LEGAL REVIEW OF THE POSITION OF MEDIATION AS AN EFFORT TO RESOLVE CASES IN RELIGIOUS COURTS IN INDONESIA (ANALYSIS OF PERMA NUMBER 1 OF 2016) (STUDY IN SIBOLGA RELIGIOUS COURT)

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Abstract
The judicial system in Indonesia plays an important role in enforcing the law and providing legal certainty for the community. However, the lengthy litigation system and high costs often become obstacles in resolving disputes. Mediation as an alternative form of dispute resolution offers a faster, more efficient, and win-win solution. The Supreme Court has strengthened the role of mediation through various regulations, including Supreme Court Regulation (PERMA) Number 1 of 2016 concerning Mediation Procedures in Court. This regulation requires the parties to undergo mediation before proceeding to the litigation process, with the aim of reducing the burden of cases in court and encouraging more peaceful dispute resolution.
This study focuses on the implementation of mediation in dispute resolution at the Sibolga Religious Court based on PERMA Number 1 of 2016. The results of the study indicate that although the regulation has been quite comprehensive, the implementation of mediation still faces various obstacles, such as the low success rate of mediation, lack of public understanding of the benefits of mediation, and limited number of competent mediators. Therefore, strategic efforts are needed, such as increasing the capacity of mediators, wider socialization to the community, and incentives for mediators who succeed in resolving cases. With these steps, the effectiveness of mediation in the Religious Court is expected to increase, so that dispute resolution can be faster, cheaper, and fairer.

I. INTRODUCTION

Indonesia as a country of law based on the principle of the rule of law places the judiciary as an institution tasked with enforcing law and justice in society. The judiciary not only functions as a means of resolving disputes, but also as an institution that provides legal certainty for those seeking justice. In the Indonesian legal system, the court is the last place for people to seek truth and justice. However, in practice, the effectiveness and efficiency of the judicial system are still major challenges. Settlement of cases often takes a long time, especially in the trial process from the first level to the cassation. This condition has an impact on the increasing burden of cases in court, which results in the legal process becoming slower and the costs incurred by the disputing parties are often greater than the value of the dispute itself. In addition, dispute resolution through litigation can also cause a strain on social relations between the parties to the case.

In order to overcome various problems in the judicial system, alternative dispute resolutions have emerged that are faster and more efficient, one of which is mediation. Mediation is a form of dispute resolution that is more flexible and less formalistic than the litigation process in court. In Indonesian civil procedure law, mediation has been accommodated in Article 130 of the Herziene Inlandsch Reglement (HIR) and Article 154 of the Rechtsreglement Voor De Buitengewesten (Rbg), which emphasize the importance of resolving disputes peacefully. Both provisions require the judge to attempt to reconcile the parties before proceeding to the trial stage.

Mediation in the context of religious courts in Indonesia also has a very important role. The Supreme Court through Supreme Court Regulation (PERMA) Number 1 of 2008 and later updated with PERMA Number 1 of 2016 has specifically regulated mediation procedures in court. Article 2 paragraph (3) of PERMA Number 1 of 2008 states that if the mediation procedure is not taken, then the resulting decision can be null and void by law. This provision shows that mediation is an inseparable part of the dispute resolution process in court. In addition, in PERMA Number 1 of 2016 Article 2 paragraph (1) it is emphasized that the mediation procedure applies to cases in the general court and religious court environment. This shows that mediation has

become a dispute resolution mechanism that is increasingly strengthened in the Indonesian legal system.

The main advantage of mediation is its ability to provide a fairer and more mutually beneficial solution (win-win solution). Mediation allows the parties to reach an agreement that is not only based on legal aspects, but also considers social, economic, and emotional factors. Thus, mediation not only resolves disputes legally, but also helps maintain good relations between the parties to the case. Mediation also has other advantages, such as reducing the burden of cases in court, accelerating dispute resolution, and saving costs and time for the parties to the dispute.

