

## **Reconstructing Mediation Regulation in Contemporary Islamic Family Disputes: Reform Urgency in Indonesian Religious Courts**

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### **ABSTRACT**

**Purpose** - This study examines the urgency of reforming mediation regulations in Islamic family law disputes in Indonesian religious courts to be more responsive, in line with Islamic values and contemporary legal needs. The current mediation framework is often criticized for its rigidity, legal uncertainty, and procedural inefficiency, which hinder the timely resolution of disputes and limit access to justice.

**Methods** - This study uses a normative legal research method with a legislative approach analysis. Primary and secondary legal materials were collected using a document study method, and these legal materials were then grouped and analyzed according to the formulation of each issue.

**Findings** - The research identifies major regulatory shortcomings, including the weak enforceability of mediated agreements, inadequate mediator qualifications, and the absence of institutional support to encourage mediation. These issues contribute to prolonged litigation and discourage parties from choosing mediation. Reform is needed to establish a more flexible, transparent, and enforceable mediation system that upholds both procedural justice and Islamic legal principles.

**Research Limitations:** This study is limited by its focus on analyzing regulations related to mediation that apply in Indonesia.

**Originality/Value:** The study offers a conceptual framework for reconstructing mediation regulation by bridging Islamic jurisprudence with modern legal mechanisms.

**Keywords:** *Reform, Regulation, Mediation, Religious Courts.*

### **Introduction**

The judicial system faces a number of fundamental challenges in ensuring fast, fair, and efficient access to justice. Some of the fundamental problems faced are slow case

resolution,<sup>1</sup> which often leads to a backlog of cases,<sup>2</sup> lengthy litigation processes,<sup>3</sup> and high costs.<sup>4</sup> To address these challenges, a combination of technological innovation,<sup>5</sup> alternative dispute resolution methods,<sup>6</sup> and judicial reform is needed to improve efficiency and reduce costs.<sup>7</sup> Additionally, alternative dispute resolution methods are an important approach that can be implemented through mediation, particularly in resolving family disputes.<sup>8</sup>

Several countries have effectively implemented mediation in the resolution of Islamic family law disputes. In Morocco, mediation is facilitated by a third party that is part of the state.<sup>9</sup> Furthermore, Turkey implements a “med-arb” model, which integrates mediation and arbitration following Islamic family law norms in order to reduce the divorce rate.<sup>10</sup> Similarly, Indonesia has mandated mediation in all court cases, including divorce proceedings.<sup>11</sup> This obligation is stipulated in Supreme Court Regulation No. 1 of 2016.<sup>12</sup> However, the process and outcomes of mediation in Indonesia are often questioned, particularly regarding its suboptimal implementation.<sup>13</sup>

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<sup>1</sup> A. Aidid and A. Niblett, “Reconsidering Litigation Delay,” in *Research Handbook on Law and Time* (2025), 327–46, <https://doi.org/10.4337/9781035316762.00026>.

<sup>2</sup> M. He, “Sustainable Development through the Right to Access to Justice in Environmental Matters in China,” *Sustainability (Switzerland)* 11, no. 3 (2019), <https://doi.org/10.3390/su11030900>.

<sup>3</sup> J.F. Henry, “The Courts at a Crossroads: A Consumer Perspective of the Judicial System,” 95, no. 4 (2007): 945–64, <https://www.scopus.com/inward/record.uri?eid=2-s2.0-34250162547&partnerID=40&md5=08f973b3f8f81b089edc22862dfe6f2a>.

<sup>4</sup> R.J. Williams, “Taking a Shot: Access to Justice, Judging and eCourt,” *Family Court Review* 59, no. 2 (2021): 278–93, <https://doi.org/10.1111/fcre.12574>.

<sup>5</sup> J.A.M. Martins and E.F. Camilo, “ACCESS TO JUSTICE AND THE USE OF TECHNOLOGY: GUARANTEE OF A NON-EXCLUSIONARY JUDICIAL PROCESS?,” *Revista Jurídica* 1, no. 77 (2024): 680–707, <https://doi.org/10.26668/revistajur.2316-753X.v1i77.7068>.

<sup>6</sup> B.B. Tiago, “ALTERNATIVE METHODS FOR CONFLICT RESOLUTION AND ITS PREVENTION IN HEALTHCARE MANAGEMENT,” *Medicine and Law* 43, no. 4 (2024): 601–16.

<sup>7</sup> J.W. Stempel, “Judicial Peremptory Challenges as Access Enhancers,” *Fordham Law Review* 86, no. 5 (2018): 2263–77.

<sup>8</sup> Y.Y. Salamah, “The Urgency of Mediation for Divorce Matters in the Religious Court,” *Abkam: Jurnal Ilmu Syariah* 13, no. 1 (2013): 81–88, <https://doi.org/10.15408/ajis.v13i1.953>.

<sup>9</sup> E.K. Türkmen, “A Model of Family Mediation Developed Based on Experiences From Morocco,” *Darulfunun Ilahiyat* 35, no. 2 (2024): 149–73, <https://doi.org/10.26650/di.2024.35.1536921>.

<sup>10</sup> A. Temel, “The Prospective Contributions of the Med-Arb Model in Islamic Family Law to Family Mediation in Turkey,” *Darulfunun Ilahiyat* 30, no. 2 (2019): 311–36, <https://doi.org/10.26650/di.2019.30.2.0035>.

