

MEDIATORS OPTIMIZATION OF CIVIL DISPUTES MEDIATION PROCESS AT POST-PERMA COURT NO. 1 OF 2016

Fahri Latukau*, Nam Rumkel, Suwarti

Universitas Khairun, Ternate, North Maluku, Indonesia

Email: fahrilatukau@gmail.com*

ARTICLE INFO

Date received : June 26, 2022
Revision date : July 17, 2022
Date received : July 25, 2022

Keywords:

Optimization; mediator; civil disputes; PA Ternate and PA Morotai

ABSTRACT

This study aims to analyze the factors causing the unsuccessful mediation process carried out by the mediator in resolving civil disputes, as well as what steps are important for the existence of the mediator in conducting the mediation process for civil disputes in court in accordance with the mandate of Perma Number 1 of 2016. This research method uses empirical legal research, namely research that looks at the application of legislation in society. The research conducted by the researcher belongs to the type of field qualitative research, namely research that emphasizes the completeness of the data collected in the form of primary and secondary data. The results showed that factors that cause the unsuccessful mediation process carried out by the mediator in resolving civil disputes. First, Certified mediator, The first obstacle regulated by the Supreme Court is admitting an intermediary or third party in the mediation process with a certification issued by the Supreme Court. A logical consequence that arises in the courts is also the limited number of judges with the high quality of cases which do not maximize the mediation process. The effectiveness of the implementation of peace efforts is influenced by the number of cases charged to judges. This will actually affect the performance of a judge in seeking peace for the parties. Another obstacle is the facilities and infrastructure in carrying out mediation.

INTRODUCTION

Mediation is a problem-solving negotiation process in which an impartial and neutral outside party works with the disputing parties to help them reach a satisfactory agreement (Amriani, 2012). Moreover, the fundamental basis of negotiation and mediation practice is not only the cognitive analysis of opposing interests and the rational formulation of the most effective solution, but also the recognition of the emotional aspects at play (Kelly & Kaminskiene, 2016). Simply put, mediation is the process of resolving disputes between two or more parties by consensus and assisted by outside parties.

In practice, mediation in the Religious Courts is a method of peaceful dispute resolution that is appropriate, effective, and can open wider access for the parties to obtain a satisfactory and fair settlement (Abbas, 2017). Peace is the best way to resolve disputes between litigants,

How To Cite: Latukau, F., Rumkel, N., & Suwarti. (2022). Mediators Optimization of Civil Disputes Mediation Process at Post-Perma Court No. 1 of 2016. *Journal of Social Science*. 3(4).
<https://doi.org/10.46799/jss.v3i4.382>
E-Issn: 2721-5202
Published By: Ridwan Institute

with peace, the litigants can explore a mutually beneficial resolution. This is because, in peace, what is emphasized is not only the legal aspect, but how both parties can still get the maximum benefit from the choices they agree on. Here it is also seen that with peace, the settlement puts forward the human side and the desire to help and share each other, neither side wins nor loses.

The provisions of the applicable civil procedural law, Article 154 of the Regulation of the Procedural Law for regions outside Java and Madura (Reglement Tot Regeling Van Het Rechtwezen In De Gewesten Buiten Java En Madura, Staatsblaad 1927:227) and Article 130 of the updated Indonesian Regulation (Het Herziene Inlandsch Reglement, Staatsblaad 1941: 44) encourages the parties to pursue a peace process that can be utilized through mediation by integrating it into litigation procedures in the Court. The mediation process in court as part of civil procedural law can strengthen and optimize the function of the judiciary in dispute resolution (Sumanto & Syamsinah, 2016).

Dispute is a dispute that occurs between the parties (between contending parties) regarding a matter that is the object of the agreement between the parties. Disputes can occur when one party feels dissatisfied because another party, for example, does not fulfill his achievements or obligations that have been agreed in the items of the agreement or agreement (Soekanto, 2014). Mediation is a way of resolving disputes through a negotiation process to obtain an agreement between the parties with the assistance of a mediator (Saifullah, 2015). Mediation, along with reconciliation, good offices, and investigation, can be found in situations where it is explicitly regulated (Gună, 2015). Mediator is a judge or other party who has a certificate of mediator as a neutral party who assists the parties in the negotiation process to seek various possible dispute resolutions without resorting to a way of deciding or imposing a settlement.

