

The Role of Mediation Agreement of Divorce Which Ended Amicably (Case at Yogyakarta Religious Court)

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Abstract

Mediation is one form of alternative dispute resolution outside the Court. The purpose of mediation is to resolve disputes between the parties by involving a neutral and impartial third party. The process of implementing mediation is actually very simple, but in reality there are many things that hinder or complicate the success of mediation. It is proven from the number of unsuccessful mediations compared to successful mediations in court. The formulation of the problem proposed is: How is the consideration of the divorce mediation peace agreement at the Yogyakarta Religious Court and whether the divorce dispute mediation agreement is in accordance with Supreme Court Regulation (Perma) No. 1 of 2016. The purpose of this research is to find out how the consideration of the peace agreement on divorce mediation in the Yogyakarta Religious Court and to find out the divorce mediation agreement according to Perma No. 1/2016. 1 of 2016. This research includes Empirical Research. Research data were collected by means of interviews and literature study. The analysis was carried out by Sociological Jurisdiction. The results of the analysis at the Yogyakarta Religious Court in 2017 mediation succeeded in reaching an agreement that only 11 cases out of a total of 241 cases were mediated, in 2018 only 19 cases out of a total of 265 cases, in 2019 only 23 cases out of a total of 204 cases, and in 2020 only 16 cases out of a total of 191 cases. Consideration of peaceful mediation, namely the role of the mediator and the good faith of the parties in conducting mediation. 1 of 2016, such as the type of case requiring mediation, good faith in taking mediation, costs incurred in mediation, mediation venue, and mediator certification. This makes mediation successful peace is one of the goals in civil disputes.

Keywords: Mediation, Role of Mediator, Divorce Case.

Introduction

Etymologically, the term mediation comes from the Latin, "*mediare*" which means being stand in the middle. This meaning refers to the role displayed by a third party as a Mediator in carrying out their duties to mediate and resolve disputes between the parties (James A. Wall, 2001). Being in the middle also means that the Mediator must be in a neutral and impartial position in resolving disputes. He must be able to protect the interests of the disputing parties fairly and equally, thereby creating trust from the disputing parties (Abbas, 2009). In the Indonesian Dictionary, the word mediation is defined as the process of involving a third party in resolving a dispute as an advisor. The definition of mediation given by the Indonesian Dictionary contains three important elements. First, Mediation is the process of resolving disputes or disputes that occur between two or more parties. Second, the parties involved in dispute resolution are parties from outside the disputing parties. Third, the parties involved in the dispute resolution act as advisors and do not have any authority in making decisions.

Mediation is one form of alternative dispute resolution outside the Court. The purpose of mediation is to resolve disputes between the parties by involving a neutral and impartial third party. Mediation can lead the parties to the realization of a permanent and sustainable peace agreement, considering that dispute resolution through mediation puts both parties in the same position, neither party wins nor loses.

In mediation, the parties to the dispute are pro-active and have full authority in making decisions. The mediator does not have decision-making authority, but only assists the parties in maintaining the mediation process in order to realize a peace agreement. Garry Goopaster gives a definition of mediation as a problem-solving negotiated process in which an impartial outside party *cooperates* with the disputing parties to help them reach a satisfactory agreement (Goopaster, 1993).

Civil disputes in the private matter require a fairly long process of resolution. Civil disputes experienced by society today are increasing and diverse along with the development of human life. Civil disputes that occur require the community to find the best solution to resolve these problems with various backgrounds hindsight and consideration. In the settlement of civil disputes, it has long been known that there are two settlement models, namely litigation settlement and non-litigation settlement (Astarani, 2009).

Mediation has a very important role as an alternative dispute resolution if there is a conflict between the interested parties, with mediation all processes in the settlement will be more efficient. Mediation can also reduce congestion in litigation in the Court. The number of cases submitted to the Court causes the Court process to often take a long time, so that it costs a lot and often gives unsatisfactory results, improves public order in the dispute resolution process and provides an opportunity for dispute resolution to be achieved which results in an acceptable by all parties (Winarta, 2011).

At first, the peace institution according to Article 130 HIR/154 RBg was only implemented by providing advice, space and opportunities for the parties to make peace on their own, while the Judge who heard the case could not go too far into the main issues of the parties. Along with the accumulation of civil cases in the High Court and Supreme Court, it is deemed necessary to expand the scope of peace in Article 130 HIR/154 RBg, by not only being facilitated by judges, but also by third parties who have special abilities in negotiation techniques. and the dispute resolution process (Witanto, 2011).

