

The Failure of Divorce Mediation: The Role of Attorney in the Mediation Process of Divorce Cases in Indonesia

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Abstract

This study aims to analyze the role of an attorney in the mediation process of divorce cases at the Sleman Indonesia Religious Court. In some divorce cases, a lawyer can appear to influence his client (the litigant) in the mediation room. Because of the lawyer's intervention, the disputing parties who initially wanted a settlement change their decision to divorce. This study is a field study whose data is collected through interviews and observations at the Sleman Religious Court. It employed legal ethics theory to analyze the role of an attorney in the divorce mediation process and legal system theory to analyze several factors that cause the failure of divorce mediation, as well as whether an attorney has a role. The results of this study show that many attorneys have carried out their duties by the Advocate Code of Ethics and by the regulations on mediation procedures in the court. However, some advocates still try to influence their clients in the mediation process. From a juridical perspective, it cannot be justified, as it does not follow the law and ethics. However, it is not entirely to blame, because in terms of legal structure, there are mediation facilities at the Sleman Religious Court that are not regulated by the Supreme Court, such as mediation rooms that are not soundproof, so that the attorney hears the conversation between the mediator and the principal.

Keywords: Mediation; Legal Counsel; Divorce Cases; Advocate Code of Ethics.

Introduction

Mediation is generally a form of alternative dispute resolution, also known as Alternative Dispute Resolution (ADR), which first appeared in the



United States.¹ Experts also expressed their opinions about Mediation. According to Folberg and Taylor, Mediation is a dispute resolution that can be carried out jointly by the disputing parties and assisted by a neutral party, namely the Mediator. The Mediator can develop and offer settlement options to both parties.² In addition, according to Goospaster, Mediation is a problem-solving negotiation process in which an impartial outsider works with the disputing parties to help them reach a satisfactory agreement.³ Meanwhile, according to the Collins English Dictionary and Thesaurus, Mediation is an activity that mediates between two disputing parties to produce an agreement, which a mediator carries out as a party who helps find various alternative dispute resolutions.⁴ Mediation rules in Indonesia are contained in the Supreme Court Regulation (PERMA) No.1 of 2016 concerning Mediation Procedures in Court. The definition of Mediation in the regulation is a way of resolving disputes through a negotiation process to obtain agreement between the parties with the assistance of a mediator.

As one of the executors of judicial power in Indonesia, religious courts have practiced Mediation in the case settlement process. Theoretically, dispute resolution through Mediation brings several advantages. Among these are cases that can be resolved quickly and cheaply, and reduce court congestion. The Mediator's involvement in the dispute is only to spur the parties towards an amicable settlement. Mediators generally do not interfere in determining the settlement agreement's content, unless necessary. This is based on the principle of the mediation process, that the content of the settlement agreement is the absolute right of the parties to determine without any intervention from the Mediator.⁵

The duties of the Mediator are mentioned in Article 14 of PERMA No. 1 of 2016. The Mediator's activity stage begins with introducing himself and allowing the parties to introduce themselves to each other, explaining the purpose, objectives, and nature of the Mediation to the parties. In addition, the Mediator explains the position and role of the Mediator, who is neutral

¹ Muhammad Anwar, "Perbandingan Hukum Dalam Penyelesaian Sengketa Secara Mediasi Di Pengadilan Dan Di Luar Pengadilan Di Indonesia," *Akerab Juara: Jurnal Ilmu-Ilmu Sosial* 5, no. 1 (2020): 18–34.

² Syahrizal Abbas, *Mediasi: Dalam Hukum Syariah, Hukum Adat, Dan Hukum Nasional* (Prenada Media, 2017).

³ Gary Goopaster, *Negosiasi Dan Mediasi: Sebuah Pedoman Negosiasi Dan Penyelesaian Sengketa Melalui Negosiasi* (Jakarta: ELIPS Project, 1993).