<sup>11</sup> M.H. Sebyar et al., “Divorce Mediation at Panyabungan Religious Court: Transforming the Desire for Divorce into Reconciliation through Cultural Values in Contemporary Islamic Jurisprudence,” *Al-Manabij: Jurnal Kajian Hukum Islam* 19, no. 1 (2025): 81–100, <https://doi.org/10.24090/mnh.v19i1.12255>.

<sup>12</sup> Salamah, “URGENSI MEDIASI DALAM PERKARA PERCERAIAN DI PENGADILAN AGAMA.”

<sup>13</sup> S.M.A. Rachman and H. Ali, “Divorce without In-between: An Empirical Study on the Failure of Mediation in the Religious Court of Sengeti Jambi Province,” *Man in India* 96, no. 11 (2016): 4209–24.

Most family disputes in Indonesia are resolved through litigation in court.<sup>14</sup> This process is based on a system and mechanism for dispute resolution that involves evidence from each party, which often results in a win-lose solution. As a result, even though the dispute has been decided by the court, the decision does not fully resolve the issue, for example, issues of child custody and joint property. As recorded, the divorce rate in Indonesia remains very high across various regions, with data from the Central Statistics Agency (BPS) indicating that in 2023, there were 463,654 divorce cases.<sup>15</sup>

Additionally, several challenges hinder the effectiveness of mediation, such as a shortage of trained and certified mediators,<sup>16</sup> failure to integrate cultural and religious values,<sup>17</sup> and a legal regulatory framework that limits mediation.<sup>18</sup> The shortage of trained and certified mediators poses a unique challenge as it relates to the ability to resolve disputes effectively. In Religious Courts, a judge is not automatically qualified to be a mediator; they must undergo training and certification.<sup>19</sup> However, this principle conflicts with Article 13(2) of Supreme Court Regulation No. 1 of 2016, which states that a judge without certification may perform the function of a mediator if no certified mediator is available.

The high divorce rate despite mediation indicates that mediation is still not being implemented effectively. Therefore, there is a need to reconstruct mediation regulations to resolve Islamic family law disputes, using a multifaceted approach that integrates cultural and religious values and increases the number of trained and certified mediators.

Previous research on the same topic has been conducted. The first study, written by Uray Gapima Priyanto, examined the reconstruction of mediation procedures in the resolution of cases in religious courts based on the value of justice.<sup>20</sup> Subsequently, Azzuhri

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<sup>14</sup> Salamah, “URGENSI MEDIASI DALAM PERKARA PERCERAIAN DI PENGADILAN AGAMA.”

<sup>15</sup> “Nikah Dan Cerai Menurut Provinsi Tahun 2023,” accessed September 30, 2024, <https://www.bps.go.id/id/statistics-table/3/VkhwVUszTXJPVmQ2ZFRKamNIZG9RMVo2VEdsbVVUMDkjMw==/nikah-dan-cerai-menurut-provinsi.html?year=2023>.

<sup>16</sup> E. Nuraeni and R.W. Sururi, “Mediation in Household Dispute Reconciliation: Prospects and Challenge,” *Khazanah Hukum* 4, no. 2 (2022): 120–28, <https://doi.org/10.15575/kh.v4i2.19113>.

<sup>17</sup> F. Okur, “Family Mediation and Arbitration Practises in Saudi Arabia,” *Darulfunun Ilahiyat* 35, no. 2 (2024): 175–208, <https://doi.org/10.26650/di.2024.35.1541722>.

<sup>18</sup> H.K. Kahya, “Studies on Family Mediation in Türkiye: A Critical Analysis,” *Darulfunun Ilahiyat* 35, no. 2 (2024): 33–54, <https://doi.org/10.26650/di.2024.35.1561079>.

<sup>19</sup> A. Ismayawati and S.M. Chaedar, “Family Conflict Resolution through Mediation in Indonesia and Malaysia: A Sociological Study of Islamic Law,” *Jurnal Hukum Islam* 22, no. 2 (2024): 467–94, <https://doi.org/10.28918/jhi.v22i2.8>.

<sup>20</sup> Uray Gapima Priyanto, “Rekonstruksi Regulasi Prosedur Mediasi Dalam Penyelesaian Perkara Peradilan Agama Berbasis Nilai Keadilan” (Disertasi, UNISSULA, 2023), 267, <https://repository.unissula.ac.id/31026/>.

Al Bajuri examined the reconstruction of family mediation processes in Indonesia.<sup>21</sup> Winsherly Tan examined the urgent need to establish mediation laws in Indonesia.<sup>22</sup> Unlike these studies, this research does not stop at the normative level but integrates a social approach and the technical capacity of mediators as part of the regulatory reconstruction framework. This represents a significant innovation, as the effectiveness of mediation in practice is greatly influenced by the capacity of mediators and community participation, not just norms alone.

Furthermore, the author highlights the technical capacity and professionalism of mediators, aspects that have long been overlooked in regulatory frameworks. For instance, there is currently no mandatory training, ethical standards, or monitoring mechanisms for mediator effectiveness. This opens up opportunities to propose competency standards and specialized training programs for mediators handling Islamic family cases. This research is urgent because mediation in Islamic family law cases continues to show high failure rates.<sup>23</sup> The proposed reconstruction goes beyond a purely legal approach by emphasizing the strengthening of mediators' capacities as a fundamental element in reforming the mediation system.<sup>24</sup> This research is expected to make a meaningful contribution to promoting a more responsive, inclusive, and effective mediation regulatory framework, as well as supporting the establishment of a fairer, efficient, and beneficial dispute resolution system for various contemporary Islamic family issues in Indonesian Religious Courts.<sup>25</sup>

## Methods

The research uses a normative legal research method with an analysis of the legislative approach, which aims the aim of analyzing the regulation of mediation in dispute resolution in Indonesia. The scope of this normative research involves an analysis of the structure of

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<sup>21</sup> Azzuhri Al Bajuri, "Rekonstruksi Proses Mediasi Keluarga Indonesia," *Hukum Islam* 20, no. 1 (July 2020): 149, <https://doi.org/10.24014/jhi.v20i1.9544>.

