

Legal Counseling on the Role of the Mediator in the Mediation Process for the Klinik Keluarga Sakinah - Pimpinan Daerah 'Aisyiyah Team of Malang City

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Info Artikel

Article History:

Received: February 1, 2023

Revision: March 24, 2023

Accepted: April 15, 2023

Published: April 27, 2023

Keywords:

Role; Mediator; Mediation

Kata Kunci:

Peran; Mediator; Mediasi

Abstract

The problems faced by Klinik Keluarga Sakinah -Pimpinan Daerah 'Aisyiyah (KKS-PDA) Team of Malang City are educational background, the majority of which are not legal science, minimal knowledge of legal science, especially regarding mediation, do not knowledge about the duties, roles, and functions of mediators in the mediation process. Bearing in mind that this mediation is a non-litigation realm, for the KKS PDA team in Malang City this skill is really needed, considering the number of residents in Malang City and law enforcement officers is unequal. So, the role of the KKS-PDA Team of Malang City to contribute to assist in the mediation process is also needed by the community. So, before the KKS-PDA Team of Malang City carries out the mediation process as a mediator (a neutral party), it is necessary to provide counseling to the KKS-PDA Team of Malang City so that they have these skills.

Abstrak

Penyuluhan Hukum Peran Mediator Dalam Proses Mediasi Tim Klinik Keluarga Sakinah Pimpinan Daerah Aisyiyah Kota Malang. Permasalahan yang dihadapi oleh Klinik Keluarga Sakinah (KKS) Pimpinan Daerah Aisyiyah (PDA) Kota Malang adalah latar belakang pendidikan yang mayoritas bukan ilmu hukum, memiliki pengetahuan yang minim mengenai ilmu hukum khususnya mengenai mediasi, belum mengetahui mengenai tugas, peran dan fungsi mediator dalam proses mediasi. Mengingat bahwa mediasi ini, merupakan ranah non litigasi maka bagi tim KKS PDA Kota Malang skill ini sangat dibutuhkan, mengingat jumlah penduduk di kota Malang dengan aparat penegak hukum yang tidak seimbang. Maka peran dari tim KKS PDA Kota Malang untuk berkontribusi membantu dalam proses mediasi juga dibutuhkan oleh masyarakat. Maka sebelum tim KKS PDA Kota Malang melakukan proses mediasi sebagai mediator (pihak yang netral) maka perlu dilakukan penyuluhan terhadap tim KKS PDA agar memiliki skill tersebut.



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INTRODUCTION

Mediation appears officially because it is motivated by social reality. The court as a case settlement institution is seen as unable to resolve the case following the expectations of society (Rizal, 2021). Criticism of the judiciary was caused by several factors, including the slow completion of litigation channels (*waste of time*), *very formal (formalistic)* examinations, *very technical (technical)*, and cases that went to court *overloaded*. In addition, court decisions always end in wins and losses so legal certainty is seen as detrimental to one of the litigants. This is different if the settlement of cases through mediation, where the wishes of the parties can be fulfilled, although not completely. This settlement prioritizes the interests of the two parties so that the decision is a *win-win solution*. (Musadad, 2020).

Mediation is an action that is highly recommended for families experiencing the conflict above (Kamaruddin, 2018). This mediation is carried out from the latent conflict stage to the open conflict and even mediation is still needed even though the divorce has occurred (Hajati, Sekarmadji, & Winarsi, 2014). This mediation is expected to be able to find the root of the conflict so that the problem does not widen further which could threaten the integrity of the household. Mediation is a very interesting concept for resolving a conflict, including conflict between husband and wife. Related to the concept of mediation in marital conflict is as explained in the Al-Qur'an Surat An-Nisa' verse 35.

The role of the mediator is only to assist the parties by not breaking up or imposing their views or judgments on issues during the mediation process on the parties (Kurniati & Fakhriahional, 2017). The mediator must prepare a proposed mediation meeting schedule for the parties to discuss and agree on. We can understand that a mediator has a very important role in achieving a peace agreement between the parties (Anggraeny, Lutfia, Ratna, Rachmaudina, & Author, 2021). In addition, the role of the mediator according to Syahrizal Abbas is that if there is a difference in the strength of the parties the mediator can overcome it in the following ways: Providing a comfortable and non-threatening atmosphere Providing opportunities for parties to speak and other parties to hear what is conveyed Minimizing differences between the parties by creating an informal situation. Neutral mediator behavior can provide comfort. Not pressuring or forcing the parties.

