

The Role of the Mediator Judge in the Formation of the Van Dading Deed as an Instrument of Peace in Divorce Cases in Religious Courts

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Abstract

This study aims to analyze the role of the mediator judge in the formation of a van dading deed as a peace instrument in divorce cases in Religious Courts. The research method used is a normative legal approach by examining relevant laws and regulations, legal doctrine, and court decisions. The results show that the van dading deed has permanent and executory legal force because it is approved by a judge, so it can be immediately enforced without a new lawsuit if a violation of the agreement occurs.

The mediator-judge serves not only as a communication facilitator but also as a guardian of the legality of the substance of the agreement to ensure it does not conflict with substantive or formal law. In divorce cases, this role is crucial for protecting the rights of women and children and ensuring that the agreement contains substantive justice. Obstacles that arise include low mediation effectiveness, weak legal drafting skills, and the lack of standardization of the wording of the deed of divorce in all religious courts.

The conclusion of this study confirms that the van dading deed is an effective dispute resolution instrument that aligns with the principles of legal certainty, justice, and expediency. Strengthening the capacity of mediators and updating technical guidelines is necessary to ensure that mediation in religious courts truly embodies the values of restorative justice and public welfare in Islamic family law in Indonesia.

Keywords: Deed of Deed, Mediator Judge, Judicial Mediation, Divorce Cases, Religious Courts.

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Introduction

Civil dispute resolution in court does not always result in a decision that orders or punishes one of the parties. In the Indonesian legal system, the courts actually encourage peaceful resolution as the primary route before the case is further examined by a panel of judges. This orientation is in line with the principle of litigation as a last resort, which places peace as the substantive goal of every civil legal process.[1] In the context of religious courts, this principle has a deeper social and moral dimension because the cases being tried, especially divorce, are directly related to family harmony, children's rights, and the continuity of financial responsibilities between husband and wife.[2] Mediation as a form of dispute resolution in court has a strong legal basis in the national justice system. The provisions of Article 130 of the *Herzien Inlandsch Reglement* (HIR) and Article 154 of the *Rechtsreglement voor de Buitengewesten* (RBg) require judges to first seek peace before continuing with the examination of the case.[3] This peace effort is not a formality, but has concrete legal consequences if successful, namely the results of the agreement are recorded in a deed of peace—a peace deed made before a judge and has permanent legal force[4]. Thus, the deed of peace is not merely the result of a compromise, but an integral part of the court's decision which is final and binding.

The birth of the *van dading* deed reflects a progressive legal paradigm that prioritizes the court's function as a conflict resolution institution, not merely a sanction-giver. In civil procedural law, *dading* itself is defined as an agreement between two parties who agree to end a case or prevent the emergence of a case by mutually giving or withholding something[5]. Article 1851 of the Civil Code (KUHPerdata) emphasizes that a settlement has the same binding force as a judge's decision. Meanwhile, Article 1868 of the Civil Code classifies a *van dading* deed as an authentic deed because it is made before an authorized official, in this case a judge[6]. Therefore, the existence of a *van dading* deed not only has the moral value of peace, but also has strong enforceability in the realm of civil procedural law.

In divorce cases, the role of the mediator judge is a determining factor in the success of reaching a peace agreement. The mediator judge acts not only as a facilitator, but also as a guardian of legal certainty so that the parties' agreement complies with material and formal legal provisions. In many cases, the mediator judge functions to direct the parties to avoid violating Islamic legal norms applicable in the Compilation of Islamic Law (KHI) and statutory regulations such as Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019[7]. This is important because any agreement that conflicts with positive law or sharia principles cannot be validated as a deed of agreement by the panel of judges[8]. The position of mediation as a mandatory stage in the judicial process is affirmed in Supreme Court Regulation (PERMA) Number 1 of 2016 concerning Mediation Procedures in Court. This regulation updates and strengthens previous provisions, while expanding the role of the mediator judge to oversee the peace process up to the stage of drafting the agreement text. This PERMA is an important milestone that integrates the principle of alternative dispute resolution (ADR) into the formal justice system (court-annexed mediation)[9]. Thus, implementing mediation in court is no longer an option, but has become a legal obligation inherent in every judge examining a case[10].

