is affirmed in the prevailing laws and regulations in Indonesia: Article 39 of Law Number 1 of 1974 concerning Marriage. 10 Article 31 of Government Regulation Number 3 of 1975 Implementation of Law Number 1 of 1974 concerning Marriage.11 Article 65 and Article 82 of Law Number 7 of 1989 concerning Religious Courts. (Hermanto, dkk, 2021)

The ability of the mediator is very influential because the success or failure of a mediation is greatly influenced by the role of the mediator in order to create peace between the parties, so the role of the mediator is very risky in influencing the outcome of the mediation itself. The mediation process in court is carried out by mediators who come from the elements of judges and non-judges. A person who performs the function of a mediator must have a certificate obtained after attending the Mediator Professional Special Education (PKPM) organized by an institution accredited by the Supreme Court. However, if there is no certified judge in the court area, then the judge in the court environment can serve as a mediator. Thus, judges who have not been certified can perform the function of mediators.

The Ujung Tanjung Religious Court attempted to overcome obstacles to mediation failure. The mediator continued to explain the importance of mediation as access to justice for the community, Pengadilan Agama Ujung Tanjung has 6 judges. Judges who have



attended and passed the Mediator training and have certificates for 4 judges, including 1 non-judge mediator judge and then 2 judges who do not have a mediator certificate because they have not been called to attend education, the plan is for the Supreme Court to have a program for all judges to attend training only gradually. (Mardhiyyah 2022)

Divorce cases are handled by the Ujung Tanjung Religious Court, both divorce and divorce cases, in the mediation process in divorce cases, both divorce and divorce, the mediator really asks both parties that the person concerned is the husband or wife of each party, then each party explains the problem then the mediator explains or provides solutions to them about solving the problem. And finally the mediator gives them a file that will be signed by both parties. Parties outside the Religious Court conducting the mediation can only agree through communication in virtual mediation.

The first thing the mediator does is to ensure or give the option to the parties to mediate virtually or with an order from the judge because since the beginning of the trial a virtual trial process has been carried out so that the mediator mediates virtually using media provided by the Ujung Tanjung Religious Court, Virtual mediation is carried out at the initiative of the mediator at the Sidoarjo Religious Court by providing options to the parties conducting the mediation process. The mediator asks the parties whether they are willing to conduct the mediation process virtually or not.

The virtual mediation process can also use the facilities of the Ujung Tanjung Religious Court, but usually the use of the facilities of the Religious Court is that the case process has been carried out from the beginning, not only during mediation. The Ujung Tanjung Religious Court cooperates with the Religious Court where one of the parties is domiciled, thus minimizing network constraints by litigants or to avoid fraudulent acts from one party such as one party falsifying his identity by ordering the other party to mediate virtually. However, sometimes virtual mediation is carried out at the initiative of the mediator and the agreement of related parties so that there are many possibilities for poor network connections, especially when one of the parties is in an area where the network connection is very difficult to reach.

CONCLUSION

The implementation of virtual mediation in the Ujung Tanjung Religious Court has been carried out from this study that the low success of the community factor itself is that not all parties in the case use the services of advocates, and the education level of the parties is low on average. The Ujung Tanjung Religious Court in carrying out its duties and functions has carried out a mediation process based on PERMA No. 1 of 2016, the results of the litigants in conducting the mediation process are still low and the parties' strong desire to divorce. The Ujung Tanjung Religious Court has made efforts to resolve the issue, but it still requires awareness and responsibility. The online mediation process itself, if referring to the Supreme Court Rules, the process can be done with audio-visual media such as video calls, which are already available in many applications. In other words, the role of this paper is expected to be able to serve as a social construction to find the level of effectiveness of mediation in divorce cases in religious courts.

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