

Analysis of Decision Number 291/Pdt.G/2024/Pa.Prob Regarding the Revocation of the Mediation Agreement Outside the Presence of the Defendant from the KHI Perspective and Civil Law

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ABSTRACT

This study aims to analyze the legal considerations of the panel of judges at the Probolinggo Religious Court in Decision Number 291/Pdt.G/2024/PA.Prob regarding the withdrawal of a mediation agreement in the absence of the defendant, from the perspective of the Compilation of Islamic Law (KHI) and civil law. The background of this research is based on the fact that mediation is a mandatory stage in civil cases, including divorce cases, as stipulated in Supreme Court Regulation Number 1 of 2016. However, in practice, problems arise when a mediation agreement is unilaterally withdrawn without the presence of one party, creating legal implications for the validity of the agreement. This research employs a qualitative method with normative juridical and empirical juridical approaches. Primary data were obtained through interviews with mediators, judges, and litigants, while secondary data were sourced from laws and regulations, legal literature, and case documents. The findings reveal that the withdrawal of a mediation agreement without the presence of the defendant has the potential to violate the principles of balance and good faith in agreements as regulated in Article 1338 of the Indonesian Civil Code. From the perspective of KHI, such an action is inconsistent with the principles of deliberation and amicable settlement as stipulated in Articles 115 and 116 of KHI. The panel of judges in this decision considered the existence of procedural violations in the withdrawal process, thereby declaring the mediation agreement non-binding. These findings emphasize the importance of the presence of both parties in the mediation and agreement withdrawal process to ensure legal certainty and substantive justice.

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1. INTRODUCTION

Human beings as social beings created by Allah to live in pairs, complement each other and cooperate with each other which is manifested in marriage. Since the beginning of their life or throughout their history, they have known the existence of the family as a community. From this unit, the reproduction of humans in the form of clans, tribes, tribes is derived which in turn develops into a nation that is scattered into inhabitants on the surface of the earth that form the human realm. The pattern of human reproduction has certainly been carried out from generation to generation, constructed into a form of value in the form of institutionalized norms, and aims to regulate the system of life, especially in the matter of reproduction. In addition to patterns that are regulated or constructed by humans based on the agreement of norms, there are also standard rules that govern the phenomenon of reproduction. These patterns are known as religious or religious rules.

The presence of Islam is one of them to maintain offspring through marriage, because it is one of the efforts to maintain the glory of offspring and is the key to community peace in order to achieve a blessed *sakinah, mawaddah and rahmah* household based on love and affection between the two. In this case, it shows the importance of men and women to instill determination in themselves that the family built through marriage must make all husbands, wives and children feel calm or peaceful (*sakinah*) because there is a relationship built on mutual love (*mawaddah warahmah*) not on power. The sense of calm, love and affection in this family is also felt in the body.

Islam has also regulated the issue of marriage in detail. One of them is that marriage must be preceded by a contract. That is an expression related to *ijab and qabul*. This means that the marriage contract is not just a civil agreement. Rather, it must be stated as a strong covenant mentioned in the Qur'an with the phrase "*mitsaqan ghalizhan*" (Amir Syaifuddin, 2006). The marriage contract is also something that must be careful in its implementation, because the marriage contract is the determinant of whether or not a man and a woman can have a relationship. This is because the original law in the matter of sex (intercourse) is *haram* (As-suyuti, Jalaluddin, 1979).

Every human being who lives together in a marriage bond must long for the family he fosters to be able to run harmoniously and always be pleased by God Almighty. This is as emphasized by Sulisty, in Law No. 1 of 1974, that: "Marriage is a bond born in the mind between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the One Godhead."

From the above opinion, it can be seen that marriage is a bond of birth and mind between husband and wife, which is carried out legally, to form a happy and eternal family (household) that is carried out according to their respective religions and beliefs. Because marriage has the intention that husband and wife can form a family that is eternally happy, in accordance with human rights, the marriage must be approved by both parties who carry out the marriage, without any element of coercion from any party. However, many families also fail in their efforts to achieve harmony, a bad dream will occur, namely the emergence of a "divorce" conflict that they never expected (As-suyuti, Jalaluddin, 1979).

