



IMPLEMENTATION OF MEDIATION IN AN EFFORTS TO SETTLE ISLAMIC FAMILY LEGAL DISPUTES IN THE PEMATANGSIANTAR RELIGIOUS COURT

Muliadin ^{*1} T. Riza Zarzani ^{2*} Andoko ^{*3}

¹²³Panca Budi Development University

E-mail: escudo.adin@gmail.com Tengkuriza@umsu.ac.id bundazahrazahra@yahoo.com

Article Info	Abstract
Article History Received : 2024-12-03 Revised: 2024-12-10 Published: 2025-01-15 Keywords: <i>Mediation, Islamic Family Law, Pematangsiantar Religious Court, Mediation Effectiveness, Public Awareness.</i>	This study examines the effectiveness of mediation in resolving Islamic family law disputes in the Pematangsiantar Religious Court. Using a qualitative approach, this study analyzes data obtained from observations, interviews, and literature studies related to mediation practices in Indonesia. The results of the study indicate that although mediation has been integrated into the judicial system through Supreme Court Regulation (Perma) No. 1 of 2016 concerning Mediation Procedures, there are still various obstacles that reduce its effectiveness. These obstacles include limited mediator skills, lack of motivation and incentives for mediators, and low public awareness of the benefits of mediation. This study also highlights the importance of training and certification for mediators to improve the quality of mediation and the need for educational campaigns to raise public awareness. The conclusion of this study emphasizes the need for a multi-faceted strategy to improve the effectiveness of mediation in religious courts, which focuses not only on legal and procedural aspects but also on increasing mediator capacity and active community participation. This study contributes to a deeper understanding of mediation as an alternative to resolving Islamic family law disputes and proposes a more holistic approach to implementing mediation in Indonesian religious courts.

I. INTRODUCTION

In Indonesia, civil disputes often relate to individual rights and obligations, especially in the context of Islamic family law which covers issues such as child maintenance, divorce, post-divorce support, and inheritance distribution.(Zebua, Jauhari, and Siregar 2008)In an effort to resolve these disputes, Indonesia as a country of law has two approaches: litigation and non-litigation. Litigation, which takes place in court, relies on evidence and a judge's decision that has a compelling nature. Meanwhile, non-litigation or mediation, offers a settlement through mutual agreement outside the court, which prioritizes consensus between the disputing parties.

The Regulation of the Supreme Court of the Republic of Indonesia through PERMA No. 1 of 2016 concerning Mediation Procedures reflects the efforts to integrate mediation into the judicial system. Mediation is designed to create a simpler, faster, and more cost-effective judicial process. However, the reality on the ground is often different. A study by the Indonesian Institute for Conflict Transformation shows that the success rate of mediation is very low, at only 5.49% in 2022, down from the previous year. This fact illustrates that although mediation is intended to

reduce the burden on the courts, its level of effectiveness is still far from expectations.(Wibawa and Krisnawati 2019)

Especially in cases of divorce and inheritance, mediation has not shown significant results. Mediation of divorce cases often fails to reconcile both parties, and the mediation process for inheritance disputes also faces similar obstacles. The causes can vary, including the competence of the mediator and the public's understanding of the mediation process itself.

In Indonesia, mediation is regulated in HIR (Herziene Inlandsch Reglement) and RBg (Rechtsreglement Voor De Buitengewesten), and is strengthened by Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. This regulation should help the courts handle cases more efficiently through mediation before entering the trial process. In practice, mediation should be carried out seriously and effectively, but there are still many obstacles faced, both in terms of implementation and in terms of public acceptance.

In addition, mediation is expected to reduce the time and costs required in resolving disputes. However, in practice, mediation is often considered a mere formality, without achieving

meaningful results.(Handayani et al. 2013)This failure reflects the urgent need for evaluation and improvement of mediation practices in courts, given the potential that mediation can offer as an effective and fair alternative to dispute resolution.

Given the shortcomings and challenges, this study aims to evaluate and provide recommendations on how mediation can be more effectively implemented in court, especially in the Pematangsiantar Religious Court. The main focus is on increasing the success of mediation in Islamic family law cases, by seeking ways to improve mediator competence, improve the mediation process, and increase public awareness of the benefits of mediation.(Nugroho 2018)

In a broader context, the results of this study are expected to provide insight for improving the justice system in Indonesia, ensuring that mediation is not only a formal procedure but is truly an effective tool for achieving justice. The ultimate goal is to create a more responsive and efficient justice system, capable of resolving disputes in a fair and satisfactory manner for all parties involved.

