



Unraveling the Issue of Divorce Mediation in the Gorontalo Religious Court

Adriani B. Halid

Faculty of Law, Universitas Negeri Gorontalo, Indonesia.

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Corresponding Author:

adrianibhalid@gmail.com

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Abstract

Mediation is mandatory in every civil case examined by an Indonesian court under Supreme Court Regulation (PERMA) Number 1 of 2016, yet divorce cases at the Gorontalo Religious Court Class I A continue to be resolved almost entirely by adjudication rather than by settlement. This article examines the effectiveness of mediation in resolving divorce cases at that court and identifies the factors causing the high rate of mediation failure. The study applies empirical normative legal research, combining statutory and conceptual analysis with field data obtained through interviews with the vice chief judge, mediator judges, the court registrar and former mediation participants, direct observation of divorce hearings, and documentary study of the court's mediation reports for 2018 to 2022. The data are analysed descriptively and assessed against Soerjono Soekanto's theory of legal effectiveness. The study finds that mediation is procedurally effective because it is conducted in conformity with PERMA Number 1 of 2016, but ineffective in outcome, since only 45 of 670 mediated divorce cases were settled. Four of Soekanto's five elements are not satisfied. Failure is driven mainly by the parties' entrenched intention to divorce, absence of good faith, limited mediator capacity, a single mediation room, and family influence.

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1. Introduction

Law is a political product, a chapter of character the content of any legal product will be largely determined or colored by the balance of power or political configuration that gave birth to it.¹ The formation of legal norms is essentially legislation.² According to Law of the Republic of Indonesia Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage article 1 states that marriage is a bond born between a man and a woman as husband and wife to form a happy and eternal family (household) based on the One True Godhead. According to Atho Mudzhar, a rule will not be effective if it is merely an appeal and advice, especially if there is low legal awareness in society.³ There are three types of legal systems in force in Indonesia, namely the customary law system, civil law, and Islam.⁴ Meanwhile, according to the compilation of Islamic law in Indonesia, article 2 states that marriage according to Islamic law is marriage, which is a very strong contract or *mitsaaqon gholiidhan* to obey Allah's commands and carry out worship.⁵

Legal certainty requires the formulation of generally accepted legal methods, which also means that they must be strictly enforced or implemented.⁶ So to find out the effectiveness of a law or law that has been enacted, it is necessary to use a theoretical analysis of effectiveness, so that it can be measured to what extent the regulation contributes according to the intention in its form, as well as knowing the shortcomings of the law or regulation that has been enacted.⁷ A legal product is said to be effective if the legal product has been performed or implemented as in practice.⁸

The theory of legal effectiveness covers success in the implementation of the law, failure in the implementation of the law, and influencing factors in the implementation of the

¹ Ahmad Wijaya and Nasran Nasran, "Comparison Of Judicial Review: A Critical Approach To The Model In Several Countries," *Jurnal Legalitas* 14, no. 2 (2021): 85–106. Hlm 88.

² Fence M Wantu Kadek Wijayato, Lusiana Margareth Tijow, "Kedudukan Peraturan Desa Dalam Sistem Pembentukan Peraturan Perundang-Undangan Nasional," *Ius Civile* 4, no. 2 (2020), 201.

³ Deflaizar, "Efektivitas Mediasi Perceraian Pasca Berlakunya Peraturan Mahkamah Agung No 1 Tahun 2016 Tentang Mediasi (Studi Pengadilan Agama Kelas 1a Jambi)". (Uin Sulthan Thaha Saifuddin). 2022.

⁴ Dolot Alhasni, "Determinasi Perlindungan Hukum Pemegang Hak Atas Neighboring Right" Determination of The Legal Protection of Right-Holders To," *Jambura Law Review* 2, no. 01 (2020): 65–82, Hal 67, 67.

⁵ *Undang-Undang RI Nomor 1 Tahun 1974 Tentang Perkawinan & Kompilasi Hukum Islam* (Bandung: Citra Umbara, 2015), 2.,324.

⁶ Fitriyani. N Siregar, "Efektivitas Hukum," *Jurnal Ilmu Pengetahuan Dan Kemasyarakatan* 18, no. 2 (2018), 3.

⁷ Citra Widyasari S dan A. Qadir Gassing, "Efektivitas Pelaksanaan Perma No 1 Tahun 2016 Tentang Perosedur Mediasi Di Pengadilan Agama Pinrang Kelas B," *Jurnal Imiah Mahasiswa Hukum Keluarga, Qadauna* 1 (2020): 137–45.

