EFFECTIVENESS OF MEDIATION IN RELIGIOUS COURTS

Suriani[1*]
Mutia Rahmah[2]

[*1]Universitas Muhammadiyah Sumatera Utara
[2]Universitas Asahan
[*1]*email:* surianisiagian02@gmail.com

Abstract: The aim of this research is to determine the effectiveness of mediation in Religious Courts. Mediation is a form of dispute resolution process outside of court which is carried out either directly or electronically as regulated in Supreme Court Regulation (Perma) Number 1 of 2016 concerning Mediation Procedures in Court and Supreme Court Regulation (Perma) Number 3 of 2022 concerning Mediation In Court Electronically. This type of research is empirical research, namely research carried out directly or through field observations. Based on the research results, it is known that the Tanjung Balai Religious Court has carried out mediation in handling cases. In 2020, 72 cases were mediated, with 8 successful and 53 unsuccessful. In 2021, the number of cases mediated was 95, with details of 50 cases not being mediated, 16 successful and 29 unsuccessful. In 2022, the number of mediated cases will reach 180 cases, with details of 90 cases not suitable for mediation, then 7 cases were successfully mediated and 83 cases were unsuccessful. Based on this, it can be concluded that the implementation of mediation at the Tanjung Balai Religious Court has not been effective.

Keywords: Mediation, Civil Cases, Religious Courts.

Introduction

One step to reduce the buildup of cases and overcome the backlog of cases from year to year at the Supreme Court is to optimize the empowerment of first level courts in implementing peaceful institutions by combining one form or means of dispute resolution (Alternative Dispute Resolution), namely mediation with the appointment of a judge. /mediator as a mediator in the judicial process, because cases or disputes that end in peace at the first level are closed to the possibility of appeal, cassation and judicial review (Abdul Mukti, 2018). Mediation is an effective instrument for non-litigation dispute resolution which has many benefits and advantages. The benefits and advantages of using mediation include that disputes can be resolved with a win-win solution, the time spent is not prolonged, the costs are lower, the relationship between the two people in dispute is maintained and their problem is avoided from excessive publicity..

The mediation of cases that go to court will reduce the backlog of cases, so that the judicial process will be more effective and in line with the principles of simplicity, speed and low costs. Because of this, civil procedural law requires a mediation process before the trial continues or before the lawsuit is read. The Supreme Court (MA) has issued Supreme Court Regulation Number 1 of 2016 (PERMA No. 1/2016) concerning Mediation Procedures in Court, which contains several changes from the previous PERMA. The most basic changes include, First, the time limit for mediation is shorter, namely within 30 days from the date of the order to carry out mediation. Second, there is an obligation for the parties (inpersons) to attend the mediation meeting in person with or without being accompanied by a legal representative, unless there is a valid reason such as a health condition that makes it impossible

to attend the mediation meeting based on a doctor's certificate; under pardon; has residence, residence or position abroad; or carrying out state duties, professional demands or work that cannot be abandoned. Third, the most recent thing is the existence of rules regarding good faith in the mediation process and the legal consequences of parties who do not act in good faith in the mediation process (Ajrina Yuka ardhira dan ghansham anand, 2018).

The Tanjung Balai Religious Court is one of the first level judicial institutions that carries out its duties as one of the executors of judicial power. The application of mediation has been carried out in resolving civil cases that occurred in the jurisdiction of the Tanjung Balai Religious Court. To determine the effectiveness of the implementation of mediation in resolving civil cases in court, it is necessary to carry out research entitled The effectiveness of mediation in religious courts.

Literature Review

Legal Effectiveness

Etymologically, the word effectiveness comes from the English word effective, in the Jhon M. Echols and Hassan Shadily dictionary it means successful and obeyed (Jhon M. Echols dan Hassan Shadily, 1996). In the Big Indonesian Dictionary, effective means, "can bring results, is effective" regarding efforts or actions. Can mean "already in force" regarding laws or regulations (*Badan Pengembangan Dan Pembinaan Bahasa, Kamus Besar Bahasa Indonesia, Cet. II*, 2017). Soerjono Soekanto is of the view that law is often a criterion for appropriate attitudes or behavior. The effectiveness of law in legal reality can be found if there is someone who states that a legal rule is successful or failed in achieving its goals, this can determine the level of influence on whether the goal will be achieved or not. What is highlighted in the effectiveness of law is the goals it achieves (Soekanto, 2008). Effectiveness is related to the relationship between the expected results and the results achieved.

