

Determining Factors Of Mediator's Success In Metro Religious Courts

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ABSTRACT

Mediation is an alternative dispute resolution that can be used by court parties. This institution provides an opportunity for the parties to play a role in resolving disputes with the assistance of a third party, namely a mediator. The parties to the dispute or litigation in court must of course go through a mediation process first. The mediation process in resolving cases is forced or compulsory. Therefore, the parties to the litigation have no choice but to comply. The religious court as one of the implementers of judicial power has practiced mediation in the case settlement process. Theoretically, dispute resolution through mediation in the Religious Courts brings a number of advantages, Among other things, cases can be resolved quickly and at low cost and reduce congestion and build-up of cases (court congestion) in the Court. What is the success rate of mediators at the Metro Religious Courts and what are the determinants of the success of mediators at the Metro Religious Courts? This study aims to determine the success rate of mediation and the determinants of the success of the mediator at the Metro Religious Court. This type of research is field research, namely this research was conducted at the Metro Religious Court. Sources of data used in this study are primary data sources, namely sources obtained directly from Mediator Judges who carry out mediation efforts at the Metro Religious Courts and secondary data sources, namely data sources obtained from records and books related to the problems studied. The data collection technique in this research is the interview and documentation method. Then the data analysis used is descriptive qualitative analysis. Based on the research that has been done, it can be concluded that the determining factor for the success of the mediator at the Metro Religious Court is the level of public awareness in undergoing the mediation process is very low. It is based on psychological, good faith, and moral and spiritual parties. Supporting facilities and facilities at the Metro Religious Courts are not yet ideal.

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INTRODUCTION

Mediation is an alternative dispute resolution that can be used by parties outside the court. Mediation has grown and developed in line with the growing human desire to resolve disputes quickly, and satisfy both parties[1]. The principle of mediation is a win-win solution, so that the parties involved in the dispute feel that there is no winning or losing party. Mediation not only speeds up the dispute resolution process, but also eliminates grudges and strengthens friendly relations. Mediation does not provide a model that can be described in detail and distinguished from other decision-making processes[2], [3].

The mediator as a third party negotiates, maintains and controls the mediation process, offers aAlternative solutions together the parties formulate a dispute resolution agreement. Decision making is not in the hands of the mediator, but in the hands of the disputing parties. The existence of a mediator as a third party is very dependent on the trust given by the parties to resolve the dispute so that there is no dispute between the two.[4]

The mediator's performance in the mediation process consists of several steps. These steps consist of; premediation, mediator's welcome, presentation of the parties, identification of problems, defining and sequencing of issues, negotiation and separate meetings, formulation of agreements, making and recording of final decisions, and closing of mediation[5], [6]. This step must be followed by the mediator in resolving the dispute between the parties, which is not only beneficial for himself, but also for the parties who choose mediation as an alternative dispute resolution. The work steps that will be taken by the mediator can also be notified to the parties, so that they can prepare for the mediation process. This step clearly illustrates the steps that will be taken together between the parties and the mediator. This is significant enough to dispel the impression that dispute resolution through mediation is very complicated and difficult to realize[7], [8].

Mediation in Sharia Law, in principle, humans cannot avoid or avoid differences and conflicts that occur in their daily lives. Humans have to face differences and resolve the conflict[9]. The differences and contradictions experienced by humans are natural (natural law), because God did create humans in diversity, tribes and nations. Human diversity and differences can be seen from differences in skin color, race, language, religion, culture, mindset and differences in interests. Diversity, different views and interests are potential conflicts that can lead to violence. There are several factors for the success of mediation, one of which is the ability of a mediator to reconcile the parties. The mediator must master various skills and techniques in order to help the parties resolve the dispute and be able to offer alternative solutions, the mediator must be able to map out what causes the conflict[10], [11].

METHOD

Types of research

This type of research includes field research (field research). Field research is a research conducted in the field or research location, a place chosen as a location to investigate objective symptoms that occur at that location, which is carried out for the preparation of scientific reports. Field research is considered a broad approach to collecting qualitative data. Field researchers usually take extensive notes which are then coded and analyzed in a variety of ways. Based on this, the researchers collected and analyzed data from interviews in the Metro Religious Courts environment. This study examines the determinants of the success of mediators in the Metro Religious Courts.