<sup>22</sup> Winsherly Tan, "Urgensi Pembentukan Undang-Undang Tentang Mediasi Di Indonesia," *NUSANTARA: Jurnal Ilmu Pengetahuan Sosial* 8, no. 3 (2021): 297, <https://doi.org/10.31604/jips.v8i3.2021.287-299>.

<sup>23</sup> B. Jones and A. Aftab, "Inside Indonesia's Religious Courts: An Argument for Domestic and Family Violence Screening and Exemption from Compulsory Mediation," *Oxford Journal of Law and Religion* 12, no. 2 (2023): 217–31, <https://doi.org/10.1093/ojlr/rwad015>.

<sup>24</sup> Sebyar et al., "Divorce Mediation at Panyabungan Religious Court: Transforming the Desire for Divorce into Reconciliation through Cultural Values in Contemporary Islamic Jurisprudence."

<sup>25</sup> Zezen Zainul Ali and Moelki Fahmi Ardliansyah, "Faktor Ketidakberhasilan Perma No 1 Tahun 2016 Di Pengadilan Agama Gunung Sugih," *ADHKI: Journal of Islamic Family Law* 3, no. 1 (2021), <https://doi.org/10.37876/adhki.v3i1.41>.

the law, which means identifying fundamental legal concepts such as legal subjects, rights and obligations, and legal events as stipulated in statutory regulations.<sup>26</sup> Legal materials, as the main source of this research use primary and secondary legal materials, The criteria used by the author in selecting primary legal materials are those that have legally binding force in general, such as legislation, or those that are binding on the parties concerned, such as contracts, conventions, legal documents, and court decisions. As for secondary legal materials, the author includes sources that provide supporting explanations for the primary legal materials, such as legal textbooks, legal journals, legal reports, and relevant electronic media. Primary legal sources using PERMA Number 1 of 2016, Law Number 30 of 1999, PERMA Number 1 of 2008, and Law Number 48 of 2009. secondary legal materials use research journal articles and books relevant to the topic the author raises. The method of collecting primary and secondary legal materials using the document study method, in this legal material is then collected and grouped according to the formulation of each problem.<sup>27</sup> Data processing of legal materials is carried out by classifying legal materials and systematically compiling research data. This process is carried out logically by ensuring that there is a correlation between legal materials to underlie the results of the research.<sup>28</sup>

## Result and Discussion

### Integration of Islamic Mediation (*As-Sulh*) into the Indonesian Legal Framework and Its Relevance to the Judicial System

Indonesia, as a country, has rules that have been organized in legislation regarding dispute resolution that can be accessed or used by the community; these codified rules are an inseparable part of community life in maintaining order.<sup>29</sup> The settlement can be in the form of litigation or non-litigation channels, each of which has its mechanism and procedures. The name of the settlement carried out in non-litigation as the first step in seeking justice is commonly known as alternative dispute resolution.<sup>30</sup>

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<sup>26</sup> S. Soekanto, *Pengantar Penelitian Hukum* (Penerbit Universitas Indonesia (UI-Press), 2006), <https://books.google.co.id/books?id=M3b3NAAACAAJ>.

<sup>27</sup> Muhamimin Muhamimin, *Metode Penelitian Hukum* (Mataram: Mataram University Press, 2020), 75.

<sup>28</sup> Sigit Sapto Nugroho, Anik Tri Haryani, and Farkhani Farkhani, *Metodologi Riset Hukum* (Sukoharjo: Oase Pustaka, 2020), 90.

<sup>29</sup> Marisa Nabila et al., "Studi Literatur: Tantangan Dalam Menegakkan Hukum Keadilan Di Indonesia," Articles, *Jurnal Review Pendidikan Dan Pengajaran (JRPP)* 7, no. 1 (January 2024): 128, <https://doi.org/10.31004/jrpp.v7i1.24014>.

<sup>30</sup> Andi Ardillah Albar, "Dinamika Mekanisme Alternatif Penyelesaian Sengketa Dalam Konteks Hukum Bisnis Internasional," *Jurnal Kepastian Hukum Dan Keadilan* 1, no. 1 (2019): 21.

Indonesia, as a country with a Muslim majority, cannot be separated from religious values in every practice of dispute resolution, especially mediation. Islamic mediation, known as *as-Sulh*, is a traditional conflict resolution method rooted in pre-Islamic Arabian culture and later adopted into Islamic law. It emphasizes peaceful negotiation, justice, and reconciliation without relying on court litigation. In *Sulh*, neutral and respected mediators, often with knowledge of Islamic principles, help disputing parties reach an agreement based on mutual understanding and respect.<sup>31</sup> This approach is designed to prevent hostility and maintain social harmony.

The principles and structure of *Sulh* share notable similarities with the mediation system practiced in Indonesia, especially in religious courts handling family disputes. Both systems prioritize confidentiality, voluntary participation, and fairness. In Indonesia, mediation has become an institutional mechanism supported by the judiciary to reduce case overload and promote amicable settlements. The alignment between *Sulh* and Indonesian mediation illustrates how Islamic values can complement modern legal frameworks. Integrating these shared principles strengthens access to justice, respects cultural and religious norms, and contributes to long-term social stability.

