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Legal Analysis of the Legal Basis for Mediation in Dispute Resolution Efforts in Religious Courts

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Abstract:

Mediation is an important instrument in the Indonesian judicial system, particularly in Religious Courts, as an effort to resolve disputes in line with the principles of simple, fast, and low-cost justice, reinforced by PERMA Number 1 of 2016 and updated by PERMA Number 3 of 2022, which accommodates electronic mediation in response to technological developments and post-pandemic community needs. This study aims to analyze the legal basis and effectiveness of mediation in Religious Courts by comparing the provisions in both regulations, particularly in the settlement of divorce and child support cases. The method used is normative juridical with a qualitative approach through a literature study of primary, secondary, and tertiary legal materials analyzed descriptively and qualitatively. The results of the study show that mediation has a strong legal basis and plays a role in improving efficiency and access to justice, particularly through the application of electronic mediation. However, its success rate is still influenced by the low level of good faith among the parties, the limited number of certified mediators, the dominant culture of litigation, and the readiness of technological infrastructure. Therefore, it can be concluded that optimizing mediation in Religious Courts requires improving the competence of mediators, strengthening technological facilities and infrastructure, and conducting ongoing outreach so that mediation truly becomes an effective, fair, and humane means of dispute resolution.

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Introduction

Dispute resolution in Indonesia can be done through two main approaches, namely adjudication and non-adjudication, where mediation as part of non-adjudication offers a faster, cheaper, more flexible process and is able to maintain relations between parties (Yahya, 2025). The legal basis is regulated in Article 130 HIR and Article 154 RBg, which require judges to reconcile disputing parties before trial, and is reinforced by PERMA No. 1 of 2016 concerning mediation procedures in court and PERMA No. 3 of 2022 which improves the implementation of electronic mediation due to the WFH policy. This evolution reflects the adaptation of mediation to technological developments and community needs, as stipulated in the jurisdictional principle in Law No. 48 of 2009 which emphasizes efficiency and accessibility.

In 2022, 20,861 cases were successfully resolved through mediation in religious courts, indicating a significant increase in the use of mediation in divorce and child support cases, driven by PERMA No. 3 of 2022 which facilitates online mediation (Apriyanita et al., 2024). However, mediation outcomes vary, ranging from complete success (dismissal of the case) to partial success, to failure or inability to implement if a party fails to appear twice without justification (Anggriawan et al., 2023). This phenomenon is evident in various courts, where in-person mediation has shifted to electronic mediation during the pandemic, increasing access but also creating practical challenges.

The urgency of mediation is increasingly pressing amidst the high burden on the judiciary, where the adjudication process is time-consuming and expensive, while mediation offers a peaceful solution that takes into account emotional and psychological aspects and the value of deliberation in Islamic Family Law (Apriyanita et al., 2024). With the increase in divorce cases, mediation has become crucial for judicial efficiency, public accessibility, and the prevention of protracted conflict, especially post-pandemic, which demands digital adaptation through PERMA No. 3 of 2022 (Putra & Utama, 2021).

The novelty of this research lies in the comparison of PERMA No. 1 of 2016 with PERMA No. 3 of 2022, specifically the impact of electronic mediation on the resolution of child support disputes in divorces in Indonesian religious courts. This approach integrates psychological, sociological, and Islamic Family Law perspectives, which have not been comprehensively explored since the implementation of the latest regulations (Apriyanita et al., 2024; Anggriawan et al., 2023).

Although mediation has been comprehensively regulated, gaps remain in the effectiveness of electronic mediation implementation in the field, where success rates are not always optimal due to the absence of parties or the lack of specific guidelines for emotional cases such as child support (Anggriawan et al., 2023). Previous research has focused more on general mediation (Putra & Utama, 2021), while a comparative analysis of current regulations and a multidisciplinary perspective on divorce has not been conducted in-depth (Apriyanita et al., 2024). This study aims to compare PERMA No. 1 of 2016 and No. 3 of 2022 in improving the effectiveness of electronic mediation for resolving child support disputes in divorce cases in religious courts.

