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EVOLUTION OF SEMA 2002 TO PERMA 2016: MEDIATION AND ITS FUNCTION IN FAMILY PROBLEM SOLVING

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Abstract

Mediation in Indonesia is currently regulated by Supreme Court Regulation (PERMA) No. 1 of 2016 on Mediation Procedures in Court. This regulation refines earlier regulations—PERMA No. 2 of 2003 and PERMA No. 1 of 2008—by introducing updated definitions and reinforcing procedural requirements. Prior to these, the Supreme Court issued Circular Letter (SEMA) No. 1 of 2002 on Empowering First－Level Courts to Promote Peaceful Settlements. At that stage, mediation was only encouraged and not mandatory, serving as a recommended mechanism to resolve disputes amicably (dading). This study aims to examine the historical trajectory of mediation regulations in Indonesia, tracing the transition from non－binding recommendations in SEMA to the mandatory framework established through PERMA. It particularly focuses on the role and effectiveness of mediation in resolving family law cases within Religious Courts. Using a normative legal research method, this study relies on primary legal sources such as laws and Supreme Court regulations, as well as secondary sources including scholarly journals, academic books, and related literature. Findings reveal that SEMA No. 1 of 2002 marked the initial push for judges to take an active role in peaceful dispute resolution. This effort evolved into formal legal obligations with the issuance of PERMA No. 2 of 2003, its revision in PERMA No. 1 of 2008, and its refinement in PERMA No. 1 of 2016. The latter emphasized the requirement of good faith in mediation and introduced legal consequences for parties failing to comply.

Abstrak

Mediasi di Indonesia saat ini diatur oleh Peraturan Mahkamah Agung (PERMA) No. 1 Tahun 2016 tentang Prosedur Mediasi di Pengadilan. Peraturan ini merupakan penyempurnaan dari regulasi sebelumnya—PERMA No. 2 Tahun 2003 dan PERMA No. 1 Tahun 2008—dengan memperkenalkan definisi yang diperbarui serta memperkuat ketentuan prosedural. Sebelum itu, Mahkamah Agung telah menerbitkan Surat Edaran (SEMA) No. 1 Tahun 2002 tentang Pemberdayaan Pengadilan Tingkat Pertama dalam Mendorong Penyelesaian Sengketa Secara Damai. Pada saat itu, mediasi hanya bersifat anjuran dan belum menjadi kewajiban, serta berfungsi sebagai mekanisme penyelesaian sengketa secara damai (dading). Penelitian ini bertujuan untuk mengkaji perjalanan historis regulasi mediasi di Indonesia, dengan menelusuri peralihan dari rekomendasi yang tidak mengikat dalam SEMA hingga kerangka hukum yang bersifat wajib melalui PERMA. Fokus utama diarahkan pada peran dan efektivitas mediasi dalam menyelesaikan perkara hukum keluarga di lingkungan Peradilan Agama. Dengan menggunakan metode penelitian hukum normatif, kajian ini mengandalkan sumber hukum primer seperti undang-undang dan peraturan Mahkamah Agung, serta sumber sekunder berupa jurnal ilmiah, buku akademik, dan literatur terkait lainnya. Temuan menunjukkan bahwa SEMA No. 1 Tahun 2002 menjadi awal dorongan formal bagi hakim untuk berperan aktif dalam penyelesaian damai. Upaya ini berkembang menjadi kewajiban hukum melalui PERMA No. 2 Tahun 2003, revisinya dalam PERMA No. 1 Tahun 2008, dan penyempurnaannya dalam PERMA No. 1 Tahun 2016. PERMA terakhir ini menekankan pentingnya iktikad baik dalam proses mediasi dan memperkenalkan sanksi hukum bagi pihak yang tidak mematuhinya.

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INTRDUCTION

In resolving cases, there are two methods that can be used: litigation and non−litigation. The litigation route involves resolving cases in judicial institutions through a trial process. Meanwhile, the non−litigation route includes four methods: negotiation, mediation, conciliation and arbitration. The mediation process itself is divided into two types, namely: mediation carried out in court and mediation carried out outside court.[1] Mediation in court is regulated by PERMA no. 1 2016, while out−of−court mediation is regulated by Law no. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution.

The existence of mediation is further clarified by Law no. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. In accordance with the words of article 1 number 10 that[2] *"Alternative dispute resolution is an institution for resolving disputes or differences of opinion through procedures agreed upon by the parties, namely resolving disputes outside of court by means of consultation, negotiation, mediation, conciliation or expert assessment"*. According to Rachmadi Usman, as explained by Marwan Busyro, one form of alternative dispute resolution, including in land disputes, is through mediation. As an alternative method, mediation offers a settlement approach with its own distinct characteristics. Its relatively simple process allows disputes to be resolved in a shorter period of time and at a more efficient cost.[3]

Settlement of cases through litigation is generally more popular and in great demand. This is in accordance with article 4 paragraph 2 of Law no. 4 of 2004 concerning judicial power, which states that justice must be simple, fast and low cost. The integration of mediation into the court process aims to facilitate and optimally assist disputing parties in overcoming various obstacles and challenges, in order to achieve a judicial process that is simple, swift, and low−cost through deliberative negotiation.[4] The judiciary has played an important role in this matter. However, court decisions often do not provide satisfaction and justice for both parties to the dispute. Usually, court decisions tend to satisfy one party while the other party is dissatisfied. The party who is able to prove their rights will win by the court, while the party who cannot show evidence even though they actually have the rights, will lose. In this case, dispute resolution through court prioritizes formal evidence without paying attention to the parties' ability to submit evidence. The final result of resolving disputes through court is a win or loss for the parties to the dispute.[5]

Dispute resolution through trial and a judge's decision based on the evidentiary process in court remains the main choice for many people in Indonesia. In other words, many people in our society consider the judge's decision to be a convincing solution to

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[1] Dedy Mulyana, "Kekuatan Hukum Hasil Mediasi Di Luar Pengadilan Menurut Hukum Positif," *Wawasan Yuridika* 3, no. 2 (2019): 177, https://doi.org/https://doi.org/10.25072/jwy.v3i2.224.

[2] "Undang−Undang No. 30 Tahun 1999 Tentang Arbitrase Dan Alternatif Penyelesaian Sengketa, Pasal 1" (n.d.).

[3] Marwan Busyro and Ridwan Rangkuti, "Proses Penyelesaian Sengketa Hak Tas Tanah Melalui Mediasi Di Kantor Pertanahan Kota," *Justitia : Jurnal Ilmu Hukum Dan Humaniora* 1, no. 2 (2019): 25, https://doi.org/http://dx.doi.org/10.31604/justitia.v7i2.

[4] Rika Lestari, "PERBANDINGAN HUKUM PENYELESAIAN SENGKETA SECARA MEDIASI DI PENGADILAN DAN DI LUAR PENGADILAN DI INDONESIA," *Jurnal Ilmu Hukum* 3, no. 2 (2019): 231.

[5] Syahrizal Abbas, *Mediasi* (Jakarta: Kencana, 2009).

