

# Integration of Mediation in Divorce Cases Reviewed from Supreme Court Regulation on Court Mediation Procedures

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## Article Info

Submitted: April 10, 2023  
Revised: October 3, 2023  
Accepted: January 2, 2024

### Keywords:

Divorce; Mediation  
Procedure; Integration.

### How to cite [Chicago Manual of Style 17th edition (full note)]:

Nirwan Junus, Mohamad  
Taufiq Zulfikar Sarson,  
Nurul Fazri Elfikri, and  
Job Wahidun Muntholib,  
"Integration of  
Mediation in Divorce  
Cases Reviewed from  
Supreme Court  
Regulation Number 1 of  
2016" *Jambura Law  
Review* 6, no. 2 (2024):  
183–205.

## Abstract

*The court as a law enforcement instrument has been implementing mediation since 2008. However, the success of mediation is still far from what was expected. This indicates that the integration of mediation in the court system has not been effective, especially related to divorce cases. The integration of mediation into court practice, on the one hand, aims to avoid the accumulation of cases and maximize the function of court institutions in resolving adjudicative disputes, but on the other hand, it increases the judges' workload. Therefore, integrating mediation into court proceedings can be an instrument in reducing the divorce rate. This research uses an empirical normative approach in terms of Supreme Court Regulation Number 1 of 2016. The obtained data will be analyzed qualitatively. The research results indicate that the integration of mediation in divorce cases at the Gorontalo City and Regency Religious Courts has prioritized societal values, particularly deliberation to reach the best solution for the parties involved. However, this approach does not seem to align well with the social dynamics in Gorontalo City. This is because there are still several key factors that hinder achieving the best results through mediation. The failure to reach critical points in these deliberations results in a minimal success rate for mediation in resolving divorce cases, as evidenced by the relatively high number of divorce decisions. This is often due to the parties involved blaming each other and being unwilling to negotiate for a mutual agreement.*

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## 1. Introduction

Conflict is an inevitable part of human life. Problems should not be avoided but resolved. Law enforcement frequently encounters obstacles as societal development and the rapid pace of globalization increase the potential for conflict, including divorce. Traditionally, divorce is viewed as a significant event, considered a social issue with legal consequences.<sup>1</sup> Regarding divorce, it is regulated by the Marriage Law, which emphasizes making divorce difficult. This regulation constricts divorce procedures and mandates that divorce must be conducted in court (Article 39 paragraph 1). The court system provides married couples a grace period before filing for divorce. In practice, dispute resolution, particularly in divorce cases, can be achieved through various means, including mediation.

Supreme Court Regulation (PERMA) Number 1 of 2016 on Mediation Procedures in Court regulates the use of mediation as a method of resolving disputes in court. Arising problems in human life, including divorce, are often difficult to resolve through conventional law enforcement.

According to PERMA No. 1 of 2016, mediation is a dispute resolution method that involves a negotiation process facilitated by a mediator to help the disputing parties reach an agreement. In religious courts, efforts to reconcile the parties are considered a fair way to resolve problems, as mediation ensures that no party wins or loses. Article 4 paragraph 1 of PERMA mandates that all civil disputes submitted to the court must attempt to be resolved through mediation, unless otherwise specified by PERMA.

Mediation is not an unfamiliar method for resolving disputes; it simply adapts different approaches and methods to the local legal culture. In the religious court context, the presence of a mediator is a well-established practice aimed at ensuring that the disputing parties attempt to reach a peaceful resolution. In the religious court environment, mediation has been practiced as a method for resolving cases, particularly divorce cases.<sup>2</sup> Thus, mediation serves as a means to achieve ideal justice in resolving disputes. The formal basis for the integration of mediation in the justice

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<sup>1</sup> Badruzzaman Ismail, *Asas-Asas Dan Perkembangan Hukum Adat* (Banda Aceh: CV. Boebon Jaya, 2013).

<sup>2</sup> Febri Handayani and Syafliwir Syafliwir, "Implementasi Mediasi Dalam Penyelesaian Perkara Perceraian Di Pengadilan Agama," *Jurnal Al Himayah* 1, no. 2 (2017): 227–50.

system is found in Article 130 of the HIR and Article 145 of the R.Bg. To enhance its effectiveness, the Supreme Court has made the mediation process more coercive.<sup>3</sup> This background led to the issuance of SEMA on January 30, 2002, concerning the Empowerment of Courts of First Instance to Implement Peaceful Institutions. However, SEMA was largely unsuccessful because judges, by nature, are not effective mediators and often reluctant to engage in the mediation process. This prompted the Supreme Court to issue Supreme Court Regulation No. 1 of 2016 on Mediation Procedures in Court. According to Article 1 of PERMA No. 1 of 2016, mediation is defined as a method of resolving disputes through negotiation to reach an agreement between the parties with the help of a mediator. In the Religious Court setting, efforts to reconcile the parties are viewed as a fair approach to resolving issues, as reconciliation focuses on achieving a mutually acceptable resolution rather than determining a winner or loser. Article 4 paragraph 1 states that "all civil disputes submitted to court must first seek resolution through mediation, unless otherwise determined based on this Supreme Court Regulation."<sup>4</sup> As one of key implementers of judicial power in Indonesia, religious courts have incorporated mediation into their case resolution process, particularly for divorce cases. Theoretically, mediation offers several advantages, including quicker resolution and lower costs for both parties. Most importantly, it helps reduce the backlog of cases in the court system.<sup>5</sup>