In 2002 the Supreme Court issued a Supreme Court Circular (SEMA) No. 1 of 2002 which entitled "Empowerment of First Instance Courts Implementing Peaceful Institutions (*pemberdayaa pengadilan tingkat pertama menerapkan lembaga damai*). The issuance of the SEMA started from one of the National Working Meetings of the Supreme Court in Yogyakarta in September 2001. The motivation that prompted it was that there should be a substantive and procedural limitation of cassation cases, because if the courts at the first level were able to resolve cases through peace, it would have an impact on the decline in the number of cases at the higher level. appeal (Harahap, 2010). Because the issuance of SEMA was considered as less successful, various PERMAs were issued, until the last with the issuance of PERMA No. 1 of 2016 concerning Mediation Procedures in Courts.

The releasing of mediation in court through PERMA Number 1 of 2016 is a re-enforcement of the previous regulation, namely PERMA Number 1 of 2008, Mediation in court is the institutionalization and empowerment of peace as regulated in the provisions of Article 130 HIR/ Article 154 RBg paragraph (1) states that : "*jika pada hari yang ditentukan itu, kedua belah pihak datang, maka Pengadilan Negeri dengan pertolongan ketua mencoba akan memperdamaikan mereka*" So that the mediation system is connected to the litigation process system in court (*mediation connected to the court*) which is intended to provide certainty, order, smoothness in the process of reconciling the parties to resolve a civil dispute. Because the settlement of cases by peace is a better and wiser way of settling than being resolved by court decisions, both in terms of time, cost and energy used (Sri Wardah, 2007).

Perma No. 1 of 2016 has fundamentally changed judicial practice in Indonesia regarding with civil cases. Mediation as an effort to reconcile the parties to the litigation is not only important, but must be carried out before the case is examined. So far, efforts to reconcile the parties have been carried out formally by the Judge examining the case, but now the Panel of Judges is obliged to postpone it to give the Mediator an opportunity to reconcile the litigants. Special time and space are given to mediate between the parties. Peace efforts are not just a formality, but must be carried out in earnest (Usman, 2012).

Mediation in court must be implemented which is access to encourage the awareness of the parties to sit together in resolving disputes and solutions to reduce the buildup of cases in the District Court, District High Court and Supreme Court, and

mediation will result in peace and establish, good relations between parties, satisfactory, time-saving and resource-saving, so as not to spend money and energy (Rahmadi, 2010).

The integration of mediation in the Court's proceedings is to facilitate, earnestly try to help the parties to the dispute overcome all obstacles and obstacles to achieving a simple, fast and low-cost trial through negotiation, deliberation by putting aside the law to reach a peace that is agreed upon by both parties (Sukadana, 2012). Thus, the essence sought in dispute resolution or cases by integrating mediation into court proceedings is "fairness", because the wishes of both parties can be fulfilled, no one feels defeated especially.

Mediation is not just to fulfill formal legal requirements, but is a serious effort that must be made by the parties concerned to achieve peace. Mediation is an attempt by the litigants to make peace in the interests of the parties themselves. It is not in the interest of the Court or Judge, nor is it in the interest of the Mediator (Rahardjo, 2006).

In practice, there are divorce cases that can be resolved through mediation, that the number of cases of the Yogyakarta Religious Court in 2017 that were successfully mediated were 11 cases out of a total of 241 cases mediated, in 2018 19 cases were successfully mediated out of a total of 265 cases that were mediated. mediated, and in 2019, 23 cases were successfully mediated out of a total of 204 cases mediated.

The increase in the divorce rate in the city of Yogyakarta is not too significant. The increase is lower when compared to other districts in DIY. Divorce cases are the most common. This means that the application for divorce is made from the wife's side. The high number of divorce cases is caused by many factors. These factors include being left by the husband, not providing a living, domestic violence. The reason why the divorce rate in Yogyakarta City is not too high is because the divorce process is considered more complicated. Most of the cases handled, there was mediation and counterclaims were filed, thereby reducing the divorce rate it self.