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resolve disputes that occur between parties in society.[6] One of the reasons why the number of civil cases that go to court remains high is because the litigation route is better known among legal practitioners and has been widely socialized in society, both among those who understand the law and those who are still laypeople.[7]

The high level of public interest in choosing the litigation route is reflected in the thousands of cassation cases at the Supreme Court. This shows that the community is very interested in getting justice for their disputes through the judge's decision judicial institution (Court Dispute Resolution). Therefore, discussing the peace institution (Dading) as one of the dispute resolution concepts (Dispute Resolution Concept) in the corridors of the judiciary (court) is very important to carry out.[8]

After Indonesia became independent and the Supreme Court became the highest executor of judicial power in accordance with Article 24 of the 1945 Constitution concerning judicial power, mediation in court (*court annexed mediation*) began to be implemented in Indonesia since the issuance of Supreme Court Regulation (PERMA) no. 2 of 2003 concerning Mediation Procedures in Court. This PERMA aims to perfect the Supreme Court Circular (SEMA) No. 1 of 2002 concerning the Empowerment of First Instance Courts in Implementing Peace Institutions as regulated in Article 130 Herziene Inlandsch Reglement (HIR) and Article 154 Rechtsreglement voor de Buitengewesten (RBg). Article 130 HIR and Article 154 RBg regulate peace institutions and require judges to first reconcile the parties to the dispute before the case is examined.[9]

Currently Mediation is regulated in Perma No. 1 of 2016 concerning Mediation Procedures in Court which is a refinement of Perma No. 2 of 2003 and Perma no. 1 of 2008 discusses regulations more broadly, as well as new definitions regarding mediation.[10] This article attempts to examine the historicity of the development of sema and perma and then relate the role of mediation in resolving family problems.[11]

This research is a normative study with library research, namely examining the meaning of mediation itself, then the historicity of the rules governing mediation and the role and position of mediation in the Religious Courts, especially in family matters. The primary source for this article is the State Gazette in the form of Laws and Supreme Court Regulations. Secondary materials include library materials in the form of journals, books and other scientific works which discusses the topic of mediation and its role in resolving family problems.

METHODS

This study employs a normative juridical approach, which is a primary method in legal research for analyzing legal norms, statutory principles, and relevant legal doctrines. This approach allows the researcher to comprehensively examine the formal legal

[6] Maskur Hidayat, *Strategi Dan Taktik Mediasi* (Jakarta: Kencana, 2016),hlm 5.

[7] Yusna Zaidah, *Penyelesaian Sengketa Melalui Peradilan Dan Arbitrase Syari'ah Di Indonesia* (Yogyakarta: Aswaja Pressindo, 2015), hlm 98.

[8] Hidayat, hlm 7.

[9] dwi rezki sri Astarini, *Mediasi Pengadilan: Salah Satu Bentuk Penyelesaian Sengketa Berdasarkan Asas Peradilan Cepat, Sederhana, Biaya Ringan* (Bandung: PT Alumni, 2013), hlm 129.

[10] Agung AKbar Lamsu, "Tahapan Dan Proses Mediasi Dalam Penyelesaian Sengketa Perdata Di Pengadilan," *Lex et Societatis* 4, no. 2 (2016): 120, https://doi.org/https://jurnal.fh.unpad.ac.id/index.php/jbmh/article/view/57.

[11] Septi Wulan Sari, "MEDIASI DALAM PERATURAN MAHKAMAH AGUNG NOMOR 1 TAHUN 2016," *Ahkam* 5, no. 1 (2017), https://doi.org/https://doi.org/10.21274/ahkam.2017.5.1.1－16.

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framework, particularly in tracing the legal construction and historical development of mediation in Indonesia. The main focus is directed at the implementation of mediation within the Religious Courts, especially in family law cases such as divorce, child custody, alimony, and the division of joint property. Using library research as the data collection technique, this study constructs legal arguments based on authoritative written legal sources. The analysis explores the transformation of mediation regulations—from Supreme Court Circular Letter (SEMA) No. 1 of 2002, which was merely a recommendation, to Supreme Court Regulation (PERMA) No. 1 of 2016, which mandates mediation as part of the judicial process. This transformation reflects the evolving legal thought at the level of the Supreme Court, which seeks to integrate alternative dispute resolution principles into the formal judicial system.

The primary data sources in this research consist of primary legal materials, including Indonesian laws, Supreme Court Regulations (PERMA), and Supreme Court Circular Letters (SEMA). In addition, this study also relies on secondary legal sources, such as reputable academic journals, legal reference books, scientific articles, and expert legal opinions relevant to the topic of mediation and family law. These materials are analyzed using descriptive—analytical and prescriptive techniques to examine how mediation is positioned within the national legal system and to assess its effectiveness as a fair, efficient, and socially just dispute resolution mechanism. Thus, this research not only offers a conceptual study of legal norms but also generates constructive insights aimed at improving the mediation system in the courts, particularly within the Religious Court context in Indonesia. The results of this method are expected to contribute both theoretically and practically to the discourse on alternative dispute resolution in national law, while also reinforcing mediation as an integral component of judicial reform oriented toward peaceful and sustainable settlements.

RESULT AND DISCUSSION

RESULT

Mediation Procedure

The success rate of mediation is highly influenced by how the process is carried out. If mediation is conducted optimally,[12] the likelihood of reaching a peaceful agreement between the parties increases.[13] Conversely, if the implementation is ineffective, the mediation is at risk of failing to produce results.[14]

On the day of the hearing that has been determined and attended by the parties, the Case Examiner obligates the parties to mediate (article 17 paragraph 1).[15] Parties who are not present at the first hearing will be summoned once again in accordance with

[12] Rachmadi Usman, *Pilihan Penyelesaian Sengketa Di Luar Pengadilan* (Bandung: Citra Aditya Bakti, 2013), hlm 98.

[13] Takdir Rahmadi, *Penyelesaian Sengketa Melalui Pendekatan Mufakat* (Jakarta: Raja GrafindoPersada, 2011), hlm 12.

[14] Dyta Ayu Irmadani Marpaung and Abd. Mukhsin, "Efektivitas Mediasi Dalam Upaya Penyelesaian Perceraian Di Pengadilan Agama Sei Rampah," *Amnesti : Jurnal Hukum* 6, no. 2 (2024): 189, https://doi.org/https://doi.org/10.37729/amnesti.v6i2.5323.

[15] Peraturan Mahkamah AGung No 1 Thun 2016 Tentang Prosedur Mediasi Di Pengadilan Pasal 17 Ayat (1)

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procedural law practice.[16] Mediation will still be held after the summons is made even if all parties are not present.[17]

Article 6 states that the judge examining the case is obliged to explain the mediation procedure to the parties which includes:[18] understanding and benefits of mediation, the obligation of the parties to attend the mediation meeting directly along with the legal consequences for behavior not in good faith in the mediation process, costs that may arise due to the use of non—judge mediators and non—court employees, options for following up the peace agreement through a peace deed or withdrawal of the lawsuit and , and the obligation of the parties to sign the mediation explanation form.[19]

After giving an explanation,[20] the examining judge obligates the parties on the same day, or at the latest 2 days later, to negotiate in order to choose a mediator, including the costs that may arise as a result of the choice of using a non—judge mediator who is not a court official. If the parties cannot agree on choosing a mediator within a period of 2 days, then the head of the panel of examining judges immediately appoints a judge mediator or court officer. If the same court does not have a judge who is not a case examiner and a certified court officer, the head of the case examiner judge assembly appoints one of the case examiner judges to carry out the function of a mediator by prioritizing a certified judge.[21] Next, the chairman of the panel of judges examining the case issues a decision containing an order to conduct mediation and appoint a mediator. The judge examining the case then notifies the decision to the mediator via a substitute clerk.

