



THE ROLE OF NON JUDGE MEDIATORS PROVIDING GUARANTEE OF WOMEN'S RIGHTS PROTECTION IN DIVORCE CASES

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Abstract

The mediation process encountered obstacles. The role of non-judge mediators to protect women's rights in divorce cases was needed in the mediation process. This study aims to determine the role of non-judge mediators in providing guarantees for the protection of women's rights in divorce cases at the Samarinda Religious Court and to find out the obstacles to guaranteeing the protection of women's rights that occur in the mediation process in divorce cases at the Religious Courts. This type of research is normative empirical using descriptive qualitative research methods with data collection techniques in the form of observation, interviews, documentation, supported by legislation and legal norms in society. Research Qualitative data analysis techniques, in the process of analysis with data reduction (selection process). The results obtained from this study are that the role of non-judge mediators at the Samarinda Religious Court has provided protection for post-divorce women's rights in cases of talak and divorced divorces with the same rights. Obstacles in the mediation process to protect women's rights after divorce, namely the purpose of the Religious Courts is only to formalize Divorce in state law, the absence of good faith from one party can be caused by not wanting to divorce or not wanting to meet again with other parties, the inability of the parties economically to fulfill women's rights after divorce.

Keywords: Non-judge mediators, women's rights, divorce, mediation barriers

Abstrak

Proses mediasi menemui kendala, Peranan mediator non hakim untuk menjaga hak perempuan pada kasus perceraian dalam proses mediasi diperlukan. Penelitian ini bertujuan untuk mengetahui peran mediator non hakim dalam memberikan jaminan perlindungan hak perempuan pada kasus perceraian di Pengadilan Agama Samarinda dan untuk mengetahui kendala memberikan jaminan perlindungan hak perempuan yang terjadi dalam proses mediasi pada kasus perceraian di Pengadilan Agama. Jenis penelitian ini normatif empiris menggunakan metode penelitian kualitatif deskriptif dengan teknik pengumpulan data berupa observasi, wawancara, dokumentasi, didukung peraturan perundangan dan norma hukum dalam masyarakat. Penelitian Teknik analisis data kualitatif, dalam proses analisa dengan reduksi data (proses pemilihan). Hasil yang didapat dari penelitian ini adalah bahwa peran mediator non hakim di Pengadilan Agama Samarinda sudah memberikan perlindungan pada hak perempuan pasca perceraian dalam kasus cerai talak dan cerai gugat dengan hak yang sama. Kendala dalam proses mediasi untuk menjaga hak perempuan pasca perceraian yaitu tujuan para pihak kepengadilan Agama hanyalah meresmikan Perceraian dalam hukum negara, tidak adanya itikad baik dari salah satu pihak dapat disebabkan karena tidak ingin bercerai ataupun tidak ingin bertemu lagi dengan pihak lainnya, ketidakmampuan pihak secara ekonomi untuk memenuhi hak perempuan pasca perceraian.

Kata kunci: Mediator non hakim, hak perempuan, perceraian, kendala mediasi

INTRODUCTION

Marriage is also a way chosen by God as a way for humans to have children and maintain their lives, after each partner is ready to play an active role in fulfilling the purpose of

marriage.¹ Marriage in Islam is intended to fulfill one's inner needs in a lawful manner and to carry out their offspring in an atmosphere of mutual love (mawaddah) and affection (rahmah) between husband and wife.²

Article 38 of Law Number 1 of 1974 concerning Marriage stipulates that in the course of the marriage it may end, caused by death, divorce, or by a court decision. Divorce can only be carried out in court, either because the husband who has dropped the divorce (talak) or the wife who has sued for customary divorce is asking for divorce rights because *sighat taklik talak*.³

The compilation of Islamic law explains in articles 105 and 149 that the termination of a marriage is due to divorce, so the husband provides *mut'ah*, a living during the *iddah*, *Madhiyah*, *Hadhanah*, *hadhanah* costs for children who are not yet 21 years old, and takes care of children who have not been *mumayyiz*. After the issuance of the Supreme Court's circular letter number 1960/DjA/HK.00/6/2021 concerning the guarantee of the fulfillment of the rights of women and children after divorce on June 18, 2021, in cases of divorce, a lawsuit can also include in the lawsuit the rights of women as listed in KHI article 105 and article 149.⁴

