



Ijtihad
Volume 39, Nomor 1, Tahun 2023

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Sumber : Ijtihad
Diterbitkan Oleh : Rumah Jurnal Fakultas Syari'ah
Universitas Islam Negeri Imam Bonjol Padang

To cite this article:

Fadlullah, Fathan, 2023. "Involvement of Other Parties in the Mediation Process in Religious Courts". Ijtihad. 39 (1); 1-12.

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Ijtihad

pISSN: 1410-4687

eISSN: 2685-5216



Involvement of Other Parties in the Mediation Process in Religious Courts

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ABSTRACT

This study was motivated by the dominance of divorce cases in the Bukittinggi Religious Court class 1B, which when viewed from the total cases that entered from 2019-2021, there were 2,827 cases and 2,114 of them were divorce cases. Then in the past three years, there were 492 cases mediated. Of the 492 cases, only 67 cases were successfully mediated. This study answers the question of how the existence of other parties in the implementation of mediation in accordance with the implementation of Article 26 of PERMA No. 1 of 2016 concerning Mediation Procedures in Bukittinggi Religious Courts Class 1B. To answer questions, the authors use field or empirical research methods. As for the findings in this study, namely: First, it was not carried out by other parties in the implementation of active mediation in the Bukittinggi 1B Religious Court due to several factors, namely; 1) Not important involving other parties in mediation, 2) Involving other parties is not a necessity, 3) a priori attitude shown by the mediator. Second, the urgency to involve other parties in the implementation of mediation is the high divorce rate and inadequate number of mediators.

KEYWORDS

Mediation, Religious Courts, Other Parties in Mediation, PERMA No. 1 of 2016

PENDAHULUAN

Conflicts between husbands and wives are among the commonly occurring disputes in life, often resulting in divorce. These conflicts, which frequently serve as indicators of divorce causes, arise due to various reasons and factors. Despite the fact that according to the Compilation of Islamic Law (Kompilasi Hukum Islam - KHI), the purpose of marriage is to establish a family life characterized by tranquility, affection, and mercy, it is still uncertain that conflicts will not arise in marital relationships. Therefore, Allah has informed humanity through His Messenger, as subsequently inscribed in Surah al-Nisa' verse 35:

وَأِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَابْعَثُوا حَكَمًا مِّنْ أَهْلِهِ وَحَكَمًا مِّنْ أَهْلِهَا إِنْ يُرِيدَا إِصْلَاحًا يُوَفِّقِ اللَّهُ بَيْنَهُمَا إِنَّ اللَّهَ كَانَ عَلِيمًا خَبِيرًا

"And if you fear dissension between the two, send an arbitrator from his people and an arbitrator from her people. If they both desire reconciliation, Allah will cause it between them. Indeed, Allah is ever Knowing and Acquainted [with all things]." (Q.S 4: 35).

This verse explains the role and function of mediators sent by both parties, the husband and the wife, in the event of a dispute between them, without knowing the true state of affairs regarding who is right or wrong among the couple, with the aim of reaching a fair agreement and resolution (Abidin-aminuddin, 1999).

Alongside the increasing number of divorce cases in Indonesia, Dirjen Bina Masyarakat Islam, Kementrian Agama, records an average of 300 thousand divorce cases annually in Indonesia. Consequently, there are at least 300 thousand women who become widows, and men who become widowers due to divorce each year (Indonesia, 2020).

Furthermore, to be more specific, this is reinforced by data obtained from Class 1B Religious Courts as follows:

Table 1.1. Divorce Data of Class 1B Religious Court Bukittinggi

Report of Divorce Cases at Class 1B Religious Court Bukittinggi						
No	Year	Divorce case	Cases eligible for mediation	Mediation report		
				Successful Mediation	Unsuccessful	Failed

1	2019	658	154	4	150	-
2	2020	650	153	1	147	3
3	2021	806	185	62	123	2
Total		2.114	492	67	420	5

Data Source: Bukittinggi Religious Court

It can be observed that there are many divorce cases filed in Class 1B Religious Court Bukittinggi, and it is disproportionate to the success rate of mediation. Out of a total of 492 divorce cases eligible for mediation since 2019-2021, only 67 cases were successfully mediated, while 420 cases were not successfully mediated.

Therefore, the presence of mediators and other parties mentioned in Article 26 of PERMA No. 1 of 2016 is crucial in efforts to reduce divorce rates. This is because Indonesian society, which generally prefers to settle disputes amicably, typically relies on religious or community figures to assist in resolving the issues they face (Saifullah, 2015).

The resolution of issues conducted within the court environment is known as mediation, wherein the individual responsible for seeking solutions to the conflict is referred to as the mediator (Goodpaster, 1993).

In PERMA No. 1 of 2016 Article 1: 'Mediation is defined as a dispute resolution method through negotiation processes to reach an agreement among the parties assisted by a mediator.' Mediation based on this Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2016 is applied as part of the proceedings in civil cases within the Religious Courts and General Courts.

It is important to note that before the enactment of PERMA No. 1 of 2016, PERMA No. 1 of 2008 was already in effect. The change from PERMA No. 1 of 2008 regarding Mediation Procedures in Courts to PERMA No. 1 of 2016 was based on the consideration that the former was deemed insufficient in meeting the needs for more effective and successful mediation implementation in courts.