The judge examining the case is obliged to postpone the trial process to give the parties an opportunity to undergo mediation.[22] article 21 paragraphs 1 and 2 that the mediator determines the day and date of the mediation meeting, after receiving the determination of appointment as mediator. In the event that mediation is carried out in a court building, the mediator, under the authority of the judge examining the case, through the clerk, summons the parties with the assistance of a bailiff or substitute bailiff to attend the mediation meeting.

The Mediation process lasts a maximum of 30 days from the date of the order to conduct Mediation. Based on the agreement of the Parties, the Mediation period can be extended for a maximum of 30 (thirty) days from the end of the period as intended in paragraph (2). The Mediator, at the request of the Parties, submits a request for an extension of the time period to the Case Examining Judge accompanied by the reasons.[23]

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[16] HM. Yakub, "Dakwah Mediasi: Perspektif Sejarah Islam," *Jurnal Kajian Dakwah Dan Kemasyarakatan* 21, no. 1 (2017): 78, https://doi.org/https://doi.org/10.15408/dakwah.v21i1.11811.

[17] Teguh Anindito, Aris Priyadi, and Arif Awaluddin, "No Title," *Cakrawala Hukum* 24, no. 1 (2022): 27.

[18] Peraturan Mahkamah AGung No 1 Thun 2016 Tentang Prosedur Mediasi Di Pengadilan Pasal 6

[19] Ismail Rumadan, *Efektivitas Pelaksanaan Mediasi Di Pengadilan Negeri* (Jakarta: Puslitbang Hukum dan Peradilan Mahkamah Agung RI, 2017), hlm 30.

[20] "Peraturan Mahkamah AGung No 1 Thun 2016 Tentang Prosedur Mediasi Di Pengadilan Pasal 1 Ayat (1)" (n.d.).

[21] Peraturan Mahkamah Agung No 1 Thun 2016 Tentang Prosedur Mediasi Di Pengadilan Pasal 20 Ayat 4

[22] Peraturan Mahkamah Agung No 1 Thun 2016 Tentang Prosedur Mediasi Di Pengadilan Pasal 20 ayat 7

[23] Dian Maris Rahmah, "OPTIMALISASI PENYELESAIAN SENGKETA MELALUI MEDIASI DI PENGADILAN," *Jurnal Bina Mulia Hukum* 4, no. 1 (2019): 5.

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Negotiation material in Mediation is not limited to the posita and petitum of the lawsuit. In the event that Mediation reaches an agreement on the plaintiff's problem, amend the lawsuit by including the agreement in the lawsuit. The mediator can present one or more experts, community leaders, religious leaders, or traditional leaders. The Parties must first reach an agreement on the binding or non−binding strength of the explanations and/or assessments of experts and/or public figures.[24]

Types of Agreements in Mediation

Article 27 (1).[25] If the Mediation is successful in reaching an agreement, the Parties with the assistance of the Mediator are obliged to formulate a written agreement in a Settlement Agreement signed by the Parties and the Mediator. (2) In helping to formulate a Peace Agreement, the Mediator is obliged to ensure that the Peace Agreement does not contain provisions that: a. contrary to law, public order and/or morality; b. harm third parties; or c. cannot be implemented. (3) In the Mediation process represented by a legal representative, the signing of a Settlement Agreement can only be carried out if there is a written statement from the Parties containing approval of the agreement reached. (4) The Parties through the Mediator can submit a Peace Agreement to the Case Examining Judge to be confirmed in the Deed of Peace. (5) If the Parties do not wish for the Settlement Agreement to be confirmed in the Settlement Deed, the Settlement Agreement must contain the withdrawal of the lawsuit. (6) Mandatory mediator report in writing the success of the Mediation to the Case Examining Judge by attaching the Peace Agreement.[26]

Article 28 (1) after receiving the Peace Agreement as intended in Article 27 paragraph (6), the Case Examining Judge immediately studies and examines it within a maximum of 2 (two) days. (2) In the event that the Peace Agreement requested to be strengthened in the Deed of Peace does not fulfill the provisions as intended in Article 27 paragraph (2), the Case Examining Judge is obliged to return the Peace Agreement to the Mediator and the Parties accompanied by instructions regarding matters that must be corrected. (3) After holding a meeting with the Parties, the Mediator is obliged to resubmit the revised Settlement Agreement to the Case Examining Judge no later than 7 (seven) days from the date of receipt of the revised instructions as intended in paragraph (2). (4) No later than 3 (three) days after receiving the Peace Agreement which meets the provisions as intended in Article 27 paragraph (2), the Case Examining Judge shall issue a determination of the trial date to read out the Peace Deed. (5) The Settlement Agreement which is confirmed by the Deed of Settlement is subject to the provisions on disclosure of information in the Court.[27]

Article 29 (1)[28] In the event that the Mediation process reaches an agreement between the plaintiff and some of the defendants, the plaintiff changes the lawsuit by no

[24] Peraturan Mahkamah AGung No 1 Thun 2016 Tentang Prosedur Mediasi Di Pengadilan Pasal 26

[25] Peraturan Mahkamah AGung No 1 Thun 2016 Tentang Prosedur Mediasi Di Pengadilan Pasal 26

[26] Marwah Syaifani et al., "PeranMediasiDalamPenyelesaianSengketaHartaWarisan Dalam Hukum Keluarga Islam," *Tabayyun : Journal Of Islamic Studies* 2, no. 2 (2024): 411.

[27] Septikan Eka Putra and Meria Utama, "Pelaksanaan Mediasi Dalam Penyelesaian Sengketa Perdata Berdasarkan Peraturan Mahkamah Agung Nomor 1 Tahun 2016 Tentang Prosedur Mediasi Di Pengadilan," *Lex Lata: Jurnal Ilmiah Ilmu Hukum*, 2021, 437.

[28] Peraturan Mahkamah AGung No 1 Thun 2016 Tentang Prosedur Mediasi Di Pengadilan Pasal 26

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longer presenting the defendant who did not reach an agreement as the opposing party. (2) Partial Settlement Agreement between the parties as intended in paragraph (1) is made and signed by the plaintiff with some of the defendants who reached an agreement and the Mediator. (3) The Partial Peace Agreement as intended in paragraph (2) can be strengthened by a Peace Deed as long as it does not involve assets or assets

wealth and/or interests of parties who do not reach an agreement and fulfill the provisions of Article 27 paragraph (2). (4) The plaintiff can file a lawsuit again against the party who did not reach a Partial Settlement Agreement as intended in paragraph (1). (5) In the event that there is more than one plaintiff and some of the plaintiffs reach an agreement with some or all of the defendants, but some of the plaintiffs who do not reach an agreement are not willing to change their lawsuit, Mediation is declared unsuccessful. (6) A partial peace agreement between the parties as intended in paragraph (1) cannot be carried out at the voluntary peace stage at the case examination stage and at the level of appeal, cassation or judicial review. Mediation is Unsuccessful or Cannot be Implemented Article 32 (1):[29]

The mediator must declare that the mediation has failed to reach an agreement and notify the Judge examining the case in writing, in the following circumstances:

a. The parties do not reach an agreement within the maximum period of 30 (thirty) days, including any extensions as referred to in Article 24 paragraphs (2) and (3); or
b. The parties are declared to be acting in bad faith as referred to in Article 7 paragraph (2) letters d and e.