⁴ Lorna Gilmour, *Collins English Dictionary and Thesaurus*, Third Edit (Great Brotein: Harper Collins Publisher, 2007).

⁵ Febri Handayani and Syaflawar Syaflawar, "Implementasi Mediasi Dalam Penyelesaian Perkara Perceraian Di Pengadilan Agama," *Jurnal Al-Himayah* 1, no. 2 (2017): 227–50.

and does not make decisions.⁶ Before the commencement of Mediation, a mediator establishes the rules for the implementation of Mediation with the parties, then prepares a mediation schedule with the parties, fills in the mediation schedule form, and provides an opportunity for the parties to convey problems and peace proposals.⁷ According to PERMA No. 1 of 2016, mediation is not part of the litigation institution, but now the mediation institution is part of the court. Meanwhile, according to Article 130 HIR/154 RBg concerning peace (dading), Mediation is the development and empowerment of peace institutions.

Based on observation, the researcher once saw a lawyer who seemed to influence his clients (litigants) in the mediation room of the Sleman Religious Court. In less than 5 minutes, the parties who initially wanted to make peace finally failed.⁸ The chronology was that a lawyer heard that his mediated client wanted peace. Hearing the conversation of his client who wanted to make peace, the attorney immediately banged on the door of the Sleman Religious Court mediation room to talk briefly with his client. In connection with this, one of the parties to the dispute, who had initially begun to melt and want to make peace, chose to return to divorce.⁹

This phenomenon violates Article 18, paragraph 2, point b of Supreme Court Regulation No. 1/2016 on Mediation, which reads "the obligation of the legal counsel as referred to in paragraph 1 is to encourage the parties to take an active role in the mediation process". The attorney should encourage the parties to participate actively in the mediation process. However, in reality, the legal counsel obstructs the proper implementation of mediation.¹⁰ In addition, Article 7 of PERMA No. 1 Year 2016 also stipulates that the parties (in person) involved in Mediation must have good faith so that, with good faith, the mediation process can be carried out efficiently and adequately.¹¹

The seriousness of the Supreme Court in integrating Mediation into the court process can be seen in the mandatory use of Mediation in all civil

⁶ Mahkamah Agung Republik Indonesia, "Peraturan Mahkamah Agung Republik Indonesia Nomor 1 Tahun 2016 Tentang Mediasi" (2016).

⁷ Admin Pengadilan Tinggi Agama Jambi, "Implementasi Peraturan Mahkamah Agung Tentang Mediasi," Pengadilan Tinggi Agama Jambi, 2023, <https://www.pta-jambi.go.id/11-artikel/3870-implementasi-peraturan-mahkamah-agung-ri-nomor-1-tahun-2016-tentang-prosedur-mediasi-di-pengadilan>.

⁸ Banaan Iqbal Rabbani, "Observation at the Sleman Religious Court on August 10, 2022," 2022.

⁹ Rabbani.

¹⁰ Mahkamah Agung Republik Indonesia, Peraturan Mahkamah Agung Republik Indonesia Nomor 1 Tahun 2016 tentang Mediasi.

¹¹ Mahkamah Agung Republik Indonesia.

cases filed with the Court.¹² Mediation may not occur in cases excluded by PERMA No. 1 of 2016 concerning mediation procedures in the Court. The integration of Mediation into the judicial system is mandated by Supreme Court Regulation No. 1 of 2008, later amended by PERMA No. 1 of 2016, which requires all civil cases to be resolved through Mediation before being submitted to a court decision.¹³ Mediation aims to provide humane and fair dispute resolution and encourage peace and reconciliation, especially in divorce cases.¹⁴ The success of Mediation relies heavily on the professionalism and active involvement of the Mediator.¹⁵

Based on the description above, this study analyzes the failure of mediation process in the Sleman Religious Court in the role of legal consultants in divorce cases. The formulation of the problems in this study is that how is the role of an attorney in the mediation process of divorce cases at the Sleman Indonesia Religious Court?

