

EFFECTIVENESS OF MEDIATION IN OUT-OF-COURT SETTLEMENT OF INHERITANCE DISPUTES

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Abstract

This research discusses the effectiveness of mediation in settling inheritance disputes outside of the court. The objectives of this study are, firstly, to determine the effectiveness of mediation in resolving inheritance disputes outside of court; secondly, to assess whether conducting mediation outside of court is a viable solution in settling inheritance disputes; thirdly, to identify the factors that contribute to the success of mediation in resolving inheritance disputes outside of court. The research method employed in this discussion is library research, supplemented with analytical descriptive data analysis. Based on the research findings, mediation has proven its effectiveness in settling inheritance disputes outside of court. By expediting the resolution process, reducing costs, and enhancing the satisfaction of the involved parties, mediation presents an attractive alternative worthy of consideration as a solution in settling inheritance disputes through non-litigious means. Another evidence demonstrating the effectiveness of mediation conducted outside of court is its greater impact in maintaining positive relationships, as the outcome is not a win-lose decision, but rather a win-win situation where both parties equally win and willingly accept the agreed-upon settlement, in line with the principles of win-win solutions.

Keywords: Mediation, inheritance dispute, outside court

Abstrak

Penelitian ini membahas tentang efektifnya mediasi dalam penyelesaian sengketa waris di luar pengadilan. Adapun tujuan dari riset ini yang pertama, mengetahui efektivitas mediasi dalam penyelesaian sengketa waris di luar pengadilan, kedua, apakah melaksanakan mediasi diluar pengadilan merupakan solusi yang baik dalam penyelesaian sengketa waris, ketiga, faktor-faktor apa yang mendukung keberhasilan suatu mediasi dalam penyelesaian sengketa waris diluar pengadilan. Adapun metode penelitian pada pembahasan ini adalah riset kepustakaan (library research) dan metode analisis data yang digunakan adalah Deskriptif Analitik. Berdasarkan hasil penelitian, Mediasi telah terbukti keefektifannya dalam penyelesaian sengketa waris di luar pengadilan. Dengan mempercepat proses penyelesaian, mengurangi biaya, dan meningkatkan kepuasan para pihak yang terlibat, mediasi memberikan alternatif yang menarik dan layak dipertimbangkan untuk dijadikan solusi dalam penyelesaian sengketa waris melalui jalur non-litigasi tersebut. Bukti lain yang menunjukkan efektifnya mediasi

yang dilaksanakan diluar pengadilan adalah dampak yang lebih besar dalam menjaga hubungan dengan baik, karena hasil keputusannya bukanlah suatu putusan yang bersifat menang kalah, melainkan masing-masing pihak sama-sama menang dan sama-sama rela bersedia dan menerima kesepakatan yang disepakati kedua belah pihak atau sesuai prinsip win-win solution.

Kata Kunci: *Mediasi, sengketa waris, luar pengadilan*

INTRODUCTION

Humans are created as social creatures who always interact with each other to fulfill their needs. With the encouragement of mutual needs, humans interact with each other in order to help meet the needs of life. This bond of mutual need must be maintained in order to create a safe, peaceful, and prosperous atmosphere in human life as social creatures. Because, if the interaction has been damaged, then various bad effects will occur, such as the destruction of the values of justice, regulation, and security that have lived in the community.

Interaction that has been damaged will lead to a sense of no longer needing each other, it can lead to disputes between humans one, even between groups. Disputes that occur in society in general can occur in marriage relationships, the dignity of a person affected by discrimination, to problems related to property, one of which is a dispute in the division of inheritance.

The issue of the division of inherited property is a very sensitive matter. Not a few siblings who become estranged from each other due to inheritance can even end up persecuting each other because of this. Inheritance disputes that occur in the community are generally caused by unfair distribution to the heirs as stipulated in Islamic law because there are rights that should be obtained but instead are controlled by other heirs. Inheritance disputes can also occur, due to one party selling the property for personal gain without the knowledge and consent of other heirs. The existence of injustice in the distribution and conflict of personal interests is what causes inheritance disputes to arise (Maradona et al., 2021).