The issuance of PERMA Number 2 of 2003 which was later revised in PERMA Number 1 of 2008 concerning Court Mediation Procedures is a new history for Indonesian civil procedural law that the Supreme Court, which based its thinking on Article 130 HIR / 154 Rbg, made rules in the first trial, namely the parties to the dispute. required to go through the mediation process first.⁵

Mediation is the process of resolving disputes between two or more parties through negotiation or consensus with the assistance of a neutral party who does not have the authority to decide.⁶ application of mediation in court is the implementation of "PERMA No. 1 of 2008 is a revision of PERMA No. 2 of 2003. Then PERMA No. 1 of 2008 is also revised by PERMA Number 1 of 2016 concerning Mediation Procedures in Courts."

Observations of research conducted at the Samarinda Religious Court, Divorce cases whose mediation was led by Akhmad Haries as a non-judge mediator,⁷ although the divorce continues but all rights After the divorce, the parties succeeded in agreeing and the parties decided that the case was sentenced to follow the results of the mediation.⁸

¹Mohammad Thalib. (Trans) Sayyid Sabiq, *Fikih Sunnah*, (Bandung: PT.Alma'arif, 1980), 8.

²Syarifuddin, *Kamus Al Misbah* (Jakarta: Bina Aksara, 2010.), 573.

³UU No 1 Tahun 1974, Pasal 38.

⁴See the circular letter of the Supreme Court number 1960/DjA/HK.00/6/2021 concerning guarantees for the fulfillment of the rights of women and children after divorce on 18 June 2021 and KHI articles 149 and 105.

⁵Dwi Rezki Sri Astarini, *Mediasi Pengadilan Salah Satu Bentuk Penyelesaian Sengketa Berdasarkan Asas Peradilan Cepat, Sederhana, Biaya Ringan*, (Bandung: P.T.Alumni, 2013), 141.

⁶Takdir Rahmadi, *Mediasi Penyelesaian Sengketa Melalui Pendekatan Mufakat*, (Jakarta: PT. Raja grafindo Persada, 2010), 12.

⁷See case Number 993/Pdt.G/2021/PA.Smd.

⁸See Article 130 Paragraph (2) of the HIR which states that, "If such a peace can be reached, then a

The author wants to know the role of non-judge mediators in providing guarantees for the protection of women's rights after divorce in cases of divorce, talak and litigation, so that the fulfillment of these rights can be completed through mediation, as well as the extent of the obstacles in the mediation process in providing guarantees for the protection of women's rights after divorce. divorce.

RESEARCH METHODS

This type of research is empirical normative with a qualitative descriptive approach,⁹This field research was conducted at the Samarinda Religious Court, East Kalimantan Province. Data collection techniques The research used the method of observation, interviews, or document review. Furthermore, the analysis technique in this study uses data including reduction, presentation, and conclusion.

RESULTS AND DISCUSSION

1. Women's Rights in Divorce

The wife's rights due to divorce, including hadhanah, iddah, mut'ah and madhiyah expenses in divorce divorce are regulated in KHI articles 105 and 149 which can then be included in the divorce lawsuit according to the SEMA of the Supreme Court Number 1960/DjA/HK.00/6 /2021 on guarantees for the fulfillment of the rights of women and children after divorce.

In Islam, child rearing is called hadhanah. Etymologically hadhanah means "beside" or "under the armpit" while in terms of hadhanah means caring for and educating someone who has not been mumayyiz or who has lost his intelligence because he cannot choose his own needs.¹⁰Al Shan'ani said that hadhanah is nurturing a (child) who cannot be independent, educating and caring for him to avoid something that is destructive and brings bad luck to him.¹¹In terms of fiqh, two words are used to indicate the same intention, namely kafalah and hadhanah which means maintenance or care. In a more complete sense, it is the maintenance of a young child after a divorce while the child still needs help from his father and mother.¹² Meanwhile, the Marriage Law Number 1 of 1974 does not definitively mention the hadhanah itself but only mentions the obligation of parents to take care of their children which is stated in Article 45 of Law Number 1

deed is drawn up in the trial in which both parties are punished for complying with the contents of the agreement that has been reached, which deed has the same power and is executed with the same way as an ordinary judgment".

