INSTITUTIONAL REINFORCEMENT OF ALTERNATIVE DISPUTE RESOLUTION (ADR) WITHIN THE INDONESIAN LEGAL FRAMEWORK NAVIGATING PRACTICAL DEMANDS AND JUDICIAL PARADIGM SHIF

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Abstract
This study examines the implementation and challenges of reorienting the role of judges as mediators in civil cases through the Alternative Dispute Resolution (ADR) mechanism at the Blangkejeren Sharia Court. Within the framework of national civil procedural law reform, the role of judges is no longer limited to deciding cases, but must transform into peace facilitators. This reorientation is normatively reinforced by Supreme Court Regulation Number 1 of 2016, which requires mediation efforts in every civil case before the main examination. However, at the empirical level, implementation at the Blangkejeren Sharia Court shows a striking duality between the relatively high statistical achievements of mediation and the complexity of obstacles that hamper its effectiveness. The limited number of certified mediator judges, limited time due to caseloads, and resistance to the community's litigative culture are crucial inhibiting factors. Through the approaches of legal system theory (Friedman), living law (Ehrlich), and legal objectives (Radbruch), this study critically examines the gap between the asynchronous legal structure and legal culture. The analysis shows that despite progressive regulations, mediation practices are still implemented solely for procedural purposes, rather than as a substantive mechanism that addresses the root values of society. The novelty offered is the idea of locality-based, sharia-based participatory mediation that combines formal legal values with local socio-religious norms. The Blangkejeren Sharia Court, with its Gayo community-based characteristics rich in deliberation, is worthy of being a national prototype for culture-based ADR transformation. Thus, this research not only fills a gap in the literature but also directly encourages concrete reforms to the face of religious courts to make them more humane, effective, and rooted.

I. INTRODUCTION

Alternative Dispute Resolution (ADR), also known in Indonesian as Alternatif Penyelesaian Sengketa (APS), refers to dispute resolution mechanisms outside of formal litigation. Generally, ADR encompasses various non-litigative methods such as consultation, negotiation, mediation, conciliation, expert assessment, and arbitration. This concept emphasizes dispute resolution through procedures agreed upon by the parties, with the goal of reaching an amicable agreement without the need for a judicial decision.(Siregar, Adrian, and Rambe 2023)

Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution Article (6) paragraph 1 Civil disputes or differences of opinion can be resolved by the parties through alternative dispute resolution based on good faith by setting aside litigation resolution in the District Court.(Prasetyo 2024) It serves as the primary legal basis for ADR in Indonesia. The law affirms that civil disputes can be resolved out of court based on the good faith of the parties, excluding litigation in the District Court. In other words, national law explicitly allows ADR institutions to play a role in the Indonesian legal system, on an equal footing with formal justice.(Siregar, Adrian, and Rambe 2023)

The formal legal basis for ADR is not limited to Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. Several

Supreme Court regulations and rules (PERMA) also regulate the integration of ADR into national legal procedures. The Indonesian Supreme Court, for example, issued Supreme Court Regulation (PERMA) No. 1 of 2016 concerning Mediation Procedures in Court, which requires that every civil case brought to court must first be resolved peacefully through mediation.(Nugroho 2016)

Article 3 (1) Every Judge, Mediator, Parties and/or legal counsel must follow the procedure for resolving disputes through Mediation.

This provision replaces the previous regulations PERMA No. 2 of 2003 and PERMA No. 1 of 2008 and strengthens the obligation of judges to facilitate mediation before the main case examination. This regulation aligns with the long-standing principles of HIR (Herzien Inlandsch Reglement) and RBG (Rechtreglement voor de Buitengewesten), namely the Civil Procedure Code inherited from the colonial era, which requires peace efforts at the outset of the trial.(Konradus 2016)However, through the latest PERMA, mediation is carried out in a more structured manner by certified mediators (other judges or non-judge mediators). In addition, various sectoral regulations also encourage ADR. For example, Law No. 8 of 1999 concerning Consumer Protection established the Consumer Dispute Resolution Agency (BPSK) for consumer mediation/arbitration, and Law No. 2 of 2004 concerning the Settlement of Industrial Relations Disputes even requires bipartite negotiations and mediation by Disnaker mediators before a lawsuit is filed with the Industrial Relations Court. These legislative and regulatory steps demonstrate Indonesia's inclusive legal framework for ADR, providing a legal umbrella for peaceful dispute resolution outside the courts.(Siregar, Adrian, and Rambe 2023)(Fazira, Manfarisyah, and Husna 2023)

In practice, the integration of ADR into the national justice system is evident through the implementation of mediation within the courts and respect for arbitration decisions. In civil courts (both District Courts and Religious Courts), mediation is no longer optional but a mandatory procedure. When a case is registered, at the first hearing, the judge is required to attempt a settlement through a mediation process facilitated by a mediator. The parties can choose a mediator from a judge who is not currently hearing the case or a certified non-judge mediator. The mediation process takes place privately and at no additional cost if a judge mediates. If a settlement agreement is reached, the mediation results are set forth in a settlement deed, which has the same legal force as a court decision. Conversely, if mediation fails, the case proceeds to a principal examination. This policy reflects a reorientation of the judicial paradigm from an adversarial culture to a deliberative one, with the judge acting as a peace facilitator before deciding the case.

Institutional support for ADR is also evident in the Supreme Court's efforts to increase the capacity and effectiveness of mediation. The Chief Justice has on numerous occasions encouraged peaceful resolution of cases through mediation for civil cases in both general and religious courts. The results are beginning to be evident in judicial performance data. The Supreme Court's 2022 Annual Report recorded 20,861 cases successfully resolved through mediation at the first instance, a 92.24% increase compared to the previous year. This significant increase indicates that more parties are utilizing court mediation to resolve disputes quickly and mutually.