This type of research is field research at the Sleman Religious Court. This research is descriptive analytical, namely, research that conveys, describes, and analyzes the problems objectively from the object under study. This research seeks to describe and analyze the role of legal counsel in the mediation process at the Sleman Religious Court. The approach used in this research is empirical juridical; researchers see the legal counsel's role in the field's mediation process. Then, it will be analyzed using the legal provisions that govern it, namely Law No. 18 of 2003 concerning advocates and PERMA No. 1 of 2016 concerning mediation. Researchers use observation and interview data collection techniques. Observation is carried out in stages so that this observation can produce accurate data regarding the role of legal counsel in the mediation process at the Sleman Religious Court. Second, interviews with judges and non-judge mediators who are in charge of the mediation process at the Sleman Religious Court.

¹² Admin Pengadilan Negeri Surabaya, "Tentang Mediasi," Pengadilan Negeri Surabaya, 2023, <https://pn-surabayakota.go.id/kepaniteraan-perdata/mediasi/>.

¹³ D Sunarsi, "Effectiveness of Mediation Implementations in the Religious Courts of Indonesia," *International Journal of Innovation, Creativity and Change* 10, no. 3 (2019): 49–64, <https://www.scopus.com/inward/record.uri?eid=2-s2.0-85079628303&partnerID=40&md5=f45e2741eb19910c975c5773c31751a4>.

¹⁴ S M A Rachman and H Ali, "Divorce without In-between: An Empirical Study on the Failure of Mediation in the Religious Court of Sengeti Jambi Province," *Man in India* 96, no. 11 (2016): 4209–24, <https://www.scopus.com/inward/record.uri?eid=2-s2.0-85009268796&partnerID=40&md5=800ace0dbfb4acb05f369b7b2a4017b2>.

¹⁵ Karmawan Karmawan, "Mediation in the Religious Courts of Indonesia," *AHKAM: Jurnal Ilmu Syariah* 20, no. 1 (June 30, 2020), <https://doi.org/10.15408/ajis.v20i1.13249>.

Discussion

Ethics of the Legal Profession

Ethics in English is called Ethics, the science of morality, which determines how humans should live in society. Another meaning is the science of what is good and evil, as well as moral rights and obligations; a collection of principles or values relating to morals; values about right and wrong adopted by a group or society. Etymologically, ethics comes from the ancient Greek "Ethos", which means habits, customs, morals, character, feelings, and attitudes. Aristotle was the first philosopher to speak about ethics critically, reflectively, and comprehensively. Aristoteles was also the first philosopher to place ethics as a separate branch of philosophy.¹⁶

Behavior becomes the object of ethical discussion because human behavior reveals various models of choice or decision included in the standard of assessment or evaluation, whether the behavior contains benefits or harms, both for themselves and others.¹⁷ A profession is a permanent job in a long period based on special expertise obtained from the results of specific education in the profession. Mediators pursue this work with full responsibility, whose purpose is to earn an income. People who practice a profession are referred to as professionals. From the previous descriptions, the legal profession is a job that is done professionally and related to the law. In obtaining a license to practice law, mediators must complete special education in the major or concentration of the legal profession of interest, because the legal profession itself has several kinds of work.

The mediation process must be in good faith. This intention is contained in Article 7, paragraph 1 of Supreme Court Regulation No. 1 of 2016, which reads "the parties and/or their attorneys shall pursue mediation in good faith". Good faith is new because it was not contained in the previous regulation. The description of good faith is explained in Article 7 paragraph 2 which states that "one of the parties and/or their legal representative can be declared not in good faith by the mediator if the party concerned: does not attend after being properly summoned 2 (two) times in a row at a mediation meeting without a valid reason; attends the first mediation meeting, but never attends the next meeting even though it has been properly summoned 2 (two) times in a row without a valid reason; repeated absences that interfere with the mediation meeting schedule without a valid reason; attends mediation meetings, but does not submit and/or does not respond to the other party's case resume, and/or; does not sign the agreed upon draft peace agreement without a valid reason".

