



## THE EFFECTIVENESS OF MEDIATION IN COMPLETING DIVORCE CASES IN JAMBI PROVINCIAL RELIGIOUS COURT

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### Abstract

The accumulation of cases always increases from year to year. For this reason, the Supreme Court issued Supreme Court Regulation (Perma) No.1 of 2016 concerning mediation procedures in court, as an effort to reduce the number of cases that go to court, including divorce. but unfortunately mediation does not show the expected success rate in religious courts. This research reveals the failure and success factors of mediation in the Jambi religious court, the role of the mediator in resolving divorce cases and exploring the effectiveness of mediation in divorce cases.

This research is located at the location of divorce cases, namely the Jambi City Religious Court, the Kuala Tungkal Religious Court and the Sarolangun Religious Court. The results of this study prove that; first, the mediation success rate is only 4%. The failure factor for mediation is the lack of judges as mediators, there is no incentive funds for mediators who succeed in reconciling the mediator who does not have sufficient skills in dealing with the parties. Second, the role of the mediator in resolving divorce cases is not only as a facilitator but as a catalyst, educator, supporter and psychiatrist depending on the case at hand.

**Key Words: Mediation, Divorce, Jambi Religious Court**

### A. Introduction

The mediation success has not shown a significant number. This is proven that the success rate of mediation settlement in Indonesia is still far below the 10% level. And the fact that mediation fails to suppress the number of cases that go to court is also supported by academic studies that have examined the development of mediation in Indonesia, be it mediation in medical conflicts, in sharia economic disputes, inheritance and so on. Unfortunately, the mediation in the religious court did not show any significant progress. Mediation in religious courts, especially in divorce cases, often results in "dead locks", so that the conflict will continue to court.

Based on the initial findings made by the author, that in divorce cases that go to the religious court, after the first trial the parties will meet with a mediator to try to settle their case through mediation. judge mediator or non-judge mediator, will always try to reconcile by advising both parties.

However, at the beginning of the mediation session, the emotions of both parties were visible and more dominant. At this point, deadlocks often occur. The implementation of mediation in court is inversely proportional to the mediation conducted by the Jambi



Province Integrated Services Center for Women and Children (P2TP2A) in the Community Empowerment and Women's Empowerment Agency (BPMPP). In this institution, mediation is actually more successful. The success of this mediation has also reached cases that actually have little chance of mediation, such as cases of domestic violence (KDRT).

## B. Theoretical Review

Thomas E Crowley says *Mediation is a process in which a neutral person to helps the opposing parties reach their own settlement.* Mediation is a process where there is a third party who helps the disputing parties find a way out so as to reach an agreement as a solution accepted by the parties. and this can maintain good relations between the disputing parties. According to him, the mediation process is the management in negotiating between the two parties, and the mediator is a manager who leads the discussion about the problems to be resolved. Laurence Boulle says *mediation is a decision-making process in which the parties are assisted by a third party as the mediator. The mediator attempts to improve the process of decision-making and to assist the parties reach an outcome to which each of them can assist.*

Boulle argues that mediation is a decision-making process carried out by the disputing parties assisted by a third party as the mediator. The mediator will endeavor to help the disputing parties make a decision that is agreeable to both. This means that the mediator only acts as a facilitator so that the parties can reach a decision. The same thing was expressed by Allan J. Stitt, who stated that mediation was basically only facilitating negotiations.

The mediator acts as the person who helps the disputing parties to negotiate to find a solution and reach an agreement. In the Supreme Court Regulation (PERMA) No.1 of 2016 concerning the implementation of Article 1 paragraph 1 it is also explained that mediation is a way of resolving disputes through negotiation to obtain agreement from the parties with the assistance of a mediator. In paragraph 2 also explained that the so-called mediator is a neutral party that helps the parties in the negotiation process to find various possible dispute resolution without using a way to decide or force a settlement.