⁸ Ria Ayu Novita, Agung Basuki Prasetyo, and Suparno, "Efektifitas Pelaksanaan Undang-Undang Nomor 2 Tahun 1960 Tentang Perjanjian Bagi Hasil Pertanian (Tanah Kering) Di Desa Beringin, Kecamatan Bayan, Kabupaten Purworejo," *Diponegoro Law Journal* 6, no. 2 (2017): 1–12.

law.⁹ Soerjono Soekanto observed that a regulation can function in the order of people's lives.¹⁰

As a creation of God, the human being is endowed with various qualities and desires. Being social by nature, no person can live alone because every human being needs each other between one human being and another human being. Therefore, the lust possessed by a human being can give rise to a desire to establish a relationship with the opposite sex, and one of the efforts is to hold a marriage or marriage.¹¹ With all needs met, both physical and mental needs, it can be said that the person lives a prosperous life.¹²

The purpose of being created by humans in pairs is so that living things on earth can continue to multiply and preserve their offspring through the marriage process, in this case, according to Islam marriage is *sunnatullah* which generally applies to all creatures of God, whether humans, animals, or plants.¹³

According to Prof. Scholten, marriage is a legal relationship between a man and a woman to live together eternally recognized by the State.¹⁴ Whatever form is enshrined in Islam must have a purpose, at least have a certain wisdom, and marriage is no exception. Marriage is the inner birth bond of a man with a woman who is expected to create a *sakinah, mawadah, and warahmah* household. To achieve the purpose of marriage, it is required to have a mutual understanding of the interests of both parties, mutual understanding, especially those related to rights and obligations.¹⁵

According to the author, that marriage or marriage is a form of union between one human being (man) and another human being (woman) which is legal and recognized religiously and legally by the State, marriage is also a form of proving one's affection for the opposite sex, as well as a responsibility which in this case has the purpose of wanting to live together and be happy, and obtaining offspring to maintain human survival. As for the household, there must be a feeling of mutual love, and complementarity with each other, there must be trust, take care of each other, protect each other, and must have goals that will be achieved together to maintain harmony in the household. According to the author, every human being must want a happy, eternal, prosperous life, and have a *sakinah, mawadah, and warahmah* family with a partner like the purpose of marriage contained

⁹ Salim HS and Erlies Septiana Nurbaini, *Penerapan Teori Hukum Penelitian Tesis Dan Disertasi*, Cetakan ke (Jakarta: Raja Grafindo Persada, 2013), 303.

¹⁰ Soerjono Soekanto, *Kegunaan Sosiologi Hukum Bagi Kalangan Hukum*, Cet 5 (Bandung: Citra Aditya Bakti, 1989), 56-57.

¹¹ Husni Syawali and Putri Nurul Nafisaadullah, "Implementasi Mediasi Dalam Penyelesaian Perkara Perceraian Di Pengadilan Agama Bandung Kelas I A," *Law Studies* 2, no. 1 (2022): 465-71, 466.

¹² Suwitno Y Imran Julius T Mandjo, "Implementasi Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 Pasal 27 Ayat 2 Tentang Hak Untuk Mendapatkan Pekerjaan Dan Penghidupan Yang Layak Bagi Kemanusiaan," *Jurnal Majelis* 8. (2020), 85.

¹³ Rayani Saragih, "Implementasi Mediasi Terhadap Perkara Perceraian Di Pengadilan Agama Kabupaten Simalungun," *Jurnal Somasi (Sosial Humaniora Komunikasi)* 1, no. 1 (2020): 104-15, 104.

¹⁴ Husni Syawali and Putri Nurul Nafisaadullah. *Op. Cit*, 466.

¹⁵ Lilik Andaryuni and Ratu Haika, "Efektivitas PERMA Nomor 1 Tahun 2016 Tentang Prosedur Mediasi Di Pengadilan Dalam Menekan Angka Cerai Di Pengadilan Agama," *Jurnal Penelitian* 10, no. 2 (2018): 95-116.

in Law Number 1 of 1974. But based on the reality and phenomenon that exists that in every household there will always be disputes, ranging from small things to big things, therefore, this is what can cause various kinds of conflicts so that not all human beings can maintain their marriage or realize a household according to what they aspire to, although no human being wants any dispute, especially in the household, If disputes often occur without a definite solution from both parties then it is this condition that will lead to divorce.

Divorce means to separate or to dissolve the relationship between a husband and a wife. According to Subekti, divorce is the dissolution of a marriage by a judge's decision or the demands of one of the parties to the marriage, divorce can only be done in court either because the husband who has filed for divorce (talak) or the wife who is arguing for divorce is asking for talak rights. Article 38 of the Marriage Law explains that marriages can be broken up due to death, divorce, and by court decisions. For Muslims, divorce cases are filed with the Religious Court.¹⁶ As a last alternative, Islam requires that, before a separation occurs, peace efforts be pursued between the two parties, because the marriage bond is the most sacred and solid.¹⁷

According to the author, in general, the factors for divorce are due to infidelity, the economy, and the existence of domestic violence (domestic violence). Divorce cases are the most common in today's religious court environment, and mediation is the first step in the settlement process. Conceptually, the word "mediation" derives from the English term meaning intermediary. While in Dutch it is called Medio meaning middle and in the dictionary, Indonesian mediation means mediating.¹⁸ Furthermore, in principle, mediation can be interpreted broadly and narrowly. Broadly speaking, it is dispute resolution that is carried out both by third parties, outside the judicial system, and within the judicial system.¹⁹

In general, in the Big Indonesian Dictionary, it is stated that what is meant by mediation is the process of participating third parties in resolving a dispute as advisors.²⁰ Mediation is the process of negotiating problem-solving, impartial outsiders cooperate with the parties to the dispute to help the parties obtain a satisfactory agreement.²¹

Mediation gains a very important position in the legal system in Indonesia,²² the normative basis for peaceful dispute resolution in Indonesia is regulated in Article 130 HIR (Herzien Inlandsch Reglement)/154 RBG (Rechtreglement Voor de Buitengewesten) which orders peace efforts by judges, to be the main capital in building the legal

¹⁶ Husni Syawali and Putri Nurul Nafisaadullah. *Op.Cit*, 466.

