

The Effectiveness of Mediation Implementation in Resolution of Joint Property Disputes after Divorce in Brebes City

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Abstract. *Divorce is a legal event that has a significant impact on various aspects of a married couple's life, including the division of joint assets. Conflicts arising from disputes over joint assets after divorce often lead to complex problems that have the potential to disrupt social harmony and harm both parties. The purpose of this study is to analyze: 1) a legal review of the status of land ownership in the old village of Batam City according to Agrarian Law. 2) legal protection of land ownership rights in the Old Village community of Batam City after the Agrarian Law. This type of research is empirical legal research. The approach method in this research is structural approach and cultural approach. The type and source of data in this study are primary data. Data analysis is a research activity that involves reviewing the results of data processing. The results of this study are that the implementation of mediation in resolving joint property disputes at the Brebes Regency Religious Court has demonstrated significant effectiveness as a more humane, efficient, and participatory alternative dispute resolution. The implementation of mediation based on PERMA Number 1 of 2016, supported by an understanding of Islamic law and local social dynamics, is able to produce a fairly high level of success. Despite facing various challenges such as limited resources and case complexity, it can be concluded that the effectiveness of mediation is the result of a complex interaction between internal and external factors that influence each other.*

Keywords: *Divorce; Effectiveness; Joint Property; Mediation; Settlement.*

1. Introduction

Divorce is a legal event that has a significant impact on various aspects of a married couple's life, including the division of joint property. Conflicts arising from post-divorce joint property disputes often give rise to complex issues that have the potential to disrupt social harmony and harm both parties. In this context, mediation is present as an alternative dispute resolution that is expected to provide a fair, effective, and efficient solution. Divorce is a social phenomenon that has been increasing in Indonesia in recent decades. One of the legal consequences of divorce is the division of joint property (*gono-gini*) between husband and wife. Post-divorce joint property disputes often lead to prolonged conflict that has the potential to harm both parties, both materially and psychologically.

In the context of Indonesian law, post-divorce joint property disputes can be resolved through litigation or non-litigation. Mediation, as a non-litigation method, primarily aims to achieve a fair and expeditious resolution and reduce the burden on the courts.¹The Supreme Court, through Supreme Court Regulation No. 1 of 2016 concerning Mediation Procedures in Court, requires mediation in all civil cases, including joint property disputes. This step is expected to encourage peaceful conflict resolution and avoid lengthy legal proceedings.²

Overall, the effectiveness of mediation in resolving post-divorce joint property disputes is not merely a technical issue, but also encompasses social, cultural, and economic dimensions. By identifying factors influencing mediation success, this study is expected to provide comprehensive insights to improve the quality and public trust in mediation mechanisms in Indonesia. Furthermore, the results are expected to contribute to the development of better public policies to support peaceful and equitable dispute resolution.

In this context, research on the effectiveness of mediation becomes highly relevant. This study aims to evaluate the extent to which mediation achieves its goal of resolving joint property disputes fairly and efficiently. Furthermore, this study will identify factors influencing the success or failure of mediation and provide recommendations for improving its effectiveness in the future. Therefore, it is hoped that the results of this study will contribute to the development of mediation policies and practices in Indonesia. Based on this background, the researchers conducted a study entitled "The Effectiveness of Mediation Implementation in Resolving Joint Property Disputes After Divorce in Brebes City."

¹Nuning Uteki, (2020), *Mediasi sebagai Alternatif Penyelesaian Sengketa di Indonesia*, Yogyakarta : Graha Ilmu, p. 47.

²Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Court,

2. Research Methods

The type of research used in this thesis is Empirical Legal research. Research that examines law as a social phenomenon in its interaction with society.³ The approach methods used in this research are the structural approach and the cultural approach.⁴ Types and sources of data come from primary data. The data collection method in this study is by observation data, interviews. Data analysis is an activity in research which involves conducting a study or analysis of the results of data management assisted by theories that have been obtained previously⁵. Data analysis is an activity in research which involves conducting a study of the results of data processing.⁶

3. Results and Discussion

3.1. Implementation of Mediation in the Settlement of Joint Property Disputes at the Brebes Regency Religious Court

Mediation as an alternative dispute resolution (ADR) aims to find a mutually beneficial solution with the assistance of a neutral third party. This process aligns with Islamic legal principles, which prioritize peace and avoid family divisions. The Brebes Regency Religious Court, as a judicial institution under the Supreme Court, is obligated to implement mediation provisions in accordance with the applicable Supreme Court Regulation (PERMA).

