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**EFFECTIVNESS OF
DIVORCE MEDIATION IN INDONESIA:
COMPARATIVE LEGAL STUDY OF
UNITED STATES**

Abstract

Victims of Domestic Violence (KDRT) are increasing every year, which is one of the causes of divorce. CATAHU Komnas Perempuan 2022 reported that as many as 4,779 cases of divorce were due to domestic violence. The divorce process is preceded by a mediation stage as a dispute resolution by mediators at the Religious Courts. Mediators who handle divorce cases must be thorough and have a strategy for identifying and dealing with domestic violence. Domestic violence screening (KDRT screening) needs to be done so that the identification of cases of domestic violence can be explained specifically. One of the countries that have implemented screening is the United States, which considers it an appropriate and effective method. Comparison of the legal system becomes an analytical knife regarding the legal process of mediation between Indonesia and the United States. Domestic violence screening conducted in divorce mediation can identify violence that occurs. If there is an act of violence, the mediator can use a different approach during mediation. Mediation should be able to help both parties reach an agreement that is fair and profitable for both while taking into account the rights and obligations of the parties.

Keywords: *Comparative Legal Study, Domestic Violence, Divorce Mediation.*

Abstract

Korban Kekerasan Dalam Rumah Tangga (KDRT) meningkat setiap tahunnya, yang menjadi salah satu penyebab perceraian. CATAHU Komnas Perempuan 2022 melaporkan bahwa, sebanyak 4.779 kasus perceraian karena KDRT. Proses perceraian didahului dengan tahap mediasi sebagai penyelesaian sengketa oleh mediator di Pengadilan Agama. Mediator yang menangani kasus perceraian harus secara teliti dan memiliki strategi untuk mengidentifikasi serta menangani KDRT. *Domestic violence screening* (skrining KDRT) perlu dilakukan agar identifikasi kasus KDRT dapat dijelaskan secara spesifik. Negara yang sudah menerapkan skrining salah satunya Amerika Serikat, dan menganggap sebagai metode yang tepat dan dinilai efektif. Perbandingan Sistem hukum menjadi pisau analisis mengenai proses hukum mediasi antara Indonesia dan Amerika Serikat. *Domestic violence screening* yang dilakukan dalam mediasi perceraian dapat mengidentifikasi kekerasan yang terjadi. Apabila terdapat tindak kekerasan, mediator dapat menggunakan pendekatan yang berbeda ketika mediasi. Mediasi

seharusnya dapat membantu kedua belah pihak mencapai kesepakatan yang adil dan menguntungkan bagi keduanya, dengan tetap memperhatikan hak dan kewajiban para pihak.

Keywords: Kekerasan Dalam Rumah Tangga, Mediasi Perceraian, Studi Hukum Komparatif

INTRODUCTION

Comparison of legal systems is an object of study as well as a method of approach in legal science. In a broad sense, the comparison of legal systems has attracted much interest from comparative and legal scholars. The rapid development and growth of globalization to trace the legal system adopted by various countries has resulted in no dividing walls between one country and another. Comparison of the legal and judicial systems seems to be a demand that is the need of all countries at this time, especially for countries that establish diplomatic relations with the country concerned.

The stamp of a rule of law state for a country has consequences for building a legal system and updating it to be better, modern, and comparable to other countries. One scientific method that can be taken is to conduct a comparative study of the legal and judicial systems. Since the 19th century, comparison of legal systems has become a topic of increasing importance in the legal field. Initially, the comparison of legal systems focused solely on comparisons between European legal systems, but has now expanded to include comparisons between legal systems around the world (Djoni Sumardi Gozali, 2004). From the results of the comparison, you will get a description of the points of similarities and differences between one legal system in one country and another. Then it can be received if there are positive things that do not conflict with the values, sense of justice, or culture adopted by the Indonesian people.

Reception of the legal and judicial system is not taboo in the history of the growth and development of the legal system in the world. In general, the legal systems of European countries are inseparable from the reception results of the Roman legal system, especially the book of Justinian's Law. Likewise, the American legal system is the result of a reception from the British legal system known as the Common Law System, which originates from the customary law of the indigenous people of England, namely the Anglo Saxons.