Then one of the steps that can be taken in efforts to reduce divorce rates in Indonesia is as outlined in Article 26 of PERMA No. 1 of 2016, specifically in the third section regarding the Involvement of Experts and Community Figures:

- (1) With the agreement of the parties and/or their representatives, the mediator may introduce one or more experts, community figures, religious figures, or customary leaders.
- (2) The parties must first reach an agreement on the binding or non-binding nature of the explanations and/or assessments of the experts and/or community figures as referred to in paragraph (1).

So far, studies on mediation have been extensively conducted, with various studies addressing the implementation of mediation in Religious Courts in accordance with PERMA No. 1 of 2016 regarding Mediation Procedures in Courts as

follows; (SARI, 2017), (Saladin, 2017), (Syariah, 2020), (Fikri, 2020) and then the study conducted by (Fadili & Sidiq, 2019) regarding the implementation of mediation with family counseling theory aimed at improving the harmony of household life.

Furthermore, there are several studies that tend to discuss the ineffectiveness of mediation implementation in Religious Courts, and these studies can be categorized as follows; (Fauzi & Faisal, 2018), (Ibrahim, 2013), (Zaitullah et al., 2020), (Karmuji & M. Prima Handa Kusuma, 2022) and (Salamah, 2013).

Furthermore, with the absence of studies specifically addressing the implementation of mediation in Religious Courts involving other parties, it becomes interesting to further investigate in this study the existence of other parties in the mediation process at Class 1B Religious Court Bukittinggi. Whether the involvement of other parties in the mediation process will serve as an important indicator of success or as a cause of failure in the mediation process at Class 1B Religious Court Bukittinggi?

METHOD

This research is a type of Field Research. Data collection techniques involve interviews with mediators at Class 1B Religious Court Bukittinggi to directly understand the existence of involvement of other parties in peace efforts in accordance with the Implementation of PERMA No. 1 of 2016 in Article 26 Regarding Mediation Procedures. Meanwhile, secondary data are obtained from documents such as academic books, theses, journals, and reports from Class 1B Religious Court Bukittinggi. Data Analysis Technique employs both inductive and deductive reasoning. Inductive reasoning involves starting with specific statements to develop arguments that are general in nature. Deductive reasoning, on the other hand, starts with general statements and draws specific conclusions (Nazir, 2009).

FINDINGS AND DISCUSSION

A. Mediation Concept

The term mediation is now widely known among the general public, especially among judges in the Courts, whether in the General Courts or in the Religious Courts. Many scholars also endeavor to clearly explain the meaning of mediation in various literature in order to apply mediation in various dispute resolution practices, both litigation and non-litigation.

In the Complete Indonesian Dictionary, the term 'mediation' is defined as the process of involving a third party (as a mediator or advisor) in resolving a dispute. The definition of mediation provided by the Complete Indonesian Dictionary contains three important elements. First, mediation

is a process of resolving disputes or conflicts that occur between two or more parties. Second, the parties involved in the dispute resolution are those from outside the disputing parties. Third, the parties involved in the dispute resolution act as advisors and do not have any authority in decision-making (Saladin, 2017).

Furthermore, the word 'mediation' also originates from the English language, meaning the resolution of disputes involving a third party as a mediator, or dispute resolution through mediation, where the mediator or intermediary facilitates it. In this mediation process, there is an agreement between the disputing parties, which is a consensus accepted by the parties involved in the dispute. Dispute resolution through mediation is conducted by the disputing parties with the assistance of a mediator (Abbas, 2009).

According to (D.Y. Witanto, 2012) citing the opinion expressed by Laurence Boulle as follows:

"Mediation is a decision making process in a which the parties assisted by third party, the mediator: the mediator attempts to improve the process of decision making and to assist the parties reach an outcome to which each of them can assent, without having a binding decision making function."

This means that Mediation is a decision-making process where the parties are assisted by a third party, namely the mediator: the mediator seeks to improve the decision-making process and help the parties achieve results that can be agreed upon by each party, without having a binding decision making a function.

The definition confirms the relationship between mediation and negotiation, that is, mediation is an intervention in the negotiation process carried out by a third party. Third parties have limited or no authority to make decisions to help the parties to the dispute reach a dispute resolution acceptable to both parties.

In PERMA No. 1 of 2016 concerning Mediation Procedures in Court in Chapter 1 ayat 1 it is also explained about the definition of mediation, where mediation is defined as a way of resolving disputes through the negotiation process to obtain agreement between the parties assisted by a mediator.

In chapter 1851 of the Civil Code, it is stated that what is meant by peace is an agreement in which both parties by surrendering, promising or withholding an item, end a matter that is dependent or prevent a case from arising. Peace agreements are invalid but must be made in writing.

From some of the above understandings, it can be understood that dispute resolution must be based on consensus deliberation, this principle is the highest value further elaborated in the 1945 Constitution and a number of laws and regulations below, among those mentioned in the explanation of Article 3 paragraph 2 of Law No. 14 of 1970 which has been amended by Law No. 4 of 2004 which has been amended by Law No. 48 of 2009 concerning

Judicial Power namely "The state judiciary applies and enforces law and justice based on Pancasila".

Then as stated in Surah Al-Hujurat: 10 about seeking peace between litigants:

إِنَّمَا الْمُؤْمِنُونَ إِخْوَةٌ فَأَصْلِحُوا بَيْنَ أَخَوَيْكُمْ
وَ اتَّقُوا اللَّهَ أَلَعَلَّكُمْ تُرْحَمُونَ

Meaning: Verily believers are brothers, therefore reconcile between your two brothers and fear Allah so that you may have mercy (Al-Hujurat 10).

