

SETTLEMENT OF DIVORCE DISPUTE THROUGH THE FORUM OF MEDIATION IN JUDICIAL INSTITUTIONS AS AN EFFORT OF LEGAL PROTECTION FOR THE RIGHTS AND INTERESTS OF THE CHILD OF POST-DIVORCE

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Abstrak: Secara yuridis sudah ada pengaturan dalam Undang-undang Perkawinan Nomor. 1 tahun 1974 Pasal 41 tentang pemeliharaan hak anak akibat perceraian. Namun dalam prakteknya sering terjadi perebutan atas hak pemeliharaan anak. Perebutan atas hak pemeliharaan anak ini kerap terjadi dikarenakan masing-masing pihak (orang tua) merasa memiliki hak untuk dapat merawat anak-anaknya. Dengan adanya PERMA Nomor 1 tahun 2016 tentang Presedur Mediasi di Pengadilan maka diharapkan penyelesaian sengketa perkawinan melalui forum mediasi dapat memberikan perlindungan hukum terhadap hak dan kepentingan anak. Tujuan penelitian ini untuk dapat mengkaji upaya dalam dalam mewujudkan perlindungan hukum terhadap hak dan kepentingan anak pascapercaian melalui forum mediasi. Hasil kajian menunjukkan bahwa pola penyelesaian sengketa perceraian melalui forum mediasi dapat memberikan perlindungan terhadap hak dan kepentingan anak dengan kesepakatan yang dibuat oleh para pihak (orang tuanya) yang tertulis dalam akta perdamaian. Metode dalam penelitian ini adalah penelitian hukum normative, setelah mengkaji sumber data yang didapatkan melalui kepustakaan juga menelaah hasil mediasi di Pengadilan Agama yang terdapat dalam Akta Perdamaian.

Kata Kunci: Mediasi; Peradilan; Akta Perdamaian

Abstract: Legally, there is already a regulation focusing on Marriage Law, namely Law 1 of 1974 article 41 concerning child care due to divorce. In practice, there are efforts to handle children's rights. This struggle over children's rights occurs because each parent feels that they have the right to protect their children. With the *PERMA* Number 1 of 2016 concerning court mediation procedures, resolving marital disputes through mediation forums can provide legal protection for children's rights. The purpose of this study is to examine efforts in realizing legal protection for the rights and interests of

post-divorce children through mediation forums. The research shows that the pattern of resolving divorce disputes through mediation forums can protect for the rights and interests of children with an agreement made by the parents written in the peace deed. The method in this research is normative legal research by reviewing the sources of data obtained through the literature and examining the mediation results in the Religious Courts contained in the Peace Deed.

Keywords: Mediation; Judicial Decision; Settlement Agreement

INTRODUCTION

Divorce cases today constitute the single largest group of all cases in the judicial system in Indonesia which account for 50% of all cases followed by criminal cases by 33%. The divorce rate in Indonesia has been going up in the past five years. Based on data from the Directorate General of Religious Courts Agency, the divorce rate in 2019 has reached 480,618 cases, an increase of 401,717 cases, nearly 20% from the 2016 divorce rate. The year 2020 also sees a sharp increase from January to August, recording 306,688 cases.¹

Divorce is the last thing ever expected to happen to any human being, particularly if there are children from the marriage. Inescapable continual disagreements often make divorce the best solution. Divorce does not necessarily end any conflict, on the contrary the conflict

deepens as it includes the struggle for custody of the children conceived during the marriage. This custody litigation is particularly contested for those who have underage children. The contested child custody is motivated by the right of each parent to take care of their children.²

Divorce in general will be followed by complex issues related with inheritance such as pre-marital assets, jointly owned assets, custody of children and the degrading family relationships. The problem regarding issue of the child is not only the custody but also the fulfillment of the rights to support the child. Hurlock (1999) argued that divorce would create single parent who must be responsible for caring children without a husband or a wife.³ Posner (1972) stated that divorce resulted in the increase of household

¹Nurhadi Suchayo, Cerai di Masa Pandemi: Ditahan PSBB, Di dorong ekonomi <https://www.voaindonesia.com/a/cerai-di-masa-pandemi-ditahan-psbb-didorong-ekonomi-/5578035.html>, 10 September 2020, Accessed on 12 Desember 2020.