Indonesia, which originally implemented the customary law system, the Islamic legal system, and the colonial legal system. The Dutch, who colonized for quite a long time, were the cause of the reception of the Dutch legal system which was rooted in the Roman Law System. Comparative studies of the legal system make a major positive contribution to delivering the dynamics of a nation's legal system. Later it will lead to a renewal and implementation of a legal system in accordance with current conditions. This is important because the law must be positioned according to its function as a tool to protect humans, not to suppress human rights. Comparison of legal systems is also increasingly related to global issues such as human rights (HAM), environmental protection, and law enforcement against transnational crimes such as terrorism and human trafficking. This shows the importance of understanding the differences and similarities between legal systems in various countries, one of which is the comparison of divorce mediation at the Indonesian Religious Court (PA) and the Cuyahoga Family Court, in the United States.

For 21 years, Gender Based Violence (KBG) in the personal realm with the type of Violence Against Wives (KTI) totaled 484,993 cases reported. The highest KTI occurred in CATAHU 2009, namely 131,375 cases (Komisi Nasional Anti kekerasan Terhadap Perempuan, 2023). More specifically, within one year of gender-based violence against women that occurred in Indonesia, there was a significant increase. Throughout 2021, there were 338,496 incoming reports. In 2020, the number of cases entered was 226,062. So there was an increase of 50%. In addition, there were 771 KTI cases that were reported to Komnas Perempuan. Data from Badan Peradilan Agama (Badilag) also shows a high number related to violence, namely 42,387 cases of divorce due to domestic violence (Komisi Nasional Anti Kekerasan Terhadap Perempuan, 2022). The problems of domestic violence became open with the emergence of Law Number 23 of 2004 concerning the Elimination of Domestic Violence (UU PKDRT). Violence is no longer a private issue, but a public issue. The state is obliged to justify that the violence experienced by women and men is a crime against humanity. In addition to these laws, there is a convention called the International Bill of Rights for Women. This convention gave birth to a text in the form of the Convention on the Elimination of All Forms of Discrimination Against Women or called CEDAW. Indonesia ratified it into Law Number 7 of 1984 concerning the Ratification of the Convention Concerning the Elimination of All Forms of Discrimination Against Women. The law is a valuable change regarding the elimination of violence against women.

The Religious Courts (PA) have mediation provisions for civil cases listed in the Supreme Court Regulation Number 1 of 2016 concerning Court Mediation Procedures. Mediation is a negotiation carried out by disputing parties assisted by a mediator. Mediation must be carried out in any dispute. This process is assisted by non-judge mediators or judge mediators. Mediation aims to provide an opportunity for peace for the parties. In the United States, family courts were first established starting in the late 1910s by order of probation officers who were invested in the success of special domestic relations courts. The original criminal nature of family courts was slowly replaced by an implied civil approach, starting in the 1930s with New York laws designed to treat non-support cases as civil matters.

In 1933, New York established an independent family court, called the Domestic Relations Court, to better address family matters from criminal jurisdictions. In addition, New York issued the Uniform Support of Dependents Law (USDL) to provide an interstate civil enforcement mechanism for family court decisions. The court's mediation department consists of lawyers trained as mediators who assist litigants in resolving child custody disputes impartially and confidentially. Mediation is available both by court order and also by direct request without filing a motion in court.

This paper will present a comparison of divorce mediation in the Indonesian religious court and the Cuyahoga family court, in the United States of America. This study was conducted because a special tool was needed for screening cases of domestic violence, one of the goals of which was to be able to contain accurate data. PA does not have jurisdiction over domestic violence cases, but it can explore potential disputes between the parties involved. For victims of violence, this will provide space and obtain rights to legal protection and justice. What are the differences between mediation procedures in Indonesia and the United States? So what kind of concept can fulfill women's human rights in divorce.

RESEARCH METHODS

The type of research used is normative juridical. Normative legal research is a process of searching for legal rules, legal doctrines, and legal principles to answer problems. Research conducted will produce arguments, new concepts, or theories that produce prescriptions for solving problems (Marzuki, 2019). The research source in the form of legal materials is used to analyze applicable laws, which consist of primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal material has an authoritative nature, namely in the form of laws along with state gazettes, additional state gazettes, and judges' decisions. Legal material in the form of laws and regulations is a reference in conducting research. Meanwhile, secondary legal materials are publications concerning law that are not official documents such as books, journals, or theses. Tertiary legal materials are materials that provide explanations regarding primary and secondary legal materials such as legal dictionaries or encyclopedias (Marzuki, 2019).