Dispute resolution outside the court or Alternative Dispute Resolution (ADR) has the same goal as that which has been alive and developing (Shavell, 1995) and carried out by the people of Indonesia, namely through deliberations to reach a consensus. This can be traced from the various facts that people's lives are more oriented towards balance and harmony, sometimes they cannot obtain a level of balance when fully surrendering settlements by law enforcers, especially the judiciary, which in essence is that everyone wants to be respected, valued and nothing is want to lose their interests. It is customary for the Indonesian people to resolve disputes informally through various mediation mechanisms, often involving regional leaders or government officials. Local and informal



mechanisms for resolving these disputes, or what is commonly referred to as the expression "in a family way". (Purba, 2009)

In resolving disputes, one way to find a way out of deadlock is to bring in a third party as a mediator or arbitrator. Deadlock is when both parties feel very frustrated because there is no progress and feel that there is no point in continuing the conversation (Dawson, 2010) for the conflicting parties, solving the problem by bringing it to justice is sometimes felt to be less effective. There are many advantages offered by mediation compared to the litigation process, namely: (Manan, 2006) in mediation there are two important principles, namely first, avoid winning "lose" (*win loose*), but "win-win solution" (*win-win solution*). Winning together is not only in an economic or financial sense but also includes a moral reputation victory (good name and trust). Second, the decision does not prioritize legal considerations and reasons but rather is based on equality, decency, and a sense of justice.

The problems faced by The Klinik Keluarga Sakinah - Pimpinan Daerah 'Aisyiyah (KKS-PDA) Team of Malang City are educational backgrounds, the majority of which are not legal, minimal knowledge of the law, especially regarding mediation, do not know about the duties, roles, and functions of mediators in the mediation process. Bearing in mind that this mediation is a non-litigation realm, for the Sakinah Family Clinic Team of the Regional Leadership 'Aisyiyah Malang City this skill is needed, considering the number of residents in the city of Malang with law enforcement officers is unequal. So, the role of the KKS-PDA Team of Malang City to contribute to assist in the mediation process is also needed by the community. So, before the KKS-PDA Team of Malang City carries out the mediation process as a mediator (a neutral party), it is necessary to provide counseling to the KKS-PDA Team of Malang City so that they have these skills. This service is offered using mentorship and outreach strategies.(Esfandiari, 2021). The problem of legal awareness is a problem that occurs in general. The low level of public legal awareness is known by looking at several indicators, including public knowledge of a rule of law, public knowledge of the contents of the rule of law and attitudes of the community toward the law, and so on(Kurnia & H.S, 2020).

According to Peraturan Mahkamah Agung (PERMA) No. 1 of 2016 there is a change in the form of an expansion regarding who is allowed to become a mediator. Judge mediators, in addition to judge mediators, the court also provides mediators from among court employees which include clerks, secretaries, substitute clerks, bailiffs, substitute bailiffs, prospective judges, and other employees. If there are no limited certified mediators in the court, the head of the court has the right to appoint a judge as a mediator (article 13 paragraph 2).

Mediators from outside the court are certified mediators from non-judges and are not court employees. In PERMA No. 1 of 2016 explains the article which explains mediators from outside the court, namely Article 8 Paragraph 2 which states "The fees for the services of non-judge mediators and not court employees are borne jointly or based on the agreement of the parties". External and internal mediators are required to have a

mediator certificate obtained after taking and passing an exam issued by the Supreme Court or an institution that has accreditation from the Supreme Court (Article 13 paragraph 1).

Considering that in this case, the community needs to resolve legal issues, but the parties do not want to be resolved in court, mediation can be one way to find solutions to these legal problems (Rizal, 2021). This is what needs to be emphasized, because of the importance of the element of the community's role, especially community organizations that are close to directly responding quickly to dealing with problems that occur in the community (Manan, 2006).

The objectives of this community service include: First, for the KKS-PDA Team of Malang City can become part of a community organization that is capable of assisting the mediation process, especially in their area, namely in Malang City. Second, the KKS-PDA Team of Malang City can make a real contribution to society through non-litigation, namely mediation.