The prevailing realities of generally accepted fatwa life in Indonesian society highlight the inefficiency and lack of improvement in the effectiveness of the justice system in Indonesia. This often results in prolonged resolution times for mediation cases. This requires the involvement of a mediator in a divorce case to mediate for the disputing parties to resolve the case peacefully without interfering in determining the contents of the peace agreement for the parties. because the mediator has a very important role, therefore a mediator must be neutral between both parties. This is to achieve

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<sup>3</sup> Sri Wahyuni Husain, "Mediation Optimization in Gorontalo Religion Court," *Al-Mizan* 13, no. 2 (December 1, 2017): 204–26, <https://doi.org/10.30603/am.v13i2.854>.

<sup>4</sup> Yusna Zaidah and Mutia Ramadhania Normas, "Mediasi Online Dalam Penyelesaian Perkara Perceraian Di Era Pandemi," *Journal of Islamic and Law Studies* 5, no. 2 (2021), <http://103.180.95.17/index.php/jils/article/view/5847>.

<sup>5</sup> Handayani and Syafliwat, "Implementasi Mediasi Dalam Penyelesaian Perkara Perceraian Di Pengadilan Agama."

consensus in resolving disputes in the form of deliberation. This is in accordance with the principles of the mediation process as the peace agreement material is the absolute right of the parties without any intervention from the mediator.<sup>6</sup>

In the context of handling divorce cases at the Gorontalo Religious Court in the last 3 years, 2019-2021, it was recorded that of the 452 cases submitted, only 30 cases were successful in mediation. Additionally, at the Limboto Religious Court, the success rates for mediation have been low in recent years. In 2019, out of 716 cases submitted, only 86 were successfully resolved through mediation. In 2020, of 731 cases, only 72 were successfully mediated. In 2021, out of 710 cases, only 57 were resolved through mediation. The data indicates that the success rate of mediation in divorce cases at PA Gorontalo and PA Limboto remains quite low. Integrating mediation into divorce proceedings at Religious Courts is one of the instruments to address the backlog of cases and enhance the effectiveness of court institutions, in line with Supreme Court Regulation Number 01 of 2016. This context provides the basis for conducting this research.

## 2. Problem Statement

Based on the description above, the problem formulation is as follows:

- 1) What things must be implemented regarding the implementation of mechanisms in mediation arrangements as an effort to reduce the divorce rate are reviewed from Supreme Court Regulation No. 1 of 2016?
- 2) To what extent is the integration of mediation to maximize the function of court institutions in reducing the divorce rate in the Religious Courts of Gorontalo City and Gorontalo District?

## 3. Methods

The method employed in this research is empirical juridical research, also known as field research. This approach examines the alignment between theoretical normative legal provisions and their practical application in real-life situations. Specifically, the study investigates how normative legal provisions are enacted and applied in practice.

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<sup>6</sup> D.Y Witanto, *Hukum Acara Mediasi Dalam Perkara Perdata Di Lingkungan Peradilan Umum Dan Peradilan Agama Menurut PERMA No. 1 Tahun 2008 Tentang Prosedur Mediasi Di Pengadilan* (Bandung: Alfabeta, 2017).

The research will focus on the Gorontalo City Religious Court and the Gorontalo Regency Religious Court, with data analyzed qualitatively.

#### **4. Implementation of Mechanisms in Mediation Arrangements in Efforts to Reduce Divorce Rates Reviewed by PERMA No. 1 of 2016**

Civil dispute resolution can basically be divided into peaceful dispute resolution and adversarial dispute resolution.<sup>7</sup> Peaceful dispute resolution is often referred to as resolution through deliberation and consensus. In contrast, adversarial dispute resolution involves third parties who are not directly involved in the dispute, with mediation being one such method. Mediation is a problem-solving negotiation process in which an impartial and neutral outside party works with the disputing parties to help them reach an agreement that satisfies both parties (win-win solution). According to Article 1 point 1 of Supreme Court Regulation no. 1 of 2016 concerning Mediation Procedures in Court states that: "Mediation is a method of resolving disputes through a negotiation process to obtain agreement between the parties with the assistance of a Mediator."<sup>8</sup>

Mediation based on the procedure is divided into two parts, including:

- 1) Mediation carried out in court (litigation) is regulated in Article 130 HIR/154 RBG in conjunction with PERMA No. 1 of 2016 on Mediation Procedures in Court;
- 2) Mediation carried out outside of court (non-litigation) is regulated in Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution.<sup>9</sup>

Mediation in court strengthens peaceful efforts as stated in procedural law Article 130 HIR (Hetherziene Indonesische Reglement) or Article 154 RBG (Rechtreglement Buiten Gewesten).<sup>10</sup> For this reason, the Supreme Court issued PERMA No. 1 of 2016

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<sup>7</sup> Muhammad Luthfi, Yaris Adhial Fajrin, and Hasnan Bachtiar, "The Existence of Urf in the Resolution of Marriage Disputes in Islamic Law: A Living Law Perspective," *Jurnal IUS Kajian Hukum Dan Keadilan* 12, no. 1 (2024): 146–58, <https://doi.org/10.29303/ius.v12i1.1356>.

