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Settlement Through Mediation Between the Normative and Practice in Religious Judiciary Agencies*

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Abstract:

Mediation in religious courts is believed to be an effective mechanism for reducing the case buildup. Due to the completion of the case at the mediation stage, the parties do not need to continue the litigation process. The agreement reached in the mediation process will be ratified by the judge and therefore has the same legal consequences as the judge's decision. Normatively mediation based on PerMA Number 1 of 2016 provides a new direction as the Supreme Court's policy to put more pressure on the number of cases that enter the court so that mediation at the court level will reduce the accumulation of cases. Even the practices of mediation at the religious court level mediators still use traditional methods like advising the parties. As the court case is examined, the parties to the dispute can see that litigation no longer provides a better solution.

Keywords: Mediation, mediator, normative, practice, the religious court

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Penyelesaian Melalui Mediasi Antara Normatif dan Praktek

Di Lembaga Peradilan Agama

Abstrak:

Mediasi di pengadilan agama diyakini sebagai mekanisme yang efektif untuk mengurangi penumpukan kasus. Karena penyelesaian kasus pada tahap mediasi, para pihak tidak perlu melanjutkan proses litigasi. Kesepakatan yang dicapai dalam proses mediasi akan disahkan oleh hakim dan karenanya memiliki konsekuensi hukum yang sama dengan keputusan hakim. Mediasi secara normal berdasarkan PerMA Nomor 1 tahun 2016 memberikan arah baru karena kebijakan Mahkamah Agung untuk lebih menekan jumlah kasus yang masuk ke pengadilan sehingga mediasi di tingkat pengadilan akan mengurangi akumulasi kasus. Bahkan praktik-praktik mediasi di tingkat pengadilan religius mediator masih menggunakan metode tradisional seperti menasihati para pihak. Ketika kasus pengadilan diperiksa, adalah mungkin bagi para pihak yang berselisih untuk melihat bahwa proses pengadilan tidak lagi memberikan solusi yang lebih baik.

Kata kunci: Mediasi, mediator, normatif, praktik, pengadilan agama

Урегулирование Через Посредничество Между Нормативом и Практикой В Религиозных Судебных Органах

Аннотация:

Посредничество в религиозных судах, как полагают, является эффективным механизмом для уменьшения количества дел. В связи с завершением дела на стадии посредничества сторонам не нужно продолжать судебный процесс. Соглашение, достигнутое в процессе посредничества, будет ратифицировано судьей и, следовательно, имеет те же правовые последствия, что и решение судьи. Нормативно, посредничество, основанное на Правилах Верховного Суда (PerMA) № 1 от 2016 года, обеспечивает новое направление политики Верховного суда, направленное на подавление количества дел, поступающих в суд, с тем, чтобы посредничество на уровне суда снизило их совокупность. Однако практика посредничества на уровне религиозного суда показывает, что посредник все еще использует традиционные методы, такие как консультирование сторон. Поскольку судебное дело рассматривается, стороны в споре могут увидеть, что судебный процесс больше не дает лучшего решения.

Ключевые слова: Посредничество, Посредник, Норматив, Практика, Религиозный суд

Introduction

Law Number 30 the Year 1999 and Law Number 48 the Year 2009 explicitly determine mediation as one way to settle disputes outside the court. This legislation regulation is used as a legal basis but it has questions among academicians, practitioners, and lawyers about the position of mediation being the competence of the judiciary to resolve it. When examined in deeply, the methods to resolve disputes outside the court (Alternative Dispute Resolution) by using consultation, negotiation, mediation, conciliation, and expert judgment, generally it uses for the willingness to bargain, consensus, and democracy, and prioritizing peaceful resolution of disputes. The motivation of the parties to the dispute is determined by the ability to bargain position (bargaining *position)* of the disputed object.

Alternative Dispute Resolution is very relevant and necessary to develop *genuine* society participation. The tendency of global and national policies leads to an increase in community involvement at the level of decision-makers (*influence participation*). As a consequence of community involvement in the decision making process, it is necessary to have a forum for managing differences (conflicts) that arise due to community involvement, because the absence of conflict resolution mechanisms will result in the ineffective implementation of community participation (Nugroho, 2019, p. 60).