In religious courts (for example, in divorce cases), mediation often results in a settlement or annulment of the divorce, while in general courts, mediation is widely applied in general civil disputes such as business, banking, land, and family matters. In addition to court mediation, arbitration, as a form of ADR, is also increasingly integrated into the legal system. Arbitration agreements between parties are recognized and respected by the courts; according to Law No. 30 of 1999, if a dispute has been agreed to be resolved through arbitration, the district court is obliged to refuse to examine the parties' claims. Arbitration decisions, both domestic and foreign, are recognized as final and binding and can be enforced through a ruling by the Chief Justice of the District Court.(Bahrun, Abbas, andjauhari 2018)

Although various ADR instruments have been implemented in the judicial system, their effectiveness remains a matter of evaluation. The success rate of mediation in court is generally low. For example, at the East Jakarta District Court, only around 10% of mediation cases resulted in a settlement agreement between January and April 2025. The majority of cases proceeded to litigation because mediation failed to bridge the gap between the parties.

These figures indicate that mediation as a formal instrument is not yet sufficiently effective in resolving disputes, despite its significant potential benefits. However, trends show gradual improvement, with several courts reporting

increasing success rates from year to year. Mediation success is strongly influenced by the quality of the mediator, the parties' willingness to compromise, and the support of mediation infrastructure. Therefore, integrating ADR into the judicial system is not simply a matter of mandatory mediation regulations, but also encompasses strengthening mediator human resources, public outreach, and enforcing sanctions/incentives to ensure that parties are serious about mediation.(Berliana, Anita, and Siregar 2022)

To support the urgency of discussions regarding strengthening the Alternative Dispute Resolution (ADR) institution in the national legal system, particularly in its application at the local level, the following presents empirical data on the implementation of mediation at the Blangkejeren Sharia Court during 2024.

The following is detailed data on the results of mediation at the Blangkejeren Sharia Court in 2024:

No	Keterangan	Jumlah	Persentase
1	Mediasi Berhasil Dengan Pencabutan	4	10,27
2	Mediasi Berhasil dengan Akta *Vandading*	2	5,13
3	Mediasi Berhasil Sebagian	20	51,28
4	Mediasi Tidak layak dilaksanakan	2	5,13
5	Mediasi gagal (tidak berhasil mencapai kesepakatan	11	28,21
6	Mediasi Masih Dalam Proses	0	0
	Jumlah	39	100 %

2024 Mediation Results Data

Based on an internal recapitulation of the Blangkejeren Sharia Court, it was recorded that throughout 2024, there were 39 contentious lawsuits, all of which were attended by both parties. Referring to the provisions of Supreme Court Regulation of the Republic of Indonesia Number 1 of 2016 concerning Mediation Procedures in Court, every civil case that meets the requirement for the presence of the parties must go through the mediation stage, unless the case is explicitly exempted by law.

Thus, all 39 cases were directed to be resolved through mediation. The results indicate that mediation at the Blangkejeren Sharia Court was not only implemented procedurally but also produced significant results. Based on Table 2.19 below, it is known that of the total 39 cases, there were 26 cases (66.66%) that can be categorized as successfully mediated. This category of success includes cases that ended with a revocation (usually in divorce cases), cases that were successful through a deed of vandading (generally related to property disputes), and cases that were partially successful, namely when part of the lawsuit can be resolved amicably, while the remainder continues in the judicial process.(Syahrul and Anam 2022)

Efforts to integrate ADR institutions into the national legal system face several real-world obstacles that must be overcome to achieve the ideal situation. In fact, the legal culture in society and among practitioners still tends toward litigation. Indonesian society has long had a strong "litigation culture," where many parties default to resolving disputes through formal courts. Understanding and socialization of ADR options remain limited, and many people do not yet understand the mechanisms and benefits of arbitration, mediation, and other forms of non-litigation resolution. This situation is exacerbated by the perception that court decisions provide tangible victories, while peace agreements are sometimes considered less satisfying to the ego of those who believe they are in the right. Furthermore, advocates and law enforcement officials are also accustomed to an adversarial approach, which sometimes discourages clients from reaching a compromise. These cultural barriers result in suboptimal utilization of ADR. Many cases that could have been negotiated remain languishing in court, resulting in time-consuming and costly decisions.(Fite, Jamil, and Cahyani 2022)

In addition to cultural factors, there are structural and technical obstacles to ADR integration. The limited number and competence of mediators/arbitrators is a crucial issue. Not all courts have adequate non-judge mediators, so mediation is often handled by judges who may not be specifically trained in mediation techniques. The quality of mediation also varies, with some cases failing to reach a settlement because the mediator is unable to explore the parties' interests or lacks trust. Furthermore, the inconsistency of court decisions regarding ADR in the past has raised doubts. For example, although Law No. 30 of 1999 states that arbitration awards are final, in some civil cases the losing party attempted to file a new lawsuit to circumvent the arbitration award. Although the high court/Supreme Court ultimately rejected such attempts, as a matter of law, such incidents created a perceived risk that ADR outcomes could be challenged through litigation. Similarly,

decisions by the Consumer ADR Agency (BPSK), which are final by law, are often challenged in the district court by dissatisfied parties, thereby diminishing the ultimate effectiveness of this ADR pathway. These actual obstacles reflect the gap between the legal norms that encourage ADR and the reality of practice on the ground.(Muslika 2021)

While real challenges remain, the ideals and future prospects for ADR integration remain bright. Ideally, ADR is expected to become an integral part of Indonesia's modern judicial paradigm. The reorientation of the judicial paradigm requires a shift from a win-lose orientation to a win-win orientation that emphasizes restorative justice and good relations between the parties. Ideally, the wider community would make ADR their first choice before litigation, especially for private civil disputes that are more likely to be resolved through deliberation. Judges and law enforcement officials are also expected to adopt a more facilitative mindset, becoming proactive "drivers of deliberation" who offer peaceful solutions.

Given the above conditions, the urgency of research on the integration of ADR institutions into the national legal system is clear. There is a gap between the normative desire to make ADR a pillar of dispute resolution and the empirical reality of its suboptimal implementation. This gap raises a critical question: what are the appropriate legal and institutional strategies for truly integrating and effectively implementing ADR in Indonesia? Answering this question is crucial for improving access to justice for the public. A well-functioning ADR will provide faster and more humane resolution options, while simultaneously reducing the caseload faced by judges.(Pujiana and Fathoni 2021)

From the perspective of judicial reform, the integration of ADR also aligns with the demands of a reorientation of the judicial paradigm in the modern era. The courts are no longer viewed merely as "case-deciding machines," but rather as public service institutions in the field of justice. Restorative and participatory justice—in which the parties are actively involved in finding solutions—is now being promoted as a complement (or even an alternative) to retributive or purely legal-formal justice. Therefore, a change in mindset among law enforcement officials is urgently needed: judges, prosecutors, advocates, and police need to better understand the values of mediation, deliberation, and peace. This reorientation does not mean weakening the function of law enforcement, but rather enriching the law enforcement approach with a more diverse range of solutions tailored to the nature of the dispute.