<sup>8</sup> See Supreme Court, "Supreme Court Regulation (PERMA) Number 1 of 2016 on Mediation Procedures in Court (Article 3)".

<sup>9</sup> Witanto, *Hukum Acara Mediasi Dalam Perkara Perdata Di Lingkungan Peradilan Umum Dan Peradilan Agama Menurut PERMA No. 1 Tahun 2008 Tentang Prosedur Mediasi Di Pengadilan*.

<sup>10</sup> Syahrizal Abbas, *Mediasi Dalam Hukum Syariah, Hukum Adat, Dan Hukum Nasional* (Depok: PT. Kharisma Putra Utama, 2017).

on Mediation Procedures in Court is a refinement of Supreme Court Regulation (PERMA) Number 1 of 2008 on Mediation Procedures in Court. The Supreme Court made these improvements because in Supreme Court Regulation (PERMA) Number 1 of 2008 several problems were found, so that the implementation of mediation in court was ineffective.<sup>11</sup> Article 3 of PERMA No. 1 of 2016 mandates that all civil cases brought before the court of first instance must go through mediation. Failure to comply with this mediation requirement renders the court's decision being null and void.<sup>12</sup> The Supreme Court recognized that Supreme Court Regulation (PERMA) Number 1 of 2008 faced implementation challenges, including the lack of a requirement for parties to attend mediation sessions in person and incomplete supporting regulations. As a result, the regulation did not achieve the success initially intended, partly due to the parties' lack of commitment to the mediation process.<sup>13</sup>

The Supreme Court introduced PERMA No. 1 of 2016 to expedite, reduce costs, and simplify the dispute resolution process. This regulation aims to ensure clarity, order, and efficiency in reconciling parties and resolving civil disputes.

Mediation, as a peaceful dispute resolution method, has significant potential for growth in Indonesia. Given the deep-rooted Eastern customs, individuals often value preserving harmonious relationships with family and business partners over short-term gains from disputes. While winning in court may bring substantial financial benefits, it often harms the relationship.<sup>14</sup>

Incorporating mediation into court proceedings can enhance and optimize the role of judicial institutions in resolving disputes, aligning with the court's primary adjudicative function. Mediation in court is mandatory, as it is supported by Supreme Court Regulation (PERMA) and reinforces Article 130 HIR/154 RBG.<sup>15</sup> The article specifies that before a case is reviewed by a panel of judges, efforts must be made to reach a settlement between the parties. All judges, mediators, and parties involved are

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<sup>11</sup> Susanti Adi Nugroho, *Manfaat Mediasi Sebagai Alternatif Penyelesaian Sengketa* (Jakarta: Prenada Media, 2019).

<sup>12</sup> See Supreme Court, Supreme Court Regulation (PERMA) Number 1 of 2016 on Mediation Procedures in Court (Article 3).

<sup>13</sup> Nugroho, *Manfaat Mediasi Sebagai Alternatif Penyelesaian Sengketa*.

<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid.*

required to adhere to the dispute resolution process through mediation.<sup>16</sup> The provisions regarding Mediation Procedures in this Supreme Court Regulation apply in the process of litigating cases in the Courts, both in general and religious courts. Before entering the mediation process, a lawsuit must first be registered with the Registrar of the District Court concerned. Then, after the appointment of the Panel of Judges by the Chairman of the Court, the Chairman of the Panel determines the first day of the trial and orders the Bailiff/Substitute Bailiff to summon both parties on the appointed trial day. Article 7 of PERMA No. 1 of 2016 mandates that mediation must be conducted in good faith. The parties involved are required to approach the mediation with good intention to ensure the process is effective and successful. Indicators that suggest a lack of genuine intent in mediation include:

Failure to attend the mediation sessions despite being summoned twice in succession.

- a) Attending the initial mediation meeting but missing subsequent sessions, even after being summoned twice.
- b) Repeated absences disrupt the mediation schedule.
- c) Failure to submit or respond to the case summary.
- d) Failure to sign the peace agreement.

The presence of parties lacking good intentions during mediation affects the legal process of case examination. This is evident in how the parties' lack of good intentions impacts the overall mediation process.

The legal consequences of a plaintiff who does not act in good faith include:

- 1) Plaintiffs who do not act in good faith may have their lawsuit declared inadmissible (NO).
- 2) They are required to cover the costs of mediation.
- 3) The mediator will report that the plaintiff did not act in good faith, including recommendations for sanctions and their amounts.
- 4) Based on the mediator's report, the judge conducts a trial and issues a decision.
- 5) Any mediation costs imposed as a sanction are deducted from the plaintiff's

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<sup>16</sup> Ibid.

deposit or paid separately by the plaintiff and given to the defendant.

The legal consequences of a defendant who does not act in good faith include:

- 1) Defendants who fail to act in good faith will be required to cover the mediation costs.
- 2) The mediator will indicate the defendant's lack of good faith in the mediation report, including recommendations for sanctions and their amounts.
- 3) Before proceeding with the case examination, the judge will issue a ruling based on the report, declaring the defendant's lack of good faith and ordering them to pay the prescribed amount.
- 4) Payment of mediation costs by the defendant follows the implementation of the decision which has permanent legal force.
- 5) Payment from the defendant is handed over to the plaintiff through the clerk's office.
- 6) Mediation costs.