Divorce cases are the highest handled at the Yogyakarta City Religious Court. In 2017 alone there were 489 divorce cases. There are only 150 cases of talak divorce with the most factors leave one of the parties. In 2018, there were 566 divorce cases. Meanwhile, 153 cases consisted of cases of talak divorce. Most of the factors due to disputes as many as 432 cases. To reduce the divorce rate, the Office of the Ministry of Religion (Kemenag) Yogyakarta City requires the bride and groom to undergo pre-marital guidance. This is done to reduce the divorce rate. The purpose of the Yogyakarta City Ministry of Religion is to conduct the guidance for 2 (two) days for the bride and groom. This program has been running for 2 (two) years since 2017.

The Yogyakarta Religious Court has carried out its duties and functions as a judicial institution within its scope of authority. In terms of mediation, especially mediation of divorce cases, the Yogyakarta Religious Court refers to and adheres to Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Courts which is regulated in it.

Supreme Court Regulation No.1 of 2016 concerning Mediation Procedures in Courts contains 9 (nine) chapters consisting of General Provisions, Guidelines for Mediation in Courts, Mediators, Premediation Stages, Mediation Process Stages, Separation of Mediation from Litigation, Voluntary Reconciliation, Peace in Out of Court, and Closing Provisions. So that the Yogyakarta Religious Court in carrying out the mediation process, especially for divorce cases, just needs to run and follow the rules contained in the Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures at the Court. The process of implementing mediation is actually very simple, because mediation is intended to make it easier to solve cases without going through a complicated series of trials. But in reality there are many things that hinder or complicate the success of mediation. It is proven from the number of unsuccessful mediations compared to successful mediations.

This research uses empirical research. In this study, data analysis was carried out using the sociological juridical method, by processing secondary data in the form of primary legal materials, secondary legal materials, and tertiary legal materials that have been systematically collected to produce conclusions that can answer the research problem formulation. This study uses a statutes research approach to the Supreme Court Regulation by analyzing the consideration of the peace agreement mediating divorce cases at the Yogyakarta Religious Court and whether it is in accordance with Perma No. 1 of 2016. The method of data collection in this research was conducted by interviewing mediators and young clerks at the Yogyakarta religious court conducted in the jurisdiction of the Yogyakarta Religious Court and summarizing the material law which consists of books, journals, perma, internet references and other references.

Result and Discussion

Mediation Practices at the Yogyakarta Religious Court on Divorce Cases

Divorce is a disgraceful act and is hated by Allah SWT. But husband and wife may divorce if their marriage can no longer be maintained, but divorce must still have reasons as regulated in the Act that husband and wife will not be able to live in harmony as husband and wife (Muhammad, 2014). In general terms, divorce is a break in the relationship or marital bond between a man or woman (husband and wife). Whereas in Islamic law, divorce is called talak, which means release or liberation. In Islamic jurisprudence, divorce or talak means divorce as opposed to gathering. Then this word used as a term by fiqh experts which means divorce between husband and wife (Mukhtar, 1993).

The court is a judicial institution appointed to resolve divorce cases in order to create legal certainty for divorce between the two parties (Soemijati, 1982). In Indonesia, the implementation of divorce requires a Court Decision to decide that a marriage has been terminated. Law No. 1 of 1974 concerning Marriage states that

divorce can only be carried out in front of a court session after the court cannot reconcile the two parties.

From the provisions of the article above, it can be seen that a marriage termination can only be carried out if each husband and wife have made peace efforts. This peaceful effort must be carried out and ordered for reconciled the two parties to maintain the household that had been created (Subekti, 2006). Islamic law stipulates that the right to divorce belongs to the husband, with the consideration that men are generally more natural by nature to think about which is better between separating or surviving as a wife than women. A man is generally more mature in thinking before making a decision than a woman who usually acts on emotions. Thus, if the divorce rights are given to the husband, it is expected that the divorce will be less likely than the divorce rights are given to the wife (Basyir, 1999).

Marriage is a religious commandment, every religious commandment is part of the worship of every creature of Allah SWT to servant is certainly not just an order, but there is a noble purpose for that command. The noble purpose of marriage is to make a happy family. A happy family is a family that achieves *sakinah*, *mawaddah*, and *rahmah*, these three things are a necessity that should be achieved (Mardjono, 1997). From a quantitative perspective, the purpose of marriage in the sense of forming a family has been achieved in accordance with the expectations of the establishment of Law no. 1 of 1974 concerning Marriage. But when referring to the goal of eternal life in marriage, this cannot necessarily be achieved, because it is proven that in marriage there are still many divorces (Sanjaya, 2017). Divorce cases are the most common. This means that the application for divorce is made from the wife's side. High cases of divorce is due to various factors, including being left by the husband, the husband does not provide a living, and domestic violence.

