

# Implementation Of Mediation In Domestic Violence

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## Implementation Of Mediation In Domestic Violence ( Study At Surabaya District Court)

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### Abstract

This study aims to determine how the implementation of mediation in domestic violence carried out by judges in the Surabaya District Court. This research uses empirical juridical research methods. Sources of data obtained through interviews with informants who aim to find answers to the problems discussed by the author. The subject matter that the author discusses is the implementation procedure, obstacles to the application of mediation in the crime of domestic violence at the Surabaya District Court. The results of the study can be concluded that although the use of mediation in criminal acts of domestic violence there are no legislation governing. The results of the mediation were only limited to consideration in convicting the defendant.

**Keywords:** Mediation, Domestic Violence, Surabaya District Court

### I. Introduction

Domestic violence is a violation or a crime experienced by humans and is a form of discrimination. Domestic violence is any crime that often befalls women, which will result in physical, psychological, sexual and psychological suffering, and neglect also includes threats to commit acts, coercion and deprivation unlawfully within the scope of the household.<sup>1</sup>

Mediation is one way that can be taken in an effort to resolve this domestic violence. With mediation, the parties will sit together to solve the problem. Victims will be protected and involved in every stage of decision making. So that the losses and injuries that they experience can be remedied or restored with the consequences that must be fulfilled by the perpetrators. The thing decided in mediation is truly the needs of both parties.<sup>2</sup>

The confidential nature of mediation is very appropriate to be carried out in cases of domestic violence, because domestic violence occurs in the personal realm that is unknown to other communities. This secrecy becomes necessary so that families who experience domestic violence are not ashamed psychologically and sociologically.

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<sup>1</sup> Undang-Undang No. 23 Tahun 2004 tentang Kekerasan Dalam Rumah Tangga pasal 1 ayat 1

<sup>2</sup> Nofarina, Kekerasan Dalam Rumah Tangga Dilihat Dari Aspek Viktimologi Dan Hukum Pidana, Jurnal Ilmiah, 2012, hlm.3

Mediation can also avoid criticism of the legal process which is always seen as long and inefficient. During this time the community, especially victims of domestic violence do not report what happened to them because of the assumption that the legal process they will go through is complicated with results that are not necessarily in line with expectations.

## II. Method

This research departs from criminal procedure law in terms of conducting mediation in criminal cases. This research uses empirical legal research methods, namely legal research methods that function to see the law in the real sense and examine how law works in the community.

Peter Mahmud Marzuki stated that legal research is a process of finding legal rules, legal principles, and legal doctrines in order to address the legal issues at hand.<sup>3</sup>

## III. Main Heading of the Analysis or Results

### A. Mediation on Domestic Violence at the Surabaya District Court

In resolving domestic violence by using mediation in the Surabaya District Court area in resolving domestic violence by using its discretion, the definition of discretion is an authority possessed by the judge in resolving a case in terms of statutory regulations that provide choice, not regulate, incomplete or not clear.

Tabel 1. The number and percentage of Domestic Violence Cases handled by the Surabaya District Court between 2014 and 2019

#### Cases of Domestic Violence Mediated at Surabaya District Court

Years	Given Mediated	Case	Average
2014	10	36	27,77%
2015	4	16	25%
2016	7	29	24,13%
2017	5	19	26,31%

<sup>3</sup> Peter Mahmud Marzuki., *Penelitian Hukum*, cetakan ke-11, Jakarta : Kencana. 2011,hal 35

2018	5	14	35,71%
2019	9	14	28,93%
Amount	40	128	31,25%

Source: Interview with Ms. Sofia Diana Christina, S.H. in the Surabaya District Court

Domestic violence committed by a husband against his wife is caused by weak economic factors, an unemployed husband or working odd jobs with an uncertain income and temperamental nature. The economic factor in question is domestic violence perpetrated by the husband against his wife due to lack of economic needs, the wife demanding more while the husband is only a casual worker with uncertain income or even unemployment. In fact, many cases of perpetrators who were then reported or complained of committing domestic violence were initially victims of other types of domestic violence committed by victims who were actually the initial perpetrators of a birth process in a series of domestic violence.<sup>4</sup>

In the trial examination stage, all judges examining the case will ask the victim or the defendant whether there has been a peace between the two parties, if there is no peace then the judge will ask the victim whether to apologize to the defendant, if the victim answers that he will forgive then the defendant will apologize to the victim. The event of forgiveness is understood as peace.<sup>5</sup>

Mediation in domestic violence cases is conducted by judges by:<sup>6</sup>

1. During the examination stage, the witness will be asked whether the victim witness has peace with the defendant.
2. If there is not yet then the judge will ask whether he wants to make peace.
3. If the victim witness declares that she wants to make peace then the judge will give the defendant and victim witness the opportunity to meet and forgive each other.