From the explanation above, it can be concluded that the mediation process involves the parties who have the dispute and a mediator as the third person to mediate. Mediation is the process of negotiation or the process of reaching an agreement between the disputing parties. The aim of mediation is to reconcile a win-win solution, reach an agreement that is mutually agreed upon by the parties and maintain good relations between them. In the mediation process, the parties resolve the conflicts that occur, and discuss future solutions and do not discuss the past. The mediator only acts as a facilitator who leads the parties to the goal of a peace agreement.

Mediation has basic principles that must be known. This principle must be the fundamental basis for implementing mediation in any part of the world. The basic principle of mediation



was expressed by an international mediator from Germany, that the principle of mediation is not only a science but also in legal action.

The basic principles of integrated mediation in court (Court-Connected Mediation) as contained in the Supreme Court Regulation (Perma) No.1 of 2016 concerning court mediation procedures which contain the following main points; Mediation must be taken, before the dispute is decided, Autonomy of the parties, Undertake mediation in good faith, Time efficiency, The provision that the mediator must be certified, Duties and responsibilities of the mediator, Principles of Confidentiality, Financing, Repetition of mediation and An out-of-court peace deal.

Mediation in this court as stated in the Supreme Court Regulation Number 1 of 2016 is the result of the development and empowerment of a peace institution which is also regulated in the provisions of Article 130 HIR / 154 Rbg, which requires a judge hearing a case to seriously seek peace between the litigants.

In mediation the parties will usually commit to comply with an agreement that has been mutually agreed upon, rather than a decision imposed by a third person. A solution imposed by the court will lead to a win for one party, and a win-lose solution for the other. However, the mediator will help the parties so that both feel win-win. Someone will be able to remember the agreement reached by the mediator to encourage the parties to understand and identify what they want in this situation. Mediation is a process that provides comfort, so that each party can speak without fear that their words will be used as evidence against them. Mediation is more focused on the root of the problem. Mediation can cover any case, in contrast to the litigation route which only covers cases covered by applicable law. Although mediation looks at and examines the past, mediation is more focused on the future.

## **C. Methodology**

This research is an empirical legal study or sociological legal research, because it relates to research that includes the effectiveness of law in society and research on legal identification (unwritten). The effectiveness of the law in question is to examine the extent to which the effectiveness of the Supreme Court Regulation (Perma) No.1 of 2018 regarding Mediation Procedures in Courts, the extent to which they are implemented in Religious Courts throughout the Jambi region, and what are the obstacles in the implementation of mediation in the Religious Courts in particular related to resolving efforts. divorce case. For this reason, this research is a research that uses the socio-legal research method, which only places law as a social phenomenon. That is why this research has a social nature related to law.



## D. Findings and Discussion

Regulation after regulation was made to strengthen the existence of mediation in the judiciary, but unfortunately this effort is currently not giving the expected results. In the Jambi City Religious Court, of the number 235 cases that can be mediated, only 5 cases have been successfully mediated (2%). In the Sarolangun area, of the 46 cases that could be mediated, only 3 cases were successfully mediated (6%). Meanwhile, in the Tungkal region, of the 40 cases that could be mediated, only 5 cases were successfully mediated. (12%).

Whereas in the overall data for the Jambi Province (jurisdiction of the Jambi High Religious Court) in 2018, only 34 cases of mediation were successful out of the number of cases that could be mediated, namely 713 cases. Thus, the mediation success rate is only 4%.

The implementation of mediation in court is hampered by several aspects that make it difficult to carry out mediation efforts, in divorce cases that lead to peace agreements. There are several reasons for the obstruction of mediation at the Jambi Provincial Religious Court, along with the explanation.

### 1. The absence of the defendant / respondent

Many people assume that when divorce wants to be quickly processed and immediately terminated in court, the defendant / respondent must not attend the hearing. This understanding has long been widespread and has become common knowledge within the community. This absence will certainly hinder the mediation process. Because in principle, mediation must be attended by both parties, and the reasons for both of them are for the purpose of deliberation in determining joint solutions to the problems they experience.