The implementation of mediation within the Religious Courts also exhibits a unique sociological dimension. Divorce disputes often involve emotions, religious beliefs, and the interests of children. In such situations, the mediating judge plays a strategic role in transforming conflict into dialogue and formulating an agreement that is not only legally valid but also morally just. The agreement reached can be formalized in a deed of agreement, which is then confirmed by a court decision.[11] Thus, the mediating judge serves as a bridge between positive legal values and the humanitarian values that underlie the Islamic legal system.[12]

The legal force of a deed of agreement derives from its ratification by a judge, not solely from the agreement of the parties. This deed has a dual character: as a civil agreement and as a court decision. From a civil perspective, it is subject to the principle of *pacta sunt servanda*,

namely that every valid agreement applies as law for the parties who made it. From a procedural law perspective, it is final and has executory power like a final decision (in *kracht van gewijsde*), so it can be immediately implemented if one of the parties breaks the promise.[13] Therefore, the preparation of the agreement text that will form the basis of the deed of agreement requires high precision to avoid ambiguities or legal inconsistencies that could give rise to new disputes.[14] However, practice in the field still shows variation in the quality of mediation results and the wording of the deed of agreement. Many mediator judges are still oriented towards formalities, merely marking the mediation stage without delving into the substance of the agreement. As a result, *van dading* deeds emerge that do not fulfill the material and formal elements, such as the lack of clarity regarding the amount of maintenance, the time for carrying out obligations, or the division of joint assets[15]. On the other hand, agreements that have been ratified are often challenged because they are considered to violate certain legal principles, for example provisions regarding children's rights or the obligation to maintain maintenance which is mandatory according to sharia[16].

These problems indicate that the effectiveness of a *van dading* deed is highly dependent on the mediator judge's ability to oversee the substance of the agreement. The mediator judge must possess a high level of legal sensitivity, not only understanding the formal rules of mediation, but also being able to interpret the principles of substantive justice in a family context. In divorce cases, for example, the mediator judge needs to ensure that the amicable divorce agreement does not eliminate the rights of children and ex-wives derived from Islamic law and other statutory regulations.[17] Thus, the success of mediation is measured not only by the achievement of an agreement, but also by the quality of the resulting agreement.[18] From a procedural law perspective, a *van dading* deed is a special form of declaratory decision that has executory force without the need for a new lawsuit. This deed closes the case and binds the parties, and cannot be appealed or cassated. Exceptions only occur if the agreement contains elements of defective will such as fraud, coercion, or error as regulated in Article 1321 of the Civil Code.[19] In the context of the Religious Court, the cancellation of a deed of marriage can be submitted if the substance of the agreement is contrary to Islamic law or violates the principle of the child's best interests as regulated in the Child Protection Law[20].

From a legal perspective, the primary objective of ratifying a *van dading* deed is to realize the principle of peace for the sake of justice. The court is not only tasked with imposing sanctions, but also upholding social harmony. This principle aligns with the concept of *islah* in Islamic law, which places peace as the highest form of dispute resolution.[21] Even in the Qur'an, Surah An-Nisa, verse 35, it is emphasized that if a dispute arises between a husband and wife, a judge from each party should be appointed to mediate and reconcile the two.[22] This value was later adopted in the religious court system through a mediation mechanism that ends with the ratification of a *van dading* deed.

Therefore, the role of the mediator judge in the formation of the deed of consent is not only procedural, but also substantive and moral. The mediator judge is tasked with ensuring that the resulting peace is truly fair, does not create legal uncertainty, and does not sacrifice one of the parties, especially the socially weak party such as the wife or child. The balance between legal certainty (*rechtssicherheit*), justice (*gerechtigkeits*), and benefit (*zweckmäßigkeit*) is an ethical guideline for every mediator judge in the process of forming the deed of consent[23].

