



EFFECTIVENESS OF CAUCUSES IN PEACE AGREEMENTS BY MEDIATION IN RELIGIOUS COURTS A STUDY IN THE TEBING TINGGI RELIGIOUS COURT

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Article Info	Abstract
Article History Received : 2024-12-03 Revised: 2024-12-10 Published: 2025-01-15 Keywords: <i>Mediation, Caucus, Divorce</i>	<p>Mediation is a dispute resolution mechanism that is required before a case is examined in court, as regulated in Supreme Court Regulation (PERMA) Number 1 of 2016. One method in mediation that aims to increase the effectiveness of dispute resolution is caucus, which is a separate meeting between the mediator and one party without the presence of the other party. This study analyzes the effectiveness of the caucus method in achieving peace in divorce cases at the Tebing Tinggi Religious Court. The approach used is sociological juridical with a qualitative descriptive method through document studies and observations of the divorce mediation process.</p> <p>The results of the study indicate that the caucus method has a strategic role in helping the parties reveal hidden interests, calm emotions, and build trust in the mediation process. However, the effectiveness of this method is still influenced by various factors, such as minimal understanding of the parties regarding the function of the caucus, the limited time for mediation which is only 30 days, and the mediator's skills in utilizing this session optimally. Other obstacles faced include distrust between the parties, resistance to mediation, and lack of legal understanding regarding the caucus in PERMA No. 1 of 2016.</p> <p>To overcome these obstacles, it is necessary to increase public understanding of the benefits of mediation, as well as strengthening more detailed regulations regarding the procedures for implementing caucuses in PERMA. In addition, mediators must improve their skills in building trust and digging for information effectively in caucus sessions. By optimizing the caucus method, it is hoped that mediation can become a more efficient alternative for resolving disputes, reducing the burden of cases in court, and providing a more humane solution in divorce cases.</p>

I. INTRODUCTION

Mediation is one of the dispute resolution methods that is increasingly integrated into the judicial system in Indonesia, including in the Religious Courts. In judicial practice, mediation is a mandatory effort before the case is further processed by the judge, as regulated in various regulations, such as Article 130 HIR, Article 154 RBg, and Supreme Court Regulation (PERMA) Number 1 of 2016.(Cape 2018)Mediation aims to provide a faster, cheaper solution, and prioritizes the principle of a win-win solution for the disputing parties. In the context of religious courts, especially those handling marriage and family cases, mediation is an important instrument to reconcile disputing couples and avoid conventional decisions that tend to produce win-lose situations. However, although regulations have mandated the optimal implementation of mediation, the reality in the field shows that the effectiveness of mediation

still faces various challenges.(Suprayogi 2023)what

One approach in mediation that is often used to increase its effectiveness is the caucus method. A caucus is a meeting between a mediator and one party separately without the presence of the other party. This approach allows the mediator to better understand the positions, interests, and emotions of the parties in a more open and comfortable atmosphere. Thus, the mediator can design a more effective dispute resolution strategy and help the parties reach a fair and mutually acceptable agreement. In the context of the Religious Court, especially in the Tebing Tinggi Religious Court, the effectiveness of using the caucus method in the mediation process is an important aspect that needs to be studied further.

The Supreme Court has attempted various policies to strengthen the implementation of mediation in the judicial system in order to reduce the backlog of cases and increase access to justice

for the community. One important basis is Supreme Court Regulation Number 1 of 2016 which requires all judges and mediators to optimize mediation before cases are examined further. (Lawalata, Titahelu, and Latupeirissa 2022) In this regulation, caucus is one of the methods that can be used by mediators to achieve a more effective peace agreement. However, in practice, many cases show that the effectiveness of caucus in mediation still varies, depending on various factors, such as the skills of the mediator, the level of trust of the parties, and the psychological dynamics in the negotiation process.