RESULTS AND DISCUSSION

Legal System and Comparison of Legal Systems

To find out how the legal system works, Lawrence M. Friedman's legal theory can be used as an analytical knife. Friedman initiated the working of the legal system in three ways, namely legal structure, legal substance, and legal culture (Friedman, 2021). The legal structure is one of the basic elements of a real legal system. So the framework or body of a system is a structure. In addition, the making and law enforcement agencies are in this section. For example, the structure of the judicial system is a judge who has jurisdiction in court. Higher courts are above lower courts.

The legal substance is something that is produced by legislators such as decisions, decrees, laws, and other derivative regulations. Meanwhile, legal culture is the relationship between social behavior and law. Culture is a social value and attitude element. This can be in the form of customs, habits, opinions, ways of acting, and attitudes that are held. So that in practice it can take advantage of norms other than legal norms. This will be a support so that the implementation of legal norms can be achieved. The legal structure, legal substance, and legal structure interact with each other in the functioning of the legal system. The state can use these three things as a guideline for carrying out the law. So that you know where the law can be improved. If these three points can be implemented properly, justice, benefit, and legal certainty can be achieved.

From an academic perspective, there are two views regarding the comparative study of the legal system, namely whether it is included in a disciplinary study and includes a branch of law or not. This view can be explained by the following two opinions (Qamar, 2010). AM. Suherman described that developments regarding the comparative study of the legal system are a science that is as old as the discipline of law. In its development, this study was only seen in the 19th century as a special branch of legal science. This scientific discipline developed intensely in Europe, pioneered by Montesquieu in France, Von Feuerbach and Mansfield in England, and Gand and Thibaut in Germany.

In contrast to this, M. Fuady argues that comparative law is a method and knowledge that studies law by reviewing more than one legal system that looks at rules, legal principles, jurisprudence, as well as expert opinion in various legal systems, which aims to obtain differences and equality. So as to get certain concepts and conclusions that can be searched

for the emergence of differences and similarities sociologically, analytically, historically, to normatively. The first opinion unequivocally states that comparative legal systems are a special branch of legal science that experienced development in the 19th century. While the second opinion states that the comparison of the legal system is knowledge, it is also included as a method for studying law. Sunaryati Hartono also stated that comparative law is a legal science research method. Not a branch of law science.

Apart from these two differences of opinion, the comparison of legal systems is the object of study from comparative science. This is a method of approaching legal science in a broad sense so that in the perspective of the study of comparative law it acts as an auxiliary science in law. The role of comparison of legal systems in legal science is as an approach method to explore and uncover points of similarities and differences of a discipline or legal system that is highlighted.

According to A. E. Orucu in a book entitled *Method and Object of Comparative Law* is a legal discipline that aims to find similarities and differences and find patterns of close relationships between various legal systems. Also looks at the comparison of legal institutions, and concepts and tries to determine a solution to certain problems in the legal system in question. The goal is legal renewal, unification, and others (Atmasasmita, 1989). W.L.G. Lemaire also gave an opinion regarding comparative law in a book entitled *Het Recht in Indonesie*, namely as a branch of science (which also uses comparative methods), among other things, has the following scope of contents of legal rules, similarities, differences, causes, and social basis (Soerjono Soekanto, 1979).

Satcipto Rahardjo revealed that in order to be said to be conducting a comparative study of law, materials collected from foreign laws need to lead to certain points such as, (1) Showing the differences and similarities that exist between the system and the legal fields studied; (2) Explain the reasons for similarities or differences, as well as the factors that cause them; (3) Provide an assessment of each system used; (4) Provide ideas from the results of the study regarding conclusions that can be drawn and their continuation; (5) Formulate general trends in legal developments, including the regularity and rhythm that can be seen in said legal developments; and (6) Finding general principles from the results of research conducted by comparison (Rahardjo, 1986).