The benefits of community service regarding the role, duties, and functions of this mediator include: First, the KKS-PDA Team of Malang City received legal counseling regarding the role, duties, and functions of the mediator. Second, the KKS-PDA Team of Malang City can expand work programs other than consulting about religion as well as opening opportunities for other elements, namely mediation.

IMPLEMENTATION METHOD

The target audience for this service is the KKS-PDA Team of Malang City who are active and have an interest in participating in legal counseling about the roles, duties, and functions of mediators. The mediator in the mediation process shows several attitudes that reflect the type of mediator. The mediator takes action solely to help and speed up the dispute resolution process. On the other hand, the actions of the mediator in negotiating cannot fully satisfy the disputing parties.

In the case of disputes, the parties most vulnerable to becoming victims are women and children. Such as cases of domestic violence and child marriage. So that the services provided prioritize family resilience. Moreover, a child learns basic things from within the family. Fundamental things in question such as an understanding of religion, education, socio-culture and so on.

One of the important parties involved in mediation is the mediator. Usually, the mediator is a person who is an expert in the field being discussed/disputed or an expert in the field of law because the approach is focused on rights. The mediator is a neutral and impartial third party whose function is to assist the parties in seeking possible dispute resolution. (Sutadi, 2005)

There are times when the mediator will often meet with the parties privately in a meeting called a caucus, namely a mediator meeting with one of the parties without the



other party attending so that the mediator will be freer to obtain information from parties who are not willing to openly share information. With this separate meeting (caucus), the mediator will have more information about the actual problems. Therefore, a mediator must also have the ability to gather as much information as possible which will later be used as material for compiling and proposing various resolutions to the disputed issues, so that the mediator is expected to be able to determine whether there are grounds for the realization of an agreement/agreement. (Sri Astarini, 2013)