² Umar Haris Sanjaya, "Keadilan Hukum Pada Pertimbangan Hakim Dalam Memutus Hak Asuh Anak," *Yuridika* 30, no. 2 (August 23, 2017):352, <https://doi.org/10.20473/ydk.v30i2.4653>.

³ Ario Chandra Jonathan and Ike Herdiana, "Coping Stress Pascacerai: Kajian Kualitatif Pada Ibu Tunggal," *INSAN Jurnal Psikologi Dan Kesehatan Mental* 5, no. 1 (June 22, 2020): 71, <https://doi.org/10.20473/jpkm.V5I12020.71-87>.

consumption which is detrimental in terms of economy.⁴

The fulfillment of children's rights after divorce is acknowledged as crucial considering that the presence of a child in a marriage creates a legal relationship between children and parents. This legal relationship creates rights and obligations between parents and children which will continue until the children reach adulthood in spite of the parents' broken marriage. The fulfillment referred to some aspects, such as clothing, food and shelter as well as education and security. The judicial implication of the Marriage Law No. 1 of 1974 is the arrangements for children as a result of the breaking up of marriage due to divorce as stated in Article 41, "Either the mother or the father is still obliged to care for and educate their children, solely based on the interests of the children and when disputes arise involving the children's custody, the court will make the decision. In that Article there are no specific words in terms of child custody.

The term custody of children appears in the Islamic Law Compilation, hereinafter referred to as KHI, a source of law making in the Religious Courts that regulate child custody post-divorce. Article 105 letter a KHI stated that in the event of

a divorce, caring of children who are *mumayyiz* or under 12 years old is the right of the mother. The costs of the caring of the children will be borne by the father as stated in letter c. The father's provision is emphasized in Article 156 of KHI that regulates that in the event of a dispute regarding *badhanah* and child support, the Religious Court can issue a verdict based on the norms regulated in Article 156 of KHI, letters a, b, c and d.

However, the provisions as stipulated in Article 105 and Article 156 of KHI do not apply absolutely, because in practice, there are many decisions of the religious courts that do not necessarily decide and legalize child care to the mother. The court will first make several considerations, such as the *aqidah* of the parents or their capabilities in rearing the children, so there is no absolute guarantee of childcare under the mother's care.

That can be seen in the rules of jurisprudence which change the provisions of child custody in the decision of the Supreme Court Number 110 K / AG / 2007 dated 13 November, 2007. Before the existence of this jurisprudence, the determination of child custody in general referred to the provisions of Article 105 letter a of KHI despite the unfavorable circumstances supporting the application of the norm as it is.

⁴ Ricard A. Posner, *Economics Analysis of Law* (Boston, Toronto: Little Brown and Company, 1977), 108.

Jurisprudence No. 110 K / AG / 2007 changes the general norms in determining child custody from the previously very normative norm to the more comprehensive norm based on the best interests of the child. In the case referred to, the Supreme Court determined custody of the child falls to the child's biological father (the original defendant / appeal applicant) by considering the welfare of the child and stated:

*"That child custody can not only be decided by who has the most rights, but by who causes the most damage to the child, in other words the child's interests should be put forward. The fact has been revealed by the first Judge that the child will suffer more under the mother's care because the mother often travels abroad so it is unclear who the child should be with, whereas so far it has been proven that the child has lived safely and peacefully with the father, therefore for the sake of the child's welfare, the hadbnab is given to the father."*⁵

The jurisprudence decision mentioned above is used as a reference for the judges of the religious courts in determining disputes of child custody to the father (ex-husband) when his wife has high working obligation. The judges are empowered to find law (*rectsvinding*) and creating law

(*rechtshepping*).⁶ However, settlement of the case through a judge's decision, regardless of the fairness of the verdict according to the judge, is still considered unfair by one party, especially for the defeated party. On the contrary, amicable settlement of cases allows neither party to feel aggrieved, causing social or psychological problems for the parties. This is far better than the settlement of case done by judge's verdict.⁷

Judges, therefore must also play the role in being able to provide peace to both the litigating parties. The efforts to reconcile are carried out with the aim of stopping the parties from settling their cases in religious courts considering the ties and blood relations between them.