Divorce Mediation in the Indonesian Religious Courts and Cuyahoga Family Court, United States of America

According to the Marriage Law, husband and wife have equal rights and obligations. So, if one party infringes on the rights or obligations, then they have the same opportunity to file for divorce. KHI and Law Number 1 of 1974 does not specifically mention divorce. However, implicitly contained in Article 114 KHI, the breakup of a marriage caused by a divorce can occur due to divorce or a divorce lawsuit. In addition, in Article 39 paragraph 1 of Law Number 1 of 1974 jo. Article 115 KHI explains a marriage is considered dissolved if it has been made an oath in front of the Religious Court after the court tried to reconcile but was unsuccessful.

As referred to in Article 39 of Law no. 1 of 1974, (1) Divorce can only be carried out before a court hearing after the person concerned has tried and failed to reconcile the two parties, (2) To carry out a divorce there must be a sufficient reason that between husband and wife will not be able to get along as husband and wife, and (3) Procedures for divorce before a court session are regulated in the said statutory regulations.

Within the scope of religious courts, there are two terms of the divorce, namely contested divorce and talak divorce. Claimed divorce is the breakup of marital relations due to a divorce claim from the wife. Meanwhile, talak divorce is the breaking of a marital relationship in which the husband becomes the applicant (Manan & Fauzan, 2002). The petitum contained in the divorce allows the applicant to impose divorce on the respondent. So that the impact is that the wife is still supported by the husband, provided that the wife is not nusyuz. If the divorce is contested, then the content of the petitum is that the defendant drops one ba'in sughra divorce on the plaintiff. The resulting impact is that the wife does not get iddah or mut'ah income.

Mediation comes from the Latin word *mediare*, which means to be in the middle. This word is in line with the role of the mediator as a third party in a case. A neutral and impartial attitude towards one of the disputants will create an attitude of trust from the disputing parties (Abbas, 2009). Based on the opinion of Jhon W. Head, mediation is an intermediary method in which there is a third party as a communication link between the parties so that the different views of the dispute experienced can be reconciled. However, the peace agreement lies with each party (Head, 1997).

The types of cases mediated, namely all civil disputes submitted to the Court of First Instance, must first be sought for settlement through peace with the help of a mediator. Everyone who carries out the mediator function is in principle required to have a mediator certificate obtained after attending training organized by an institution that has obtained accreditation from the Supreme Court of the Republic of Indonesia. The mediation process is basically closed unless the parties want otherwise.

Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Courts (Perma Mediasi) has the aim of integrating the mediation process in cases in PA. This will suppress cases that go to the level of appeal and cassation. In addition, it has implications for the mediation time span being short, the disputing parties participate in mediation accompanied by legal counsel or not accompanied, and the parties have good faith in mediation.

Legal effectiveness is defined by the ability to produce or create conditions in accordance with the will of the law. This effectiveness can be seen from the function of law as a means of change as well as social control. There are factors that are interconnected and influence the effectiveness of the law, namely legal factors, law enforcers, facilities and means of law enforcement, culture, and society (Soekanto, 2013).

The implementation of mediation in PA is considered a formal process that resulted in the failure of the peace agreement between the parties. Mediation conducted before a lawsuit is submitted to the religious court is also one of the reasons why the litigants often perceive mediation attempted in the religious court as a mere formality, so rarely cases handled in court end in an amicable agreement at the mediation stage, like most the parties to the litigation had been divorced religiously for a long time and already had their respective spouses (already married), so to legalize the divorce they finally filed a lawsuit or application letter to the religious court (Haeratun & Fatahullah, 2022).

In the Bandung Religious Court, there is research that explains that the obstacles to mediation failure are caused by a lack of legal awareness and a low desire for peace. This situation can be seen from the high number of mediation failures from year to year. There was no significant decrease in numbers as seen based on data taken in 2017 which were

unsuccessfully mediated, namely 944 cases in total 995 were reconciled, until July 2018 which were unsuccessful were 468 cases in total 500 cases which were reconciled by mediators (Habibunnas, 2021).

Mediation is considered successful if the parties agree to reconcile and withdraw the divorce application or suit. This success is judged by the peace between the disputing parties, not other factors that lead to divorce. Mediation should be able to accommodate the rights and obligations of the litigants, not just record it through successful, partially successful, unsuccessful, and not implemented mediation.

