

Mediation Procedure in Religious Courts in Indonesia in the Perspective of Thought Wahbah Al-Zuhailly

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Received: 23-05-2023

Revised: 26-06-2023

Accepted: 30-06-2023

Abstract

Marriage is expected to be harmonious and happy. However, there are still many domestic disputes that end in divorce. Divorce cases in Indonesia are still very high. Divorce has many negative effects. Efforts to maintain the integrity of the household is necessary. One of them is mediation. This study aims to find out how the mediation procedure at the Religious Courts in Indonesia is in the perspective of Wahbah Al-Zuhailly's thought? Research conducted by the author using a type of library research (Library Research). While the approach is descriptive analysis; in this case describing and explaining conceptual phenomena. Literature study with main sources At-Tafsir al-Munir fi al-qidah wa al-Syari'at wa al-Manhaj and al-Fiqh al-Islamy Wa Adillatuhu by Wahbah al-Zuhailly and Supreme Court Regulation No. 1 of 2016 governing procedures mediation in court. From the research that has been conducted by researchers, it can be concluded that there are some similarities between the mediation procedures that apply to the Religious Courts in Indonesia and Wahbah al-Zuhailly's views in terms of the importance of mediation in efforts to reconcile disputes and disputes that occur between husband and wife. Likewise, in the main principles of mediation, mediation procedures at the Religious Courts in Indonesia are in line with Wahbah al-Zuhailly's thoughts. As in the qualifications of the judge or mediator and the limits of his authority in conducting mediation. Hopefully this research will bring benefits both theoretically and practically to all interested parties.

Keywords: *Divorce, Mediation, Mediator, Religious Court, Wahbah Al-Zuhailly*



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INTRODUCTION

The family is the main pillar of a society as well as the cell that enlivens the existence of society. If the family is good, it will give birth to good personalities. Furthermore, a good person will form a good and harmonious household and family. When the family is good and harmonious, a good society will be realized. (Al-Khin et al, 2012: 16)

Religion prescribes marriage to create a family full of peace, love, and compassion. Allah SWT says:

وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةَ وَرَحْمَةً إِنَّ فِي ذَلِكَ لَآيَاتٍ لِقَوْمٍ يَتَفَكَّرُونَ

Meaning: "And among His signs, He has made for you spouses of your kind. And He made between your feelings of love and affection. Indeed, in this case there are signs of His greatness for people who think "(Qs. Ar-Rum: 21)

In the household, disputes and fights can occur. This climactic conflict between the two husband and wife is what is termed syiqaq. Disputes and disputes often lead to divorce lawsuits to the Religious Courts. A. Mukti Arto said that the cases in the Religious Courts that were handled the most were divorce cases. (Arto, 2012: 373)

Religious teachings explain that divorce is something that, although it is permissible, is hated by Allah SWT. Rasulullah S.A.W. said:

أَبْغَضُ الْحَلَالِ عِنْدَ اللَّهِ الطَّلَاقُ

Meaning: "The lawful thing that Allah hates the most is divorce." (Narrated by Abu Dawud)

Sayyid Muhammad bin Alwi al-Maliki, mentioned that divorce has many bad effects. Among them is destroying family ties, causing a very heavy psychological burden on children, because they lose the pleasure of the complete shade of affection from their mother and father. (al-Maliki, 2002: 89)

One of the efforts to reduce the divorce rate is to maximize mediation efforts. In Islamic religious literature, mediation is often referred to as ishlah or shulh. The process is called tahkim. Explicitly mentioned in the Qur'an, the command to make peace between husband and wife who are in conflict. As mentioned in the letter An-Nisa verse 35:

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

Meaning: "And if you are worried that there will be a dispute between the two, then send a judge from a male family and a judge from a female family. If the two hakam people intend to make improvements, surely Allah will give taufik to the husband and wife. Surely Allah is All-Knowing, All-Knowing.

