

# The Effectiveness of Mediation in Divorce Case in Denpasar District Court

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# The Effectiveness of Mediation in Divorce Case in Denpasar District Court

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**Abstract** — Mediation as one of Alternative Dispute Resolution having the ascendancy in the Indonesian Legal System. This mediation was considered as a way of dispute resolution humane because the mechanism for decision making within the authority of the parties in dispute and maintaining good relation and fair because the parties conveyed his intention and first each other and negotiated a way to the problem and the result obtained the agreement of the parties. focus on the implementation of mediation in divorce, the supporting and inhibitors factor on the mediation and the level of success of system mediation.

An obligation in the event followed the process of mediation in the judiciary was imposed and be integrated into system in court since The Supreme Court Regulation (PERMA) No.1 in 2008 [1]. A mediation proses repair in the implementation regulation with The Supreme Court Regulation (PERMA) No.1 in 2016.[2] Therefore the author interest to inspect how effectiveness the mediation with PERMA No.1 in 2016 [2] in reducing made divorce in court.

This reseach used research law normative by adopting qualitative. The data used is secondary data by the use of primary and secondary as a basic source and analysis of data was qualitatively. Processing by the use of deductive method.

District Court Denpasar was chosen because the persentase divorces in this area is increasing every

years, a factor of divorce are economic factor, the affair, until customary marriage Nyentana Bali. This reseach focus on the implementation of mediation in divorce, the supporting and inhibitors factor on the mediation and the level of success of system mediation.

**Keywords:** *effective, mediation, divorce*

## I. INTRODUCTION

Marriage is an institution that is very important in social life. The existence of an institution is the ministry of legalized legal relationships between a man with a woman [3]. Namely, a bond born inner between man and a woman as husband and wife with a view to forming families of a household ) who happy and permanent based on the only one god

The point of view of marriage another us that the purpose of marriage is to form a make happy family and permanent. based on the belief in the only one god. This is means that marriage lasted a lifetime, the marriage or divorce required the terms of rigorous and is the last, husband and wife helps to develop itself [3] In the dynamics of, marriage often the goal of not conforming to expected. There are many factors affect the divorce case, in various areas, it is focused on the Denpasar Disctric Court

Several factors that affect the economic factors such as divorce is often the case when the husband could not give provisions, It disbelief to the husband or wife who make affair, some of them the age factors where the woman who are still too young to households want to build an independent households but in practice og the households interfered with b a third party, sexual violence in marriage and other factors such as the customary Adat Nyentana there was a wedding in Bali which in marriage is a woman wielding the traditional rights and men participated in, family his wife stay at home and his wife take off the wife of which this is in the customs Bali patrilineal, this often lead to dispute that causes the lack of harmony within in marriage

Mediation is an effective instrument to deal with disputes through the non- litigation and has many benefits and advantages. parties assisted by a mediator.

Mediation was seen as a way for dispute mechanisms completion humanist a into decision-making within the authority of the parties to the dispute and maintaining good relations, system because the parties conveyed his intention and to accomodate each other and negotiated a way out of the problem and the result obtained in the form of agreement of the parties.

Their than as an instrument that provides much of benefits or services , mediation is also giving benefit for judicial , namely to reduce the likelihood of the build-up of case that has come into the court , with a reduced case that has come into the court so the examination process a proceeding in the court will run fast .So that it will line to run the bases for judicial simple, fast, and the cost of light

An obligation in the event followed the process of

mediation in the judiciary in the system has been in effect and be integrated into court from attending the Indonesian Supreme Court No. 1 in 2008. [1]. The mediation process to repair the system in its implementation and born the Indonesian Supreme Court No.1 in 2016 [2] of procedure mediation in court as a substitute for the supreme court before. In this research will study the effectiveness of mediation in divorce case in Denpasar Distric Court to know the implementation, supporting factors and that the success of mediation

## II. DATA AND METHOD

### A. Data

As a normative legal research, data use in this researc are secondary data, that are collected through literature review. The main data are primary legal source, that consisted of law other the suprene court regulation, and secondary legal sources that consisted of text books. The main regulation in this research are Het Herziene Inlands Reglement, Het Reglement op de Buitengewesten, The Supreme Court Regulation No 1 in 2008 and The Supreme Court Regulation No 1 in 2016

### B. Method

Data obtained are analysed using qualitative method. Discussions are made to understand the conception the aim of the researchers to the effectiveness of mediation in divorce case in Denpasar District Court. Futher the researchers to know how the implementation of mediation in divorce, the supporting and inhibitor factor on the mediation and the level of success of system mediation.