Among the various alternative dispute resolutions that are available and can be used in Indonesia, there are two non-litigation ones. First, there is mediation as an alternative, in generally used in the initial step before enforcement through litigation, codified in the regulation of Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Court. In addition, there is one more non-litigation path, namely the existence of Arbitration stipulated in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. This rule is applied in settlements outside the general court.<sup>32</sup>

In general, the practice of conducting mediation can be carried out at two different times, namely, outside the judicial system and within the judicial system.<sup>33</sup> What is meant by outside the judicial system is the mediation process carried out outside the court system. Meanwhile, mediation within the judicial system is a mediation process that is included in the

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<sup>31</sup> R Tanzil Fawaid Sayyaf, “Mediasi Dan Sulh Sebagai Alternatif Terbaik Penyelesaian Sengketa Hukum Keluarga Islam,” *Aq-Syari’ah: Jurnal Hukum Islam* 9, no. 2 (2023): 180–98.

<sup>32</sup> Rini Eka Agustina, “Efektifitas Arbitrase Sebagai Penyelesaian Perselisihan,” Article, *Ethics and Law Journal: Business and Notary* 2, no. 1 (2024): 267, <https://doi.org/10.61292/eljbn.130>.

<sup>33</sup> Tan, “Urgensi Pembentukan Undang-Undang Tentang Mediasi Di Indonesia.”

judicial procedural law.<sup>34</sup> Courts in Indonesia are more likely to use mediation like this in the Indonesian legal system. The emergence of PERMA makes mediation count in the series of court proceedings. It makes the series of dispute resolution more comprehensive because it must go through the mediation process first to continue the process of litigation in court.<sup>35</sup>

Looking deeper, there are five reasons for disputing parties to choose alternative dispute resolution, which are as follows:

1. Having a process that is better, more open, flexible, and responsive to the unique needs of the parties. These reasons are often related to negative perceptions of the law and lawyers.
2. Save time and money, and potentially reduce the burden on the justice system;
3. Increase the involvement of the parties and the community in the dispute resolution process.
4. Achieve better outcomes that meet the real needs of the parties and society;
5. Expanding access to justice.<sup>36</sup>

Family disputes often involve various parties, such as between parents and children, husbands and wives, and relationships between family members and grandparents. Each family usually has its own rules for dealing with this kind of conflict. Some family members may try to resolve them through negotiation, while others may rely on decisions set by parents. Some individuals make their own decisions without involving the other party, and it is okay to do so, but often conflicts are still likely to occur.<sup>37</sup>

Conflicts cannot always be resolved using conventional methods, such as through negotiation, which has been massively used in families as a form of family deliberation. Still, sometimes this has not been able to satisfy all parties to the dispute. Under such conditions, mediation should be able and effective to be used in solving problems that cannot be

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<sup>34</sup> Agus Hermanto, Iman Nur Hidayat, and Syeh Sarip Hadaiyatullah, "Peran dan Kedudukan Mediasi di Pengadilan Agama," *As-Siyasi: Journal of Constitutional Law* 1, no. 2 (2021): 40, <https://doi.org/10.24042/as-siyasi.v1i2.11292>.

<sup>35</sup> Moh Mujibur Rohman, "Menakar Efektivitas Mediasi Pasca Regulasi PERMA Nomor 1 Tahun 2016 (Studi Analisis Pengadilan Agama Pamekasan)," *Al-Khidmah: Jurnal Pengabdian kepada Masyarakat* 4, no. 2 (2024): 13.

<sup>36</sup> L.L. Riskin and J.E. Westbrook, *Dispute Resolution and Lawyers*, American Casebook Series (West Publishing Company, 1997), <https://books.google.co.id/books?id=vU5LAQAAIAAJ>.

<sup>37</sup> Siti Nur Fathanna, Nurmala Hak, and Sunaryo Sunaryo, "Faktor-Faktor Kegagalan Mediasi Perkara Cerai Gugat Tahun 2019 Di Pengadilan Agama Kelas 1 A Palembang," *Usroh: Jurnal Hukum Keluarga Islam* 7, no. 2 (2023): 48, <https://doi.org/10.19109/ujhki.v7i2.19268>.

resolved personally by family members themselves, requiring an outside or third party to play a supporting role in mediating the dispute.<sup>38</sup>

The mediator facilitates people in conflict to find the best possible solution that satisfies both parties, and this mediation process is confidential or private, which is only known and interfered with by certain parties. This is important because one of the factors that complicate and hinder the provision of solutions in mediation is the lack of openness of one of the parties to convey the problems that occur in detail and comprehensively.<sup>39</sup> In addition, some mediators also try to teach the parties how to manage their conflicts in the future without having to involve a third party.