Among the modern commentators who provide an in-depth discussion of this mediation verse are Prof. Dr. Musthofa Wahbah Al-Zuhaily, through his commentary book, At-Tafsir Al-Munir. Therefore, the author needs to examine how the mediation procedure in the Religious Courts in Indonesia is from the perspective of Wahbah Al-Zuhaily, a scholar of interpretation, fiqh expert as well as a legal expert. Sayyid Badi' Al-Lahham in his book, mentions that Wahbah Al-Zuhaily was able to combine sharia education with legal knowledge. This really helps him to be able to solve modern legal problems, with the understanding of a comprehensive fiqh expert (Al-Lahham, 2001: 17-18)

In the Indonesian Justice System, mediation procedures are then regulated in PERMA No. 1 of 2008 concerning Mediation Procedures in Court which has been perfected in PERMA No. 1 of 2016. Researchers consider it necessary to look at the mediation procedures that apply to religious courts in Indonesia from the perspective of Wahbah Al-Zuhaily's thought. The authors consider this problem important to research and write about because the mediation procedure is an important step in minimizing the occurrence of divorce.

This article is important because research on mediation procedures at the Religious Courts in Indonesia in the perspective of Wahbah Al-Zuhaily's thought does not find the same thesis in the library with the author's current research. However, there have been several studies

discussing Wahbah Al-Zuhaily's thoughts and mediation, but with a different research focus. Meanwhile, this research combines two research focuses, namely the thoughts of Wahbah Al-Zuhaily and the Mediation Procedures that apply in the Religious Courts in Indonesia.

The formulation of the problem that the author will focus on is as follows: 1. How is mediation understood from the perspective of Wahbah Al-Zuhaily? 2. What are the mediation procedures at the Religious Courts in Indonesia? 3. What are the mediation procedures at the Religious Courts in Indonesia from the perspective of Wahbah Al-Zuhaily?

RESEARCH METHODS

This article is library research, so that the data and materials needed in this research come from the library, in the form of literature, manuscripts, books, journals, the results of previous research. (Mestika, 2004: 3)

The method of writing this article uses qualitative analysis methods. The problems that will be analyzed qualitatively are how are the mediation procedures at the Religious Courts in Indonesia in the perspective of Wahbah Al-Zuhaily's thinking. The author sees that there are some similarities between mediation procedures at the Religious Courts in Indonesia and Wahbah Al-Zuhaily's thoughts in terms of mediation.

The primary data in this article uses authentic books by Wahbah Al-Zuhaily entitled: a. *At-Tafsir Al-Munir fi Al-Aqidah wa Al-Syari'at wa Al-Manhaj* b. *Al-Fiqh Al-Islamiy wa Adillatuhu*. Other primary data studied by the author is Supreme Court Regulation (PERMA) No. 1 of 2016 concerning Mediation Procedures in Courts.

Data collection techniques are in the form of documentation techniques or documentary studies, namely by using primary data, namely the book by Wahbah Al-Zuhaily, namely *At-Tafsir Al-Munir fi Al-Aqidah wa Al-Syari'at wa Al-Manhaj* and *Al-Fiqh Al-Islamiy wa Adillatuhu*. and Supreme Court Regulation (PERMA) No. 1 of 2016 concerning Mediation Procedures in Courts.

RESULTS AND DISCUSSION

A. Mediation Procedures in the Religious Courts in Indonesia

Mediation in the Court (court annexed mediation) has taken effect in Indonesia since the issuance of Supreme Court Regulation (PERMA) No. 2 of 2003 concerning Mediation Procedures in Courts. With the enactment of PERMA, no 2 of 2003, mediation is mandatory for all civil cases submitted to the court of first instance. PERMA No. 2 of 2003 regulates mediation procedures at the Supreme Court Court, which includes pre-mediation, mediation stages, venue, and mediation fees. As many as 18 articles in this PERMA all regulate mediation which is integrated in the litigation process in court.