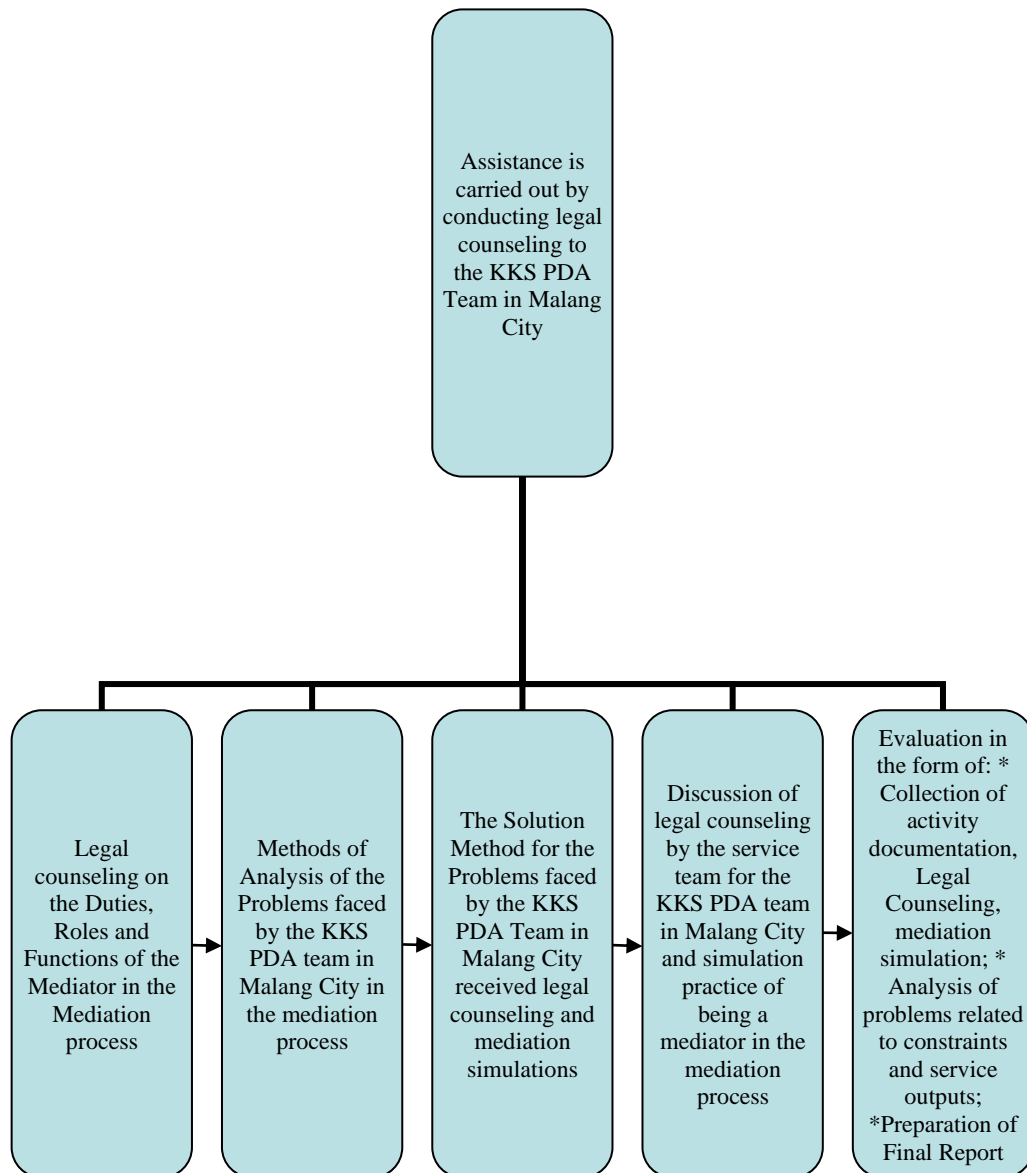


Chart 1. Methods for Implementing Legal Counseling Activities on Mediators

The realization of problem-solving in this community service program is intending to help the KKS-PDA Team of Malang City in providing skills as a mediator. Servants provide direct exposure and practice as mediators with examples of cases that have been prepared. The servant also receives questions related to the mediation process in solving problems asked by the audience so that the audience can understand the problems they

are facing. The target audience for this community service is the the KKS-PDA Team of Malang City and several Aisyiyah cadres in Malang with the hope that they understand mediation.

The method used in this community service is legal counseling, in which the service team deals directly with participants from the KKS-PDA Team of Malang City. Submission of material about the role, duties, and functions of the mediator using existing facilities at the service location with attention to the quality of the service. After the presentation of the material by the community service team, a dialogue was held regarding the presentation of the duties, roles, and functions of the mediator, in which case the participants were given the freedom to ask questions about all legal issues that mediation could carry out. Then a case example is given as an explanation of the legal rules regarding mediation.

The final stage of this service is continued with a simulation as a mediator, if faced with a legal case that is resolved by mediation by providing a mediation simulation the participants increasingly understand the role, duties, and functions of the mediator.

RESULTS AND DISCUSSION

Nobody wants a holy marriage to be threatened by problems and conflicts, let alone to the point of causing extraordinary fights. No one wants a solid marriage (mitsaqan Galizha) to fall apart so that the children can no longer be with their father because of the divorce. No one longs for a sacred marriage to be dark in color because there is nowhere else to unite. But the wind doesn't always blow in the direction we want. The calm sea sometimes also has loud waves, so the ship has to be thrown and the boat can capsize. If you weren't a strong sailor, an overturned boat wouldn't be able to reach the anchorage. Marital life sometimes has to face hard collisions.

Sometimes the hard collision is called a situation, for example, economic difficulties that crush. Sometimes this hard clash is called social pressure, for example, the desire of close or distant relatives to determine the color of our marriage according to what they think is good and not according to syara'. Sometimes this hard collision is called slander, which has various sources: the prejudice that is followed, inevitable difficult situations, such as what happened to Ummul Mukmininm 'Aisyah in the Talk to your friends incident, or even originating from our preference to reveal the bad things of our brothers.

Sometimes, the hard collision also comes from our demands on our spouse. This is for example in the case of the demands of the Prophet's wives that the Prophet Muhammad Sallallahu Allaihi was salaam provide additional spending money. They were finally given a choice; eternal life hereafter or divorce.

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medication is expected to be able to find the root of the conflict so that the problem does not widen further which could threaten the integrity of the household.