Based on the theory of legal effectiveness put forward by Soerjono Soekanto, whether a law is effective or not is determined by five factors. These factors have a neutral meaning, so their positive or negative impact lies in the content of these factors. These factors are as follows: 1) Legal Factors (Laws) The meaning of the legal factors in the first point according to Soerjono Soekanto is that laws in the material sense are written regulations that are generally accepted and made by legitimate central or regional authorities. 2) Law Enforcement Factors. The scope of the term law enforcement is very broad, because it includes those who are directly and indirectly involved in the field of law enforcement. 3) Facilities and facilities factors. Without infrastructure, it would not be possible to run smoothly. These facilities or facilities include, among other things, educated and skilled human power, good organization, adequate equipment, sufficient finances and so on. 4) Community Factors. Community compliance with the law is greatly influenced by the factors mentioned above. Most people don't care about the legal rules that are currently in force, but they just want to get justice and legal certainty regarding the cases they are facing. Likewise in the case of mediation. Both parties to the dispute will have hope in law enforcers, namely mediators, so that the dispute between them can be resolved well. The role of the mediator is very important in the mediation process that takes place between the two parties. It is very important to know the mediator's ability to understand the values and rules that apply in society, so that the mediator can find a solution to the dispute and not end up making things worse due to his ignorance of the customary values that exist in a society. 5) Cultural Factors. Cultural factors which are actually one with societal factors are distinguished because in the discussion the priority is given to the value system which is the core of spiritual or material culture. As a system or subsystem of society (Soekanto, 2008).

Understanding Mediation

Etymologically, mediation comes from the Latin mediare which means being in the middle (Adiyono, 2008a). 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 (Rizqah Zikrillah Aulia, 2015). In terms of terminology, mediation is a form of negotiation between two individuals or groups involving a third party with the aim of helping to reach a compromise resolution or a way of resolving problems outside of court (Adiyono, 2008b).

According to Priatna Abdurrasyid, mediation is a peaceful process in which the disputing parties hand over the resolution to a mediator (someone who arranges a meeting between two or more disputing parties to achieve a fair final result, without large costs but still effective and fully accepted by both parties parties to the dispute. A third party (mediator) acts as a companion and advisor. As a mechanism for resolving disputes, mediation is used in many communities and is applied to various conflict cases(Sikri, M. S., Karim, K., & Syahril, 2022). Then, according to John W. Head "Mediation is a mediation procedure where someone acts as a vehicle for communication between the parties, so that their different views on the dispute can be understood and possibly reconciled, but the main responsibility for achieving a peace remains in the hands of the parties. own side(Talli, n.d.).

PERMA Number 1 of 2016 explains that mediation is a way of resolving disputes.Mediation is a negotiation process to solve problems through an impartial and neutral external party who will work with the disputing parties to help find a solution to resolve the dispute in a satisfactory manner for both parties (Puspitaningrum, 2018). Mediation is an alternative dispute resolution between parties to reach an agreement assisted by a mediator to ensure honesty, openness and exchange of opinions between parties in order to reach consensus. (Nugroho, 2009).

states that "mediation is a method of resolving disputes through a negotiation process to obtain agreement between the parties with the assistance of a mediator." Mediation is carried out with the help of a mediator, which in Article 1 paragraph 2 explains that "a mediator is a judge or other party who has a mediator certificate as a neutral party who helps the parties in the negotiation process to look for various possibilities for resolving the dispute without resorting to deciding or forcing a resolution."

Mediation Principles

The first principle of mediation is that mediation is voluntary. In principle, the initiative to resolve disputes through mediation is subject to agreement between the parties. This can be seen from the nature of the binding force of the mediation agreement based on the strength of the agreement based on Article 1338 of the Civil Code. Thus, in principle, the choice of mediation is subject to the will or free choice of the parties to the dispute. Mediation cannot be carried out if only one party wants it (Susanti Adi Nugroho, 2009).

The definition of voluntary in the mediation process is also aimed at settlement agreements. Even though the parties have chosen mediation as a way to resolve their dispute, there is no obligation for them to produce an agreement in the mediation process. This voluntary nature is supported by the fact that the mediator who mediates the parties' dispute only has a role to help the parties find the best solution to the dispute faced by the parties. The mediator does not have the authority to decide the dispute in question like a judge or arbitrator. Thus, there is no compulsion for the parties to resolve their disputes through mediation(Zein Umar Purba., 2007).