The implementation of mediation in Religious Courts faces various challenges that contribute to the low success rate in reaching a peace agreement. One of the main challenges is the resistance of the parties to peace efforts, especially in divorce cases that have reached the stage of acute conflict. Many couples consider that attending court is the last step in resolving their conflict, so they tend to be reluctant to mediate. In addition, in some cases, the attorneys representing the parties to the case actually push for litigation to a higher level in the interests of professionalism and the sustainability of the case. This causes mediation, including the caucus method, to be less than optimally utilized in the dispute resolution process.

From a regulatory perspective, the judge's obligation to seek peace has been regulated in various provisions, such as Article 130 HIR, Article 154 RBg, and Article 39 of Law Number 1 of 1974 concerning Marriage. In addition, Article 31 of Government Regulation Number 9 of 1975 and Article 115 of the Compilation of Islamic Law state that judges are required to make peace efforts in every hearing. This effort is reinforced by the Circular of the Supreme Court (SEMA) Number 1 of 2002 which emphasizes that every judge must seriously seek peace and not only carry out mediation as a mere formality. However, in practice, the effectiveness of the implementation of this regulation is still questionable, especially in the context of the application of the caucus method as a dispute resolution strategy that is more flexible and adaptive to the psychological conditions of the parties.

In the context of the Tebing Tinggi Religious Court, the effectiveness of mediation and the caucus method still needs to be studied further to determine the extent to which this method is able to increase the success rate of peace in the

mediation process. From the data obtained, the number of divorce cases submitted to the Religious Court is still very high, with the figure reaching more than 90% of the total cases handled. Although PERMA Number 1 of 2016 has been implemented, which requires every civil case to be mediated before entering the trial stage, the success rate of mediation is still relatively low. In fact, in some cases, mediation is only carried out as an administrative procedure without any serious efforts from the parties or the mediator. (Ramadan 2023)

The caucus method in mediation offers several advantages, especially in dealing with parties who are reluctant to communicate directly or have a very tense relationship. With this method, the mediator can help reveal the hidden interests of each party without the psychological pressure of the presence of the opposing party. In addition, the caucus also allows the mediator to be more flexible in exploring various settlement options that are acceptable to both parties. However, the success of this method is highly dependent on the mediator's expertise in maintaining neutrality, building trust, and ensuring that information obtained from one party is not misused or causes injustice to the other party.

One of the main challenges in implementing caucuses is the limited understanding of the parties regarding the mediation process. Many parties still assume that mediation is just a formality before entering the trial, so they are not serious in following the process. In addition, not all mediators have the communication and negotiation skills to utilize the caucus method optimally. Therefore, training and capacity building are needed for mediators so that they can implement this method more effectively. (Ramadan 2023)

In addition to internal challenges in the mediation process, external factors such as policies and legal systems also affect the effectiveness of the caucus method in mediation at the Tebing Tinggi Religious Court. The mechanism for executing agreements reached through mediation is often still weak, so that some parties are reluctant to truly commit to the peace process. In addition, the lack of incentives for mediators is also an obstacle in optimizing the implementation of this method.

By considering various factors that influence the effectiveness of mediation and the caucus method in the Religious Court, this study aims to evaluate the extent to which this method

has succeeded in increasing peace agreements and identifying the obstacles that are still faced. The results of this study are expected to provide more concrete recommendations for improving the implementation of mediation in the religious court system, especially in efforts to strengthen the effectiveness of the caucus method in resolving civil cases peacefully and fairly.

II. RESEARCH METHODS

This study uses a sociological juridical approach to analyze the effectiveness of the caucus method in mediation at the Tebing Tinggi Religious Court, with a focus on the legality and implementation of its practices in the field.(Indra Utama Tanjung 2024)This type of research is descriptive qualitative with data collection techniques through observation and document studies related to the divorce mediation process. Data analysis was conducted qualitatively to understand the context, meaning, and factors that influence the success or failure of mediation. Previous studies have shown that many mediations are only formalities due to the lack of openness of the parties and the mediator's skills in exploring the root of the problem. The conceptual framework of this study includes the relationship between regulation and stages of mediation and factors that influence the effectiveness of the caucus method in reaching a peaceful agreement.