Based on several problems that the author has outlined above, the author has formulated the problems in this research as follows:

1. What is the theoretical and regulatory basis for reorienting the role of judges as mediators in the civil dispute resolution system through ADR in Indonesia?
2. How is the implementation and challenges of reorienting the role of judges as mediators in civil cases through ADR at the Blangkejeren Syar'iyah Court?

II. RESEARCH METHODS

This research is a normative (doctrinal) legal research with a qualitative approach and a conceptual approach, which aims to examine the legal norms governing Alternative Dispute Resolution (ADR) in the Indonesian legal system and evaluate the effectiveness and challenges of its integration in judicial practice.(Hasibuan, Sembiring, and Rafianti 2024)This research uses primary legal materials in the form of laws and regulations such as Law Number 30 of 1999, Law Number 8 of 1999, Law Number 2 of 2004, and PERMA No. 1 of 2016; secondary legal materials such as legal literature, scientific journals, previous research results, and official reports from the Supreme Court; and tertiary legal materials such as legal dictionaries and encyclopedias. The legal material collection technique is carried out through library research.(Sembiring et al. 2022)by collecting and classifying relevant legal sources from laws, jurisprudence, and academic literature. Although normative in nature, this study enriches the context by focusing on the application of ADR in the Blangkejeren Sharia Court, Aceh Province, to describe the implementation of ADR regulations in local religious court practices and identify potentials, obstacles, and opportunities for strengthening them. The analysis technique is carried out descriptively qualitatively through systematic interpretation of the legal norms and theories used, with the aim of providing a

comprehensive picture of the strategic position of ADR in the national legal system and solutions to actual challenges in its implementation within the Sharia Court.

III. RESULTS AND DISCUSSION

A. Theoretical and Regulatory Basis Regarding the Reorientation of the Role of Judges as Mediators in the Civil Dispute Resolution System through ADR in Indonesia

In modern judicial practice in Indonesia, the role of judges is no longer limited to adversarial adjudication, but has been directed to also function as mediators, helping parties reach a settlement. This new orientation aligns with the development of Alternative Dispute Resolution (ADR) as an approach to resolving civil disputes outside of litigation.(Siregar, Adrian, and Rambe 2023)Theoretically, ADR is seen as capable of producing more win-win, efficient, and mutually satisfactory solutions than court decisions that are based on win-lose. Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution recognizes various forms of ADR, including mediation. Article 1 number 10 of Law 30/1999 defines "Alternative Dispute Resolution" as an institution for resolving disputes outside the courts with procedures agreed upon by the parties, namely through consultation, negotiation, mediation, conciliation, or expert assessment. This law encourages parties to set aside the litigation process and first pursue dispute resolution through deliberation and consensus in good faith. It even stipulates that amicable agreements resulting from mediation are final and binding, and must be implemented in good faith and registered with the court within a certain time. This provision demonstrates a strong national legal foundation for a culture of peace in civil dispute resolution.(Adri 2019)

The theoretical basis for the judge's role as a mediator can also be traced back to classical civil procedural law and the Islamic legal values adopted in religious courts. The HIR/RBg (Herziene Indonesisch Reglement and Reglemen for areas outside Java) as the old civil procedural law requires peacemaking efforts before the court. Article 130 of the HIR/Article 154 of the RBg requires the judge at the first hearing, attended by both parties, to first attempt peacemaking before examining the main points of the case. If peacemaking is achieved, a peace deed (dading) is drawn up, which has the same force as a judge's decision. This provision demonstrates that the role of "peacemaking" has long been inherent in the function of judges, particularly in civil cases. In the context of religious courts, Islamic sharia values strongly encourage peaceful resolution through sulh or ishlah. Islamic teachings emphasize deliberation and family involvement in resolving household conflicts before divorce (see, for example, the recommendation of QS. An-Nisa': 35 regarding sending a hakam as a mediator from the husband and wife's families). A recent study confirms that mediation is a dispute resolution mechanism recommended in Islamic teachings and reinforced by national legal provisions, particularly in divorce cases before the Religious Courts. This principle of islah (peace) is integrated into the formal justice system so that divorces do not always result in a divorce decree, but rather seek reconciliation or an agreement that is best for both parties. Therefore, theoretically, shifting the role of judges to mediators has strong justification, both in terms of the principles of speedy, simple, and low-cost justice, and in terms of religious values and local wisdom that prioritize peace.(Sirrullah 2020)

The push to reorient the role of judges as mediators has grown stronger with the update of the Supreme Court (MA) regulations on mediation. The MA has issued several regulations to incorporate mediation into standard procedural procedures. Following an evaluation of PERMA No. 2 of 2003, which was deemed ineffective, the MA issued PERMA No. 1 of 2008, and the current PERMA No. 1 of 2016 concerning Mediation Procedures in Court is in effect. This regulation applies in all judicial environments, including religious courts, and binds judges, parties, and legal counsel to comply with mediation procedures in dispute resolution. Article 4 paragraph (1) of PERMA 1/2016 expressly requires that “all civil disputes submitted to the Court… must first be resolved through Mediation.” This means that before the panel of judges examines the merits of the case and renders a decision, the parties must be given the opportunity to mediate. If the judge does not order mediation and the parties continue the case without mediation, this is considered a procedural violation. PERMA 1/2016 even stipulates strict sanctions: if mediation is skipped, the appellate court or the Supreme Court can overturn the first instance decision and order that mediation be

carried out first. Therefore, every court decision must include a statement stating that the case has been resolved peacefully through mediation, complete with the name of the mediator. This provision ensures that mediation is not merely a formality, but a procedural requirement that must be met for the decision to be valid.(Muhkam and Dhahri 2015)