Article 32 (2) The mediator must declare that mediation cannot be conducted and notify the Judge examining the case in writing, in the following circumstances: a. hen assets, property, or interests clearly related to other parties:

1) Are not included in the lawsuit, so the interested parties are not part of the mediation process;
2) Are included as parties in the lawsuit when there is more than one legal subject involved, but do not appear in court and therefore are not part of the mediation process; or
3) Are included as parties in the lawsuit when there is more than one legal subject involved and do appear in court, but never attend the mediation process. b. When it involves the authority of ministries/agencies/institutions at the central/regional level and/or State－Owned Enterprises/Regional－Owned Enterprises that are not parties to the case, unless the parties involved have obtained written approval from the ministry/agency/institution and/or State－Owned Enterprise/Regional－Owned Enterprise to make decisions in the mediation process. c. When the parties are declared to be acting in bad faith as referred to in Article 7 paragraph (2) letters a, b, and c.

Article 32 (2) After receiving the notification as referred to in paragraphs (1) and (2), the Judge examining the case must promptly issue a decree to continue the examination of the case in accordance with the applicable procedural law. Overall, the flow of mediation can be described as follows:

[29] (Peraturan Mahkamah Agung No 1 Thun 2016 Tentang Prosedur Mediasi Di Pengadilan Pasal 26)

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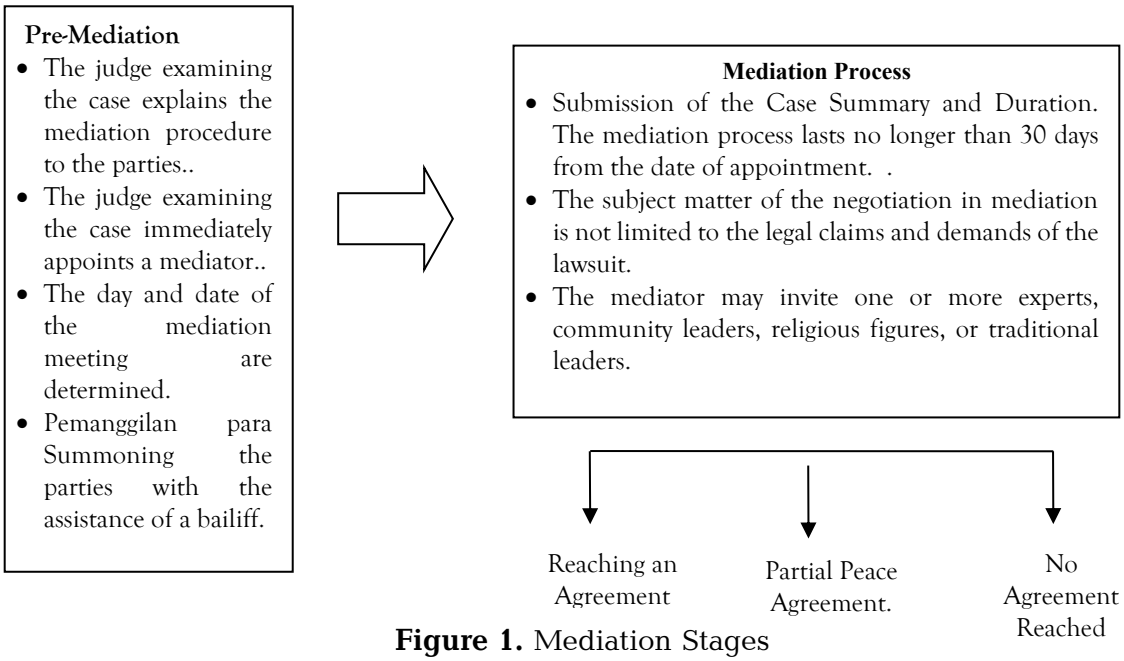

Figure 1. Mediation Stages

Article 31 (1) For mediation of divorce cases in a judicial environment religion where divorce demands are cumulated with other demands, if the Parties do not reach an agreement to live in harmony again, Mediation continues with other demands. (2) In the event that the Parties reach an agreement on other demands as intended in paragraph (1), the agreement is stated in a Partial Settlement Agreement containing a clause relating to the divorce case. (3) Partial Settlement Agreements for other claims as intended in paragraph (2) can only be implemented if the decision of the Case Examining Judge granting the divorce claim has permanent legal force. (4) Partial Settlement Agreement fsor other claims as intended in paragraph (2) does not apply if the Case Examining Judge rejects the claim or the Parties are willing to reconcile during the case examination process.

Historicality of Sema and Perma Development

Based on Supreme Court Circular Letter (SEMA) No 1 of 2002, to all judges who deal with matters, it is emphasized to seriously strive to achieve peace by implementing the provisions of Article 130 HIR and 154 RBG, not just as a mere formality but as a sincere recommendation for reconciliation.[30]

Supreme Court Circular Letter Number 1 of 2002 concerning Empowerment of First Instance Courts in Implementing Peaceful Institutions was issued as a follow—up to the results of the Supreme Court's 1st National Working Meeting (RAKERNAS) which was held in Yogyakarta on 24—27 September 2001. This Circular Letter once again emphasizes its important role court of first instance in encouraging the resolution of cases through peaceful efforts (dading institutions), as regulated in article 130 HIR/article Rbg. This Circular contains several important points, namely: Peace efforts in court must be carried out seriously and optimally, not just as a formality. This peace process involves a judge who is appointed as a facilitator or mediator, not a panel of judges who handles the case.

However, the results of the National Working Meeting (RAKERNAS) allowed mediators to be appointed from the panel of judges with several considerations: Lack of

[30] Usman, *Pilihan Penyelesaian Sengketa Di Luar Pengadilan, hlm 48*.

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judges in the regions. The panel of judges better understands the issues in the case. Judges appointed as facilitators or mediators have a maximum of 3 months to complete their duties. This duration can be extended with the approval of the Chairman of the District Court. If the mediation fails, the judge concerned is obliged to report the results of the mediation to the Chairman of the District Court/Chairman of the Panel. The examination of the case is then continued by the panel of judges.