The necessity of implementing mediation is also further explained in the second part in chapter 4 of PERMA No. 1 of 2016 concerning Mediation Procedures in Court as follows:

(1) All data disputes filed with the Court including matters of resistance (verzet) on the decision of verstek and the resistance of the subject matter (partij verzet) or third party (derden verzet) against the execution of the decision which has the force of permanent law, are obliged to first seek settlement by mediation, unless otherwise determined in accordance with the Rules of the Supreme Court.

Affirmation of the necessity of mediation in Religious Courts as stated in Chapter 1 (3) of PERMA No. 1 of 2016 concerning Mediation Procedures in Court which reads:

"Every judge, mediator, parties and/or legal representatives must follow the dispute resolution procedure through mediation".

Then it continues to verse three that:

"The examining judge who does not order the parties to take mediation so that the parties do not mediate has violated the provisions of the laws governing mediation in the Court".

Some relevant regulations as the legal basis for the implementation of mediation in the Judiciary are as follows:

1. Pancasila and the 1945 Constitution, are based in their philosophy that the principle of dispute resolution is deliberation for consensus.
2. HIR Article 130 and Rbg Article 154 have regulated the Peace Institute. The judge in his duty to handle the case must first reconcile the litigants before the case is examined.

1. Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2016 concerning Mediation Procedure

Furthermore, when viewed from the side of the place of implementation, mediation is divided into 2 (two) types, namely:

1. Mediation in Court
Mediation in Court has long been known. Parties who submit their cases to the Court are required to go through mediation procedures before examining the subject matter.
2. Out-of-Court Mediation
Mediation outside the Court can be found in several laws and regulations, which establish a

dispute resolution body. PERMA No. 1 of 2016 also regulates provisions that link between out-of-court mediation practices that result in agreements.

Broadly speaking, the parties directly involved in mediation are several parties as follows:

1. The party of the matter

In civil cases there are at least 2 (two) parties, namely the plaintiff and the defendant. But in certain cases casuistically there are co-defendants. A plaintiff is a person or party who feels aggrieved by another person or party (defendant). The defendant is a person or party who is considered to have harmed the rights of other people or parties (plaintiffs), while the defendant is a person or party who has no direct interest in the case, but has something to do with the party or object of the case concerned (Hidayat, 2016).

1. Mediator

The mediator is a third party involved in the mediation process, both individually and in the form of an independent institution that is neutral and impartial. Meanwhile, in Perma No. 1 of 2016 Article 1 point 2, a mediator is a judge or other party who has a mediator certificate as a neutral party who assists the parties in the negotiation process to find various possibilities for dispute resolution without using the means of deciding or forcing a settlement (Asnur, 2017).

In PERMA No.1 of 2016 chapter 1 (2), a mediator is a judge or other party who has a mediator certificate as a neutral party who assists the parties in the negotiation process to find various possible dispute resolutions without using the means of deciding or forcing a settlement.

Later in Islamic law, the mediator was known as hakam. Islam is also in line with mediation in resolving two people who are in conflict. Mediation or peace or *islah* in Islam is an act that intends to settle two or more litigants according to the will of the parties. Husband and wife who are in dispute (*shiqaq*), Allah Almighty. explains in the Qur'an to send hakam or peacemaker (Taufiqurohman, 2021).

As a guideline, the definition of hakam can be taken from the explanation of Article 76 paragraph (2) of Law Number 7 of 1989 jo Law Number 3 of 2006 jo Law Number 50 of 2009 concerning Religious Courts. In the law it is explained that "hakam is a person determined by the court from the side of the husband's family or the wife's family or other parties to seek a dispute resolution against *shiqaq*".

Mediation is one form of alternative dispute resolution. The purpose of mediation is to resolve disputes between parties by involving neutral and impartial third parties. Mediation can lead the parties to the realization of a permanent and sustainable peace agreement,

given that dispute resolution through mediation puts both parties in the same position, neither side is won or the party is defeated (Nur & Wijaya, 2020).

In PERMA No. 1 of 2016, a Mediator is a Judge or other party who has a Mediator Certificate as a neutral party who assists the Parties in the negotiation process to seek various possible dispute resolutions without using the means of deciding or forcing a settlement. Every mediator is basically required to have a mediator certificate obtained from the Supreme Court. However, if in the territory of a Court there is no certified mediator, the judge within the Court concerned is authorized to carry out the function of mediator.

1. Members and Public Figures

Furthermore, other parties, peaceful efforts can be made by presenting other parties, in accordance with the sociological values of Indonesian society who often seek peace with other parties outside the implementation of mediation with mediators alone, the Supreme Court also provides opportunities or opportunities to apply these sociological values.

As regulated and given the opportunity to be applied in Article 26 of PERMA No. 1 of 2016 in the third part concerning the Involvement of Experts and Community Leaders:

1. Upon agreement of the Parties and/or legal representatives, the Mediator may present one or more experts, community leaders, religious leaders, or traditional leaders.
2. The Parties shall first reach an agreement on the binding or non-binding force from the explanation and/or assessment of experts and/or public figures as referred to in paragraph (1).

Mediation has become a mandatory process to be passed in litigation processes in religious courts, and it has also become the responsibility of judges to ensure that the process is passed by litigants. In accordance with Article 3 paragraph 3 of PERMA No. 1 of 2016 concerning Mediation Procedures in Court, the parties involved in the mediation process are not only litigants and mediators, but can also involve other parties as mentioned in Article 26 of PERMA No. 1 of 2016 concerning Mediation Procedures in Court.