The problem appears if mediation as a way to resolve disputes change into judicial competence, it will not lead to the addition and accumulation of cases in the court, initiative, and role of the parties who litigate is greater than judicial judges which are more passive and only facilitate the parties. At least, if agreement can be achieved between the parties through mediation so disputes have been done in the court level, and accumulation of case files will not occur.

Since the enactment of the Supreme Court Regulation of the Republic of Indonesia PerMA Number 1 Year 2 016 which is a revision of PerMA Number 1 the Year 2008 and PerMA Number 2 the Year 2003 regarding the procedure of conducting mediation at the court level, both the general and the religious court, become an alternative as one of the important agendas in the process of an official report, including the Religious Courts. The consideration and even input from various parties so that the process of conducting mediation becomes a necessity for the parties to the litigation to be the imperative accent, before the principal examination of the case against the parties in court, the possibility of cancellation of the court's decision does not include consideration of the mediation process, and various clauses of the mediation process in court make the motivation of the parties to the litigation more intensive.

Normatively the PerMa regarding mediation procedures at the court level above should give an effect on the understanding of the parties who submitted the lawsuit and even the judges who were appointed as mediators and certified mediators rather than the judges. In PerMA Number 1 Year 2016 stated that "the parties are required to attend in the person of mediation conference with or without accompanied by an attorney in law." Although the legal position of mediation in courts has been very clear the people of Indonesia who have a character like deliberation in facing disputes, the benefits can be achieved if choosing mediation rather than "resolving" the case in court, but the facts show that the public and court haven't utilized the mediation process as optimal as possible (Nugroho, 2019).

The role of a judge as the mediator can be said as an epicenter of all mediation processes in the court. The judge has a relation with all aspects involve and manage all the potential that exists in realizing the peace of the parties. Therefore, the mediator is required to know the problem before holding a meeting and the mediator should be patient in dealing with the parties because the success of a mediation process requires the touch of a mediator (Noce, 2008, p. 97) who is professional in carrying out their roles and functions.

In this context, the mediation of religious court was developed as a political move law (*siyasa syar'iyyah legitimate)* to realize the benefit of society. In this case, the general benefit (*maslahah 'ammah*), which is used as a foothold of the source of *shari'a* in the *Maliki* school, it involves three conditions, they are; a public benefit is not about worship; public benefit must be in harmony (*in harmony with*) with the soul of the *Shari'ah* and it should not be in conflict with one of the sources of *Shari'ah* itself; and it must be essential (Yazid, 2004, p. 77) (required) and not luxury matters (Azhary, 1992). Umar Shihab mentioned four criteria, namely: *First, for* perfecting the objectives of *sharia*; *Second,* it must be simple (balanced) and acceptable to the reason (logical); *Third,* it uses for to overcome difficulties; and *the fourth,* it uses in the public interest (Usman, 2001, p. 112).

The mediation practice carried out by the religious court has not optimal, because the mediation carried out by the religious court is only limited to the conditions required by the religious court against the parties have not touched the essence of mediation results that have the same legal force as the verdicts of the court decisions against the parties who filed the lawsuit. It shows that if the implementation of mediation is not a legal culture of a society that must be developed for religious justice institutions, many cases enter during mediation and many also do not succeed, because the parties who do not want mediation

after that take a shortcut to get a decision from the judges. Supreme Court report which showed that the mediation results from year to year are very small success rate.

Discussion

1. Competence of Religious Courts in Mediation

The mediation carried out by the Religious Court is a law created by the Judge to give legal considerations to the parties who litigate fairly. The main point, settlement through mediation carried out by the Religious Courts as responsive to a sense of justice that develops in the community in the field of marriage, inheritance, and shared property both in terms of legal sources, legal substance and responsiveness toward the issues of justice and sociological development of contemporary Islamic society (Abdillah, 2005, p. 327).