### 2. Lack of state attention (Supreme Court) towards the profession of mediator.

The majority of mediators are judges. The judge's character is accustomed to finding facts, assessing and deciding problems with win-lose solution legal products. So that when he becomes a mediator, it is very difficult for him to move from that character. The judge mediator is untrained and does not have the ability to build more effective communication between the parties and do not have the ability to deal with the emotional outburst of the parties.

Judges are used to giving advice to the parties to reconsider their decision to end their marriage. This is what becomes the judge's "capital" to enter the mediation room. So it is not surprising that the mediation process is no different from the trial process. The motion of the judge (mediator) becomes static in the mediation process, in simple terms it is when the parties no longer receive advice, the mediation process fails and must continue with the litigation process.

### 3. Judicial Program Implications



The Supreme Court has now determined the period for completion of cases at the first instance level is no later than 5 months, completion of case at the appeal level is no later than 3 months. The specified time includes the completion of the minutation. Determining the time frame for settlement of this case has an impact on efforts to accelerate the resolution of the case, which in this case affects the implementation of mediation in court. Because in essence, the mediation process must be carried out carefully and takes time, according to the complexity of the case.

- 4. Lack of support from the Indonesian Supreme Court in optimizing mediation in court. The Supreme Court has not made any efforts to improve matters that support the implementation of mediation efforts in the Court, particularly regarding the following matters;

- a. Lack of judges

We know that the judge is a milestone in the conduct of mediation. For the sake of successful mediation implementation, it must be supported by certified mediators for non-judge mediators, as well as mediators from among the judges themselves. However, the problem is that the number of judges in Jambi Province is very small, and with a very small number of them are given a fairly heavy workload. This is because in addition to examining a large number of cases, judges are given the task of mediating cases submitted except for cases that are not justified by law. The lack of judges, of course, has implications for the lack of mediators in the implementation of mediation in various courts in Jambi Province. The following details the number of judges in Jambi province and their workload.

### Number of Judges and Workload in all Religious Courts in Jambi Province 2018

No.	Religious Court	Number of Judges	Things settled
1	Pengadilan Tinggi Agama	9 person	33 things
2	PA.Jambi	17 person	1168 things
3.	PA. Sangeti	5 person	615 things
4.	PA. Muara Bulian	7 person	474 things
5.	PA.Bangko	4 person	378 things
6.	PA.Sabak	1 person	424 things
7.	PA. Bungo	3 person	541 things
8.	PA.Kuala Tungkal	3 person	1021 things
9.	PA.Sungai Penuh	2 person	381 things
10.	PA.Sarolangun	1 person	298 things
11	PA.Muara Tebo	1 person	430 things



From the table above, we can understand how big the burden of judges is every day. In the Jambi Religious Court, for example, in 2018, almost 100 cases are required to be completed each month. Especially in the Religious Courts which only have one judge in their territory, who at the same time have to act as a mediator in the mediation process. This heavy workload will certainly have an impact on the effectiveness and implementation of mediation in court. The number of cases contained in the table above is the number of cases decided in each Religious Court in 2018.

Meanwhile, the mediator at the Religious Court is the judge himself, except for the mediator at the Jambi City Religious Court. Where in the Religious Court class IA Jambi (Jambi City) has 8 mediators, namely 6 judge mediators and 2 non-judge mediators. This means that only Jambi City Religious Courts have non-judge mediators, while religious courts in other regions only have mediators who are also judges, as shown in the table above. So at the Religious Courts at the first level, the mediation process is very dominated by judges.

## b. Mediation Fees

In theory, mediation is considered cheaper than the litigation process, especially if it uses the services of a judge mediator. This is because the use of mediators from the judges is free of charge from the parties. Whereas the non-judge mediator, the cost of mediation is borne by one of the parties in bad faith. However, if the mediation is carried out with the help of a non-judge mediator (lawyers / legal academics), the parties may / can choose to organize mediation in another place outside the first tier court building, and the imposition of fees depends on the agreement between the parties and the mediator. Meanwhile, if the mediation involves an expert, all costs for the benefit of the expert are borne by the parties based on the agreement. However, regulations regarding this cost issue are not coercive. Because in practice, those who use the services of non-judges as mediators are sometimes unwilling to pay for the services of a mediator to mediate.