Based on the results of interviews with Mrs. Hj. Suryantinah, SIP., MM. As a non-judge mediator at the Yogyakarta Religious Court, she stated that the reasons for divorce that had been handled in mediation were of various kinds (Suryantinah, 2021): *First*, Economic Factors. The husband works, but does not meet household needs such as the cost of children's education or other children's needs. The husband only produces the Provincial Minimum Wage (UMP), which is under 3 million. For one month's life was not enough, the wife finally filed for divorce from her husband. From the husband's side, he has tried, but only got that much, the wife also doesn't work, so a divorce occurs. *Second*, the problem of infidelity. That there is another ideal woman or another ideal man. *Third*, Assuming the husband cannot see his wife's troubles or lacks empathy. *Fourth*, the occurrence of domestic violence, but cases like this are rare. The divorce rate found in the Yogyakarta Religious Court can be illustrated by the following table:

Table 1.
Reports for divorce *talak* and *gugat* divorce for 2017-2020

No	Year	Divorce (<i>talak</i>)	Divorce (<i>Gugat</i>)	total
1	2017	513	144	657
2	2018	527	129	686
3	2019	618	154	772
4	2020	507	146	653

Source: Reports of litigation and divorce are accessed on the Yogyakarta Religious Court website

The data above was taken directly from the Yogyakarta Religious Court office. Shows that the city of Yogyakarta also has a fairly high divorce rate. The data is purely a report that was decided by a Religious Reports that have been terminated have legal force. From this data, it can be concluded that the divorce rate from 2017 to 2020 continues to increase, although not too significantly (Pengadilan Agama Yogyakarta, 2020). Table 2. Mediation Report on Divorce Cases Successfully Reaching Agreement at the Yogyakarta Religious Court in 2017 - 2020 (Pengadilan Agama Yogyakarta, 2021).

Table 2.
Mediation Reports on Divorce Cases reached an agreement

No.	Year	Mediation Cases	Mediation Successful
1	2017	241	11
2	2018	265	19
3	2019	204	23
4	2020	191	16

Source: Annual Report accessed on the Yogyakarta Religious Court website

The process of implementing mediation is actually very simple, because mediation is indeed aimed at makes it easier to solve cases without going through a complicated series of trials. But in reality there are many things that hinder or complicate the success of mediation. It is evident from the number of unsuccessful mediations compared to successful mediations. As stated by Mr. Arwan Ahmad as the Junior Registrar of the Yogyakarta Religious Court, the success rate of mediation in divorce cases is slightly below 10%, but there is also successful mediation and the case is withdrawn (Arwan Ahmad, 2020).

The success rate is low because they are usually reconciled in the Kelurahan or in the family, so cases that go to court are usually severe. Efforts in the success of this mediation cannot be separated from the important role of a Mediator. Although indeed the greatest influence remains on both parties to the dispute. But at least in this case it is the Mediator who has direct contact with the parties. One example of a case that was successfully reconciled was that husband and wife were just busy with each other so they rarely saw each other, then filed for divorce and happened to be successful because they could be reconciled. However, trivial issues do not guarantee successful mediation.

Consideration of the Divorce Mediation Agreement at the Yogyakarta Religious Court

Divorce can only be filed in front of a court hearing after the Court concerned has tried and failed to reconcile the two parties, both the District Court for non-Muslims and the Religious Courts for those who are Muslim. Article 39 paragraph (2) of the Law on Marriage explains that in order to be able to carry out a divorce there must be sufficient reason that between husband and wife will not be able to live in harmony as husband and wife. The reasons for divorce can be seen in Article 39 paragraph (2) of the Marriage Law Act and Article 19 Government Regulation No. 9 of 1975.

Based on both regulation above, basically to divorce as a wife only file a lawsuit to the Religious Court (divorce lawsuit) in the legal area where the husband lives and it is sufficient reason that husband and wife will not be able to live in harmony as regulated in Article 39 paragraph (2) marriage law act.