However, the opportunity for the parties to reconcile during the examination is still open. The success of resolving cases through peace can be a consideration for giving awards to judges who act as facilitators/mediator.[31]

Republic of Indonesia Supreme Court Regulation Number 21 of 2003 concerning Mediation in Court (hereinafter referred to as PERMA No. 21 of 2003) requires mediation as part of the process of resolving cases in court. PERMA No. 21 of 2003 strengthens peaceful efforts in resolving disputes in court, as regulated in procedural law (article 130 HIR or article 154 RBg).[32] Article 2 PERMA No. 21 of 2003 confirms that all civil cases submitted to the court of first instance must be resolved through mediation with the help of a mediator before the case is tried.[33]

Gradually, the Supreme Court realized that the Supreme Court Circular (SEMA) No. 1 of 2022 is not effective as a legal basis for facilitating peace between disputing parties. Finally, SEMA is not much different from the provisions contained in Article 130 HIR/154 RBG, where SEMA only gives judges a small role in peace efforts and gives them the authority to place cases in court after going through the peace process. Therefore, the Supreme Court revoked SEMA No. 1 of 2002, which at that time was only 1 year and 9 months old, and on September 11 2003, the Supreme Court, based on Law no. 14 of 1985 concerning Judicial Power, gives the Supreme Court the authority to make additional regulations necessary to complete or fill legal gaps that support the smooth running of the judicial process, by issuing Supreme Court Regulation (PERMA) No. 2 of 2003 concerning Mediation Procedures.[34] This law stipulates that the mediation process must be carried out by a mediator who is a judge of the District Court, and it must take place before the preliminary examination stage in a civil case.[35]

PERMA No. 1 of 2008 concerning Mediation Procedures in Court was issued on July 31. This regulation is an improvement on the previous PERMA. The Supreme Court made these improvements after finding several problems in the implementation of PERMA No. 2 of 2003, making it ineffective in court. The aim of the issuance of PERMA No. 1 of 2008 is to speed up and simplify dispute resolution and provide wider access to justice seekers.[36] Key changes or new elements that differentiate Supreme Court Regulation (PERMA) No. 1 of 2008 from PERMA No. 1 of 2003:[37]

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[31] Astarini, *Mediasi Pengadilan: Salah Satu Bentuk Penyelesaian Sengketa Berdasarkan Asas Peradilan Cepat, Sederhana, Biaya Ringan, hlm 128*.

[32] Sri Puspita Ningrum, "No Title," *Jurnal Spektrum Hukum* 15, no. 280 (2018).

[33] Abbas, *Mediasi*, hlm 306.

[34] Astarini, *Mediasi Pengadilan: Salah Satu Bentuk Penyelesaian Sengketa Berdasarkan Asas Peradilan Cepat, Sederhana, Biaya Ringan, 129*.

[35] Dinda Nur Azra et al., "Perkembangan Dan Pembaharuan Terhadap Hukum Perdata Di Indonesia Beserta Permasalahan Eksekusi Dan Mediasi," *Al-Zayn: Jurnal Ilmu Sosial & Hukum* 2, no. 1 (2024): 68, https://doi.org/https://doi.org/10.61104/alz.v2i1.204.

[36] Usman, *Pilihan Penyelesaian Sengketa Di Luar Pengadilan*, hlm 57.

[37] Peraturan Mahkamah Agung No 1 Tahun 2008 Tentang Prosedur Mediasi Di Pengadilan

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1) Clarification that mediation is mandatory; if not adhered to, the decision in the case can be declared null and void by law (Article 2 paragraph (3)).
2) The plaintiff is required to bear the cost of summoning the parties in advance (Article 3).
3) The judge examining the case is permitted to act as a mediator (Article 8 paragraph (1)). In PERMA 2003, this was not regulated due to concerns that the judge examining the case would not be able to adjudicate objectively and neutrally after a failed mediation.
4) It allows for more than one mediator (Article 8 paragraph (1) letter e and paragraph (2)).
5) The preparation of a case summary by the parties is no longer mandatory (Article 13 paragraph (1)).
6) The mediation process is set to last 40 days and may be extended, and the mediation period is separate from the 6—month case examination period. PERMA 2003 set the duration of mediation at 21 days, including the case examination period (Article 13 paragraphs (3) and (5)).
7) Regulates the authority of the mediator to declare mediation failed and unviable (Article 15).
8) Judges are required to encourage the parties to seek settlement at every stage of the case examination before the verdict is read (Article 18 paragraph (3)).
9) Mediators are not civilly or criminally liable for the content of the agreement (Article 18 paragraph (3)).
10) More detailed regulations on settlements at the appeal and cassation levels (Articles 21 and 22).
11) Regulations regarding settlement agreements conducted outside of court (Article 23).

The implementation of Supreme Court Regulation (PERMA) No. 1 of 2008 on Mediation Procedures in Court introduced a fundamental change, namely that the dispute resolution process can be shortened. This is because disputing parties are not required to go through all stages of the trial; it is sufficient to stop at the pre—trial stage if a peaceful settlement is reached through mediation at the beginning of the court process.[38] Key Differences between PERMA No. 1 of 2016 and PERMA No. 1 of 2008 on Mediation:

a. The mediation time limit is shorter, reduced from 40 days to 30 days from the issuance of the mediation order.
b. Parties are required to attend mediation meetings in person, with or without legal representation, except for valid reasons such as health conditions that prevent attendance or other recognized reasons such as a doctor's certificate, being under guardianship, residing or being located abroad, fulfilling state duties, or having professional or work demands that make attendance impossible.
c. There are new rules regarding good faith in the mediation process, as well as legal consequences for parties who do not demonstrate good faith during mediation. In PERMA No. 1 of 2016, Article 7 is regulated as follows:

[38] Siti Musawwamah, "Mediasi Integratif Di Pengadilan Agama Pemekasan," *Jurnal Nuansa* Vol 11, no. 2 (2014): 341, https://doi.org/https://doi.org/10.19105/nuansa.v11i2.537.

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Paragraph (1): The parties and/or their legal representatives are required to conduct mediation in good faith. Paragraph **(2):** One party, or both parties and/or their legal representatives, may be declared by the mediator to be acting in bad faith in the following circumstances:

1) Failing to attend after being duly summoned twice consecutively for mediation meetings without a valid reason;
2) Attending the first mediation meeting but never attending subsequent meetings, despite being duly summoned twice consecutively without a valid reason;
3) Repeated absences that disrupt the mediation meeting schedule without a valid reason;
4) Attending mediation meetings but failing to submit and/or respond to the case summary from the other party;
5) Failing to sign the draft peace agreement that has already been agreed upon without a valid reason.

Article 23, Paragraph (1) If the plaintiff does not demonstrate good faith during the mediation process, the lawsuit will be declared inadmissible by the judge examining the case. The plaintiff who does not show good faith as referred to in paragraph (1) will also be required to bear the costs of mediation. The mediator must submit a report to the judge examining the case regarding the failure or non−execution of the mediation and recommend the imposition of mediation costs along with the calculation.

Article 23, Paragraph (3) Based on the mediator's report as stipulated in paragraph (2), before proceeding with the case examination at the next hearing, the judge examining the case is required to issue a ruling declaring that the defendant has not demonstrated good faith and, therefore, the case is inadmissible, accompanied by a sanction for the payment of mediation costs.