The provisions regarding the mediation procedure in the Regulation of the Supreme Court apply in the litigation process in the Court, both within the general court and in the religious court. Each judge, mediator, parties and/or legal counsel must follow the procedure for resolving disputes through mediation. The judge examining the case in consideration of the decision is obliged to state that the case has been attempted for reconciliation through mediation by mentioning the name of the mediator (Sururie, 2012).

The case examiner judge who did not order the parties to take mediation so that the parties did not mediate had violated the provisions of the laws and regulations governing mediation in court. In the event of a violation of these provisions, if legal action is proposed, the Court of Appeal or the Supreme Court with an interim decision orders the First Level Court to carry out a mediation process. Then, the Chief Justice appoints a judge mediator who is not the examining judge of the case who decides.

The mediation process is carried out no later than 30 (thirty) days from the receipt of notification of the interim decision of the High Court or the Supreme Court. The Chief Justice of the Court submits the mediation result report along with the case file to the High Court or Supreme Court. Based on the report, the judge examining the case at the High Court or the Supreme Court handed down a decision, all civil disputes submitted to the Court including cases of resistance (verzet) against the verstek decision and the resistance of litigants (partij verzet) and third parties (derden verzet) against the implementation of the decision. which has permanent legal force, must first seek a settlement through mediation, unless otherwise stipulated based on the Regulation of the Supreme Court. Disputes that are excluded from the obligation to settle through mediation.

Mediation is one of the most effective instruments in resolving disputed parties in court. Every civil dispute settlement in the Court must go through a mediation process, if the plaintiff

and defendant are present, the Chairperson of the Assembly provides the opportunity for the disputing party to choose a judge mediator or other certified mediator registered with the court. In carrying out the mediation process, as a mediator must try maximally in order to be able to completely resolve the problems of the disputing parties, because the optimal measure of the implementation of mediation is that the mediator can reconcile the disputing parties with a final report to the Panel of Judges who hears the case that reached an agreement, failure (Saladin, 2017).

The mediation process is basically closed unless the parties wish otherwise. Submission of the mediator's report regarding parties who have no good intentions and the failure of the mediation process to the case examining judge is not a violation of the closed nature of mediation. Mediation meetings can be conducted through long-distance audio-visual communication media which allows all parties to see and hear each other directly and participate in the meeting.

The parties must attend the mediation meeting in person with or without being accompanied by a legal representative. The presence of the parties through long-distance audio-visual communication that allows all parties to see and hear each other directly and participate in the meeting is considered a direct presence. The direct absence of the parties in the mediation process can only be done for legitimate reasons. The legal reasons include health conditions that do not allow attending mediation meetings based on a doctor's certificate under pardon, having a place of residence, residence or position abroad or carrying out State duties, professional or work demands that cannot be abandoned.

The most basic thing that refers to Supreme Court Regulation No. 1 of 2016 concerning Mediation Procedures in Courts is the determination of good faith as one of the determinants in determining the success or failure of mediation. This regulation seems to want to increase the awareness of the litigants to change their mindset in resolving disputes by prioritizing peace efforts. This provision seems to be based on the fact that many cases are mediated, especially in courts in big cities where the material principal never comes before the mediator even though he has been summoned. a peace is also greater. Because of that, It is understandable why the Perma Mediation emphasizes the importance of good faith on the part of the litigants with the threat that if the plaintiff does not have good intentions, then the lawsuit is declared unacceptable. Article 7 paragraph 1 of the Supreme Court Regulation No. 1 of 2016 concerning Mediation Procedures in Courts emphasizes the obligation of the litigants to have good faith during the mediation process. If it is not in good faith, then the lawsuit is declared inadmissible.

After the issuance of the Supreme Mahakah Regulation Number 1 of 2016 concerning Mediation Procedures in the Court, specifically as a mediator at the Ternate Religious Court and the Morotai Religious Court in Tobelo, they have carried out according to the Supreme Court Regulations, based on the mediation report from the mediator to the Panel of Judges who heard the divorce lawsuit. However, after the Panel of Judges received the mediator's report that the case was not successful, the Panel of Judges was successfully reconciled.