II. RESEARCH METHODS

In this normative legal research, which focuses on mediation in the Pematangsiantar Religious Court, a qualitative method is used by analyzing laws and regulations and jurisprudence. This study combines primary data obtained through direct observation, and questionnaires, as well as secondary data from literature studies including journals, books, and online sources.(Indra Utama Tanjung 2024)Legal materials include primary legal materials such as the 1945 Constitution and the Criminal Code, secondary legal materials from literature related to mediation, and tertiary legal materials such as definitions from legal dictionaries to support the analysis of the implementation of PERMA No. 1 of 2016 concerning Mediation Procedures.

III. RESULTS AND DISCUSSION

A. Legal Basis of Mediation in the Indonesian Legal System

Mediation as an alternative dispute resolution (ADR) method has been recognized and regulated in the Indonesian legal system through a number of laws and regulations. The main key to implementing mediation is to provide a more efficient, faster, and lower-cost dispute

resolution solution compared to conventional litigation in court.(Syarief 2014)

The legal basis for mediation in Indonesia is formally stated in the Supreme Court Regulation (PerMA) No. 1 of 2016 concerning Mediation Procedures in Court. This regulation emphasizes the role of mediation in the judicial system, clarifies procedures, and requires mediation as an initial stage in the civil dispute resolution process before entering the litigation process.(Sepatia, Zarzani, and Purba 2022)Through this PerMA, mediation is expected to increase the effectiveness and efficiency of dispute resolution, by prioritizing a more personal and flexible approach between the parties.

From a legal perspective, mediation in Indonesia is also supported by Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, which provides a framework for dispute resolution through arbitration and mediation. This law emphasizes the importance of agreement between the parties in choosing and implementing this ADR process, avoiding more formal and potentially time-consuming and costly court procedures.(MA Siregar, Adrian, and Rambe 2023)

The importance of mediation is emphasized in the Civil Code, especially in Article 1851 which explains that peace as a result of mediation is an agreement to end or prevent litigation. This principle is in line with the philosophy of Pancasila, which supports conflict resolution through deliberation and consensus.

In addition, Article 6 of Law No. 30 of 1999 explains that ADR including mediation is a settlement mechanism that can be chosen by the parties to resolve disputes outside the court by means of consultation, negotiation, mediation, or expert assessment, thus providing an alternative to the formal court process.

In practice, mediation allows the parties to reach a win-win solution, maintain good relations between the disputing parties, and reduce the possibility of future problems. This process is also considered to be able to accelerate dispute resolution at a lower cost, considering that mediation does not require a complex and expensive litigation process.

The role of the mediator in this process is crucial. A mediator is a neutral individual who helps the parties reach an agreement.(ARM Siregar et al. 2024)In the context of judicially regulated mediation, the mediator can be a judge or another party who is certified as a mediator. The mediator does not make a decision like a

judge in court, but rather facilitates discussion between the parties to reach a mutual agreement.

Article 1851 of the Civil Code also emphasizes that an agreement reached through mediation has the same legal force as a judge's decision, if it has been made legally and in accordance with applicable provisions. This shows the state's recognition of the results of mediation as a legitimate and binding solution, thus strengthening the position of mediation within the legal framework in Indonesia.

In addition, mediation also supports the principle of simple, fast, and low-cost justice as stated in Law No. 48 of 2009 concerning Judicial Power. Mediation helps reduce the workload of the courts by resolving disputes before they reach the litigation stage, and allows judicial resources to be used more effectively for cases that do require formal legal handling.

B. Mediation Problems in Theory and Practice in Religious Courts in General and Pematangsiantar Religious Court in Specific

In Friedman's legal system theory, "Legal Structure" is defined as the role filled by law enforcement officers. In terms of structure, mediation in court is influenced by the performance of the mediator Judge and court staff, including in the Pematangsiantar Religious Court. (Syarifah 2015) Mediation failure is often associated with the mediator's limited time, low mediator skills, lack of motivation, and the small number of certified mediators.

The average duration of mediation which runs around 20-40 minutes shows that the mediation process often does not run optimally, whereas theoretically, the ideal duration for mediation according to the results of mediator training is 60 minutes. In addition, the large number of uncertified judge mediators shows that the quality of mediation is not optimal due to the lack of ability in mastering effective mediation techniques.

According to Article 16 of Perma No. 1 of 2016 concerning Mediation, the chief justice is required to submit a performance report of judges or court employees who have successfully resolved a case through mediation without any information regarding compensation or consequences for the success or failure of the mediation. This shows that the absence of incentives can have an impact on the lack of motivation of mediators to carry out their duties optimally. (Perdana, Zarzani, and Fauzi 2018)

In terms of legal substance, there are weaknesses in various regulations governing mediation. Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution replaces the arbitration provisions regulated in the RV and HIR. This law is quite advanced by including mediation as one of the alternative methods of dispute resolution (Article 1 point 10 and Article 6 of the AAPS Law).