In its development, the use of mediation has become mandatory for certain contexts. In Indonesia, mediation is mandatory and currently applies to civil disputes that have been submitted to court based on Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Court. The use of mandatory mediation procedures in this case is

possible because the civil procedural law in force in Indonesia, Article 130 HIR and Article 154 RBG states that judges are required to first attempt a peace process. Thus, the use of mandatory mediation in relation to civil justice processes in Indonesia has a strong legal basis at the statutory level, so that it does not cause problems from a legal aspect.

The second principle of mediation is that the scope of the dispute is in principle civil in nature. If we look at the various statutory regulations governing mediation in Indonesia, it can be concluded that in principle the disputes that can be resolved through mediation are civil disputes. The third principle is a simple process. The voluntary nature of mediation gives parties the freedom to determine for themselves the mediation dispute resolution mechanism they want. In this way, the parties to the dispute are not trapped by the formalities of the event as in the litigation process.

The parties can determine simpler methods compared to formal court proceedings. Dispute resolution through litigation can take years to complete, if the case continues to be appealed or even cassation, while the option of dispute resolution through mediation is shorter, because there are no appeals or other forms. Besides that, the decision in mediation is final and binding. The definition of binding is to impose the burden of legal obligations and demand obedience from legal subjects. In Civil Procedure Law, the theory of res adjudicata pro veritare habetur is known, which means that if a decision is no longer possible to apply for legal action, then the decision itself has permanent legal force, and therefore the decision is binding on the parties to the dispute.

To see the comparison with the court decision, the decision is final and binding, connected with the theory of res adjudicata pro veritare habetur, meaning that an appeal or cassation cannot be submitted to a decision. Thus, the decision is binding on the parties and must be obeyed by the parties (Retnowulan Sutantio dan Iskandar Oeripkartawinata, 1997). As a consequence of this simpler method, mediation is often considered cheaper and less time consuming compared to litigation or going to court.

The fourth principle is that the mediation process maintains the confidentiality of the parties' disputes. Mediation is carried out behind closed doors so that not everyone can attend the mediation negotiation sessions. This is different from judicial bodies where trials are generally open to the public. The confidential nature of the mediation process is its own attraction, because the parties to the dispute generally do not like it if the problems they are facing are made public. However, the Peace Agreement which is strengthened by a peace deed is subject to disclosure of information in court (Legal Basis: Article 5 paragraph (1) PERMA No. 1/2016).

The fifth principle is that mediators are mediating. In a mediation process, the mediator plays the role of mediating between the parties in dispute. This role is realized through the mediator's task of actively assisting the parties in providing a correct understanding of the dispute they are facing and providing the best alternative solution for resolving the dispute. In this case, the decision to accept the settlement proposed by the mediator is entirely determined by the wishes/agreements of the parties to the dispute. The mediator cannot impose his or her ideas as a dispute resolution that must be adhered to. This principle requires a mediator to have extensive knowledge of the related areas in dispute between the parties.

Method

This researchThis type of empirical research is research carried out directly or observed in the field. Empirical research is a research model originating from the social sciences to examine social problems and phenomena in depth within the research area, so that it is more focused and the data analysis is carried out qualitatively, not using numbers and statistical

formulas. However, it is carried out in ways such as interviews, observations, case studies, experimental groups, document analysis, and so on (Fuady, 2018).

This research was conducted at the Tanjungbalai Religious Court, Tanjungbalai City, Prov. North Sumatra. The research began by conducting observations in the field to search for and find information related to the implementation of mediation. Furthermore, based on the results of observations, interviews were conducted with resource persons to collect data related to the implementation of mediation in religious courts. Next, primary data obtained from the field and supplemented with secondary data in the form of statutory regulations are analyzed and then conclusions are drawn by deduction.

Results and Discussion

Mediation Implementation Process in Religious Courts

The Tanjungbalai Religious Court is located at Jalan Jendral Sudirman, Tanjung Balai City, Prov. North Sumatra. The jurisdiction of the Tanjungbalai Religious Court covers the entire Tanjungbalai City Government area, namely the Districts of Datuk Bandar, Datuk Bandar Timur, Tanjung Balai Selatan, Tanjung Balai Utara, Sei Tualang Raso, and Teluk Nibung. Apart from that, seven areas of Asahan Regency are also part of the jurisdiction of the Tanjungbalai Religious Court, namely Tanjungbalai District, Sei.Kepayang District, Air Joman District, Simpang Empat District, Pulau Rakyat District, Bandar Pulau District. The Tanjungbalai Religious Court has a vision namely "The realization of the Great Tanjungbalai Religious Court" The mission ofThe Tanjungbalai Religious Court is maintaining the independence of the judiciary, providing fair legal services to justice seekers, improving the quality of leadership of the judiciary, increasing the credibility and transparency of the judiciary.