¹⁷ Rika Saputri, "Implementasi Mediasi Dalam Perkara Perceraian Di Pengadilan Agama Krui Lampung Barat" (UIN Raden Intan, 2018), 15-16.

¹⁸ John Echols dan Hasan Shadily, *Kamus Inggris Indonesia* (Jakarta: Gramedia Pustaka Utama, 2003), 377.

¹⁹ Edi As'Adi, *Hukum Acara Perdata Dalam Perspektif Mediasi (ADR) Di Indonesia* (Yogyakarta: Graha Ilmu, 2012), 3.

²⁰ Tim Penyusun *Kamus Pusat Pembinaan Dan Pengembangan Bahasa* (Jakarta: Balai Pustaka, 2000), 640.

²¹ Garry Goopaster, *Negosiasi Dan Mediasi : Sebuah Pedoman Negosiasi Dan Penyelesaian Sengketa Melalui Negosiasi* (Jakarta: Visi Media, 1993), 27.

²² Subekti & Tjitrosudibio, *Kitab Undang-Undang Hukum Perdata* (Jakarta: Pradnya Paramita, 1985), 414.

apparatus,²³ which has been initiated since 2002 through the Supreme Court Circular (SEMA) Number 1 of 2002 concerning the empowerment of the Court of First Instance which applies 2 (two) peaceful institutions ex Article 130 HIR / 154 RBG.²⁴ Then, in 2003 through Supreme Court Regulation (PERMA) Number 2 of 2003 concerning Mediation Procedures in Courts and refined again Number 1 of 2008, the Supreme Court issued Perma Number 1 of 2016 to revoke Perma Number 1 of 2008, with the hope of increasing the success rate in mediation.²⁵ The mediation process in religious courts is part of the civil procedural law which aims to be able to implement the principles of simple, fast, and low-cost judicial administration and strengthen and optimize the function of the judicial institution in resolving cases including divorce cases.²⁶

W. E. Burger once stated that it is not true that most people want black-robed judges, well-dressed advocates, and paneled siding rooms to be good at resolving their disputes.²⁷ A troubled person is like a person in pain. They want help and they want it as quickly and cheaply as possible.²⁸ The effort to reconcile the litigants is a top priority and is seen as fair in ending a case, because reconciling it can end with no one to lose and whom to win, still the realization of kinship and harmony.²⁹ And if it is not successfully reconciled by the judge, then only then will the process of hearing the case continue.³⁰

However, based on the facts on the ground, from the data obtained by the author from the Gorontalo City Religious Court class 1A in the final report of 2018-2021, the application of mediation as the first step of the case settlement process still cannot increase the percentage of success of the mediation application, this is evident from the data obtained, namely the few cases that have been successfully resolved by mediation, especially for divorce cases in religious courts. The city of Gorontalo in 2018-2021 where more and more cases are being mediated and have not shown good results. Because of the large number of divorce cases that enter and accumulate every year in the Gorontalo City Religious Court and based on the data above, it is appropriate to question how effective mediation is in the process of resolving divorce cases.

²³ Rachmadi Usman, *Pilihan Penyelesaian Sengketa Di Luar Pengadilan* (Bandung: PT Citra Aditya Bakti, 2013), 95-96.

²⁴ Nurul Husna, "Penyelesaian Tindak Pidana Kekerasan Dalam Rumah Tangga (Kdrt) Melalui Mediasi Di Polres Bener Meriah" (Uin Ar-Raniry Darussalam, 2018), 42.

²⁵ Haeratun Haeratun and Fatahullah Fatahullah, "Efektivitas Mediasi Sebagai Alternatif Penyelesaian Perkara Perceraian Di Pengadilan Agama," *Batulis Civil Law Review* 3, no. 1. (2022).

²⁶ Putri Nurul Nafisaadullah and Husni Syawali. *Op.Cit*, 466.

²⁷ Takdir Rahmadi, *Mediasi Penyelesaian Sengketa Melalui Pendekatan Mufakat* (Jakarta: PT Raja Grafindo Persada, 2010), 12-13.

²⁸ Yulia Aswaty and Martha Eri Safira, "Efektivitas Mediasi Dalam Penanganan Perceraian Di Pengadilan Agama Ponorogo," *Jurnal Antologi Hukum* 1, no. 1 (2021): 125-44, 126-127.

²⁹ Abdullah Rifai, *Restorative Justice Dalam Mewujudkan Rasa Keadilan Masyarakat* (Jakarta: Restu Agung, 2006), 25.