In practice, the divorce lawsuit is regulated in Article 20 PP No. 9 of 1975. A lawsuit for divorce is filed by the wife or her proxies to the Court whose jurisdiction covers the residence of the defendant, in the event that the residence of the defendant is unclear or unknown or does not have a permanent residence, the divorce suit is filed to the Court at the place of residence of the plaintiff abroad, then the divorce suit of defendant resides shall be submitted to the Court at the place of residence of the plaintiff, where the application is submitted by the head of the court to the defendant through the local Representative of the Republic of Indonesia. Lawsuit is accepted if it is clear enough for the court regarding the causes of the dispute and quarrel after hearing the family, closest people and the defendant declare or show an attitude of not wanting to return to the joint residence.

It can be taken for example, disputes and quarrels as one of the reasons for filing a divorce. The reasons must be stated in the application or divorce suit and it must be briefly and concisely stated the reasons, then make sure there are 2 (two) witnesses from the family who know about the quarrel. These

two witnesses will be brought to court. From the statements of the witnesses, it must be shown that the dispute or the quarrel was irreconcilable. Lawsuits that will be examined in court, must previously take preventive measures. One of the steps in the lawsuit in the divorce lawsuit is mediation. Article 115 of the Compilation of Islamic Law explains that divorce can only be carried out in front of a Religious Court trial after the Religious Court has tried and failed to reconcile/mediate the two parties.

Mediation is an alternative dispute resolution that can be used by parties outside the court. The principle of mediation is a win-win solution. Mediation itself not only speeds up the dispute resolution process, but also eliminates grudges and strengthens friendship (Sumartono, 2006). In practice, the aim of the parties to mediate is to make peace, involving a neutral third party and it is impartial, namely the mediator. As a third party, the mediator negotiates, maintains and controls the mediation process, offers alternative solutions, together the parties formulate a dispute resolution agreement. Decision making is not in the hands of the mediator, but in the hands of the parties. The existence of a mediator here is very dependent on the trust given by the parties to resolve the dispute so that there is no dispute between the two (Situmorang, 1993).

The implementation of mediation at the Yogyakarta Religious Court itself is as follows (Arwan Ahmad, 2020):

1. Incoming cases received at table I, all new incoming cases are submitted to the chairman of the assembly and the chairman of the assembly will divide the case to the assemblies.
2. The chairman of the panel to distribute the case must be determined by the Panel of Judges, Then the file is submitted for examination. The first day it is not known when the trial will be held, which will divide and appoint judges is the authority of the desired chairman, because the number of judges depends on the case.
3. The obligation of the panel to determine the day of the trial, the judge appointed by the chairman of the panel must immediately determine the day of the trial.
4. It is the duty of the tribunal to order the bailiff to summon the parties as scheduled.
5. If both parties are present, an explanation of the mediation procedure will be given or all mediation issues will be explained by the chairman of the assembly.
6. After being explained, both parties provide a statement if it has been explained and has understood. Here is a statement letter.
7. The chairperson of the assembly asked the two parties who the Mediator was, if not was given the opportunity to choose a Mediator in the list of Mediators already listed in front of the door of the mediation room or on the mediation table, along with their names and photos. mediator.

8. After agreeing on the name of the Mediator, the chairman of the assembly makes a determination and submits it to the selected Mediator.
9. Both parties are summoned by officers to enter the mediation room to explore all problems and find solutions.
10. Make a mutual agreement between the two parties.
11. The mediator is obliged to report to the panel on the result of the mediation carried out, whether successful, partially successful, unsuccessful or failed. If this happened, it can be revoked with an order that the parties comply with the agreement made before the mediator on the day, date with a written report.
12. Even if successful or not, mediator is obliged to report to the panel of judges.

The formal requirements for the peace decision as referred to in article 1851 of the Indonesian Civil Code (ICC) and article 130 of HIR (indonesian law of privat law procedure), and article 154 RBg can be stated that there is an agreement between two parties and the form of peace must be in writing (Abdul Manan, 2005). After peace efforts have been made and an agreement is reached, the Religious Court will immediately make a peace deed which has the same legal force as the judge's decision and can be implemented. If there are parties who do not want to comply with the contents of the peace, then the aggrieved parties can request to execution to the Religious Court.