PERMA 1/2016 also provides detailed guidance on mediation procedures and the role of judges as mediators. Mediators can be judges, court employees, or certified non-judge mediators (e.g., advocates or consultants). In practice, in courts, particularly religious courts, the most frequently chosen mediator is a judge mediator, partly because the use of a judge mediator's services is free of charge to the parties. PERMA requires every mediator to have a mediator certificate, but flexibly allows non-certified judges to function as mediators upon appointment by the chief justice. However, it is important to note that Article 3 paragraph (5) of PERMA 1/2016 stipulates that a judge mediator may not also serve as the examining judge who will decide the dispute. Therefore, if the case is handled by a panel of judges, another judge (not the panel) will be appointed as mediator. This is to maintain the neutrality and confidentiality of the mediation process – the mediator must not take sides or become the judge who renders a decision if mediation fails. PERMA 1/2016 also introduced modern mediation innovations, such as allowing mediation to be conducted remotely (teleconference) if necessary, without violating the principle of confidential mediation. This step aligns with technological developments and the need for electronic mediation, especially during the recent pandemic, where online mediation has become a practical solution.(Muhkam and Dhahri 2015)

In terms of procedural time, court mediation is given a maximum period of 30 days from the date of appointment of the mediator, which can be extended by another 30 days with court approval. PERMA 1/2016 stipulates 30 working days, but in socialization in religious courts, the total is often stated as 40 working days including extensions. During this time, the mediator works intensively to reconcile the parties' desires. The mediator can hold joint sessions or caucuses (meeting separately with each party) to explore interests and find creative solutions. The mediation process is closed and confidential, so nothing discussed may be leaked to the court if the mediation fails—this allows the parties to be open without fear of harming their legal standing in court. The parties are required to attend in person at least for the first mediation meeting and must act in good faith. If a party behaves in bad faith (for example, absenting themselves twice without a valid reason), the mediator can report the incident to the examining judge for sanctions, such as charging the defaulting party with mediation costs. This provision regarding good faith is important so that the parties truly give peace a chance, not just go through the motions.(Hariyanto, Efendi, and Sulistiyawati 2021)

As a general rule, all civil cases must undergo mediation. However, PERMA 1/2016 provides several exceptions. Article 4 paragraph (2) details the types of disputes that do not require mediation, including cases where the trial process is regulated to be expedited (such as simple lawsuits, commercial disputes, PHI, etc.), then cases of denial of default, counterclaims (reconventions) or interventions, and several special cases in religious courts. For religious courts, it is interesting that cases concerning the prevention, rejection, annulment, and validation of marriages are exempt from the obligation to mediate. This is logical because cases such as annulment of marriage usually involve the validity of the marriage, which legally cannot be "compromised," unlike ordinary divorces, which can still be reconciled. In addition, divorce cases in religious courts have special procedures (there is a separate stage of the peacemaking trial according to the Marriage Law), so formal mediation through PERMA is often combined with these peacemaking efforts. Another exception is if, prior to the case, the parties have already attempted out-of-court mediation with a certified mediator but failed. In this case, with evidence of the failed mediation statement signed by the mediator and the parties, the case can proceed directly without re-mediation in court. This flexibility prevents duplication of efforts and respects the seriousness of the parties who have previously attempted to reach a settlement.(Nurjanah 2015)

The implementation of mediation regulations within the religious courts demonstrates a strong commitment to making judges facilitators of settlement. Certified mediators, generally judges themselves, are available in every Religious Court (PA) or Sharia Court (the name for religious courts in Aceh Province). In fact, the Supreme Court, through the Director General of Religious Affairs and Religious Courts (Badilag), requires

every PA/MS to establish a comfortable mediation room, complete with various supporting facilities, to foster a conducive mediation atmosphere. Mediation in religious courts is essentially an attempt to reconcile a husband and wife in a divorce case, with the assistance of a mediator judge in court. Since 2008, mediation has been integrated into PA procedures, and following PERMA 1/2016, its implementation has been updated and optimized. Every registered divorce case will first go through a mediation stage: at the first hearing, the panel of judges explains the mediation procedure to the parties and postpones the main case examination to allow for a maximum of 40 days of mediation. The parties may choose a mediator from the available list (e.g., Judge A or a non-judge mediator if available). However, if they cannot agree on a choice within two days, the Chief Justice will appoint a mediator directly, who is usually another judge in the court. This mediator judge is not a member of the panel examining the case and is therefore neutral. Mediation is usually conducted in a special room in the courtroom, and often only one or two meetings are sufficient to determine whether there is a chance for a settlement. If an agreement for reconciliation or peace is reached during the mediation, a written Peace Agreement is drawn up and signed by the parties and the mediator. This agreement is then submitted to the panel of judges to be confirmed in a final and legally binding peace decision (peace deed) in accordance with Article 130 of the HIR. Conversely, if mediation fails (no reconciliation or any solution is reached), the divorce process continues through regular court proceedings until a verdict is reached.(Jamilah 2020)

Regarding the judge's role as mediator, there are several aspects of implementation that merit careful attention in the religious court environment. First, mediation in religious courts is often synonymous with efforts to reconcile disputing couples. Mediating judges in religious courts often employ religious and family-oriented approaches, such as reminding the parties of the rewards of maintaining a marriage, the fate of children if their parents divorce, and so on.(Chanafi, Mutimatun, and SH 2018) Research at the Semarang Religious Court shows that mediators (both judges and non-judges) consistently strive to remind the parties of the negative consequences of divorce and child custody disputes, and encourage them to consider the best interests of their children. In divorce cases, the mediating judge acts as a facilitator, listening to the parties' concerns and as a conciliator, offering advice on how to restore the marriage, if possible. However, the mediator must remain neutral and not impose a solution; the decision to reconcile or divorce remains the responsibility of the parties. Even if reconciliation is not achieved, mediation can at least help the parties to accept their positions more openly and understand each other's positions. This can hopefully lead to a smoother process or a decision that is accepted without prolonged hostility.(Hamzah, Hasmulyadi, and Amirullah 2021)