According to PERMA Number 1 of 2016, the details and guidelines for charging mediation costs are explicitly outlined. The regulation specifies the following regarding mediation costs:

- 1) Mediation costs are costs incurred in the mediation process as part of case costs, which include costs for summoning the parties, travel costs based on actual expenses, meeting costs, expert fees and others.
- 2) The use of judge mediators and court officials is free of charge.
- 3) The costs of non-judge mediator services are borne jointly or based on the agreement of the parties.
- 4) The costs of summoning the parties to attend the mediation process are borne by the plaintiff first through a case fee retainer.
- 5) If mediation is successful, summons costs are borne jointly or based on the agreement of the parties.
- 6) If mediation is unsuccessful or cannot be carried out, the summons fee is borne by the losing party, except for divorce cases in the Religious Courts.

In terms of the process of implementing mediation regulated in PERMA Number 1 of



2016 on Court Mediation Procedures regulates the mediation stages which are divided into three stages, including:

### **1. Premediation stages**

The plaintiff or his attorney registers his legal claim at the court clerk's office.<sup>17</sup> The Chief Justice will assign a Panel of Judges to review the case. On the scheduled hearing day, which the parties are expected to attend, the Presiding Judge will mandate that they participate in mediation. If a party fails to appear at the initial hearing, they can be summoned again in accordance with procedural law. If a party still does not attend after being summoned, mediation can proceed without being disrupted by their absence. The Judge reviewing the case must inform the parties about mediation, covering its purpose, procedures, benefits, and the obligations of the parties to participate. The judge should also explain the legal consequences of not acting in good faith, the costs associated with mediation, and the option to sign a deed if an agreement is reached. After this explanation, the parties are required to sign a form acknowledging their understanding of the mediation process. Once the Examining Judge has explained the mediation process and presented the form detailing the mediation procedures and the parties' commitment to participate in good faith, the parties are then asked to select one or more mediators from those registered with the court. They have up to two days to make their choice. If the parties fail to agree on a mediator within the given time frame, the chief judge of the panel will appoint a judge mediator or a certified court employee to handle the mediation. Once appointed, the mediator will schedule the date and time for the mediation session.

### **2. Mediation process stage**

At this stage, within five days after the parties select a mediator or the chief judge appoints one, they must provide their Case Resume to the other party or the mediator. The mediator plays a crucial role in the success of the mediation process. Thus, mediators must possess strong skills to ensure that the mediation process proceeds smoothly and adheres to the procedures outlined in Supreme Court Regulation

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<sup>17</sup> Aulia Mubarak, M. Adli, and Iman Jauhari, "Implementation of Marriage Itsbat in Aceh," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 21, no. 1 (2021): 119-34, <https://doi.org/10.18326/ijtihad.v21i1.119-134>.

(PERMA) Number 1 of 2016 on Court Mediation Procedures. They are required to follow the behavioral guidelines set by the Supreme Court and are prohibited from serving as judges who examine and adjudicate the case. This provision can be concluded from the article which states that a judge reviewing a case, whether as chairman of the panel or member of the panel, is prohibited from acting as a mediator for the case in question.<sup>18</sup> In Supreme Court Regulation (PERMA) Number 1 of 2016 on Mediation Procedures in Courts, especially Article 19, states that the Chief Judge has determined the list of mediators in the Supreme Court Decision.

The qualifications for mediators in Supreme Court Regulation (PERMA) Number 1 of 2016 on Mediation Procedures in Court:

- 1) The Chief Judge appoints a Judge Mediator who is not the same as the Judge reviewing the case and making the decision.<sup>19</sup>
- 2) Every mediator must hold a Mediator Certificate, which is awarded upon completing and passing the mediator certification training conducted by the Supreme Court or an accredited institution.<sup>20</sup>
- 3) According to the Court Chairman's Decree, judges who are not certified may serve as mediators if there is a shortage or insufficient number of certified mediators. Additional details about the requirements and procedures for mediator certification and the accreditation of certification institutions are outlined in the Decree of the Chief Justice of the Supreme Court.<sup>21</sup>

At this stage, the mediator's role is to facilitate joint meetings where all parties can engage in dialogue and exchange information. During these meetings, the mediator is responsible for gathering input from all sides, fostering a positive relationship, and building mutual trust among the parties. The mediator must utilize their skills to investigate the issue, analyze data, and gather information. They should explore the interests of all parties, assess these interests, and ultimately encourage a resolution. This process may include holding private meetings or caucuses with the parties

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<sup>18</sup> Abbas, *Mediasi Dalam Hukum Syariah, Hukum Adat, Dan Hukum Nasional*.

<sup>19</sup> See Supreme Court, Supreme Court Regulation (PERMA) Number 1 of 2016 on Mediation Procedures in Court (Article 3 Paragraph 5).

<sup>20</sup> Ibid. (Article 13 Paragraph 1).

<sup>21</sup> Ibid. (Article 20).

involved.

Supreme Court Regulation (PERMA) Number 1 of 2016 on Mediation Procedures in Court carries binding authority and enforcement for the parties in a case. Failure to participate in mediation can result in the court's decision being invalidated. Mediation is a mandatory step in every civil case examination, serving as a continuation of peace efforts.<sup>22</sup>

Under PERMA No. 1 of 2016, the mediation process is set for 30 days from the issuance of the mediation order. If more time is needed, the mediation period can be extended by up to 30 additional days, provided the agreement of the parties. To request an extension of time, the parties must have the mediator submit a request to the reviewing judge, along with the reasons for the extension.

