

Legal Study of the Failure of Mediators in Resolving Disputes on the Division of Collective Property After Divorce (Study in Medan Religious Courts)

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ABSTRACT

In Article 1 of the Marriage Law, marriage reflects the spiritual and physical bond between a man and a woman with the aim of forming a happy and lasting family based on faith in the Almighty God. In legally valid marriages, the role of assets is crucial in building a household, both as individual and joint assets. Issues related to marital assets often arise, affecting the well-being and comfort within the marriage. Reasons for divorce include invalid marriages, domestic violence, neglect of responsibilities, and prolonged disputes. When both parties seek divorce, mediation is utilized as a means to resolve conflicts, guided by a mediator seeking resolution options. This study identifies factors contributing to the failure of mediation in resolving disputes over joint property. These factors include parties' knowledge, absence, cultural and character differences, reluctance to compromise, prolonged and complex conflicts, ill intentions, external influences, lack of understanding of rights and obligations, and materialistic tendencies. The success of mediation in the Medan Religious Courts depends on the mediator's ability, derived from knowledge, education, training, and experience, which serves as a tool to effectively assist parties in resolving their disputes.

Keyword: Joint Assets, Marriage, Mediator Failure

ABSTRAK

Dalam Pasal 1 Undang-Undang Perkawinan, pernikahan mencerminkan ikatan rohani dan jasmani antara seorang pria dan seorang wanita dengan tujuan membentuk keluarga bahagia dan langgeng berdasarkan iman kepada Tuhan Yang Maha Esa. Dalam perkawinan yang sah secara hukum, peran aset sangat penting dalam membangun rumah tangga, baik sebagai aset asli maupun bersama. Isu-isu terkait aset perkawinan sering muncul, yang memengaruhi kesejahteraan dan kenyamanan dalam pernikahan. Alasan untuk perceraian termasuk perkawinan yang tidak sah, kekerasan dalam rumah tangga, kelalaian dalam tanggung jawab, dan perselisihan yang berlarut-larut. Ketika kedua belah pihak ingin bercerai, mediasi digunakan sebagai cara untuk menyelesaikan konflik, yang dipandu oleh seorang mediator yang mencari opsi penyelesaian. Penelitian ini mengidentifikasi faktor-faktor yang menyebabkan kegagalan mediasi dalam menyelesaikan sengketa harta bersama. Faktor-faktor tersebut meliputi pengetahuan pihak, ketidakhadiran, perbedaan budaya dan karakter, enggan untuk mengalah, konflik yang berlarut-larut dan kompleks, niat buruk, pengaruh eksternal, kurangnya pemahaman tentang hak dan kewajiban, dan kecenderungan materialistik. Keberhasilan mediasi di Pengadilan Agama Medan tergantung pada kemampuan mediator berdasarkan pengetahuan, pendidikan, pelatihan, dan pengalaman, yang digunakan sebagai alat untuk membantu pihak-pihak menyelesaikan sengketa mereka dengan efektif.

Keyword: Harta Bersama, Pernikahan, Kegagalan Mediator



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1. Introduction

The definition of marriage, as specified in Article 1 of the Marriage Law, describes a union both spiritual and physical between a man and a woman, forming a husband and wife relationship with the aim of

establishing a joyful and enduring family based on faith in the Almighty God. According to these provisions, marriage encompasses five elements, including:¹ The spiritual and physical bond between a man and a woman in marriage forms the basis of a happy and lasting family, founded on belief in the Almighty God.

In legal marriages, assets are fundamental in establishing a household, whether they are owned individually or jointly acquired during the marriage. Issues regarding marital assets often arise, impacting the welfare and harmony of the marriage.²

The importance of financial resources in maintaining a marriage is unquestionable. A successful family, built on marriage, should provide spiritual enrichment, a healthy and godly income, and harmony among its members. The endeavor for a successful family is a duty that involves all members of the marital partnership.³

The assets owned by a married couple are categorized into two parts: inherited assets and joint assets. In marriage, both spouses have the right to share responsibilities for household expenses, and assets accumulated during the marital union are considered joint assets. Assets acquired before the legal marriage, such as those obtained through gifts, grants, wills, or inheritance, are also recognized. Inherited assets are possessions acquired individually by either spouse before the marriage, whether through inheritance or other means. Joint assets, on the other hand, are those obtained through the combined activities of the husband and wife during the legal marriage period, excluding gifts or inheritances.⁴