The implementation of mediation in court is no different from the mediation of other civil cases. Procedurally this has been regulated in Peraturan Mahkamah Agung Number 1 of 2016 concerning Prosedur Mediasi di Pengadilan, which with time has undergone several changes. Analysis of a law enforcement process is an attempt to realize legal ideas and concepts to achieve justice, legal certainty, and social benefits. Law enforcement itself involves many things. According to Soerjono Soekanto, law enforcement is the activity of harmonizing the relationship of values that are described in the principles/views of values that are solid and embodied with attitudes and actions as a series of elaboration of the final values to create, maintain and maintain social peace.

The mediation process is carried out by both parties and the mediator, a mediator only does his job by accompanying the two parties to find a way out which means he cannot decide which is good and right and does not make a decision (Puspitaningrum, 2018; Syarifudin, Herwastoeti, & Hapsari, 2022).

Alternative Dispute Resolution or better known as Alternative Dispute Resolution is a dispute resolution mechanism through non-litigation channels. Dispute resolution using this method is expected to be the community's choice in every problem it faces. It is hoped that a settlement process that is less bureaucratic, such as in court, will be able to fulfill a sense of justice in society. In terms of legality, Indonesia already has regulations regarding alternative dispute resolutions contained in Undang-Undang No 30 of 1999 concerning Arbitrase dan Alternatif Penyelesaian Sengketa.

Alternative Dispute Resolution can generally be interpreted as a dispute resolution process outside the court, where the parties can pursue a settlement without involving the court (Afifah & Paruntu, 2015). In its implementation, Alternative Dispute Resolution is deemed capable of providing solutions for law enforcement in Indonesia (Rachmatulloh, 2021). Alternative Dispute Resolution known as Alternative Dispute Resolution is often interpreted as an alternative to litigation but is often also interpreted as an alternative to adjudication. If the first meaning is used as a reference (alternative to litigation), then all out-of-court dispute resolution mechanisms, including arbitration, are part of the Alternative Dispute Resolution and if the Alternative Dispute Resolution (excluding litigation and arbitration) is part of the Alternative Dispute Resolution, then the meaning of Alternative Dispute Resolution as an alternative to adjudication can include consensual or cooperative dispute resolution mechanisms such as negotiation, mediation, and conciliation.

Article 1 paragraph (10) of the Law of the Republic of Indonesia Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution provides an understanding of Alternative Dispute Resolution which is an institution for resolving disputes or differences of opinion through procedures agreed upon by the parties, namely settlements outside the court by way of consultation, negotiation, mediation, conciliation, or expert judgment.



Even though it has been regulated, in reality on the ground, the implementation of Article 1 paragraph (10) still needs to be reviewed again. Alternative Dispute Resolution which includes mediation provides hope for justice seekers. This is also expected to be able to reduce the burden of dependents on cases in court.

The birth of Peraturan Mahkamah Agung (PERMA) Number 1 of 2016 concerning Mediation Procedures in Courts as a refinement of Peraturan Mahkamah Agung (PERMA) Number 1 of 2008, provides hope for the public to obtain justice through mediation in court. Settlement of civil case disputes in the District Court with the issuance of the PERMA can be carried out by mediation with the mediator being a judge. The obligation of a judge to offer a civil case settlement process is an implementation of Peraturan Mahkamah Agung (PERMA) Number 1 of 2016 concerning Mediation Procedures in Courts contained in Article 2 paragraphs (2), (3), and (4), namely:

- (2) Every judge, mediator, and party is required to follow the procedure for settling disputes through mediation as stipulated in this Regulation.
- (3) Not following the mediation procedure based on this Rule is a violation of the provisions of Article 130 HIR and/or Article 154 Rbg which results in the decision being null and void.
- (4) The judge in considering a case decision must state that the case concerned has sought reconciliation through mediation by mentioning the name of the mediator for the case concerned.

Mediation is draft very interesting to finish a conflict including conflict between husband and wife. Related the concept of mediation in marital conflict is as explained in the Al-Qur'an Surat An Nisa' verse 35:

وَإِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَابْعَثُوا حَكَمًا مِّنْ أَهْلِهِ
وَحَكَمًا مِّنْ أَهْلِهَا إِنْ يُرِيدَا إِصْلَاحًا يُوَفِّيهِ اللَّهُ بَيْنَهُمَا
إِنْ اللَّهُ كَانَ عَلِيمًا حَكِيمًا ﴿٣٥﴾

Meaning "And if you are worried that there is a dispute between both, then send a judge from the male family and a judge from a female family. If the two judges intend to make improvements, surely Allah will give help to them the husband and wife. Verily, Allah is All-Knowing, All-Knowing Know". {Qs. An-Nisa' (4): 35}.