Like the Religious Courts in Indonesia, the Tanjungbalai Religious Court also has the authority to examine, decide and settle cases between Muslim people in the fields of marriage, inheritance, wills, grants, endowments, zakat, infaq, shadaqah and sharia economics as regulated in article 49 of Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts. For this reason, the Tanjungbalai Religious Court in 2020 received and handled 501 cases, consisting of 427 contentious cases (lawsuits), and 74 voluntary cases (petitions) (No Tanjungbalai, 2020). In 2021, the Tanjungbalai Religious Court has handled 540 cases, consisting of 461 contentious cases (lawsuits), and 79 voluntary cases (petitions).(Tanjungbalai, 2021). During 2022, the Tanjungbalai Religious Court has handled 567 cases, consisting of 496 contentious cases (lawsuits), and 71 voluntary cases (petitions).(Tanjungbalai, 2022).

Based on the Republic of Indonesia Supreme Court Regulation Number 1 of 2016, Mediation is a method of resolving disputes through a negotiation process to obtain an agreement between the Parties with the assistance of a Mediator. Globally, the mediation stages can be divided into three stages, namely: the preparation stage, the implementation stage and the decision-making stage. 1). Preparation phase. A mediation process requires a mediator to first explore what is the main dispute between the parties that will be discussed in the mediation. And at this stage the mediator usually consults with the parties about the place and time of the mediation, the identity of the parties who will attend, the duration of time and so on. 2). Implementation Stage. The first implementation stage is the formation of a forum, namely before starting, the mediator and the parties create or form a forum. After the forum is formed, a joint meeting is held and the mediator issues a preliminary statement. The second implementation stage continues with gathering and sharing information, where the mediator gives the parties the opportunity to talk about the facts and positions according to their respective versions. The mediator acts as an active listener and can raise questions and must also apply decision rules and otherwise control the parties' interactions. 3). Decision Making Stage At this stage the parties work together with the help of a mediator to evaluate options,

obtain trade offs and offer packages, minimize disputes and find a fair basis for joint allocation. And finally the parties who agreed succeeded in making a joint decision. In the decision-making stage, the mediator can also put pressure on the parties, find formulas to avoid embarrassment, help the parties in dealing with the power of attorney (if empowered) (Kamaruddin, 2018).

In carrying out mediation, the Tanjungbalai Religious Court mediator refers to the mediation process*Indonesian Institute for Conflict Transformation* (*Admin-Pasumut.*, 2018). *The mediation stages begin with:*The mediator introduces himself and the parties emphasize the willingness of the parties to resolve the problem through mediation, then explains the meaning of mediation and the role of the mediator, explains the mediation procedure, explains the meaning of caucus, explains the confidentiality parameters, describes the schedule and length of the mediation process and explains the rules of conduct in the negotiation process , then give the parties the opportunity to ask questions and answer them.

The next stage isidentifying general problem topics, agreeing on subtopics of problems to be discussed and determining the order of subtopics to be discussed in the negotiation process, preparing the negotiation agenda. A mediator who leads the mediation mreveal the hidden interests of the partiesin two ways, namely the direct way by asking questions directly to the parties or the indirect way, namely by listening to or reformulating the statements put forward by the parties.

The next stage generates dispute resolution options. The mediator encourages the parties not to stick to a positional mindset but to be open and look for alternative solutions to the problem together. Next, analyze dispute resolution options. The mediator helps the parties determine the advantages and disadvantages of accepting or rejecting a problem solution. The mediator reminds the parties to be realistic and not to make unreasonable demands or offers. Next is the final bargaining process. At this stage the parties have seen the intersection of their interests and are willing to make concessions to each other. The mediator helps the parties to develop offers that can be used to test whether or not a resolution of the problem can be achieved. After that, the next step is to reach a formal agreement. The parties prepare an agreement and procedure or plan for implementing the agreement referring to the steps that the parties will take to implement the terms of the agreement and end the dispute.

Based on the cases received and examined at the Tanjungbalai Religious Court, there were 72 cases mediated in 2020, with details of 8 successful and 53 unsuccessful. In 2021, the number of cases mediated was 95, with details of 50 cases not being mediated, 16 successful and 29 unsuccessful. In 2022, the number of mediated cases will reach 180 cases, with details of 90 cases not suitable for mediation, then 7 cases were successfully mediated and 83 cases were unsuccessful.