Mediation performance in religious courts shows a varied trend. There are commendable successes, but also significant challenges that need to be overcome. In some smaller religious courts, mediation success rates are quite high. For example, PA Manna (Bengkulu) once reported a mediation success rate of 85.71% in a given period, PA Sungai Penuh (Jambi) achieved 84%, and PA Suwawa (Gorontalo) announced that mediation had successfully reduced the divorce rate by 72%. These high rates typically occur when the number of cases is small and the mediator is very proactive in seeking reconciliation, or in specific cases where the parties are still open to reconciliation. However, overall, nationally, mediation success rates remain relatively low when calculated based on total cases received. A recent study (2024) compiled by Badilag (Religious Court) revealed that the mediation success rate at the Bandung High Religious Court (PTA) was only around 2.11%, and at the Bangka Belitung High Religious Court (PTA) around 13.22%. These figures indicate that the majority of civil cases in religious courts ultimately proceed to verdict, and mediation efforts have not yet yielded amicable outcomes. There is a gap between the normative expectations of PERMA (many cases are resolved amicably) and the reality on the ground.(Sariffudin and Fida 2023)

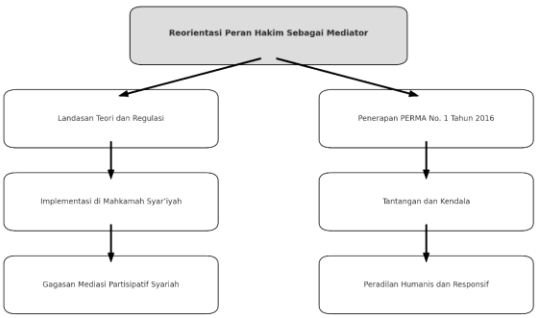
Various factors contribute to the suboptimal mediation process in religious courts. First, the high caseload compared to the number of available judges makes effective mediation difficult. For example, in 2012, the Sragen Religious Court recorded 2,459 cases with only 8 judges, and not a single one of these thousands of cases was resolved through mediation. The judges at the Religious Court are severely overburdened—two panels of judges are in session each day, leaving only two judges free to sit outside of court. If one of those not in court is

appointed as a mediator, there is essentially only one judge left for other administrative duties. These resource limitations certainly hinder the smooth running of mediation. Research at the Sragen Religious Court identified the disproportionate number of judges to the number of cases as a major obstacle to mediation. Second, there are procedural obstacles when one party is absent (the defendant is absent). PERMA 1/2016 actually exempts absentee cases from mandatory mediation, but in practice, confusion sometimes arises: should the first hearing be postponed to recall the absent party in accordance with the HIR, or should it be deemed sufficient and the case proceed without mediation. Before the regulation was clarified, some judges were uncertain about whether bypassing mediation was permissible if the defendant was absent. This has now been addressed with exceptions, although care remains to ensure no procedures are overlooked. Third, the nature and character of cases in religious courts—particularly divorce—make successful mediation difficult. Divorce involves deep emotional and psychological aspects; when a couple is already separated and emotions are running high, the mediating judge often faces a tough wall. Research cites immaterial factors such as "feelings" as an obstacle to divorce mediation. Many couples come to court already determined to divorce, making reconciliation difficult.(Sentana, Astara, and Sugiartha 2020)Moreover, if the cause of the divorce is serious (e.g., infidelity, domestic violence), mediation usually only serves to fulfill formal requirements without any hope of reconciliation. Fourth, there is still the issue of legal culture: some members of the public and legal counsel may not understand the benefits of mediation. Previously, mediation was considered a formality that slowed down the process; this view is slowly changing with the public's awareness that mediation can actually save time and money if successful. PERMA 1/2016 explicitly aims to change the perspective of law enforcement officials (judges and advocates) so that they see the court's function not only as a decision but also as a reconciliation. Therefore, the active participation of legal counsel is highly desirable to encourage their clients to reconcile when possible. Fifth, there are factors such as costs and mediator incentives. Although judicial mediation is free, if a non-judge mediator is chosen, the parties must pay a fee (honorarium) as agreed. Many parties are reluctant to add this cost, so the non-judge mediation option is rarely used. Meanwhile, judicial mediation itself does not incur additional costs to the parties (because it is free), but there has been talk of providing incentives for judges who successfully mediate cases. As of PERMA 1/2016, this incentive scheme has not been detailed and remains a matter of debate. The lack of formal incentives may discourage some judges from prioritizing mediation amidst a growing number of case resolution targets. However, many idealistic judges—even without incentives—feel that reconciliation efforts are part of their noble calling and a form of worship, especially in religious courts that handle family matters.(YAYAN 2024)

In the context of the Sharia Court in Aceh, the implementation of mediation is essentially the same as in other religious courts, given that the regulations used are national (the Law and the Supreme Court Regulation). As a religious court with a special focus on Islamic law, the Sharia Court arguably has a stronger nuance of islah (Islamic reconciliation). Judges in Aceh generally understand local customs and sharia, which strongly emphasize family reconciliation. It is not uncommon to involve religious leaders or extended family members informally to support the mediation process. However, formally, the procedure follows PERMA 1/2016: the appointment of a mediator, the timeframe, and reporting of mediation results are all the same. Several Sharia Courts have reported positive mediation successes. For example, in 2022, the Blangpidie Sharia Court successfully resolved several cases through mediation (their internal reports indicate that mediation is effective in reducing divorce rates).(Chanafi, Mutimatun, and SH 2018)Similarly, the Lhoksukon Sharia Court held an evaluation meeting in 2023 to improve the success of mediation, indicating special attention is being paid to this mediator's role. This aligns with the idea that religious court judges act as muṣliḥ, namely those who facilitate islah (reconciliation) within the community. Experts emphasize the importance of optimizing the role of judges as muṣliḥ and increasing public awareness of mediation as a strategy to maintain family integrity. In other words, in the Aceh Sharia Court and other religious courts, reorienting the role of judges to mediators is not only a requirement of the rules but also aligns with the values of local Islamic wisdom that exist within the community.