The Supreme Court of the Republic of Indonesia announced the 2023 national mediation ratio data in its 2023 Annual Report. Successful mediation in district courts increased by 9.05 percent in 2022. Successful mediation in religious courts increased by 40.66 percent from 2022. Mediation success nationally increased by 34.16% in 2022. Meanwhile, 22,792 mediation cases still failed to be resolved, or 21.81% of the total cases that year.<sup>40</sup>

According to the 2023 Annual Report of the Supreme Court, there were 41,198 mediation cases in the general court environment, 1,509 of which were successfully resolved, while 16,893 were unsuccessful, 21,530 could not be implemented. The remaining 1,266 cases were still in process. In the religious courts, there were 63,312 mediation cases, of which 25,230 cases were successful, 35,984 cases were unsuccessful, 1,262 could not be implemented, and the remaining 836 cases were still in process. If all the data is added up, mediation cases in 2023 will reach 104,510.<sup>41</sup>

Several key factors can be identified as contributing to mediation failure. First, a lack of openness and trust between parties often leads to superficial negotiations. Second, disparities in the skill and training of mediators may limit the process's effectiveness, especially in complex cases. Third, procedural constraints and administrative inefficiencies hinder proper implementation, as shown by the high number of cases categorized as "not implemented." Additionally, many litigants still view court rulings as more authoritative than

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<sup>38</sup> Anugrah Reskiani, Mukhtar Lutfi, and Hamzah Hasan, "Kompetensi Mediator Dalam Menunjang Keberhasilan Mediasi Pada Kasus Perceraian Di Pengadilan Agama Makassar (Tinjauan Teoretis Dan Faktual)," *Jurnal Diskursus Islam* 4, no. 2 (2016): 261.

<sup>39</sup> Wina Purnamasari, Fakhruddin, and Ahmad Dibul Amda, "Problematika Mediator Dalam Penyelesaian Perkara Perceraian Di Pengadilan Agama Curup Kelas 1B," *Al-IHKAM: Jurnal Hukum Keluarga* 13, no. 1 (2021): 106, <https://doi.org/10.20414/alihkam.v13i1.3745>.

<sup>40</sup> Mahkamah Agung, "Laporan Tahunan Mahkamah Agung Tahun 2023," February 2024, 119, [https://kepaniteraan.mahkamahagung.go.id/images/laporan\\_tahunan/FA-LAPTAH\\_MA\\_2023-\\_low.pdf](https://kepaniteraan.mahkamahagung.go.id/images/laporan_tahunan/FA-LAPTAH_MA_2023-_low.pdf).

<sup>41</sup> Agung, 140.

mediated settlements, reducing their willingness to engage in the mediation process genuinely.

Indonesia has made measurable progress in promoting mediation as an alternative dispute resolution mechanism; its practical application remains limited by institutional, cultural, and procedural barriers. Improving mediator quality, enhancing public awareness, reinforcing enforcement mechanisms, and fostering a legal culture that values dialogue over confrontation are essential steps in reducing mediation failure. Strengthening mediation not only contributes to judicial efficiency but also aligns with broader goals of social harmony, access to justice, and the peaceful resolution of disputes.

### **The Urgency of Mediation Regulatory Reform in Indonesia: Obstacles and Projections**

As the highest state institution in Indonesia, the Supreme Court is authorized to handle the construction of judicial power, and has PERMA Number 1 of 2016 concerning Mediation Procedures in Courts as a regulation that directs procedures in the national scope with the aim of filling the legal vacuum in Indonesia. In the mediation process, there is a third party called a mediator. The mediator serves as an arbiter and helps both parties resolve the conflict. During the mediation process, the mediator must be neutral and impartial.<sup>42</sup> In addition, the mediator must also be able to protect the interests of both parties in a fair and balanced manner, so that the trust of the disputing parties can be maintained.

Articles and paragraphs in PERMA Number 1 Year 2016 related to several points cause obstacles in the settlement of non-litigation cases through mediation, such as in article 8, which is considered to have no value of justice in it because there is a difference in the issue of honorarium for judges and non-judge mediators.<sup>43</sup> In addition, the assignment of Judge Mediators by the President of the Court, as stated in article 3 paragraph 5, in practice will also increase the workload of judges, in addition to resolving cases in litigation, also charged in non-litigation as mediators, which can have implications for the mediation process carried out by litigants.<sup>44</sup>

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<sup>42</sup> I Wayan Suwanda, "Mediasi Sebagai Upaya Penyelesaian Perkara Yang Bersifat Kooperatif," *GANECSWARA* 15, no. 1 (March 2021): 900, <https://doi.org/10.35327/gara.v15i1.189>.

<sup>43</sup> Priyanto, "Rekonstruksi Regulasi Prosedur Mediasi Dalam Penyelesaian Perkara Peradilan Agama Berbasis Nilai Keadilan," 9.

<sup>44</sup> Ayu Chairun Nisa, Dachran S Busthami, and Ahyuni Yunus, "Efektivitas Mediasi Penyelesaian Sengketa Ekonomi Syariah di Pengadilan Agama: Studi di Pengadilan Agama Kelas IA Makassar," *Journal of Lex Generalis (JLG)* 1, no. 3 (2020): 326.

According to Article 13, mediators must have a mediator certificate issued by an institution recognized by the Supreme Court. The article reads: "A certified mediator, as referred to in paragraph 1, is a mediator who has a mediator certificate issued by an institution that has obtained accreditation from the Supreme Court."<sup>45</sup> The quality of the mediator affects the success of the mediation, and this article emphasizes the need for certified mediators. If the mediator does not have sufficient expertise, especially in complex cases, the mediation can become deadlocked, and the process becomes longer without results.<sup>46</sup>

A legal issue related to the ineffective regulation of mediation in Indonesia is that only a small proportion of cases are successfully resolved through mediation in court. Although the regulations require mediation, there is still a perception that mediation is a formality that must be passed before the litigation process, so there is no maximum effort to resolve disputes amicably.<sup>47</sup> This situation is exacerbated by the incompetence of the mediator and the lack of active participation of the parties, which means that the mediation process often fails to achieve the goal of time and cost efficiency. As a result, cases continue to go to court, leading to a backlog of cases and an increase in dispute resolution costs.<sup>48</sup> This highlights the importance of updating mediation regulations to make them more responsive and effective in reducing court caseloads and increasing public confidence in mediation.