Efforts to create peace can be made possible by providing protection in the interests of the children after the divorce decision between the husband and the wife is made. Therefore, the most appropriate forum for the resolution of divorce disputes in the context of legal protection of children's rights and interests is through mediation. Albeit the fact that reconciliation in divorce cases is difficult to avoid, but at least with the help of a Mediator, the parties can come to a mutual

⁶ Bagir Manan, *Hakim Sebagai Pembaharu Hukum, Varia Peradilan Majalah Hukum*, vol. XXII (Jakarta: Ikatan Hakim Indonesia, 2007): 521.

⁷ Ibad Syoifullah Arief, "Optimalisasi Peran Hakim Dalam Upaya Perdamaian Di Persidangan," *Badilag Mahkamah Agung*, 2020, <https://badilag.mahkamahagung.go.id/artikel/publikasi/artikel/optimalisasi-peran-hakim-dalam-upaya-perdamaian-di-persidangan-oleh-ibad-syoifulloh-arief-19-3>.

⁵Fauzan, *Kaidah-Kaidah Hukum Yurisprudensi "Norma-Norma Baru Dalam Hukum Kasus"* (Jakarta: Kencana, 2016: 349.

agreement in resolving the dispute that is acceptable to all parties. These agreements are mainly resolved around the rights and interests of the child after divorce.

Mediation is the way to rebuild good relationship between the disputing parties, not only between the husband and the wife, but also the children. More importantly for judicial institutions, this mediation can reduce congestion of cases in court and expedite the access to justice for the parties including the interests of the child.⁸

Based on the above arguments, it is necessary to study the legal undertakings towards the rights and interests of children after divorce through mediation. Can the settlement agreement made by the parties provide legal protection for children in the post-divorce cases?

METHOD

Normative legal research is method used in this research, that is, research Laws that review relevant principles, norms and legal rules regarding of

⁸ The purposes of integrated mediation in court proceedings according to Perma No.1 of 2008 in the dictum of consideration are (a) that mediation is one of the fastest and cheapest dispute resolution processes that can provide greater access to the parties to find a solution which fulfills the sense of justice. (b) that the integration of mediation into court proceedings can be an effective instrument in overcoming the problem of case accumulation in court and strengthening and maximizing the function of judicial institutions in dispute resolution in addition to adjudicative court processes.

research topics and legal methods, conceptual approach, and case approach⁹ After the divorce, the children's rights are reflected in the court through the forum. The data sources are legal materials, namely, the Marriage Law No. 1/1974, the 2014 Law No. 35 on Child Protection, the Islamic Law Collection, and the PERMA Peace Contract Decision Document No. 1 of 2016 regarding the Mediation Procedure in Court and the decision document of the Peace Deed related to the agreement of the parties to provide protection for children. Then, the sources of these legal materials are interactively analyzed with library materials from books, periodicals, and other documents.

RESULTS AND DISCUSSION

1. Legal Protection of the Rights and Interests of Children

John O'Manique, compiled a list of fundamental needs for human development as a whole, namely: food, the physical environment that is not threatened, security, health, science and work, freedom of thought, freedom of expression, freedom of association and self-determination. These fundamental needs are absolute necessities for the

⁹Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Prenada Group, 2005).

growth and development of children to become fully human.¹⁰

In the United Nations Convention on the Rights of the Child which was declared in 20 November, 1989, children's rights are grouped into 4 categories, namely: the right to life, the right to grow and develop, the right to receive protection, and the right to participate. Parents should be responsible for all maintenance of the rights attached to the child. Parents are obliged to protect their children so that they do not become anyone's victims, individuals or groups, private or government organizations either in a direct or indirect manner. Children need protection so they don't experience loss, both mental, physical, and social¹¹ as the children cannot protect themselves from various circumstances that resulted in mental, physical, and social harms. Children have the right to services that will develop their abilities and social life and the right also for protection of the environment that can harm or inhibit their growth naturally.¹²

Indonesia as nation governed by the a rule of law has a legal system in the form of laws that regulate everything, including

¹⁰ Abdussalam and Adri Desasduyanto, *Hukum Perlindungan Anak* (Jakarta: PIIK, 2016), 17.