³⁰ Rika Saputri. *Op.Cit*, 18.

2. Method

The research used in this article is empirical normative legal research. This method combines a normative legal approach with a range of empirical elements. The study is *descriptive-analytic*, which explains in full how effective the implementation of mediation on divorce cases in the Gorontalo City Religious Court is. Then it is analyzed through an empirical normative approach, namely writing that emphasizes the facts that occur in the field, then connected with the theory or applicable laws and regulations. The data sources consist of field data and literature data. The population comprises all components of the Gorontalo City Religious Court. The sample consists of judges and mediators of the Gorontalo City Religious Court and the parties who took part in mediation. After the data is collected, analyzed *in a descriptive analysis*, meaning that the collected data (primary and secondary data) be it obtained from the results of interviews, observations, or literature, will be connected between theoretical knowledge and the circumstances found in the field, then analyzed and concluded systematically and logically.

3. Implementation of Mediation in Resolving Divorce Cases at the Gorontalo Religious Court Class I A

The right to independence and freedom becomes the foundation for a state in upholding the rule of law on the sovereignty of its jurisdiction.³¹ The effectiveness of mediation in resolving divorce cases at the Gorontalo Religious Court is set out below on the basis of the field study conducted. Sahrul Fahmi, Vice Chair of the Gorontalo Religious Court, stated:

In my view, mediation in resolving divorce cases can already be said to be effective, because it is implemented in accordance with the applicable regulations, namely PERMA Number 1 of 2016, when viewed in terms of data on divorce cases in mediation, there are still many cases that fail in mediation than those that succeed in mediation it is not because of the ineffectiveness of the mediation carried out but the factors that cause the failure of mediation that is, from the parties who can no longer be concealed for various reasons that arise.³²

From the results of the interview above, it can be known that according to a statement from Mr. Sahrul Fahmi, Mediation in resolving divorce cases at the Gorontalo Religious Court has been said to be effective when viewed in terms of its implementation under applicable regulations, while if you look at it in terms of divorce case data from 2018-2022, in this case, divorce cases that fail in mediation are more than cases that succeed in mediation, then The cause is not due to the ineffectiveness of the implementation of the mediation itself but from both parties to the case.

Next is the author's interview with Mr. Muh. Hamka Musa, the mediator judge on the effectiveness of mediation in resolving divorce cases in PA Gorontalo, said:

³¹ Fence M. Wantu dan Usman Rasyid, "Redefinisi Kewenangan Komisi Yudisial Dalam Konstitusi: Upaya Mengharmonisasikan Putusan Pelaku Kekuasaan Kehakiman Indonesia," *Jurnal Majelis* 8. (2020).

³² Interview with Drs. Sahrul Fahmi, M.H. Vice Chairman of PA Gorontalo, on Friday, August 19, 2022.

Talking about the effectiveness of mediation in resolving divorce cases in PA Gorontalo is not effective when viewed from divorce cases which from year to year more fail in mediation than those who succeed in mediation, but in terms of the procedure the implementation is under the provisions of PERMA Number 1 of 2016, but the mediators in PA Gorontalo are quite a few because we do not use non-judge mediators because it can cost money, so that the incoming divorce cases accumulate and we from the mediator are overwhelmed, it cannot be denied that the divorce case is a very sensitive matter because it is related to the problems and feelings of the litigants, so when the mediation is carried out, the success rate is very small because both parties are determined to remain divorced.³³

From the results of the author's interview with Mr. Muh. Hamka Musa, the mediator judge of PA Gorontalo can be known that according to him that mediation in divorce cases in PA Gorontalo is still not effective because of the number of cases that fail in mediation, while the mediators in PA Gorontalo are still relatively few because they do not use non-judge mediators so that the mediator judges are overwhelmed because of the accumulation of cases, but this is mostly caused by both parties who already have problems that so complicated that it is determined to remain divorced despite various mediation efforts.

Furthermore, in the author's interview with Mr. Burhanudin Mokodompit, judge mediator of PA Gorontalo, he said:

If the question of the effectiveness of mediation in divorce cases in PA Gorontalo is effective because it has been carried out under the applicable procedural, when talking about the number of mediations that fail to be carried out, 75% of the failure factors come from the litigants who are indeed quite complicated domestic problems and cannot be denied every year the cases that enter in PA Gorontalo accumulate.³⁴

Based on the results of an interview with Mr. Burhanudin Mokodompit, the mediator judge of PA Gorontalo, it can be seen that in his view the mediation carried out in resolving divorce cases in PA Gorontalo has been effective because it is carried out under the specified procedures, and talking about the number of divorce cases that fail in mediation is something that cannot be avoided and is indeed a case that experiences a buildup every year and 75% The failure factor comes from the litigants.

In the next interview with Mr. Fikri Asnawi Amiruddin, Clerk of PA Gorontalo, He said:

In my view, the effectiveness or not of mediation in divorce cases depends on how it is implemented and how the achievement of the mediation is carried out, when viewed in terms of its implementation, it is effective because it is based on the procedure, but when viewed from the achievement of the purpose of implementing mediation is still not

³³ Interview with Mr. Drs. Muh. Hamka Musa, M.H. Judge Mediator, on Friday, August 19, 2022.