III. RESULTS AND DISCUSSION

A. Legal Regulations for the Mediation Process in Religious Courts in the Framework of Seeking Peace in Divorce Cases

Mediation in the Religious Court is a dispute resolution mechanism that must be carried out before the case is examined in court. In Supreme Court Regulation (PERMA) Number 1 of 2016, the parties to the case are required to choose a mediator within two days of the first hearing. If the parties cannot reach an agreement in choosing a mediator, then the chief justice has the authority to appoint a certified mediator from among the judges in the same court. Mediation must take place within a maximum period of 30 days, with the possibility of an extension of up to another 30 days based on the agreement of the parties. The mediator is obliged to prepare a mediation schedule, encourage active participation of the parties, and hold separate meetings or caucuses if deemed necessary. If mediation fails or one party

is absent consecutively without a valid reason, then the mediator is required to report the failure to the panel of judges to continue the case examination process.(Country 2001)

Mediation in divorce cases has a very important role because it aims to provide a peaceful solution for the parties without having to proceed to the trial stage. PERMA Number 1 of 2016 provides a more detailed legal basis than previous regulations, including the obligations of mediators and parties to carry out the mediation process in good faith. Indicators of lack of good faith in mediation include repeated absences without valid reasons, not responding to case resumes,(Prasetyo 2024)or refuse to sign a settlement agreement. If the plaintiff does not act in good faith, his lawsuit can be declared unacceptable and he is required to pay the mediation fee. Conversely, if the defendant does not act in good faith, he will be subject to sanctions in the form of payment of mediation fees which will be submitted to the plaintiff through the clerk's office. However, in practice, there are still many parties who do not carry out the mediation process in good faith, so that the success of mediation in resolving divorce cases is still relatively low.(Rullah 2023)

One aspect regulated in PERMA Number 1 of 2016 is the cost of mediation, which includes the cost of summoning the parties, travel costs, meeting costs, and expert service fees if needed. Mediators who come from judges and court officials are not charged a service fee, while certified non-judge mediators are charged a fee charged to the parties based on an agreement. In practice at the Tebing Tinggi Religious Court, mediation does not require additional costs because the current mediators come from within the court and there are no certified mediators from outside the court who handle cases there.

Mediation in divorce cases in Religious Courts is categorized as mandatory mediation that must be carried out before the main case examination begins. The examining judge is obliged to explain the mediation procedure to the parties, including the definition and benefits of mediation, the obligation to attend mediation meetings, and the legal consequences if the parties do not act in good faith. The court clerk is tasked with recording the progress of the mediation process, conveying the judge's decision regarding the mediation order, and coordinating with the mediator in determining the mediation schedule. The mediator himself has the task of introducing himself to the parties, explaining the

principles of mediation, and facilitating negotiations with the aim of reaching a peaceful agreement. In addition, the mediator is authorized to conduct a caucus, which is a separate meeting with one of the parties to dig deeper into information and help find common ground for resolving the case. (Tanjung and Tanjung 2022)

In the Indonesian judicial system, the mediation process is not only limited to divorce cases, but also includes various other types of civil cases. However, there are several types of disputes that are exempt from the obligation to undergo mediation, such as cases whose examination has a certain time limit, objections to the decision of the supervisory commission, and cases filed after out-of-court mediation efforts have been declared failed by a certified mediator. In mediation conducted in court, the results of the peace agreement are stated in a peace deed that has permanent legal force. If mediation fails, the case will proceed to the stage of examining the main case until it is finally decided by the judge. Although mediation is required in every civil case submitted to court, there are still many obstacles faced in practice. One of the main obstacles is the lack of understanding of the parties about the importance of mediation, so that many of them only undergo the mediation process as a formality without any serious intention to reconcile.