Thus, the urgency of this research lies in the need to clarify and strengthen the role of the mediator judge in creating a valid, fair, and enforceable deed of agreement. Through a normative legal approach, this research will examine the legal basis, doctrine, and practices that have developed within the religious courts in relation to the implementation of mediation and the ratification of its results. The results of this research are expected to provide theoretical contributions to the development of civil procedural law, as well as practical benefits for improving the quality of mediation in religious courts as an effective peace instrument.[24] Furthermore, this research is also expected to bridge the gap between theory and practice in the

implementation of judicial mediation. Theoretically, mediation should result in a binding and enforceable agreement without further dispute. However, in reality, practices are still found that ignore the principles of clarity, balance, and appropriateness of the agreement's contents. Therefore, strengthening the role of the mediator judge is key to ensuring that the deed of agreement truly functions as a legal instrument that supports certainty, justice, and humanity.[25] This research emphasizes the importance of reformulating the understanding of the function of mediation in religious courts. Mediation is not merely an administrative formality, but rather part of the judge's efforts to uphold substantive justice. The mediator judge acts as a problem solver who guides the parties toward reaching a dignified and sustainable peace agreement. In this way, the court becomes not only an arena for litigation, but also an institution capable of fulfilling the social function of law, namely maintaining family peace and order within a framework of living law.[26]

Literature Review

1. Basic Concept of the Van Dading Deed

Deed of inheritance is a term derived from Dutch law, where the word *dading* means “peace” or “peaceful settlement.” In the context of Indonesian law, a van dading deed is understood as a peace deed made before a judge and confirmed as part of a court decision. This provision is normatively regulated in Article 130 HIR and Article 154 RBg which requires the judge to seek peace before continuing the examination of the case. If peace is reached, the agreement is stated in the form of a van dading deed which has permanent legal force. In the doctrine of civil procedural law, a van dading deed has two main characteristics: first, as a civil agreement subject to the principle of *pacta sunt servanda*, and second, as part of a final and binding court decision. This means that the agreement that has been ratified in the form of this deed has the executory power like a decision with permanent legal force (in *kracht van gewijsde*). Therefore, it cannot be appealed, cassated, or reviewed, except through a lawsuit for annulment if there are elements of defective will such as coercion, error, or fraud.

2. The Position of Mediation in the Judicial System

Mediation in Indonesia embodies the principle of peaceful dispute resolution. The Supreme Court, through Supreme Court Regulation No. 1 of 2016 concerning Mediation Procedures in Court, affirms that mediation is a mandatory step before the commencement of the main case examination. This Regulation regulates the procedures for implementing mediation in all judicial settings, including Religious Courts, as a form of court-annexed mediation.

Mediation serves to reduce the burden of litigation and encourage restorative justice, particularly in family matters. In Islamic law, the concept of peaceful resolution is known as *ishlah*, as implied in Surah An-Nisa, verse 35 of the Quran, which instructs that if a dispute arises between a husband and wife, each party must appoint a judge to reconcile them. This principle demonstrates that mediation aligns with Islamic values of justice, which prioritize deliberation, balance, and protection of the weaker party, particularly women and children.

3. The Role of the Mediator Judge in the Formation of the Van Dading Deed

The mediator judge plays a central role in the deed of agreement formation process. He or she serves not only as a communication facilitator but also as a guardian of the legal validity of the agreement. In divorce cases, the mediator judge must ensure that each point of the agreement does not conflict with laws and regulations, religious norms, or principles of substantive justice. The mediator judge's duties include:

- (1) ensure that the agreement meets the requirements for a valid agreement as stipulated in Article 1320 of the Civil Code;
- (2) ensure that the agreement clauses are clear, measurable and executable;

- (3) ensure that the agreement does not eliminate fundamental rights, such as child support, custody, and joint property;
- (4) directing the parties so that the agreement is realistic and does not create new injustices.

In practice, a competent mediator will help the parties formulate an agreement using clear, legally sound language that is not open to interpretation. The resulting agreement will then be reported to the panel of judges examining the case to be formalized in the form of a deed of settlement.

4. Legal Elements and Legal Force of the Van Dading Deed

Materially, a van dading deed must fulfill the requirements of a valid agreement, namely agreement of the parties, capacity, a specific object, and a lawful cause. Formally, the deed must be drawn up before the judge examining the case, signed by the parties, and stated in the verdict. If one of these elements is not met, the van dading deed can be considered formally flawed and has no executory power. The legal force of a van dading deed is binding like a court decision that has permanent legal force. Therefore, if one party violates the contents of the agreement, the other party can immediately file an execution request with the court without having to file a new lawsuit. Due to its final nature, a van dading deed also cannot be submitted to ordinary legal remedies such as appeal or cassation.