1. **Others in Medical Practice**

From the data obtained by the author in the field, that other parties have not been involved in the implementation of mediation at the Bukittinggi Class 1B Religious Court, where the findings that the author found can be grouped into three points, namely:

1. The Unimportance of Involving Others in Mediation

From the results of interviews that the author conducted with mediators IA, EA, R, and MA, regarding the importance or not of involving other

parties in the implementation of mediation, these mediators said that;

First, the IA mediator; "*It depends on the wishes and needs of the parties only*".

second, mediator R; "*If the mediator has had enough of the presence of the mediator himself, there is no need to present other parties in the implementation of mediation*".

Third, MA mediator; "*If it is said to be important or not conditionally, if it is said to be important, not really*".

According to the author, from these opinions, it can be understood simply that there is no mediator who believes that involving other parties in the implementation of mediation is an important thing to do, but according to the author's understanding, it is important to do, because;

First, there is recognition of the existence of other parties in the mediation process, which can be seen in Article 26 paragraph (1) of PERMA No. 1 of 2016 in the third part concerning the involvement of experts and community leaders stated that; Upon agreement of the parties and/or legal representatives, the mediator may present one or more experts, community leaders, religious leaders, or traditional leaders.

As stated in PERMA No. 1 of 2016 above, with the recognition of the existence of other parties in mediation within the Court, it has broadly shown that the existence of other parties in the implementation of mediation is important to be involved, because when viewed from the divorce rate and mediation success rate obtained in the last three years, where divorces mediated at the Bukittinggi Religious Court in 2019 were 154 cases and there were 4 Cases that were successfully mediated, in 2020 there were 153 cases and only 1 case was successfully mediated, and then in 2021 there were 185 cases mediated and there were 62 cases that were successfully mediated.

Then if it is said that there is no need for help from other parties according to the mediator, which if the mediators have enough with themselves, then they no longer need help from other parties, this opinion also looks unsuitable when viewed from the success rate of mediation carried out at the Bukittinggi Religious Court, with the low success rate of mediation at the Bukittinggi Religious Court in 2019-2021 has refuted the arguments presented by the mediator.

Furthermore, if viewed further with the existence of the Supreme Court as an institution that has the right to issue legal products, and where the resulting legal products are binding. As stated in Article 8 of Law No. 12 of 2011 concerning the Establishment of Laws and Regulations which reads:

1. Types of laws and regulations other than those referred to in Article 7 paragraph (1) include regulations stipulated by the People's Consultative Assembly, House of Representatives, Regional Representative Council, Supreme Court, Constitutional Court,

Audit Board, Judicial Commission, Bank Indonesia, Ministers, agencies, institutions, or commissions at the same level established by Law or the Government by order of the Law, Provincial People's Representative Council, Governor, Regency/City People's Representative Council, Regent/Mayor, Village Head or equivalent.

2. Laws and regulations as referred to in paragraph (1) are recognized for their existence and have binding legal force to the extent ordered by higher laws and regulations or established by authority. If further understood about the sound of Article 26 of PERMA No. 1 of 2016 concerning Mediation Procedures in Court with the sound of Article 8 of Law No. 12 of 2011 concerning the Establishment of Laws and Regulations, with the existence of PERMA which basically has binding legal force, then according to the author, the regulation has provided clarity that the existence of other parties clearly stated in PERMA No. 1 of 2016 should be for realized in the implementation of mediation in the Religious Court.

It should be a simple consideration in understanding that the existence of Article 8 of Law No. 12 of 2011 concerning the Establishment of Laws and Regulations has become a simple consideration in understanding that the existence of other parties written in Article 26 of PERMA No. 1 of 2016 concerning Mediation Procedures in Court is important to be realized in the mediation process at the Bukittinggi Class 1B Religious Court directly.

Second, if viewed at the location of the Bukittinggi Religious Court which is geographically within the Minangkabau natural area, then the mediator should be able to take advantage of the values that grow in Minangkabau society itself. Which by utilizing the habits of the Minangkabau community who tend to solve problems in a familial way, it is also appropriate for mediators to be able to take advantage of this.

Because for Minang people, adat is the complexity of a community of customs, norms, beliefs and etiquette which has a double meaning, namely adat means a collection of local customs, and adat is also considered a complex structure system of society (Nurus Shalihin, 2014).

In Minangkabau society, there is a cultural mechanism that is expected to prevent divorce in the family, because marriage in Minangkabau tradition is the formation of a family carried out with a personal bond between a man and a woman with the blessing and consent of all relatives (Fiony Sukmasari, 1983).

In addition, if viewed on the process passed to get a partner in Minangkabau where in the marriage system of Minangkabau society there is a marriage ban that still survives today, namely the prohibition of tribal marriage. Where this reason is caused by the assumption of the Minangkabau people that those who are bound in one tribe are still in one brotherhood, so that if the marriage has been carried

out it will cause weak confusion in the future, so this has become a concern for the Minangkabau community from the past until now (Abadi, 2021).

Furthermore, with the prohibition for the Minangkabau community about the impermissibility of tribal / clan marriages, it makes the marriage carried out by the Minangkabau community a large marriage carried out by two different tribes. At the beginning of this marriage process also involved many parties, including tribal chiefs, ninik mamak, religious leaders, and so on.