### III. RESULTS AND DISCUSSION

#### A. *Mediation*

The interpretation mediation by the national alternative dispute resolution. Mediation is a process in which the parties to a dispute, with the assistance of a dispute resolution practitioner (a mediator), identify the dispute issues, develop option, consider alternative and endeavour to reach an agreement. The mediator has no advisory or determinative role in regard to the content of dispute or the outcome of its resolutions, but may advise on or determine the process of mediation whereby resolution is attempted [4].

Of understanding on can be defined there are three crucial elements is the hallmark mediation as distinct from other, solution disputes out of court the role of a mediator and the authority of a mediator who in solution dispute only authorized to take care of a mediation process going well and give advice to both sides of parties.

Mediation obviously involves the existence of a third party (either an individual or in the form of an institution independent) that introduce neutral and impartial, which serves as a mediator. As a neutral third party, independent, and impartial and been assigned by the parties, a mediator empowered to carry out tasks and functions the knowledge so you can offer and wishes of the parties [5].

As for the job of the judge mediation one of them to reconcile the parties to the dispute. This regulation the supreme court about mediation bridge judge mediation as well as a mediator will be to reconcile the parties litigant in order to create a judicial process as simple, fast and light, cost

Mediation has known in article 130 HIR “that if the day as the set both sides absent, if so the to reconcile them”.

Mediation is also the road to avoid the judges run the basic principle in attempts to enforce the rule of law serves to strengthen cohesion national unity ( justice for all future ) and give injustice, democracy as the civilization [6].

#### B. *The Difference between The Supreme Court no 1 in 2008 and The Supreme Court no 1 in 2016*

The Supreme Court No 1 in 2008[1] of procedure mediation in court is the essence of it together with peace efforts as required by article 130 HIR or article 154 RBg. As efforts to mediation procedure have been improved substantially.

Some of the things that the criterion of The Supreme Court No. 1 in 2008 [1] with The Supreme Court No.2 in 2016 [2]. Particularly regarding a term mediation in a shorter. The Supreme Court No.1 in 2016 [2] article 24 paragraph ( 4 ) time mediating a maximum 30 (thirty) days while in The Supreme Court No. 1in 2008[1] ( 40 during forty days ), the second the rules of good faith as stipulated in section 7 The Supreme Court No.1 in 2016 [2] there are mediasi in the process and fear of the law a person not faith either in a mediation process, now it is the obligation of the parties directly to attend a mediation with or without accompanied by attorney

#### C. *The Effectiveness of Mediation in Divorce Case*

The resolutions of disputes by mediation significant impact. Benefits the resolution by mediation relatively effective compared with the judicial process, cause the judge a mediator can evaluate the case by potential [7]

In assessing the effectiveness of a legal system, in theory the effectiveness of a law presented by Soerjono Soekanto there are four supporting factors such as effectiveness or regulation, employees of a court of law , facilities and support facilities law, and society and culture that flourished.

As normative the fourth supporting factors effectiveness has been there regulation in Denpasar district court there are the regulations and The Supreme of Court No. 1 in 2008 and The Supreme Court No. 1 in 2016. On the Supreme Court No.1 in 2016 known that the Mediation mediation is a dispute resolution process of negotiations to obtain agreement the parties assisted by a mediator [2] . Mediation as an effort to reconcile the litigants required done in judicial in Indonesia before his trial just because he examined. This work is done reach a point resolution meeting the problems both sides. Existence The supreme court No. 1 in 2016 are stated that the mediation is obliged to travel in the process of litigants in the vicinity of the judicial general and fair the religion of its essence same with the effort to mediation in rbg forbidden and. This mediation can bridge the parties to the parties so as to achieve the best solution on the parties.