However, although mediation has various advantages, in practice the implementation of mediation in court still faces various challenges. Based on research conducted by the Indonesian Institute for Conflict Transformations (IICT) together with the Supreme Court of the Republic of Indonesia and AIPJ, it was found that the success rate of mediation is still low. Several factors that cause the low effectiveness of mediation include the lack of understanding of the parties about the benefits of mediation, the lack of mediator skills in managing the mediation process, and the tendency of judges and parties to the case to prefer litigation over mediation. In addition, there is still an assumption in society that dispute resolution through the courts has more legal force than agreements reached through mediation.

In the context of religious courts, mediation has a higher urgency considering the many cases related to family disputes, such as divorce, child custody, and alimony. Mediation in family cases not only aims to resolve disputes legally, but also considers the psychological and emotional impacts experienced by the parties, especially children. Therefore, the application of mediation in religious courts must be further optimized so that it can be an effective solution in resolving family disputes.

In the Indonesian legal system, there are several regulations governing mediation as an alternative dispute resolution. One of the regulations that is the legal basis for mediation is Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. Article 1 number 10 of the law states that alternative dispute resolution is a dispute resolution institution through consultation, negotiation, mediation, conciliation, and expert assessment. With this regulation, it is hoped that dispute resolution through mediation can be increasingly accepted and implemented more widely in the Indonesian legal system.

In addition to the regulations mentioned above, the Supreme Court has also issued various policies to strengthen the role of mediation in court. One of these policies is PERMA Number 1 of 2016 which regulates mediation procedures in court in more detail. This PERMA provides guidelines for judges, mediators, and the parties to the case in carrying out the mediation process. Article 7 of PERMA Number 1 of 2016 states that judges are required to postpone the trial process to provide an opportunity for the parties to undergo the mediation process. This provision shows that mediation is not only an option, but also an obligation in the dispute resolution process in court.

However, although the regulations governing mediation are quite comprehensive, in practice there are still various obstacles in the implementation of mediation in religious courts. One of the main obstacles is the low success rate of mediation in resolving disputes. Many disputing parties still tend to choose the litigation route because they assume that decisions made through the courts have higher legal certainty compared to agreements made through mediation. In addition, the lack of understanding of the parties about the benefits of mediation is also a factor that causes the low success rate of mediation.

To improve the effectiveness of mediation in resolving disputes in religious courts, several strategic steps are needed. One step that can be taken is to increase the capacity of mediators through training and certification of professional mediators. With competent mediators, it is hoped that the success rate of mediation can increase. In addition, it is also necessary to socialize the benefits of mediation to the community so that the community better understands that mediation can be an effective solution in resolving disputes. This socialization can be done through various media, such as seminars, workshops, and public campaigns.

Based on the description above, this study aims to analyze the legal regulations for mediation in resolving cases in religious courts and the implementation of mediation in the Sibolga Religious Court in accordance with PERMA Number 1 of 2016. This study is expected to contribute to the development of a more effective

and efficient dispute resolution system in religious courts in Indonesia.

II. RESEARCH METHODS

The research method used in this study is normative legal research that focuses on the analysis of legal norms contained in laws and regulations, jurisprudence, and related legal doctrines. This research is qualitative with a literature study approach and analysis of various legal sources, both primary legal materials such as the 1945 Constitution, Supreme Court Regulation (PERMA) No. 1 of 2016, and court decisions, as well as secondary legal materials in the form of books, journals, and previous research results. In addition, this study also uses empirical data from interviews and direct observations at the Sibolga Religious Court to understand the implementation of mediation in resolving cases.

Data collection techniques were conducted through observation, interviews with judges and mediators, and document studies of court decisions. The data obtained were analyzed systematically using the analytical descriptive method, namely organizing data into certain patterns and categories to understand the effectiveness of the implementation of mediation in resolving cases in religious courts. With this approach, the study is expected to provide a comprehensive picture of the obstacles faced and legal solutions that can be implemented to increase the effectiveness of mediation as an alternative dispute resolution effort.