The verse above emphasizes the importance of mediation in settlement conflict specifically conflict within the family between husband and wife to find the best way out. It means that the way out is taken is a solution that can be reconciled and not potentially cause new conflicts and problems between husband and wife.

The mediator is a neutral party who assists the parties in the negotiation process to find various possibilities for resolving disputes without using a method of breaking or forcing a settlement. Important characteristics of the mediator are: neutral. help the parties.

Important Characteristics of a Mediator:



1. Neutral
2. Help the parties
3. Without using a way of breaking or forcing a settlement

So, the role of the mediator is only to help the parties by not breaking up or imposing their views or judgments on the problems during the mediation process on the parties.

Mediator Duties:

1. The mediator must prepare a proposed mediation meeting schedule for the parties to discuss and agree on.
2. The mediator must encourage the parties to directly play a role in the mediation process.
3. If deemed necessary, the mediator can hold separate caucuses or meetings during the mediation process.
4. The mediator must encourage the parties to explore and explore their interests and seek the best settlement options for the parties.

Mediator Role:

1. Controlling processes and defining ground rules;
2. Maintaining structure and momentum in negotiations;
3. Fostering and maintaining trust between the parties;
4. Explain the process and educate the parties in terms of good communication;
5. Strengthen the atmosphere of communication;
6. Helping the parties to deal with the situation and reality;
7. Facilitating creative problem-solving between the parties;
8. End a process when it is no longer productive.

The Importance of Out-of-Court/Non-Litigation Mediation:

1. If a lawsuit arises, and the lawsuit has not been filed in court, it turns out that the parties have succeeded in resolving the dispute with the assistance certified mediator outside the court, then the peace agreement between them can be submitted to the competent court.
2. The trick, one of the parties among them first filed a lawsuit against the other party. And, the lawsuit file also included a peace agreement, in addition to the attached documents proving the existence of a legal relationship between the parties to the object of the dispute
3. Furthermore, the examining judge of the case before the parties will strengthen the peace agreement in the form of a peace deed
4. The agreement must fulfill the following conditions: (1) Following the will of the parties; (2) Not against the law; (3) Not detrimental to third parties; (4) Executable; (5) With good intention.

The mediation process is carried out through several stages:

1. The preliminary stage of the mediation trial

The mediator first explains the mediation process and the role of a mediator, although maybe one or both parties already know how mediation works and the role of a mediator. However, it would be very useful if the mediator explained this to the parties in the mediation process. This explanation mainly relates to the identity and experience of the mediator, the neutral nature of the mediator, the mediation process, the implementation mechanism, confidentiality, and the results of the mediation process. If the parties fully understand the working mechanism of mediation, it will be easier for the mediator to perform his role optimally.

2. Every party is allowed to present or explain to each other the issues that are the subject of their dispute to the mediator in turn.

Where the purpose of this presentation is to provide information to the mediator and provide an opportunity for the parties to listen to each other's problems and desires. And one of the important roles of a mediator here is to identify problems/things that have been mutually agreed upon between the parties. This will help the parties see the positive aspects of the problems that occur.

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Where the purpose of this presentation is to provide information to the mediator and provide an opportunity for the parties to listen to each other's problems and desires. And one of the important roles of a mediator here is to identify problems/things that have been mutually agreed upon between the parties. This will help the parties see the positive aspects of the problems that occur. The result of this service is that there is an increase in capacity, especially for members of the the KKS-PDA Team of Malang City in particular and members of Aisyiyah Malang City in general. So that diverse educational backgrounds are not an obstacle for the team to contribute more.

CONCLUSION

Based on community service activities that have been carried out by servants targeting the KKS-PDA Team of Malang City and Aisyiyah members in general with the counseling method. The final result is an increase in capacity regarding the tasks, roles and functions of mediators in solving problems. So that team members are more concerned and empowered in serving the community.



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