5. The Relevance of the Van Dading Deed in Divorce Cases

In divorce cases before the Religious Court, the van dading deed holds strategic value because it integrates formal legal aspects with religious morality. Through mediation, the parties can reach agreements on sensitive matters such as child custody, division of joint property, or maintenance obligations. When these agreements are formalized into a van dading deed, the court acts not only as a dispute resolution but also as a guardian of family justice.

In Islamic law, peace (*ishlah*) is considered more important than conflict. Therefore, the van dading deed can be seen as a modern implementation of the *ishlah* principle within the positive legal system. It is not only a legal instrument, but also a concrete manifestation of the values of mutual benefit within the household, oriented toward child protection and balancing the rights and obligations of husband and wife.

6. Previous Studies

Several previous studies have shown that the success rate of mediation in religious courts remains relatively low, but its effectiveness increases when the mediating judge has a good understanding of Islamic substantive family law. Research conducted by the Religious Courts Agency (Badilag) shows that divorce cases with a higher success rate in mediation generally occur when the mediator actively guides the parties to concrete, realistic, and fair solutions. Meanwhile, academic studies in several legal journals highlight the importance of the quality of the wording of the agreement that will be used as a deed of support. Unclear wording can give rise to new disputes during the implementation stage, for example regarding the amount of maintenance, division of assets, or meeting times for children. Therefore, improving the capacity of mediating judges in legal drafting of agreements is a crucial factor in ensuring the deed of support is truly effective as an instrument of peace and legal certainty.

Research Methodology

This research uses a normative legal approach (normative juridical research), namely research that is based on positive legal norms, legal principles, and relevant legal doctrines. The main focus of this approach is to examine the laws and regulations governing mediation in court, the status of the van dading deed, and the role of mediator judges in divorce cases within the Religious Courts[1].

This approach was chosen because the research focuses on analyzing legal systems rather than social behavior, so the material studied consists of written legal norms. This research uses three types of legal materials:

1. Primary legal materials, including Herzien Inlandsch Reglement (HIR), Rechtsreglement voor de Buitengewesten (RBg), Civil Code, Law Number 7 of 1989 concerning Religious Courts and its amendments, Law Number 1 of 1974 concerning Marriage in conjunction with Law Number 16 of 2019, Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Court, and Compilation of Islamic Law (KHI).
2. Secondary legal materials, in the form of books, legal journal articles, and scientific works discussing mediation, civil procedural law, and deeds of deed.
3. Tertiary legal materials include legal dictionaries, encyclopedias, and institutional reports such as documents from the Religious Courts Agency (Badilag) on family case mediation[2].

The data collection technique was conducted through a literature study by inventorying, reviewing, and interpreting legal materials according to the topic. The data were analyzed qualitatively and prescriptively, namely by outlining the contents of legal norms to find their principles, consistency, and relevance to judicial practice. The analysis also focused on finding the ratio legis of the mediation regulations and the deed of divorce in divorce cases, to then formulate theoretical and practical recommendations to strengthen the role of mediator judges in realizing substantive justice in religious courts[3].

Results

The Role of the Mediator Judge in the Formation of the Van Dading Deed as an Instrument of Peace in Religious Courts

The mediator judge in the Indonesian judicial system has a strategic function as an enforcer of justice and a guardian of the values of peace. In the context of civil cases, particularly divorce cases in Religious Courts, the mediator judge is a figure who bridges two legal interests: legal certainty and social welfare. The mediator judge plays a role in shifting the paradigm of case resolution from a confrontational pattern to a collaborative pattern. Mediation in court is not merely an administrative effort required by law, but is a substantive mechanism to protect the rights and dignity of the parties through peaceful resolution.[1] Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Courts emphasizes that every civil case must go through the mediation stage before the main case examination begins. This provision is imperative, meaning that violations of the mediation procedure can result in the decision being null and void. In the Religious Court environment, this provision has a higher urgency considering that divorce cases concern household harmony, child custody (hadhanah), and the obligation of maintenance, which not only have legal value but also religious moral value.[2] Mediation in religious courts can be seen as a form of restorative justice in the context of family law. In resolving marital disputes, a mediator acts as a facilitator, encouraging constructive communication between husband and wife, with the primary goal of restoring social balance between them. This concept aligns with Islamic legal principles, which emphasize the importance of ishlah, or reconciliation, as a means of restoring relationships.