PERMA Number 1 of 2016 emphasizes the importance of the mediator's role in ensuring the success of mediation in court. The mediator must have expertise in building trust between the parties, demonstrate a neutral attitude, and have good communication skills. In addition, the mediator must also have a deep understanding of the substance of the case and effective negotiation techniques to encourage the parties to reach a peaceful agreement. The existence of a neutral mediator greatly determines the effectiveness of the mediation process, so the mediator must be free from personal interests or working relationships with one of the disputing parties. In practice, an effective mediation process can reduce the number of cases filed in court and reduce the workload of judges in handling civil disputes. However, in some cases, mediation still fails because there are parties who are reluctant to compromise or prefer to continue the case to the trial stage. (Risidawati et al. 2023)

In relation to the implementation of mediation, the concept of caucus is one method that can be used by mediators to help the parties find the best solution in resolving disputes. A caucus is a separate meeting between the

mediator and one party without the presence of the other party, with the aim of digging deeper into information and finding common ground that can lead to a peaceful agreement. In practice, caucuses are often used in difficult cases, especially when the parties cannot communicate well or have high emotional levels. With separate meetings, the parties can more freely express their problems without pressure from the opposing party. The mediator is tasked with maintaining a balance of information and ensuring that the interests of both parties are taken into account in the mediation process. (Marzuki and Sh 2021)

The implementation of caucus in mediation at the Tebing Tinggi Religious Court still needs to be improved in order to be more effective in reaching a peace agreement. Although according to the rules caucus can be done in the mediation process, in practice there are still many mediators who are reluctant to use it due to limited time and resources. In addition, there is still an assumption that separate meetings can cause distrust between the parties, so their use must be done very carefully and professionally. Therefore, it is necessary to improve the skills of mediators in mediation techniques, including in the application of the caucus method, in order to help the parties reach a fair and sustainable agreement. Thus, the effectiveness of mediation in divorce cases at the Religious Court can be further improved, in line with the main objective of PERMA Number 1 of 2016, namely to provide a faster, cheaper dispute resolution solution, and provide a sense of justice for all parties.

B. The Effectiveness of Caucus as a Step in Achieving Peace in Divorce Cases

In the mediation process in the Religious Court, one of the methods that can be used to reach an agreement is a caucus, as regulated in Article 14 of PERMA No. 1 of 2016. A caucus is a closed meeting between a mediator and one of the disputing parties, where the contents of the discussion are kept secret from the other party. This method is incidental, meaning it is not always planned in advance, but is used as needed to dig deeper for information and create a more conducive atmosphere in the mediation process. In practice, a caucus aims to understand the motivations and hidden interests of the parties, help them channel their emotions without damaging the mediation process, and allow the mediator to direct the negotiations in a more constructive direction. (Lubis 2024)

The existence of a caucus in divorce mediation is very important because many parties are reluctant to reveal their personal problems in front of the other party. With this closed meeting, the mediator can build trust with each party, dig deeper for information, and develop strategies that can lead to a fair and beneficial resolution for both parties. In addition, the caucus also helps in testing the reality of the proposed resolution options, so that the mediator can provide a more objective view to the parties before a decision is made. In divorce cases, this method allows the mediator to understand the emotional dynamics involved and provides a safer space for the parties to express their wishes without pressure.

However, despite its many benefits, the implementation of caucus in divorce mediation at the Tebing Tinggi Religious Court still encounters various obstacles. One factor that affects the effectiveness of this method is the lack of understanding of the parties regarding the function and purpose of the caucus. Many disputing parties still consider that this separate meeting can cause injustice or bias from the mediator. Therefore, it is important for the mediator to explain thoroughly to the parties that the caucus aims to facilitate mediation and not to benefit one party only. In addition, the limited duration of mediation which only lasts for 30 days is also a challenge in implementing the caucus. Due to limited time, mediators often have difficulty allocating enough time to hold separate meetings with each party.(Ariska and Latif 2022)

In addition to the factors of understanding and time, the effectiveness of the caucus is also influenced by the readiness of the means and facilities available in the court. In the Tebing Tinggi Religious Court, the mediation room and caucus room facilities are quite adequate, but not all courts have the same facilities. Cultural factors also play a role in the success of this method. In society, dispute resolution is often carried out through deliberations involving religious or community leaders, so the concept of closed meetings such as caucuses is still not fully understood. Many parties still feel more comfortable with conventional mediation which is carried out openly and involves both parties directly.(Nawafitrid et al. 2024)

From a legal perspective, caucuses have been recognized as part of a legitimate mediation procedure, but their regulation in PERMA No. 1 of 2016 is still very limited. Regulations regarding the procedures and implementation of caucuses are only regulated in one article, so there are still

many aspects that have not been explained in detail, such as the mechanism for conveying caucus results to other parties and how mediators should handle confidential information. Therefore, strengthening regulations is needed so that the implementation of caucuses can be more optimal and does not cause doubt among the disputing parties.