<sup>4</sup> Interview with Sofia Diana Christina, SH., At the Surabaya District Court on March 20, 2020

<sup>5</sup> Ibid

<sup>6</sup> Interview with H. Hisbullah Idris, SH., M.Hum., Judge at the Surabaya District Court on March 2, 2020

4. The judge will provide an explanation that the representatives of the accused and the victim are advised to meet outside the court to resolve the issue.
5. If peace occurs then it will be stated in the form of a statement letter
6. The statement will be considered by the judge in passing the verdict against the defendant.

Peace becomes a matter that alleviates the sentence of the defendant because the restoration of the balance damaged by the criminal event, with the existence of peace, the relationship between husband and wife has been restored as intended by the PKDRT Law, namely to ensure the integrity and harmony of the household.

*B. Analysis of the Implementation of Domestic Violence Mediation in the Surabaya District Court*

The use of mediation as an alternative settlement of criminal cases which is part of the criminal justice process is very much needed, so that it can become a legitimate means of settlement and the results of the agreement are binding on the parties, law enforcement agencies and the public. From the interview with Mr. Hisbullah Idris, it is known that the concept of mediation between the parties in criminal cases is understood by law enforcers still simply by means of forgiveness from the victim to the perpetrator so that peace has occurred.

In practice from his experience as a Judge, peace is not commonly known as a crime of peace by providing compensation or imposing obligations on the perpetrators, in contrast to the peace between the parties in ordinary cases where the victim is another person often has peace with the provision of housing costs sickness, as well as funeral costs in the case of negligence resulting in other people dying. Mr. Hizbullah Idris stated that peace is not impossible by charging compensation or other obligations to the perpetrators but in domestic violence cases within the scope of the household, the peace is more aimed at restoring marital relations in the household so that peace with forgiveness that unites households into more important than material compensation. In the procedure, Mr. Hizbullah Idris said that in each judge the mechanism could be different depending on the complexity of the case and the conditions during the trial. As long as the mediation effort has been offered to the parties (victim witnesses and defendants) the final choice is in their hands whether they want to go through the

mediation / peace process or not. Mediation in this case is also the same as the ultimate goal of the UUPKDRT, which is that if a sentence is imposed, it will tend to be mild so that the final point is expected that the marriage of the perpetrator and the victim will not break.<sup>7</sup>

Although the Judge's efforts are expected to benefit the perpetrators because the sentences he receives will be lighter than those proposed by the Public Prosecutor, there is still a guilty stigma borne by the perpetrators and here the judge is still oriented to punish on the grounds he does not have the authority to stop the proceedings and the Judge must determine the law in the form of conviction for the offender.

### *C. The Obstacles In The Implementation of Domestic Violence Mediation in the Surabaya District Court*

Settlement of criminal cases through mediation mechanisms is now increasingly being done and can be accepted by the community because it is felt to be able to reach a sense of justice, even though practitioners and legal experts are of the view that mediation can only be applied in civil cases, not to settle criminal cases because of the principle of criminal cases. cannot be solved through this mechanism. Settlement of cases in restorative justice can be demonstrated in the form of mediation, because the impact caused by mediation is very significant in the enforcement process, although it may deviate from the legal system procedures. The formulation of the rule of law to settle criminal cases is done through mediation derived from the ideals of the law and the principles of law. Therefore the mediation pattern applied must refer to the values of justice, the value of legal certainty and expediency.

The crime prevention policy through mediation of domestic violence in its application, there are several obstacles faced by the Judges including:<sup>8</sup>

1. There is no legal basis for this mediation in domestic violence.  
There is no legal basis that directly regulates mediation in the settlement of domestic violence cases in the Court, making Judges and other law enforcement officials hesitate to discretion.

<sup>7</sup> Interview with H. Hisbullah Idris, SH., M.Hum., Judge at the Surabaya District Court on March 2, 2020

<sup>8</sup> Interview with H. Hisbullah Idris, SH., M.Hum., Judge at the Surabaya District Court on March 2, 2020

2. Covert interests of one party.  
For victims, especially a wife, sometimes they don't want to be mediated if there is already another ideal man, then a conviction will facilitate the divorce process.
3. The parties disobeyed the mediation decision  
For example the defendant only uses mediation as a way to lighten the verdict without any intention of self-examination. After the peace agreement was reached, they did not want to implement it and repeat the criminal action again.
4. Public distrust of law enforcement officers  
So that if law enforcement officials become mediators, the atmospheric community will have negative perceptions leading to unreasonable suspicion.
5. The consequences or adverse effects of domestic violence.  
Physical violence still dominates in the form of domestic violence committed in the Surabaya Court. The impact is usually not only on the physical, if it is severe enough psychologically and mentally the victim will become injured and will cause trauma resulting in fears of repeated violence perpetrated by the perpetrators so that the victim is afraid to give testimony.
6. Limited Access to Companion and / or Legal Counsel  
Usually found in cases of domestic violence in this case the perpetrators get legal counsel while the victim is not due to not being able to get it other than that the victim has not fulfilled his rights to get assistance outside the law.