III. RESULTS AND DISCUSSION

A. Legal Regulations for Mediation in Resolving Cases in Religious Courts in Indonesia

Mediation as a method of dispute resolution has long been known in the Indonesian legal system. Before independence, the Dutch legal system applied in Indonesia had regulated dispute resolution through a peace mechanism, as stated in Article 130 HIR and Article 154 RBG. This provision requires judges to try to reconcile the parties before continuing the examination of the case. After independence, this rule remained in effect through transitional provisions in the 1945 Constitution. However, this mechanism was considered ineffective so that the Supreme Court modified the rule by issuing SEMA No. 1 of 2002 which aims to encourage first-instance courts to be more active in resolving disputes through peace. However, its effectiveness is still limited because it does not require the parties to first undergo mediation before litigation.

In response to the weaknesses of SEMA No. 1 of 2002, the Supreme Court then issued PERMA No. 2 of 2003 which more firmly regulates mediation procedures in the judicial system. Mediation is considered a faster, cheaper, and more flexible method than litigation, and is able to reduce the burden of cases in court. However, PERMA No. 2 of 2003 still has limitations, especially in terms of the role of the judge as a mediator, which is contrary to Article 130 HIR. Therefore, this regulation was then revised through PERMA No. 1 of 2008 which allows the examining judge to act as a mediator. Improvements to the mediation rules continued to be made until finally PERMA No. 1 of 2016 was issued, replacing PERMA No. 1 of 2008. This revision presents a number of fundamental changes, such as the obligation of the parties to attend mediation in person, regulations on good faith in the mediation process, and simplification of the duration of mediation from 40 days to 30 days.

The legal basis for the implementation of mediation in Indonesia does not only come from PERMA, but also from various other laws and regulations. Pancasila as the foundation of the state contains the values of deliberation and consensus that support the principle of mediation in resolving disputes. The 1945 Constitution also provides space for dispute resolution through mediation as an alternative before the case is submitted to court. In addition, Article 130 HIR and Article 154 RBG explicitly state that judges are required to try to reconcile the parties before continuing the examination of the case. In the context of family law, mediation is also regulated in Law No. 1 of 1974 concerning Marriage which requires judges to try to reconcile couples before issuing a divorce decision. Likewise, Government Regulation No. 9 of 1975 emphasizes the obligation of judges to continue trying to reconcile couples as long as the case has not been decided.

Presidential Instruction No. 1 of 1991 concerning the Compilation of Islamic Law (KHI) also regulates the obligation of judges to try to reconcile couples who file for divorce. This is emphasized in Article 115 of the KHI which states that divorce can only be carried out after the Religious Court has attempted to reconcile both parties. In addition, Article 144 of the KHI states that if reconciliation is achieved, then a divorce suit cannot be re-filed based on the same reasons.

Efforts to empower mediation were further strengthened by the issuance of SEMA No. 1 of 2002, which was then revised through PERMA No. 2 of 2003, PERMA No. 1 of 2008, and most recently PERMA No. 1 of 2016. In practice, all civil cases submitted to the First Instance Court must first be resolved through mediation.

In addition to family law, alternative dispute resolution is also known in various other legal fields. Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution regulates various forms of dispute resolution outside the court, such as arbitration, consultation, negotiation, mediation, conciliation, and expert assessment. Dispute resolution through litigation is still the main choice for many parties, but this mechanism has various weaknesses, such as a long process, high costs, and the potential for new conflicts to arise due to parties who feel they have lost. Therefore, alternative dispute resolution outside the court is increasingly used because it is considered faster, cheaper, and more flexible. Some of the reasons that encourage disputing parties to choose alternative routes are because they are more cost and time efficient, more flexible in the process, and provide fairer results and are in accordance with the needs of the parties.