In conclusion, reorienting the role of judges as mediators in civil courts—particularly religious courts—is a progressive step toward

realizing a more responsive, humane, and effective justice system. Its theoretical foundation rests firmly on the principle of peace in procedural law and religious moral teachings. This legal basis is clearly stated in Law 30/1999 and the Supreme Court regulation on mediation (PERMA 1/2016), which requires that all disputes be resolved peacefully. In practice in religious courts, judges are now required to fulfill two functions simultaneously: as firm arbitrators when deliberations fail, and as empathetic mediators who open up space for dialogue between the parties. The implementation of this policy in Indonesian religious courts has shown promising, though not ideal, results. Many family cases have been resolved amicably, thus maintaining relationships, saving emotional and financial costs, and reducing court decisions.(Muslika 2021)On the other hand, challenges remain, such as the low success rate of mediation in general, due to caseload factors, the psychological factors of the parties, and limited resources. Efforts are ongoing to overcome these obstacles—from increasing the number and competence of mediator judges (through mediator certification training), improving case management to ensure adequate mediation time, to public outreach on the importance of mediation. Thus, it is hoped that in the future, the mediation function in the judiciary (including religious courts and the Sharia Court) will truly align with the adjudication function. Judges will no longer be seen simply as "case deciders," but also as protectors who help justice seekers reach the best peaceful solutions. This integrated mediation policy, in line with the Supreme Court's objectives, is expected to achieve a simple, fast, and low-cost justice system, while simultaneously fulfilling a sense of substantive justice for the community. With the commitment of all parties, reorienting the role of judges as mediators will lead to a civil dispute resolution system that is more adaptive to the needs of the community and more aligned with the noble values of peace.



B. Implementation and Challenges of Reorienting the Role of Judges as Mediators in Civil Cases through ADR at the Blangkejeren Islamic Court

The implementation of the reorientation of the role of judges as mediators in civil cases through the Alternative Dispute Resolution (ADR) mechanism at the Blangkejeren Sharia Court is a concrete form of national judicial policy that places peaceful dispute resolution as an essential part of the modern justice system. This reorientation was born from a major paradigm shift in civil procedural law, particularly since the issuance of Supreme Court Regulation (PERMA) Number 1 of 2016 concerning Mediation Procedures in Court, which requires every civil case to first go through a mediation process before entering the main points of the case. This provision applies in all judicial environments, including religious courts, which are the dominant space for resolving family and inheritance disputes among Muslims. In the context of the Blangkejeren Sharia Court, the implementation of PERMA is a strategic instrument to encourage judges to play a dual role, namely not only as dispute resolvers, but also as peace facilitators oriented towards a win-win solution approach and participatory justice. As part of the religious court institution in Aceh, the Blangkejeren Sharia Court has a specific area that makes the mediation process full of nuances of sharia values and Gayo customs, where peaceful resolution within the family is not only a legal mechanism, but also a manifestation of highly upheld moral and social values.(Ilyas, Abbas, and Jauhari 2017)

In practice, the implementation of the judge's role as mediator at the Blangkejeren Sharia Court demonstrates an interesting dynamic to study, particularly given the striking discrepancy between normative expectations from national regulations and the actual conditions in the

region. Institutionally, this court has implemented mediation procedures as mandated by the Supreme Court Regulation (PERMA), including establishing a list of mediator judges, providing a dedicated mediation room, and establishing an administration and reporting system for mediation results in each case. Internal data from the Blangkejeren Sharia Court in 2024 shows that of the 39 lawsuits that met the requirements for mediation (contentious and presence of the parties), 26 were successfully resolved amicably, either through withdrawal of the lawsuit, a settlement deed, or a partial agreement. This means the mediation success rate reached 66.66%, a relatively high figure compared to the national average for mediation, particularly in divorce cases, which are generally very difficult to reconcile. This achievement is noteworthy as an indication that, in the local context, the mediator judge at the Blangkejeren Sharia Court is capable of carrying out mediation functions with an approach appropriate to the community's culture, particularly persuasive religious, family, and psychological approaches. However, this success is not without challenges. In reality, not all cases can be easily mediated. Many cases ultimately proceed to the main hearing due to mediation failure due to emotional tension between the parties, the absence of one party during the mediation process, or a party coming to court with a firm intention of divorce without considering amicable options.(Fathurrahman 2023)

Other implementation challenges that have emerged at the Blangkejeren Sharia Court include structural, technical, and cultural aspects. Structurally, the limited number of judges certified as mediators is a significant issue. In many cases, the mediation process is handled by non-certified judges appointed by the Chief Justice due to limited human resources. This has the potential to impact the quality of mediation, as judges who have not received specialized mediator training are often only able to carry out formal procedures without understanding negotiation strategies, mediative communication techniques, and restorative approaches. Furthermore, technical challenges arise in the form of a high workload for judges, as one judge must simultaneously handle various administrative and court duties, severely limiting the time available for mediation. This results in mediation often being conducted in a short time, suboptimally, and merely fulfilling formal obligations as required by Supreme Court Regulation No. 1 of 2016. Culturally, an equally important challenge is the attitude of some members of the public who still view mediation as a form of weakening the legal position or who doubt the validity of its results. Many people still believe that victory in a case is only valid if achieved through a judge's decision, not through a peace agreement. This demonstrates the persistence of a litigious culture among justice seekers, despite Islamic values and local wisdom strongly valuing deliberation.

To understand these challenges and dynamics theoretically, Lawrence M. Friedman's legal system theory can be used as the main analytical framework. Friedman states that the legal system consists of three elements: legal structure, legal substance, and legal culture. In the context of the Blangkejeren Sharia Court, the legal structure has provided institutional and procedural tools for the implementation of ADR through PERMA No. 1 of 2016. The legal substance in this case is clear and progressive in encouraging the role of judges as mediators. However, the crucial point is legal culture, namely how the community and judicial officials interpret the mediation process. When the community's legal culture is still based on the belief that only judges can resolve cases "fairly," the role of mediation will always be subordinate, regardless of how well the regulations are. Therefore, the novelty of this discussion arises from the systematic effort to identify the gap between the already progressive legal structure and substance and the local community's legal culture that is not yet fully aligned, and how this condition can become a foundation for reforming the mediation approach model based on the local characteristics of the Blangkejeren community. This novelty can be developed as a model of “locality-based participatory sharia mediation” in which the judge acts not only as a technical mediator, but also as an educational and moral figure who is able to bridge formal legal values with the legal values of the community's life.