Regulatory reform of mediation institutions in Indonesia is urgently needed to improve the efficiency of case resolution, given that mediation is often perceived as an ineffective formality before litigation. Implementation in the field still faces many obstacles; the gap between regulation and practice shows the need for revisions that are more responsive to the needs of modern society, which demands fast processes and low costs. In addition, the public's low legal literacy and lack of perception towards mediation add to the challenges in the effectiveness of this process. Regulatory reform is expected to address social dynamics and increase public confidence in the existence of mediation.

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<sup>45</sup> Mahkamah Agung, "PERMA 1 TAHUN 2016," Peraturan Mahkamah Agung, 2016.

<sup>46</sup> Albi Briantama and Lince Magriasti, "Implementasi Perma Nomor 1 Tahun 2016 Tentang Prosedur Mediasi dalam Perkara Perceraian di Pengadilan Agama Padang Kelas I A," *PUBLICNESS: Journal of Public Administration Studies* 3, no. 3 (August 2024): 316, <https://doi.org/10.24036/publicness.v3i3.225>.

<sup>47</sup> Ristiana Dewi, "Peran Mediator dalam Proses Mediasi Upaya Menyelesaikan Perkara Perdata (Studi Kasus di Pengadilan Negeri Pasuruan)," *MLJ Merdeka Law Journal* 2, no. 1 (November 2021): 36, <https://doi.org/10.26905/mlj.v2i1.6254>.

<sup>48</sup> Indah Tria Sari Simatupang, Ibrahim Siregar, and Ikhwanuddin Harahap, "Pengetahuan Peran Mediator Dalam Proses Mediasi Perkara Perceraian," *Wahana Didaktika : Jurnal Ilmu Kependidikan* 22, no. 1 (August 2023): 26, <https://doi.org/10.31851/wahanadidaktika.v22i1.12925>.

## Reconstructing Mediation Regulations in Indonesia: Efforts to Resolve Contemporary Islamic Family Disputes

Mediation as an alternative way to resolve conflicts and guaranteed to be an effective and efficient method, needs regulatory updates with a focus on clearer procedures, strengthening mediator certification, structuring the role and commitment of litigants, and minimizing bureaucracy so that it is not complicated.<sup>49</sup> A mediator needs to be able to identify the root causes of conflict by observing the communication, perceptions, attitudes, and interaction patterns of the parties during the mediation process.<sup>50</sup>

The key role of a mediator in mediating cases is very strong, but currently, the quality and competence of mediators often vary.<sup>51</sup> To ensure the quality of mediators who can facilitate dispute resolution properly, it is necessary to strengthen several aspects. Article 13 of PERMA Number 1 Year 2016 stipulates that mediators must have a certificate obtained through a training process conducted by an institution accredited by the Supreme Court. Non-certified judges can perform the role of mediator based on the decision of the court president in certain situations, such as when the number of certified mediators is limited. In addition, the Decree of the Chief Justice of the Supreme Court also sets out regulations on the requirements and procedures for mediator certification and accreditation of certification bodies.<sup>52</sup>

In Article 16 of PERMA No. 1/2016, the head of the court is required to report the performance of judges who successfully resolve cases through mediation to the head of the higher court in their respective region and then forward it to the Supreme Court. However, this does not include provisions related to compensation or consequences (such as a system of rewards and sanctions) for successful or unsuccessful mediation. The absence of such provisions means that there is no strong incentive for court mediators to settle cases by

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<sup>49</sup> Djalaluddin Djalil, Baso Madiong, and Abdul Haris Hamid, “Efektivitas Mediasi Dalam Penyelesaian Perkara Perdata Di Pengadilan Negeri Makassar Kelas Ia Khusus,” *Indonesian Journal of Legality of Law* 5, no. 2 (June 2023): 330, <https://doi.org/10.35965/ijlf.v5i2.2673>.

<sup>50</sup> Lalu Moh Fahri, “Mediator Dan Peranannya Dalam Resolusi Konflik,” *PENSA : Jurnal Pendidikan dan Ilmu Sosial* 3, no. 1 (2021): 120.

<sup>51</sup> Ria Zaitullah, “Efektivitas Mediasi dalam Penyelesaian Perkara Perceraian di Pengadilan Agama Menurut Peraturan Mahkamah Agung (PERMA) No. 1 Tahun 2016,” *Al-Manhaj: Journal of Indonesian Islamic Family Law* 2, no. 2 (2020): 155, <https://doi.org/10.19105/al-manhaj.v2i2.3417>.