Marriage in Minangkabau which is exogamous type and designed in such a way should also be used in the process of seeking peace between parties who want to divorce. Because with the many parties involved in marriage in Minangkabau, such as mamak, tribal chiefs and so on, it should also be important to be involved in the divorce process, not only in the peace process carried out outside the Court, but also actively involved in the mediation process in the Religious Court.

Then also in accordance with the existence of Article 76 paragraph (2) of the Law on Religious Courts of 1989 which reads: The court after hearing witness statements about the nature of the dispute between husband and wife may appoint one or more from the family of each party or another person to be hakam.

The appointment of hakam from each of these parties, if understood, has the same objectives as Article 26 of PERMA No. 1 of 2016 concerning Mediation Procedures in Court, which both aim to provide alternative reconciliation for litigants in Court through the mediation process. The difference is only the implementation or utilization of the hakam.

If the appointment of hakam from each party aims to negotiate peace outside the mediation procedure in the Religious Court, then the existence of the other party mentioned in PERMA No. 1 of 2016 is involved or included in the mediation process of the case and these parties are present in the mediation carried out.

Actually, the involvement of the hakam referred to in Article 76 paragraph (2) of the 1989 Law on Religious Courts can not only be done by mediation outside the Court, but these parties can also be present in the mediation process in the Religious Court, in accordance with the agreement made by the mediator with the litigants, if referring to Article 26 of PERMA No. 1 of 2016 concerning Mediation Procedures in Court.

Involving other parties in mediation as an effort to boost the success rate of future mediation seems important for mediators in the Bukittinggi Religious Court, and mediators and litigants should be able to take advantage of the opportunities that are present.

So, in accordance with the author's description above, involving other parties in the implementation of mediation at the Bukittinggi Class 1B Religious Court is important to do, because with

Article 76 paragraph (2) of the Religious Court Law of 1989, then Article 26 of PERMA No. 1 of 2016 concerning Mediation Procedures in Court, and added with the local wisdom of the Minangkabau community, so it has become a strong reason that the involvement of other parties in the mediation process at the Bukittinggi Religious Court is important in the future.

1. Involving others is not a necessity

In accordance with the statements of the mediators at the Bukittinggi Religious Court that the author interviewed, which knowledgeable, the mediators knew that the existence of other parties recognized for their existence in PERMA No. 1 of 2016 concerning Mediation Procedures in Court, this was illustrated from the answers given by these mediators as follows;

First, the IA mediator; "For regulations governing the involvement of other parties in mediation, there is in PERMA No. 1 of 2016".

Second, EA mediator; "In PERMA 2016 on mediation procedures there are rules".

Third, mediator R; "In PERMA No. 1 of 2016, but what article do you not remember".

Fourth, MA Mediator; "In PERMA 2016".

From the results of the interview, it can be understood that the mediators are aware of the existence of other parties recognized in PERMA, and unfortunately, the existence of other parties who have clearly been recognized as juridical foundations in practice is not involved in mediation by mediators at the Bukittinggi Religious Court.

Furthermore, the mediators at the Bukittinggi Religious Court reasoned that they did not involve other parties in the implementation of mediation because to involve other parties in the implementation of mediation was not a necessity, reflected in the answers given by the mediators as follows;

First, the IA mediator; "The involvement of the other party is permissible, however, the involvement of the other party is like presenting the family, it is usually done in court, when the litigants present witnesses. So far, in mediating divorce cases, I have never involved other parties in mediation."

Second, EA mediator; "As long as you are here, you have never involved other parties in the implementation of mediation, and before moving to PA Bukittinggi, this has never been, then the involvement of other parties is not a requirement".

Third, mediator R; "To involve the other party in mediation has only been done once, even that has been a long time. Because the involvement of other parties depends later, if for example in mediation there is a feeling that other parties are needed, then involved, but so far only mediators with litigants are often done".

Fourth, MA Mediator; "During my time in PA Bukittinggi, I have never done so and the involvement of other parties usually depends on the mediator, which if the mediator considers it necessary to involve the family in mediation, may, provided that the parties

wish, but the involvement of other parties in mediation is not a requirement".

The argument presented by this mediator refers to Article 26 concerning the Involvement of Experts and Community Leaders which states that upon agreement of the parties and/or legal representatives, the mediator may present one or more persons.

In the absence of the word must contained in PERMA No. 1, and only written with the phrase can present, the mediator concludes that presenting the other party in mediation is not a must, and only as a form of permissibility.

The argument presented has an impact on the absence of efforts made to involve other parties in mediation by the mediator, which further also results in no socialization or introduction to the litigants in the Court, that in proceedings at the Bukittinggi Religious Court, in addition to litigants and mediators, there are actually other parties who can be present in the mediation process.

No effort was made to present other parties in the implementation of this mediation in accordance with the information provided by the mediator of the Bukittinggi Religious Court whom the author interviewed regarding whether the mediators had made efforts to involve other parties or not, as follows the answers given by these mediators;

first, the EA mediator; "There has been no attempt in mediation to involve the other party".

Second, mediator R; "Nothing has been attempted yet".

Third, MA Mediator; "So far no effort has been made".