Mediation efforts in court against family disputes are regulated in Article 39 of Law No. 1 of 1974, Article 56 of Law Number 7 of 1989, most recently amended by Law Number 50 of 2009, Articles 115, 131, 143 and 144 KHI, and Article 32 PP No. 9 of 1975. In these articles, the judge required in the provisions contained the judge to try to reconcile the parties before their case is decided. Peace efforts were not only carried out by the judge at the beginning of the trial but also each hearing. Judges are required to always offer peaceful efforts in every trial process, because the settlement of cases through a peace agreement is far better, compared to the judge's verdict. The importance of peace efforts in resolving family disputes requires judges to invite or to ask the closest family to ask for information.

The judge can ask the family for helping of the parties so that they can take the path of peace, and if this effort fails the judge resolves the case through the decision.

The urgency and motivation of the mediation in court for the parties' case become peaceful and they do not continue the case in the court proceedings. If there are things that block the problem, it must be resolved in a familial manner with a consensus agreement. The purpose of mediation is to achieve peace between litigation parties which usually very difficult to reach an agreement which usually becomes easier when brought together by being facilitated by one or more mediators to filter out issues so that they become clear and the litigants are aware of the importance of peace between them (Loveinheim, 1999, p. 14). Case handling in court a judge seeks to mediate

between parties to look for possible peace between the two. However, to mediate family problems, a mediator who is trusted by the community can solve cases is needed because the biggest problem of implementing mediation is related to the emotional aspects of the parties. In other words, the success of mediation depends on the ability of the mediator to face the litigants (Brown, 1985).

Negotiation for consensus is the philosophy of the Indonesian people in every decision making, including dispute resolution. Negotiation of consensus as the value of the nation's philosophy embodied in the basics of the state, namely Pancasila. In the fourth precept of Pancasila, it is stated that democracy is led by wisdom in consultation/representation. This highest-value then further elaborated in the 1945 Constitution and many laws and regulations below. The principle of deliberation to reach consensus is a basic value used by disputing parties in finding solutions, especially outside the court. The value of consensus agreement is concreted in many alternative forms of dispute resolution such as mediation, arbitration, negotiation, facilitation, and various other forms of dispute resolution (Benton & Setiadi, 1998).

Legislation Indonesian history of the principle consensus that led to peace is also used in the environment of the judiciary, especially in the resolution of civil disputes. This can be seen from many laws and regulations since the Dutch colonial period up to now still contain the principle of peaceful deliberation as one of the principles of justice in Indonesia (Harahap, Beberapa Tinjauan Mengenai Sistem Peradilan dan Penyelesaian Sengketa, 1997, pp. 237 – 238). Even recently there has been a strong desire from various parties to strengthen the principle of peace through mediation and arbitration in dispute resolution.

This impulse is based on a number of considerations including; dispute resolution through the court takes a long time, gives birth to win-lose parties, tends to complicate the relations of the parties after the birth of the judge's decision, and the parties are not free to pursue their dispute resolution options (Green).

Following are many laws and regulations which form the legal basis for the application of mediation in the court and outside the court. Mediation based on deliberations towards a peace agreement received separate arrangements in several Dutch East Indies legal products and legal products after Indonesia gained independence to this day. An alternative arrangement for dispute resolution in the rule of law is very important, considering that Indonesia is a state of law (rechtsstaat) (Pringgodigdo, 1981, p. 127). In a legal state, the actions of state institutions and state apparatuses must have a legal basis, because the

actions of the state or state apparatus which have no legal basis can be canceled or null and void by law. Mediation as an institution for dispute resolution can be done by a judge (the State apparatus) in a court or other party outside the court so that its existence requires a rule of law.