In cases where a husband and wife wish to pursue legal action regarding their assets, they must first obtain consent from each other. This implies that both spouses have the right to jointly utilize the assets, but only after obtaining permission from the other spouse and subject to certain terms and conditions. This rule applies throughout the marriage, and in the event of a divorce, inherited assets must be returned to the respective husband or wife. These regulations are outlined in Article 35 and Article 36 of Marriage Law Number 16 of 2019, in conjunction with Law Number 1 of 1974 concerning Marriage.

Divorce can be sought under various circumstances, including an invalid marriage, involvement in domestic violence, neglect of responsibilities by either party, or prolonged disputes and quarrels between the husband and wife. If both parties agree to divorce, mediation can be used to facilitate an agreement. A mediator helps in this process by exploring various dispute resolution options between the parties. Mediation is often seen to enhance the role of judges in reconciling parties involved in a dispute through a successful, simple, and cost-effective method.⁵ Currently, there are numerous approaches individuals can use to reach agreements during the dispute resolution process or resolve conflicts that arise between them. Society is increasingly prioritizing legal methods over old habits. As a result, communities are gradually embracing government-recognized dispute resolution methods that encompass a variety of approaches to address conflicts.⁶

2. Problem Statement

The study seeks to investigate the root causes of mediators' inefficacy in managing joint property disputes and assess the overall efficacy of mediation procedures administered by mediators at the Medan Religious Court. By addressing these inquiries, the research aims to offer insights into the hurdles encountered in the mediation process and the results attained in settling disputes pertaining to joint property. The study poses two key questions:

1. What is the contributing factor to the failure of mediators in effectively resolving disputes related to joint property?
2. Has mediation by mediators succeeded in resolving joint property disputes at the Medan Religious Court?

¹Soetojo Prawirohamidjojo, *Pluralism in Marriage Legislation in Indonesia*, (Airlangga University Press, 1988) p. 38

²Rosnidar Sembiring, *Assets in Marriage*, (Jakarta : Rajawali Pers, 2016), p.185

³ Ibid pp. 83- 86.

⁴Siti Dalilah Candrawati, *Islamic Marriage Law in Indonesia*, (UIN Sunan Ampel Press, 2014), pp. 72-74.

⁵ Syahrizal Akbar, *Mediation in Sharia Law, Customary Law and National Law*, (Jakarta: Prenada Media Group, 2011) p.2

⁶Pringgodigdo Girinro et al, *Arbitration in Indonesia*, (Jakarta : Ghalia Indonesia, 1995), p. 1

3. Method

The research employed a normative-empirical approach through descriptive analysis. Empirical normative legal research involves examining legal norms present in statutory regulations and court decisions, focusing on the unwritten positive legal aspects related to individuals' behavior in societal relationships.⁷ Normative legal research includes inventories, discovering legal principles, and understanding the philosophical basis of positive law. It also involves identifying laws suitable for specific legal cases.⁸ Therefore, empirical normative legal research delves into the application of normative legal provisions, such as codification, laws, or contracts, in response to specific legal events in society.⁹

Data collection methods included interview guidelines and literature/document studies. Interviews with a Mediator at the Medan District Court were conducted to gather relevant information. To draw conclusions addressing the research questions, a qualitative analysis was performed using inductive and deductive methods. The goal was to derive comprehensive insights into the role of mediators in resolving disputes over the division of joint assets after divorce, identify obstacles faced by mediators, and explore solutions employed by mediators in dispute resolution. This approach allowed for a thorough examination of the mediation process and its effectiveness in handling joint property disputes.