According to Article 26 of PERMA No. 1 of 2016, the mediation process may involve one or more experts, community leaders, religious leaders, or traditional leaders, provided that the inclusion of these individuals is approved by the parties, their legal representatives, and the mediator. Additionally, any explanations or assessments given by these individuals must be agreed upon by the parties beforehand to determine whether their input is binding or non-binding.

### **3. The Stage of Conclusion of Mediation**

Mediation is considered concluded with one of two outcomes: First, if mediation is successful, resulting in an agreement between the parties, the next step is to formalize this agreement into a legally binding peace deed, similar to a court decision with permanent legal effect.<sup>23</sup> Second, if the mediation process results in a deadlock and fails, the case will proceed to trial in court. If an agreement is reached, the parties, with the mediator's assistance, must draft and sign the peace agreement. The agreement must then be reviewed by the case judge within a maximum of 2 (two) days. If the peace agreement is found to be non-compliant with the requirements specified in Article 27, paragraph (2), the examining judge must return it to the mediator and the parties for

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<sup>22</sup> Ivana Gloria Ompusunggu, "Mediasi Dalam Penyelesaian Perkara Perdata Di Pengadilan," *Lex Crimen* 9, no. 2 (2020), <https://ejournal.unsrat.ac.id/index.php/lexcrimen/article/view/28554>.

<sup>23</sup> Kamaruddin Kamaruddin, "The Early Marriage of the Tolaki Konawe Community in the Perspective of Critical Islamic Law," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 22, no. 2 (2022): 255-70, <https://doi.org/10.18326/ijtihad.v22i2.255-270>.

corrections. The mediator is responsible for ensuring that the peace agreement does not include provisions that:

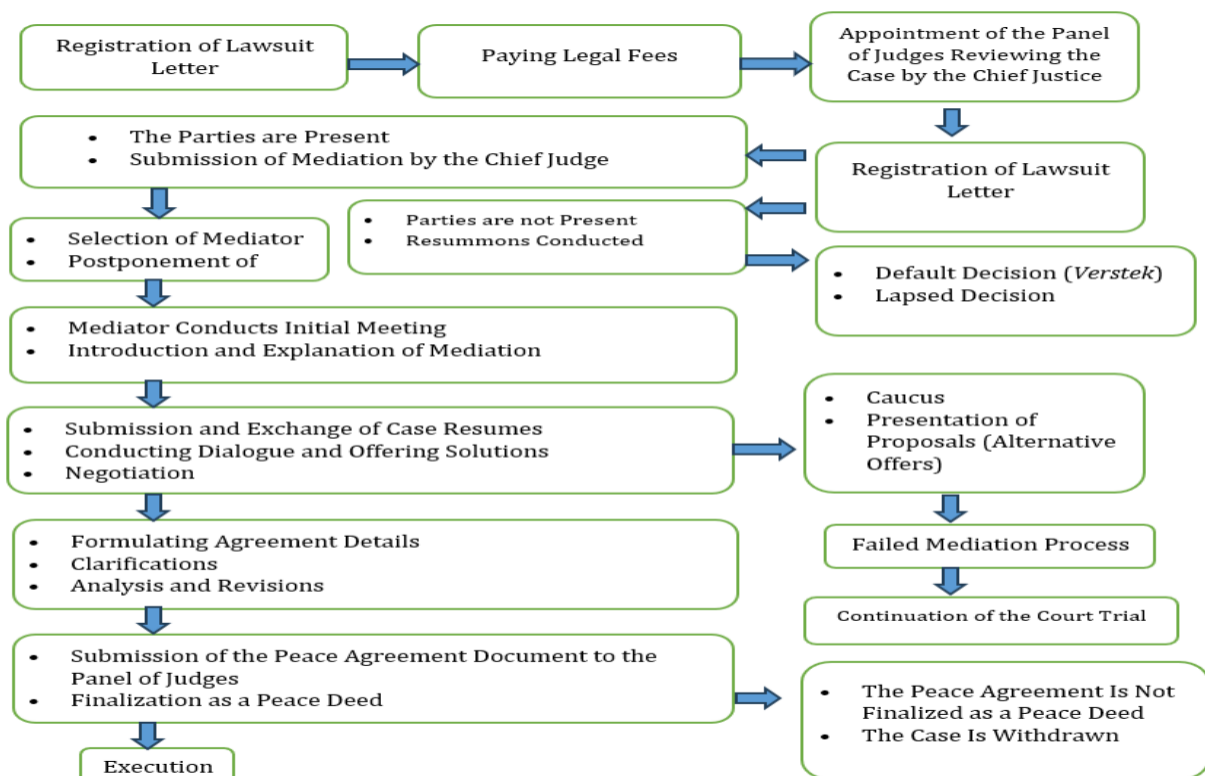
- 1) Contrary to law, public order and/or morality
- 2) Harm third parties; or
- 3) Cannot be implemented.

If a legal representative is involved in the mediation process, the peace agreement can only be signed if the parties provide a written statement confirming their approval of the agreement. If the mediation fails or reaches a deadlock, the mediator must declare it unsuccessful and inform the examining judge in writing. The written notification must include:

- a) The parties do not reach an agreement until the maximum time limit is 30 (thirty) days and the extension as regulated in Article 24 paragraph (2) and paragraph (3).
- b) The parties do not act in good faith as intended in Article 7 paragraph (2) letters d and e.