¹⁶ Serlika Aprita, *Etika Profesi Hukum, Bandung: Refika Aditama* (Bandung: Refika Aditama, 2020).

¹⁷ Aprita.

Suppose the plaintiff is declared not to have acted in good faith in the mediation process as referred to in Article 7, paragraph 2 above. In that case, the examining judge declares the lawsuit inadmissible (Article 22, paragraph 1 PERMA No. 1/2016). Plaintiffs who do not act in good faith are also subject to the obligation to pay mediation costs (Article 22, paragraph 2 PERMA No. 1/2016). Conversely, if the defendant is found not to have acted in good faith, he or she must pay mediation fees (Article 23, paragraph I of PERMA No. 1/2016). Article 22 states that if the plaintiff is declared not in good faith in the mediation process as referred to in Article 7, paragraph 2, the lawsuit is declared inadmissible by the Case Examining Judge; the plaintiff who is declared not in good faith as referred to in paragraph 1 is also subject to the obligation to pay mediation costs.¹⁸ Furthermore, Article 23 states that the defendant declared not in good faith, as referred to in Article 7, paragraph 2, and is subject to the obligation to pay mediation costs.¹⁹

Divorce and Mediation

Marriage Law No. 1 of 1974 provides a basis that makes divorce difficult, as mentioned in Article 4, letter (e). Divorce should be avoided.²⁰ Because the purpose of marriage is to form a happy, lasting, and prosperous family, this law adheres to the principle of making divorce difficult, and to allow divorce, there must be specific reasons, and it must be before a court session. Article 4 letter (c) of Law Number 1 of 1974 concerning Marriage does not intend to stop divorce. On the contrary, the principle of making divorce difficult. The Court must still make every effort to prevent divorce. This must be done to reduce the divorce rate in the community.²¹

Mediation is a middle way; the Mediator functions as a third party.²² His position is not as a judge, but only provides solutions and does not take sides. This mediator can maintain both parties' interests fairly and equally and foster trust between them. As stipulated in the Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2008 concerning Mediation Procedures in Court, a mediator is a third party responsible for mediating and

¹⁸ Mahkamah Agung Republik Indonesia, Peraturan Mahkamah Agung Republik Indonesia Nomor 1 Tahun 2016 tentang Mediasi.

¹⁹ Mahkamah Agung Republik Indonesia.

²⁰ M. Misbahul Mujib, "Memahami Pluralisme Hukum Di Tengah Tradisi Unifikasi Hukum: Studi Atas Mekanisme Perceraian Adat," *Supremasi Hukum: Jurnal Kajian Ilmu Hukum* 3, no. 1 (June 1, 2014), <https://doi.org/10.14421/sh.v3i1.1945>.

²¹ Ahmad Royani, "Efektivitas Asas Mempersulit Terjadinya Perceraian Di Pengadilan Agama Depok" (UIN Syarif Hidayatullah Jakarta, 2008).

²² Erina Qurrota Ainy, "Penerapan Mediasi Dalam Penyelesaian Sengketa Perdata Di Pengadilan Negeri Yogyakarta Tahun 2012-2013: Studi Peraturan Mahkamah Agung Nomor 1 Tahun 2008," *Supremasi Hukum: Jurnal Kajian Ilmu Hukum* 3, no. 2 (November 30, 2014), <https://doi.org/10.14421/sh.v3i2.1955>.

resolving disputes between the parties. The Mediator assists the parties in the negotiation process by seeking various ways to resolve the dispute without deciding or imposing a settlement. Therefore, Mediation is neutral, which means it does not favor any particular party. In the mediation process, the parties are open, fair, and honest, exchanging opinions to reach a mutual agreement. The Mediator does not decide the dispute, but uses it as a middle point to reach a solution.²³