Certain conditions are required that must be met for the law to have an influence on the attitude of action or human behavior. The conditions that must exist include that the law must be communicable. Legal communication focuses more on attitude because attitude is a mental readiness so that a person has a tendency to give good or bad views, which are then manifested in real behaviour (Orlando, 2022).

Mediation of divorce cases in Religious Courts is generally not effective because it is not in accordance with the intent of issuing a Supreme Court Regulation concerning Mediation Procedures in court. The ineffectiveness of this mediation is because the mediation implementer has not fully (maximally) carried out mediation and still seems to only fulfill formalities, standard measures for success in mediation of divorce cases which are difficult to achieve, and the culture of society in responding to peaceful efforts in court. In order for mediation to be effective, improvements and changes that include mediation implementers, rules, and community culture must be carried out and go hand in hand and support each other.

In the United States, there are family courts, which are courts with limited jurisdiction that try cases involving family law. For example, family courts usually hear cases involving divorce, child custody, and domestic violence. Family court is governed by state and local laws. Depending on the jurisdiction, these courts may be called domestic relations courts.

The court coordinates assessments and makes referrals for court mediation services. Certified mediators, located at the Court of Domestic Relations, help parties resolve parenting issues without litigation. Mediated issues concern the allocation of parental rights and responsibilities and the arrangements and life schedules of children. Financial matters will not be discussed. The mediation fee is \$250.00 and is charged as court costs. The court will generally order each party to pay 50% of the costs. An additional fee of \$50.00 will be charged to parties who fail to attend the mediation session without being officially released from the mediation session. Under the Uniform Mediation Act, ("UMA"), R.C. 3109.052 and Sup. R.16. There are some general rules of mediation.

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This protocol contains many best practice strategies and recommendations for identifying and responding to domestic violence and other barriers to safe mediation. The protocol includes questions about the dynamics of the relationship; questions about certain behaviors, including various harassment tactics; follow-up questions to clarify participants' answers; explanation of confidentiality limitations; and information about what to do with the disclosed information. This strategy can help mediators determine whether a case should be mediated or not. If not mediated, can carry out other processes safely.

Domestic violence cases are considered unsuitable for mediation. But if the victim wants to participate in mediation, the mediator ensures and demonstrates that mediation will be a safe and effective tool for all parties. The decision whether to order, initiate or continue mediation despite presumptions against mediation should be made on a case-by-case basis. The most important factor to consider in deciding whether to proceed with mediation is whether the victim wishes to mediate. Mediation should not be continued if the victim does not wish to participate. In the United States, it also recommends routine checks for women to prevent Intimate Partner Violence (IPV). This examination includes physical and psychological violence.

Comparison of Divorce Mediation Procedures between the Religious Courts of Indonesia and the United States of America

Based on the description of each procedure in each country, the following is a comparison regarding divorce mediation procedures between the two countries.

Table 1. Comparison of Mediation Procedures

No	Comparison	Indonesia	Cuyahoga, Amerika Serikat
1.	Regulation	There are no special regulations regarding divorce. Mediation of civil cases is generally contained in Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Courts (Perma Mediasi).	There are special regulations governing divorce mediation in court, namely the Uniform Mediation Act, (“UMA”), R.C. 3109.052 and Sup.R.16.
2.	Screening before mediation	The Perma Mediasi firmly states that all civil cases must go through a mediation process.	There is screening before mediation takes place, not all divorce cases can be mediated.