Eugen Ehrlich's theory of living law also strengthens this new foundation. Ehrlich emphasized that the law that applies is actually the law that lives within society, namely the practices, social norms, and customs that are actually implemented. In the context of the Blangkejeren Sharia Court, the practice of resolving family conflicts through traditional leaders, mosque imams, and heads of families before the case is brought to court is a form of living law that functionally acts as informal mediation. Therefore, the reorientation of the

judge's role as a mediator in ADR should not stop at procedural formalities, but rather must adapt to the practices and values that exist within the community. Judges as mediators in areas like Blangkejeren, therefore, ideally should not simply be rule-makers but also understand the values, customs, and sociocultural nuances of the community they are dealing with. From this theory, a novelty that can be drawn is the need to integrate formal mediation with existing social mediation practices, for example by providing space for the participation of non-judge third parties (traditional or religious leaders) in the mediation process without violating the principle of judicial neutrality. This is a form of legal revitalization that is embedded in formal legal procedures, so that the ADR mechanism is not alienated from the community it serves.

Meanwhile, from the perspective of Gustav Radbruch's theory of legal objectives, which emphasizes three main elements: justice, legal certainty, and expediency, the implementation of mediation by judges at the Blangkejeren Sharia Court can be tested to what extent all three are achieved. Ideally, mediation provides a higher level of substantive justice because the outcome is a mutual agreement between the parties, not forced through a decision. However, in practice, this agreement is often not achieved due to the dominance of unilateral interests or emotional pressure. In terms of legal certainty, a mediation-derived settlement deed has the same legal force as a judge's decision, but the public often lacks confidence in its effective execution if one party violates it. In terms of expediency, mediation should be faster, cheaper, and more emotionally friendly, but in practice in Blangkejeren it is often suboptimal due to judges' time constraints and caseloads. Therefore, this analysis based on Radbruch's theory demonstrates a gap between the objectives of the law and the reality of its implementation. From this perspective, the emerging scientific novelty is the proposal to strengthen institutional strategies and legal education for the community so that mediation truly becomes a rational choice, not just a formal obligation. This strengthening includes local culture-based mediation training, strengthening the position of peace deeds as a means of fast execution, and promoting the value of participatory justice through legal counseling within the Sharia Court.(Saravistha 2020)

By bringing together these three theories in one analytical foundation: Friedman with the legal system, Ehrlich with living law, and Radbruch with legal objectives, it can be concluded that the implementation of mediation by judges at the Blangkejeren Syar'iyah Court cannot be assessed sufficiently from the perspective of the suitability of formal procedures, but must be placed in the context of social values, institutional support, and the effectiveness of the results towards social justice.(Zamayya et al. 2025)The novelty that emerged from this discussion is a measurable proposal for the construction of locally based participatory mediation specifically adapted to the context of regional religious courts, by combining a structural approach (through institutional policies), a cultural approach (through an understanding of living law), and an evaluative approach (through benchmarks of legal objectives). In other words, this research does not stop at evaluating implementation, but offers a realistic, measurable, and empirically based reformulation idea. The Blangkejeren Sharia Court, as a local entity, has great potential to become a national model in strengthening the mediation function of judges in ADR within the religious courts.(Bakry, Apriyanto, and Mangaluk 2025)Therefore, this research has an original contribution in bringing the law closer to the community, not just making mediation an additional procedure, but as the spirit of a just dispute resolution system.

IV. CONCLUSIONS AND RECOMMENDATIONS

Based on the description of the implementation and challenges of reorienting the role of judges as mediators in civil cases through ADR at the Blangkejeren Sharia Court, it can be concluded that the implementation of mediation as a dispute resolution instrument has been running normatively in accordance with the provisions of PERMA No. 1 of 2016. The Blangkejeren Sharia Court shows positive achievements with mediation success above 60%, especially in family cases. However, the effectiveness of the judge's role as mediator still faces various obstacles, ranging from the limited number of certified mediator judges, high workloads, to resistance from the legal culture of society that still prioritizes litigation. Analysis of the legal system theory (Friedman), living law (Ehrlich), and the purpose of law (Radbruch) shows an imbalance between the structure and substance of law that is already adequate with the legal culture of society that is not yet fully adaptive to peaceful mechanisms through mediation.

As a recommendation, an integrated approach is needed that includes strengthening the capacity of judges as mediators through certified training, restructuring the caseload to provide more proportional mediation time, and legal outreach to the community to understand and accept mediation as the primary alternative for dispute resolution. Furthermore, it is necessary to develop a locality-based participatory mediation model that accommodates sharia values and Gayo culture as part of the living law of the Blangkejeren community. The Blangkejeren Sharia Court has the potential to become a laboratory for good practices in the application of mediation in religious courts, with the caveat that institutional reform and cultural approaches must be carried out simultaneously and sustainably.

REFERENCE LISTAN

Adri, Muhammad. 2019. "The Penghulu's Considerations Regarding the Reading of the Sighat Taklik Talak at the Depok Sleman District Religious Affairs Office."

Bahrun, Bahrun, Syahrizal Abbas, and Iman Jauhari. 2018. "The Role of the Mediator Judge in the Settlement of Joint Property Disputes After Divorce in the Sharia Court." Syiah Kuala Law Journal 2 (3): 371–87.

Bakry, Kasman, Apriyanto Apriyanto, and Efraim Mangaluk. 2025. Constitutional Law: Theory and Application of Constitutional Law in Democratic Countries: Theory and Application of Constitutional Law in Democratic Countries. PT. Sonpedia Publishing Indonesia.

Berliana, Betty, Anita Anita, and Gomgom TP Siregar. 2022. "ANALYSIS OF THE ROLE OF JUDGES AS MEDIATORS IN PEACE BETWEEN THE PARTIES IN CIVIL CASES AT THE MEDAN DISTRICT COURT, CLASS IA SPECIAL." RECTUM JOURNAL: Juridical Review of Criminal Action Handling 4 (1): 369–80.

Chanafi, Muhammad, Ni'ami Mutimatun, and M SH. 2018. "The Effectiveness of the Role of Judges as Mediators in Efforts to Resolve Disputes Through Mediation at the Karanganyar Religious Court in 2015-2017." Muhammadiyah University of Surakarta.

Fathurrahman, Mgs M Hanief. 2023. "THE ROLE OF JUDGES AS MEDIATORS IN THE SETTLEMENT OF DIVORCE CASES IN THE SLEMAN RELIGIOUS COURT CLASS IA." UIN SUNAN KALIJAGA YOGYAKARTA.