However, more than 20 years since the enactment of the AAPS Law, Indonesia has not had a specific and complete regulation governing mediation. The Judicial Power Law states that dispute resolution outside the court is a function of the judicial power, which can be carried out through mediation (Articles 58, 59, and 60 of the Judicial Power Law). However, until now, there has been no specific law that regulates mediation in detail.

Perma No. 1 of 2016 on Mediation Procedures in Court shows the Supreme Court's efforts in integrating mediation into the judicial system. However, this regulation focuses more on mediation related to cases that have been registered in court (court-annexed mediation) and does not make mediation a primary element in access to justice.

From the legal culture side, there is still a lack of public awareness of the benefits of mediation. Many mediation cases are only followed because they are a requirement in the judicial process, not because of the initiative of the disputing parties. This indicates that mediation is often considered only as a formality.

The mediator in carrying out his duties is regulated in Article 14 of the Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2016, which includes making rules for implementing mediation, holding caucuses, and helping the parties formulate a peace agreement. However, without awareness and active participation from the community, mediation will not be effective. (Fatmawati et al. 2024)

More efforts are needed to educate and socialize the role and benefits of mediation in dispute resolution so that the community does not just follow mediation as a formality. Approaches that can be taken include adjusting the values adopted by the community and continuous socialization about the importance of mediation.

The success of mediation is highly dependent on three factors: legal structure, legal substance, and legal culture. Only with the synergy between these three aspects can

mediation become an effective dispute resolution tool and provide better access to justice for the community.

C. Mediation Problems in Theory and Practice in Religious Courts in General and Pematangsiantar Religious Court in Specific

The implementation of mediation in the effort to resolve Islamic family law disputes in the Pematangsiantar Religious Court has a very significant role, especially in handling personal and sensitive cases, such as divorce and inheritance issues. The Pematangsiantar Religious Court, as one of the institutions tasked with handling Islamic family law cases, has adopted mediation as an alternative way to resolve disputes, in line with national regulations and regulations set by the Supreme Court. (Saladin 2017)

In the context of family law, mediation is considered a gentler and more personal approach that aims to find a mutually beneficial solution without having to go through a formal and often confrontational court process. This process supports sharia principles that prioritize agreement and peace between the disputing parties. The Pematangsiantar Religious Court has implemented this system to ensure that each party has a fair opportunity to express their views in a more supportive and less intimidating environment than a regular court.

One of the main challenges in family law mediation at the Pematangsiantar Religious Court is the level of emotional and personal complexity of the cases at hand. Often, mediation in family law cases involves strong emotions and deep personal issues that require great sensitivity and understanding from the mediator. (Nurjannah and Muin 2016) Mediators at the Pematangsiantar Religious Court, who are often judges who also act as mediators, need to have specialized skills in conflict management as well as a deep understanding of family psychology and social dynamics to be effective in their role.

To improve the effectiveness of mediation in family law disputes, the Pematangsiantar Religious Court emphasizes the importance of training and certification for mediators. Trained and certified mediators are expected to be able to manage mediation sessions more effectively, facilitate better communication between the parties, and help them reach fair and sustainable agreements. The training also aims to improve the ability of mediators to apply sharia principles in

mediation practice, which is very important in the context of Islamic family law.

Although mediation has brought many successes, there are still obstacles and challenges in its implementation. Among them is the lack of awareness and understanding from the community about the benefits of mediation. Many parties still view mediation as a mere formality procedure without understanding its substance and potential benefits. This often results in mediation not being carried out optimally because both parties do not fully participate or invest in the process. (Grace 2019)

In addition, the issue of incentives for mediators is also something that needs to be considered. In the current system, as regulated in the Supreme Court Regulation, there are no special incentives given to mediators for successful mediation. This can reduce the motivation of mediators to encourage effective dispute resolution. Therefore, there needs to be consideration to provide appropriate incentives for mediators who successfully resolve cases through mediation, as a form of appreciation for their efforts and dedication.

The Pematangsiantar Religious Court, through this mediation practice, seeks to implement existing regulations while also adapting to the unique needs of the communities they serve. By focusing on training, certification, and increasing public awareness of mediation, it is hoped that more family law disputes can be resolved in a more harmonious and satisfactory manner for all parties involved. (Puspitaningrum 2018) This process not only helps in resolving cases but also in building deeper understanding and respect between the disputing parties, which ultimately contributes to social stability and family harmony in society.