In 2008, PERMA No. 2 of 2003 was replaced by PERMA No. 1 of 2008. In the weighing part of this PERMA, it is stated "that after evaluating the implementation of the mediation procedure in court based on PERMA No. 2 of 2003, it turns out that several problems were found originating from the PERMA so that PERMA No. 2 of 2003 needs to be revised with a view to making more efficient use of mediation related to the litigation process in court".

In PERMA No. 1 of 2008, there were several significant revisions compared to PERMA No. 2 of 2003. This PERMA is firmer and clearer regarding the implementation

and procedures for mediation within the Religious Courts than PERMA No. 2 of 2003. Article 1 point 13 and 14, states that all civil disputes submitted to the Court of First Instance must first seek a settlement of peace with the help of a mediator. Article 2 confirms that not taking the mediation procedure based on this PERMA will result in the decision being null and void by law.

Update on PERMA No. 1 of 2008, among other things, there is the possibility of parties seeking justice to mediate at the appeal, cassation and review levels, there is the possibility of a peace agreement that occurs outside the court to be strengthened into a peace deed and the addition of the mediation time limit to 40 (forty) days and can be extended for another 14 (fourteen) days.

In 2016, PERMA No. 1 of 2008 was renewed with the issuance of PERMA No. 1 of 2016 concerning Mediation Procedures in Courts. PERMA No. 1 of 2016 was established on February 3, 2016. PERMA No. 1 of 2016 contains nine chapters and 39 articles. Whereas PERMA No. 1 of 2008 only contains eight chapters and 27 articles.

There are several reforms regulated in PERMA No. 1 of 2016:

a) Time of Mediation

The mediation process lasts no longer than 30 days from the date of the order to mediate. Based on the agreement of the Parties, the mediation period can be extended for a maximum of 30 days. The request for an extension of the mediation time is made by the mediator along with the reasons.

The mediation time setting is shorter with the provisions contained in Perma No. 1 of 2008 which regulates the mediation schedule for 40 days. However, the extension of time for mediation upon the agreement of the parties is even longer, namely 30 days, whereas in Perma No. 1 of 2008 it was only 14 days.

b) Concerning Good Faith

Article 7 regulates the obligation to carry out mediation in good faith. The parties involved in the mediation process must have good intentions so that with good intentions the mediation process can be carried out and run well. The implementation of mediation in the presence of parties who do not have good intentions, has a legal impact on the case examination process.

First, the legal consequences of the plaintiff who do not have good faith:

1. Plaintiffs who do not have good intentions are declared not accepted (NO)
2. The plaintiff is also subject to the obligation to pay mediation fees.
3. The Mediator stated that the Plaintiff was not in good faith in the mediation report accompanied by recommendations for sanctions and the amount.
4. The examining judge of the case based on the mediator's report held a trial and issued a decision.
5. Mediation costs as a sanction are taken from the down payment or a separate payment by the Plaintiff and handed over to the Defendant.

Second, the Legal Consequences of the Defendant who did not have good intentions:

1. Defendants who do not have good intentions are subject to payment of mediation fees.
2. The mediator stated that the Defendant was not in good faith in the mediation report accompanied by recommendations for sanctions and the amount.
3. The examining judge of the case based on the mediator's report before proceeding with the case examination issued a stipulation regarding not good faith and sentenced the Defendant to pay.
4. The payment of the mediation fee by the Defendant follows the implementation of a decision that has permanent legal force.
5. Payment from the Defendant was submitted to the Plaintiff through the clerk's office.

c) Mediation Fees

In Perma No. 1 of 2016, the imposition of mediation costs is stated in detail and clearly. In contrast to Perma No. 1 of 2008 which only mentions mediation costs in general. Regarding mediation costs in Perma No. 1 of 2016 it is explained that:

- ✓ Mediation costs are costs incurred in the mediation process as part of the case costs, which include the cost of summoning the Parties, travel costs based on real expenses, meeting costs, expert fees, and others.
- ✓ The use of judge mediators and court apparatus is free of charge.
- ✓ The cost of non-judge mediator services is borne jointly or based on the agreement of the Parties.
- ✓ The cost of summoning the Parties to attend the mediation process is borne by the Plaintiff in advance through the down payment of the case fee.
- ✓ If the mediation is successful, the costs of the summons shall be borne jointly or based on the agreement of the Parties.
- ✓ If the mediation is not successful or cannot be carried out, the summons costs will be borne by the losing party, except for divorce cases in the Religious Courts.