¹¹ Maidin Gultom, *Perlindungan Hukum Terhadap Anak Dan Perempuan* (Bandung: PT. Refika Aditama, 2012), 69.

¹² Maulana Hasan Wadong, *Advokasi Dan Hukum Perlindungan Anak* (Jakarta: Grasindo, 2000), 18.

the issue of child custody. The existence of this rule of law is necessary to create legal certainty and ensure legal protection for children. The constitutional basis for the protection of children's rights is stated in Article 1 paragraph (3) of the 1945 Constitution, the result of the 3rd Amendment Article 28B paragraph (2) of the 1945 Constitution which states "every child has the right to survive, grow and develop and has the right to protection from violence and discrimination. With the constitutional regulation of children's rights contained in the 1945 Constitution, it is clearly seen that the politics of law on child protection in the state administration system of the Republic of Indonesia has acquired a very strong position. As a nation governed by the rule of law, the state and government have stipulated various laws and regulations relating to the survival of children as human beings, the fulfillment of their welfare, and legal protection of their rights, and penalties in the event of a violation of the law.

In the Marriage Law No. 1 of 1974, Rights and Obligations between parents and children stated in Article 45 paragraph (1) and (2) are: (1) "both parents are obliged to maintain and educate their children as well as possible. (2) parents have the obligations referred to in paragraph (1) of this article are valid until the child is married or can stand alone and

in which obligations prevail even though the marriage between the parents ends.¹³

Whereas Article 41 letters (a) and (b) provide legal protection to the children as victims of divorce, namely for their survival, by determining the obligations of the parents, whereas the father is responsible for the children's provisions, but if his father is unable to make ends meet for the children, then the court can determine that the child's income becomes the obligation of the mother. Other articles, namely from articles 42 to 54, also deal with the rights and obligations of the parents towards their children, guardianship of the children whose parents have already passed away, and management of the assets of the children.

Islamic Law Compilation (KHI) as a source of law making in the Religious Court also plays a role in regulating child custody issues. KHI explained that husband and wife have the obligation to care for their children, by regarding their physical, spiritual, intellectual growth and religious education.

In the Law No. 35 of 2014 amendments to law No. 23 of 2002, it is defined that Child Protection is all activities to guarantee and protect children and their rights so that they can live, grow, develop and participate optimally in

accordance with human dignity, and receive protection from violence and discrimination.¹⁴ The law emphasizes that the responsibility of parents, family, community, government and the state is a series of activities carried out continuously for the protection of children's rights.

The explanation of this law emphasizes that all state institutions, namely the executive, legislative and judiciary, must play an active role in realizing child protection. And for the judiciary, of course, the Religious Court judges must play an active role in providing legal protection to children, especially those who are victims of divorce, by providing legal certainty about who is taking care of them and who is responsible for their living expenses after the judge granted the divorce of their parents.¹⁵ In fact, Article 23 paragraph (1) of this regulation emphasizes and expands the realization of the implementation and protection of children's rights in Indonesia. "The state, government and local governments guarantee the protection, maintenance and welfare of children by taking into account the rights and obligations of parents, guardians, or other people who are legally responsible for children".