The issue of inheritance disputes cannot be resolved between the parties with an interest in the property internally. It is necessary to have a justice institution as a third party to emphasize and provide solutions in resolving inheritance disputes so that there is no prolonged conflict. The purpose of the institution of justice is to reconcile the parties to the dispute. The dispute resolution process is called mediation. In the settlement of cases in court, before the judge holds a trial, the parties are obliged to follow the mediation stage which will be carried out by the mediator.

Basically, the mediation process can be carried out in litigation (court) or non-litigation (outside the court). If conducted in litigation, the mediation process is carried out by a mediator judge. However, if it is carried out outside the court, then the parties can appoint their own mediator as an alternative dispute resolution. However, the mediation process carried out in court sometimes takes a long time so it can waste a lot of time and money. In fact, the judicial process carried out in litigation prioritizes the principles of fast, free, and low-cost justice. However, the fact is that the mediation process carried out actually

takes quite a long time, even up to months. Thus, dispute resolution through litigation can be considered less effective and efficient. Based on these matters, a dispute resolution process has developed that is not only carried out through court channels but can be carried out outside the Court, known as APS (Alternative Dispute Resolution). APS has various forms, one of which is mediation.

Mediation is the right step in dispute resolution because the principle of mediation is a win-win solution for the parties to the dispute. Dispute resolution through mediation is considered to be able to maintain the relationship of the litigants as good as it was in the beginning. This is because the mediation process emphasizes good faith and the availability of the parties to resolve disputes through peaceful means. Dispute resolution through mediation is also considered to embrace one of Indonesia's national values, namely deliberation and consensus. In this article, the authors will present the results of research on how the presence of APS, which provides solutions to dispute resolution through mediation outside the Court, can run effectively (Lie et al., 2021).

Research on dispute resolution in mediation in general is not new in the disciplines of civil law, Islamic law, or Islamic family law. From the results of the search, the author found several literature reviews that are in line with this research, including the work of Desi Sunarsi et al entitled *The Effectiveness of the Role of Non-Judge Mediators in Settling Divorce Cases in Class 1A Religious Courts in Java Island*, the work of A. Maradona et al entitled *The Effectiveness of Mediation Implementation in Settling Inheritance Disputes*, the work of Apriliani Kusnadi entitled *The Effectiveness of Settling Consumer Disputes Through Out-of-Court Processes*, and the work of Muhammad Hafid entitled *The Effectiveness of Settling Inheritance Disputes Using Mediation in Court*.

Based on the literature review above, the object of dispute resolution through mediation is different from this article. In this article, the author discusses the effectiveness of mediation in resolving inheritance disputes outside the Court. Although based on the literature review above there is an object of discussion of inheritance dispute resolution, the scope is different. In this article, it will focus on the effectiveness of the role of mediation in resolving inheritance disputes outside the Court.

METHODS

The research method used in this discussion is library research, which is research carried out using literature (literature) either through books, notes, or reports from previous research results. The data analysis method used is Analytical Descriptive, which is a method that examines human groups, objects, conditions, systems of thought, and events in the present. This analytical descriptive analysis is used in order to reveal research data so that conclusions can be drawn from the title problem.

RESULTS AND DISCUSSION

The Effectiveness of Mediation in Settling Inheritance Disputes Outside the Court

Mediation has become a widely used way of resolving conflicts, especially in matters of inheritance. Mediation can be conducted in court (litigation) or out of court (non-litigation). In the context of non-litigation mediation, it can be conducted by private

mediators, individuals, or independent institutions such as the National Mediation Center (PMN) (Indonesia, n.d.). In community traditions, mediators are usually village heads, tribal heads, customary functionaries, or religious leaders (Mahruz, 2019). As for this subchapter, the problem formulation studied is the extent of the effectiveness of mediation in resolving inheritance disputes, with a focus on speed, cost, and satisfaction of the parties involved.