d) Mediators

In Article 1 number 2 of the Supreme Court Regulation (PERMA) Number 1 of 2016 concerning Mediation Procedures in Courts, it provides the following understanding of a mediator: "Judges or other parties who have a Mediator Certificate as a neutral party who assist the Parties in the negotiation process in order to seek various possibilities settlement of disputes without using a way of deciding or imposing a settlement.

The mediator party does not have the authority to give a decision on the dispute, but only serves to assist and find a solution for the parties to the dispute. That is the description of Munir Fuady in his book, *Alternative National Arbitration for Business Dispute Resolution*. (Fuady, 2000: 47)

Runtung, in *Empowering Mediation as an Alternative Dispute Resolution in Indonesia*, states that a Mediator is a judge or other party who has a mediator certificate as a neutral party who assists the litigants in the negotiation process to seek various possibilities for dispute resolution without resorting to deciding or forcing a settlement. (Runtung, 2006: 15)

To guarantee the quality and professionalism of mediators, PERMA No. 1 of 2016 provides provisions regarding the obligation to certify mediators and accreditation of institutions. Article 13 paragraph 1 states that every Mediator is required to have a Mediator Certificate which is obtained after attending and being declared to have passed the Mediator certification training held by the Supreme Court or an institution that has obtained accreditation from the Supreme Court. Whereas paragraph 2 states, based on the decision of the Head of Court, judges who are not certified can carry out the Mediator function if there are no or is a limited number of certified Mediators.

e) Mediation Stages

The stages of mediation are discussed in Chapter IV PERMA No 1 of 2016. The stages of mediation are divided into two, namely the pre-mediation stage and the mediation process stage.

Pre-mediation stages include. First, the judge or chairman of the panel of judges requires the parties to mediate at a hearing attended by the parties. Second, the presiding judge explained to the parties about the mediation procedure based on PERMA Number 1 of 2016, as well as the benefits and objectives of mediation.

The Legal Counsel is obliged to assist the parties in exercising their rights and obligations in the mediation process. The Legal Counsels convey the explanation of the Case Examining Judge as referred to in Article 17 paragraph (7) to the Parties; b. encourage the Parties to play an active direct role in the Mediation process; c. assist the Parties in identifying their needs, interests and proposals for dispute resolution during the Mediation process; d. assist the Parties to formulate plans and proposals for a Peace Agreement in the event that the Parties reach an agreement; e. explain to the Parties regarding the obligations of attorneys.

Furthermore, the Parties choose a Mediator. Article 19 (1) states that the Parties have the right to choose one or more Mediators who are recorded in the Register of Mediators at the Court. 2) If in the Mediation process there is more than one Mediator, the division of the Mediator's duties is determined and agreed upon by the Mediators. (3) Further provisions regarding the List of Mediators as referred to in paragraph (1) are regulated in a Decision of the Chief Justice of the Supreme Court.

Article 20 (1) After providing an explanation regarding the obligation to carry out Mediation as referred to in Article 17 paragraph (7), the Examining Judge of the Case obliges the Parties on that very day, or no later than 2 (two) following days to negotiate in order to choose a Mediator including the costs incurred may arise as a result of the choice of using non-judge Mediators instead of Court Officials. (2) The Parties immediately submit their choice of Mediator to the Examining Judge of the Case. (3) If the Parties cannot agree on selecting a Mediator within the period referred to in paragraph (1), the chairman of the panel of Judges examining the Case shall immediately appoint a Mediator Judge or Court Officer.