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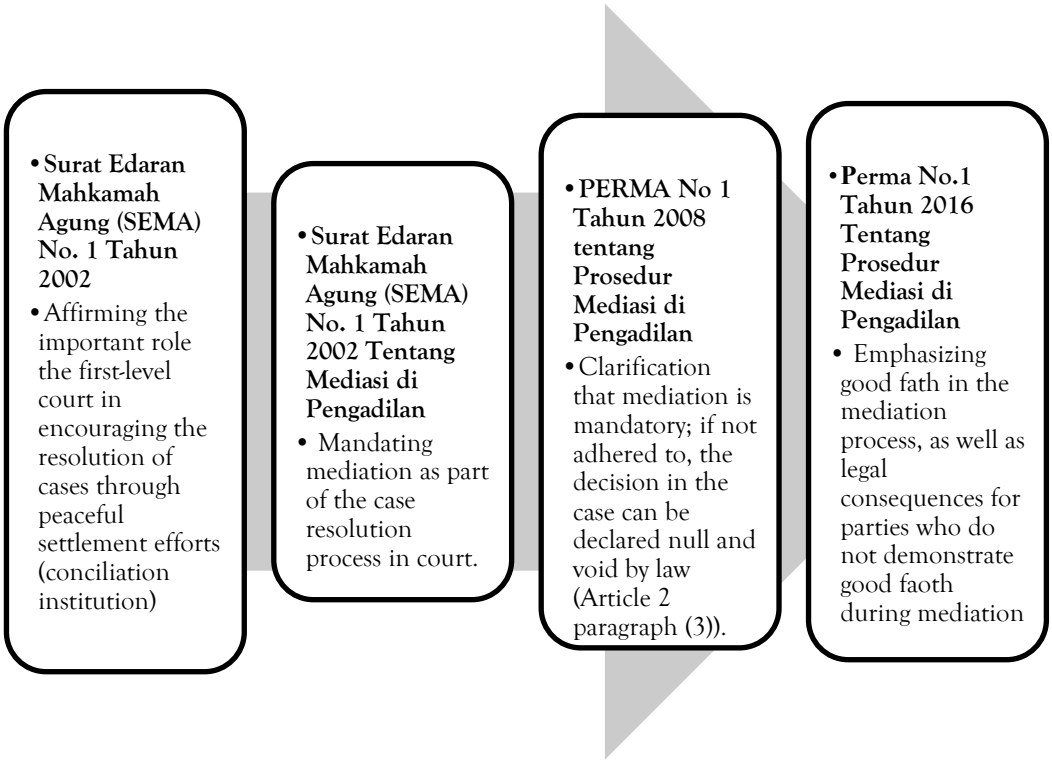

Figure 2. Historicity of Mediation development

DISCUSSION

The enactment of the Marriage Law in 1974 brought new hope for addressing various family−related issues in Indonesia. However, the potential for conflict within the household still exists and requires more serious attention. Unresolved domestic problems that lead to disputes are often caused by a lack of understanding of the dynamics of married life and insufficient skills to resolve such issues.[39]

Mediation has become an important part of the entire process of handling cases in court, including in the Religious Courts. As emphasized in the explanation of article 2 paragraph (3) PERMA RI Number: 01 of 2008 *"relates to legal consequences and failure to carry out mediation procedures based on this regulation, which is a violation of the provisions of Article 130 HIR and/or Article 154 Rbg, resulting in the decision being null and void"*.[40] And including various other clauses encourages increasingly intensive attention to mediation.

The spirit that inspires the need for mediation in case examinations in legal and psychological effects that are very good for the litigants, because they result from the parties' own agreement, so that the binding force for resolving the case becomes stronger, and therefore the possibility of filing further legal proceedings is increasingly thin, and

[39] Khoiruddin Nasution and Syamruddin Nasution, "Peraturan Dan Program Membangun Ketahanan Keluarga: Kajian Sejarah Hukum," *Asy: Syir'ah* 51, no. 1 (2017): 1, https://doi.org/https://doi.org/10.14421/ajish.v51i1.318.

[40] Peraturan Mahkamah Agung No 1 Tahun 2008 Tentang Prosedur Mediasi Di Pengadilan

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for the court it can reduce accumulation of cases.[41] PERMA Hope No. 1 of 2016 concerning Mediation Procedures in Court includes at least four wishes, namely:[42]

1. The mediation process for dispute resolution is expected to be faster and cheaper in accordance with the expectations of the disputing parties.
2. Mediation offers more opportunities for the disputing parties to participate in finding a resolution that satisfies both sides.
3. Mediation is expected to reduce the backlog of cases in court.
4. Mediation will strengthen and maximize the function of the judiciary in resolving disputes non—adjudicatively.

For the disputing parties, mediation provides positive values in resolving conflicts, such as the importance of respect for others, honor, honesty, fairness, mutual reciprocity, individual participation, agreement, and control by the parties. These values counter the value system that prevails in litigation—based dispute resolution, such as the adversarial process, impersonality, control by lawyers, and the authoritative enforcement of regulations.[43]

In order for the mediation process to be more optimal and successful in reaching an agreement and reconciliation, the mediating judge of the Religious Court undertakes efforts to ensure the success of the mediation. The efforts that can be made by the mediating judge of the Religious Court include:[44]

1. Conducting the mediation in a closed room so that it is not known by others.
2. Explaining the purpose, goals, and benefits of mediation.
3. The mediating judge must appear as a neutral intermediary who does not take sides with either party.
4. The mediating judge must appear as a friend who does not take sides with either party.
5. Providing solutions to the problems they face.
6. Advising the parties to maintain the integrity of their household.
7. Conducting caucuses (a meeting between the mediator and one party without the other party present to explore information that cannot be expressed during the mediation process).
8. Conducting mediation at least twice.
9. Creating a mutual agreement through a written contract signed by both parties.

In the context of family law in Indonesia, particularly in the Religious Courts, mediation is an important stage aimed at reconciling married couples who are undergoing

[41] Agus Hermanto, Iman Nur Hidayat, and Syeh Sarip Hadaiyatullah, "Peran Dan Kedudukan Mediasi Di Pengadilan Agama," *AS-SIYASI: Journal of Constitutional Law* Vol 1, no. No 2 (2021), hlm 40, http://dx.doi.org/10.24042/as—siyasi.v1i2.11292..

[42] Febri Handayani and Syafliwar, "Implementasi Mediasi Dalam Penyelesaian Perkara Perceraian Di Pengadilan Agama," *Jurnal Al-Himayah* Vol 1, no. No 2 (2021), hlm 241, https://journal.iaingorontalo.ac.id/index.php/ah/article/view/586.

[43] Marian Roberts, *Mediation in Family Disputes: Principles and Practice,* (Ashgate Publisting Ltd, 2008), hlm 2.

[44] Handayani and Syafliwar, "Implementasi Mediasi Dalam Penyelesaian Perkara Perceraian Di Pengadilan Agama," 2021., hlm 243

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the divorce process. This process seeks to find the best solution for both parties, with the hope of maintaining the integrity of the household.[45] The mediation is led by a judge specially appointed by the Religious Court, who acts as a mediator or intermediary.

In practice, mediation is generally conducted when one party in the marriage expresses disagreement with the divorce. For example, if a wife files for divorce but the husband, at the first hearing, expresses his desire to maintain the marriage, then the mediation process will be initiated. This is done as a maximal effort by the court to provide both parties with an opportunity to engage in dialogue, find common ground, and reconsider their decision to divorce.[46]

Before appointing a mediator, the court or judge is obligated to conduct an in—depth examination of the root causes and the dynamics of the conflict between the husband and wife. This aims to gain a comprehensive understanding of the nature and causes of the dispute. By doing so, the judge can identify the underlying factors contributing to the disharmony within their household.