In practice, there are several alternative dispute resolution methods that are often used, including arbitration, consultation, negotiation, mediation, conciliation, and expert assessment. Arbitration is a dispute resolution method carried out outside the court by an arbitrator chosen by the parties. This method is widely used in commercial disputes because its decision is final and binding. Consultation is a dispute resolution method carried out by asking for the opinion of a legal expert or consultant. Negotiation is a direct bargaining process between the disputing parties to reach a mutually beneficial agreement. Mediation involves a neutral third party to help the parties reach an agreement without coercion. Conciliation is similar to mediation, but the conciliator has a more active role in providing recommendations to the disputing parties. Expert assessment is a method in which an expert in a particular field provides an opinion or recommendation as a basis for resolving the dispute.

In the context of family law, mediation has become a mandatory mechanism for divorce cases in the Religious Court. However, there are still several obstacles in the implementation of mediation, especially related to the low level of public legal awareness and lack of understanding of the benefits of mediation. Many couples who come to the Religious Court do not understand that they are required to first undergo the mediation process before the case is processed further. In addition, there are still challenges in ensuring that the mediation decision is actually implemented by the parties. Therefore, more systematic efforts are needed to increase the effectiveness of mediation, both through increasing the capacity of mediators, legal education for the community, and strengthening regulations that require the implementation of mediation results.

In the development of judicial practice, the Supreme Court continues to strive to improve regulations related to mediation in order to increase the effectiveness of dispute resolution outside of litigation. Mediation is not only a solution to reduce the burden of cases in court, but also an important instrument in achieving more humanistic justice and oriented towards common interests. With the increasing development of the mediation system in Indonesia, it is hoped that dispute resolution, especially in divorce and family law cases, can be faster, more efficient, and provide a more equitable solution for the parties.

B. Implementation of Mediation in Settlement of Cases in the Sibolga Religious Court in Accordance with Perma Number 1 of 2016 Concerning Mediation Procedures in Court

The Supreme Court has an important role in enforcing the law through mediation procedures regulated in Supreme Court Regulation (PERMA) Number 1 of 2016 concerning Mediation Procedures in Court. The discovery of law by judges in the mediation process is necessary when the law does not clearly regulate a concrete case. Judges must explore relevant legal sources, whether in the form of jurisprudence, doctrine, or laws that live in society (Mertokusumo, 2006). In this context, judges have the responsibility to interpret and apply the law by considering the value of justice. This is in accordance with Article 10 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power which states that the court may not reject a case simply because there are no clear rules.

In the application of mediation in the Religious Court, judges use various interpretation methods, including grammatical, systematic, and historical interpretations. Grammatical interpretation is used to understand the language of the regulations, while systematic interpretation

looks at the relationship between applicable legal regulations. Meanwhile, historical interpretation aims to trace the intention of the lawmakers when the regulations were made (Panggabean, 2010). This method aims to ensure that the mediation procedure is carried out in accordance with the principles of substantive and procedural justice.

PERMA Number 1 of 2016 is the main legal instrument in resolving disputes through mediation in court. Mediation aims to reach an agreement between the disputing parties in order to avoid a lengthy litigation process. One of the main advantages of mediation is its flexible nature and allows the parties to reach a mutually beneficial solution (Friedman, 2011). However, the implementation of PERMA still faces various challenges, including the lack of understanding of the parties about the benefits of mediation and their absence in the mediation process.

One of the important aspects regulated in PERMA Number 1 of 2016 is good faith in the mediation process. Article 7 stipulates that the parties are required to undergo mediation in good faith. If one of the parties is declared not to have good faith, there are legal consequences regulated in Articles 22 and 23 of the PERMA. Plaintiffs who do not have good faith can be subject to sanctions in the form of an inadmissible lawsuit, while defendants who do not have good faith can be required to pay mediation costs (Rawls, 2005). This provision aims to increase the effectiveness of mediation as a more efficient means of resolving disputes compared to litigation.