Restorative justice In divorce cases, mediation is not merely used to delay the divorce process, but to reach a resolution that embodies the values of justice and humanity. If reconciliation is not possible, mediation still has an important function in formulating a peaceful agreement regarding the legal consequences of divorce, such as the division of joint assets, child custody, and maintenance obligations. This is where the van dading deed plays a role as the final result of the mediation process that successfully creates a valid, binding agreement with executory power.[3] The process of forming a van dading deed begins at the mediation stage where the parties reach a written agreement outlined in the minutes of the mediation

results. The agreement is then submitted to the panel of judges to be ratified as a *van daring* deed that becomes part of the decision. The mediating judge has the obligation to ensure that the contents of the agreement have fulfilled the elements of a valid agreement as regulated in Article 1320 of the Civil Code, namely the existence of an agreement, capacity, a specific object, and a lawful cause.

In addition, the mediating judge must verify that the contents of the agreement do not conflict with laws and regulations, morality, or public order. In divorce cases, this means that the agreement must not eliminate the child's right to receive maintenance or ignore the provisions of the Compilation of Islamic Law regarding custody and joint property. Once all elements are met, the agreement is ratified by the panel of judges and stated in the verdict as a legally binding deed.[4]

The *van daring* deed's status as part of a decision makes it final and binding (*res judicata*). This means that the agreement cannot be appealed or cassated, and if one party breaks the promise, the other party can immediately file an enforcement request. Thus, the *van daring* deed combines two legal powers at once: the binding force of the agreement and the force of the court's decision.[5]

The role of a mediator judge is not limited to the procedural aspects of mediation, but also encompasses a substantive function as a safeguard of legal interests. The mediator judge must be able to assess that the agreement made truly reflects substantive justice, not merely a formal agreement reached due to pressure or legal ignorance on the part of one of the parties. In divorce cases, women are often economically and psychologically weaker. Therefore, the mediator judge needs to ensure that the contents of the agreement do not create inequality or violate the fundamental rights of the weaker party.[6]

The substantive justice maintained by the mediating judge must encompass three main dimensions: legal certainty, moral justice, and social benefit. Legal certainty is achieved through clear and enforceable wording of the agreement. Moral justice is achieved by ensuring that the contents of the agreement do not conflict with Islamic and humanitarian values. Meanwhile, social benefit is reflected in the mediator's efforts to maintain good relations between the parties after the divorce decision, especially regarding child care and inter-family communication.[7] Although normatively, the *van daring* deed has strong legal force, in practice, several obstacles remain. First, the low success rate of mediation in the Religious Courts, primarily due to the high emotional intensity of the parties in divorce cases. Many couples come to court with a firm intention to divorce, making mediation difficult. Second, there are still differences in understanding among judges regarding the wording of an agreement that is suitable to be used as a *van daring* deed. Some agreements do not meet formal requirements, such as not having the signatures of both parties or not being formulated in the form of an enforceable decision.[8]

Another obstacle is the limited training and skills of mediator judges in legally drafting agreements. Some mediators still draft agreements using overly general or normative language, for example, "the husband will provide maintenance according to his ability," without specifying the amount and payment mechanism. As a result, when a violation occurs, the court has difficulty enforcing the order because it lacks certain measurable parameters.[9] Furthermore, there is a structural problem in the form of a limited number of certified mediators in the religious courts. The Supreme Court has indeed established mediator competency standards through special training, but implementation has not been uniform. As a result, many judges carry out mediation functions without formal certification, which has an impact on the low quality of mediation results and the resulting agreements.[10]

From a procedural legal perspective, a *van daring* deed has executory force because it is ratified by a judge. Under Article 1858 of the Civil Code, a settlement approved by a court cannot be revoked except for a defect in will. This confirms the *van daring* deed's position as

both evidence and an enforceable instrument. This legal force guarantees certainty to the parties that the agreement cannot be unilaterally reneged on.