¹³ Law of the Republic of Indonesia No. 1 of 1974 concerning Marriage, State Gazette of the Republic of Indonesia of 1974 No. 301

¹⁴ Article 1 No 35 2014 amendments to law Number 23 of 2002 concerning Child Protection, Supplement to the State Gazette of the Republic of Indonesia No.5606

¹⁵ *ibid*

Can you imagine, how the children will get their rights as mentioned above when both parents are divorced? What happens is a variety of problems that arise as bad impact of divorce against children as stated above. Therefore, every divorced parents must maintain their children's rights, and they must also carry out their obligations in fulfilling their children's rights. In every divorce process, children are given the right to decide who they will live with. If the child is a minor, this decision will be decided by the court based on considerations guided by the needs of the child.

2. Mediation as an Effort for Legal Protection of Rights and Interests of Children of Post-Divorce

The word Mediation comes from English which means the process of amicable completion of disputes involving the assistance of a third party to provide a solution which can be accepted by the disputing parties.¹⁶ Mediation is a method of dispute resolution through a negotiation process involving a neutral, not taking sides with the disputing parties in which their presence is accepted by the disputed parties. Included in this method is the settlement of divorce cases, which nowadays have been increasing and

creating problems in the custody of children.

The dispute resolution mechanism through settlement has been formally regulated in Article 130 HIR and Article 1851 of the Civil Code. Supreme Court as the agent of the judiciary power in Indonesia is making efforts to further regulate the mediation procedure by Issuing a Supreme Court Circular (SEMA) Regulation Number 1 of 2002 on 30 January, 2002 concerning the Empowerment of the Court of First Instance to implement Peace Institution (ex Article 130 HIR), which was later supplemented with PERMA No. 2 of 2003 entitled Mediation Procedures in Court. In consideration, letter e is stated to become one of the reasons PERMA was issued because SEMA number 01 of 2002 was incomplete and has not firmly integrated the mediation into the system of the judiciary and as a result that SEMA is unable to encourage the parties intensively, in forcing the settlement of the case first through peace. Evaluation on the implementation of mediation in court according to PERMA Number 2 of 2003 that identified problems originating from the PERMA in making use of mediation in court led to the Supreme Court revision of PERMA number 2 of 2003 to be PERMA Number 1 of 2008 which was later revised to PERMA Number 1 of 2016 concerning

¹⁶ Marbun B.N., *Kamus Hukum Indonesia*, 1st ed. (Jakarta: Pustaka Sinar Harapan, 2006), 168.

Mediation Procedures in Courts. The revision is caused by the findings that PERMA No. 1 of 2008 was not considered optimum to efficiently deal with mediation and increase its success in court.

Access to protection for children of post-divorce is very important for future child survival. Basically, childcare is a responsibility of both parents, particularly in terms of solving economic problems, education and all things regarding basic needs, as also regulated in the Marriage Law Number 1 of 1974 Article 41, that the consequences of divorce should not necessarily resulted in the breaking of relationship between the divorced parents and children born from marriage. However, in reality, struggle for childcare is often the major issue. Children are often considered as property, so their “ownership” must be fought for. Ironically, after the case of fighting over the child has already earned the legal force (*inkracht*), the execution process is very difficult to carry out. As a result, the child continues to suffer in the parents struggle that often develop into violence against children, including cases of kidnapping, imprisonment, and child abuse done by the biological parents.

In the last few years, in the context of protecting children's rights in divorce disputes of their parents, the Religious

Courts have pursued a biased policy to justice seekers, in various regulations and court decisions that have provide life insurance for women and children in divorce cases, especially for those who come from economically weak groups, more specifically women who play the role as female heads of household. It has not been successfully overcome by a divorced couple. According to Amran Suadi (2018) in his writing on the Role of the Religious Courts in Protecting the Rights of Women and Children through impartial and accessible decisions Implemented, stating that implementation of decisions in the form of divorce is often not possible and understood due to the lack of awareness of the husband to give guarantees to his wife and children, therefore intervention from other agencies is necessary to carry out the solution.¹⁷

The mediation forum is currently an effort that is expected to provide access to justice in the fulfillment of children's rights, both to obtain custody and support rights without having to create new conflicts for the divorced parents. Mediation forums that have been integrated in the courts can provide