³⁴ Interview with Drs. Burhanudin Mokodompit, Mediator Judge of PA Gorontalo, on Monday, August 22, 2022.

effective, because indeed from all cases entered in PA Gorontalo, the success rate of mediation is very minimal, More things fail, some things are half successful.³⁵

Based on the results of the author's interview with Mr. Fikri Asnawi Amiruddin, Clerk of PA Gorontalo, it can be known that in his view mediation in resolving divorce cases if viewed in terms of implementation has been effective, but if you look at it in terms of achieving the objectives of the implementation of mediation, it has not been effective, this is because of all mediation cases, the success rate of mediation is very minimal.

Furthermore, the results of the author's interview with one of the parties who had participated in mediation in PA Gorontalo, namely Mrs. Vonny Lihawa, she said that:

Their household has been in disharmony for a long time and there is no benefit to continuing the household because the problems are quite complicated and last long enough, so in conducting mediation I and my ex-husband agreed to remain divorced, therefore the mediation that was carried out ended unsuccessfully. The mediator is very friendly, kind, and very understanding of what is the problem we are experiencing, but from our side who are litigants, we do not want to continue the marriage.³⁶

Furthermore, the result of the author's interview with Mrs. Indriyati Usman, a party who had filed for divorce in the Gorontalo religious court, He said that:

When my ex-husband and I went through the mediation process in PA Gorontalo, the mediator could be said to be very hasty in the determination of the decision, so that my ex-husband and I kept to our initial decision to divorce. Had the mediation not been rushed, we might have taken the option of reconciling; but that is only my own impression.³⁷

Furthermore, the author made direct observations by participating in the trial of divorce cases in PA Gorontalo, and what the author observed was that most of the parties present in the trial were only parties who registered the case, while the defendant party was not present, therefore in the divorce case could not be mediated because one of the parties did not have good faith to be present at the trial, This is what causes many divorce cases that cannot be mediated.

From the results of the interviews that the author conducted, it can be seen that the implementation of mediation in divorce cases at the Gorontalo Religious Court is in accordance with the applicable regulation, namely PERMA Number 1 of 2016 on Mediation Procedures in Courts, so that in its implementation it can be said to be effective when viewed from the PERMA. However, when viewed in terms of data on divorce cases that are entered every year at the Gorontalo Religious Court, it is still ineffective because

³⁵ Interview with Mr. Fikri Hi. Asnawi Amiruddin, S.Ag, Clerk of PA Gorontalo, on Monday, August 22, 2022.

³⁶ Interview with Mrs. Vonny Lihawa, one of the parties who had participated in mediation in PA Gorontalo, on Tuesday, August 23, 2022.

³⁷ Interview with Mrs. Indriyati Usman, one of the parties who had participated in mediation in PA Gorontalo, on Tuesday, August 24, 2022.

of the number of cases that are not successful in mediation compared with those that succeed in mediation.

Table 1. Recapitulation of Mediation Data at the Gorontalo City Religious Court Class I A, 2018-2022

No	Year	Number of Mediation Cases	Succeed	Failed
1	2018	131	13	118
2	2019	155	11	144
3	2020	143	10	133
4	2021	153	9	144
5	2022 (January - August)	88	2	76
Total		670 Cases	45 cases	> 615 Cases

Source: Mediation results data of the Gorontalo City Religious Court Class I A, 2022 (processed).

The explanation of the data above, namely that the divorce bills entered in the Gorontalo Religious Court Class I A cannot all follow the mediation process. Cases that must be mediated in the stage of resolving civil disputes filed in court are only against cases attended by both parties to the proceedings. Meanwhile, in the Gorontalo Religious Court, not all divorce cases are mediated because not all litigants have good faith to attend the trial.³⁸

So from the description above, it can be known that of the many divorce cases mediated in the Gorontalo religious court in terms of the level of cases, more cases failed in mediation than succeeded, it can be seen in the table above that from 2018 - August 2022 divorce cases undergoing mediation process amounted to 670 cases, 45 cases were successfully mediated while the remaining 615 cases were not successfully mediated. So that when viewed in terms of data on divorce cases, mediation cannot be said to be effective.

4. Factors Causing the High Rate of Mediation Failure at the Gorontalo Religious Court

4.1. Assessment against Soerjono Soekanto's Five Elements of Legal Effectiveness

To find out the effectiveness of mediation in resolving divorce cases in the Gorontalo Religious Court Class I A due to 5 factors as follows:³⁹

a. The legal factor itself

³⁸ Deflaizar. *Op.Cit.* Pg 60.

³⁹ Lilik Andaryuni and Queen Haika. *Op.Cit.* Pg 108.