The explanation regarding the sequence of pre-mediation and mediation process stages at the Gorontalo City and Gorontalo District Religious Courts is as follows:

### Order of the Mediation Process in Court



At the Religious Courts of Gorontalo City and Gorontalo District, mediators are categorized into two groups: *first*, certified mediators who come from outside the court, and second, judge mediators. While judge mediators are not required to be certified, non-judge mediators must hold certification. The role of the mediator involves guiding, advising, and assisting the parties in finding solutions. The mediator helps facilitate the resolution of the case without making decisions or imposing their own views or assessments on the issues at hand.<sup>24</sup>

The duties of a mediator in a divorce case are as follows: *First*, the mediator must prepare a proposed schedule for mediation meetings, which is then discussed and agreed upon by the parties. *Second*, the mediator is responsible for encouraging the parties to actively participate in the mediation process. *Third*, if needed, the mediator may conduct separate meetings during the mediation process. *Fourth*, the mediator must encourage the parties to identify and discuss their interests and consider various resolution options that would best serve both parties.<sup>25</sup> The regulations outlined in PERMA No. 1 of 2016 provide a clear legal framework for the implementation of mediation, offering protection and guidelines for the parties involved in the case.

Mediation arrangements in maximizing the function of religious justice institutions in reducing the divorce rate<sup>26</sup> can be referred to in PERMA No. 1 of 2008 as amended by PERMA No. 1 of 2016 on mediation. In PERMA, mediation is integrated into the trial process and is considered a mandatory step within procedural law. Both the plaintiff and defendant must participate in mediation if they are present at the trial. If mediation is not conducted despite both parties being present at the trial, the judge's decision will be rendered null and void due to non-compliance with the mediation requirements specified in PERMA No. 1 of 2016. However, a current challenge for the court in effectively conducting mediation is the frequent absence of the parties, which prevents

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<sup>24</sup> Interview with Burhanudin Mokodompit at the Gorontalo Class 1A Religious Court, April 4, 2022

<sup>25</sup> *Ibid.*

<sup>26</sup> Lilik Andar Yuni, "The Use of Ex Officio to Fulfill Women's Post-Divorce Rights at the Samarinda Religious Court," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 21, no. 2 (2021): 135-54, <https://doi.org/10.18326/ijtihad.v21i2.135-154>.

the mediation process from proceeding. Consequently, the panel of judges may end up issuing a verdict on the case without the participation of the absent party.

## 5. Integrating Mediation to Maximize the Function of Court Institutions in Reducing Divorce Rates in the Religious Courts of Gorontalo City and Gorontalo District

Generally, society is known for its preference for peaceful problem-solving. This is evident in the way communities often turn to religious and community leaders for assistance in resolving issues. These discussions typically take place in village meeting halls or the homes of respected leaders. For the Muslim community, peaceful resolutions were traditionally held in mosque courtyards, which eventually evolved into what are now known as Religious Courts.<sup>27</sup>

The incorporation of mediation into the judicial process highlights the crucial role of PERMA mediation in dispute resolution (rather than case adjudication). Historically, PERMA No. 1 of 2016 was established to formally recognize mediation as an essential stage in the trial process that must be conducted during court proceedings. Mediation, traditionally a method for resolving disputes outside the courtroom (non-litigation), has been integrated into the court system (litigation) through PERMA No. 1 of 2016. This regulation is expected to achieve at least four key objectives:

- 1) Mediation is intended to be a faster and more cost-effective dispute resolution process, aligning with the expectations of the parties involved.
- 2) Mediation offers the parties more opportunities to actively engage in finding a mutually satisfactory solution.
- 3) Mediation is expected to reduce the backlog of cases in court.
- 4) Mediation will strengthen and maximize the function of court institutions in resolving disputes *non-adjudicatively*.

The integration of mediation into divorce cases is a compelling area of study due to the prevalence of such cases in religious courts, which hold a prominent position. This

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<sup>27</sup> Muhammad Saifullah, "Efektivitas Mediasi Dalam Penyelesaian Perkara Perceraian Di Pengadilan Agama Jawa Tengah," *Al-Ahkam* 25, no. 2 (2015): 181-204, <https://doi.org/10.21580/ahkam.2015.25.2.601>.

trend is evident across nearly all religious courts in Indonesia. In compliance with PERMA No. 1 of 2016, these courts are required to implement mediation.

The case ranked highest in the Gorontalo City Religious Court Class 1A and the Limboto Religious Court Class 1B is related to divorce matters. Divorce cases are civil cases that must be resolved through mediation first. There are several possibilities for mediation in divorce cases, such as:

- a) When one of the parties fails to attend the trial, mediation cannot proceed, allowing the judge to render a decision in absentia or *verstek*.
- b) The mediator successfully reconciled the Plaintiff and Defendant (they decided not to divorce), leading to the case being withdrawn and the judge issuing a Decision.
- c) The mediator successfully reconciled the Plaintiff and Defendant, resulting in an amicable divorce.