First, speed is one of the important aspects of resolving inheritance conflicts outside the court. Based on research conducted by Nurhayati Zein, it was found that mediation generally results in faster settlements and minimizes the time required to resolve inheritance disputes, compared to the judicial process which often takes months or even years (Zein, 2022). Similarly, Bima Cahya said in his thesis that mediation can resolve inheritance conflicts quickly, efficiently, and at a more affordable cost than taking the dispute to court (Setiawan, 2014). This is due to the flexibility of time that the parties have in determining the mediation schedule, thus enabling a faster settlement. The parties involved in mediation tend to reach an agreement in a shorter time because the mediation process allows them to communicate directly and find solutions together.

Secondly, in terms of cost, mediation also offers the potential for significant savings for the parties involved in an inheritance dispute. Mediation is often more affordable than litigation in court. Litigation is a way of alleviating conflict between parties that is carried out in court (Pramesti, 2020). Therefore, litigation in court often involves high costs, including administrative costs, lawyers, and other costs that can burden the parties. However, mediation tends to be more economical due to the reduction of these costs. Ahmad Falih Mahruz (2019) observed that this factor also influences people in Wonosalam Village (Demak) to be reluctant to resolve their problems using the judicial process (Mahruz, 2019). They prefer non-litigation mediation because it can minimize the expenses associated with formal legal processes.

Third, party satisfaction is also an important indicator when assessing the effectiveness of mediation in resolving inheritance disputes. According to research conducted by Ahmad Falih (2019) in Wonosalam Village (Demak), parties tended to be more satisfied and sincere in accepting the outcome of non-litigation mediation of their inheritance disputes than those who followed the court process. Factors such as greater control over the process, joint decisions in formulating solutions that meet the needs and interests of each party, and a more collaborative atmosphere in mediation all contributed to higher levels of satisfaction.

For example, in Gemuruh Village, Tungkal Ulu Subdistrict, the settlement of inheritance disputes involves community leaders as mediators who consider the wishes of all parties involved. This is so that the disputed issue can be resolved satisfactorily without leaving future tensions, and all parties can accept the agreement sincerely (Saparudin, 2023). Essentially, the satisfaction of all parties lies in the outcome of decisions that prioritize solutions that benefit all parties, known as win-win solutions. This is a concept where the goal is not to determine who wins or loses but to create a joint solution to solve the

problem. This is in contrast to the court, where the judge's decision usually determines the losing and winning parties (Lasori, 2021; Mahruz, 2019).

In the context of inheritance dispute resolution, mediation has proven to be an effective method. The main factors that demonstrate the effectiveness of mediation in resolving such disputes out of court include speed in dispute resolution, cost reduction in the dispute resolution process, and satisfaction of the parties in the settlement outcome. This can be realized if all parties make maximum efforts to realize an effective mediation process in order to reach an amicable agreement. Therefore, supporting mediation as the main option in the settlement of inheritance disputes can provide great benefits for all parties involved.

Mediation as a Solution in Building Good Relationships

Mediation aims to resolve inheritance disputes out of court, specifically where the disputing heirs jointly resolve disputes relating to the division of inheritance through agreement. If the agreement does not reach the expected result, mediation is then carried out, and after that one of the disputing heirs invites a third party to mediate and resolve the dispute over the division of the inheritance. As happened in Gemuruh Village, the process of resolving inheritance disputes through the mediator of community leaders. The people of Gemuruh Village who mediate with community leaders are mostly those who are obedient to religious values. Therefore, they need advice and more knowledge about religion and this is obtained from someone who has broader religious knowledge than them, one of which is from community leaders where it is hoped that the resulting decision will not conflict with religious teachings and most people come to ask community leaders as mediators are people who have family problems, especially regarding the division of inheritance property (Saparudin, 2023).

In this case, the main actor in resolving disputes with mediation is the mediator who can only provide advice or suggestions to resolve existing problems, therefore he cannot force the disputing heirs to obey and follow the opinions and suggestions of the mediator. The mediation process in Gemuruh Village is very different from the mediation process in the Court, in the implementation procedure there are no special provisions governing it, in the sense that the implementation of mediation is not formally as in the law, or as in the process carried out in court, but the rules and other provisions applicable to mediation are decided by the parties to the dispute, starting from time to other procedures. The mediator follows what the parties want so that all existing problems can be resolved peacefully so that no further disputes occur and all parties can accept decisions and agreements satisfactorily.