4. Result and Discussion

4.1 Factors Causing Mediation Failure in Resolving Joint Property Disputes

In resolving disputes, both non-litigation and litigation methods are commonly utilized. Litigation involves settling disputes through the courts, while non-litigation methods entail resolving disputes outside the court. Among these non-litigation methods, mediation has emerged as a significant approach. The regulations governing mediation are outlined in Supreme Court Regulation Number 1 of 2016, which details Mediation Procedures in Court, replacing Supreme Court Regulation Number 1 of 2008. Mediation is considered a prerequisite in dispute resolution. Failing to utilize mediation violates the provisions of Article 130 HIR and/or Article 154 RGB, rendering the decision null and void. As per Supreme Court Regulation Number 1 of 2016, mediation is defined as a process involving discussions to reach an agreement between parties, facilitated by a Mediator.¹⁰

The presence of the parties during the initial trial is essential, as it provides an opportunity for the Chief Judge to offer advice on achieving reconciliation between the parties. It is also possible for the Chief Judge to suggest mediation to both parties. In such cases, the Chairman of the Assembly will allow both parties to choose their mediator. Mediation can occur in private or in other agreed-upon settings if both parties prefer. While typically conducted in a mediation room, it can also take place outside the court if the mediator is not a judge or if parties request an external mediator. However, if the mediator is a judge at the trial location, mediation outside the court is not permitted.¹¹ In his presentation, Drs. H. Sholeh, SH, MH mentioned that a panel of judges can opt for mediation initially to assess if a case can proceed or be successfully mediated. In such instances, the judge will request and appoint a mediator to facilitate the case. Following the mediation process, whether it succeeds or fails, the judge will review the outcomes presented by the mediator.¹²

In the mediation process, the mediator plays a critical role by guiding and encouraging the parties involved to engage in collaborative discussions. This involves helping them select a dispute resolution process, steering away from blame and focusing on finding mutually agreeable solutions. The mediator's primary responsibility is to ensure the mediation process progresses smoothly, creating a stable atmosphere conducive to beneficial outcomes for both parties (a win-win solution). Adhering firmly to these principles is essential for the mediator to achieve positive results in mediating between the disputing parties. This includes allocating equal time for both parties to express their concerns, seeking to understand the daily experiences of the parties without taking sides, actively contributing to constructive discussions, and maintaining a neutral stance to

⁷Abdulkadir Muhamad, Law and Legal Research, Bandung: Citra Aditya Bakti, 2004, p. 155

⁸Ronny Hanitijo Soemitro, Legal Research Methodology, Jakarta: Ghalia Indonesia, 1994

⁹Abdulkadir Muhamad, Op. Cit., p. 134

¹⁰<https://www.djkn.kemenkeu.go.id/kpknl-manado/baca-article/13448/Penyelesaian-Sengketa-Non-Litigasi-Melalui-Proses-Mediasi.html>, accessed on October 10 2022 at 10.00 WIB.

¹¹Interview with Drs. H. Hasan Basri Harahap, SH., MH, at the Medan Religious Court, on November 8 2022

¹²Interview with Drs. H. Sholeh, SH, MH, at the Medan Religious Court, on December 20 2022

avoid any criticism that may arise during the process.¹³ The mediation dispute resolution process provides stages along the way, which broadly, the mediation process can be divided into four stages, namely: the registration stage, the mediator appointment stage, the mediation implementation stage, and the final mediation implementation stage.

a) Registration Stages

The initial stage is known as the pre-mediation registration phase. During this stage, the Plaintiffs/Petitioners have the option to register their lawsuit at the Court Registrar's Office. Following this, a detailed review of the files will be carried out to determine the fees and costs related to the mediation process. The Plaintiff/Petitioner can then proceed with the required payments. Upon completion, the case will be assigned a registration number, and the court clerk will forward a lawsuit letter to the Chairman of the Medan Religious Court, identifying the Panel of Judges responsible for handling the case.

b) Stages of Determining a Mediator

The first step is referred to as the pre-mediation registration phase. At this stage, Plaintiffs/Petitioners can choose to register their lawsuit at the Court Registrar's Office. Subsequently, a thorough examination of the files will be conducted to ascertain the fees and costs associated with the mediation process. The Plaintiff/Petitioner can then make the necessary payments. Once this is done, the case will be given a registration number, and the court clerk will send a lawsuit letter to the Chairman of the Medan Religious Court, specifying the Panel of Judges tasked with overseeing the case.