A peace deed can only be made in a dispute regarding the materials that allows it to be implemented and a peace deed cannot be appealed reviewed or be submitted to the second times (Muktiarto, 2005). The benefits of the peace system in resolving disputes carried out by peaceful means will result in inner and outer satisfaction and disputes are resolved, the costs are lights and done fast. Besides that the hostility between the two litigants will be reduced. This is much better that if the case was decided by ordinary decision, for the example the defendant was defeated and the execution of the decision had to be carried out by force (Sutantio, 1997).

In this research, mediation process will carried out there where the mediation succeeded in reaching an agreement was resolved by Mrs Suryantinah as a non-judge mediator at Yogyakarta Religious Court such as : (1) mediation in divorce, (2) mediation for child interest because of the drugs impact of parents divorce. Form both case basically the success of the mediation is supported by the role of mediator in reconciling the two parties to reach a win-win solution agrrement and the good faith of the parties in conducting the mediation process in court (Fritz, 2020). Several role of mediator are : (1) attending mediation, (2) following mediation procedures, and (3) being willing to respond to case resumes from other parties. Those role of mediator are showed in the table 3 below (Suryantinah, 2021):

Table 3.
Role of mediator

No	Success Factors	From the case
1.	The mediator roles	<p>The divorce case, the point of mediation is to change the behavior patterns between parties especially husbands into wives.</p> <p>Mediator role are :</p> <ol style="list-style-type: none"> 1. Attending skills : the mediator is close to the disputing parties, listens and makes eye contact. 2. Following skills : the mediator listens to the parties and asks question. Mediator good in listening and try to provokes parties to telling the story and continueing the story well. 3. Reflecting skills : mediator make a summarize from the story which is has been told by parties and conveys it back to them. Then parties feels really appreciate and heard from what it is telling.
2.	The good faith from parties (roles from parties)	<p>The role of parties to showing the good faith each other. This practice is happened in first and second meeting by ordering the parties to say anything alternately, begin from to say anything and the wife was told to be quite until the husband finished speaking. And allow to wife to reponds after husband finished.</p> <p>Use the impact of divorce to provoke parties in mediation to take intention the impact of divorce toward family and child.</p>

From the role of mediator above, can be a consideration that a peace will occurs over the skill or role of the mediator in mediation. It because of a lot of knowledge does not necessarily guarantee the success of the mediation without being accompanied by a number of skills (William, 2015). These skills can be acquired through by mediator training, education, and passing the time.

The skill of mediator is the most important element in mediation (Khoirul Anam, 2021). Because skill will determine the success or failure of a mediator in resolving disputes between the parties. The skills possessed must always be honed and practiced in order to have sharpness in analyzing, compiling works steps, and preparing solutions in the context of resolving disputes between the parties (Abbas, 2009). The the mediator if want to be successful in mediation is to (1) show attention to the problems of the parties, (2) give the parties equal time to present their problems (Malach Pines, 2002), and develop constructive question.

Consideration of peace will occur if the parties apply the good faith. Those good faith is regulated in Supreme court regulation no. 1 of 2016 in article 7 paragraph (2) that obligation to carry out the good faith in mediation. The parties involved must have good faith so that the mediation process can be carried out and run well. There is the indicator of the parties if they are do not have good intentions such as : (1) absence in mediation after being duly summoned two times in a row of mediation meeting without valid reasons, (2) only attending the first meeting mediation but never attending the next meeting, (3) absent repeatedly then will disrupting the mediation meeting schedule without valid reason, (4) attending the mediation meeting but did not provide a response to continue resolving the case, (5) did not sign the draft peace agreement that had been agreed upon.

If the mediation succeeds in reaching an agreement, the parties with the help of the mediator are required to formulate a peace written agreement, signed by parties and also mediator it self. The contain of peace agreement should be based on law, following the public order, morality and does not giving losses toward third parties (Steegh, 2013). Meanwhile if the mediation failed, it will be the strong desire from the parties, they have no intention, difficult to be reconciled by the family, even in mediation they shows the unrespectful each other. Even the parties sometimes cannot receive input from mediator, they feel the most correct, it means the plaintiff can no opportunity to forgive the defendant. The mediation is failed if parties shows their own ego and reasons, then a lot of mediation which is illustrate such this is rarely cannot be reconciled (Suryantinah, 2021).