⁹ Lexy J. Moleong, *Metodologi Penelitian Kualitatif*, (Bandung: PT Remaja Rosdakarya, 2017), Cet. ke 36, 11.

¹⁰Aminur Nuruddin dan Azhari Akmal Tarigan, *Hukum Perdata Islam di Indonesia*, (Jakarta : kencana, 2006), Cet ke 3, 292.

¹¹Ahmad Rofiq, *Hukum Perdata Islam di Indonesia*, (Jakarta : Rajawali Pers, 2015), 197.

¹²Amir Syarifuddin, *Hukum Perkawinan Islam di Indonesia*, Jakarta: Kencana, 2006, 327.

of 1974, namely "both parents are obliged to maintain and educate their children". -their children are the best¹³Fiqh scholars define hadhanah by taking care of children who are still small, both male and female or who are older but not yet mumayyiz, provide something that makes them good, guard against something that hurts and damages them, educate physically and spiritually and accompany them until they are able to do so. stand alone face life and have responsibilities.¹⁴Hadhanah referred to in this discussion is the obligation of parents to maintain and educate them as well as possible. This maintenance includes maintenance in economic matters, education and all the basic needs of the child.¹⁵Child care also implies a parent's responsibility to supervise, provide proper service, and fulfill the needs of a child's life by his parents. The responsibility for maintenance in the form of supervision and service as well as the provision of a living for the child is continuous until the child reaches the legal age limit to be said to be an adult who is able to stand on his own.¹⁶While what is meant by education in this case is the obligation of parents to provide education and teaching that allows the child to become a human being who has the ability and dedication to life equipped with abilities and skills in accordance with the innate talent of the child which will be developed in the midst of society after he disobeyed his parents.¹⁷Child care is basically the burden and responsibility of the parents, whether the parents are still living in harmony or when the marriage fails due to divorce, because even though a divorce has occurred, they are still obliged to maintain and educate their children solely for the benefit of the child himself. although in practice it is carried out by one of them, it does not mean that the other party is free from responsibility for the care of the child.

Mut'ah's kind of a keepsake for the wife. When they want to get married, the husband gives a dowry to his wife, and when he wants to divorce the husband gives what is called *mut'ah*. *Mut'ah* is property given to a wife who is divorced by her husband as entertainment. *Mut'ah* can also be interpreted as property given by a husband to his divorced wife which exceeds the dowry or in exchange for the dowry as in the condition of the *mifawwidah* woman to comfort the woman's heart and to compensate for the pain caused by separation. The granting of *mut'ah* is in accordance with the agreement between the two divorced parties and also based on the judge's consideration in accordance with the husband's ability and husband's income to provide the *mut'ah*. The process of implementing the granting of *mut'ah* is done by cash,¹⁸Article 149 of the Compilation of Islamic Law letter a states that if the marriage breaks up due to divorce, then the

¹³Law Number 1 of 1974 Article 45.

¹⁴Slamet Abidin dan Aminuddin, *Fiqih Munakahat*, (Bandung : CV. Pustaka Setia, 1999), 171.

¹⁵Ahmad Rofiq, *Hukum Perdata Islam di Indonesia*, (Jakarta: Rajawali Pers, 2015), 235.

¹⁶M Yahya Harahap, *Hukum Perkawinan Nasional*, (Medan: Zahir Trading, 1975), 204.

¹⁷M Yahya Harahap, *Hukum Perkawinan Nasional*, ..., 205.

¹⁸Fatimah, Rabiatul Adwiyah, M rifqi, "*Pemenuhan Hak Istri Dan Anak Akibat Putusnya Perkawinan Karena Perceraian*" Jurnal Pendidikan Kewarganegaraan, Vol 4, No. 7, (Mei 2014), 561.

ex-husband is obliged to give his ex-wife a proper mut'ah, either in the form of money or goods, unless the ex-wife is qobla al dukhul. Regarding the size of the mut'ah itself has been regulated in the Compilation of Islamic Law (KHI) Article 160 which reads: "The amount of mut'ah is adjusted to the propriety and ability of the husband".