No	Comparison	Indonesia	Cuyahoga, Amerika Serikat
3.	Aim	The mediation carried out has the aim of reconciliation. Mediation is said to be successful if the case is withdrawn. So mediation does not only discuss child custody.	Mediation aims to discuss the rights and obligations of parents in child care.
4.	Divorce mediation caused by domestic violence	In filing for divorce, the religious suit has stated the reasons for the divorce, one of which is domestic violence. But there is no special action if the problem is domestic violence.	Distinguish between mediation that handles domestic violence cases and has special rules during mediation. If there is an order to protect victims of violence, then the mediation process is different from mediating other cases. Mediation of domestic violence cases using domestic violence screening.
5.	Mediation Fees	Fees are first charged to the plaintiff through the down payment of court fees. If there is an agreement, then the costs are shared. If the mediation fails, the costs will be borne by the party who is sentenced by the judge to pay court costs.	Distinguish between mediation that handles domestic violence cases and has special rules during mediation. If there is an order to protect victims of violence, then the mediation process is different from mediating other cases. Mediation of domestic violence cases using domestic violence screening.
6.	Training for Mediators	There is no special training for mediators in dealing with domestic violence cases.	The court also required a training program for judges and mediators on domestic violence.
7.	Mediator type	If mediation has been carried out before but did not use a mediator who is certified and registered at the local court, then mediation in court must still be carried out because it is not included in the exception of cases that must be mediated	If you use a private mediator and do not use a mediator from the court, then submit a report to the court in writing

Source: Processed by authors from various sources.

Every case that enters the religious court, will go through mediation first. The purpose of mediation is to provide a peaceful opportunity for the disputing parties. In some divorce mediations, there is an unequal power relationship between the parties. PA as an institution that has the authority to resolve divorce cases is still inclusive. Whereas based on data from KOMNAS Perempuan in 2009-2016, 70-95% of violence against women is data obtained from religious courts.

The way out chosen to avoid violence is divorce. The higher the intensity of violence, the greater the desire to seek help. Therefore, mediation will run smoothly if the parties are not worried about personal safety. This process raises the potential for injustice to victims of violence (Field, 2006). It is also necessary to pay attention to the resources of the parties so that power relations do not continue to form.

The percentage of reconciliation during mediation is very small. It is possible that there was a power relation when the mediation was in progress, which event was ignored by the mediator. Victims of violence cannot immediately tell what happened. There are several reasons behind it, such as embarrassment, and fear of a negative response, to threats. The professionalism of the mediator is required when handling this case. Mediators handling divorce cases must be thorough and have strategies in place to identify and respond to domestic violence. With mediation, the victim or the parties can maintain balance and power in resolving the dispute they are facing. In the mediation process until an agreement is produced it will be dangerous if there is an imbalance or a large power relationship from one of the parties. So that there are several possibilities that can occur, namely, the perpetrator will continue to maintain control over the victim. The neutrality of the mediator can emphasize that violence in any form is unacceptable.

Based on this, Domestic Violence Screening or screening regarding domestic violence really needs to be done because the identification of cases of domestic violence is still not specific. Even during mediation, this was not explained clearly. Identifying physical and sexual abuse is easier than psychological. Domestic violence screening has not yet been implemented in Indonesia. This is because identification and screening are very important, especially for victims. There are various types of domestic violence screening discussed and implemented in Indonesia. The screening is carried out in mental health and health institutions. However, violence identification-based domestic violence screening has not been implemented in divorce mediation. It is possible that the mediator indirectly or culturally has already screened during mediation. However, special instruments are needed to carry out this screening so that the results of the mediation screening can be relevant and concrete.

One of the mental health screenings in Indonesia is carried out by the Poltekkes Kemenkes Semarang. The screening carried out is to provide assistance and empowerment for cadres to strengthen and increase awareness of domestic violence (Erawati et al., 2018). Another example is IPV (Intimate Partner Violence) screening (Iskandar et al., 2015). The IPV study in this example was approved by the Institutional Review Board of the University of Hawaii and the Indonesian Ministry of Health. This research is a translated WAST (Woman Abuse Screening Tool) test to detect IPV in Indonesia. WAST was conducted using diagnostic interviews by trained psychologists with 240 women who attended both Puskesmas in Jakarta. The overall rate of IPV by diagnostic interview was 36.3%, much higher than published estimates. The most commonly identified forms of IPV were psychological (85%) and physical violence (24%).

Domestic violence screening can be done by asking questions during mediation, this is to identify if there is domestic violence. So that domestic violence screening has the goal of identifying power relations in the household, recording data on cases of domestic violence, and being able to provide targeted services for victims. In addition to the above, screening needs to be done to detect acts of violence. After knowing whether there was violence or not,

the mediator can use a different approach when mediating. So that the mediator acts actively to detect violence.