The mediation agreement of gugat divorce at Yogyakarta Religious Court is according to PERMA No. 1 Year 2016

Mediation on divorce in Yogyakarta Religious Court should refer to Supreme court No. 1 of 2016 Concerning the Mediation procedures in court. The procedures such as : (1) the type of case that requires mediation, (2) good faith in mediation, (3) costs incurred in mediation, (4) venue of mediation , and (5) certification of mediator. Yogyakarta Religious Court is perform the mediation such following that procedure : (first) divorce is one of type which is explained in article 4 paragraph (1) perma No. 1 of 2016 that all disputes submitted to the court in the type of case resistance (verzet) toward verstek decision, resistance by litigants (party verzet) include third party (derden verzet) against the implementation of the verdict, before be trial must be settle in the first step through mediation. With the obligation to reconcile as the first step in the court, the judges has role as mediator to reconciling the disputing parties with the active role, but if move to the trial the judges must be passive. Then based on Perma No. 1 of 2016 the duty of judge is no longer decide with verdict but also has new role developed into a mediator. Mediation in here is a negotiation process with involved the outside who impartiality cooperates with the disputing parties to assist in

obtaining satisfactory agreement. The parties authorize the mediator to help the resolve the issues between them (Nugroho, 2019).

Second, the parties and their attorney are required to take mediation in good faith. This principle is regulated in Indonesia Civil Code (ICC) article 1338 paragraph (3) that “ every agreement must be carried out in good faith. The good faith principle is related to the implementation of the agreement which to be equity, it mean that the performance of agreement must be rational, equity and has aim to prevent inappropriate behavior from one of the parties (Sanjaya, 2019).

Third, based on Perma No. 1 of 2016 article 8 paragraph (1) any mediation services from judges or court officials are free of charge. Different with the officials, the mediator non judges services is charge together between parties according to agreement. Fourth, the practice of mediation alternatively be held in the court mediation room or outside the court depend on the parties agreement. Fifth, every mediator is required to have a certificate which obtained after participating and declared to have passed as mediator by Supreme court or an institution that has obtained accreditation from the supreme court.

Specifically, this research uses the *gugat* divorce in Yogyakarta religious court as the samples to analyze the role of mediator. Several cases of *gugat* divorce in Yogyakarta Religious court applied the perma No. 1 of 2016 in practice toward *gugat* divorce. Mediation is the first be carried out in seeking the peace. According to result of an interview with Arwan Ahmad as the junior registrar of the Yogyakarta Religious Court that reconcile the parties is the priority by the court, and it done by the judges with or no mediator presence. With the presence of a mediator, efforts to make peace more deeply because they have enough time to provide an understanding of peace and counseling face-tof face. It is more focused than without presence the mediator. Than mediation is obligation to carried out, even though attended judges or with mediator (Arwan Ahmad, 2020).

The implementation of Perma No. 1 of 2016 give the advantages toward parties in the court, previously any lawsuit must be reconciled by judges in private law case, and it will be perform without any involve from mediation process or with services from third party (mediator). After Perma No. 1 of 2016 implemented, mediation must be carried out before moving to trial process with intermediary from third party such as Mediator even from judge or non judge. Beside advantages, Perma No. 1 of 2016 also has the deficiency in practice, it realizes in the mediation process that must be ended for around 30 (thirty) days and those mediation process affects the assessment in the form of points against mediator even judge mediator or non judge. For example, if the mediation finish faster than 30 days the mediator will get the higher point, if the process less than 30 days then it will be convert 5 (five) points. If mediation more than 30 days until 3 (three) monts then mediator is only get 3 (three) points, and then if around 3 (three) until 5 (five) mounts the mediator only get 1 (one) points. The consequences is toward the judge who entrusted to mediation, they will considerate

to transferred into other court if cannot be finish the mediation procees as well as the time provide. Mediation process must be finished quickly even if it is successful or unsuccessful, then the mediator do not get minimum or low points.

One of the successes of the mediator ini the divorce lawsuit is conditioning the parties. Mediator reminds the parties about the mental impact of the family, especially children (Nelson, 2013). It has aim to make the couple will think again about divorce and will get along again. One of the consideration if the children become naughty, neglected or more than in become victims of promiscuity. In practice, mediator needs to make parties respect each other such in first meeting mediator ordered the one party to say anything and the wife must be listening and quite until finished speaking (Andisa Putri, 2018). Vice versa which is treated on the next party, this must happened balance, both parties get the same opportunity, rights, and time. Mediator has a role to create conditions of good faith for parties in mediation until created : the good intentions by parties attending, parties respond each other the speech and resume, and parties will sign the draft of peace agreement.