In practice, the effectiveness of the caucus also depends heavily on the skills and expertise of the mediator. An experienced mediator is able to use this method to dig deeper into information, build trust with the parties, and direct the mediation process in a more constructive direction. Conversely, if the mediator does not have adequate skills, the caucus can actually be an obstacle in the mediation process because it creates distrust between the parties. Therefore, increasing the capacity of mediators through more intensive training is very necessary so that this method can be applied more effectively.(Reni Suryani 2024)

In divorce cases, where emotional factors are often the main obstacle in the mediation process, caucusing can be a very effective strategy for achieving peace. When parties are reluctant to speak openly in front of their disputants, the mediator can use the caucus session to understand their feelings and hopes in more depth. In doing so, the mediator can help the parties find a solution that is more in line with their interests, without having to go through a long and tiring trial process. However, the success of this method still depends on the good faith of the parties to actively participate in mediation and the readiness of the mediator to manage the negotiation process.

Based on the evaluation of the effectiveness of caucuses in divorce mediation, there are several things that need to be considered to increase their success. First, wider socialization is needed to the public regarding the benefits and mechanisms of caucuses, so that the disputing parties can better understand the importance of this method in resolving their cases. Second, the regulation regarding caucuses in PERMA No. 1 of 2016 needs to be clarified so as not to cause doubt in its application. Third, improving the skills of mediators in using this method must continue to be carried out, both through training and exchanging experiences with other mediators. Fourth, the courts need to ensure that supporting facilities for mediation, including adequate caucus rooms, are available in every religious court so that the mediation process can run optimally.

Overall, the caucus method in divorce mediation has great potential to increase the effectiveness of dispute resolution in religious courts. With the right approach, a caucus can help the parties find a fairer and more beneficial solution for both parties without having to go through a long trial process. However, to achieve maximum effectiveness, commitment is needed from all parties involved, both in terms of regulations, mediator readiness, and public understanding of the importance of mediation as an alternative dispute resolution. Thus, it is hoped that this method can be further optimized in efforts to achieve peace in divorce cases in Religious Courts.

IV. CONCLUSIONS AND RECOMMENDATIONS

Based on the research results, it can be concluded that the effectiveness of the caucus method in divorce mediation in the Religious Court, especially in the Tebing Tinggi Religious Court, still faces various challenges even though it has great potential in reaching a peaceful agreement. The caucus provides space for the parties to express their interests and feelings more freely without pressure from the opposing party, so that the mediator can dig deeper for information and find a solution that is more in line with the interests of both parties. However, the implementation of this method is still limited by several factors, such as the lack of public understanding of the importance of mediation, the limited time given in PERMA No. 1 of 2016, and the lack of mediator skills in utilizing the caucus optimally. In addition, obstacles such as distrust between the parties and resistance to mediation often hinder the effectiveness of the application of this method in practice.

To improve the effectiveness of caucuses as part of mediation, further socialization is needed to the public regarding the benefits and mechanisms of mediation, including the importance of caucus sessions in helping to resolve disputes more fairly and efficiently. Related regulations also need to be clarified to provide more detailed guidelines in the implementation of caucuses, as well as prevent negative perceptions from the disputing parties. In addition, increasing the capacity of mediators through more intensive training is needed so that they can manage mediation, including the caucus method, more professionally. By optimizing the application of this method, it is hoped that mediation can become a more effective

alternative dispute resolution and be able to reduce the burden of cases in court, as well as provide a more humane solution for the parties to the case.

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