Since the enactment of Law Number 1 of 1974 and then Law Number 7 of 1989, there have been symptoms indicating that court power has increased. At the same time, the number of court units at the first and the appellate levels has experienced rapid growth (Bisri, 200, p. 166). Development of the apparatus implementing the judicial power, namely judges and substitute executors, both the amount of quality and its distribution in each court unit is carried out in a planned manner. With these regulations, the frequency and burden of cases received, examined, tried, decided and resolved by the courts in the religious court environment increased markedly, especially during the first four years of the enactment of Law Number 1 of 1974. Then, gradually developed almost constant, although there was an inconspicuous decline. The burden of the case received and decided requires the consequence of the need for additional personnel and facilities that can be utilized to carry out the powers of the court. The formal juridical Religious Courts were born based on Law (Law) Number 7 of 1989 concerning Religious Courts (Daniel S. Lev, 1986, p. 29).

The Act complements the provisions relating to the Religious Courts that have been mentioned in Law Number 14 of 1970 concerning the Basic Provisions of Judicial Power (Anshori, 2007, p. 38). The presence of Law No. 7 of 1989 is considered an effort to develop and renew national law.

The coming into force of Law Number 7 of 1989, M. Yahya Harahap (Harahap, 1977, p. 25) identifies the main objectives to be achieved. *First, it* emphasizes the position and authority of the religious court as one of the implementations of *judicial power* in the Republic of Indonesia. The affirmation of these objectives can be seen in the considerations of letters c and e and the articles. In letter c it is formulated *"that one of the efforts to uphold justice, truth, order, and legal certainty is through the Religious Courts as referred to in Law Number 14 of 1970 concerning the Basic Provisions of Judicial Power"*. To be clear about the role and function of the Religious Courts in exercising judicial authority, the consideration letter e explains "... it is *deemed necessary to stipulate laws governing the composition, powers and procedural law of courts of justice within the Religious Courts." Second,* creating a legal unit of religious justice. This objective is motivated by the diversity of regulations governing the existence of a religious justice environment. There are at least 3 (three) provisions which arranging the rule, power, and procedural law in the religious court environment, namely the

Regulations on Religious Courts in Java and Madura *Staatsblad* Year 1882 Number 152 connected with *Staatsblad* Year 1937 Number 116 and 160, Regulations concerning *Qa* Density *in* and Density of *Qa in the* Great for some South and East Kalimantan Resident *Staatsblad* of 1937 Number 638 and 639), and Government Regulation Number 45 of 1957 concerning Religious Courts / Sharia Courts Outside Java and Madura State Gazette Year 1957 Number 99. With the publication of Law No. 7 of 1989, the diversity of legislation is declared over (Muhammad, 2000, p. 13). *Third,* refining the function of religious justice. Before the promulgation of Law No. 7/1989, the authority and powers of religious courts were artificial and subordinated by the general court. Every decision of a religious court must be confirmed by a general court. The inauguration is carried out by a District Court Judge by affixing the words "confirmed" then the District Court Judge concerned signs and affix the official seal on the verdict that is confirmed.

Promulgation of Law Number 7 of 1989, (Anshori, 2007, p. 27) The functions and the power structure of the Religious Courts are refined and strictly enforce without interference from the General Courts' environment. Based on Law No. 7 of 1989 above, the authority of the Religious Courts is regulated in Article 49 paragraph (1), namely that the Religious Courts are tasked with and have the authority to examine, decide upon and settle cases at the first level among people who are Muslim in the fields of (a) marriage; (b) inheritance, wills, and grants based on Islamic law; (c) *waqf* and *sadaqah* which have become positive laws in our homeland.

PerMA rules that mediators are obliged to encourage the parties to search and explore the interests of each party during the mediation process. The mediator must be able to help the parties to be able to express their interests and also so that they know the interests of the other party. Finally, things can be found that are of their mutual interest, and the mediator can help the parties make reasonable choices to make an effort to resolve their disputes to reach an agreement.

The obligation of the mediating judge to reconcile the disputing parties, in line with moral demands and teachings, is therefore appropriate for the judges to realize the function of reconciling. Because in a decision that, however fair, there must be a party that is defeated and won. Both parties can't be won or be defeated. As fair as the verdicts handed down by the panel of judges, it will be considered unfair by the losing party. However, wrongdoing the verdicts, will be considered and felt fair by the winning party. Another case with peace, the result of sincere peace from the mutual awareness of the parties to the dispute,

free from the qualifications of winning and losing because they both win so that both parties recover their relations in an atmosphere of harmony and brotherhood (Harahap, 1977, pp. 47-48).