Implementing mediation in joint property disputes requires a comprehensive understanding of various legal aspects, both positive law and Islamic law. The success of mediation depends heavily on the mediator's understanding of the complexity of joint property issues and his or her ability to facilitate constructive dialogue between the parties. Family law literature and legal journals related to mediation serve as important references in developing an effective mediation methodology at the Brebes Regency Religious Court.

The mediation mechanism for joint property disputes at the Brebes Regency Religious Court follows the procedures established in Supreme Court Regulation No. 1 of 2016, with various local adjustments to suit the characteristics of the local community. The mediation process begins with the plaintiff registering the case, which is then reviewed by the court clerk for administrative completeness in accordance with applicable civil procedure law. According to Dewi Sartika, Deputy Clerk of the Brebes Regency Religious Court, explained that "After the case is

³Mukti Fajar ND & Yulianto Achmad, (2010), *Dualisme Penelitian Hukum Normatif dan Hukum Empiris*, Yogyakarta : Pustaka Pelajar, p. 34

⁴Eko Sugiarto, (2015), *Menyusun Proposal Penelitian Kualitatif: Skripsi Dan Tesis*, Yogyakarta : SuakaMedia, p. 12

⁵Narbuko & Achmadi, (2009), *Metodologi Penelitian*, Jakarta : PT. Bumi Aksara, p. 44.

⁶Mukti Fajar & Yulianto Achmad, *Op Cit*, p. 183

registered, we immediately inform the parties about the obligation to undergo mediation. Usually, at the first hearing, the panel of judges will explain the importance of mediation and provide the parties with a choice of mediators."⁷ Once the case is registered and declared complete, the panel of judges will schedule an initial hearing, which must be attended by both parties to determine a mediator who will assist in the dispute resolution process. The mediator can be selected by agreement between the parties or appointed directly by the panel of judges from a list of certified mediators available at the Brebes Regency Religious Court. Hendra Wijaya, Judge of the Brebes Regency Religious Court, stated that "We always prioritize the parties' choice in determining the mediator. However, if there is no agreement, we will appoint a mediator who best suits the characteristics of the case and the backgrounds of the parties."⁸ The appointed mediator must hold a mediation certificate issued by an institution recognized by the Supreme Court and possess a sound understanding of Islamic family law and local social dynamics. The mediation process is conducted in a special room separate from the courtroom to create an atmosphere conducive to dialogue and negotiation between the parties. The mediator acts as a facilitator, helping the parties identify the issues, explore alternative solutions, and find mutually acceptable common ground.

Based on an interview with the mother **Ratna Sari**, a non-judge mediator registered with the Brebes Regency Religious Court, said, "The separate mediation room really helps create a more relaxed and open atmosphere. The parties feel more comfortable expressing their feelings and concerns without the formal pressures of a courtroom."⁶ The maximum time for mediation is 30 working days, which may be extended by agreement of the parties, in accordance with the applicable PERMA provisions. If the mediation is successful, a settlement deed will be drawn up, which is legally binding and can be executed immediately without further court proceedings. The entire mediation process must be properly documented as part of the case administration and as material for evaluating the mediation's performance at the Brebes Regency Religious Court.

The effectiveness and success rate of mediation in resolving joint property disputes. The success of mediation in the Brebes Regency Religious Court can be measured through various quantitative and qualitative indicators that reflect the achievement of mediation's objectives in providing a fast, affordable, and satisfactory resolution for the parties. The quantitative success rate of mediation can be seen from the percentage of cases that successfully reach an agreement compared to the total number of cases entered into the mediation process, which indicates the effectiveness of mediation as an alternative dispute resolution.

⁷Interview with Dewi Sartika, as Deputy Clerk of the Brebes Regency Religious Court, the interview was conducted on August 8, 2025.

⁸Interview with Hendra Wijaya, as Judge of the Brebes Regency Religious Court, the interview was conducted on August 8, 2025.