With the above information, according to the author, if indeed the problem lies in the absence of a phrase that states the necessity to involve other parties in the implementation of mediation in PERMA No. 1 of 2016 concerning Mediation Procedures in the Court and ends in no effort to involve other parties in the implementation of mediation, and also reflects the lack of enthusiasm of mediators in seeking all efforts to reconcile the parties who In the middle of a litigation, it seems that the Supreme Court seems to need to issue or affirm in PERMA No. 1 of 2016 concerning Mediation Procedures in Court, to require parties or mediators to be able to present or involve other parties needed in mediation procedures, especially divorce cases, and also provide sanctions if this is not done, then the case cannot proceed.

The affirmation in PERMA seems to be done by the Supreme Court, as a form of seriousness in suppressing the high divorce rate in Indonesia, and also avoiding the views of mediators as the author has written above. Then the use of parties outside the litigant is important, because when viewed from the development of mediation in Indonesia which starts from the culture of the community, which is carried out as an alternative to dispute resolution through peaceful means, mediation has a great opportunity to continue to grow in Indonesia.

Despite the continuous changes to the Supreme Court Rules (PERMA). Where the first is PERMA No. 2 of 2003 concerning Mediation Procedures in Court, then changed to PERMA No. 1 of 2008 and changed back to PERMA No. 1 of 2016. In an effort to make improvements made to this Supreme Court Regulation, it is intended that the implementation of mediation in the Court can become part of civil procedural law that strengthens and optimizes the function of the Judiciary in dispute resolution.

Then if viewed and adjusted again with eastern customs that are currently still rooted in the lives of Indonesian people, where most Indonesian people tend to prioritize the establishment of friendship between families rather than temporary benefits in case of disputes. Although dispute resolution in Court may yield substantial benefits if prevailing, relationships also tend to break down. While maintaining good relations is important, and maintaining good relations is also sometimes more important in the dispute resolution process in eastern cultural countries, including Indonesia itself.

Along with this, if seen in the sound of Surah An-Nisa' verse verse 35 which reads:

وَإِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَابْعَثُوا حَكَمًا مِّنْ أَهْلِهِ
وَ حَكَمًا مِّنْ أَهْلِهَا

Meaning: And if you are worried about a dispute between the two, then send a peacemaker from the male family and a peacemaker from the female family.

Consideration of the information given by the mediator, and aspects of Indonesian customs if adjusted to the sound of the paragraph above, then at least it has become a suitable consideration for the Supreme Court to be able to provide affirmation in PERMA, to be able to involve parties outside the litigant, to be actively involved in the mediation process in the Religious Court, and not only in the process of presenting witnesses, as was done in litigation at the Bukittinggi Religious Court.

If there is no affirmation in PERMA about the involvement of experts or community leaders, then the high divorce rate according to the author will continue. Although basically the parties still want to divorce, but at least divorce properly and do not harm either party. Most importantly, the benefits of mediation results can be applied in the next married life so that divorce does not recur.

1. A priori Attitude Shown by the Mediator

According to the Big Indonesian Dictionary (KBBI), the meaning of the word a priori is to preconceive before knowing (seeing, investigating, and so on) the actual situation. The origin of the word a priori is the Latin "*prius*" meaning elements, and *a* means "no" or "before" (Badan Pengembangan dan Pembinaan Bahasa, 2016).

So, it can be understood that a priori attitude is the making of conclusions that are carried out before knowing the results that will occur. And for mediators, even though these mediator judges have

been mediators for many years, and have mediated hundreds of cases, basically it is also appropriate for mediators not to be a priori in the conduct of mediation that is being carried out.

According to the author, when the mediator judge has first assumed that there will be no peace through mediation carried out with the litigants, then the mediator will no longer mediate optimally, because the mediator himself has concluded that there will be no peace, and why continue the futile thing in earnest.

As stated by one of the mediators at the Bukittinggi Religious Court who said that;

"Usually during mediation we can see from the possibilities that it is possible for these parties to reconcile, but if it is unlikely to be reconciled, such as the parties insisting on divorce, the parties are not serious in carrying out mediation, it is usually clear the end".

In the implementation of mediation headed by the mediator, as long as the implementation of mediation is still running conducive, it is also an obligation for the mediator to be able to strive for peace for the litigants to the maximum, so that the implementation of mediation also runs as it should and the mediation process does not seem to be just a form of formality.

The conclusion that mediation will not be successful according to the mediator is reflected in the mediator's admission that usually in the implementation of mediation, the mediator can already read that the implementation of mediation carried out will not achieve peace from the indicators found in the mediation process, such as; the parties insist on divorce, the parties are not serious in carrying out mediation.

According to the author, even though the implementation of mediation does not run smoothly or is less conducive, the mediator has the right to postpone the implementation of mediation as a form of mediator's effort in providing an opportunity for the parties to clear their minds, so that the mediation carried out subsequently can run conducive, not by allowing the parties to persist in their insincerity in mediation, which can later also have an impact on not achieving its reconciliation in mediation.

Conditions where the mediation carried out is already in a less conducive state, then actually at times like this the mediator as a neutral party must be able to play a maximum role, the existence of the mediator in this condition is also very important in determining the end of the mediation carried out, and at times like this the mediator's skills are needed in finding a way out as a mediator.

Postponement of mediation time is also an important effort that can be done, and at that time the mediator can do the following as written in Article 14 letter e of PERMA No. 1 of 2016 which reads: The mediator can hold a meeting with one party without the presence of the other party, on this occasion, the mediator can explore the interests of

each party for better mediation implementation in the future.