The implementation of mediation for the final decision is not a win-lose decision, but all parties win and are equally willing and accept what has become an agreement agreed by both parties or can be called in accordance with the principle of a win-win solution. Mediation in resolving inheritance disputes outside the court has several advantages for the disputing heirs compared to the court route. Mediation is one of the ways used by disputing heirs to resolve disputes over the division of inheritance property by presenting a third party. One of the advantages of mediation is that the disputing parties feel very

satisfied with the results achieved through this mediation process. Mediation helps maintain and strengthen good relations between the parties to the conflict, especially in terms of communication. This is very important to ensure the continuity of relationships between parties who are still members of one big family, and avoid divisions. Mediation can be faster and more cost-effective when compared to court proceedings which tend to be longer and more complicated. So that it provides benefits for the parties to the conflict in terms of time and financial efficiency (Awaludin, 2021).

With mediation, it is hoped that in terms of resolving conflicts, disputes will be resolved quickly and carried out properly and mediation can run smoothly and in accordance with what is desired and expected, but also sometimes even the mediation process carried out can fail. The same thing happened to the community in Gemuruh Village. When family problems occur, they prefer to resolve them within the family first. One of them is the issue of inheritance division. If there is a dispute between heirs that cannot be resolved by family deliberation, they do not submit the inheritance dispute to the Religious Court. The community prefers to resolve it through community leaders and then be tried and decided by community leaders.

Success Factors of Mediation in Out-of-Court Dispute Resolution

The settlement of inheritance disputes through out-of-court mediation is certainly not always the best way to resolve these conflicts, but there are also several advantages that can make mediation an alternative to out-of-court dispute resolution. Basically, the mediation process will not run well without paying attention to the strategy in its completion, especially when the case involves inheritance issues which are very sacred cases.

There are several supporting factors that can determine the success of the mediation process in resolving various conflict disputes. These factors must be considered so that mediation can be the right choice in resolving conflicts outside the court. Based on several previous studies related to mediation, the factors that determine the success or failure of mediation in resolving a conflict include the following:

1. The parties concerned. The parties to the mediation must have a good impulse and full willingness to be able to resolve their problems with mediation. The parties must also have the same view or vision, namely to reconcile and must understand what the purpose of the mediation is. In addition, the psychological condition of the parties is also an important part that must be considered for the success of mediation. There needs to be good mental readiness before the mediation process is carried out by a third party in a non-litigation manner.
2. The issue in dispute. The level of disputed issues by the parties also needs to be considered both in terms of situations and conditions, because without paying attention to these factors, it can have an impact on the difficulty of achieving the success of the mediation. For example, if the problem at hand has been protracted or has occurred for years, it will certainly be difficult to

find a solution with mediation. So, it would be better to take action through mediation if there is a case that is difficult to resolve privately between the parties to the dispute.

3. Mediator. The skills possessed by the mediator are also one of the factors determining the success or failure of a mediation. Therefore, a professional mediator must have creativity in carrying out mediation so as to achieve the goal of mediation, namely peace. Each mediator has its own techniques or ways of carrying out its role as a mediator. Mediators are expected to conduct mediation through approaches from various aspects, whether psychological, religious, or social. This approach aims to understand the mediation parties (Setyowati, 2015).

In addition to the factors mentioned above, the supportive legal framework and the openness or flexibility of the parties are other factors that support the success of mediation.