Marriage, which is a solid covenant, is expected never to be broken, except by the death that befalls one of the two. But in the reality of life, it turns out that the breakup of marriage in the middle of the journey, from time to time the number is increasing and the reasons are getting more and more diverse. Divorce should be the last alternative in religious rules, if the situation is indeed very difficult and there is no other way to protect the interests of the husband and wife. However, the reality is that the rules and steps that have been determined by religion are no longer heeded by most people. Divorce happens very easily and for trivial reasons that are not fundamental, although not all of them do. This can be seen from the high number of divorce cases in the Religious Court, which from year to year has increased significantly. The number of divorce lawsuits is twice as large as the divorce of *talaq*, even more (Isnawati Rais, 2014)

Divorce must be carried out in a Religious Court or others, because divorce is official and it is legal for a judge's decision in court. The settlement of civil cases, including divorce, is one of which ends with the imposition of a verdict by the court judge who examines it. However, it is temporary because it is

still at the stage of a first-level examination and there are further legal remedies such as appeals, cassation, and review. The parties involved have the right to test the verdict. The assessment can be through whether the decision has met the conditions for the imposition of a judgment as stipulated in Article 50 paragraph (1) of Law No. 48 of 2009 concerning judicial power (Bustanul Arifin Ruysdi, 2020). The 1945 Constitution of the Republic of Indonesia affirms that Indonesia is a state of law (*rechtstaat*). In line with this provision, one of the important principles of the state of law is the guarantee of the independent exercise of judicial power, free from the influence of other powers to administer the judiciary to uphold law and justice.

There are several types of absenteeism of these parties, including: the absence of the plaintiff, the absence of the defendant and the absence of both parties, both the plaintiff and the defendant. For the absence of the plaintiff even though he has been legally and properly summoned, the court will issue a verdict. If the plaintiff and the defendant are never present, the judgment will be dismissed, because the judge must first question the plaintiff's absence before questioning the defendant's absence because the plaintiff is the party who has the right to the lawsuit.

In deciding cases, the judge is not free from mistakes, even though the judge is considered to understand all legal regulations, and can even be impartial. In Article 27 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, it is emphasized that all citizens have the same position in the law. Every Indonesian citizen has equality in the eyes of the law and does not discriminate in enforcing the law. The examination between the plaintiff and the defendant is also of the same degree, even though the defendant is the one who is required to be responsible for the other party's allegations. All of this is for the life of the Indonesian nation so that it can run harmoniously and develop and live a just and sovereign life.

Therefore, this decision is interesting to discuss further related to the perspective of the compilation of Islamic law and civil law, because it contains a number of important aspects that reflect the principles, juridical approach, and interpretation of legal norms between the two systems. On the one hand, the compilation of Islamic law as a source of law that is special in the case of the family of Muslims, prioritizes sharia values that focus on the principles of justice, benefit, and the balance of rights and obligations between the parties. on the other hand, civil law. sourced from the *burgerlijk wetboek* (Civil Code), prioritizing the principle of universality and legal certainty in civil relations between individuals regardless of religious background.

2. METHODS

This research uses the field research method, which is research conducted by going directly to the research location to obtain data from the first source in depth and factual. As explained (Sugiyono, 2017), "field research is carried out by observing and interacting directly with the object being studied, so that researchers can understand the phenomenon in its entirety". The location of the research is the Probolinggo Religious Court with a focus on the lawsuit divorce case, especially regarding the revocation of the mediation agreement outside the presence of the defendant in a positive legal perspective. This research is descriptive analytical, which is to systematically explain the data found in the field, then analyzed to obtain relevant conclusions. The data source consists of primary data and secondary data. Primary data is obtained through interviews with mediators and related parties, while secondary data comes from official documents, archives, regulations, legal literature, and relevant online sources. Data collection techniques include observation, interviews, and document review. Observation is carried out by directly observing the mediation process; interviews are conducted face-to-face to dig up in-depth information; and document review is used to study literature, jurisprudence, law books, journals, as well as authentic documents of divorce cases. Data analysis was carried out descriptively with a qualitative approach, describing the findings in the form of coherent and logical sentences to facilitate interpretation. The validity of the data is ensured through triangulation—cross-checking data from various sources, methods, and times—as well as *member checks*, which are confirming the results of interviews with sources to ensure accuracy. This method is in accordance with

the opinion (Moleong, 2019) that "checking the validity of data is an integral part of qualitative research to guarantee that findings can be trusted and accounted for"

3. FINDINGS AND DISCUSSION

Chronology of Matters

Case Decision Number 291/Pdt.G/2024/PA. The prob began with the filing of a lawsuit for divorce filed by the wife (hereinafter referred to as the plaintiff) against the husband (hereinafter referred to as the defendant) at the Probolinggo Religious Court. As stipulated in the Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2016 concerning Mediation Procedures in Courts, every civil case, including divorce, is required to go through a mediation process before entering the examination of the subject matter. In this stage of mediation, both parties are present and conduct negotiations facilitated by a mediator appointed by the court.