IV. CONCLUSIONS AND RECOMMENDATIONS

The conclusion of the implementation of mediation in resolving Islamic family law disputes at the Pematangsiantar Religious Court shows that mediation has great potential as an alternative dispute resolution that is effective and beneficial to both parties. However, the effectiveness of mediation is still constrained by several factors, including the mediator's suboptimal skills and understanding, lack of motivation and incentives for mediators, and low public awareness of the benefits of mediation. Increasing training and certification for mediators, as well as educational campaigns to

the public, can help increase the success of mediation. This will not only speed up the case resolution process but will also reduce costs and maintain good relations between the parties involved.

Collaborative efforts between the courts, government, and society are needed to overcome the barriers to mediation and optimize its success as a dispute resolution tool. More effective integration of mediation into the justice system can provide fairer and more satisfactory solutions for all parties, as well as strengthen the legal structure with a more humane and empathetic approach in handling Islamic family law disputes. Through continuous improvement and adaptation to local needs, the Pematangsiantar Religious Court can make mediation an important tool in realizing social justice and harmony in society.

REFERENCE LISTAN

- Fatmawati, Irma, Rahul Ardian Fikri, Mhd Azhali Siregar, and Nabilah Syaharani. 2024. "The Existence Of Customary Law In Domestic Violence Mediation: Harmonization Between State Law And Customary Law." *Sehasen Law Journal* 10 (2): 699–706.
2013. "Legal Analysis of Insolvency in Bankruptcy (Normative Study of Article 2 Paragraph 1 of Law No. 37 of 2004 Concerning Bankruptcy and Suspension of Debt Payment Obligations)." *Kertha Semaya* 3 (2): 687–704.
- Indra Utama Tanjung. 2024. *BASICS OF LEGAL RESEARCH METHODS*. Karanganyar: CV Pustaka Dikara). https://scholar.google.com/citations?view_op=view_citation&hl=id&user=rToGqjUAAAJ&cstart=20&pagesize=80&citation_for_view=rToGqjUAAAJ:Wp0gIr-vW9MC.
- Nugroho, Dendy Prasetyo. 2018. "Contribution of Islamic Criminal Law to the Concept of Criminal Mediation in National Criminal Law Reform." Islamic University of Indonesia.
- Nurjannah, Tika, and Firman Muin. 2016. "Resolution of Double Land Title Certificate Disputes (Case Study at the Makassar State Administrative Court)." *Journal of Law* 3 (12).
- Perdana, Surya, Riza Zarzani, and Ahmad Fauzi. 2018. "Design of a Child Criminal Justice Model Based on Penal Mediation." *Collection of Research and Community Service of Lecturers* 1 (1).
- Puspitaningrum, Sri. 2018. "Mediation as an Effort to Resolve Civil Disputes in Court." *Legal Spectrum* 15 (2): 275–99.
- Rahmah, Dian Maris. 2019. "Optimizing Dispute Resolution Through Mediation in Court." *Bina Mulia Law Journal* 4 (1): 1–16.
- Saladin, Tomi. 2017. "Application of Mediation in Resolving Cases in Religious Courts." *Court: Journal of Islamic Law Studies* 2 (2).
- Sepatia, Ribka, T Riza Zarzani, and Melki Purba. 2022. "LEGAL ANALYSIS OF CRIMINAL RESPONSIBILITY FOR WEBSITE CREATORS USED FOR ONLINE GAMBLING (Analysis of Decision No. 852/Pid. Sus/2020/PN. Mdn)." *RECTUM JOURNAL: Legal Review of Criminal Action Handling* 4 (2): 430–42.
- Siregar, Abdul Rahman Maulana, Redyanto Sidi, Rahul Ardian Fikri, and Elbina Theresa. 2024. "Mediation as an Effective Alternative in Resolving Health Disputes." In *1st International Conference Epicentrum of Economic Global Framework*, 1:169–204.
- 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.
- Syarief, Elza. 2014. *Resolving Land Disputes Through Special Land Courts*. Gramedia Popular Literature.
- Syarifah, Umaiatus. 2015. "The Role and Contribution of Nashiruddin Al-Albani (d. 1998) in the Development of Hadith Science." *History* 1 (1): 1–18.
- Wibawa, DGYP, and IGAAA Krisnawati. 2019. "Mediation Efforts in Resolving Copyright Infringement Disputes." *Kertha Wicara Journal, Faculty of Law, Udayana University* 8 (01): 1–15.
- Zebua, Frans Rudy Putra, Iman Jauhari, and Taufik Siregar. 2008. "Responsibility of Corruption Crime Perpetrators and Their Heirs in Payment of Compensation for State Financial Losses Reviewed from a Civil Law Aspect (Case Study at the Medan District Court)." *Mercatoria Journal* 1 (2): 150–62.