The next stage is the Mediation Process. The mediation process stage includes the following steps. First, the parties submit case resumes or each other and to the mediator. Article 24 (1) Within a maximum period of 5 (five) days from the stipulation as referred

to in Article 20 paragraph (5), the Parties may submit a Case Resume to the other party and the Mediator.

The purpose of preparing a resume submission is to facilitate and assist the parties and the mediator in understanding the positions and interests of the parties, as well as the subject matter of the dispute, so that the parties and the mediator can save time in looking for various possible solutions to the problem.

Based on PERMA Number 1 of 2016, Article 24 paragraph 2 confirms that the Mediation process lasts no longer than 30 (thirty) days from the issuance of the order to conduct Mediation. Furthermore, in paragraph 3 it is stated that based on the agreement of the Parties, the Mediation period can be extended for a maximum of 30 (thirty) days from the end of the period referred to in paragraph 2.

f) Mediation Outside Court

The provisions of Article 36 paragraph 1 PERMA Number 1 of 2016 concerning Mediation Procedures in Court outlines: "Parties with or without the assistance of a certified Mediator who successfully resolve disputes outside the Court with a Settlement Agreement may submit a Settlement Agreement to the competent Court to obtain a Settlement Deed by means of filing a lawsuit."

The filing of a lawsuit as referred to in paragraph 1 must be accompanied by a Settlement Agreement and documents as evidence showing the legal relationship between the Parties and the object of the dispute.

Furthermore, Article 36 paragraph 3 PERMA Number 1 of 2016 concerning Mediation Procedures outside the Court which outlines: "The Case Examining Judge before the Parties will only strengthen the Peace Agreement into a Peace Deed, if the Settlement Agreement is in accordance with the provisions of Article 27 paragraph 2, namely a) In accordance with the will of the parties b) Not against the law c) Does not harm third parties d) Executable e) Good faith."

The Deed of Settlement for a lawsuit to strengthen the Settlement Agreement as referred to in paragraph 1 must be pronounced by the Case Examining Judge in a hearing open to the public no later than 14 (fourteen) days from the date the lawsuit was registered.

B. Mediation at the Religious Courts in the Thought of Wahbah Al-Zuhaily

a) Obligation to Conduct Mediation

Efforts to reconcile the two warring husband and wife in order to avoid divorce begin with a mediation process. PERMA No. 1 of 2016 states, every lawsuit filed in court, including divorce claims, must be processed first with a mediation system.

When there is a dispute, the process to resolve it is through tahkim. The main purpose of this tahkim is to reconcile and reconcile the husband and wife relationship. So important is the effort to reconcile this, some scholars are of the opinion that it is obligatory to bring justice. Imam Al-Shafi'i is one of the scholars who requires sending two judges. (Al-Sayis, 1992: 100)

According to Wahbah Al-Zuhaily Al-Zuhaily, based on the command word (amar) in the fab'atsu sentence, the law of sending a judge is mandatory. However, there are also scholars who understand this order as mere advice. (Al-Zuhaily, 1984: 7/529)

The mediation process can take place outside the court, before the dispute is brought to court. In this condition, the mediator or magistrate who will reconcile is from the family, the husband and wife, sending trusted envoys to deliberate the problems that occur. Then look for a solution that is acceptable to all parties.

In PERMA No. 1 of 2016, this type of mediation is called Mediation outside the Court. Article 36 (1) PERMA No 1 of 2016 states, the parties with or without the help of a certified Mediator who successfully resolve disputes outside the Court with a Settlement Agreement can submit a Settlement Agreement to the competent Court to obtain a Deed of Settlement by filing a lawsuit.

Wahbah Al-Zuhaily said that the order to bring the judge in verse 35 of the letter an-Nisa above is the book for qadhi (judges), married couples and relatives of both. This means that when the husband or wife, or their families and relatives see indications of a violent conflict, they can take the initiative to seek justice. (Al-Zuhaily, 2009: 63)

b) Qualifications of the Hakam or Mediator

PERMA No. 1 of 2016 stipulates that mediators who carry out mediation are experts. Article 13 states (1) Every Mediator is required to have a Mediator Certificate which is obtained after participating in and being declared passed in the Mediator certification training organized by the Supreme Court or an institution that has obtained accreditation from the Supreme Court.