The results of the mediation process show that there is a common ground. The plaintiff and the defendant stated that they agreed to reconcile and cancel the divorce process. This agreement is officially outlined in the Minutes of Mediation, which contains the details of peace, the rights and obligations of each party, as well as a commitment to improve domestic relations. The document is then signed by the plaintiff, the defendant, and the mediator, so that it has the binding force of a valid civil agreement.

However, the development of the case changed significantly a few days later. The plaintiff unilaterally proposed the revocation of the mediation agreement on the grounds that there was a change in the attitude and behavior of the defendant that was considered not in accordance with the spirit of peace that had been agreed. This application for revocation is submitted in writing in the form of a statement, which is submitted directly to the mediator and penetrated to the panel of judges who examine the case.

The legal issue is that the revocation was carried out without the presence of the defendant and without an official summons to the defendant to provide a response or defense. The mediator, after receiving the revocation letter from the plaintiff, immediately reported it to the panel of judges without clarifying or re-deliberation with both parties. This procedure raises debate because it is contrary to the principle of active participation of the parties in every stage of mediation, and has the potential to ignore the right of the defendant to have his opinion heard.

This condition raises two fundamental problems: first, in terms of civil law, whether a valid mediation agreement can be unilaterally canceled without the consent of the other party; Second, in terms of civil procedure law in religious courts, whether the revocation procedure meets the principle of due process of law, namely the right of each party to get the same opportunity in the legal process.

Judge's Considerations Based on the Civil Code

Case Decision Number 291/Pdt.G/2024/PA. Prob began with the filing of a lawsuit for divorce by a wife (hereinafter referred to as *the plaintiff*) against her husband (hereinafter referred to as *the defendant*) at the Probolinggo Religious Court. As stipulated in the Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2016 concerning Mediation Procedures in Court, every civil case submitted to the court, including divorce cases, is required to go through a mediation process first before entering the main examination stage. This mediation is intended to provide the parties with the opportunity to resolve disputes peacefully, efficiently, and avoid lengthy litigation processes.

At the mediation stage, both the plaintiff and the defendant are present and conduct a series of negotiations facilitated by a mediator officially appointed by the court. From the dialogue process, the two parties finally managed to reach a peace agreement that contained several important points, including the cancellation of the divorce process, a commitment to improve communication, and a willingness to maintain domestic harmony. This agreement is stated in the Minutes of Mediation signed by the plaintiff, the defendant, and the mediator, so that it legally has binding force as stipulated in Article 1851 of the Civil Code concerning peace agreements (*dading*).

However, the dynamics of the case changed significantly a few days after the signing of the agreement. The plaintiff unilaterally filed for the revocation of the mediation agreement. In the statement letter submitted, the plaintiff stated that the reason for the revocation was because the defendant was considered not to have shown good faith in carrying out the peace commitment, and was even considered to be repeating the behavior that was the initial cause of the lawsuit. The statement letter was submitted directly to the mediator, who then reported it to the panel of judges without resuming the defendant for clarification or response.

This action raises quite complex legal issues. From a civil law perspective, the question arises as to whether a legally binding mediation agreement can be unilaterally annulled without the consent of the other party. According to the principle of *pacta sunt servanda*, every agreement that is legally made is valid as a law for the parties who make it (Article 1338 of the Civil Code). This means that unilateral revocation has the potential to violate this principle, unless there are reasons that are regulated in the law or have been agreed upon in advance.

In addition, from the point of view of civil procedure law in religious courts, the mediator's move to directly convey the revocation to the panel of judges without presenting the defendant can be questioned. This is because the mediation procedure prioritizes the principle of active participation and equality of the parties (*equality of arms*), where each party has the right to express their opinions, objections, and defenses. The revocation process carried out without the presence of the defendant has the potential to contradict the principle of due process of law which is the foundation of procedural justice in the judiciary.

This phenomenon is interesting to study because it touches on two aspects at once: first, the validity and legal force of mediation agreements in divorce cases; second, the mechanism for canceling the agreement from the perspective of the Compilation of Islamic Law (KHI) and general civil law. This research also places itself in a broader context, namely how legal protection for the parties in the mediation process can be maintained so that no party is harmed by unilateral actions.

Perspective of the Compilation of Islamic Law (KHI)

From the perspective of the Compilation of Islamic Law (KHI), especially Article 115 and Article 116, divorce is the last resort that must be avoided as much as possible. KHI expressly mandates that before the divorce is decided by a judge, the parties must first pursue *ishlah* or peace efforts. The mediation process in religious courts, in essence, is a concrete form of implementing *ishlah* in Indonesia's positive legal system. Through mediation, it is hoped that domestic conflicts can be resolved peacefully, by maintaining family integrity and avoiding the negative impact of divorce, both psychologically and socially.