Various kinds of iddah wife divided into four. First, iddah due to talak raj'i (divorce but the husband is still allowed to return to the lap of the wife). Second, iddah due to talak ba'in (divorce done three times by the husband or through talak khulu' (ie divorce lawsuit made by the wife by returning a dowry or the like). Third, iddah during pregnancy. Fourth, iddah due to death by her husband. Iddah livelihood is the provision of a living from the ex-husband to his ex-wife for a certain time (during the iddah/waiting period) after the ex-husband has pronounced divorce. Iddah income is generally in the form of money, generally the amount of the cost of living is adjusted by agreement or based on the ability of the ex-husband.¹⁹Based on the 152 Compilation of Islamic Law it is stated that "The ex-wife has the right to receive iddah from her ex-husband unless she is nusyuz". The fuqaha agreed that women who were divorced by raj'i were entitled to a living and a place to live.²⁰

According to Syafi'iyah's opinion, Madhiyah (past livelihood) is the husband's main obligation after they have completed sexual intercourse. If it is not paid on time, then the income becomes the husband's debt to his wife. The money does not die with the passage of time because its position is as a substitute for a contract and a sexual relationship. The livelihood is the right of his wife. Past livelihood as debt is the same as the purchase price of an object that has not been paid, wages that have not been paid and the dowry that is still promised by the husband to his wife.²¹

2. Right Women in Khuluk Cases or Divorced Lawsuits

The Religious Courts have received many cases related to women and children. Cases that are specifically directly related to this include divorce, divorce, lawsuits for wife's livelihood (past and iddah), child support, mut'ah, and child custody. Based on data from the Directorate General of the Agency for Divorce Applications submitted by a woman to the Religious Courts, most of them are decided with the decision of talak ba'in sughra with the consequence of talak which cannot be referred but a new marriage contract with his ex-wife is allowed even though it is

¹⁹Zainuddin, "*Kajian Yuridis Terhadap Hak Dan Kewajiban Suami PNS Yang Mentalak Istri*", Journal Ilmiah Rinjani_Universitas Gunung Rinjani, Vol. 5 No. 1, (2017), 92.

²⁰Sayyid Sabiq, Penerjemah Nur Hasanuddin, *Fiqh Sunnah*, (Jakarta: PT Pena Pundi Aksara, 2006), 133.

²¹Salma, dkk, "*Perlindungan Hukum Bagi Perempuan dan Anak (Analisis Putusan Hakim tentang Nafkah Madhiyah pada Pengadilan Agama di Sumatera Barat)*", Jurnal Istimbath, Vol. 16, No. 1, (Juni 2017), 189.

during the Iddah period.²² According to the Compilation of Islamic Law (KHI),²³ Ba'in sughra divorce is a divorce that should not be referred to, but a new marriage contract with her ex-husband is allowed even though it is in the Iddah. Ba'in sughra divorce categories, namely:

- a. The divorce that occurred qobla al-dukhl;
- b. divorce with ransom or khuluk; and
- c. Divorce handed down by the Religious Court.

On generally there are several rights of divorced or divorced women in Court Religion is in the form of Mut'ah living rights, good living rights during the waiting period (Iddah). his livelihood, housing and clothing, madhiyah living (past income) owed, the right to maintain children (Hadhanah) for children who have not been mumayyiz.

Casedivorce filed by the divorced wife with the decision of Ba'in's divorce,²⁴ opinion on enforcement whether or not the wife's rights are, among others:

In this is not clearly discussed, but in the opinion of Hanafi, Maliki and Hanbali that the wife who has intercourse is sunnah to be given mut'ah based on her ability, this is based on the Hadith of Ali bin Abi Talib, Al Hasan, Said bin Zubair and friends.²⁵ In the Compilation of Islamic Law, it is explained that mut'ah is given only for divorce filed by the husband as a consequence of divorcing his wife, and based on Article 149 letter (b) KHI states that if a marriage breaks up due to divorce, then the ex-husband is obliged to provide a living, food and kiswah to the ex-wife during the Iddah, unless the ex-wife has been sentenced to divorce ba'in or nusyuz and is not pregnant.. Thus, if it is understood that the divorce filed by the wife is based on the decision of talak Ba'in shugra, then if it is qiyased by not being able to earn a living, food and kiswah during the Iddah time, the woman who sues for divorce from her husband does not get mut'ah from her ex-husband.