According to Wahbah Al-Zuhaily; Hakam requires people who are fair and knowledgeable about the issues being mediated. Certified mediators are believed to have proven abilities in reconciling disputes. Certification of the expertise of a mediator is the same as the criterion of a judge who is pious or *hobir*, has knowledge and masters the problem.

Recommended from the family or relatives of both parties. If both are not from the families of the husband and wife, the judge appoints two men who are not from the family (other people; *ajnabiy*). Priority is given to people who are close to the parties, such as neighbours. The point is people who understand the condition of a husband and wife who are in dispute. And the most prioritized are people who have the ability and expertise to reconcile. (Al-Zuhaily, 1984: 531)

So, the mediator can be one person or more. Wahbah Al-Zuhaily explains the permissibility of carrying out *tahkim* with one judge. With the condition that one judge has been agreed upon by the two disputing parties. (Al-Zuhaily, 2009: 63)

c) Duties and Authorities of Hakam

Hakam is usually interpreted as a peacemaker whose job is to reconcile husband and wife who are in dispute. Hakam has a very strategic role and function to protect Muslim households from destruction and divorce. (Salman, 2020)

The scholars differed on the authority of the judges. Is it only to reconcile and unite (*al-jam'u*) the two warring parties or do they also have the right to *tafriq*, namely, to separate or divorce.

The majority of *fiqh* scholars are of the opinion that these two *hakam* people do not have the right to separate husband and wife unless the husband gives up the right to separate to both. The right to divorce according to the *Shari'a* only belongs to the husband,

and the right to issue ransom for divorce belongs to the wife, so separation cannot be carried out except with the permission of both.

According to Imam Malik, that the two hakim people can give a stipulation to the husband and wife without their permission, if this is seen by the two hakim people as being able to bring benefits, like a man dropping talaq then the wife gives ransom with her wealth to get to get talaq from her husband. This means that the two hakim are two judges who are given power by the government.

According to Imam Abu Hanifah, the two judges may not divorce the marriage without permission from the husband and wife, because the hakimain is the representative of the husband and wife. This means that a judge from the husband's side may not impose talaq on his wife before obtaining approval from the husband and a judge from the wife's side also cannot impose khulu before obtaining approval from the wife. Meanwhile, according to Imam Al-Shafi'i, the duty of the hakimain is to represent the husband and wife, carry out the wishes of both and must not separate the married life between the two. (Al-Juzairy, 1976: 341)

The duties of the Mediator are regulated in PERMA No. 1 of 2016 in Article 14. In carrying out its functions, the Mediator serves as a neutral party and only assists mediation efforts, does not have the authority to decide cases.

Wahbah Al-Zuhaily said, the judges were only given the authority to reconcile (ishlah). The decision whether to proceed with divorcing his wife returns to the husband's decision. The decision to file for divorce with replacement money is also returned to the wife's decision. (Al-Zuhaily, 2009: 63)

According to Wahbah al-Zuhaily, the spirit of ishlah is prioritized by these judges, based on verse 35 of Surat an-Nisa concerning the order for tahkim with hakim, Allah SWT only mentions the duty of the hakim to do ishlah. Namely with the sentence, in yuriidaa ishlaahan yuwaffiqillahu bainahumaa. If both (hakamain) want to do ishlah (reconcile) then Allah will make it easier for harmony between the two. In this verse there is no mention of the word tafriq (to separate/divorce) as a sign that there is a very strong desire for peace and family unity, not separation which results in the destruction of household ties and family unity. (Al-Zuhaily, 2009: 64)

Thus, the provisions on the duties and powers of the Mediator at the Religious Courts in Indonesia are in line with Wahbah al-Zuhaily's view of the focus and authority of the judges which is limited to ishlah efforts.