What is meant by the legal factor itself is that this writing is based on PERMA Number 1 of 2016 concerning Mediation Procedures in Religious Courts. Based on the results of interviews obtained by the author from several parties that this PERMA has been implemented in the Gorontalo Religious Court under the procedures and provisions in force since it was established as the latest regulation on Mediation Procedures in Courts. So that this PERMA is an obligation to be carried out by the Gorontalo Religious Court and must be taken for parties who file cases with the Religious Court, especially divorce cases because if this PERMA is not implemented then the trial process cannot be carried out and the court's decision becomes null and void. Therefore, when viewed in terms of its law, namely PERMA Number 1 of 2016, the effectiveness of mediation in resolving divorce cases in the Gorontalo Class I A Religious Court can already be said to be effective because it is carried out under the procedures applicable in PERMA Number 1 of 2016.⁴⁰

b. Law enforcement factor

What is meant by law enforcement factors are parties who are in charge of carrying out the process of a case, namely mediator judges or non-judge mediators who in this case are third parties, namely as mediators between the two parties to the dispute? In terms of law enforcement, the effectiveness of mediation in resolving divorce cases. Based on the organizational structure of the Gorontalo Religious Court, there are only 6 mediators, all of whom are mediator judges and do not yet have non-judge mediators, this is because no one has been registered as a non-judge mediator and the parties who follow the mediation process prefer the mediator judge to the non-judge mediator because they consider additional costs when using a non-judge mediator. The Gorontalo Religious Court cannot be said to be effective because the quantity of the mediator itself is limited, so this affects the quality of the mediator judge which in this case can cause the success rate of mediation carried out is very minimal.⁴¹

c. Facilities and infrastructure factor

What is meant by the factor of facilities and infrastructure is the availability of rooms and facilities as support in the running of the mediation process at the Gorontalo Religious Court, because, without certain facilities and infrastructure, law enforcement can't run smoothly. Thus, when viewed in terms of facilities and infrastructure in PA Gorontalo, the effectiveness of mediation in resolving divorce cases in PA Gorontalo Class I A is still ineffective because it only⁴² has 1 mediation room, the lack of availability of available rooms is still lacking, this is because the number of divorce cases registered in the Religious Court is quite large so that when the mediation process is carried out the mediation can only be carried out in a fairly short time because other parties are waiting in line.⁴³

⁴⁰ Interview with Drs. Sahrul Fahmi, M.H. Vice Chairman of PA Gorontalo, on Friday, August 19, 2022.

⁴¹ Wawancara Dengan Bapak Drs. Sahrul Fahmi, M.H. Wakil Ketua PA Gorontalo, Pada Hari Jumat 19 Agustus 2022.

⁴² Deflaizar. *Op.Cit.* Pg 62.

⁴³ Interview with Mr. Fikri Hi. Asnawi Amiruddin, S.Ag, Clerk of PA Gorontalo, on Monday, August 22, 2022.

d. Community factor

What is meant by community factors is the environment in which the law applies and is applied, the meaning of the community here is the parties to the litigation in the Gorontalo Religious Court. Another element that affects the effectiveness or not of the regulation or law from society, for example from the results of the author's interview that has been described above that in the case of divorce the average party who files a lawsuit or application for divorce to the Gorontalo Religious Court has quite complicated domestic problems, there is no benefit or reason to reconcile and get along again, the decision has been unanimous in wanting to separate no matter what the best way even though the mediation process has been carried out as well as possible by the mediator, therefore if viewed in terms of the community or the parties to the case, the effectiveness of mediation in resolving divorce cases in PA Gorontalo Class I A is still ineffective because of the large number of cases that have not been successfully mediated due to the litigants themselves.

e. Cultural factor

What is meant by cultural factors is the habits that society does regarding the treatment of a rule. This cultural factor is related to the community factor almost the same because the habits of the parties litigating in the Religious Court, especially divorce cases, the cases experienced the parties are almost the same. This means that the case registered with the Gorontalo Religious Court is a very complicated matter, so divorce is the only path that most litigants want to take. So it can be said that the culture of the community or litigants is difficult to be invited to reconcile, especially in domestic matters, so this has a considerable influence on the failure of the mediation process. Therefore, it is based on this cultural factor that the effectiveness of mediation in resolving divorce cases in the Gorontalo Class I A Religious Court cannot be said to be effective.⁴⁴

From the discussion about the effectiveness or not of a law or a regulation according to Soerjono Soekanto above, when viewed in terms of law enforcement, facilities and infrastructure, society and culture are still relatively ineffective, this is what causes the success rate of mediation to be very minimal, it is proven by the data listed above. So whether or not mediation is effective in resolving divorce cases at the Gorontalo City Religious Court in terms of implementation procedures, it can be said to be effective because it is under PERMA Number 1 of 2016 concerning Mediation Procedures in Courts. Meanwhile, when viewed from the results of cases that have been successfully mediated, they are still not said to be effective. Therefore, the author concludes that the effectiveness of mediation in resolving divorce cases in the Gorontalo City Religious Court Class I A is still not fully effective.

The internal and external factors that cause the high number of mediation failures at the Gorontalo Religious Court are as follows:

⁴⁴ Deflaizar. *Op.Cit.* Pg 63.