<sup>52</sup> Agung, “PERMA 1 TAHUN 2016.”

mediation, despite the success of mediation, and despite the fact that successful mediation in the courts is essential to meet the needs of parties seeking justice.<sup>53</sup>

If mediation has been conducted previously without the involvement of a mediator who is certified and registered with the local court, mediation in court is still required, according to Article 4 Paragraph 2e of Supreme Court Regulation Number 1 Year 2016. This is due to the fact that this mediation does not fall under the exception of cases that require mediation. This means that even though the parties have conducted mediation, if the mediator is not certified and registered, the mediation process is considered invalid and futile. One of the weaknesses of the PERMA on Mediation is that it does not recognize out-of-court mediation processes involving uncertified and unregistered mediators. In fact, non-litigation mediation, such as tahkim or peacemaking, is often chosen by the public, especially in divorce cases, even without using the services of a judge as a mediator or a non-judge mediator who is certified and registered with the court.<sup>54</sup>

The position of mediators should be of more concern; people who have completed a law degree before are still required to carry out training and schooling to obtain the advocate profession. Ideally, a mediator should not be able to do the same thing without certification or training first. However, according to PERMA rule number 1 of 2016, a judge who has not been certified can still conduct mediation even without certification if there is a shortage of certified mediators in the court. On the other hand, advocates also have a very important role in supporting the smooth and successful mediation process, either by educating about the importance of the process or by assisting *clients* to seek peace first.<sup>55</sup>

The Supreme Court, as the highest State institution that regulates the judiciary in Indonesia, has the power to make a rule and boost the number of certified mediators in Indonesia so that mediators who handle cases as an effective alternative step in dispute resolution. The work of a judge who doubles as a mediator means that their focus when mediating cases of the parties cannot be maximized in carrying out their duties during the

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<sup>53</sup> Diah Rahma Kusumaningrum, "Alasan Mediasi Belum Menjadi Model Utama Dalam Upaya Penyelesaian Sengketa Bisnis Di Indonesia," *Jurnal Privat Law* 9, no. 1 (2021): 58, <https://doi.org/10.20961/privat.v9i1.41464>.

<sup>54</sup> Haeratun Haeratun and Fatahullah Fatahullah, "Efektivitas Mediasi Sebagai Alternatif Penyelesaian Perkara Perceraian Di Pengadilan Agama," *Batulis Civil Law Review* 3, no. 1 (2022): 50, <https://doi.org/10.47268/ballrev.v3i1.930>.

<sup>55</sup> Wika Yudha Shanty, "Eksistensi Advokat dalam Penyelesaian Sengketa Perdata melalui Mediasi," *Bhirawa Law Journal* 4, no. 1 (August 2023): 94, <https://doi.org/10.26905/blj.v4i1.10582>.

flow of the mediation process until it is completed.<sup>56</sup> To ensure that all judges in religious courts can function properly when conducting mediations, the Supreme Court should provide mediator training. In addition, this training would increase the effectiveness of the mediation process and broaden judges' skills in resolving disputes through mediation.<sup>57</sup>

Every person who acts as a mediator must be certified. If a court lacks certified mediators, the president of the court can exercise his right to decide the form of a letter to assign a judge to be a mediator. Therefore, in order to balance the number of civil cases that require mediation, judges in the courts are also assigned to conduct mediation.

Continuous certification for Mediators should be conducted as a periodic certification renewal program. This ensures that mediators are always *up-to-date* with the latest legal developments and mediation techniques. So far, there are rules for the renewal of certification every five years for the mediator certification organizers for non-judge mediators.<sup>58</sup> However, there is no specific rule in place for mediators.

Strengthening the role of judges in encouraging mediation in cases that come to court, judges can be more proactive in encouraging parties to pursue mediation first before proceeding to litigation. This will increase awareness of the importance of mediation as a more efficient means of dispute resolution. Although judges who act as mediators do not have the authority to decide cases as in the litigation process, they still hold two important roles. First, as a facilitator responsible for ensuring the smooth running of the mediation process, and second, as a provider of legal advice or consideration to the disputing parties.<sup>59</sup>

Laurence Boulle, in his book entitled "Mediation: Principles, Process, and Practice" states that the Mediator performs several important roles, including building trust and confidence of both parties, analyzing conflicts, and then designing appropriate solutions,

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<sup>56</sup> Tika Khairunisa, Dahlia Haliyah, and Moh. Fadhil, "Problematika Mediasi Perkara Perceraian Berdasarkan Pengalaman Hakim Mediator Pada Pengadilan Agama Singkawang," *Al-Usroh* 2, no. 2 (2022): 357, <https://doi.org/10.24260/al-usroh.v2i2.682>.

<sup>57</sup> Rahmat Fauzi and Faisal, "Efektifitas Mediasi Dalam Menyelesaikan Sengketa Perceraian (Study Di Pengadilan Agama Bukittinggi Dan Pengadilan Agama Payakumbuh Tahun 2015-2017)," *Soumatera Law Review* 1, no. 2 (2018): 323, <https://doi.org/10.22216/soumlaw.v1i2.3722>.

<sup>58</sup> Mahkamah Agung, "SK-KMA Nomor 117 Tahun 2018 Tentang Tata Cara Pemberian Dan Perpanjangan Akreditasi Lembaga Penyelenggara Sertifikasi Mediator Bagi Mediator Nonhakim," June 26, 2018.

<sup>59</sup> Dewi, "Peran Mediator dalam Proses Mediasi Upaya Menyelesaikan Perkara Perdata (Studi Kasus di Pengadilan Negeri Pasuruan)," 38.

improving communication, facilitating the settlement process, providing opportunities to demonstrate their abilities, and encouraging dispute resolution.<sup>60</sup>

The mediation process should be designed so that all parties feel heard and cared for, so that they are more likely to respect and implement any agreement reached. The following is a reconstruction that can be done specifically in the case of mediators, so that balance and efficiency can occur in the mediation environment.