The success of mediation at the Ternate Religious Court and the Morotai Religious Court in Tobelo is still classified as low, so the mediator must have high ability and willingness to reconcile the disputing parties, more importantly the mediator judge must also master the norms in the Supreme Court Regulation Number 1 of 2016 Regarding the Mediation Procedure at the Court, this reality shows that whether there are factors that cause the mediator at the Ternate Religious Court and the Motorai Religious Court to carry out their duties as a mediator or whether the mediator only carries out his duties as a mere formality, even though the existence of the role of the mediator in the Ternate Religious Court and The Morotai Religious Court is very helpful in determining the success or failure of mediation efforts, if the mediator is

successful in reconciling the disputing parties, then there will be a peace decision from the Panel of Judges which has a very important meaning for the parties seeking justice, because disputes are resolved peacefully quickly, at low costs.

The mediation process carried out by a certified mediator judge or mediator is possible to succeed and fail, mediation is very important, one of which is in an effort to resolve cases by peaceful means, not with win-lose results as if it has entered the litigation process, because it requires efforts that are more optimally so that the existence of mediation carried out by the mediator judge can achieve the desired result. This also has the effect of preventing so many case files in the court from piling up because all cases are eventually proceeded to the litigation process because non-litigation (mediation) is not successful.

Previous research only discussed the mediation procedure, which discussed only the procedure of mediation at the religious courts in Ternate and Morotai as well as the role of judges in mediation. This study discusses the role of mediators in mediation in the religious courts of Ternate and Morotai so that this study has a strong novelty and is different from the previous novelty, namely that this study discusses the role of mediators in the mediation process in the religious courts of Ternate and Morotai

Based on the description above, the researcher is very interested in studying further about the existence of mediators at the Ternate Religious Court and the Morotai Religious Court in mediating a dispute, why there are still so many cases that have not been successfully mediated, why the disputing parties prefer the case to be continued. compared to being resolved non-litigation, the researchers raised the title of the research, namely: "Optimizing Mediators in the Mediation Process for Civil Disputes at the Post-Perma Court No. 1 of 2016 at the Ternate Court and the Morotai Religious Court". Based on the background of the problems that have been described above, this research formulates several problem formulations as follows:

1. What are the factors causing the unsuccessful mediation process carried out by the mediator in resolving civil disputes?
2. What steps are important to do so that the existence of a mediator in the mediation process for civil disputes in court is in accordance with the mandate of Perma Number 1 of 2016?

METHOD

A. Types and Nature of Research

This type of research has the type of empirical legal research, namely research that looks at the application of legislation in society. The research conducted by the researcher belongs to the type of field qualitative research, namely research that emphasizes the completeness of the data collected in the form of primary and secondary data.

B. Research sites

In this study the researchers took the research location in 2 (two) Religious Courts in North Maluku ([Abdurrahmat & Si, 2006](#)). Nature of Research This research is descriptive in nature, because this study aims to explain current problem solving based on data, so this study also presents data, analyzes and interprets.

Descriptive research is research that is directed to provide symptoms, facts, or events systematically and accurately, regarding the characteristics of a particular population or area. Descriptive research tends not to need to find or explain interrelationships and test hypotheses. In this study, the purpose of descriptive research is to provide an overview and explanation of the factors that influence the failure to mediate civil dispute settlement cases in 2019-2021.

C. Data Sources Data sources

This study uses several data sources, namely primary data sources and secondary data sources.

1. Primary Data Source

Primary data sources are data that directly provide data to data collectors. The primary data sources in this scientific work are judges as well as city PA mediators, and 10 disputing communities who failed to mediate in resolving their cases.

2. Secondary Data Source

Secondary data sources are sources that do not directly provide data to data collectors, for example through other people or documents. Secondary data sources can also be obtained from existing sources, usually obtained from libraries or previous research reports, which will then produce data secondary data or also known as available data.

The secondary data in this scientific work are in the form of books, research journals and divorce case documents/archives and the archives of the Ternate and Tobelo Religious Courts relating to the implementation of Mediation (Arikunto, 2013).

D. Data collection technique

Data collection technique is a way of collecting data. This study uses the following data collection techniques:

1. Interview

An interview is a form of communication between two people, involving someone who wants to get information from the other by asking questions, based on a specific purpose. Interviews can be interpreted as data collection techniques by asking questions directly by the interviewer to the respondent, and the answers are recorded or recorded (Sugiyono, 2013).

The technique used is structured free interview where the interviewer has prepared a list of questions but can leave the list. Interviews not only capture understanding or ideas, but can also capture the feelings, experiences, emotions, motives of the respondent concerned. The objects of this interview method are judges, mediators of the Ternate Class IA Religious Court, the Morotai Religious Court and the parties who carry out mediation.