*D. Efforts made by Judges to Overcome Obstacle in Implementation of Mediation in Domestic Violence*

One form of protection that every person must have is protection from violence in the personal, community and state domains. Recent developments show that physical, psychological, sexual and economic violence actually occurs in the realm of personal or household spheres, where women and children are often victims. If seen from its characteristics, domestic violence is a type of violence that has specific characteristics that are committed in the home, the perpetrators and victims are family members and are

often considered not a form of violence. Considering that there is no legal basis that provides justification for mediation at the trial level, the judge is doubtful or even reluctant to resolve cases of domestic violence using mediation. Actually not all cases of domestic violence can be resolved by mediation but there must be a selection of cases handled. Against perpetrators who have the habit to hurt, sadistic and keep repeating it would be inappropriate to solve it in mediation.

There are several obstacles that occur in the implementation of mediation in domestic violence, therefore efforts need to be made to overcome these obstacles so that the implementation of mediation can run optimally. The efforts made by the Judge according to Mr. Hisbullah Idris in overcoming the obstacles that occur during the implementation of mediation in domestic violence are as follows:<sup>9</sup>

1. Legal Inventions (Rechtsvinding) by Judges

There is an attempt to interpret or interpret the laws and regulations that can be applied positively. Efforts to interpret the existing positive law can be applied to every case that occurs, because there are times when the law is unclear, incomplete, or may not be relevant to the times (out of date).

2. Behave Arif and Wise

If there is indeed a hidden intention from one of the parties to refuse mediation so that the hidden goal is achieved, the Judge with his wise and wise attitude has offered the mediation process in order to achieve peace then his choice and final results rests with both parties.

3. Judge Warns the Defendant

The judge will remind and warn the defendant that mediation is a means of self-introspection and must be aware of his actions and be willing to take responsibility.

4. Building Personal Judges with Integrity

A Joint Decree of the Chairperson of the Supreme Court of the Republic of Indonesia and the Chair of the Judicial Commission of the Republic of Indonesia Number: 047 / KMA / SKB / IV / 2009 and Number: 02 / SKB / P.KY / IV / 2009 dated April 8, 2009 concerning the Code of Ethics and the Code of Conduct for Judges which is a guideline for Judges throughout Indonesia as

<sup>9</sup> Interview with H. Hisbullah Idris, SH., M.Hum., Judge at the Surabaya District Court on March 2, 2020



well as Guidelines for the Indonesian Supreme Court and the Indonesian Judicial Commission in carrying out internal and external oversight functions.

5. Judges Order Victims' Witness To Be Accompanied  
Victim Witnesses who may have physical and / or mental limitations need a companion and / or facilities that meet their specific needs, the Judge may order that the Victim Witness be accompanied by a psychologist, psychiatrist, social worker,
6. Judge Suggests that Victim's Witness Get Legal Aid  
People who cannot afford the services of an advocate can get their services for free. There are two ways to get advocate services free of charge, first asking for legal aid from the Legal Aid Institute (LBH) or asking for legal assistance free of charge from a lawyer (pro bono) through assistance from the High Court / District Court

#### IV. Conclusion

Based on the results of research on the Implementation of Domestic Violence Mediation in the Surabaya District Court, the author can explain several conclusions, including:

1. The implementation of mediation in criminal acts of domestic violence carried out by judges is not impossible to be applied during the trial process before the court, but the judge can only use the final mediation / peace process between the perpetrators and victims as consideration of the mitigation of the verdict to be imposed on the perpetrators.
2. Obstacles that arise in the implementation of mediation in criminal acts of domestic violence that is the absence of a strong legal basis for mediation in domestic violence, the vested interests of one party, the parties do not obey the mediation decision, the public distrust of law enforcement officials , due to or adverse effects of domestic violence, Limited Access to Companion and / or Legal Counsel.
3. Then in their efforts to overcome the obstacles that occur when conducting mediation in domestic violence, the Judge conducts Legal Discovery (Rechtsvinding) in carrying out their duties, behaves Arif and Wise, the Judge

Warns the Defendant, Builds a Person of Integrity Judge, the Judge Orders the Victim Witness For Accompaniment, the Judge Suggests that Victim's Witness Get Legal Aid

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