A mediator judge acts as an intermediary who helps the parties to resolve the dispute they face. Besides, a mediator judge must also help the parties to the dispute formulate various dispute settlement options that can be accepted by both parties. Therefore, the mediator judge is required to know the problems of the parties first before holding a meeting and the mediator must also be patient in dealing with the parties because the success of a mediation process is nothing but the touch of a mediator judge who is capable and professional in carrying out his role and function as a mediator.

At least the mediator judge must be carried out the different interests to reach a meeting point that can be used as a starting point for solving the problem. By all means, the judge as a mediator must be able to explore problems, including problems that are not revealed. This stage is more or less the proof stage if in a court hearing. To obtain data that has not been revealed, the expertise of the judge mediator is needed. A mediator judge not only acts as a mediator who only acts as the organizer and leader of the discussion but also helps the parties to design the resolution of the dispute, to produce a collective agreement.

2. Mediation Implementation Efficiency

Efficiency in conducting mediation is following the spirit of applying the principle of justice which is simple, fast, and low cost. This is consistent with the opinion of Harrington and Marry (Harrington & Merry, 1988, p. 715) stated that mediation promises efficiency, a limited forum for private matters, and a rational source of law. In this connection, in the Religious Courts in the jurisdiction of the Banten High Religion Court, efficiency is seen from a technically simple implementation, in terms of time being carried out quickly if both parties to the dispute agree with the mediation process and end with the making of a peace deed, and in terms of costs are carried out cheaply. Yahya Harahap explained that the meaning and purpose of the judicial principle are simple, fast, and low-cost. It is a process of examination that does not take a relatively long period to years according to the simplicity of the procedural law itself (Harahap, 1977, p. 54).

The simple principle of justice, fast, and low cost in Law Number 7 of 1989 regulated in article 57 paragraphs (3). This principle is rooted in the provisions of article 4 paragraph (2) of Law Number 14 of 1970. The broader

meaning of this principle is stated in the General Explanation and the article 4 paragraph (2) which reads "the court is carried out simply, quickly, and a small fee, but must be adhered to which is reflected in the law on the Criminal Procedure Code and the Civil Procedure Code which contains much simpler inspection and verification regulations.

Furthermore, the purpose and understanding of the principle of justice emphasized by the explanation of article 4 paragraph (2) which reads "The court must fulfill the expectations of justice seekers who always want a judiciary that is fast, precise, fair, and low cost." Convoluted which can lead to a process for years, sometimes it must be followed by heirs to seek justice in cases of inheritance disputes both parties equally want to control the inheritance of the deceased so that the mediator judge has difficulty in conducting mediation if the parties put forward emotions and arguing with each other wanting to find justice and there is no solution. If both dispute parties refrain and respect the mediation process conducted by the mediating judge and the results of the mediation can be accepted by the parties, then it will be easy in the mediation process. Low cost means the lowest possible cost incurred by the disputing parties for the mediation process so that it can be borne by the community. All this is done to seek truth and justice in the religious court.

From the aspect of fulfilling a sense of justice, the implementation of mediation can meet the wishes of the applicant. Justice seekers can fulfill their sense of justice and get an agreement that can be accepted by both parties without having to go to court or carry out the proceedings in court for a long time and high costs. The meeting was a strategic effort to unite perceptions and views in reaching an agreement. The meetings were very efficient both in terms of time and cost. The meeting place is usually held in one of the rooms in the Religious Court, not using another place outside the court because that can be difficult for the parties. The meeting can be held between 4 (four) to 6 (six) times. In general, the meeting resulted in an agreement that both parties to the dispute and the deed dissuade reconciliation. Thus the implementation of mediation in the Religious Courts becomes more efficient both in terms of time and cost. This is following the principle of justice which is fast, precise, fair, and low cost.