C. Some Differences in Mediation in the Perspective of Wahbah Al-Zuhaily and PERMA No. 1 of 2016

There are several differences found in the concept of mediation in the perspective of Wahbah al-Zuhaily with the mediation procedure in PERMA No. 1 of 2016. These differences can be seen in technical and administrative aspects, including:

1. Good Faith in Mediation

PERMA No. 1 of 2016 also regulates good faith in mediation which is regulated in Chapter II part five of Article 7. (1) The Parties and/or their attorneys must take Mediation in good faith.

2. Mediation Fees

In Chapter II regarding mediation guidelines in the sixth part of article 8 it regulates mediation costs. This mediation fee is only for the services of Non-Judge Mediators and not Court Employees. Meanwhile, the services of Judge Mediators and Court Employees are free of charge. Mediation costs are borne jointly or based on the agreement of the Parties. Details of the provisions for mediation costs have been regulated in PERMA No. 1 of 2016 in chapter VI article 8 to article 10.

3. Place and Time of Mediation

Mediation is held in the Mediation Room of the Court or in another place outside the Court as agreed by the Parties. Judge Mediators and Court Employees are prohibited from holding Mediation outside the Court. Non-judge mediators and non-court employees are required to hold Mediation at the Court. The use of the Court Mediation room for Mediation is free of charge.

Mediation time lasts no longer than 30 days from the date of the order to mediate. Based on the agreement of the Parties, the mediation period can be extended for a maximum of 30 days.

4. Mediation Stages

The stages of mediation are discussed in Chapter IV PERMA No 1 of 2016. The stages of mediation are divided into two, namely the premediation stage and the mediation process stage.

First, the Pre-Mediation Stage

Pre-mediation stages include. First, the judge or chairman of the panel of judges requires the parties to mediate at a hearing attended by the parties. Second, the presiding judge explained to the parties about the mediation procedure based on PERMA Number 1 of 2016, as well as the benefits and objectives of mediation.

Furthermore, the Parties choose a Mediator. The Parties have the right to choose one or more Mediators who are recorded in the Register of Mediators at the Court.

Second, the Mediation Process Stage

First, the parties submit case resumes or each other and to the mediator. Within a maximum period of 5 (five) days from the stipulation as referred to in Article 20 paragraph (5), the Parties may submit the Case Resume to the other party and the Mediator. Based on PERMA Number 1 of 2016, the Mediation process lasts no longer than 30 (thirty) days from the issuance of the order to conduct Mediation. The Mediation Period can be extended for a maximum of 30 (thirty) days from the end of the period.

Some of these technical and administrative provisions were not discussed in the view of Wahbah al-Zuhaily. This is reasonable, because Wahbah al-Zuhaily discusses it in the context of fiqh and interpretation which produces the main concepts in mediation.

CONCLUSION

From the results of research conducted researchers came to several conclusions. Mediation procedures in the Religious Courts in Indonesia are regulated in Supreme Court Regulation (PERMA) No. I of 2016. This PERMA refines the previous regulations. The

contents are completer and more detailed, including regulating the technique and administration of mediation.

Mediation according to Wahbah al-Zuhaily is an effort to maintain household integrity. Wahbah al-Zuhaily believes that it is obligatory to bring in a magistrate (mediator) to mediate the two parties. The judges are only authorized to reconcile (ishlah). The decision to reconcile or continue with divorce returns to the husband and wife. The principles of mediation in the Religious Courts are in line with the thoughts of Wahbah al-Zuhaily.

The difference between Wahbah al-Zuhaily's thoughts and mediation procedures in the Religious Courts in Indonesia in PERMA No. I of 2016 is only in technical and administrative provisions.

Furthermore, the author gives suggestions. husbands and wives so that whenever there is a potential for conflict, efforts are made to mediate. Even though he has filed a lawsuit with the court, he still prioritizes and follows the mediation process with a strong determination to defend the household. Then to the judges in the Religious Courts, especially the mediator judges, we recommend continuing to improve and maximize efforts so that mediation is successful in minimizing the occurrence of divorce.

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