In law Marriage in Indonesia, it is generally regulated and understood that the matter of living after a divorce between husband and wife has been regulated in Article 41 Letter c of Law no. 1 of 1974 concerning marriage states that the Court may oblige the ex-husband to provide living expenses and/or determine an obligation for the ex-wife.

Reviewing the maqashid al-Shari'ah perspective, in Indonesia today an ex-wife during the Iddah period must be given living because without a living, the ex-wife both in the Iddah raj'i

²²HS Al-Hamdani, *Risalah Nikah Hukum Perkawinan Islam*, (Jakarta: Pustaka Amani 1989), 238.

²³Kompilasi Hukum Islam Pasal 119 Ayat (1) dan Ayat (2)

²⁴Talak ba'in is "a divorce that is completely broken in the sense of not allowing the husband to return to his wife except with a new marriage." Amir Syarifuddin, *Islamic Marriage Law in Indonesia: Between Fiqh Munakahat and Marriage Law* (Jakarta: Kencana, 2006), 220.

²⁵AlMughni The essay of Ibn Qudamah juz 6 p. 714 and see the commentary of Ibn Kathir juz 1, 128.

divorce and the Ba'in sughra divorce (the divorce handed down by the Court) will be in a dangerous condition due to the absence of a living. Associated with dharuriyat al-khamsah (five main maslahah), the maslahah in the protection of the ex-wife is hifzh al-nafs (maintaining the soul). The soul is one of the dharuriyat al-Khamsah that must be maintained. The obligation to maintain the soul has begun since in the womb in the form of maintaining the results of fertilization of sperm and ovum even before fertilization with the shari'ah of marriage and the prohibition of adultery. This life protection continues with the obligation of parents to take care of the child from birth to independence for men or until marriage for women. For a woman,

In the Circular Letter of the Supreme Court (SEMA) No. 03 of 2018 point 3 Plenary results of the Religious Chambers, namely regarding the obligations of husbands due to divorce to wives who are not nusyuz, accommodates Perma No. 3 of 2017 concerning guidelines for adjudicating cases of women dealing with the law, then wives in divorce cases can be given mut'ah and Iddah maintenance , as long as it is not proven nusyuz".²⁶

3. Casewith the Agreement of the Parties in Mediation at the Samarinda Religious Court

According toMotherKamsiahstatethat in the Samarinda Religious Court, so far there are 9 non-judge mediators at the Samarinda Religious Court. Based on the Decision of the Head of the Samarinda Religious Court, here are some lists of Non-Judge Mediators recorded at the Samarinda Religious Court, namely:²⁷

1. Akhmad Haries
2. Alfitri
3. Lilik Andaryuni
4. H. Murjani
5. H. Moh. Mahrus
6. Materan
7. Hervina
8. Kamsiah
9. Khoirudin

The following is a sample datawhichThe author chooses from the results of the 2021

²⁶ SEMANo. 03 of 2018 concerning the Implementation of the Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber of 2018 as Guidelines for the Implementation of Duties for the Court, 14 and see SEMA Number 1960/DjA/HK.00/6/2021 concerning guarantees for the fulfillment of the rights of women and children after divorce.