Domestic violence screening is important to implement for several reasons, such as being able to identify domestic violence in mediation. Identifying violence during mediation is not necessarily easy. Physical violence can be seen more easily than psychological violence. There are times when the power relations are not displayed directly by the actors. So it takes special competence to understand it. The practice of screening for domestic violence in divorce mediation processes has been established and implemented in the United States. In 1993, the United States surveyed 200 mediation programs whose results, were as many as 80% of the cases that came in were due to domestic violence (Tirtawening & Maryam, 2018). Meanwhile, the pattern of data collection in the religious courts in Indonesia concerning divorce is only limited to family disharmony, polygamy, economic reasons, and others. Does not show the things that led to the divorce in detail, so that the cause and effect that is written becomes unclear.

In addition to the above, screening needs to be done to detect acts of violence. After knowing whether there was violence or not, the mediator can use a different approach when mediating. So that the mediator acts actively to detect violence. Domestic violence screening is important to implement for several reasons, such as being able to identify domestic violence in mediation. Identifying violence during mediation is not necessarily easy. Physical violence can be seen more easily than psychological violence. There are times when the power relations are not displayed directly by the actors. So it takes special competence to understand it.

The obstacle to screening for domestic violence is the lack of mediators who have the competence to identify violence. Domestic violence is not only limited to physical and psychological violence, so the parameters and indicators of domestic violence regulated in the PKDRT Law must be understood. In addition, the parties to the dispute must also understand that violence is a criminal act that can be tried. Therefore, mediators who handle divorce mediation need education about aspects of domestic violence such as (1) identifying and recognizing domestic violence; (2) Understanding the victim's opinion and decision to stay in the abusive relationship or leave; (3) Types of domestic violence; (4) Identify the characteristics of harassment or violence; (5) Specific techniques to be applied; and (6) Equalizing power and considering safety.

In 2017, the religious court changed the format of divorce documents with specifications for causes of divorce such as alcoholism, drug addiction, gambling, leaving one of the parties, being sentenced to prison, polygamy, domestic violence, physical disability, forced marriage, apostasy, economics, and others. The data collection carried out is the attitude and perspective of the state regarding the cases that occurred. The categorization will be more accurate if there is a specific subdivision. Domestic violence cases can be resolved in criminal and civil ways. Although there are still many who settle cases through a divorce. The mediator can recommend cases of domestic violence to be prosecuted, even though the final decision rests with the victim. If the victim decides not to report, then screening can be done at the religious court. Mediators can suggest referral services to victims.

For example, victims experience physical and psychological violence which affects the course of mediation. The mediator can suggest counseling with a psychologist and provide referrals to go to health services. In addition, the mediator can convey to the judge that there

was violence, to examine the facts of domestic violence. So that it can be included in the court decision to resolve domestic violence through criminal channels.

CONCLUSION

In Indonesia, the mediation of civil cases is generally contained in PERMA Number 1 of 2008 concerning Mediation Procedures in Courts. The regulation states emphatically that all civil cases must go through a mediation process, including divorce. In filing for divorce, the religious court has stated the reasons for the divorce, one of which is domestic violence, but there is no specific action if the divorce is caused by domestic violence. There are special regulations governing divorce mediation in Cuyoga court, United States of America, namely the Uniform Mediation Act, ("UMA"), R.C. 3109.052, and Sup. R.16. Before mediation takes place, there is screening beforehand so that not all divorce cases can be mediated. Distinguish between mediation that handles domestic violence cases and has special rules when mediating. Mediation of cases of domestic violence using domestic violence screening.

The fundamental difference between the two countries is that there are special regulations regarding divorce cases and there is screening before mediation takes place. The practice of screening for domestic violence in divorce mediation processes has been established and implemented in the United States. Screening needs to be done to detect acts of violence. After knowing whether there was violence or not, the mediator can use a different approach when mediating. So that the mediator acts actively to detect violence.