3. Legal Strength of Peace Act

The mediation process carried out by the court is essentially so that the parties to the dispute are resolved peacefully, (Salim, 2008, p. 92) with mediation dispute resolution is also expected to be quickly resolved and to be carried out

properly there is no animosity between the two parties. Not all mediation can run smoothly and as expected. But in peace, the mediation process is carried out by holding various meetings attended by both parties to the dispute and the agreement will be reached later, this agreement is called a peace agreement with the help of mediators (Subekti, 1995, p. 177). The peace made by the parties to the litigation is the first stage that must be carried out by the judge as a mediator in hearing a case, the role of the judge as the mediator reconciling the disputing parties is more important than the function of the judge dropping the verdict in a case handled by him. The judge has the power to issue decisions on the peace deed made by the parties before the mediator when the agreement is formed. The peace deed is made when mediation has reached an agreement between the two parties and the peace deed is also stated in a judge's decision. It can be concluded that peace is an agreement agreed by both parties to end a dispute that is in process or to prevent a case from arising. And held through formalities if not then the peace is not binding and is not legal. The formal requirements must be met by the parties to the dispute to be able doing peace efforts carried out by a panel of judges in the hearing, both parties must agree and agree voluntarily to end the ongoing dispute. This agreement must come from both parties.

A peace agreement will have a binding legal force when it has become a deed of peace through a judge's decision in court. To be a peace deed, the peace agreement or agreement must be requested by the panel of judges as mentioned earlier. If this agreement is still not in a peace deed form, then the strength is very weak, because the agreement is only limited made by both parties, without any supervision by the competent authority. In other words, if one day there will be a problem regarding the contents of the agreement, then even if the agreement has been approved by the mediator or other neutral third party, the mediator cannot immediately take action on the occurrence of problems with the contents of the agreement, so that the parties can bring the dispute up again. It is different if the agreement or peace agreement has been submitted to the court or requested to be strengthened from the panel of judges in the religious court so that its position becomes the same deed as the judge's decision that has a binding and final power (Rahmadi, 2010, pp. 76-78).

The peace decision or the peace deed is requested by the panel of judges, the law in the peace agreement is the same as the usual agreement which only binds the parties because the agreement has not been requested for power or a decision to the panel of judges and when there are more problems it can still be submitted as a new case and not can be executed. One of the functions of the peace certificate is for the parties, one of which is as evidence of peace and as a proof of a valid and binding agreement. If there are problems in the future

regarding the contents of the peace certificate, the religious court through the court clerk or bailiff led by a judge can directly execute the contents of the peace certificate (Fauzan, 2007, p. 9). This was done to pay attention to human values and justice.

The principle of deliberation is one of the basic principles in people's lives and the life of the nation-state of Indonesia. Pancasila and UUD 1945 instill the principle of the existence of an obligation for every organizer of state power in carrying out its power to always be based on deliberation. The goal is to avoid centralizing power (absolute) to someone in decision making so that it can harm the public interest or the interests of the people. Deliberation must be based on the spirit of brotherhood following the principles of the Indonesian rule of law, by not prioritizing who wins or loses. Deliberations that are prioritized are good things, therefore the principle of peace must always be upheld highly and be a priority in the life of the state, nation, and society, including in the relationship between the government and its people. Therefore, dispute resolution through judicial decisions will only be used as a last resort if the principles of deliberation and peace have been made as much as possible.

The principle of deliberation and peace is also reflected in civil proceedings, for example in the peace of the parties which must be maximally sought by the judge and in the mechanism of decision making. Indeed, some opinions question whether, in the procedural legal process, it is still possible for deliberations and peace between the plaintiff and the defendant. If the question is connected in conjunction with the concept of the Indonesian rule of law, for example, the principles of kinship, harmony, harmony, balance, and harmony, of course, the existence of deliberations and peace is not in conflict and even in line with the ideals of the Indonesian rule of law. Besides, there are also other opinions that question, how is the relationship with the principle of *presumtio justea causa* or the principle of *het vermoeden van rechtmatigheid*. This principle is certainly only possible if it is associated with a dispute or objection or appeal from the party affected by the decision and feels disadvantaged by the decision. However, if each party to the dispute is aware of their mistakes and mistakes, then the dispute will no longer need to be continued and the dispute can be resolved by deliberation so that peace can be reached.