4.2. Internal Factors

Internal factors in the mediation of divorce cases are factors that come from the litigants, and mediators, to divorce cases. These factors include:

4.2.1. *Factors Relating to the Divorce Case*⁴⁵

The divorce case factor is the initial basis for taking the step of divorce and filing a lawsuit or application for divorce to the Gorontalo Religious Court. These factors such as:

1. Of the two parties to the case who have a strong desire to divorce, in the mediation process carried out at the Gorontalo Religious Court Class I A, often one of the parties even if both have a strong determination to divorce. The problem from both parties is already severe or complex, if it is said that the problem is a disease then the disease is chronic, this is based on a problem that cannot be solved such as continuous disputes due to the presence of third parties, the presence of parties who often get drunk, husbands who no longer provide a living, gambling, and are indifferent or have separated their residences, thus causing a mismatch that resulted in the two of them desperately wanting to divorce. Their arrival in court usually occurred as a result of unsuccessful peace efforts made by the family. So this often makes it difficult for mediators to pursue peace efforts.
2. Conflicts or problems that occur between the parties have been protracted-protracted and for so long, usually cases or problems that they have experienced for a long time, some are around 2, 3, or 4 years before they file a lawsuit or divorce application in court. During the mediation process, the parties can no longer suppress their emotions so that they can no longer receive input from the mediator and feel self-righteous. It is not uncommon for the Petitioner/Plaintiff to be unable to forgive the Respondent/Defendant party so it is difficult to get along again.
3. One of the parties has been separated for a long time and has remarried.
4. The mistakes made by one of the parties are very fatal for example apostate and adultery.

4.2.2. *Factors Relating to the Litigants*

This factor is the most dominant factor that causes the failure of the mediation process at the Gorontalo Religious Court. Because:

1. Non-compliance with the rules i.e. not having good faith, for example, the absence of one of the parties, The presence of the litigants is very important in the mediation process, because the mediation process cannot run smoothly without the presence of the parties. In reality, one of the parties is sometimes not present at the time of the mediation process, even though the court has previously made an attempted

⁴⁵ Interview with Drs. Sahrul Fahmi, M.H. Vice Chairman of PA Gorontalo, on Friday, August 19, 2022.

summons to attend the mediation. In the absence of one of the parties, the mediation process cannot continue.⁴⁶

2. The parties who do not want to be invited to cooperate, to both find solutions to the problems that occur between the parties, because the successful mediation factor is mainly from the parties themselves.⁴⁷
3. Psychological or psychiatric factors, deep disillusionment with their life partner often gives rise to a sense of hopelessness in a person's marital ties. So there was no choice but to end the marriage.⁴⁸
4. Did not find a bright spot of the problem. Both sides each with their egos, they do not leave it entirely to the mediator and do not listen to/accept the opinion of the mediator.
5. There is no sincerity between the two sides to make peace, being earnest in finding a way out of the problem is an attempt to reconcile. Because the success of mediation must be based on the parties themselves, if the parties do not have good faith then success in mediation will not be achieved.
6. There is a sense of shame to relent from one of the parties, the magnitude of the sense of prestige by the parties to the case by assuming that when their case has been filed for divorce in court, then they or one of the parties feel ashamed to reconcile again, as a result of which the litigants maintain their respective egos for divorce only. So that is what makes it quite difficult for the mediator judge to reconcile the two sides to achieve mediation success and even result in the mediation process failing.⁴⁹

The meaning of the information does not have good faith when in the mediation process as follows: ⁵⁰

1. Not attending after being duly summoned 2 times in a row to a mediation meeting without a valid reason.
2. Attend the first meeting but do not attend the next meeting despite having been duly summoned 2 times in a row without a valid reason.
3. Repeated absences that interfere with the schedule of mediation meetings without a valid reason
4. Attended the mediation meeting, but did not want to be good in finding a solution to make peace.

⁴⁶ Interview with Mr. Fikri Hi. Asnawi Amiruddin, S.Ag, Clerk of PA Gorontalo, on Monday, August 22, 2022.

⁴⁷ Interview with Drs. Burhanudin Mokodompit, Mediator Judge of PA Gorontalo, on Monday, August 22, 2022.

⁴⁸ Interview with Mr. Fikri Hi. Asnawi Amiruddin, S.Ag, Clerk of PA Gorontalo, on Monday, August 22, 2022.

⁴⁹ Interview with Mr. Drs. Muh. Hamka Musa, M.H. Judge Mediator, on Friday, August 19, 2022.

⁵⁰ Interview with Drs. Sahrul Fahmi, M.H. Vice Chairman of PA Gorontalo, on Friday, August 19, 2022.

5. The case registered with the court has dragged on for so long that reconciliation has become difficult.
6. Not signing the concept of an agreed peace deal without a valid reason.