Nature of Research

This research is descriptive qualitative. Descriptive research is research that seeks to describe current problem solving based on data, so it also presents data, analyzes, and interprets. While qualitative, namely research that intends to understand the phenomenon of what is experienced by research subjects such as behavior, perception, motivation, other actions holistically and by way of description in the form of words and language, in a special context that is natural and utilizes various methods. natural. Based on the information above, this study aims to describe the success rate of mediation and the determinants of the success of the mediator in mediating at the Metro Religious Court

Data collection technique

The data collection technique in this research is by using interview and documentation

methods. Documentation method is one method of collecting qualitative data by viewing or analyzing documents by the subject himself or by another person by the subject. Interview is a question and answer process in research that takes place orally in which two or more people face to face and listen directly to information or information. The interview used by the researcher is a guided free interview, namely the interview method carried out by bringing guidelines which are only an outline of the things to be asked. Sampling by accidental sampling, namely sampling by taking individuals who can be reached or met.

Data Analysis Techniques

The data analysis technique used in this research is qualitative data analysis using inductive thinking method. Qualitative data analysis is "an effort made by working with data, finding patterns, breaking it down into manageable units, discovering what is important and what is learned and deciding what to tell others".

RESULTS AND DISCUSSION

Analysis of Determinants of Mediator Success in Mediation Efforts at the Metro Religious Courts

The success of a mediator in conducting mediation efforts is strongly influenced by the supporting and inhibiting factors during the mediation process. The following factors support the success of mediation:

a. Psychological Factor

As for the psychological conditions of the parties that affect the success of mediation. For women who want to separate from their husbands because there is no sense of comfort, infidelity, Domestic Violence (KDRT). And in this case, women have considered the pros and cons of divorce. Based on the above, it can be concluded that the greater the pressure on a person, the greater his desire to separate from his partner

b. The Good Faith of the Parties

The mediator seeks to reconcile the parties and acts as a mediator. However, no matter how good the effort is, if it is not supported by the good faith of the parties themselves, it will not bear fruit. Because in essence, it is the parties themselves who determine the outcome of the peace agreement. It can be seen in PERMA No.1 of 2016 in Article 22 paragraph (1) regarding the Legal Consequences of a Party with Bad Intentions, if the Plaintiff is declared to have no good faith in the mediation process as referred to in Article 7 paragraph (2), the lawsuit is declared unacceptable by the Judge. The Case Examiner and also in Article 22 Paragraph (3) it is emphasized that the Case Examining Judge issues a decision which is the final decision stating that the lawsuit cannot be accepted along with the penalty of payment of mediation fees and court fees.

c. Mediator Skills

The mediator as a mediator from both parties must have skills in reducing the emotions of both parties. With certification training carried out by the Supreme Court, it can improve the quality of a mediator in carrying out his roles and functions properly.⁸⁵ Based on the explanation above, the mediator judge at the Metro Religious Court has carried out the Mediator Task Phase well. In Perma No.1 of 2016 concerning Stages of Mediator Duties in Article 14 that mediators must try to carry out their functions properly, including in point (h) providing opportunities for the parties to submit problems and proposals for peace; and (i) taking an inventory of problems and scheduling discussions based on priority scale. Based on this, this stage is Probing (an examination to obtain justification and confirmation from both parties). In point (j) facilitate and encourage the parties to:

1. Explore and explore the interests of the parties;
2. Searching for various options for the best settlement for the parties; and
3. Work together to reach a solution.

Based on this, the mediator's action is appropriate because it is included in the category of reframing. Point (e) explains that the mediator can hold a meeting with one party without the presence of the other party (caucus).

4. Supporting facilities

Mediation The mediation room is still not ideal enough. This is evidenced that the equipment in the room is still incomplete. The mediation room should provide security, comfort and beauty in it, in order to make the atmosphere warm, so that even though there is a problem, it can be forgotten for a moment with an ideal room for litigants.

5. Moral and Spiritual

In Perma No.1 of 2016 Article 26 paragraph (1) that the mediator can present the involvement of experts and community leaders with the approval of the parties and/or legal counsel. If the parties can be invited through a spiritual approach, the mediator can use this alternative to maximize the success rate of mediation.

CONCLUSION

Based on the explanation above, mediation in cases that are the focus of researchers are Divorce Lawsuit, Divorce Divorce, and Joint Assets, especially Cases in 2016-2017 within the scope of the Metro Religious Court. The researcher concludes that the success factor of mediators in mediating at the Metro Religious Courts is still relatively low. In 2016 the mediation success rate was only 12%. Meanwhile, in 2017 the mediation success rate was 0.44%.

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