After gaining a thorough understanding, the judge will provide relevant information and resources to the mediator. This information includes key findings obtained during the trial, which will serve as a basis for the mediator in their efforts to reconcile both parties. The goal is for the mediator to perform their duties effectively and efficiently, with a clear understanding of the issues at hand.[47]

A study conducted by Ramdani Wahyu Sururie (2010) in three Religious Courts in West Java—namely the Depok Religious Court, the Bandung Religious Court, and the Ciamis Religious Court—revealed that the majority of cases filed in these courts were divorce cases. The reasons and backgrounds for the failure of mediated divorce cases varied widely.In divorce cases caused by domestic violence (KDRT), mediation often failed to resolve the issue. Besides domestic violence, other reasons for divorce included the absence of love, the involvement of a third party (PIL for Pria Idaman Lain or "another man" and WIL for Wanita Idaman Lain or "another woman"), and job termination (PHK). While some of these cases were successfully mediated, the majority ended in failure.For divorce cases caused by the involvement of a third party, the success or failure of mediation could not be generalized. This means that in some instances, the parties reconciled and restored harmony, while in others, they chose to proceed with the divorce.[48]

A study conducted by Ach Rois and Galuh Widitya Qomaro (2023) in all Religious Courts in Madura—namely Sumenep, Pamekasan, Sampang, and Bangkalan—showed that the number of cases in Sumenep and Pamekasan Regencies was higher compared to Sampang and Bangkalan Regencies.[49]

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[45] Yayah Yarotul Salamah, "Urgensi Mediasi Dalam Perkara Perceraian Di Pengadilan Agama," *Ahkam* 13, no. 1 (2013), https://doi.org/10.15408/ajis.v13i1.953.

[46] Jimmy Joses Sembiring, *Cara Menyelesaikan Sengketa Di Luar Pengadilan, Negosiasi, Mediasi, Konsiliasi, Dan Arbitrase* (Jakarta: Transmedia Pustaka, 2011), Hlm 56.

[47] Ahmad Budiyanto and Muhammad Fahmi, "Mediasi Dalam Rangka Mendamaikan Perselisihan Suami Istri Di Pengadilan Agama Cilacap," *Jurnal Al-Wasith: Studi Hukum Islam* Vol 1, no. No 2 (2016): 46.

[48] Ramdani Wahyu Sururie, "Implementasi Mediasi Dalam Sistem Peradilan Agama," *Jurnal Wacana Hukum Islam Dan Kemanudiaan* Vol 12, no. No 2 (2012): Hlm 156.

[49] Ach Rois and Galuh Widitya Qomaro, "Tren Keberhasilan Mediasi Di Pengadilan Agama, Wilayah Madura Dan Faktor—Faktor Yang Mempengaruhinya," *Bustanul Fuqaha : Jurnal Bidang Hukum Islam* Vol 4, no. No 3 (2023): Hlm 435.

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Sampang and Bangkalan Regencies had a very low mediation success rate, with only a few cases being resolved through mediation. The low success rate of mediation in the Religious Courts throughout Madura was due to the lack of understanding among the Madurese community regarding the mediation system, as well as the tendency of plaintiffs and defendants to rely more on legal advocates. As a result, the success rate of mediation in the Religious Courts in the Madura region did not reach half of the total divorce cases handled.[50]

A study conducted by Hamdan Arifin and his team revealed that, based on official data from the Religious Court of Metro City (2022—2024), only around 10—15% of all divorce cases were successfully resolved through mediation. In other words, the majority of couples proceeded with the divorce process through to the trial stage and received a final verdict. This percentage reflects that the effectiveness of mediation in resolving divorce disputes remains relatively low.[51]

The integration of mediation in divorce cases is quite an interesting study because the dominance of cases in religious courts ranks the highest. This phenomenon occurs in almost all religious courts in Indonesia. The Religious Court has the authority to seek reconciliation, particularly to prevent disputing couples from divorcing. Generally, couples who file a case with the Religious Court have previously consulted with BP4 (Marriage Counseling and Dispute Resolution Agency). However, if a couple files their case directly with the Religious Court without going through BP4, the case will still be processed. Whether or not the couple has consulted BP4, the judge handling the case is still obligated to make efforts toward a peaceful resolution between the disputing parties.[52] The Religious Court must carry out mediation in accordance with Supreme Court Regulation No. 1 of 2016. Court rulings that do not first go through mediation are considered null and void by law.[53] In mediation for divorce cases, several possibilities may arise, such as:

a. One of the parties does not attend the hearing, so the mediation cannot be conducted. Therefore, the judge may issue a default judgment (verstek).
b. The mediator successfully reconciles the Plaintiff and the Defendant (they decide not to divorce), and the case is withdrawn with a judicial decree issued by the judge.
c. The mediator successfully reconciles the Plaintiff and the Defendant, resulting in an agreement to divorce amicably. This means the mediation has failed, and the trial proceeds to examine the merits of the case.

PERMA No. 1 of 2016 regulates that non—attendance is one of the reasons a party may be deemed as acting in bad faith during the mediation process by the mediator.[54] If the plaintiff is declared to have acted in bad faith during mediation, the judge handling the case may declare the plaintiff's lawsuit inadmissible, and the mediation costs will be

[50] Rois and Qomaro. Hlm 435
[51] Hamdan Arifin et al., "Efektivitas Mediasi Dalam Penyelesaian Sengketa Perceraian Di Pengadilan Agama: Perspektif Hukum Keluarga Islam (Studi Kasus Di Kota Metro)," *Bulletin Of Islamic Law* 2, no. 1 (2025): 46, https://doi.org/https://doi.org/10.51278/bil.v2i1.1814.
[52] Tomy Saladin, "Penerapan Mediasi Dalam Penyelesaian Perkawa Di Pengadilan Agama," *Mahkamah: Jurnal Kajian Hukum Islam* 2, no. 2 (2017): 153, https://doi.org/10.24235/mahkamah.v2i2.2034.g1294.
[53] Handayani and Syafliwar, hlm 241.
[54] Febri Handayani and Syafliwar, "Implementasi Mediasi Dalam Penyelesaian Perkara Perceraian Di Pengadilan Agama," *Jurnal Al-Himayah* 1, no. 2 (2017): 238.

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borne by the plaintiff (as per Article 22 of PERMA No. 1 of 2016). If the defendant is declared to have acted in bad faith during the mediation process and the plaintiff wins the lawsuit, the mediation costs will be charged to the defendant.