Methods

This study uses a qualitative, normative-juridical approach to analyze laws and regulations and legal documents related to the implementation of mediation in Religious Courts. The normative-juridical approach is used to examine the principles,

theories, and legal principles governing mediation, as stated in the HIR, RBg, PERMA No. 1 of 2016, and PERMA No. 3 of 2022. The type of data used in this study is secondary data, consisting of:

1. Primary legal materials, namely laws and regulations such as HIR, RBg, Law No. 48 of 2009, Law No. 30 of 1999, and relevant PERMA.
2. Secondary legal materials, such as literature, scientific articles, law journals, textbooks, and expert opinions regarding mediation in the Indonesian legal system.
3. Tertiary legal materials, in the form of legal dictionaries, legal encyclopedias, and indexes are used to support understanding of primary and secondary materials.

Data collection was conducted through library research, reviewing various legal sources and relevant literature. The collected data were then analyzed using descriptive-qualitative analysis, namely by outlining the contents of laws and regulations and analyzing their application in religious court practice, particularly in the mediation process in Religious Courts. This analysis aims to uncover the effectiveness and challenges of implementing mediation as an alternative dispute resolution in Religious Courts.

Results

Understanding Mediation in the Indonesian Legal System

Mediation is defined as a dispute resolution process through negotiation to reach an agreement between the parties with the assistance of a neutral third party, called a mediator. Etymologically, mediation comes from the Latin word mediare, meaning "to be in the middle," reflecting the mediator's role as an impartial intermediary. Meanwhile, according to PERMA No. 1 of 2016 Article 1 paragraph 1, mediation is a method of dispute resolution through a negotiation process to reach an agreement assisted by a mediator who does not have the authority to decide the case. This definition is reinforced by the views of experts such as Laurence Bolle and Garry Goospaster, who emphasize that mediation is an active effort to resolve conflicts with a win-win solution approach without the intervention of binding decisions (Tunajah, 2018).

Mediation is a dispute resolution process in which a third party (the mediator) helps disputing parties reach a peaceful agreement. Mediation in the context of divorce is crucial, but its implementation faces various challenges. In divorce cases, disputing parties often prefer to obtain a judge's decision rather than resolve the issue through mediation. This is due to a lack of public understanding of mediation and a culture that does not support peaceful dispute resolution (Musyrifah et al., 2024).

Dispute resolution through ADR (Alternative Dispute Resolution) is not unfamiliar to Indonesian culture, as Indonesians inherently have a family spirit and a cooperative nature in resolving problems. Various ethnic groups in Indonesia have long practiced deliberation and consensus as a means of decision-making. For example, the Batak people use the Runggun traditional forum to resolve conflicts amicably, while the Minangkabau people use the Nagari Customary Council (KAN) as a peacemaking institution that functions as a mediator and conciliator in resolving community issues. Therefore, the concept of ADR is well-received and in harmony with the social character of Indonesian society (Sugianto et al., 2020).

Mediation can be conducted by two or more parties (multiparties) involved in a dispute. The mediation process can be successful if all parties in the dispute are able to accept the outcome. However, sometimes obstacles arise that prevent a problem

from being resolved, and the mediation ends in a deadlock. The mediator in this process must be neutral and must not make decisions for any party. The mediator's role is as a facilitator, facilitating communication between the disputing parties. This communication must be conducted with transparency, honesty, and an exchange of opinions to reach a consensus (Anggriawan et al., 2024) .

According to the theory put forward by Abbas and Goodpaster, mediation has five main principles, namely (Suwanda, 2021):

1. Confidentiality: All information and processes in mediation are confidential and not public. Furthermore, mediators must maintain the confidentiality of all mediation proceedings and should destroy all related documents after the mediation session is complete. Mediators cannot be called as witnesses in court for cases resolved through mediation they facilitated.
2. Voluntary As mediation is conducted on the basis of the free will of all parties involved, the principle of voluntariness is based on the idea that individuals will be more willing to cooperate to find a solution to their dispute if they come to the negotiating table of their own choosing.
3. **Empowerment** where the disputing parties are encouraged to actively seek their own solutions. This principle is based on the assumption that parties willing to participate in mediation have the ability to negotiate their own problems and reach the desired agreement.
4. Neutrality, where a mediator must be neutral, impartial, and not make decisions.
5. Unique Solutionthat is, the agreement reached does not have to be in the form of formal law, but must provide an effective solution to the problem at hand.