c) Stages of Implementing Mediation

The process of implementing mediation at the Medan Religious Court involves the mediator conducting mediation sessions based on a predetermined schedule. These sessions take place in a specially designated mediation room provided by the court and are held behind closed doors, excluding the public. Only the involved parties and the mediator are permitted to attend, unless the parties authorize the presence of family members or legal representatives. This practice is in accordance with Article 13, paragraph (3) of PERMA Number 1 of 2016 regarding Mediation in Court, as emphasized by Drs. H. Hasan Basri Harahap, SH., MH. During mediation, the mediator engages in dialogue with the disputing parties, clarifies their roles, and explains the mediation process. The mediator's main objective is to facilitate an amicable resolution. According to Drs. H. Soleh, SH., MH, if the disputing parties choose to reconcile, the case will be withdrawn, and they can proceed to draft a peace agreement. However, if the parties opt to remain separated, the legal separation process will be pursued.

d) Final Stages of Implementing Mediation

In the final stage of mediation, the mediator is required to submit a report on the outcomes of the mediation to the Chair of the Panel of Judges. The final results of the mediation process at the Medan Religious Court can take several possibilities, including:

a. Mediation was successful

A peace agreement between the two parties will be made by the panel of judges, a peace deed will be signed by both parties and then the case will be withdrawn.

b. Mediation was partially successful

If it turns out that a divorce agreement is still an option, however, they agree to peace regarding the legal consequences they will receive. Still agreeing to divorce and agreeing to divide joint assets peacefully will be considered finished.

c. Mediation is not feasible

Mediation is said to be inappropriate if both parties or one party is not willing to mediate then the peace agreement between the two is deemed to have failed.

d. Mediation failed

If it turns out that the mediation is declared a failure if the two parties cannot be reconciled, in other words they are determined to divorce.¹⁴

The mediation overseen by the mediator was unsuccessful, and no agreement was reached. The mediator is required to furnish a written statement detailing the failure of the mediation process and to

¹³Interview with Drs. H. Hasan Basri Harahap, SH., MH, at the Medan Religious Court, on November 8 2022

¹⁴Interview with Drs. H. Hasan Basri Harahap, SH., MH, at the Medan Religious Court, on November 8 2022

communicate this to the judge. Moreover, any statements or confessions made by the parties during the mediation process are not admissible as evidence in the trial.¹⁵

At the Medan Religious Court, the anticipated successes in the mediation process and stages have not been observed. Even though in every trial process, the judge always attempts to reconcile. Based on information obtained during interviews with several mediators working at the Medan Religious Court, factors influencing the failure and success of mediation include:¹⁶

- a) Knowledge Factor of the Parties
In this case, the parties know the importance of mediation and must go through this stage. There are also parties who feel forced to go through mediation, assuming that there is an obligation that every case that goes to court must go through the mediation process.
- b) Absence of one of the parties
It is very important for both parties to be present, but in the process often the parties are not willing to attend the mediation even though they have been properly summoned, which will result in the success of the mediation.
- c) Cultural differences and character differences
The nature and character of the parties are different, so often during mediation the mediator is not given the opportunity to convey important points because they have different opinions.
- d) There is a sense of shame in giving in
High prestige and ego also make it difficult for mediators to reconcile the two parties in a dispute.
- e) There has been a prolonged and very complicated conflict
Problems regarding joint property between the parties have been going on for a long time and are so complicated that the parties cannot control their emotions, so the advice given by the mediator cannot be accepted by both parties.
- f) There is bad faith on the part of the parties
This bad faith resulted in the mediation process not running properly.
- g) There is Influence from Third Parties
The mediator had succeeded in reconciling the joint property dispute between the two parties, and there had been an agreement so that it was agreed upon by the parties, it turned out that in the following time one of the parties canceled what had been agreed, this was because one of the parties received influence from a third person because he thought it would a sense of injustice on the part of one party.
- h) Do not understand their rights and obligations
In this case, the parties to the case do not understand the rights that arise for each of them in achieving equal justice in the eyes of the law and also do not understand their obligations in continuing to seek and strive for the pursuit of joint assets.
- i) Materialistic Nature of One of the Parties
Both parties to the lawsuit do not want to think about their children's share of the assets. Because he is materialistic and only thinks about his own benefits.