Civil cases must first be attempted for peaceful settlement through Mediation. The decision must consider the mediation effort. If a case is not mediated, even though both parties have attended the trial, the decision is null and void. Before examining the main case by the panel of judges, the couple who will divorce must go through several mediation stages.²⁴

The first stage is the pre-mediation process. Prior to the commencement of a mediation, the couple seeking a divorce must first submit their file to the Sleman Religious Court. The plaintiff will register the case file with the religious Court. Subsequently, the case file will be reviewed and studied. The president of the Court will appoint a judge to hear the case. Article 18 of Perma No 1 Year 2016 explains that the attorney must encourage the parties to play an active role in the mediation process, helping the parties identify their needs, interests, and proposals for dispute resolution during the mediation process. If the parties cannot attend, the attorney may represent the parties in mediation. The judge hearing the case will meet the parties at the first hearing. The judge will explain the obligation to mediate the divorce, as well as related matters such as: maintenance, *idah*, *mut'ah* (if divorced by the husband), child support, and child custody. At this stage, the Court will also inform both parties who will be the Mediator to resolve this case.

The next stage is the mediation implementation process. The mediation implementation stage is: the Mediator introduces himself and provides an opportunity for the parties to introduce themselves; explains the purpose, objectives and nature of Mediation; explains the role and position of the Mediator as neutral and does not make decisions; establishes rules for the implementation of Mediation with the parties; the parties can submit a Resume within a maximum of 5 (five) days from the determination as stated in Article 20 paragraph (5); provide an opportunity for the parties to present problems and peace proposals; facilitate and encourage the parties to explore

²³ Irfan Ardyana Nusantara, "Analisis Terhadap Dualitas Peraturan Menteri Dalam Sistem Peraturan Perundang-Undangan Di Indonesia," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 4, no. 1 (2021): 53–68, <https://doi.org/10.24090/volksgeist.v4i1.4245>.

²⁴ Admin Pengadilan Agama Blora, "Prosedur Mediasi Di Pengadilan Agama," Pengadilan Agama Blora, 2023, <https://pa-blora.go.id/index.php/layanan-hukum/mediasi/prosedur-mediasi>.

and study the interests and benefits of Mediation, seek the best settlement options, and work together to settle; assist the parties in the preparation and drafting of the Peace Agreement; and submit a report on whether the agreement is successful or the Mediation cannot be implemented to the Case Examining Judge.²⁵

After notification of the divorce mediation to both parties, the negotiation process will occur according to the schedule set by the Court. The negotiation process will generally occur in a special mediation room provided by the Court. However, the parties can also choose another area to conduct the discussions, which, of course, must be with the approval of the Court.

The parties must be physically present in this mediation process and may not use a representative. However, the parties may still use the services of an attorney to assist them. In the process, divorce mediation will make the parties sit together in one room. The Mediator will be a neutral party and help explore their problems, which will lead to an agreed-upon agreement. The purpose of a mediation is to find a middle ground for the problems that occur. Moreover, striving to get the best solution can lead to peace.

The next stage is the final implementation of the results of divorce mediation. This stage is where the parties carry out the agreement they have put together in a written agreement. Suppose the Mediation succeeds in reaching an agreement. In that case, the parties, with the help of the Mediator, must formulate an agreement in writing and sign it by the parties and the Mediator according to Article 27 of PERMA Number 1 Year 2016.²⁶ A Peace Agreement can only be made if there is a written statement from the parties containing their approval of the agreement reached. The Mediator shall report in writing the success of the Mediation to the judge examining the case by attaching the peace agreement. If the Mediation reaches an agreement, the parties must appear before the judge with the agreement signed by the parties.

The parties themselves generally carry out the implementation of Mediation. However, in some cases, the implementation is assisted by other parties. The implementation of Mediation takes a maximum of 5 (five) days. As of the determination of the Mediator, the parties to the divorce must submit a case resume to the Mediator. In implementing this Mediation, the Mediator asks the parties to submit a resume for the disputed subject. In this case, the Mediator gave both parties to the divorce the opportunity to

²⁵ R Rahmiati, K Karim, and A Ambarwati, "Pelaksanaan Mediasi Bagi Para Pihak Dalam Perkara Perceraian," *Jurnal Litigasi Amsir* 11, no. 2 (2024): 158–65.