4. Community Legal Culture in Mediation

The effort to bring about justice or settle cases in court through peaceful means for the parties to the dispute is not a foreign tradition for the Indonesian

people. This is proven, based on article 130 HIR or article 154 RBg which is made by the Dutch government and applies to the son earth group expressly requires that before a case is tried by a judge, the judge is obliged to reconcile the parties. However, in its development, peace efforts as a settlement of civil disputes are considered merely as a formality to merely meet the norms of civil procedural law. For the mediation process to be used optimally in resolving disputes between parties, the parties who litigate in court need to understand the purpose and purpose of mediation. So, it can convince the parties that the court will try in a transparent, efficient, and effective manner following justice. Therefore, efforts to optimize mediation in the civil procedural process need to civilize peace efforts through mediation in court. In other hence, increasing public legal awareness by socializing mediation procedures in court.

It is common knowledge, the accumulation of cases in Indonesian justice institutions continues. This condition has caused the flow of cases, that flow through the court to go fast, resulting in the accumulation of cases. There will be an accumulation of cases because to resolve disputes in a win-win solution has not been entrenched. As a result of the arrears on the case, the process of handling a case to get a decision that has a permanent legal force, on average takes years. (Harahap, 1997, p. 78) For the parties to the dispute, the duration of the process of obtaining justice is unfavorable, both from the wasted energy of the mind and the number of costs incurred. This condition did not dampen the disputing parties to continue to give the trust of the court to resolve the dispute. The tendency of people who prefer to use the win-lose solution dispute resolution model through the court is quite interesting (Sulistiyono, 2013).

Indonesian society has the value of daily life, which is to hold deliberations in every meeting and even disputes in the community. However, in reality, the dispute resolution, the community seems to have lost the appreciation and practice of the value of deliberation, which is seen now precisely the development of dispute resolution by violence and culture of suing society. For this reason, mediation is a way out so that the culture of deliberation can be developed to resolve win-win solution disputes, which are faster processes and relatively inexpensive and do not cause hostility to the parties to the dispute.

The modern legal system, the existence of the judiciary has the task of resolving every dispute that occurs within the community to enforce the rule of law and is intended as a facilitative means of upholding the authority of the law by providing access to justice for the parties involved in the dispute. Although proven in its development, dispute resolution using this channel is infused with

excessive formality, inefficient and ineffective, expensive, impartial judge behavior, the sale and purchase of cases in the court environment, and the results of judges' decisions that often disappoint justice seekers.

It was further explained that the settlement of the case in the court was proven to be partly causing dissatisfaction with the parties to the dispute and also the wider community. Public dissatisfaction is expressed in the form of cynical views, ridicule, and even blaspheming the performance of the judiciary because it does not humanize the disputing parties, keep the disputing parties away from justice, the place where the judge's decision is traded, and other forms of blasphemy directed at the institution Justice. The settlement of disputes outside the courtroom is a reality that must be accepted. The reason is that the use of the modern legal system as a means of justice sometimes has structural obstacles. Then the main obstacle of the modern justice system is because the implementation of the distribution of justice puts forward too much formality, procedural, bureaucratic, and strict methodology so that justice obtained by modern society is nothing but rational and bureaucratic justice (Suparman, 2012, p. 117).

To develop trust in the community in dispute resolution mechanisms through mediation in court, making mediation part of the community's cultural values, and believed to be following community values to resolve disputes. Therefore, the formal education system from elementary to tertiary level must start introducing, developing, and communicating the noble values of the deliberative culture. So, understand peace in their social environment. Efforts to increase public legal awareness to be effective and efficient are through education. Education is not an incidental act, but it is a continuous and intensive activity and especially in the case of legal awareness education will take a long time. It would not be an exaggeration to say that with intensive mediation education the results of enhancing and fostering legal awareness can only be seen as satisfying results for at least another 18 or 19 years so that the mediation process in court goes well. This is not something that must be faced with pessimism, but must be welcomed with a determined determination to succeed. (William & Elaine, 1998, p. 214)

Thus an effort of the parties to seek and find justice through alternatives outside the judiciary is one of the efforts to reduce these structural barriers. Marc Galanter (1985) explained that justice should be obtained from several institutions, not just the judiciary. He further explained that there were two different processes in dispute resolution, namely negotiation and litigation. The process of integration between the two is called *litigation* (Galanter, 1985, p. 1).