From the perspective of Islamic law, the concept of *ishlah* is closely related to the principles of *ṣulḥ* (peace) and *taḥkīm* (arbitration). *Ṣulḥ* is the settlement of disputes through a peace agreement that binds both parties, while *taḥkīm* is the appointment of a third party as an intermediary or judge in resolving the dispute. Both have a strong basis in the Qur'an, including in Q.S. An-Nisa verse 35 which orders the sending of *hakam* (mediator) from the husband and wife to achieve peace, and in Q.S. Al-Hujurat verses 9-10 which affirms the obligation to reconcile parties in disagreement.

In the rules of jurisprudence, a peace agreement that has been reached through the Prophet has binding force and should not be annulled unilaterally, unless there is a re-agreement agreed by both parties or a legal defect is found that causes the agreement to be null and void. Imam Nawawi in *Al-Majmu' Syarh al-Muhadzdzab* explained that, "If peace has been agreed upon by both parties and meets the conditions, then the law is binding as a general agreement (*akad*), and cannot be canceled without the consent of the other party." This view is in line with the principle of consensus deliberation, where any change or cancellation of an agreement should be based on mutual agreement, not unilateral will.

Therefore, the unilateral revocation of the mediation agreement without any deliberation or consent from the opposing party, let alone without giving him the opportunity to respond, is contrary to the basic values of Islamic law. Such actions not only ignore the principles of justice and equality of

rights of the parties, but also undermine the very purpose of *ishlah*, which is to create a mutually beneficial peaceful solution.

Furthermore, from the point of view of *procedural justice*, this unilateral revocation also has the potential to damage the dignity of mediation as an effective dispute resolution instrument. In the Islamic legal tradition, consensus deliberation is not just a formality, but a moral pillar that ensures that the decisions taken are truly born from mutual understanding and willingness. If this principle is violated, then the peace process will lose legitimacy, both morally and juridically.

Implications of the Verdict

The panel of judges in this case ruled that the unilateral revocation of the mediation agreement was legally invalid, so the peace agreement still had binding force. This consideration shows that judges seek to uphold the principle of substantive justice, which is to ensure that the verdict not only complies with the provisions of formal law, but also upholds justice and protects the rights of the parties proportionately. From a civil law perspective, a peace agreement reached through mediation is a form of agreement that is subject to the provisions of Article 1338 paragraph (1) of the Civil Code, which states that "*All agreements legally made shall be binding on those who make them.*" This means that the agreement cannot be unilaterally canceled without the consent of the other party.

This judge's decision also sets an important precedent regarding the procedure for revoking mediation agreements. The judge emphasized that any revocation or cancellation of the mediation results must be carried out by involving both parties in order to ensure the principle of *audi et alteram partem* (the right of each party to be heard). Thus, mediation is not only interpreted as a technical stage of dispute resolution before the trial continues, but also as a forum that guarantees the full participation of the parties at every stage of the process, including when there is a request for changes or cancellations of the agreement.

In addition, this ruling provides an ethical and procedural record for the role of mediators. Mediators are not only tasked with facilitating negotiations, but also have a moral and legal responsibility to ensure that any action—including the revocation of the agreement—is carried out in accordance with the applicable legal mechanisms. Ignoring this procedure not only has the potential to harm one party, but it can also give rise to new disputes that ultimately undermine the effectiveness of mediation itself.

Implicitly, this case emphasizes that effective mediation must meet three main elements: (1) a voluntary and legally conscious agreement, (2) the full involvement of the parties at every stage of the process, and (3) a transparent and mutually agreed mechanism for change or cancellation. If these three elements are ignored, mediation will lose its main function as a means of *ishlah* (peace) and have the potential to cause further conflicts both in terms of personal relationships and in terms of juridical aspects.

4. CONCLUSION

Based on the analysis of the case of Decision Number 291/Pdt.G/2024/PA. It can be concluded that the mediation agreement that has been approved and signed by both parties has binding force as stipulated in Article 1338 of the Civil Code and is in line with the principle of *ishlah* in Articles 115 and 116 of the Compilation of Islamic Law (KHI). Therefore, unilateral revocation without the consent of the other party is not legally valid. The judge's consideration emphasized the importance of maintaining substantive justice, protecting the rights of the parties, and applying the principle of *audi et alteram partem* (the right of each party to be heard) at all stages of mediation, including the revocation of the agreement.

This ruling also shows that the mediator has a responsibility not only to facilitate the reach of an agreement, but also to ensure that the procedure of change or revocation is carried out by actively involving both parties. Implicitly, effective mediation must meet the elements of voluntariness, full

involvement, and transparent procedures so that the function of mediation as a means of peace is maintained and does not turn into a new source of conflict.

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