²⁶ Destri Budi Nugraheni, "Urgensi Penggunaan Mediasi Dalam Penyelesaian Perkara Pembatalan Perkawinan Di Pengadilan Agama," *Al-Manabij: Jurnal Kajian Hukum Islam* 14, no. 2 (December 3, 2020): 251–66, <https://doi.org/10.24090/mnh.v14i2.4177>.

prepare a case resume.²⁷ After identifying the issues and the settlement options each party offers, the Mediator asks the Respondent or Defendant questions about the solution options proposed by the Petitioner or Plaintiff, or vice versa.

In this implementation stage, the Mediator also has an important role in encouraging an agreement that benefits both parties. The important roles and functions of the Mediator include the following: fostering and maintaining confidence between the parties; explaining the process, teaching the disputing parties to communicate, and maintaining a good atmosphere; calming the disputing parties in the face of the situation and reality at hand; providing guidance to the parties on the process and skills of bargaining; and helping the parties to gather and obtain important information, as well as generating or generating options in resolving a problem.²⁸

Article 15 details the primary duties of the Mediator as: prepare a proposed schedule of mediation meetings to be discussed and agreed upon by the parties, encourage the parties to participate directly in the mediation process; conduct caucuses if deemed necessary; encourage the parties to explore their interests and find solutions.²⁹ The broader the experience of the Mediator, the more this ability will hone and drive them towards something better in the mediation process.³⁰ Based on the interview with the attorney, the author obtained information from the attorney that peace efforts between the two parties were always carried out, even though they were sometimes unsuccessful. The attorney is considered to have an achievement if the attorney can reconcile the parties or win the case.³¹ In addition, the attorney also explained to the parties the obligation to mediate before the examination. The attorney is also related to the mediation room and how to answer so that his client is not disadvantaged and does not take the wrong step during the mediation process.³² In some instances, attorneys still try to influence their clients during Mediation. This often makes mediation fail and impacts the parties' loss of their rights.³³

²⁷ Abdul Halim Talli, "Mediasi Dalam Perma Nomor 1 Tahun 2008," *Jurnal Al-Qadān* 2, no. 1 (2015): 76–93.

²⁸ Banaan Iqbal Rabbani, "Interview with Rahmat Nugroho as Mediator of Sleman Religious Court, 19 Agustus 2023," 2023.

²⁹ Khairuddin Hasballah and Rahmadani, "Studi Pemikiran Ibnu Qayyim Al-Jauziyyah Tentang Hakam Dan Relevansinya Dengan Mediasi Di Pengadilan Agama," *Samarab* 3, no. 1 (2019): 53–68, <https://doi.org/10.22373/sjkh.v3i1.4430>.

³⁰ Abbas, *Mediasi: Dalam Hukum Syariah, Hukum Adat, Dan Hukum Nasional*.

³¹ Banaan Iqbal Rabbani, "Interview with Rodiyanto, Advocate at the Sikap Legal Aid Institute (LBH), 16 Januari 2024," 2024.

³² Banaan Iqbal Rabbani, "Interview with Khoirul Anwar, Advocate at Khoirul Anwar and Partners, 16 Januari 2024," 20224.

³³ Rabbani, "Observation at the Sleman Religious Court on August 10, 2022."

Legal Counsel in Mediation

Advocates provide legal counsel. This profession has professional ethics. Sometimes legal counsel is also involved in the mediation process. Such involvement is not a problem if it is by the professional code of ethics. The term professional code of ethics is a standard of assessment or evaluation for assessing whether a person's behavior is beneficial or harmful to themselves and others.³⁴ A profession is a permanent job for an extended period based on special expertise obtained from specific educational qualifications. In pursuing this work, one must do it with full responsibility, the purpose of which is to earn income. People who practice a profession are called professionals.