²⁷ Kamsiah, Non Judge Mediator at the Samarinda Religious Court, Interview 18 March 2022.

mediation agreement which has been signed by the parties and has become a court decision. The data that the author displays are those who continue the divorce process but fulfill women's rights in mediation agreements:

1. Case number 580/Pdt.G/2021/PA. Smd divorce talak
2. Case number 648/Pdt.G/2020/PA. Smd
3. Case number 633/Pdt.G/2021/PA. Smd
4. Case number 659/Pdt.G/2021/PA. Smd
5. Case number 967/Pdt.G/2021/PA. Smd
6. Case number 646/Pdt.G/2020/PA. Smd
7. Case number 1374/Pdt.G/2021/PA. Smd
8. Case number 1466/Pdt.G/2021/PA. Smd
9. Case number 1438/Pdt.G/2021/PA. Smd
10. Case number 1523/Pdt.G/2021/PA. Smd
11. Case number 1074/Pdt.G/2021/PA.Smd
12. Case number 1119/Pdt.G/2021/PA.Smd
13. Case number 1041/Pdt.G/2021/PA.Smd
14. Case number 1090/Pdt.G/2021/PA.Smd
15. Case number 1150/Pdt.G/2021/PA.Smd
16. Case number 1171/Pdt.G/2021/PA.Smd
17. Case number 1208/Pdt.G/2021/PA.Smd
18. Case number 1296/Pdt.G/2021/PA.Smd
19. Case number 1349/Pdt.G/2021/PA.Smd
20. Case number 993/Pdt.G/2021/PA. Smd divorced
21. Case number 1552/Pdt.G/2021/PA. Smd
22. Case number 1541/Pdt.G/2021/PA. Smd
23. Case number 1296/Pdt.G/2021/PA.Smd

24. Case number 1695/Pdt.G/2021/PA.Smd
25. Case number 566/Pdt.G/2021/PA. Smd
26. Case number 564/Pdt.G/2020/PA. Smd
27. Case number 675/Pdt.G/2020/PA. Smd
28. Case number 602/Pdt.G/2021/PA. Smd
29. Case number 737/Pdt.G/2021/PA. Smd
30. Case number 1035/Pdt.G/2021/PA. Smd
31. Case number 1042/Pdt.G/2021/PA. Smd
32. Case number 1170/Pdt.G/2021/PA. Smd
33. Case number 1193/Pdt.G/2021/PA. Smd
34. Case number 1178/Pdt.G/2021/PA. Smd
35. Case number 1180/Pdt.G/2021/PA. Smd
36. Case number 1393/Pdt.G/2021/PA. Smd
37. Case number 1442/Pdt.G/2021/PA. Smd
38. Case number 1409/Pdt.G/2021/PA. Smd
39. Case number 1423/Pdt.G/2021/PA. Smd
40. Case number 1448/Pdt.G/2021/PA. Smd
41. Case number 1524/Pdt.G/2021/PA. Smd
42. Case number 1353/Pdt.G/2021/PA. Smd
43. Case number 1555/Pdt.G/2021/PA. Smd
44. Case number 1039/Pdt.G/2021/PA.Smd
45. Case number 1114/Pdt.G/2021/PA.Smd
46. Case number 1047/Pdt.G/2021/PA.Smd
47. Case number 1115/Pdt.G/2021/PA.Smd
48. Case number 1176/Pdt.G/2021/PA.Smd

49. Case number 1269/Pdt.G/2021/PA.Smd

50. Case number 1270/Pdt.G/2021/PA.Smd

4. The Role of Non-Judge Mediators in Providing Guarantees for the Protection of Women's Rights in Divorce Cases at the Samarinda Religious Court

The Samarinda Religious Court has a low success rate in divorce mediation, but non-judge mediators continue to encourage them not to fail entirely. Non-judge mediator directs that the mediation is partially successful, in a successful agreement partially it can be stated that post-divorce women's rights can be stated in the peace deed,²⁸ and encourage changes to lawsuits based on the results of the mediation agreement.²⁹

In the case of divorce, women's rights have been clearly stated in the KHI articles 149 and 105 so that the fulfillment of rights does not become an obstacle in the mediation process.³⁰ However, in the case of divorce, the state through the Supreme Court has provided an opportunity for women who are suing for divorce to still be able to include post-divorce women's rights in the lawsuit,³¹ such as in the application for divorce in accordance with SEMA number 1960/DJA/HK.00/6/2021 which is based on PERMA number 3 of 2017 article 1 paragraph 6. The state has provided a way for women to claim their rights but in practice women very rarely use it so that the claim for these rights is not included in the divorce suit, so that so far the mediators have been pushing for women's rights to be obtained through a mediation agreement.³²