Fazira, Inda, Manfarisyah Manfarisyah, and Cut Asmaul Husna. 2023. "The Role of the Mediator Judge in Mediating Divorce Disputes at the Lhoksukon Sharia Court." Student Scientific Journal (JIM-FH), E-ISSN, 2798–8457.

Fite, Fitriani Saudu, Muh Jamal Jamil, and A Intan Cahyani. 2022. "The Role of the Mediator Judge in Inheritance Disputes at the Pinrang Religious Court Class 1B." Qadauna: Scientific Journal of Islamic Family Law Students 3 (3): 567–83.

Hamzah, Ekawati, Hasmulyadi Hasmulyadi, and Amirullah Amirullah. 2021. "The Role of the Mediator Judge in Handling Divorce Mediation in Religious Courts." KALOSARA: Family Law Review 1 (2): 277–307.

Hariyanto, Erie, Moh Efendi, and Sulistiyawati Sulistiyawati. 2021. "The Dilemma of Religious Court Judges in Resolving Family Law Cases Through Mediation." Volksgeist: Journal of Law and Constitutional Studies, 115–24.

Hasibuan, Fitri Handayani, Tamaulina Br Sembiring, and Fitri Rafianti. 2024. "The Relationship Between Ethics Institutions in the Health Sector in The Enforcement of Professional Ethics from a Utilitarian Perspective." Asian Journal of Multidisciplinary Research and Analysis 2 (1): 130–39.

Ilyas, Ilyas, Syahrizal Abbas, and Iman Jauhari. 2017. "The Effectiveness of the Judge's Role as a Mediator in the Settlement of Civil Cases at the Jantho Sharia Court." Syiah Kuala Law Journal 1 (1): 83–100.

Jamilah, Fitrotin. 2020. "The Role of Judges as Mediators in the Surabaya Religious Court in Handling Divorce Cases." IQTISODINA 3 (2): 83–94.

Konradus, Danggur. 2016. "Legal Politics Based on the Constitution." Legal Issues 45 (3): 198–206.

Muhkam, Mirwan Fikri, and Irsyad Dhahri. 2015. "The Role of the Mediator Judge in the Mediation of Divorce Cases at the Makassar Class 1 A Court." Jurnal Tomalebbi" Journal of Thought, Legal Research, and Pancasila and Citizenship Education (PPKn)", 69–75.

Muslika, Niki. 2021. "Optimizing the Role of Judges as Mediators in the Mediation Process in Settling Marital Dispute Cases at the Indramayu Religious Court." UIN Sunan Gunung Djati Bandung.

Nugroho, Wahyu. 2016. "Legal Politics Following the Constitutional Court Decision on the Implementation of General Elections and Regional Elections in Indonesia." Constitutional Journal 13 (3): 480–502.

Nurjanah, Siti. 2015. "The Role of Mediation Judges in Divorce Cases (Study at the Central Jakarta Religious Court 2012-2014)."

Prasetyo, Wawan. 2024. "RECONSTRUCTION OF STATE LOSSES RETURN REGULATION IN CORRUPTION CRIMINAL ACTS THROUGH PENAL MEDIATION POLICY BASED ON PANCASILA JUSTICE." Sultan Agung Islamic University Semarang.

Pujiana, Irpan Manik, and M Yazid Fathoni. 2021. "THE ROLE OF A MEDIATOR JUDGE IN THE MEDIATION PROCESS IN DIVORCE CASES: (Case Study at the Praya Religious Court, Central Lombok)." Private Law 1 (3): 432–38.

Saravistha, Dely Bunga. 2020. "The Dual Role of Judges as Mediators for the Settlement of Civil Cases in Courts Related to the Professional Code of Ethics." Raad Kertha Scientific Journal 3 (1): 17–27.

Sariffudin, Anas, and Imanuddin Abil Fida. 2023. "The Effectiveness of Judges' Efforts as Mediators in Mediation Settlement of Divorce Cases at the Class IB Religious Court of Probolinggo City." USRAH: Journal of Islamic Family Law 4 (1): 30–45.

Sembiring, Tamaulina Br, Irma Rachmawati Maruf, Catur Budi Susilo, A Nururrochman Hidayatulloh, and BMAS Anaconda Bangkara. 2022. "Health Literacy Study on Approaching Forest and Boosting Immune System Strategy." International Journal of Health Sciences 6 (1): 40–49.

Sentana, Made Rai Diascitta Hardi, I Wayan Wesna Astara, and I Nyoman Gede Sugiartha. 2020. "The Role of Judges in Reconciling Disputing Parties in Civil Cases at the Denpasar District Court." Journal of Legal Analogy 2 (2): 203–8.

Siregar, Mhd Azhali, Rahul Fikri Adrian, and Muhammad Juang Rambe. 2023. "EXAMINING THE JOURNEY OF THE BIRTH OF THE CONCEPT OF THE CRIMINAL LEGAL SYSTEM AND CRIMINAL LAW IN INDONESIA." Tahta Media Publisher.

Sirrullah, Nurul Alimi. 2020. "The Role of Mediator Judges in Supporting the Effectiveness of Mediation in Religious Courts." Terateks Islamic Journal 5 (2): 99–111.

Syahrul, Mahrus, and Afdolul Anam. 2022. "THE ROLE OF MEDIATOR JUDGES IN PREVENTING DIVORCE CASES." IQTISODINA 5 (2): 43–50.

YAYAN, MAULANA. 2024. "EFFECTIVENESS OF THE ROLE OF JUDGES AS MEDIATORS IN DISPUTE RESOLUTION EFFORTS IN THE BIMA DISTRICT COURT (Case Study in the Bima District Court)." Universitas_Muhammadiyah_Mataram.

Zamayya, Andi Rania Risya, Devito Imanda Wagiyanto, Paolo Gibran Joesoef, Richie Evanno Salim, and Tiffany Thendean. 2025. "A Theoretical Study of the Implications of the United Nations Convention Against Cybercrime on the Regulation of Cyber Crime in Indonesia." IKRA-ITH HUMANIORA: Journal of Social and Humanities 9 (2): 343–54.