Bibliography

- Abbas, S. (2009). *Mediasi dalam Perspektif Hukum Syariah, Hukum adat, dan Hukum Nasional*. Kencana Prenada Media.
- Atmasasmita, R. (1989). *Asas-Asas Perbandingan Hukum Pidana*. Yayasan Lembaga Bantuan Hukum Indonesia.
- Djoni Sumardi Gozali. (2004). *Pengantar Perbandingan Sistem Hukum: Civil Law, Common Law, dan Hukum Adat*. Penerbit Nusa Media.
- Domestic Violence Screening Protocol For Mediators of Domestic Relations Conflict, Office of Dispute Resolution State Court Administrative Office Michigan Supreme Court, (2014).
- Erawati, E., Triredjeki, H., Sunarmi, Isworo, A., & Sarwono, B. (2018). The Domestic Violence Screening Through The Empowerment of Mental Health Cadres. *International Journal of Indonesian Society and Culture*, 10(2), 220-224. <https://doi.org/10.15294/komunitas.v10i2.12542>
- Field, R. (2006). Using the Feminist Critique of Mediation to Explore "The Good, The Bad and The Ugly" Implications for Women of the Introduction of Mandatory Family Dispute Resolution in Australia. *Australian Journal of Family Law*, 20(5), 45-78.
- Friedman, L. M. (2021). *Sistem Hukum dan Tindakan Sosial Hukum: Seri Sistem Hukum Perspektif Ilmu Sosial*. Nusamedia.
- Habibunnas. (2021). Efektivitas Mediasi Dalam Perceraian Setelah Berlakunya Peraturan Mahkamah Agung (Perma) Nomor 1 Tahun 2016 di Pengadilan Agama Bandung. *Al-Ahwal Al-Syakhsiyah, Jurnal Hukum Keluarga Dan Peradilan Islam*, 11(1), 90-105. <https://journal.uinsgd.ac.id/index.php/al-syakhsiyah/article/view/12175>
- Haeratun, H., & Fatahullah, F. (2022). Efektivitas Mediasi Sebagai Alternatif Penyelesaian Perkara Perceraian di Pengadilan Agama. *Batulis Civil Law Review*, 3(1), 29-59. <https://doi.org/10.47268/ballrev.v3i1.930>
- Head, J. W. (1997). *Pengantar Umum Hukum Ekonomi*. Proyek ELIPS.
- Iskandar, L., Braun, K. L., & Katz, A. R. (2015). Testing the Woman Abuse Screening Tool to Identify Intimate Partner Violence in Indonesia. *Journal of Interpersonal Violence*, 30(7),

1208-1225. <https://doi.org/10.1177/0886260514539844>

- Komisi Nasional Anti Kekerasan Terhadap Perempuan. (2022). *CATAHU 2022: Catatan Tahunan Kekerasan Terhadap Perempuan Tahun 2021, Bayang-Bayang Stagnansi: Daya Pencegahan dan Penanganan Berbanding Peningkatan Jumlah, Ragam, dan Kompleksitas Kekerasan Berbasis Gender terhadap Perempuan*.
- Komisi Nasional Anti kekerasan Terhadap Perempuan. (2023). *Siaran Pers Komnas Perempuan Tentang CATAHU 2023 Komnas Perempuan*.
- Manan, A., & Fauzan. (2002). *Pokok-pokok Hukum Perdata Wewenang Peradilan Agama*. PT Raja Grafindo Persada.
- Marzuki, P. M. (2019). *Penelitian Hukum*. Kencana Prenada Media Grup.
- Orlando, G. (2022). Efektivitas Hukum dan Fungsi Hukum di Indonesia. *Tarbiyatul Bukhary, Jurnal Pendidikan, Agama, Dan Sains*, 6(1), 49-58.
- Qamar, N. (2010). *Perbandingan Sistem Hukum dan Peradilan: Civil Law System dan Common Law System*. Pustaka Refleksi.
- Rahardjo, S. (1986). *Ilmu Hukum*. Alumni.
- Soekanto, S. (2013). *Faktor-faktor yang Mempengaruhi Penegakan Hukum*. PT. RajaGrafindo Persada.
- Soerjono Soekanto, *Perbandingan Hukum*. (1979). Alumni.
- Tirtawening, & Maryam, R. (2018). *The Urgency of Applying Domestic Violence Screening Mechanism For Divorce Mediation In Religious Court*. 30(1), 138-152.
- Uniform Mediation Act, ("UMA"), R.C. 3109.052 and Sup.R.16. <https://domestic.cuyahogacounty.us/en-US/court-rule32.aspx>