The mediation process has a maximum duration of 30 (thirty) days, calculated from the date of the order to conduct mediation. A mediator is a judge or other party who holds a mediation certificate and acts as a neutral party who assists the parties in the negotiation process to find a solution to the dispute without deciding or forcing a settlement. In general, the mediation process is private, unless the parties wish otherwise. However, reporting to the examining judge regarding parties who are not acting in good faith and instability of the mediation process by the mediator is not considered a violation of the private nature of mediation (Saragih et al., 2020).

In its bureaucratic reform efforts focused on the vision of realizing a supreme Indonesian judicial body, the Supreme Court of the Republic of Indonesia has made mediation a crucial element in improving public access to justice. Mediation also supports the implementation of the principle of simple, expeditious, and low-cost judicial administration. Religious courts, as part of the judiciary, have adopted mediation in the dispute resolution process. Theoretically, dispute resolution through mediation in religious courts offers various benefits, including expedited dispute resolution at lower costs and reduced congestion and case backlogs in court (Ferian & Syahputra, 2023).

Legal Basis for Mediation Applicable in Religious Courts

Mediation has become a crucial mechanism for dispute resolution in Indonesia, both in and out of court. In an effort to improve public access to justice, the Supreme Court of the Republic of Indonesia has made mediation a supporting element in its vision of establishing a supreme judicial body. The legal basis for mediation in Indonesia, particularly in the context of religious courts, is regulated by several laws and regulations.The legal basis for mediation is:

1. Article 130 HIR and Article 154 RBg(Regulation op de Burgerlijke Rechtsvordering)→ requires judges to attempt to reconcile the disputing parties before the trial begins. These two articles form the legal basis that requires judges to play an active role in suggesting or facilitating mediation between the disputing parties. This article explains mediation as the initial step in the judicial process to attempt to resolve disputes without requiring a judicial decision. This aims to encourage peaceful dispute resolution and reduce the burden of litigation in court. Article 130 HIR and Article 154 of the RBG require judges to first attempt to reach a settlement between the disputing parties. However, because the implementation method has not been regulated in detail, there is a legal gap that needs to be filled by the Supreme Court to ensure the smooth running of the trial. Therefore, to optimize the implementation of this article, the Supreme Court issued SEMA No. 1 of 2002, which requires all panels of judges hearing cases to seriously attempt to reach a settlement by implementing the provisions of Article 130 HIR/154 RBG, not merely a formality that only proposes a settlement (Zaitullah, 2020).

2. PERMA (Supreme Court Regulation) No. 2 of 2003→This regulation marks the first milestone in the institutionalization of mediation in the Indonesian judicial system, issued primarily to reduce the caseload in courts. It is also intended as a more efficient and cost-effective alternative for dispute resolution, capable of producing satisfactory results for the disputing parties. Furthermore, this PERMA integrates mediation into the first-instance court proceedings, making it a formal part of the civil justice process.Although Supreme Court Regulation No. 2 of 2003 served as the initial basis for the institutionalization of mediation in court, this regulation was deemed incomplete and technically lacking. Therefore, in 2008, the Supreme Court issued Supreme Court Regulation No. 1 of 2008 as an effort to improve it. Some weaknesses in the 2003 Regulation include the failure to regulate in detail the role of non-judge mediators, the failure to explain the consequences for judges or parties who fail to participate in the mediation process, and the suboptimal duration of mediation and procedures for ratifying agreements.