2. Documentation

Documentation method is a method to find data about things or variables in the form of notes, transcripts, books, newspapers, magazines, inscriptions, minutes of meetings, lengger, agenda, and so on. The documentation method is to find data about things or variables in the form of notes, transcripts, books, newspapers, magazines, inscriptions, meeting minutes (Mulyana, 2008). Documentation method is the method used to collect data sourced from writing or documents.

Based on the description above, the documentation needed in collecting data in this scientific paper is a document or archive of cases that were resolved through mediation, both successful and unsuccessful, at the Religious Courts in 4 (four) districts in North Maluku in 2019-2021.

E. Data analysis technique

Analyzing data is a very critical step in research. Research must determine which pattern of analysis will be used, whether statistical analysis or non-statistical analysis. Data analysis is the process of systematically searching and compiling data obtained from interviews, field notes, and documentation, by organizing the data into categories, breaking them down into units, synthesizing them, arranging them into patterns, choosing which ones

are important and which ones will be learned, and draw conclusions so that they are easily understood by themselves and others.

The data analysis technique that the researcher uses is a qualitative data analysis technique, research that is or has the characteristics that the data is stated as it is without changing it in the form of symbols or numbers, while the word research basically means a series of activities or processes for disclosing secrets or something that is not yet known by using a systematic, directed and accountable way of working or methods, after that the researcher uses inductive thinking patterns, namely departing from special cases based on real experience (speech or behavior of research subjects) to then be formulated into concepts, theories, principles or general definition.

This method the researcher uses to describe the factors that influence the failure of mediation in reconciling civil cases in 2019-2021.

RESULTS AND DISCUSSION

A. Overview of Research Sites

The state of the research location is very important, because to determine the effect on a problem, it is determined by several things, including related to the spatial aspects (with regard to space and place) in a study, because it involves certain areas which become the space and place of a rule. (law) in a certain area. It is in this spatial aspect that is reflected in the institution. Therefore, in this sub-chapter, a general description of the history of the Ternate Class IA Religious Courts and the Morotai Religious Courts is described.

1. History of Ternate Religious Court and Morotai Religious Court

The area of North Maluku Regency from the island and formerly was called moloku kie Raha or the area of the king of kings, and is divided into 4 sultanates and each of them is ordered by a sultan with autonomous status, namely: Ternate, Tidore, Bacan and Jailolo In his government the Sultan is assisted by Joguga (Mangkubumi), and in the field of Religious Affairs and Religious Law, the Sultan is assisted by a khadi, the Sultan as the highest ruler, the jogugu (Mangkubumi) carries out orders in addition to being the Head of Landrad called the Swapraja Court, which is authorized to examine and adjudicate all the interests of Muslims which includes Tauliyah affairs. and Hukumiyah: Marriage Talak Ruku, Religious Education, Religious Information, Religious Counseling, da'wah, in short something that concerns sunnat and fardu, and the rest manage and adjudicate cases of the Islamic Ummah (Religious Court).

After the Republic of Indonesia achieved its sovereignty, the Sultanate Government returned to the Central Government, then the regions were returned to the Regent who covered the entire area of North Maluku Regency (Ternate, Tidore and Bacan).

The Minister of Justice gradually after the abolition of the Customary Courts / Swapraja throughout Bali, Sulawesi, Lombok, Sumbawa, Timor, Kalimantan, Jambi, and Maluku "The abolition of the Syara Swapraja Courts / Judges is not also erased and this Syara Swapraja Judge continues. which is based on article 134 (paragraph 2) of the Indische Staats Regeling, because in the 1945 Constitution there are no provisions regarding the Religious Courts. Even in Article 1 paragraph (2) of Law. Number 1 of 1951 states that if the Court according to living law is a part of the Swapraja Court (zelfbestuurs rechtspraak) it will not be deleted.