This indicates that if mediation fails, the case proceeds to the examination of the main issue. A crucial provision is the requirement for parties to attend mediation meetings in person. Article 6, paragraph (1) of PERMA No. 1 of 2016 stipulates: "Parties are required to attend the mediation meeting in person, with or without the presence of a legal representative." This provision mandates that both plaintiffs and defendants must personally attend the mediation meeting, regardless of whether they are accompanied by a legal representative.

PERMA No. 1 of 2016 regulates that absence is one of the reasons that can result in a party who is not present being declared to have bad faith in carrying out the mediation process by the mediator. In the event that the plaintiff is found to be acting in bad faith, the judge handling the case will reject the plaintiff's claim, and the plaintiff will be responsible for the mediation costs (as outlined in Article 22 of PERMA No. 1 of 2016). If the defendant is found to be acting in bad faith during the mediation process, and the plaintiff wins the case, the defendant will be responsible for the mediation costs. Conversely, if the defendant wins, the defendant will still bear the mediation costs, while the plaintiff will cover the court costs (as stated in Article 23 of PERMA No. 1 of 2016). If both parties (plaintiff and defendant) are found to have acted in bad faith by

the mediator, the case will be declared inadmissible by the examining judge, and no mediation fee penalty will be imposed (according to Article 23 of PERMA No. 1 of 2016). Articles 22 and 23 of PERMA No. 1 of 2016 have been applied by Religious Court mediator judges by imposing mediation summons fees on parties demonstrating bad faith, while the plaintiff continues to bear the case fees. PERMA No. 1 of 2016 also revised the mediation process timeframe from 40 days with a 14-day extension to 30 days with a potential additional 30-day extension. PERMA No. 1 of 2016 further reduces the duration for the mediation process to 30 days. Article 24, paragraphs 2 and 3, state: Paragraph 2: The mediation process must be completed within 30 days from the issuance of the mediation order. Paragraph 3: With the parties' agreement, this period can be extended for up to an additional 30 days after the initial 30-day period ends.

The Gorontalo City Religious Court Class 1A and the Limboto Religious Court Class 1B are authorized to handle civil cases for Muslims in the Gorontalo City and Regency areas. These courts have addressed various cases brought before them, with mediation being one of the key procedures used for resolving civil disputes. Mediation is expected to be the most effective method for resolving cases, as it is a mandatory procedure in the legal process. Below is the data collected from the Gorontalo City Religious Court and the Limboto Religious Court.

**Table 1.** *Recapitulation of Gorontalo City Religious Court Mediation Data Class 1A*

<b>Year</b>	<b>Number of Mediation Cases</b>	<b>Successful</b>	<b>Unsuccessful</b>
<b>2019</b>	155	11	144
<b>2020</b>	143	10	133
<b>2021</b>	153	9	144

*Source: Mediation report data at the Gorontalo Religious Court Class 1A*

**Table 2.** *Data on Divorce and Talak Divorce at the Limboto Class 1B Religious Court*

<b>Year</b>	<b>Number of Cases Received</b>	<b>Successful</b>	<b>Unsuccessful</b>
<b>2019</b>	716	86	630
<b>2020</b>	731	72	659
<b>2021</b>	710	57	653

*Source: Data on divorce reports at the Limboto Class 1B Religious Court*



According to the data provided, the Gorontalo Religious Court's handling of divorce cases over the past three years shows a decline in successful mediations. In 2019, out of 155 cases filed, only 11 were resolved through mediation. In 2020, among 143 cases, only 10 were successfully mediated. In 2021, of the 153 cases submitted, just 9 were resolved through mediation. A similar pattern was observed at the Limboto Religious Court. In 2019, out of 716 cases filed, only 86 were successfully mediated. In 2020, from 731 cases, just 72 were resolved through mediation. In 2021, of the 710 cases submitted, only 57 were successfully mediated. This indicates that the success rate of mediation in resolving cases remains quite low.

According to interview results, while mediation is considered a very effective method for resolving divorce cases, its success rate remains low.

*"Mediation is highly effective, but the success rate remains quite low. This is often because parties who have brought their cases to court may have already exhausted other mediation efforts within the family before filing. Additionally, some cases are driven by emotional factors, which can make successful mediation more challenging."<sup>28</sup>*

The author contends that the effectiveness of mediation in divorce cases should be gauged by the number of cases that are withdrawn. Nonetheless, it's crucial to recognize that a case withdrawal may not solely be attributed to the mediation conducted by the court; it could also stem from the parties' personal reflections and choices. Thus, mediation can be pursued as long as the case remains active in court, whether through the court's own mediation services or through external mediation efforts initiated by the parties involved.<sup>29</sup>

Before beginning the trial, the Religious Court Judge must make every effort to reconcile the parties involved. These peace efforts must be made by the judge while the divorce case is still pending, regardless of whether it is a talak divorce or a contested divorce. The mediation process is also utilized in handling divorce cases at the Limboto

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<sup>28</sup> Interview with Burhanudin Mokodompit at the Gorontalo Class 1A Religious Court, April 4, 2022

<sup>29</sup> Darmawati Darmawati, "Fungsi Mediasi Dalam Perkara Perceraian," *Sulesana: Jurnal Wawasan Keislaman* 9, no. 2 (2014): 88–92, <https://doi.org/10.24252/.v9i2.1303>.