This process mobilizes the judiciary by putting forward the principle of negotiations to reach an agreement. Agreement through negotiation is needed to reduce the accumulation of cases in the court and also reduce the human resources in the court. (Galanter, 1985, p. 2) Besides, the implementation of negotiations during mediation is not only carried out through a forum provided by the state, but also by the wider community by utilizing primary activities locations, such as homes, places of work, and others. Thus the implementation of negotiations in mediation is flexible, kinder, and removes the formality and bureaucratic barriers.

Lawrence M. Friedman (Suparman, 2012) explained that to build a legal culture related to mediation, there are 3 (three) components that need to work together, namely structure, substance, and culture. The legal system has a structure that is the framework of a permanent legal system to be maintained at its limits, especially those relating to its jurisdiction. The substance is the norms, norms, and human resources that are in the system. Culture is a legal culture, which is a human attitude towards the legal and legal system. Legal culture determines how legal instruments are used and or misused. Thus, the implementation of mediation will work well in a community if these three important components work together and strengthen one another. In other languages, Friedman (1986) further tries to link legal and non-legal in any changes in society. Non-legal is related to the legal culture that grows and develops in people's lives. If the legal product produced as an important instrument in the legal system, then easily the implementation of mediation in the court will become the legal culture of the community in settling cases between parties who litigate (Friedman, 1986, p. 763).

In practice, the ideals or ideas of legal certainty, justice, and benefits are almost impossible to achieve in all three in a balanced way. If legal certainty is one direction supporting law enforcement, then the other supporting direction, namely justice and expediency will be reduced, and vice versa. Emphasis on one aspect of either satisfaction or justice is strongly influenced by the legal tradition adopted. Countries that adhere to the Civil Law tradition that is based on law and legislation will lead to the satisfaction of the law; while countries that adhere to the tradition of the Common Law tradition that originates in custom and case law, the sense of justice of the community is more accommodated through judge-made law. In addition to certainty and fairness aspects, in law enforcement, consideration must also be given to the usefulness or usefulness aspects of community law, not because the law is implemented or enforced, instead, anxiety arises in the community, because the law is for the community and not the community for the law (Ismayawati, 2011, p. 60). Building a legal culture

becomes a very important thing because a good legal culture will produce a good legal system, as explained earlier that the legal culture is very influential on the existence of the legal substance and legal structure. No matter how good the substance of the law if it is not supported by a good legal community culture, then the legal substance is only a collection of writings about the rules that are not meaningful.

Conclusion

The development of mediation in the settlement of cases in religious justice institutions influences the implementation of mediation carried out in the religious court against the parties who litigate. Mediation is not just ordinary normative law as a basis for reference to cases that will be mediated, but mediation can be a practice and legal culture that develops in social life, especially in matters of religious courts, so that the accumulation of cases can be minimized. Therefore, mediation has a great opportunity to be developed in Indonesia following eastern traditions that are still rooted.

Society longs for a life that embodies the values of Islamic tradition, establish friendly relations between families rather than a momentary advantage in the event of a dispute between them. Although one party feels himself more right in the substance of the case, the attitude and handling of problems that are not right can make the party asked to budge to maintain harmony and peace of society.

The mediation carried out by the mediator in the religious court still uses traditional methods, so that if there is a family case related to Islamic civil law, the mediator puts forward many religious materials which are used as a basis for advising like a religious leader who conveys a message to the parties to think back when the separation and its impact on the life of a husband and wife even abandoned a child. The more settlement of cases through mediation, the lower the accumulation of cases and the fulfillment of the principle of justice that is simple, fast, and low cost following the values of Islamic teachings.

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