Statistical data from the Brebes Regency Religious Court shows a positive trend in the success rate of mediation of joint property disputes, although there are still variations based on the complexity of the case and the characteristics of the disputing parties. Factors that influence the success of mediation include the quality of the mediator, the good faith of the parties, the complexity of the dispute, and adequate support from the court administration system. The effectiveness of mediation can also be measured in terms of the resolution time, which is significantly faster than the formal litigation process, thereby saving time and costs for both the parties and the court.

The quality of agreements resulting from mediation is generally more sustainable and enforceable because it involves the active participation of the parties in the solution-making process. The level of satisfaction of the parties with the mediation process and outcome is an important qualitative indicator for assessing the effectiveness of mediation from the perspective of service users. Analysis of failed mediation cases provides valuable insights into inhibiting factors and areas for improvement needed to enhance the effectiveness of future mediation.

The positive impact of mediation on the relationship between the parties, particularly in the context of families with children together, demonstrates the added value of mediation compared to litigation, which often permanently damages relationships. Mediation's contribution to reducing the court caseload is an indicator of effectiveness from the perspective of the justice system as a whole. Benchmarking with other religious courts can provide a relative picture of the success rate of mediation in the Brebes Regency Religious Court compared to national standards. A longitudinal study of the implementation of mediation agreements shows high sustainability compared to the execution of court decisions, which often face obstacles in their implementation. Feedback from mediators and relevant stakeholders provides a comprehensive perspective on the strengths and weaknesses of the existing mediation system and recommendations for future improvements. According to Indra Gunawan, A public accountant who frequently consults in joint property mediations, stated that "Identification and valuation of assets require high accuracy. The mediator must ensure that all assets have been disclosed and valued thoroughly fair to achieve fair distribution."⁹

3.2. Factors Influencing the Effectiveness of Mediation in Resolving Post-Divorce Joint Property Disputes at the Brebes Regency Religious Court

The Brebes Regency Religious Court, as a regency-level judicial institution, faces challenges in implementing effective mediation to resolve post-divorce joint property disputes. Mediation effectiveness cannot be measured solely by the

⁹Interview with Indra Gunawan, as a Public Accountant and Mediation Consultant, the interview was conducted on January 27, 2025.

success rate of case resolution; it must also consider the quality of the resulting solution and the satisfaction of the parties involved in the mediation process. Various internal and external factors influence the success of the mediation process, ranging from the competence of the mediator, the willingness of the parties to compromise, to support from the existing judicial system. Research into the factors influencing mediation effectiveness in the specific context of the Brebes Regency Religious Court is crucial for contributing to the development of a judicial system that is more responsive to community needs.¹⁰ Identifying these factors will help formulate more appropriate strategies and policies to improve the effectiveness of mediation in the future. A comprehensive analysis of mediation practices at the Brebes Regency Religious Court is expected to provide a clear picture of the dynamics that occur in the process of resolving joint property disputes.

A thorough understanding of the factors influencing the effectiveness of mediation will contribute to improving the quality of judicial services and fulfilling the sense of justice for justice seekers. The local context of Brebes Regency, with its unique social, economic, and cultural characteristics, presents unique dimensions to the implementation of mediation that require in-depth study.¹¹ This study aims to systematically uncover various factors that influence the effectiveness of mediation in resolving post-divorce joint property disputes in the region. The results are expected to provide practical recommendations for improving mediation performance at the Brebes Regency Religious Court in particular and other religious courts in general. The importance of this topic extends beyond academic aspects; it also has significant practical implications for developing a more effective and efficient justice system. Therefore, according to Mrs. Aisha¹², Daughter A study of the factors influencing the effectiveness of mediation in resolving post-divorce joint property disputes at the Brebes Regency Religious Court is highly relevant and strategic. An in-depth analysis of this issue will provide a valuable contribution to the development of legal science and judicial practice in Indonesia.¹³

Mediation as a dispute resolution method has a strong theoretical foundation in various disciplines, including law, psychology, and sociology, which provides a comprehensive framework for understanding the dynamics of conflict resolution. Modern mediation theory develops from the understanding that conflict is a natural part of human interaction that can be managed and resolved through a structured communication process facilitated by a neutral third party.

¹⁰Budi Santoso, (2020), *Efektivitas Mediasi di Pengadilan Agama*, Yogyakarta : Gama Press, p. 65

¹¹Citra Dewi Sari, (2022), *Analisis Faktor-Faktor Mediasi Hukum Keluarga*, Bandung : Remaja Rosdakarya, p. 78

¹²Interview with Aisyah, Putri, as a Family Law Specialist Mediator, January 30, 2025.