According to Edi Kamal in his writing, there are several key components of good faith. First, honesty and openness in communication allow parties to express their feelings and needs sincerely, ultimately increasing the likelihood of reaching a satisfactory agreement. Second, the willingness to listen actively, with empathy and respect for others' perspectives, has proven effective in building mutual understanding and reducing tension. Third, focusing on finding constructive solutions rather than assigning blame makes it more likely for family members to reach a sustainable agreement. Lastly, adherence to the agreements made during the mediation process strengthens mutual trust among family members, which serves as a vital foundation for maintaining long—term relationships.[55]

The role of good faith is essential as a principle in resolving issues or conflicts to ensure that the problem can be addressed and a solution found. When a conflict arises within a family, the first step usually taken is a familial approach. However, if the conflict cannot be resolved through family discussions and even has the potential to create chaos within the family, the role of good faith through mediation is needed to manage and resolve the conflict.[56]

If the lawsuit is won by the defendant, the mediation costs are still borne by the defendant, while the litigation costs are charged to the plaintiff (as per Article 23 of PERMA No. 1 of 2016). In cases where both parties (the plaintiff and defendant) are jointly declared to have acted in bad faith by the mediator, the lawsuit is declared inadmissible by the presiding judge without imposing mediation costs (as per Article 23 of PERMA No. 1 of 2016). Articles 22 and 23 of PERMA No. 1 of 2016 have been implemented by mediating judges in religious courts during the mediation process by charging the cost of mediation summons to the party acting in bad faith, while litigation costs remain the responsibility of the plaintiff. The challenges faced by Mediator Judges in the mediation process of divorce cases in Religious Courts are as follows:

1. Limited number of mediators and judges.
2. Mediation adds to the workload of judges.
3. Inadequate mediation facilities.
4. Mediation has not yet gained public attention as an alternative dispute resolution method.
5. Compliance and sincerity of the parties in following the mediation process.
6. Prolonged conflict, which strengthens the desire of the parties to divorce.
7. Absence of one party in the mediation process.
8. Lack of certified mediators from outside the court (non—judge mediators).
9. Interference from advocates or lawyers.

[55] Edi Kamal, Fazzan, and Azhari, "Peran Itikad Baik Mediasi Dalam Proses Penyelesaian Konflik Keluarga," *Birokrasi* 3, no. 1 (2025): 80, https://doi.org/https://doi.org/10.55606/birokrasi.v3i1.1828.

[56] Sulistiyawati and Erie Hariyanto, "Peran Itikad Baik Mediasi Dalam Proses Penyelesaian Konflik Keluarga," *Mahkamah: Jurnal Kajian Hukum Islam* Vol 6, no. No 1 (2021): Hlm 86.

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The role of the mediator is crucial to the success of mediation. Mediators need to apply relevant and reflective approaches for both parties. As revealed in the study by Endratno Pilih Swasono et al. (2025) on politeness strategies in divorce mediation, which used direct observation and interviews with mediators at the Religious Court in the Sidoarjo region.Through a case study approach, the research showed that mediators used storytelling strategies to build empathy, reduce tension, and enhance openness in sharing experiences and feelings. This strategy encouraged understanding and reflection while demonstrating cultural relevance in supporting the success of divorce mediation in religious courts.The study also highlighted Indonesian cultural factors that influence the application of these strategies. These findings provide a theoretical contribution by expanding existing theories and a practical contribution by offering insights to improve communication in the mediation process.[57]

For religious courts handling family matters (ahwal al syakhsiyyah), predominantly divorce cases, mediation offers the advantage of providing a variety of peaceful resolution options to avoid divorce. With mediation, efforts toward peace before a divorce actually occurs become more robust. The importance of peace efforts or mediation before proceeding with divorce is emphasized in Indonesian legislation:

a. Article 39 of Law Number 1 of 1974 on Marriage.[58] Here is the English translation of the legislative references:
b. Article 31 of Government Regulation No. 3 of 1975 on the Implementation of Law No. 1 of 1974 on Marriage.
c. Article 65 and Article 82 of Law No. 7 of 1989 on Religious Courts.[59]

The implementation of mediation as a building block before divorce is a common feature found in Religious Courts (PA). The assumption is that mediation serves as a forum to consider the possibilities of reconciliation *(ishlah)* between husband and wife, with the expectation that it will lead to a change in their attitudes and potentially prevent divorce as a solution to marital problems. With a successful reconciliation agreement, the parties are expected to formally withdraw their lawsuit or petition. This general overview of mediation implementation thus becomes an important premise in formulating the parameters of mediation success, which is defined as the willingness of the parties to voluntarily reconcile and subsequently withdraw their lawsuit or petition.

The logical consequence of formulating these parameters is that if the parties in mediation cannot consider reconciliation, the mediation process will be handed over to an adversarial process under the leadership of the handling judge. When mediation fails because the parties do not reach an agreement on the possibility of living harmoniously, matters related to family issues post—divorce will also be resolved adversarially if they arise in the form of counterclaims during the examination. This indicates that the scope of family mediation in Religious Courts (PA) becomes increasingly narrow, even though conceptually, all matters, including post—divorce issues, could be mediated.

[57] Endratno Pilih Swasono, Djatmika Djatmika, and Sumarlam Sumarlam, "Politeness Strategies in Divorce Mediation Within Indonesian Religious Court," *Theory and Practice in Language Studies* Vol 15, no. No 1 (2025), https://doi.org/https://doi.org/10.17507/tpls.1501.19.
[58] Undang—Undang No 1 Tahun 1974 Tentang Perkawinan Pasal 39
[59] Undang—Undang Nomor 7 Tahun 1989 Tentang Peradilan Agama

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CONCLUSION

In positive law in Indonesia, the implementation of mediation is divided into two types: litigation and non—litigation channels. Mediation through the litigation channel is regulated by PERMA No. 1 of 2016, while the non—litigation channel is regulated by Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution. Before the term "mediation" was used, there were terms such as "peace institution" or "dading" regulated in Article 130 HIR and Article 154 RBG. Initially, mediation was an option rather than a requirement for the parties involved. Subsequently, through RAKERNAS 1 MA in 2001, the practice of mediation was increasingly emphasized in courts with the issuance of SEMA No. 1 of 2002, which encouraged judges to actively resolve disputes through reconciliation, differing from their previous passive role. SEMA No. 1 of 2002 was later replaced by PERMA No. 2 of 2003 on Mediation Procedures in Courts. PERMA No. 2 of 2003 was then updated by Supreme Court Regulation (PERMA) No. 1 of 2008 on Mediation Procedures in Courts, and finally updated again by Supreme Court Regulation (PERMA) No. 1 of 2016 on Mediation Procedures in Courts.

The differences in mediation rules from SEMA No. 1 of 2002 to PERMA No. 1 of 2016 include: SEMA No. 1 of 2002 emphasized the important role of first—instance courts in encouraging dispute resolution through peaceful means (dading). SEMA No. 1 of 2002 on Mediation in Courts made mediation mandatory as part of the dispute resolution process in court. PERMA No. 1 of 2008 on Mediation Procedures in Courts stated that mediation is mandatory; failure to comply may result in the decision being declared void by law (Article 2, paragraph 3). Finally, PERMA No. 1 of 2016 on Mediation Procedures in Courts emphasizes good faith in the mediation process, and the legal consequences for parties who do not show good faith during mediation. Religious Courts in resolving family matters must implement mediation according to PERMA No. 1 of 2016. In mediation for cases in religious courts, several outcomes are possible: One party does not attend the hearing, so mediation cannot be conducted. In this case, the judge may issue a default judgment (verstek). The mediator successfully reconciles the Plaintiff and the Defendant (they decide not to divorce), so the case is withdrawn with a judicial decree issued by the judge. The mediator successfully reconciles the Plaintiff and the Defendant, leading them to agree to divorce amicably. This means mediation has failed, and the trial proceeds to examine the merits of the case.

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