As per information provided by Drs. H. Hasan Basri Harahap, SH., MH, the mediator interviewed by the author regarding the mediator's role in conducting mediation at the Medan Religious Court, it is stated that the mediator's role in the mediation process conforms to the relevant regulations. It can be inferred that it complies with the existing regulations and is implemented based on Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Court. However, despite this alignment with regulations, the outcomes have not been optimal or successful. There are still significant challenges that need to be addressed and improved, making the process less effective.¹⁷

Despite the efforts made by the mediator at the Medan Religious Court, these efforts do not seem to significantly impact the success of mediation, particularly in cases involving joint property disputes. The main reason for this is that, during the mediation process, the mediator aims to reconcile the parties. However, the success of the mediation process ultimately depends on the intentions of the parties involved, especially the Defendant's willingness to seek reconciliation.

Engaging in a mediation process, especially in joint property disputes, offers significant benefits to the parties involved. Through mediation, a satisfactory agreement and solution can be reached, addressing the underlying issues that led to the dispute over joint property. Even in cases where mediation is unsuccessful,

¹⁵ <https://www.pa-tanjungkarakang.go.id/jasa-Hukum/persidangan/mediasi.html>, accessed 12 October 2022, at 13.00 WIB

¹⁶ Interview with Drs. H. Hasan Basri Harahap, SH., MH, at the Medan Religious Court, on November 8 2022

¹⁷ Interview with Drs. H. Hasan Basri Harahap, SH., MH, at the Medan Religious Court, on November 8 2022

both parties can coexist peacefully without harboring feelings of anger or revenge. This implies mutual benefits, with no clear distinction between winners and losers, as all parties must accept the agreement reached through mediation.

In the absence of a marriage agreement between spouses, Article 119 of the Civil Code states that, from the time of marriage, the property of one spouse becomes the property of the other, constituting joint property. In the event of a divorce, joint assets must be divided equally between the spouses, including all profits and losses incurred from joint endeavors during the marriage.

There are differences in regulations before and after the enactment of the Marriage Law regarding property in marriage. Article 35 paragraphs (1) and (2) of the Marriage Law specify that joint property includes assets acquired during the marriage. However, assets acquired before the marriage are considered inherited property for each spouse. Inherited assets and those obtained as gifts or inheritance remain under the respective control of each spouse unless otherwise agreed upon.¹⁸

Mr. Drs. H. Hasan Basri Harahap, SH., MH, highlighted several obstacles faced during the mediation process, including:

- a) Lack of Mechanism to Compel Attendance: One significant challenge is the absence of a mechanism that can compel parties to attend a mediation meeting. In court trials, parties are obligated to be present, and failure to appear can result in a *verstek* decision, disadvantaging the absentee. However, Supreme Court Regulation No. 1 of 2016 lacks explicit regulations compelling parties to attend the mediation process, leading to the absence of legal consequences for non-compliance.
- b) No Legal Consequences for Non-attendance: The regulation also fails to outline legal consequences for parties who do not attend the scheduled mediation process. Unlike court proceedings where non-attendance can lead to legal actions, the mediation process lacks a similar enforcement mechanism. Consequently, the law's application is only triggered when mediation is not carried out, potentially reducing mediation to a mere formality.¹⁹

Feelings of anger, pride, and a reluctance to communicate hinder parties from participating in the mediation process. The desire for a definitive win or lose outcome, along with the expectation of a decisive verdict, also deters parties from embracing mediation. If mediation fails, parties resort to litigation, seeking a clear win-lose resolution.

Another obstacle, as highlighted by Drs. H. Sholeh, SH, MH, is the defendant's resistance to divorce, sometimes intentionally avoiding participation (playing hard to get). Moreover, mediators often face prolonged discussions, especially regarding joint assets, leading to bargaining over shared property. Parties may request additional time for negotiations, but if an agreement cannot be reached, the mediation is deemed unsuccessful.²⁰

Based on the above description, it can be concluded that the reasons for the failure of mediation in resolving joint property disputes at the Medan Religious Court originate from two main sources: the litigants and the mediator. Factors leading to mediation failure from the litigants' side include lack of knowledge, one party's absence, cultural and character differences, reluctance to compromise due to shame, prolonged and complex conflicts, ill intentions, external influences, lack of understanding of rights and obligations, and materialistic tendencies. On the other hand, the factor contributing to mediation failure from the mediator's perspective is the mediator's inability to apply the skills acquired through training, which are expected of every mediator.