¹³Dedi Supriadi, (2021), *Penyelesaian Sengketa Harta Bersama Pasca Perceraian*, Jakarta : Sinar Grafika, p. 23

According to you Bambang, Sutrisno,¹⁴ Clerk of the Religious Court of Brebes Regency, In the context of the judicial system, mediation serves as a bridge between formal court dispute resolution and a more flexible and participatory approach. The philosophical foundation of mediation rests on the principle that the disputing parties are best informed about their own needs and interests, and therefore have the capacity to find the most appropriate solution with the assistance of professional facilitation.

Negotiation theory provides a framework for understanding the bargaining and solution-finding process in mediation, including strategies that can be used to reach optimal agreements. This comprehensive theoretical foundation provides a strong foundation for analyzing the factors influencing mediation effectiveness in the specific context of post-divorce joint property dispute resolution. The integration of various theoretical perspectives allows for a deeper understanding of the complexities of mediation and provides a robust analytical framework for empirical research. Thus, a solid theoretical foundation is an essential prerequisite for scientifically examining the effectiveness of mediation in resolving joint property disputes in the Brebes Regency Religious Court.¹⁵

The legal framework for mediation in Indonesian Religious Courts is governed by a hierarchy of laws and regulations, starting with Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts, which provides the legal basis for the authority of Religious Courts in handling Islamic civil cases, including post-divorce joint property disputes. Supreme Court Regulation (PERMA) Number 1 of 2016 concerning Mediation Procedures in Courts is the primary regulation comprehensively governing the implementation of mediation in the Indonesian judicial system, including in Religious Courts, by establishing an obligation for the parties to undergo mediation before the case examination process begins. This PERMA was subsequently updated through PERMA Number 1 of 2008, which was further refined by PERMA Number 1 of 2016, demonstrating the Supreme Court's commitment to continuously optimizing the role of mediation in the national judicial system. Mediation regulations cover fundamental aspects such as mediation obligations, mediator qualifications, mediation procedures, mediation timeframes, and the legal consequences of the mediation process, all of which are designed to ensure effective and consistent implementation of mediation across all courts in Indonesia.

According to father Rudi, Hermawan, Mediator of the Religious Court of Brebes Regency,¹⁶ Uncertainty factors in joint property disputes include uncertainty

¹⁴Interview with Bambang, Sutrisno, as Clerk of the Brebes Regency Religious Court, January 20, 2025

¹⁵Ika Susanti, (2022), *Integrasi Perspektif Multidisipliner dalam Mediasi*, Malang : UB Press, p. 34

¹⁶Interview with Rudi, Hermawan, as Mediator of the Brebes Regency Religious Court, January 31, 2025.

regarding the final division outcome, the duration of the settlement process, and the costs involved, which can cause prolonged stress and anxiety for the disputing parties. The public nature of joint property disputes in court can make parties reluctant to pursue litigation, as it could expose their private lives to the public and potentially damage their reputations or social relationships.

4. Conclusion

The implementation of mediation in resolving joint property disputes at the Brebes Regency Religious Court has demonstrated significant effectiveness as a more humane, efficient, and participatory alternative dispute resolution method. The implementation of mediation, based on Supreme Court Regulation No. 1 of 2016, supported by an understanding of Islamic law and local social dynamics, has resulted in a relatively high success rate. Despite facing various challenges such as limited resources and case complexity, the mediation system continues to develop through innovation, training, and regular evaluation. With strengthened mediator capacity, infrastructure support, and broader outreach, mediation is expected to become a key pillar in realizing equitable and sustainable access to justice in Brebes Regency. The implementation of mediation in resolving joint property disputes at the Brebes Regency Religious Court has demonstrated significant effectiveness as a more humane, efficient, and participatory alternative dispute resolution method. The implementation of mediation, based on Supreme Court Regulation No. 1 of 2016, supported by an understanding of Islamic law and local social dynamics, has resulted in a relatively high success rate. Despite facing various challenges such as limited resources and case complexity, the mediation system continues to develop through innovation, training, and regular evaluation. With strengthened mediator capacity, infrastructure support, and broader outreach, mediation is expected to become a key pillar in realizing equitable and sustainable access to justice in Brebes Regency.

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