In practice, the execution of a van daging deed follows the mechanism stipulated in Article 195 HIR, which begins with a request for execution by the entitled party to the Chief Justice of the Religious Court. If the opposing party does not voluntarily implement the terms of the agreement, the court can issue an *aanmaning* or warning order, and if this is still not implemented, the assets can be seized and auctioned in accordance with the verdict.[11] The executorial power of the van daging deed is the main difference between mediation in and out of court. An out-of-court mediation agreement only has binding civil force, but cannot be executed without a new lawsuit. Meanwhile, an agreement resulting from mediation in court and ratified as a van daging deed has permanent legal force and can be implemented immediately. This difference shows how strategic the role of the mediating judge is in ensuring the mediation process ends with a legally enforceable result.[12]

In addition to normative aspects, the role of the mediator judge in drafting the deed of divorce also has moral and social dimensions. The mediator judge is not merely a legal official, but also a moral agent tasked with upholding the values of justice and the common good. In divorce cases, the mediator judge faces a dilemma between formal legal enforcement and the emotional needs of the parties. Therefore, the success of mediation is often determined not only by legal knowledge but also by social sensitivity, empathy, and good communication skills.

The mediator judge must be able to understand the psychological conditions of the parties and instill an awareness that peace is not a form of defeat, but rather a dignified solution. From an Islamic legal perspective, peace (*ishlah*) is considered more important than separation that gives rise to hostility. This principle is also recognized in national legal principles, where the ultimate goal of law is to maintain order, peace, and social justice. Therefore, the mediator judge acts as a link between positive law and human moral values.[13] Along with the development of law and social dynamics, the role of the mediator judge needs to be reformulated to be more adaptive to the challenges of the times. This reformulation can be carried out in three directions: (1) increasing the professional capacity of mediators through competency-based mediation training; (2) standardizing the wording of mediation agreements that can be adopted as a deed of agreement; and (3) integrating the mediation performance evaluation system into the management of religious court cases. In this way, the quality of mediation and the validity of the deed of agreement can be significantly improved.

The Supreme Court has issued guidelines for implementing mediation for judges, but their implementation needs to be strengthened with stricter oversight of the content and form of the agreement. Good wording should meet the requirements of being clear, measurable, and executable, so as not to give rise to multiple interpretations in its execution. This reformulation not only strengthens the legal standing of the van daging deed, but also reaffirms the function of religious courts as institutions for resolving family conflicts in a just and civilized manner.[14] The effectiveness of the van daging deed resulting from mediation is highly dependent on the professionalism of the mediating judge. If the mediator's role is carried out well, the results can provide legal certainty for the parties and reduce the burden of cases in court. However, if the agreement is ratified without careful legal review, the van daging deed can actually become a source of new disputes. In the long term, strengthening the role of mediating judges will have a positive impact on the national legal system. Effective mediation will expedite case resolution, reduce court costs, and strengthen public trust in the judiciary. Furthermore, successful mediation in religious courts also contributes to social stability because divorce cases are no longer an arena for hostility, but rather a space for reconciliation and shared responsibility.[15]

Legal Power and Implications of the Implementation of the Van Daging Deed in Divorce Cases in Religious Courts

In the Indonesian civil procedural law system, a deed of settlement has the same legal standing as a judge's decision that has obtained permanent legal force (in kracht van gewijsde). This is because the deed is the result of a peace agreement made before a judge and ratified in court. Articles 130 HIR and 154 RBg serve as its normative basis, which explicitly state that if the parties succeed in reaching a peace agreement, the judge is obliged to record and ratify it in the form of a deed of settlement. From that point on, the dispute is considered resolved without the possibility of filing an appeal or cassation.[1]

The legal force of a van dading deed derives not only from the agreement of the parties, but also from the legitimacy of the court that grants it legal status. Once ratified, the deed is final and binding. Therefore, the parties cannot withdraw or change the contents of the agreement without going through a new legal mechanism, except in the case of a defect in will as regulated by Article 1321 of the Civil Code, namely if the agreement is born due to error, coercion, or fraud.[2] This position emphasizes that the court functions not only as an institution for resolving disputes, but also as a guardian of legal certainty for the peace reached. With the ratification of the judge, the van dading deed is elevated from being a mere civil contract to a judicial product with executory power. This is what distinguishes it from ordinary peace agreements outside the court which are only obligatory in nature without direct legal force.[3]

The primary principle underlying the validity of a deed of contract is the principle of pacta sunt servanda, which means that every legally made agreement is enforceable as law for the parties. This principle is enshrined in Article 1338 of the Civil Code and serves as the moral basis for legal responsibility in civil relations. In the context of a deed of contract, this principle is reinforced by the legitimacy of the court, so that if one party fails to fulfill its obligations, the other party has the right to file a request for enforcement with the court without a new lawsuit.