Submission of the rights of the parties is conveyed by the mediator in cases of litigation and divorce applications, the mediator's ability is also explored by the mediator to know his financial ability to fulfill his wife's rights after the divorce later. The mediator's wife also asked her claim for her rights. Based on the husband's ability and the wife's demands, the mediator negotiates so that the wishes of both parties can be fulfilled.³³

After effort-Efforts are made by the mediator during the mediation process. If the mediation is successful then the claim or lawsuit is withdrawn and the Panel of Judges makes a determination and if the mediation fails, the mediator makes in writing that the mediation failed, with that the case will continue to the next trial. Notification of successful or failed mediation is

²⁸Lilik Andaryuni, Non-Judge Mediator at the Samarinda Religious Court, Interview 18 March 2022.

²⁹Murjani, Non Judge Mediator at the Samarinda Religious Court, Interview 19 March 2022.

³⁰See Case number 580/Pdt.G/2021/PA. Smd and see case number 648/Pdt.G/2020/PA. Smd and see case number 633/Pdt.G/2021/PA. Smd.

³¹Alfitri, Non-Judge Mediator at the Samarinda Religious Court, Interview March 19, 2022 said, "Most of the lawsuits for divorce are because of poor families, their husbands' jobs and income are unclear, so if we focus on rights, it will hamper the divorce process".

³²Rusinah, Judge at the Samarinda Religious Court, Interview 22 March 2022.

³³Hervina, Non Judge Mediator at the Samarinda Religious Court, Interview 18 March 2022.

one of the tasks of the mediator in a divorce case, in accordance with Article 14 letter l of Perma No. 1 of 2016.

Fulfillment of women's rights in divorce cases are extraordinary work of non-judge mediators at the Samarinda Religious Court.³⁴ Although it is only based on SEMA number 1960/DjA/HK.00/6/2021 which is based on PERMA number 3 of 2017 article 1 paragraph 6, the Mediator has succeeded in negotiating women's rights after divorce which so far is generally understood to be only rights obtained from divorce applications. divorce.³⁵

Maximizing the mediation process then the mediator's knowledge of the parties as well as the latest regulations is very important. The non-judge mediation forum or community can maximize the implementation of mediation in accordance with PERMA number 1 of 2016 as in the Samarinda Religious Court.³⁶

The author is of the opinion that based on interviews and review of related documents, the role of non-judge mediators in the mediation process is:

- a. The mediator can carry out his role if the litigating parties are present and the mediator must be approved by the litigating parties.
- b. The form of protection for women's rights after divorce is carried out by the mediator by providing information to the litigants about the rights and obligations of each party according to the law if they continue the divorce process and how the parties withdraw the lawsuit if mediation is successful.
- c. Successful mediation is carried out by negotiating the wishes of each party and the mediator provides settlement offers to the parties.

5. Obstacles of non-judge mediators to provide guarantees for the protection of women's rights in the mediation process in divorce cases at the Samarinda Religious Court

Divorce is a matter of the heart of the husband or wife who is determined to separate and basically before filing for divorce to the Religious Courts, there are usually efforts to make peace between families or even the head of the RT or ustadz to find a way out and after making peace efforts between husband and wife and the families of both parties and cannot find a common ground to stay together or find a way out of the problems faced by husband and wife, then the

³⁴See Case number 993/Pdt.G/2021/PA.Smd, Case number 1552/Pdt.G/2021/PA.Smd, Case number 1541/Pdt.G/2021/PA.Smd, Case number 1296/Pdt.G /2021/PA.Smd, Case number 1695/Pdt.G/2021/PA.Smd.

³⁵See Case number 580/Pdt.G/2021/PA. Smd, Case number 648/Pdt.G/2020/PA.Smd, Case number 633/Pdt.G/2021/PA. Smd, Case number 659/Pdt.G/2021/PA. Smd, Case number 967/Pdt.G/2021/PA. Smd.