4.2 Success of Mediation in Resolving Joint Property Disputes in Medan Religious Courts

The success of joint property mediation at the Medan Religious Court is contingent upon various supporting factors that facilitate the desired mediation process and yield a mutually beneficial agreement for both parties.²¹

- a) Mediator Skills

¹⁸Article 35 paragraphs (1) and (2) Marriage Law no. 16 of 2019 in conjunction with Law no. 1 of 1974

¹⁹Interview with Drs. H. Hasan Basri Harahap, SH., MH, at the Medan Religious Court, on November 8 2022

²⁰Interview with Drs. H. Sholeh, SH, MH, at the Medan Religious Court, on December 20 2022

²¹Interview with Drs. H. Hasan Basri Harahap, SH., MH, at the Medan Religious Court, on November 8 2022

Mediators have their own skills in the mediation stages, for example the mediator first takes a psychological and religious approach.

b) Presence of the Parties

It can be seen from the presence of the litigants in participating in the mediation stage from first to completion, which is a form of good faith shown by the parties.

c) Effective Use of Available Time

One of the successes of mediation is if a mediator can make effective use of the available time, for example, don't just carry out mediation in one go, but must maximize it until an agreement is actually reached.

d) There is Sincerity on Both Parties

The term "sincerity" in this context refers to the willingness of both parties during mediation to refrain from contentious disputes over their property, opting instead to allocate assets for the benefit of their children's future. In this case, the mediator's role is to draft an agreement deed between the two parties.

In his capacity as a mediator. The role of the mediator can be enhanced if the mediator has the ability. This ability can be generated through knowledge, education, training and various experiences in solving problems according to the needs of the parties whose scientific background can be used as a tool to help the parties to resolve their problems.²²

While mediators possess these abilities, it cannot be assumed that all mediators consistently apply the skills acquired through education and training during the mediation process. Each mediator has a unique personality that influences their approach to mediation. The skills acquired from education need constant practical application to refine them. Mediators must consistently delve into the root of a problem, develop effective cooperative strategies, and plan solutions to address the underlying issues for the disputing parties. This approach is crucial for successful mediation and requires competent mediators who can facilitate resolution between the parties. Several issues, such as those mentioned above, contribute to the failure of mediators in resolving disputes in the Medan Religious Courts.

As per PERMA No. 1 of 2016 Article 6, parties are required to attend mediation sessions in person or be accompanied by legal representatives. The presence of the parties is crucial for the effectiveness of mediation. Furthermore, Article 7 states that parties must participate in mediation with sincerity. Paragraph 2 specifies that parties are not acting in good faith if they fail to attend after being properly summoned twice without a valid reason or if they attend the initial meeting but are absent from subsequent meetings.²³ In essence, if the mediation carried out by the mediator is successful and reaches an agreement:

- a) Mediation can create a middle way in achieving peace between the two parties involved in the case. The mediator provides assistance in designing the form of an agreement which is reached in writing and is signed by the mediator and the parties involved in the case.
- b) State in writing the agreement regarding the agreement during the mediation process between the parties to the case who can be represented by their legal representatives.
- c) In examining the contents of the peace agreement, the mediator can avoid forms of agreement that are contrary to the law or cannot be enforced and contain bad intentions, before the parties to the case sign a memorandum of agreement.
- d) The parties to the dispute are required to appear again to meet the judge at the time of the hearing which has been determined and be informed about the peace agreement.
- e) Parties in dispute can express a peace agreement to the judge so that a deed of peace will be given between the two parties.
- f) It turns out that in this case the two parties do not want to make peace, so both parties must enter an agreement to withdraw the lawsuit or declare the case has been resolved.
- g) The mediator is obliged to report in writing the success of the Mediation to the Supervising Judge.²⁴

If the mediation proves successful and the case presented involves only a divorce, the decision will not solely acknowledge the divorce but must also include a peace deed. However, if the Petitioner/Plaintiff

²²Interview with Drs. H. Hasan Basri Harahap, SH., MH, at the Medan Religious Court, on November 8 2022

²³See Articles 6 and 7 PERMA No.1 of 2016.