¹⁷ Amran Suadi, “Peranan Peradilan Agama Dalam Melindungi Hak Perempuan Dan Anak Melalui Putusan Yang Memihak Dan Dapat Dilaksanakan / the Role of Religious Court in Women and Children Rights Protection Through Partial and Executable Decision,” *Jurnal Hukum Dan Peradilan* 7, no. 3 (2018): 353, <https://doi.org/10.25216/jhp.7.3.2018.353-374>.

support in the proceedings at religious court, in providing more economical dispute resolution, in terms of cost and time, and win-win solutions to both parties in dispute for the benefit of the child. Nevertheless, contrary to the efforts towards peaceful resolutions, the failure to achieve the win-win solutions in divorce cases remain high, unable to stop the "swift flow" of divorce cases.

As a comparison, in Australia the family law system has applied the use of mediation forums, also known as family dispute resolution, in family conflict resolution since 1967. Courts provide mediation services that are confidential and are legally privileged in family courts. The mediation sessions were conducted by family consultants hired by the court. However, the Australian government made significant reforms to the family law system in 2006. One of the changes included an obligation for all new concerned parties to participate in the family dispute resolution efforts when the issue being discussed concerns children. Currently separated parents are legally obliged to make serious efforts to undertake alternative dispute resolution efforts before they begin proceedings in court.

Benefits of using mediation has been shown by social scientists in Australia, as is shown in the various studies in the past

30 years support the notion that mediation helps achieve better results in the formation of healthier and better functional parenting agreements who decided to separate, than those with who undergo an adversarial process.¹⁸ The arguments presented is that mediation reduces tension and hostility between the parties and allows parents to focus on the best interests of their child, and has an in-depth impact on reaching settlements prior to litigation.¹⁹.

The conception of shared parenting offers a new paradigm in parenting management. This conception has been widely implemented in common law countries like the United States and Canada. In Canada for example, co-care is regulated in Canadian divorce law (1997 Federal Child Support Guidelines Under The Divorce Act), share custody is an arrangement regarding sharing time between children with each of their parents. Allocation of time set in parenting together between the child with both

¹⁸ Presentasion Joe Harman at 45th AFCC Conference Vancouver (2008) Compulsory dispute resolution in Australian parenting proceedings in Mahkamah Agung Republik Indonesia, "Pengalaman Yang Lebih Baik Bagi Klien: Transformasi Layanan Dan Penyelesaian Perselisihan Keluarga Dalam System Hukum Keluarga Australia,"2011,<https://pdfslide.tips/reader/f/mahkamah-agung-republik-indonesia-formulir-yang-harus-diisi-edukasi-hukum>.

¹⁹ Jennifer McIntosh, "Child Inclusion as a Principle and as Evidence-Based Practice: Applications to Family Law Services and Related Sectors," *AIRC Issues: Australian Family Relationships Clearinghouse* 1, no. 1 (2007): 1–23.

parents is at least 40% of the time for parenting for each parent.²⁰

Based on the results of the author's research, resolving child custody disputes through mediation can produce good results for the benefit of the child. One example is in the decision of the Peace Deed case Number 3750 / Pdt.G / 2018 / PAJT. In the lawsuit, an ex-husband sued his ex-wife for child custody case. On the appointed day, the plaintiff and the defendant came to appear, represented by their attorneys. And they agreed to settle the case in a peaceful manner based on the efforts of the Panel of Judges to be resolved peacefully.

The peace agreement written in the Peace Deed as stated in the case Number 3750 / pdt.G / 2018 / PAJT which consists of 10 Articles. Article 2 is related to child custody that is given to the biological father, as well as the cost of living for the child's education and health, and the mother second party if she wants to help with her child's expenses, there is no objection to the first party (father). Article 3 states that the First Party's right to stay for 14 days and Article states the right to stay with the Second Party for 3 days. Article 5 regulates the school, where during schooling it is on the First Party

and during holidays it is in the Second Party. Article 6 regarding the time of the visit, that even though custody is on the First side, it is only limited to custody, not the right to own, therefore the child is not an item so that the second party is given the opportunity and is welcome to see or play with no time limits with an agreement the child cannot be taken out or invited to leave without permission from the First party.²¹