Currently, the Tanjungbalai Religious Court has 3 mediators from judges, namely Fadhillah Halim, SHI, MH, Deni Purnama, Lc., MA.Ek, Riki Handoko, SHI, MH. For non-judge mediators there are 2 people, namely Musa Setiawan, SH and Musa Siregar SH, CPL, CPCLE, CPM. Each mediator has a picket schedule that has been determined by the chairman of the Religious Court, Dr. Hj. Devi Oktari, S.HI., M.HI.

Mediation at the Tanjung Balai Religious Court is carried out both in person (offline) and electronically (during). In principle, the process of carrying out mediation offline and during is the same, the difference lies only in the network used. Electronic Mediation can be carried out after the Parties and/or their proxies have given their consent. In the event that one of the parties does not agree to the implementation of Electronic Mediation, the mediation will be carried out manually. If the Parties agree to mediation to be carried out electronically, the case examining judge submits an Electronic Mediation approval form to be signed by the Parties and/or their proxies. Next, the parties select a mediator from the list of Mediators at the Religious Courts. Then identity verification is carried out, determination of electronic media applications, electronic mediation meetings, then submission of mediation results.

Obstacles in Implementing Mediation in Religious Courts

Mediation is one of the alternatives used in resolving disputes, but not many people know how important mediation is, so many people immediately take the court route to resolve cases, with the motive of getting justice. Even though mediation as an alternative dispute resolution certainly provides benefits for parties who want to resolve their cases. However, the government is trying to overcome the problem of limited distance and time in communication in cross-border dispute settlement, currently various countries are optimizing peaceful dispute resolution techniques, namely the Online Dispute Resolution (ODR) concept which can simplify the mediation process which is generally done face to face. immediately transformed into a video connection with an online application(Matsum et al., 2022) This is in line with PerMA Number 3 of 2022 concerning Electronic Mediation in Court.

The implementation of mediation at the Tanjung Balai Religious Court, carried out both in person (offline) and electronically (during), certainly does not always run smoothly. According to Musa Setiawan, as a non-judge mediator at the Tanjung Balai Religious Court, he stated that there were several obstacles faced in carrying out mediation, namely the lack of knowledge of the parties regarding the importance of mediation. Some parties to the case stated that peace had been sought before the case reached court so that there was no need for mediation. Apart from that, in divorce cases, sometimes the family's interference can also be an obstacle in carrying out mediation. For electronic mediation, the obstacles experienced are network limitations, especially for parties who live in rural areas. Apart from that, there are still many people who are technologically illiterate, which is an obstacle to implementing electronic mediation.

However, the Tanjung Balai Religious Court continues to strive to optimize the implementation of mediation. Mediators, both judges and non-judges, continue to try to convince the parties of the importance of mediation by explaining the advantages of resolving cases through mediation. Apart from that, to facilitate the implementation of mediation, mediators from the TanjungBalai Religious Court offer electronic mediation for parties who cannot attend the mediation in person.

Effectiveness of Mediation in Religious Courts

The process of resolving disputes through mediation aims to allow the disputants to discuss their differences privately with the help of a neutral third party (mediator). The mediator helps the parties to understand the views of the other parties regarding the disputed issues, and then helps them carry out an objective assessment of the overall situation or circumstances that are taking place during the negotiation process. So the mediator must remain neutral, always build good relations, speak the language of the parties, listen actively, emphasize potential benefits, minimize differences and emphasize similarities, which aims to help the parties negotiate better to resolve a dispute. .

Effectiveness is related to the relationship between the expected results and the results achieved. The effectiveness of mediation at the Tanjung Balai Religious Affairs Office can be seen from the number of cases mediated as previously explained, namely 72 cases, but only 8 cases were successful in 2020 with a percentage of 11 percent. For 2021, of the 95 cases, 16 cases or 16 percent were successfully mediated. For 2022, of the 180 cases, only 3 percent or 7 cases were successfully mediated. This shows that the success rate of mediation at the Tanjung Balai Court is still low, so it can be concluded that the implementation of mediation has not been effective.

Conclusion

The implementation of mediation at the Tanjung Balai Religious Court was in accordance withSupreme Court Regulation (Perma) Number 1 of 2016 concerning Mediation Procedures in Court and Supreme Court Regulation (Perma) Number 3 of 2022 concerning Electronic Mediation in Court. Obstacles in implementing mediation include the parties' lack of knowledge of the importance of mediation, network disruption problems for electronic mediation and a society that is still technologically illiterate. This of course has an impact on the low success of mediation so that mediation cannot run effectively.

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