**Table 1.** Reconstruction of Article 13 Paragraph 2 of PERMA Number 1 Year 2016

Indicator	Pre Reconstruction	Post Reconstruction
Article 13, Paragraph 2 of PERMA Number 1 Year 2016	Non-certified judges may perform the function of Mediator in the absence of a limited number of certified Mediators.	Non-certified Judges cannot perform the functions of a Mediator until the Judge is qualified and certified as a Mediator.

Source: compiled by the author

By strengthening mediator certification in terms of updated mediation regulations can be a tangible manifestation of progressive and change-responsive law, the success of mediation depends on mediators having adequate means and facilities.<sup>61</sup>

Indonesia can follow the example of other countries in the issue of mediators, such as Turkey. In their country, some rules require all mediators to be certified, in contrast to the rules in Indonesia, which still allow uncertified judges to carry out mediation. In addition, Turkey is very concerned about its mediators; mediators there must have qualified competence, and every year, there is training.<sup>62</sup> This is certainly very good to be applied in Indonesia with the aim of increasing the competence of both judge mediators and non-judge mediators, adding skills, and updating methods in conducting mediation to be relevant to the social conditions of society. However, in Indonesia, there is no obligation imposed on mediators to do so.<sup>63</sup>

<sup>60</sup> L. Boulle, *Mediation: Principles, Process, Practice* (Butterworths, 1996), 31, [https://books.google.co.id/books?id=k20\\_AQAAIAAJ](https://books.google.co.id/books?id=k20_AQAAIAAJ).

<sup>61</sup> Muhammad Ilham Rizkq, Kristina Sulatri, and Yudhia Ismail, "Faktor-Faktor Yang Mempengaruhi Efektivitas Mediasi Terhadap Sengketa Dibidang Perkawinan Di Pengadilan Agama Pasuruan," *YURJAYA: Jurnal Ilmiah Hukum* 4, no. 3 (2022): 244.

<sup>62</sup> Temel, "Islam Aile Hukukundaki Arabulucu-Hakemlik Uygulamasının Türkiye'de Aile Arabuluculuğuna Muhtemel Katkıları."

<sup>63</sup> Muhamad Ali Muhsim, Erfanah Zuhriah, and Ali Hamdan, "Comparative Study Of Mediation Implementation In Indonesia And Turkey," *Al-Risalah Jurnal Ilmu Syariah Dan Hukum* 22, no. 1 (2022): 73–74, <https://doi.org/10.24252/al-risalah.vi.28485>.

Another relevant comparison can be drawn from the mediation mechanism employed by the Sharia Court in Malaysia, which involves three mediators: one religious officer and two representatives from each party, the husband and the wife. In contrast, the mediation process in Indonesia's Religious Courts for divorce cases typically involves only one mediator, who is external to the disputing parties.<sup>64</sup> The involvement of multiple mediators, as practiced in Malaysia, could offer valuable insights for enhancing the effectiveness of mediation, particularly in cases under the jurisdiction of religious courts.<sup>65</sup>

PERMA still does not regulate mediation provisions in detail and completely, including in terms of mediators. One of the obstacles to successful mediation is the lack of certified mediator judges. Competent and committed mediators are required to resolve disputes through mediation in order for this process to be successful. Therefore, the shortage of certified judge mediators is an obstacle, and the ability of a professional mediator is essential in running an effective mediation process.<sup>66</sup> Furthermore, the fact that no incentives are given to judge mediators, while non-judge mediators receive incentives according to the agreement between the disputing parties, creates a tendency for judge mediators to be less serious and not maximize their mediation efforts. This lack of incentives may affect judges' motivation to commit to the mediation process.

## Conclusion

Mediation regulatory reform is an urgent need to ensure that the dispute resolution process can run more efficiently and effectively. With more structured procedures, strengthening mediator certification, and structuring the roles and commitments of litigants, mediation is expected to become a reliable alternative to dispute resolution. The implementation of these measures will help to create a faster, higher-quality mediation process that delivers results that are acceptable to all parties. Article 13 of PERMA Number 1 Year 2016 needs to be substantially reconstructed. Post reconstruction in the article becomes uncertified Judges cannot perform the function of Mediator until the Judge is qualified and certified as a Mediator. The implication is that this profession becomes

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<sup>64</sup> Indra Cahya and Asep Iwan Iriawan, "Kajian Komparasi Mediasi Perceraian Pengadilan Agama Indonesia Dan Mahkamah Syariah Malaysia," *Amicus Curiae* 1, no. 2 (2024): 548–56.

<sup>65</sup> Ismayawati and Chaedar, "Family Conflict Resolution through Mediation in Indonesia and Malaysia: A Sociological Study of Islamic Law."

<sup>66</sup> Mariah S.M. Purba, "Rekonstruksi Perma No. 1 Tahun 2016 Sebagai Alternatif Penyelesaian Sengketa Di Pengadilan," *Jurnal Hukum Samudra Keadilan* 13, no. 1 (2018): 25, <https://doi.org/10.33059/jhsk.v13i1.693>.

exclusive, and the person who becomes a mediator is truly a professional person according to scientific standards and experience.

## **Declarations**

### **Author contribution statement**

P.P.D.N. conceived the study, developed the theoretical framework, and wrote the manuscript. M.T. analysed the data and aided in the analysis. E.Z. contributed to the final version of the manuscript and supervised the project. N.R.N. corrected the data, analyzed it, and edited the language.

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We declare that data supporting the results reported in the published article can be found hyperlinked to publicly archived datasets analyzed or generated during the study.

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We declare that we have no competing financial interests or personal relationships that could influence the work reported in this paper.

### **Additional information**

No Additional information.

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