Relating the cost, in Yogyakarta Religious Court always applied the perma No. 1 of 2016. Basically, perma No. 1 of 2016 does not state how much it cost to conduct mediation, thus people think that mediation process requires a lot of money to pay. The Religious court agreed to determine the amount of fees for the parties to do mediation. The cost divided into 2 (two) parts, if people choosing a judge as a mediator (comes from court) then there is no charge. Meanwhile, if choosing from mediator non judge is charge a fee around Rp. 150.000 per case. Sometimes the mediation process will complete finished is around 4 (four) or even 5 (five) times process to completed, and the cost incurred remain the same.

Related the vanue, Yogyakarta Religious court open for mediation outside the court. It realize in case number 651 di Yogyakarta Religious court, the mediation performing outside the court by the non judge mediator. After finished the process of mediation, the mediator reports to the court regarding the outcome of the mediation, then the court renders its decision to decide mediation. In the case of *gugat* divorce in Yogyakarta Religious court mostly failed to reach an agreement and success.

Related to license of mediator as well as stated in Perma No. 1 of 2016 article 13 paragraph (1), mostly mediator who practice in Yogyakarta Religious court already has a mediator certificate. The license of mediator got from the training which organized by the Supreme court in collaboration with the university or Non government organization. By training and certified from Supreme Court, mediator will carried out in order to achieve good performance, increasing the insight and professionalism then the process of mediation will be efficient.

Yogyakarta Religious court tries to adjust the norms in Perma No. 1 of 2016, that every single case in that court requiring to mediation as the first step, conditioning the mediator always remind parties that must be good faith through mediation, determined the cost as well as decent price in every meeting for non judge mediator,

give the alternative venue for mediation to make the conditions of the parties more comfortable and enjoy it either in vanue of court or outside the court, and the last every mediator in Yogyakarta Religious court already certified by Supreme court. However, perma No. 1 of 2016 is still less effective in implementation, it because of the rate of the mediation success is low, its only below 10 %. Usually, the problem of divorce has been reconciled in the Village government or in scope of family of both parties, thus the *gugat* divorce lawsuit which brought to the court by parties has become a last resort.

Conclusion

The increase of divorce rate in Yogyakarta is not too significant than the other district in province DIY. A lot of divorce in Yogyakarta are *gugat* divorce lawsuit, it means divorce is proposed from the wife'side. In facts around 2017 there were 513 cases, in 2018 there were 527 cases, in 2019 there were 618 cases, and 2020 there were 507 cases, all of the cases mention above are *gugat* divorce. Unfortunately, the success rate of mediation in *gugat* divorce is slightly just below 10 %. But also there is a successful mediation from *gugat* divorce until the lawsuit is withdrawn. In 2017 the mediation succeeded until reaching a peace only 11 case from total of 241 case were mediated, in 2018 is only 19 cases from total 265 cases were mediated, in 2019 only 23 cases from total 204 cases were mediated, and in 2020 only 16 cases form total 1919 cases were mediated. The mediation process will success according to mediator there several strategies or factors in generally : the role of mediator (skills) it self and always implement the good faith principles toward parties. Including the role of courts in enforcing Perma No. 1of 2016 to implementing the mediation is become one of factor. Yogyakarta Religious court in processing the *gugat* divorce lawsuit already adapt the Perma No. 1 of 2016. Although Yogyakarta Religious court has implemented Perma No. 1 of 2016 well, but the mediation process rate is low only 10 %. This is understandable, because the party who wants to sued for divorce in court already has a strong desire to divorce. Basically, every effort to divorce has been reconciled before the parties brought it to the court, thus lawsuit is become a final reconciliation.

The skill of a mediator is the most important element in mediation. Skills will determine the success or failure of a mediator to resolve the dispute between the parties. The skills of mediator must always be honed and practiced, then every mediator will have quality more sharpness in analyzing, compiling work steps, and preparing solution in the context of resolving disputes. Beside the skill of mediator, parties in carrying out mediation should have good intentions like attending the process then the mediator as a third party can hear directly the problems for parties and can find mutually beneficial solutions. Related the cost, it will be better if Yogyakarta Religious court should include the amount of mediation fees on the website page, thus, someone can get complete information to be able to choose a mediation stage before moving to the trial.

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