CONCLUSION

The non-litigation mediation process for inheritance disputes has proven to be more effective than the settlement through litigation (court). This is evidenced by the faster settlement process than through the courts, which can take months. The implementation of out-of-court mediation can also reduce costs, which if resolved through court channels can actually cost a lot of money such as court fees, services using lawyers, and so on, as well as a better level of satisfaction for the litigants. Mediation provides an attractive alternative and is worth considering in resolving inheritance disputes through this non-litigation route. In addition, mediation carried out outside the court has a greater impact on maintaining good relations, because the result of the decision is not a win-lose decision, but each party wins and is equally willing and willing to accept the agreement agreed by both parties or according to the principle of win-win solution. The effectiveness of a mediation that resolves inheritance cases outside the court can basically be carried out well with the support of several factors including the parties who have good faith and wholehearted willingness to achieve peaceful goals through mediation, then the problem at hand has not been protracted so that if there is a dispute in the distribution of inheritance property it would be good to hasten the mediation action, as well as the mediator's skill in influencing the parties to the dispute to make peace.

BIBLIOGRAPHY

- Awaludin, R. (2021). Penyelesaian Sengketa Keluarga Secara Mediasi Non Litigasi dalam Kajian Hukum Islam dan Hukum Positif. *Al Maqashidi: Jurnal Hukum Islam Nusantara*, 4(2), 1–16.
- Indonesia, M. A. R. (n.d.). *Mediasi*. Pengadilan Negeri Surabaya Kelas 1A Khusus. <https://pn-surabayakota.go.id/kepaniteraan-perdata/mediasi/>
- Lasori, S. A. (2021). Efektivitas Mediasi dalam Perkara Warisan. *Jurnal Ideas: Pendidikan, Sosial, Dan Budaya*, 7(1), 21–32. <https://doi.org/10.32884/ideas.v7i1.327>

- Lie, G., Syailendra, M. R., Hadiati, M., & Aprilia, I. S. (2021). Efektivitas Mediasi Dalam Menyelesaikan Sengketa Pada Masyarakat Di Kelurahan Maleber Dan Kecamatan Andir, Bandung. *Seri Seminar Nasional Ke-III Universitas Tarumanagara Tahun 2021*, 589–596. <https://journal.untar.ac.id/index.php/PSERINA/article/view/17461>
- Mahruz, A. F. (2019). Kekuatan Hukum Penyelesaian Sengketa Waris Melalui Mediator Tokoh Masyarakat di Desa Wonosalam Kecamatan Wonosalam Kabupaten Demak. *Al-Hukama: The Indonesian Journal of Islamic Family Law*, 9(1), 47–75. <https://jurnalfsh.uinsby.ac.id/index.php/alhukuma/article/view/754/563>
- Maradona, A., Nawir, S., & Anzar. (2021). Efektivitas Pelaksanaan Mediasi Dalam Penyelesaian Sengketa Kewarisan. *Journal of Lex Generalis (JLS)*, 2(1), 185–200. <https://mail.pasca-umi.ac.id/index.php/jlg/article/view/317/373>
- Pramesiti, T. J. A. (2020). *Litigasi dan Alternatif Penyelesaian Sengketa di Luar Pengadilan*. Hukumonline.Com. <https://www.hukumonline.com/klinik/a/litigasi-dan-alternatif-penyelesaian-sengketa-di-luar-pengadilan-lt52897351a003f/>
- Saparudin, J. (2023). Penyelesaian Sengketa Waris Melalui Mediasi (Non Litigasi) (Studi Kasus). *Wasathiyah: Jurnal Studi Keislaman*, 4(2), 60–68.
- Setiawan, B. C. (2014). Mediasi Sebagai Salah Satu Alternatif Penyelesaian Sengketa Pembagian Harta Waris Menurut Hukum Islam. *Skripsi Universitas Jember*.
- Setyowati, N. D. (2015). Faktor-Faktor Yang Menentukan Keberhasilan Mediasi Yudisial Dalam Perkara Perceraian Di Pengadilan Agama Semarang. *Skripsi: Universitas Islam Negeri Walisongo Semarang*. <https://eprints.walisongo.ac.id/id/eprint/4287/1/112111088.pdf>
- Zein, N. (2022). Mediasi dan Solusi: Ninik Mamak sebagai Mediator dalam Menyelesaikan Sengketa Warisan. *At-Tajdid: Journal of Islamic Studies*, 2(4), 160–168. <https://ejournal.uin-suska.ac.id/index.php/At-tajdid/article/view/20039>