Thus, the Swapraja syara judge continues even though the Office of Religious Affairs has been opened to carry out the affairs of: Tauliyah. With the gaze of the Minister of Religion of the Republic of Indonesia Number. 5 of 1958, the Religious Courts / Sharia

Courts were established, including in Ternate, Morotai, Soa-sio, and Kep. RI Minister of Religion No. 87 of 1966 refers to the Religious Courts/Shariah Labuha court, all of which are located within the Kab. North Maluku, so to eliminate dualism in the affairs of the Religious Courts, namely the Religious Courts/Sharia Courts D. h. I Ministry of Religion on the one hand and Judge Syara Swapraja on the other, then on the initiative of the Young Sultan of Ternate Mudhafar Syah,

With the provision that the Syara Swapraja Judge in Ternate, which according to the provisions of Article 1 paragraph (4) of the Emergency Law Number 1 of 1951 Jo. PP No. 45 of 1957, the duties and authorities of the agency should have been accommodated in the local Religious Court/Shari'a Court, so with the submission of the Syara Judge Body to the Directorate of Religious Courts it would further perfect and eliminate the dualism of the implementation of the duties of the Religious Courts in Ternate and the Maluku region in 1957. In general, that based on Article 39 of the 1945 Constitution on the rights of origin in the 4 Sultanates and 4 Khadianites, 4 Religious Courts/Sharia Courts were formed, namely Ternate, Soasio, Labuha and Morotai.

The Ternate Religious Court, only in fact on August 22, 1966 after the handover from the Syara Hakim Board in Ternate from Jogugu (Chairman of the Moluku Customary Council, Mr. K. H NUCH (To the Head of the Directorate of Religious Courts in Jakarta. Then the appointment of the personnel of the Ternate Religious Court is based on the Decree of the Minister of Religion Number: B/IC//5593 dated October 25, 1966 which consists of an Acting Chief, 2 (two) permanent Member Judges, 2 (two) Honorary Member Judges and a Registrar.

The Strategic Plan of the Ternate Religious Court Class IA for 2020 – 2024 is a shared commitment in determining performance in stages that are planned and programmed systematically through structuring, controlling, improving studies, managing the policy system and legislation to achieve effectiveness and efficiency.

Furthermore, to provide clear directions and targets as well as guidelines and benchmarks for the performance of the Ternate Religious Court Class IB, it is aligned with the policy and program directions of the Supreme Court of the Republic of Indonesia which are adjusted to the national development plan that has been set out in the Long Term National Development Plan (RPNJP) 2005 - 2025, as a guideline and control of performance in the implementation of the Court's programs and activities in achieving the vision and mission as well as organizational goals in 2020 - 2024.

Vision is a challenging picture of the desired future state to realize the achievement of the main tasks and functions of the Ternate Religious Court Class IA. The vision of the Ternate Religious Court Class IA refers to the Vision of the Supreme Court of the Republic of Indonesia as follows: "To create a Ternate Religious Court Class I A Yang Agung" which means to exercise independent judicial power to administer an honest and fair trial in order to uphold law and justice.

The focus of the implementation of the main tasks and functions of the judiciary is the implementation of an effective judicial power function, namely resolving a case in order to uphold law and justice based on Pancasila and the 1945 Constitution, based on the majesty, nobility and glory of the institution.

2. Morotai Religious Court

The Religious Courts are one of the actors of judicial power for the people who seek justice who are Muslim regarding certain cases as referred to in Law Number 50 of 2009 concerning the Second Amendment to Law Number 7 of 1989 concerning Religious Courts.

Judicial power within the Religious Courts is exercised by the Religious Courts and the High Religious Courts, culminating in the Supreme Court as the Highest State Court.

The Morotai Religious Court is the Jurisdiction of the North Maluku Religious High Court. The Morotai Religious Court is located on Jl. Tugu Nusantara, Tobelo, North Halmahera Regency whose working area includes 2 (two) Regencies, namely North Halmahera and Morotai Islands.

In addition, in order to realize excellent service to justice seekers, at the Morotai Religious Court, in carrying out its duties it is guided by the Standard Operating Procedure (SOP), which has been discussed by the section related to workload analysis as stated in the Decree of the Chairperson of the Morotai Religious Court. Number: W29-A4/78/OT.013/II/2018 dated February 2, 2018 as the implementation of Law Number 25/2009 concerning Public Services, the contents of which include the following ([Religious Court, 2009](#)):

1. Clarity of work processes for each work process;
2. Clarity of duties, responsibilities, targets and measurement of work results from each position;
3. Clarity of authority given or held by each position to make decisions;
4. Clarity of risks and impacts that will arise if the duties and responsibilities are not carried out properly;
5. Availability of organizational management system;
6. The professionalism of judicial personnel in carrying out their main duties and responsibilities must have the skills to use the systems that have been built.