Another mediation success can be seen in the lawsuit for child custody, *badhanah*, right to support children, *iddah* and *mut'ah* livelihoods submitted by ex-wife (Plaintiff) to her ex-husband (Defendant) at the Religious Court. Through the decision of the Peace Deed Number 381 / Pdt.G / 2019 / PA.Pnj, that the plaintiffs and defendants agree to end the dispute between them by way through mediation. The deed which consists of 8 articles agreed on maintenance of the child given to his biological mother as the Plaintiff with no condition get in the way if the Defendant as the biological father wants to meet, invites the child out and wants to make telephone call. Article 2 stipulates the amount of support for the child which is charged to the Defendant (his father) until the age of 21 years, covering also the needs of education and health costs.

²⁰ M.Natsir Asnawi, *Pengantar Jurimetri Dan Penerapannya Dalam Penyelesaian Perkara Perdata: Pendekatan Kuantitatif Dan Kualitatif Terhadap Hukum* (Jakarta: Kencana, 2020), 144.

²¹ Mahkamah Agung Republik Indonesia, Supreme Court, Decision of Peace Deed Number 37, dated 29 January, 2019.

Article 4 to Article 6 deals with the provision of *Iddah* and *mut'ab* for the ex-wife (Plaintiff) with various conditions as well as regarding the distribution of joint assets from the assets obtained during their marriage.²²

Based on the two peace deeds discussed above, it is seen that the settlement of disputes through mediation provide the best solution that benefits the parties, a win win solution, and peace of mind for the parties. Peaceful resolution is the key, it is not the legal aspect alone, it is how the two parties determine to get the maximum benefit from the choices they agree on. It is also seen here that peace resolution is the settlement that emphasizes the sides of humanity and the desire to help and share. Neither side loses or wins, parties can win together.

In legal theory put forward by Lucy V Katz,²³ the success of Alternative dispute resolution process is through mediation due to "equitable and legal." Remedies" which provide equal equality and compensation laws that must be respected by the parties. The parties have confidence that dispute resolution through mediation

will receive a remedy for damages with a win-win solution. In this position, the parties are "win-win" not only in an economic or financial sense, but also in moral as well reputation victories (good name and trustworthiness).

CONCLUSION

Based on the study discussed, the pattern of divorce settlement of divorce disputes that affects the rights and interests of children can be handled properly if carried out through mediation. Legal considerations are not the only means as the principle of mediation considers equal acceptance and justice that oversee the psychology of the child's development caused by the parents' divorce.

The agreement made by the parties contained in the peace deed can get the maximum benefit from the choices they agree on. It can also be seen that with peace resolution, the settlement emphasizes the human side and the desire to help and share with one another. Neither party loses nor wins, there are only parties who win together.

²² Mahkamah Agung Republik Indonesia, Supreme Court, Decision of Peace Deed Number 381 / Pdt.G / 2019 / PA / Pnj, September 30, 2019

²³ Lucy V Katz, "Enforcing An ADR Clause-ARE Good Intentions All You Have," *American Business Law Journal*, 1988, 575, <https://doi.org/https://doi.org/10.1111/j.1744-1714.1988.tb01156.x>.

REFERENCES

- Abdussalam, and Adri Desasduryanto. *Hukum Perlindungan Anak*. Jakarta: PTIK, 2016.