Religious Court, where the panel of judges continues to work on reconciling the parties even if a reconciliation is not achieved. According to HIR, the judge's recommendation for peace is provided during the first trial, before the lawsuit is read. Recommendations for peace can be made at any time before the case is decided. However, making these recommendations at the start of the first trial is mandatory and must be recorded in the trial minutes. This requirement exists despite the fact that the likelihood of achieving peace at this early stage is generally considered to be quite small.<sup>30</sup>

The mediation process is challenging as divorce mediation involves deep personal issues that are not always visible. The effectiveness of mediation largely depends on the parties involved, as the mediator can only offer solutions and guidance without having the authority to compel them. The mediator's role is to encourage the parties to seek reconciliation, but high levels of personal pride and resistance can hinder progress, with neither party willing to compromise. This situation complicates the mediator's task, as even after conducting caucuses to understand the parties' reasons and emotions, they may still resist or find it difficult to reach a resolution. Ultimately, this resistance can lead to mediation failure. The challenge often stems from the parties themselves, who may blame each other and refuse to engage in negotiations to find a solution.

In Gorontalo, the value of "deliberation" is an integral part of daily life. However, in practice, this value seems to be diminishing in the context of dispute resolution. Instead of embracing deliberation, there is a growing tendency toward confrontational methods and a litigious culture. Parties involved in court disputes are often reluctant to engage in deliberations aimed at finding mutually beneficial solutions. It is important to highlight that civil disputes often stem from each party's firm stance on the contested issue, leading to a decline in the culture of deliberation and a shift towards modern legal processes. Given this context, the judges at the Limboto Religious Court and Gorontalo City Religious Court are working to enhance the role of court institutions in reducing the divorce rate through the following efforts:

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<sup>30</sup> Roihan A. Rasyid, *Hukum Acara Peradilan Agama* (Jakarta: PT. Raja Grafindo, 2000).

- 1) Requires the parties to engage in mediation at the initial trial and explains that under Supreme Court Regulation Number 1 of 2016, the judges must prioritize mediation before advancing to the trial phase.
- 2) Offering the parties an explanation about marriage and divorce from religious, sociological, and psychological perspectives. Religiously, divorce is considered displeasing to God. From a sociological and psychological standpoint, it is important to consider the impact on children, who require guidance from both parents. The presence of parental love and the influence on the child's development are crucial factors.
- 3) Introducing a religious or traditional leader, provided this is done with the consent of the parties, their legal representatives, and the mediator.
- 4) Informing the parties about the consequences of divorce.
- 5) Ensuring compliance with the rules, such as presenting a minimum of two witnesses and not accepting any excuses, could lead to the suspension or discontinuation of the evidentiary trial.

If the dispute remains unresolved and the divorce proceeds, the panel of judges will work to provide the best possible solutions for both parties regarding child custody, iddah living arrangements, mut'ah, child support, and division of joint assets.

Comparison of mediation methods and techniques employed in other courts that are recognized for their effectiveness in achieving successful mediation outcomes and reducing divorce rates, as follows:

- 1) Mediation as an initial stage

Many courts have adopted an approach similar to that suggested by the Limboto Religious Court and the Gorontalo City Religious Court, by requiring mediation as an initial stage before trials can proceed. This approach provides an opportunity for disputing parties to communicate, seek mutually beneficial solutions, and reach an agreement without the need to go through a lengthy trial process.

## 2) Multidisciplinary approach

Some courts have adopted a multidisciplinary approach to mediating divorce disputes. Apart from involving mediators who are trained in law, the court also involves religious experts, sociologists and psychologists to provide a comprehensive understanding of the implications of marriage and divorce and to find sustainable and meaningful solutions for all parties involved.

## 3) Education and counseling

Courts that are successful in conducting mediation often provide education and counseling programs for couples seeking divorce. This program aims to provide better information regarding the consequences of divorce, conflict management, and effective communication strategies. By gaining a better understanding, couples can better reconsider their decisions and gain the tools necessary to manage their marital problems.

## 4) Involve community leaders and families

Some trials also involve religious or traditional leaders, as suggested in the article. The presence of these figures provides a cultural perspective and traditional values that can assist in resolving disputes in a way that is more harmonious and in accordance with the needs of the local community.

## 5) Interest-based problem solving

Successful mediation often uses an interests-based problem-solving approach. This means that the mediator helps the disputing parties to identify their core interests and find a solution that meets those interests. This approach can create a more sustainable and more satisfying agreement for all parties involved.

Therefore, achieving peace is not just about the formal act of resolving the case and withdrawing it from court; it also involves fully resolving the dispute amicably between the parties. This must be done while maintaining legal certainty and ensuring a sense of justice. In addressing divorce issues between husband and wife within the family setting, Religious Courts attempt to resolve these matters through a mediation program. This involves a negotiation process facilitated by a mediator to help the parties reach a mutually agreeable solution. However, the success or failure of the

mediation ultimately depends on the willingness of the disputing parties to engage in and adhere to the mediation process.

## 6. Conclusion

The integration of mediation in divorce cases at the Gorontalo Religious Court and the District Religious Court in Limboto Regency has not fully adhered to established mediation procedures. Despite the assistance of mediators, the disputing parties have struggled to reach satisfactory agreements. This suggests a decline in the appreciation and practice of deliberation that was once valued. Instead, there is a growing tendency towards contentious dispute resolution and a culture of litigation. This is evident from the reluctance of most disputing parties in court to engage in deliberations aimed at achieving a win-win solution.

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