The second is law employee in the court, in The Supreme Court No. 1 in 2016 [2] in said to there are a mediator is the or other parties that have a certificate a mediator as the party neutral **who assists the parties in negotiating process in order to look for a great variety of chances with the resolution of disputes without use methods involving decide upon or impose a settlement**

under. And a mediator or judge or other parties have a certificate issued by The Supreme Court or other institution who have Supreme Court authority of Certifying that a person has following and pass the training certification of mediation. Success or failure a mediation process affecting the level success of mediation. As the mediator, the judge and he neutral qualified is able to locate and mediate the problem, and there are so as to find a way out of the parties.

Data from Denpasar district court declare In Denpasar district court, there are not of all the judges received the training on mediation, so the understanding the judges with mediation not same at all. Denpasar district court have a mediator judge as many as 16 people, and a mediator non judges as many as 27 people, this is proportion of mediator still a little portion with a civil case only, especially when the case in Denpasar district court combine with divorce case. In Denpasar area have many divorce case, there was 2.223 divorce case in denpasar there was for 3 years, it means 741 divorce case of a year (Tribunnews.com,2018) The dataobtained said that the level of success of mediation in win-win solution took no more than 2 month no more than 20%. For that reason the law employee of these need to improvemente, the understandint the need to introduce equity toward mediation especially mediation in a divorce case. It is hope that by understanding as well with mediation could be reached a solution with a fair for the parties, and reduce the number of divorces case in Denpasar.

Thirrd, is support facilities in District Court in Denpasar, is own to required to take mediation process with the court room facilitation for the process of mediation.

Fourth are compliance the community and the culture of the people. As for the latest data on

divorce in Denpasar, from the population and civil registry, there are two cases in the day in Denpasar occur divorce (Tribunnew.com,2018). The divorce factors are economic factor, the education of people, distrust to the wife or husband that cause the affair some of them the age factors where the woman who are still too young to households want to build an independent households but in practice of the households interfered with by a third party, sexual violence in marriage and other factors such as the customary Adat Nyentana there was a wedding in Bali which in marriage is a woman wielding the traditional rights and men participated in, family his wife stay at home and his wife take off the wife of which this is in the customs Bali patrilineal, this often lead to dispute that causes the lack of harmony within in marriage

*D. Mediation in the early childhood marriage*

Denpasar is one of the big city in the province of Bali, in reality is particularly vulnerable the case of violence and early childhood marriage. Early childhood marriage started out as the presence of violence, and then there adultery and ending the happened is pregnancy and marriage in an early age. The data collected from the office of population and civil registration in 2017, there are 22 people who are marriage in the age range of 15 until 19 year. And this number is increase in 2018. Early childhood marriage this affect the psychological and sometimes the cause the domestic violence be divorce.

Mediation in it is present with the mediator to humanist act as the third party, can inform and directions to early childhood marriage. With qualified mediator can be success to finish the case in divorce

#### IV. CONCLUSION

The implementation of mediation in divorce case in Denpasar District Court not effectively. It can be concluded that the supporting factors are Indonesia have the regulation in mediation that is The Supreme Court No 1 in 2008 and The Supreme Court No 1 in 2016 and the court have the facilities to the mediation. And the inhibitor factors is the mediation procedure not an effective. Until the target mediation to reach the goal as the purpose of mediation and reaching a fair deal between two side not reached. This is because the factor the law employee in this court not have training on the mediation process, and trigger the comprehension of the mediator not understand the process of mediation at all.

So the level success of mediation in divorce case that use obtained the level of success of the mediation which use of win- win solution and take no more than two month are nor more than 20 %, this explained the effectiveness of mediation in divorce case in denpasar court not an effective to finish the case.

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