The mediator can also utilize the litigants as mentioned in Article 26 of PERMA No. 1 of 2016 by jointly providing the best solution to the litigants, which of course opens up greater opportunities for agreement to be reached for the parties to the dispute, and the presence of the other party is actually a solution that can be utilized optimally.

The lack of seriousness displayed by the mediator judge in seeking peace by presenting other parties in mediation according to the author, could occur because the mediator judge thinks that the divorce case that has reached the Bukittinggi Religious Court has departed from a final matter, and it could also be because the mediator judge often handles divorce cases so that it makes the mediator consider divorce a case the usual.

But for those who experience conflicts in their households by ending in divorce or divorce lawsuits due to talaq in court, it is certainly not an ordinary problem. And if further understood about the duties of mediators in Article 14 letter j of PERMA No. 1 of 2016 concerning the Stages of Mediator Duties, which reads:

1. Tracing and exploring the interests of the parties.
2. Seek various settlement options that are best for the parties; and
3. Working together achieves a solution.

From the sound of the Article above, when viewed in the first and second points that mention the task of the mediator is to explore and explore the interests of the parties. And if we examine more deeply the sound of the Article above, the a priori attitude shown by the mediator has actually violated the existing rules.

Because it is the duty of the mediator to look for various resolution options if referring to the sound of the Article above, and the use of other parties by the mediator in the implementation of mediation seems to be in accordance with the sound of paragraphs two and three in Article 14, because marriage is carried out by involving many parties, the search for the best solution or solution seems to be also possible by involving parties who can also be involved.

Although the basic principle of mediation implementation is closed, the use of other parties outside the litigant certainly departs from the agreement of the litigants, also in accordance with Article 5 of PERMA No. 1 of 2016 which states that the mediation process is basically closed unless the Parties want otherwise.

Thus, the presence of other parties in the mediation process at the Bukittinggi Religious Court has a great opportunity to be utilized, depending on the skills possessed by the mediator in seeking or negotiating with the litigants.

then it can also be understood that the mediator actually has a great responsibility to utilize all forms of solutions in seeking peace through

mediation, one form of effort that should be done is to involve other parties in the implementation of mediation in the Agama Bukittinggi Court in an effort to reduce the fairly high divorce rate.

1. The Urgency of Being Involved by Others

As the data that the authors obtained from the Bukittinggi Religious Court on the matter that went into the Bukittinggi Religious Court in 2019, there were 929 things coming in for processing, and of the 929 things that came in there were 154 things mediated, yet there were only 4 things that worked to mediate, then in 2020, there were 863 things coming in, Of these 863 things, there are at least 153 things that can be mediated, and the only thing that manages to mediate is only one thing.

then finally, in 2021 there were 1,035 cases entered, this case was more than the previous two years, and the success rate was also higher than the previous two years, where out of 185 cases mediated, there were 62 cases that were successfully mediated at the Bukittinggi Religious Court.

With the description of the data above, with the number of cases that enter the Bukittinggi Class 1B Religious Court, it can be understood that, what makes parties other than litigants with the mediator important to be involved in the implementation of mediation according to the author is divided into two points, namely:

1. High Divorce Rate

In accordance with the data that the author has obtained from the Bukittinggi Religious Court directly regarding divorce cases received in 2019-2020 there were 2,114 cases, out of a total of 2,827 total cases that entered the Bukittinggi Religious Court and from the figures seen above, it can be said that it is true to say that divorce that occurred in the Bukittinggi Religious Court was high.

Along with the fairly high divorce rate in the Bukittinggi Class 1B Religious Court, it is not balanced with the success rate of mediation which can be said to be still low, because when viewed from the data that the author has included in the previous chapter, out of 492 cases that can be mediated, only 67 cases have been successfully mediated, and from these 67 cases, The 62 successfully mediated cases were reached in 2021.

Although there was an increase in mediation success at the Bukittinggi Religious Court in 2021, where there were 62 cases successfully mediated, and this figure is much higher than the success rate in 2019 and 2020, and the achievement in the success of mediation at the Bukittinggi Religious Court is indeed still to be appreciated.

Then by dominating divorce cases in the Bukittinggi Religious Court, it was explained that mediators and judges in the Bukittinggi Religious Court had a big role in trying to suppress the divorce rate that was so high in the Bukittinggi Religious Court.

Mediation, which is an important process that must be passed in the event, is a process that has a very important opportunity to be utilized in an effort

to reduce this high divorce rate, and this mediation process should be utilized optimally by mediators and litigants in Court.

Then with the implementation of mediation which has an important role in the divorce case settlement process, of course, it will face various kinds of obstacles and obstacles, and the failures experienced in the implementation of mediation are not always caused by the litigants, it could be due to the mediator's lack of understanding of the parties' problems, the mediator's lack of seriousness, the mediator's lack of skills, or it could be due to the mediator's lack of foresight in seeing Opportunities that can be used in mediating cases.

The ability of mediators to be able to see and take advantage of existing opportunities, will greatly affect the high or low success rate of mediation, and it should also be for mediators to make breakthroughs in minimizing failures in mediation as an effort to suppress the high divorce rate.

For the time being, involving other parties in the implementation of mediation seems to be urgent to do, as an effort to suppress the surge in divorce rates in Indonesia, and especially in the jurisdiction of the Bukittinggi Class 1B Religious Court.

The use of other parties is urgent to do because it departs from the high divorce rate that occurs in the Bukittinggi Religious Court, and the use of other parties is a great opportunity that can be utilized optimally by mediators in an effort to reduce the high divorce rate. Because in an effort to reduce the divorce rate in the high Bukittinggi Religious Court, not only judges and mediators can actually be involved.