Analysis of the substance of PERMA Number 1 of 2016 shows several improvements compared to PERMA Number 1 of 2008. Several striking differences between the two regulations include the reduction of the mediation time limit from 40 days to 30 days, the obligation of the parties to attend mediation in person, and the strengthening of the role of independent mediators. In addition, PERMA Number 1 of 2016 also introduces a mediation summons mechanism using audio-visual technology, allowing the mediation process to be carried out online (Manan, 2013). This innovation is in line with technological developments and the need for a more modern justice system.

Although PERMA Number 1 of 2016 has undergone various improvements, its implementation still faces obstacles in the field. In practice, the success rate of mediation at the Sibolga Religious Court is still low. Data shows that out of 24 divorce cases submitted in 2022, only 5 cases were successfully resolved through mediation. Meanwhile, out of 5 inheritance cases, only 1 managed to reach a peace agreement. One of the main factors causing the low success of mediation is the lack of active involvement of the parties in the mediation process and their absence from meetings scheduled by the mediator (Scholten, 2008).

In addition, the role of mediators in the mediation process at the Sibolga Religious Court is still limited. Some mediators tend to be passive and do not make maximum efforts to encourage the parties to reach an agreement. In fact, based on Article 14 letter j of PERMA Number 1 of 2016, mediators should play an active role in exploring the interests of the parties and helping them find the best resolution options. However, in many cases, mediators only function as facilitators without providing concrete guidance to the disputing parties (Zehr, 2010).

To improve the effectiveness of the implementation of mediation, it is necessary to reconstruct several provisions in PERMA Number 1 of 2016. One aspect that needs to be improved is the regulation of sanctions for examining judges who do not order mediation as regulated in Article 3 paragraph (3). Currently, there are no provisions that regulate the consequences for judges who are negligent in carrying out their duties. Therefore, it is necessary to add administrative sanctions for judges who do not order the parties to undergo mediation (Lubis, 2015). In addition, there needs to be incentives for mediators who succeed in resolving cases through mediation so that they are more motivated in carrying out their duties.

Another challenge in implementing mediation in the Sibolga Religious Court is the lack of certified mediators. The limited number of mediators means that many cases cannot be mediated optimally. In addition, the low level of public awareness of the importance of mediation is also a major obstacle. Many parties prefer to continue the case to the litigation stage without considering the option of peaceful resolution through mediation (Rahardjo, 2012).

Overall, PERMA Number 1 of 2016 is a very important legal instrument in the Indonesian justice system. However, there are still various obstacles in its implementation, especially in terms of the effectiveness of mediation in court. Therefore, efforts are needed to improve the regulation and practice of mediation so that the main objective of this PERMA can be achieved, namely reducing the burden of cases in court and providing faster, cheaper, and more efficient

access to justice for the community (Sidharta, 2014).

IV. CONCLUSIONS AND RECOMMENDATIONS

The conclusion of this study shows that mediation in the judicial system in Indonesia, especially in the Religious Courts, has an important role in providing a more efficient alternative dispute resolution compared to litigation. Mediation not only offers a faster and more cost-effective solution, but also helps maintain social relations between the disputing parties, especially in family cases such as divorce, child custody, and alimony. Regulations governing mediation, such as PERMA Number 1 of 2016, have provided a strong legal basis for the implementation of mediation in court. However, in practice, the implementation of mediation still faces various challenges, such as the low success rate of mediation, lack of public understanding of the benefits of mediation, and the limited number of competent mediators.

To improve the effectiveness of mediation in Religious Courts, strategic steps are needed, such as increasing the capacity of mediators through training and certification, as well as wider socialization to the community regarding the benefits of mediation as a better solution compared to litigation. In addition, there needs to be incentives for mediators who successfully resolve cases through mediation and the implementation of administrative sanctions for judges who are negligent in carrying out their obligations to order mediation. With improvements in mediation regulations and practices, it is hoped that dispute resolution in court can become more effective, efficient, and equitable for all justice seekers.

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