3. PERMA No. 1 of 2008→The Court Mediation Procedures serve as the official guidelines for the implementation of mediation in courts in Indonesia. This regulation regulates how mediation procedures are conducted in court and designates mediators who will facilitate the mediation process between disputing parties. PERMA No. 1 of 2008 was issued by the Supreme Court as a refinement of PERMA No. 2 of 2003, which was deemed to have shortcomings in its implementation. The goal is to streamline the mediation mechanism in courts in order to reduce the backlog of cases and provide faster and more affordable access to justice for the public (Purba, 2018).

4. PERMA No. 1 of 2016→Mediation is a dispute resolution process through deliberation and consensus involving a neutral third party, the mediator, whose job is to help the parties reach an agreement without having the authority to decide the case like a judge. The mediator's role is to encourage the creation of a just and balanced peace, without any party feeling disadvantaged. The primary goal of the mediation process is to reach a peace agreement that, if successful, can be formally formalized in the form of a peace deed (Devi & Mahadewi, 2022). In PERMA No. 1

of 2016, an important aspect to note regarding mediators is that they must be neutral and certified. Mediators can come from various backgrounds, such as judges, court clerks, or court employees, as long as they meet the certification requirements. Mediators do not have the authority to decide disputes but are solely tasked with facilitating reconciliation between the disputing parties. The mediator's role is to help both parties reach a voluntary agreement without imposing a decision. Mediation, as regulated in PERMA No. 1 of 2016, emphasizes the role of certified mediators in facilitating constructive dialogue between the parties involved in a dispute. Mediation is integrated into the Indonesian judicial system to ensure a fast, simple, and affordable dispute resolution process. Under PERMA No. 1 of 2016, court mediation is mandatory before a trial begins (Article 36), as a first step in seeking an amicable agreement between the disputing parties. Meanwhile, out-of-court mediation also allows the parties to reach an amicable agreement, which can then be confirmed by the district court, giving it legal force. Both forms of mediation aim to provide a more efficient and effective alternative dispute resolution, prioritizing peace and reducing the burden on the courts (Devi & Mahadewi, 2022). Article 3 Paragraph (3) PERMA No. 1 of 2016states that all civil cases brought to court must first be resolved through mediation.

5. PERMA No. 3 of 2022→PERMA No. 3 of 2022 accommodates online (electronic) mediation and aligns it with the principles of civil procedural law..In early March 2020, the coronavirus (COVID-19) began to spread throughout the world, including Indonesia, which then faced significant challenges. Since then, the spread of COVID-19 in Indonesia has grown rapidly, resulting in significant changes in almost all aspects of people's lives. The government, medical personnel, and various elements of society are facing significant challenges in controlling the spread of this highly contagious virus. The COVID-19 pandemic has not only tested the capabilities of the health sector but has also had a profound impact on the economy, social sector, education, and legal system in Indonesia.

   PERMA No. 3 of 2022This regulation was issued in response to technological developments and the need for efficiency, as well as the Supreme Court's implementation of the e-Court system. The primary objective of this regulation is to explicitly regulate the technical aspects of online mediation, which were not previously detailed in PERMA No. 1 of 2016. In electronic mediation, mediation meetings can be conducted online using platforms such as Zoom, Skype, Google Meet, and others. The entire mediation process, from case summary, summoning parties, appointing a mediator, to signatures, is conducted electronically. The mediation application and electronic signature are used based on an agreement between the parties at the suggestion of the mediator, and this electronic signature is recognized as legally valid (Ashady et al., 2024).

Legal Analysis of Mediation Practices in Religious Courts

According to the provisions of PERMA (Supreme Court Regulation) Number 1 of 2016, Article 3, every civil case, especially family civil cases, must go through a mediation process before the main case is examined by a panel of judges. The purpose of this mediation is to reach an amicable agreement between the parties without the need to proceed to a full trial. The mediation process must be attended in person by

both parties, either with or without legal assistance. The services of a mediator who comes from a judge or court employee are free of charge. Mediation is conducted in the court mediation room, unless both parties agree to choose another location. However, mediators who come from judges or court employees are not permitted to lead mediation outside the court (Amelia et al., 2025).