In divorce cases, the enforceability of a deed of divorce is significant. For example, if a husband agrees to provide a certain amount of post-divorce maintenance and fails to comply, the ex-wife can immediately file a request for enforcement with the Head of the Religious Court. This mechanism is regulated in Article 195 of the HIR concerning the enforcement of decisions, which authorizes the court to enforce the deed through seizure, auction, or other legally valid means.[4]

Thus, the deed of marriage provides concrete legal guarantees for the parties, especially those who are economically weak. In family matters, this means that the protection of the rights of wives and children can be upheld without having to go through a lengthy and tiring new litigation process.[5]

In order for a deed of deed to be valid and have executorial power, it must fulfill legal requirements both materially and formally.

1. Material requirements, as stipulated in Article 1320 of the Civil Code, include:
 - Agreement of the parties without coercion or fraud;
 - The legal capacity of the parties to act;
 - Certain objects are clear and implementable;
 - Because it is halal and does not conflict with law, religion or morality.
2. Formal requirements, namely:
 - The agreement is made before a judge;
 - Recorded in the minutes of the trial;
 - Stated in the verdict;
 - Signed by the parties and the judge hearing the case.

If one of these elements is not fulfilled, the deed of consent cannot be considered an authentic deed and loses its executorial power. For example, a peace agreement made only through a mediator without the approval of a judge cannot be executed, because it has not obtained legal legitimacy from a judicial institution[6].

The fundamental difference between a van dading deed and a regular decision lies in their nature. A regular decision is declarative and constitutive because it arises from a litigation

process that ends with a judge's decision, while a van dading deed is contractual, arising from an agreement between the parties but gaining legal status through court ratification. Furthermore, in terms of legal remedies, a regular decision can be appealed, cassated, or reviewed, while a van dading deed cannot. This is because the contents of the deed represent the mutual will of the parties that has been agreed upon under the supervision of a judge. Thus, the deed is a form of finalization of the dispute that does not open up room for substantial correction at a higher level.[7]

In divorce cases, a van dading deed usually results from mediation that successfully results in an agreement between husband and wife. The agreement may include: (1) mutual acknowledgement of a peaceful divorce; (2) division of joint assets; (3) child custody; and (4) post-divorce maintenance obligations. The mediating judge is responsible for ensuring that the agreement does not conflict with positive law or the sharia principles applicable in Indonesia. The presence of a van dading deed in divorce cases brings significant benefits. First, it expedites the resolution of the case because the court process does not need to continue until a final decision. Second, it reduces the case load for the court. Third, it creates a better relationship after the divorce because the settlement is carried out with awareness and mutual agreement. Fourth, it guarantees legal certainty for children and wives who are often the weaker parties in post-divorce relationships.[8] However, on the other hand, the effectiveness of the van dading deed still faces obstacles, such as low mediation success, a lack of understanding by the parties regarding the legal consequences of the agreement, and differences in judges' interpretation of the contents of the peace order. Therefore, it is necessary to improve the professionalism of mediators and standard guidelines for the wording of the agreement so that implementation in the field is uniform and consistent.[9]

Legally, a deed of consent that has been ratified by a judge can only be annulled through a new lawsuit. This can be done if a defect in will, fraud, or the contents of the agreement are found to be unlawful. The Supreme Court, in various decisions, has emphasized that the annulment of a peace deed can only be done in a new case filed with the competent court. This means that a deed of consent cannot be annulled through ordinary legal remedies such as appeal or cassation.[10] In the context of divorce, an annulment lawsuit can be filed, for example, if the alimony agreement is made due to psychological pressure, or if the agreement on the division of joint assets is unlawful because it ignores the rights of the children. The judge examining the annulment lawsuit is obliged to assess whether there was indeed an element of coercion or an imbalance in the bargaining position between the parties when the agreement was made.[11]