²⁴<https://www.djkn.kemenkeu.go.id/kpknl-manado/baca-article/13448/Penyelesaian-Sengketa-Non-Litigasi-Melalui-Proses-Mediasi.html> accessed 5 November 2022, at 21.11 WIB

withdraws the case, the final decision will declare the case closed due to withdrawal. The examination process conducted by the panel of judges for mediation follows a specific format:

- a) In a trial assisted by a mediator, the judge is obliged to tell the parties to carry out mediation.
- b) The judge offers the parties to choose a mediator from the list of mediators provided.
- c) The trial is postponed for a specified time, if it turns out that the parties to the case agree on the name of the mediator.
- d) In mediation where the process is continued, the trial can be continued by taking into account the results of the mediation.

Regarding the selection and appointment of mediator judges, this process is carried out based on the decision of the Chairman of the Panel of Judges. The litigating parties may interact with the mediator judge through designated official representatives. The mediation process, as directed by the mediator judge, has a maximum duration of 40 working days. The initial agreement between the parties involved can be extended for up to 14 working days. If the mediation process reaches an impasse and fails to produce an agreement, the mediator judge can formally inform the panel of judges overseeing the case in writing. Following this, the litigants are allowed to meet face-to-face with the judge at the scheduled trial time, followed by the standard trial procedure. If an agreement is reached through mediation, the parties are required to appear before the judge on the specified hearing day and present the signed agreement. Based on the agreement's results, the parties can:

- a) Request that the results of the agreement be stated in a peace decision (*dading deed*).
- b) Withdraw the lawsuit according to the clause that must be included in the agreement, if the results of the agreement are not to be stated in the decision.

In divorce cases, if an agreement is reached, the plaintiff or petitioner is obligated to withdraw their lawsuit or petition. However, if a peace agreement is only partially reached, addressing matters other than divorce (cumulation with other cases), the results of the agreement can be requested to be included in the decision or revoked (e.g., either in a convention and/or in a reconvention).²⁵ The judge is authorized to approve a peace deed agreed upon by the parties during mediation. A peace deed is drafted when mediation results in an agreement between the parties, and this written document is then sanctioned by the judge.

In the context of the rule of law theory discussed earlier, it is essential to recognize that a peace deed is established when mediation leads to an agreement between the parties. This peace deed is recorded in writing and validated by the judge, rendering it legally binding for both parties involved in the case.

According to Mr. Drs. H. Hasan Basri Harahap, SH., MH, the objective of divorce mediation is to facilitate the reunification of the two parties (husband and wife) and encourage them to handle the divorce amicably if it becomes necessary. In cases where reconciliation is not feasible during the divorce process, mediation can still address the legal aspects of the divorce. This includes agreements on child custody, spousal and child support, and the division of joint property, all of which become enforceable once formalized agreements are reached.²⁶

Parties involved in mediation can experience the advantages of resolving disputes, particularly when they successfully reach a desired agreement. Even in cases where mediation fails to produce a resolution, the process can still clarify issues and reduce the scope of disputes. This allows parties to determine the type of settlement they are willing to accept, rather than pursuing uncertain alternatives.²⁷

In the most recent data as of Monday, November 28, 2022, in the Medan Religious Courtroom, Voluntary Mediator Dra. Hj. Rukiah Sari, SH, successfully facilitated mediation in a contested divorce case with case registration number 2791/Pdt.G/2022/PA.Mdn. Throughout the mediation process, the mediator diligently worked and provided guidance, persuading the parties to reach an amicable resolution, resulting in a mutually agreed-upon peace settlement. Case number 2791/Pdt.G/2022/PA.Mdn falls under the jurisdiction of a judicial panel led by Chief Judge Dra. Hj. Rukiah Sari, SH, alongside Member Judges Dra. Hj. Rinalis, MH, and Dra. Nuraini, MA, with Substitute Registrar Roslilawati Siregar, SH, as indicated by information

²⁵Interview with Drs. H. Sholeh, SH, MH, at the Medan Religious Court, on December 20 2022

²⁶Interview with Drs. H. Hasan Basri Harahap, SH., MH, at the Medan Religious Court, on November 8 2022

²⁷Supardi & Zahrotul Hanifiyah, causes of mediation failure in the divorce process (case study of the holy religious court for the January-April 2017 period), Vol 8. No 1, June 2017 accessed on 11 October 2022 at 9.50 WIB.

from the Case Tracking Information System (SIPP) application of the Medan Religious Court. It is hoped that more cases will be successfully mediated by mediators in the future, particularly at the Medan Religious Court.