While mediation is regulated by law, its practice in religious courts still faces various challenges, both technical and substantive. Some frequently encountered issues include mediator effectiveness, mediation duration, and compliance with the principles of voluntariness and neutrality. Therefore, it is important to conduct a legal analysis of mediation practices in religious courts to understand the extent to which existing regulations are effectively implemented and the challenges that need to be addressed to improve the quality and outcomes of mediation in the religious court system.

The conventional justice system is considered slow, expensive, and complicated, especially in civil and business cases that demand efficiency. Court decisions are often unsatisfactory to both parties, and the principle of "fast, simple, low cost" often becomes little more than a slogan. Therefore, mediation is seen as a more effective and satisfactory alternative solution. Mediation in family disputes, such as inheritance, divorce, and property division, is a very useful alternative dispute resolution process. The mediation process offers a more peaceful and collaborative approach compared to formal court proceedings. In cases of lawsuits regarding the division of joint property, the trial process does not immediately delve into the merits of the case, but must first go through a mediation stage in accordance with the provisions of Supreme Court Regulation (Perma) No. 1 of 2016 concerning Mediation Procedures in Court, and in line with the principles of fast, simple, and low-cost justice. Mediation aims to provide the parties (former husband and wife) with the opportunity to resolve the dispute amicably and through deliberation, without the need for a coercive judicial decision.

For example, the Marriage Law states that the division of assets after divorce follows the laws applicable to each party, which may vary according to Islamic law, customary law, or other laws. In the Compilation of Islamic Law and judicial practice, the division of joint assets is generally carried out on a 50:50 basis, although customary law may have different provisions. In Religious Courts, the dispute resolution process is carried out through systematic stages, from lawsuit to verdict, with mediation being a crucial component of efforts to reach a peaceful resolution.

Mahdaniyal Hasanah's research also states that mediation at the Purwodadi Religious Court has been conducted since 2007, based on applicable regulations. Mediation is conducted by judges acting as mediators, with the exception of the Chief Justice and Deputy Chief Justice of the Religious Court. Of the 18 judges, only three are certified mediators. However, despite mediation efforts, the results have not met expectations, particularly because many couples are already determined to divorce and find it difficult to maintain amicable settlements.According to Drs. H. Ma'mun Azhar, SH, MH, a judge at the Purwodadi Religious Court, mediation often fails because the people who bring their cases to court are very stubborn and have no desire to repair their marriages. Mediation becomes difficult because the couples involved already feel that divorce is the only way out (Nuriyyatiningrum, 2019).

In a wayNormatively, mediation aligns with the principles of simple, expeditious, and low-cost justice as mandated by the Judicial Power Law.

Furthermore, mediation reflects the values of deliberation inherent in Indonesian society and the principles of Islamic family law. However, in practice, the effectiveness of mediation still faces various challenges, such as low legal awareness among the parties, a lack of qualified certified mediators, and limited technological infrastructure for electronic mediation.

Thus, sustained efforts by the Supreme Court and judicial institutions are needed to strengthen the implementation of mediation, both through regulation, mediator training, and public education. Optimally conducted mediation can be an effective alternative solution for resolving family disputes within the Religious Courts and can also help reduce the caseload in the courts.

Conclusion

Based on a normative legal analysis of the implementation of mediation in Religious Courts, mediation has a solid legal basis through Article 130 HIR, Article 154 RBg, Law Number 48 of 2009 concerning Judicial Power, and PERMA Number 1 of 2016 and Number 3 of 2022, which make it an integral pillar of civil justice in line with the values of deliberation, restorative justice, and the principles of Islamic family law. The adaptation of electronic mediation post-pandemic further expands access to justice. However, its effectiveness in practice is hampered by low awareness of good faith among the parties, limited certified mediators, and a dominant litigation culture in divorce cases. Therefore, optimization is needed through improving mediator competence, socializing its benefits, and adequate electronic infrastructure so that mediation truly realizes simple, fast, low-cost, fair, humane, and sustainable justice.

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