³⁶Murjani, Non Judge Mediator at the Samarinda Religious Court, Interview 19 March 2022.

party who wants to remain separate files a lawsuit to the Religious Court.³⁷

Strong intentions to separate because they feel hurt because they have been betrayed are often found in divorce cases, even though the Mediator has conveyed the rights of the wife to both parties, it still doesn't work because the husband feels he doesn't have to give because the wife who is suing is then strengthened by the wife who feels that she doesn't need their rights because the wife works and is financially capable even to support the children is also rejected by the wife. In cases like this, the wife only wants to get a divorce as soon as possible and forgets her husband so that it is an obstacle to the success of mediation in fulfilling the rights of the wife after the divorce in the Samarinda religious court.³⁸

And the obstacle faced by non-judge mediators is the lack of good faith from the parties.³⁹ However, for this matter, the mediator is not too worried because in Perma No. 1 of 2016 it has been stipulated that the parties must have good intentions in Article 7 and there are also legal consequences if the parties do not have good intentions, namely Article 22 of Perma No. 1 of 2016. For example, if the plaintiff does not have good intentions, the divorce suit is declared unacceptable. One of the things that becomes an obstacle for mediators in carrying out the mediation process is the lack of good faith from the parties where good faith is very important for the success of the mediation process in order to reach a win-win solution agreement. If the parties do not want to see their needs and only pursue profit, then peace through mediation will be difficult to achieve.⁴⁰

Divorce is mostly economically motivated, that is, coming from poor families, with the husband's job and income for the family unclear. In this condition, although the mediator is ready to negotiate on women's rights after the divorce, the husband is also unable to fulfill the agreement even though the husband really wants it. In cases like this, the solution provided by non-judge mediators is to speed up the mediation process with the agreement of the parties if post-divorce rights are not obtained.⁴¹

The obstacles faced by the mediator are:

- a. The purpose of the Religious Courts is only to legalize Divorce in state law.
- b. The absence of good faith from one party can be caused by not wanting a divorce or not

³⁷Kamsiah, Non-Judge Mediator at the Samarinda Religious Court, Interview 18 March 2022.

³⁸Hervina, Non Judge Mediator at the Samarinda Religious Court, Interview 22 April 2022.

³⁹Khoirudin, Non Judge Mediator at the Samarinda Religious Court, Interview March 16, 2022 said, "The wife is suing for divorce, when the husband is in the mediation room because he doesn't want a divorce, he says can he talk at home from heart to heart with his wife, when allowed, then wait and the mediator contacts the wife it turned out that the husband did not contact or visit his wife outside the court, so I continued with the report that there was no good faith."

⁴⁰Nurnaningsih Amriani, *Mediasi Alternatif Penyelesaian Sengketa Perdata di Pengadilan*, (Jakarta: PT. Raja Grafindo Persada, 2012), 157.

⁴¹Alfitri, Non-Judge Mediator at the Samarinda Religious Court, Interview 19 March 2022.

wanting to see the other party again.

- c. The inability of the parties economically to fulfill women's rights after divorce.

CLOSING

In the case of divorce, women's rights have been clearly stated in Article 149 of the KHI and 105 so that the mediator can start negotiations deal to non-parties who usually already know the wife's rights after the divorce. In divorce, the state through the Supreme Court has provided an opportunity for women who file for divorce can still include post-divorce women's rights in a lawsuit such as in the application for divorce in accordance with SEMA number 1960/DjA/HK.00/6/2021 which is based on PERMA number 3 of 2017 article 1 paragraph 6 but this has not known to the general public so that the fulfillment of women's rights in divorce cases is an extraordinary work of non-judge mediators at the Samarinda Religious Court, the mediator has succeeded in negotiating women's rights after divorce which so far is generally understood to be only a right that is only obtained from a divorce application for talak.

Obstacles faced by non-judge mediators during the mediation process to Give Guarantees for the Protection of Women's Rights are para The purpose of the Religious Courts is only to formalize Divorce in state law, The absence of good faith from one party can be caused by not wanting to divorce or not wanting to meet again with the other party, The inability of the party economically to fulfill women's rights after divorce.

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