- Asnawi, M.Natsir. *Pengantar Jurimetri Dan Penerapannya Dalam Penyelesaian Perkara Perdata: Pendekatan Kuantitatif Dan Kualitatif Terhadap Hukum*. Jakarta: Kencana, 2020.
- B.N., Marbun. *Kamus Hukum Indonesia*. 1st ed. Jakarta: Pustaka Sinar Harapan, 2006.
- Fauzan. *Kaidah-Kaidah Hukum Yurisprudensi "Norma-Norma Baru Dala Hukum Kasus."* Jakarta: Kencana, 2016.
- Gultom, Maidin. *Perlindungan Hukum Terhadap Anak Dan Perempuan*. Bandung: PT. Refika Aditama, 2012.
- Jonathan, Ario Chandra, and Ike Herdiana. "Coping Stress Pascacerai: Kajian Kualitatif Pada Ibu Tunggal." *INSAN Jurnal Psikologi Dan Kesehatan Mental* 5, no. 1 (June 22, 2020): 71. <https://doi.org/10.20473/jpkm.V5I12020.71-87>.
- Katz, Lucy V. "Enforcing An ADR Clause-ARE Good Intentions All You Have." *American Business Law Journal*, 1988, 575. <https://doi.org/https://doi.org/10.1111/j.1744-1714.1988.tb01156.x>.
- Manan, Bagir. *Hakim Sebagai Pembaharu Hukum. Varia Peradilan Majalah Hukum*. Vol. XXII. Jakarta: Ikatan Hakim Indonesia, 2007.
- Marzuki, Peter Mahmud. *Penelitian Hukum*. Jakarta: Prenada Gruop, 2005.
- McIntosh, Jennifer. "Child Inclusion as a Principle and as Evidence-Based Practice: Applications to Family Law Services and Related Sectors." *AIRC Issues: Austalian Family Relationships Clearinghouse* 1, no. 1 (2007): 1-23.
- Posner, Ricrard A. *Economics Analysis of Law*. Boston, Toronto: Little Brown and Company, 1977.
- Sanjaya, Umar Haris. "Keadilan Hukum Pada Pertimbangan Hakim Dalam Memutus Hak Asuh Anak." *Yuridika* 30, no. 2 (August 23, 2017): 352. <https://doi.org/10.20473/ydk.v30i2.4653>.
- Suadi, Amran. "Peranan Peradilan Agama Dalam Melindungi Hak Perempuan Dan Anak Melalui Putusan Yang Memihak Dan Dapat Dilaksanakan / the Role of Religious Court in Women and Children Rights Protection Through Partial and Executable Decision." *Jurnal Hukum Dan Peradilan* 7, no. 3 (2018): 353. <https://doi.org/10.25216/jhp.7.3.2018.353-374>.
- Wadong, Maulana Hasan. *Advokasi Dan Hukum Perlindungan Anak*. Jakarta: Grasindo, 2000.

Website

Arief, Ibad Syoifullah. "Optimalisasi Peran Hakim Dalam Upaya Perdamaian Di Persidangan." *Badilag Mahkamah Agung*, 2020. <https://badilag.mahkamahagung.go.id/artikel/publikasi/artikel/optimalisasi-peran-hakim-dalam-upaya-perdamaian-di-persidangan-oleh-ibad-syoifulloh-arief-19-3>.

Republik Indonesia, Mahkamah Agung. "Pengalaman Yang Lebih Baik Bagi Klien: Transformasi Layanan Dan Penyelesaian Perselisihan Keluarga Dalam System Hukum Keluarga Australia," 2011. <https://pdfslide.tips/reader/f/mahkamah-agung-republik-indonesia-formulir-yang-harus-diisi-edukasi-hukum>

Sucahyo, Nurhadi, Cerai di Masa Pandemi:
Ditahan PSBB, Di dorong
ekonomi
<https://www.voaindonesia.com/a/cerai-di-masa-pandemi-ditahan-psbb-didorong-ekonomi-/5578035.html>. 10 September
2020, Accessed on 12 Desember
2020.

Laws And Regulation

Undang-Undang Dasar Negara KEsatuan
Republik Indonesia Tahun 1945

Undang-Undang Nomor 1 Tahun 1974
tentang Perkawinan

Undang-Undang Nomor 35 Tahun 2014
tentang Perlindungan Anak

Kompilasi Hukum Islam

United Nations Convention on the Rights
of the Child which was declared in
20 November, 1989,

Peraturan Mahkamah Agung Nomor 1
Tahun 2016 tentang Prosedur
Mediasi di Pengadilan