In carrying out a profession, one must have an attitude of professionalism where personal interests must be put aside and prioritize the interests of people in need. In this case, apart from being inseparable from the purpose of a person doing his profession, something professional provisions, he also has an interest in earning income. However, the purpose of this income must not override the purpose of self-service to society.³⁵ A person is said to be professional if they have gained knowledge about their profession from a special education, through examinations, and have obtained a professional license in a particular field. People who achieve this can be considered fit to carry out the profession.³⁶

A legal profession is a job that is done professionally and related to the law. Advocates must undergo special education in the major or concentration of the legal profession of interest in order to obtain a license to practice the legal profession. One of the professions related to Mediation is an advocate. A person can carry out the legal profession as a lawyer if they have taken the Advocate Professional Special Education (PKPA), which is regulated in Article 2 paragraph (1) of Law Number 18 of 2003 concerning Advocates.

Article 1 letter (a) of the Indonesian Advocate Code of Ethics states that an advocate is a person who practices providing legal services, both inside and outside the Court, who meets the requirements under applicable law, either as an advocate, lawyer, legal advisor, practicing lawyer, or as a legal consultant. Advocates have a position that is very free in the legal profession. Advocates can work in the courtroom and freely work outside the court. Advocates are considered an honorable profession (*officium nobile*), which receives protection from the law, laws, and codes of ethics in carrying out

³⁴ Aprita, *Etika Profesi Hukum*.

³⁵ Serlika Aprita and Hasanul Mulkan, "Peranan Etika Profesi Hukum Terhadap Upaya Penegakan Hukum Di Indonesia," *Justicia Sains: Jurnal Ilmu Hukum* 7, no. 1 (2022): 21–40.

³⁶ Aprita, *Etika Profesi Hukum*.

their profession.³⁷

Article 2 of the Indonesian Advocate Code of Ethics (KEAI) explains that "Indonesian Advocates are Indonesian citizens who are devoted to God Almighty, are chivalrous, honest in defending justice and truth based on high, noble and noble morals, and who in carrying out their duties uphold the law, the Constitution of the Republic of Indonesia, the Advocate code of ethics and their oath of office".³⁸ This Article 2 illustrates that an Indonesian advocate is a 'chosen human being' and or 'noble creature'. He is a person who is pious, honest, sidiq, trustworthy, and has a noble character. Therefore, the advocate profession is considered honorable (*officium nobile*). Because of its honorable position, an advocate is given freedom and legal protection by law in their profession.³⁹

As an honorable profession (*officium nobile*), advocates have rights and obligations in carrying out their profession. The implementation of these rights and obligations is an indicator of advocacy professionalism.⁴⁰ Indicators of the honor of the adcoat profession are that advocates must prioritize amicable settlements in civil cases; advocates are not allowed to provide information that can mislead clients about the cases they are handling; advocates are not allowed to guarantee to their clients that the cases they handle will win; advocates must consider the client's ability in determining the amount of honorarium; advocates are not allowed to burden clients with unnecessary costs; an advocate must give the same attention to the case for which he receives a fee as if he were handling a free case; an advocate must refuse to take care of a case that he believes has no legal basis; and an advocate must hold the secret of office about matters told by the client in trust and must keep the secret after the end of the relationship between the Advocate and the client.

In addition to being regulated in the advocate's code of ethics, Article 18 of Perma No. 1 Year 2016 also regulates the obligation of the attorney to assist the Parties in exercising their rights and obligations during the Mediation process. The rights and obligations of lawyers during the mediation process include: explaining the obligation to take the mediation route before the commencement of the examination of the subject matter of the case by the panel of judges; explaining the costs that may arise from the use of non-judge Mediators and non-court employees; explaining the

³⁷ Aprita.