One important dimension in the application of the van dading deed in religious courts is the protection of children's and women's rights. The mediating judge has a moral and legal responsibility to ensure that the agreement does not negate the child's right to support, education, and care. This is in line with the principle of the best interest of the child as affirmed in Law Number 35 of 2014 concerning Child Protection.[12] Furthermore, in many cases, women are often in a weak bargaining position, so the mediating judge must play an active role in balancing the legal power of the parties. Agreements that appear peaceful on the surface can contain injustice if made under social or economic pressure. Therefore, the mediating judge is obliged to provide verbal clarification in court to ensure that the agreement is truly born of free will and does not conflict with the principles of justice.[13]

From the perspective of Islamic law, this action is an implementation of the principle of *la dharar wa la dirar* (there must be no harm and no harm to each other). Thus, the van dading deed is not only a formal legal instrument, but also a manifestation of substantive justice values in Islamic family law [14].

To ensure certainty and uniformity, standardization of the wording of agreements to be adopted as a deed of agreement is necessary. The Supreme Court, through the Directorate General of Religious Courts (Badilag), has issued technical guidelines, but they have not been

fully complied with by all religious courts. Non-standard wording often leads to multiple interpretations during the execution of the agreement.

Standardization should cover the following aspects:

1. Clarity of the identity of the parties;
2. Formulation of liabilities in nominal figures;
3. Determination of the implementation period;
4. Provisions for sanctions in the event of a violation;
5. Further settlement clause in case of new disputes.

With clear wording, courts can easily implement peace orders without creating conflicting interpretations. This standardization is also important as part of best practices in judicial administration and protecting the rights of justice seekers.[15] The application of the van daring deed in divorce cases provides important lessons for the reform of civil procedural law in Indonesia. First, that agreement-based dispute resolution is more effective than lengthy litigation. Second, that the court's function is not only as a decision-making body, but also as a facilitator of peace. Third, that judges as mediators play a strategic role in maintaining social harmony and family stability. Going forward, reform of civil procedural law should ideally provide greater space for restorative approaches such as mediation and conciliation. Consensus-based settlement mechanisms align with the goals of national law, which prioritizes the values of social justice and humanity. In this regard, the van daring deed can be a model for effective, efficient, and equitable dispute resolution, particularly in religious courts that handle family cases.[16]

Ultimately, the application of the van daring deed in divorce cases in Religious Courts reflects the synergy between positive law and Sharia values. From a positive legal perspective, it is a manifestation of the principle of *pacta sunt servanda* and the principle of legal certainty. From an Islamic legal perspective, it aligns with the principle of *ishlah*, which emphasizes the importance of peace and family well-being. This synergy strengthens the role of Religious Courts as institutions that not only uphold the law but also safeguard the social and spiritual values of society.

In other words, the van daring deed is a concrete manifestation of the integration of national law and Islamic law, oriented toward substantive justice. It proves that justice does not always arise from legal battles, but can arise from agreements based on good faith, deliberation, and moral responsibility before the law and God.[17]

Conclusion

This study confirms that the van daring deed holds a crucial position in the Indonesian civil procedural legal system, particularly within the Religious Courts. It is not simply a peace agreement, but rather a legal product ratified by a judge and has permanent legal force and enforceable power. Its position as part of the decision makes the van daring deed an effective instrument in resolving divorce cases that is oriented towards peace, certainty, and legal benefit. The mediator judge plays a strategic role in ensuring that the mediation process runs in accordance with legal provisions and the values of substantive justice. The mediator's function is not only to facilitate communication between the parties, but also to ensure that the resulting agreement meets the requirements of a valid agreement and does not conflict with law, religion, or morality. Thus, the success of mediation is measured not only by the agreement reached, but also by the quality and fairness of its contents. Practically, the van daring deed helps achieve judicial efficiency and eases the burden of cases in religious courts. It serves as a settlement instrument that guarantees the rights of children and women, while reflecting the synergy between positive law and sharia values that emphasize the principle of *ishlah* or peace. Therefore, improving the capacity of mediator judges and standardizing the drafting of the deed of consent is an urgent need to ensure uniform implementation and provide stronger legal certainty. With institutional strengthening and professional development, the deed of consent

can become an ideal model for reforming Indonesian civil procedure law, oriented toward restorative justice and social welfare.

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