4.2.3. Factors Relating to the Mediator

There are limited mediator judges owned by the Gorontalo Religious Court, PA Gorontalo only has 6 mediator judges and does not have a non-judge mediator because no one has been registered, while the number of divorce lawsuits filed by the community to the Gorontalo Religious Court is quite high. So that when mediation is carried out, the mediator judge is overwhelmed because there are queues and a buildup of cases. Therefore, the non-judge mediator, in this case, is required to ease the settlement of the mediator's case by dividing the mediation process by involving both judge mediators and non-judge mediators. This is one of the obstacles in carrying out the mediation process.⁵¹

4.3. External Factors

External factors are factors that originate from outside the mediation process or supporting factors from the implementation of mediation.

4.3.1. The Place Where Mediation Is Conducted (Facilities)

The place of mediation or mediation room is a supporting factor for the smooth running of the mediation process, but the room in the Gorontalo religious court is very minimal, therefore every divorce case that is mediated is carried out quickly and hastily considering the queue of mediation cases.

Based on the author's interview with Mr. Fikri Hi. Asnawi Amiruddin, Clerk of PA Gorontalo, he said that :⁵²

In supporting the smooth process of mediation, the mediation room is one of its supporters, for example, if in the mediation process, the room is comfortable and cool, there is no noise, there are many readings that can motivate, for example, with a very comfortable room, even the litigants will think more calmly, because this concerns feelings, so as much as possible the mediation room can make the hearts and minds of the litigants relax and relax. In PA Gorontalo itself, the room includes meeting the comfort standards, but the problem here is the lack of space provided so that it wants to be as comfortable as the litigants if the mediation is carried out in a hurry, also yes the chances of success are very minimal, why is this because this is talking about feelings and domestic problems which in this case are not easy to talk about and solve in a fairly short time.

4.3.2. Environmental Factors

The influence of outside parties or from third parties on the plaintiff who wants his household to dissolve. This third party could mean family or loved ones. Although there

⁵¹ Interview with Drs. Burhanudin Mokodompit, Mediator Judge of PA Gorontalo, on Monday, August 22, 2022.

⁵² Interview with Mr. Fikri Hi. Asnawi Amiruddin, S.Ag, Clerk of PA Gorontalo, on Monday, August 22, 2022.

is a desire from married couples to be peaceful, because the family has interfered, it is difficult for them to be reconciled. It is from these environmental factors that the parties become discouraged and feels prestige if they decide to reconcile because if these parties take a peaceful decision while the case has entered the court they are worried that it will become a laughing stock and also become the subject of stories by friends of friends from both parties.⁵³

From the discussion of the causes of failure in the mediation process above, and based on the results of interviews that the author conducted with several parties in the Gorontalo Religious Court Class I A, the author concludes that the factors that cause many failures in the mediation process at the Gorontalo Religious Court Class I A are the first factors in divorce cases or the causes and initial reasons for filing a divorce lawsuit, the conflicts that occurred in their households have been protracted and complicated problems, so the last solution they have to go through is to file a case with a Religious court so that they can get a divorce. The second factor is from both parties to the case, parties who do not want to assume good faith when carrying out the mediation process so that the mediator cannot carry out the mediation process properly. The third is the parties' desire to divorce, almost all divorce cases filed with religious courts fail in mediation efforts because divorce is a matter of the heart of the heart's desire is strong for divorce then it is difficult to maintain the fourth factor of the lack of availability of mediator judges, with the large number of cases entering the Gorontalo Religious Court making the mediator judges overwhelmed in carrying out mediation. The fifth is the lack of availability of facilities and infrastructure in this case the room used in the mediation process at the Gorontalo Religious Court is only 1. And finally, there are environmental factors that influence both parties to continue to divorce in this case, namely family and closest friends.

5. Conclusion

The effectiveness of mediation in resolving divorce cases at the Gorontalo Religious Court cannot be fully said to be effective, this is because the success rate of mediation is very minimal, based on report data obtained by the author from 2018-August 2022 more cases have not been successfully mediated than cases that have been successfully mediated, under the theory of legal effectiveness proposed by Soerjono Soekanto, that whether or not a law or regulation is effective must meet five elements, namely the legal factor itself, the law enforcement factor, the facilities and infrastructure factor, the community factor and the cultural factor. Of the five elements from the writing carried out by the author both from the results of interviews, field observations, and law analysis in the Gorontalo Religious Court Class I A of the 5 (five) elements, only one element can be said to be effective, namely the legal factor itself, in terms of its implementation which is under the procedure as stated in PERMA Number 1 of 2016, while the other 4 elements cannot be said to be effective, this is what causes the implementation of mediation in resolving divorce cases in the Gorontalo Religious Court cannot be said to be effective. The factors that cause many failures in the implementation of mediation in the Gorontalo Religious Court Class I A are the first factor in the divorce case or the initial reason for filing a

⁵³ Interview with Drs. Sahrul Fahmi, M.H. Vice Chairman of PA Gorontalo, on Friday, August 19, 2022.

divorce lawsuit, the factor of both parties to the case, and the factor of lack of availability of the mediator judge. The next factor is the lack of availability of facilities and infrastructure in this case the room used in the mediation process at the Gorontalo Religious Court is only 1. And the last one is the environmental factors that influence both parties to continue to divorce in this case, namely family and closest friends.

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