With the clear high divorce rate in the Bukittinggi Religious Court, there are steps that according to the author are appropriate to take in an effort to minimize the high divorce rate, one of the steps that can be done in accordance with the research that has been done (Maghfiroh, 2015), The study explained that the tradition of dispute resolution of indigenous peoples is based on the philosophy of togetherness (communal), sacrifice, spiritual values, and justice. In indigenous peoples, where common interests are a philosophy of life that has been ingrained in indigenous peoples. Togetherness is upheld above personal interests, so that in indigenous peoples, common interests are known.

Disputes that occur between individuals and between groups in the view of customary law communities are actions that interfere with common interests (communal), and therefore must be quickly resolved wisely using customary settlement patterns, as is done in using tribal communities, although divorce is a very private matter, but in the settlement the parties involve the family to resolve the problem familiarly, But not only that, the parties also still need traditional elders who are trusted to help resolve the divorce case.

So that when there will be a divorce, it can be prevented by deliberation together with the families

of each party, and also assisted by traditional elders who will provide solutions which is better and also give advice to take a good path.

Thus, from the research that has been carried out, which if adopted to the practice of mediation carried out at the Bukittinggi Religious Court, according to the author, the use of other parties in the implementation of mediation by mediators at the Bukittinggi Religious Court is the right step that can be done.

In addition, according to the author, this implementation will also provide a greater chance of mediation success in an effort to reduce the divorce rate which is fairly high in Bukittinggi. The use of other parties will also reflect the sincerity carried out by mediators at the Bukittinggi Religious Court in an effort to minimize the occurrence of divorce.

1. Inadequate Number of Mediators

In accordance with the data obtained by the author from the Bukittinggi Class 1B Religious Court when this study was conducted, the number of mediators in the Bukittinggi Religious Court was only 6 people, these mediators also served as a judge, and coupled with the absence of non-judge mediators registered at the Bukittinggi Religious Court.

The existence of a mediator who is also a judge, and coupled with the number of cases that enter the Bukittinggi Religious Court every year, where the incoming cases during 2019-2021 are never less than 800 cases, more or less will also have an influence on the performance of the mediator, because the limited time and energy owned by the mediator will affect the process and also the results of the mediation carried out.

This will have an impact on the lack of motivation of the mediator judge to carry out his duties as a mediator. Because the main task of the judge is to examine, decide and resolve cases (Suherman, 2019), While the task as a mediator is seen as an additional duty where the mediator judge is required to help achieve peace between the litigants.

Over the past three years, there have been no fewer than 800 cases coming to the Bukittinggi Religious Court each year, and the addition of the duty of judges as mediators is a new burden for them. For Religious Courts with few cases, the additional duty as a mediator may not be a problem, but it is likely to be a problem for Courts with a high number of cases, coupled with the lack of mediators in the Religious Courts.

Then on the one hand, judges are always required to be able to produce quality decisions, but on the other hand judges also add their duties as mediators. This situation obviously adds to the workload of judges. The impact of this workload, has implications for the implementation of mediation which ends with mediation only seems to be a formality because of the limited time and energy possessed by the mediator judge.

It is stated in Article 13 paragraph (1) of PERMA No. 1 of 2016 that every mediator must have a mediator certificate obtained after attending and being declared passed in mediator certification training organized by the Supreme Court or institutions that have obtained accreditation from the Supreme Court.

In accordance with the sound of the Article above, that the mediator must obtain a mediator certificate first to be able to mediate cases that enter the Court, on the one hand, this requirement deserves to be appreciated, because with the holding of mediator certification, only qualified mediators can lead the course of mediation. But on the other hand, the cost of mediator certification which is quite expensive is an obstacle in meeting the limitations of mediators in the Bukittinggi Religious Court.

The number of mediators in the Bukittinggi Religious Court when this study was conducted was only six people, and all of them were judges, the absence of non-judge mediators in the Bukittinggi Agam Court has clearly become a serious problem, and one solution that mediators can use in the implementation of mediation is to involve other parties in the implementation of mediation actively.

Presenting other parties in the implementation of mediation is one form of effort to overcome the limited number of mediators of the Bukittinggi Religious Court, and will indirectly affect the performance of the mediator judge in the mediation process, in addition to reducing the burden of duties for judges, of course, it also provides greater opportunities in efforts to obtain peace for litigants.

CONCLUSION

The existence of other parties written in Article 26 of PERMA No. 1 of 2016 concerning Mediation Procedures in the Bukittinggi Religious Court is only a normative basis, because in practice, the involvement of other parties in the mediation process is not carried out. The absence of involvement and the absence of efforts made by the mediator at the Bukittinggi Religious Court clearly illustrates that the mediator has wasted an opportunity or opportunity that could have been taken advantage of. The existence of other parties that can be said to be a solution in an effort to prevent divorce in the Bukittinggi Religious Court should be put to good use and utilized optimally.

Then with limited time, energy and the number of mediators in the Bukittinggi Religious Court, and also added with a mediator who is also a judge, the mediators should take the initiative to make a breakthrough, such as involving other parties in the mediation process for a more effective implementation of mediation, and of course it will also help ease the increasing burden on judges due to the dualism of the function of judges in the Bukittinggi Class 1B Religious Court.

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B. Interview

Judge mediator of Bukittinggi Religious Referee Class
1B