5. Conclusion

The research findings reveal several key conclusions regarding joint property dispute mediation at the Medan Religious Court from 2017 to 2021. Firstly, the failure rate of mediation is notably high during this period, indicating a substantial gap between expectations and actual success rates. Various factors contribute to this failure, encompassing the parties' lack of knowledge, the absence of one party, cultural and character differences, reluctance to compromise due to shame, prolonged conflicts, bad faith, influence from third parties, lack of understanding of rights and obligations, and the materialistic nature of one party. In cases where mediation does not lead to an agreement, the mediator is obligated to document the failure in writing and inform the judge, and the statements and confessions made during the process cannot be used as evidence in the trial. On the other hand, successful joint property mediation at the Medan Religious Court is attributed to several supporting factors. These factors include the full awareness of the parties to act in good faith, the mediator's skills, the active presence of both parties, effective utilization of available time, and a sincere commitment from both sides. Additionally, the mediator's efforts should extend to involving the families of the Plaintiff and the Defendant, perceived as capable of facilitating reconciliation. The success of peace efforts is gauged by the mediator based on the parties' attitudes toward mutual forgiveness, avoiding conflict and demands to ensure the resolution of disputes between the two parties.

References

130 HIR/ 154 RBG

Abdulkadir Muhamad, Law and Legal Research, Bandung: Citra Aditya Bakti, 2004

Center for Language Guidance and Development, Department of Education and Culture, Big Indonesian Dictionary, second edition, Jakarta: library hall, 1995

Compilation of Islamic Law

<https://www.djkn.kemenkeu.go.id/kpknl-manado/baca-article/13448/PenyelesaianSengketa-Non-Litigation-Through-Mediation-Process.html>, accessed on October 10 2022 at 10.00 WIB.

<https://www.djkn.kemenkeu.go.id/kpknl-manado/baca-article/13448/Penyelesaian-Sengketa-Non-Litigasi-Melalui-Proses-Mediasi.html> accessed 5 November 2022, at 21.11 WIB

<https://www.pa-tanjungkarang.go.id/jauh-law/persidangan/mediasi.html>, diakses 12 October 2022, 13.00 WIB

Interview Results with Drs. H. Hasan Basri Harahap, SH., MH, at the Medan Religious Court, Tuesday. 08 November 2022

Interview Results with Drs. H. Sholeh, SH, MH, at the Medan Religious Court, on December 20 2022

Laurence Boulle, Mediation: Principles, Process, Practice, Australia: Lexis Nexis Butterworths, 2005

Marriage Law 1974

Marriage Law no. 16 of 2019 in conjunction with Law no. 1 of 1974

Muhammad Saifullah, Judicial Mediation, Semarang: CV Karya Abadi Jaya, 2015

Muhammad Saifullah, Mediation in Review of Islamic Law and Positive Law in Indonesia, Semarang: Walisongo Press, 2009

Pringgodigdo Girinro et al, Arbitration in Indonesia, Jakarta : Ghalia Indonesia, 1995

R. Soetjo Prawirohamidjojo, Pluralism in Marriage Legislation in Indonesia, Airlangga University Press, 1988

Ronny Hanitijo Soemitro – Legal Research Methodology, Jakarta Ghalia Indonesia 1994

Rosnidar Sembiring, Assets in Marriage, Jakarta : Rajawali Press, 2016

Siti Dalilah Candrawati, Islamic Marriage Law in Indonesia, UIN Sunan Ampel Press, 2014

Supardi & Zahrotul Hanifiyah, causes of mediation failure in the divorce process (case study of the holy religious court for the January-April 2017 period), Vol 8. No 1, June 2017 accessed on 11 October 2022 at 9.50 WIB.

Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Court.

Susanti Adi Nugroho, Mediation as an Alternative Dispute Resolution. Jakarta: Telaga Ilmu, 2009

Syahrizal Akbar, Mediation in Sharia Law, Customary Law and National Law, Jakarta : Prenada Media Group, 2011

Takbir Rahmadi, Dispute Resolution Mediation Through a Consensus Approach, (Jakarta: Raja Grafindo Persada, 2010

Wirjono Prodjodikoro, Civil Law of Certain Agreements