In Supreme Court regulation (Perma) No. 1 of 2019 paragraph 6 states that, the mediation costs in question are costs arising from the mediation process as part of the cost of the case, including covering the costs of calling the parties, travel costs of one party based on actual expenses, meeting costs, expert fees, or other costs required during the mediation process. So these costs are costs during the mediation process, starting from the costs of summoning the parties, to mediator services, or other costs if the mediation is carried out outside the court.

If the mediation is carried out at the first meeting and finishes immediately on the same day, then the parties will save the summoning fee which is included in the overall cost of the case. And this never happened at the Jambi Religious



Court. So the more the mediation is postponed, the greater the summoning fee and the more expensive the court fee will be. Because the summoning fee for the mediation process is included in the court fee. Not to mention the cost of mediator services if you use non-judge mediator services. so that the longer the mediation is carried out, the more delay in the mediation, the more costs are incurred.

The lack of support from the Supreme Court can also be seen in the absence of the issuance of the two most important policies regarding career paths and incentives for judges and non-judges who perform mediator functions in the first instance courts. This is important to motivate mediators to mediate. Due to the lack of clarity on the incentives received by the judge, the judge will carry out the mediator's duties as an additional burden. Because the main task of the judges is to resolve disputes through litigation. And the salary received is a reward from the main tasks mandated. Mediating is an additional task for which they are entitled to incentives. However, providing incentives for judges does not have to be financial in nature, but can take the form of guaranteed career advancement for judges who have succeeded in reconciling several cases.

c. Lack of facilities and infrastructure

One effort that supports the optimization of mediation is to provide the facilities and infrastructure needed for successful mediation. But unfortunately, there are still many courts that do not yet have the facilities and infrastructure to support mediation going well, especially the provision of good space for mediation. The facilities available for mediation in the courts are still limited, although almost all courts provide rooms for conducting mediation. This is important to do, because in addition to the confidentiality factor that must be maintained, a sense of comfort must also be prioritized so that the parties can express their problems more freely.

d. Barriers to the Personal Aspects of Parties Wishing to Divorce

Divorce conflicts have a profound impact on all family members, including children. In fact, the biggest impact of divorce is felt by children. This conflict raises stress, pressure, and causes physical and mental changes. On the other hand, divorce always carries a chain of risks both in the spouse and the child. Husband and wife conflicts, sometimes the family does not know. Although, some are for public consumption. However, usually the first time attempts to reconcile the family in the hope that they are willing to live in harmony again. If these efforts fail, sometimes it leads to peaceful efforts by the RT or the local village head. However, these efforts are now rarely carried out. If the family fails to reconcile it, they will usually end up at the green table.



So cases that have gone to court, generally have passed several stages of peaceful efforts by the family and local community, but always find a dead end. So, when going to court the couple usually has a unanimous determination to divorce. So that many mediators think, it is difficult to mediate in a situation like this.

## E. CONCLUSION

The main role of the mediator in divorce cases at the Jambi Provincial Religious Court is as a facilitator who brings together different views at one negotiating table in order to resolve problems. This is implemented in all cases that are included in the mediation room, namely by persuading and advising the parties to rethink the impact as a result of the decisions they take. Whereas in theory the role of the mediator, especially in divorce cases, is not only to facilitate negotiations but also to act as a catalyst, educator, supporter, and even as a psychiatric therapist. This role can change according to the complexity of the case received.

Dispute resolution through mediation in divorce cases is very beneficial for disputing spouses, for children and extended families in general. Because ideally divorce mediation is oriented towards win-win solutions that can improve the situation, cool down the atmosphere, unify communication that has long been broken up, improve family relationships and make it harmonious and harmonious. And household affairs are handled together in deliberation in the mediation process in a closed and confidential manner, so that the family's disgrace will be protected.

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