³⁸ Asosiasi Advokat Indonesia, "Kode Etik Advokat" (2003).

³⁹ Thalís Noor Cahyadi, "KODE ETIK SEBAGAI FUNDAMEN PROFESIONALISME ADVOKAT," Doktor Ilmu Syariah, UIN Sunan Kalijaga Yogyakarta, 2022, <https://ilmusyariahdoktoral.uin-suka.ac.id/id/kolom/detail/548/kode-etik-dan-profesionalismeadvokat#:~:text=Advokat+dilarang+berprilaku+buruk+dan,terjadicon.>

⁴⁰ Asosiasi Advokat Indonesia, Kode Etik Advokat.

obligation of the Parties to sign the Mediation explanation form; encouraging the Parties to take an active direct role in the Mediation process; helping the Parties identify their needs, interests and proposals for dispute resolution during the Mediation process; helping the Parties formulate plans and proposals for Peace Agreements if the Parties reach an agreement; and explaining to the Parties regarding the obligations of legal counsel.

Ideally, legal counsel at the Sleman Religious Court must comply with article 4 of the advocate code of ethics, which reads Advocates in civil cases must prioritize peaceful settlement. Article 18, paragraph (2), point (b) also states that advocates must encourage the parties to take an active, direct role in mediation. The advocate should also make it difficult for the divorce to occur because the purpose of marriage is to form a happy, eternal, and prosperous family. The attorney must continue to make every effort to reconcile the parties so that the divorce does not occur. This must be done as a form of effort to make divorce difficult so that the divorce rate in society does not get higher.⁴¹

The implementation of the principle of making divorce difficult is contained in Article 39 of Law No. 1 of 1974 concerning marriage, namely that divorce can only be carried out in front of a court session after the Court concerned has tried and failed to reconcile the two parties.⁴² This explanation shows that the desire of the nation and the Republic of Indonesia is that every marriage can form a happy family, meaning that it will not experience physical and mental suffering, especially the experience of divorce.⁴³

However, in reality, some lawyers bang on the door of the mediation room. The attorney forced the Mediator to speak briefly with his client. After the attorney met with his client, the client, who was initially willing to reconcile, continued with the divorce. Thus, the Mediation failed. The attorney's actions violated Article 18, point B, paragraph 2 of Perma No. 1 Year 2016. The attorney should encourage the parties to participate actively in the mediation process. However, the attorney's actions influenced his client. In the end, the Mediation failed.⁴⁴

⁴¹ Royani, "Efektivitas Asas Mempersulit Terjadinya Perceraian Di Pengadilan Agama Depok."

⁴² Retno Wulansari, "Hambatan Dalam Proses Eksekusi Putusan Terhadap Pemeliharaan Anak Dalam Perkara Perceraian Di Pengadilan Agama," *Supremasi Hukum: Jurnal Kajian Ilmu Hukum* 4, no. 2 (November 30, 2015), <https://doi.org/10.14421/sh.v4i2.1987>.

⁴³ Aripuddin, "Penerapan Asas Mempersulit Terjadinya Perceraian" (Universitas Islam Negeri Ar Raniry, 2017).

⁴⁴ Rabbani, "Observation at the Sleman Religious Court on August 10, 2022."

Conclusion

Attorneys at the Sleman Religious Court have carried out their duties by the Advocate Code of Ethics and Law No. 18 of 2003 concerning Advocates. However, attorneys still try to influence their clients during Mediation. This often makes mediation fail and has an impact on the parties' losses regarding their rights. Juridically, the attorney's actions violate Article 18, Paragraph (2), point b of PERMA No. 1 of 2016 concerning mediation procedures in the Court. The provision reads about one of the legal counsel's obligations to encourage the parties to participate actively in the mediation process. The incident occurred because the Sleman Religious Court mediation room was not soundproof, so the legal counsel heard the conversation between the mediator and the parties. In addition, the violation was also caused by the lack of supervision and strict sanctions.

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