The conditions mentioned above will gradually lead the organization to become an organization with the right function and right sizing which is one of the goals of Bureaucratic Reform. Thus, the Morotai Religious Court has a strategic role which is the First Level Court with the duty and authority to examine, decide, and settle cases at the first level between people who are Muslim in the fields of: marriage, inheritance, wills, grants, waqf, *zakat*, *infaq*, *shadaqah* and sharia economics, as regulated in Article 49 of Law Number 3 of 2006 concerning amendments to Law Number 7 of 1989 concerning the Religious Courts and Law Number 50 of 2009 concerning the Second Amendment to Law Number 7 of 1989 concerning Religious Courts.

B. Factors of Unsuccessful Mediation by the Mediator

The Supreme Court has implemented a policy of integrating the mediation process into civil procedure in court with the aim of reducing the number of cases that go up to appeal and cassation levels so that there is no accumulation of cases through the Supreme Court Circular Number 1 of 2002 concerning Empowerment of Peace Institutions, which was later changed by Regulation of the Supreme Court Number 2 of 2003 concerning Mediation Procedures in Court. The next revision is through Supreme Court Regulation Number 1 of 2008 concerning Mediation Procedures in Courts and the latest is Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Courts.

In order to realize a simple, fast and inexpensive process, the provisions of the applicable civil procedural law are Article 154 of the Regulation of the Procedural Law for Regions Outside Java and Madura (Reglement Tot Regeling Van Het Rechtswezen In De Gewesten Buiten Java En Madura, Staatsblad 1927:227) and Article 130 The updated Indonesian Regulation (Het Herziene Inlandsch Reglement, Staatsblad 1941:44) encourages the Parties to pursue a peace process that can be utilized through Mediation by integrating it into litigation procedures at the Court. In order to make the provisions of the article effective, then the Supreme Court (MA) issued SEMA No. 1 of 2002 concerning Empowerment of the

Courts of First Level Implementing Peaceful Institutions (Ex. Article 130 HIR/154 Rbg) which was later replaced by Supreme Court Regulation (*PERMA*). After the issuance of Perma No. 1 of 2016, mediation has indeed become a necessity or obligation in the settlement of civil cases, including religious civil cases. Decisions obtained without a mediation process are considered null and void. Because of the importance of mediation, judges in the Religious Courts are also required to be able to become Mediators, even though the Mediators may come from non-judges. With a note that they must have a Mediator Certificate as a neutral party who helps the parties to seek possible dispute resolution without resorting to deciding or imposing settlement methods.

It can be seen in both the Ternate Religious Court Class 1A and the Morotai Religious Court that almost 80% of mediations were unsuccessful and 90% failed. Whereas Mediation in Article 1 Paragraph (1) of the Regulation of the Supreme Court Number 1 of 2016 concerning Mediation Procedures in Courts is a dispute resolution method through a negotiation process to obtain an agreement between the parties with the assistance of a mediator. While the mediator in Article 1 Paragraph (2) is a judge or other party who has a certificate of mediator as a neutral party who assists the parties in the negotiation process in order to find various possible dispute resolutions without resorting to a way of deciding or imposing a settlement.

As an alternative method or solution that is balanced between the parties, mediation is a space to break the deadlock on the function and purpose of the law to create a sense of justice for all, therefore every civil case that reaches the court will take a lot of time and cost, even sometimes higher than what is at issue, therefore mediation is an option for a civil law settlement that is faster, less costly, and balanced between the parties without having to win or lose as a court decision.

The scope of mediation is based on Article 4 paragraph (1) and paragraph (2) of the Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Court, namely all civil disputes submitted to court including cases of resistance (*verzet*) against *verstek* decisions and resistance of litigants (*partij*). *verzet*) and third parties (*derden verzet*) for the implementation of decisions that have permanent legal force, must first seek a settlement through mediation, except for cases that are excluded (not mediation) include [\(Supreme Court, 2016b\)](#):

- a. Disputes whose examination at the trial is determined by a grace period for resolution, such as:
 - 1) Disputes resolved through the Commercial Court procedure.
 - 2) Disputes are resolved through the procedure of the Industrial Relations Court.
 - 3) Objection to the decision of the Business Competition Supervisory Commission.
 - 4) Objection to the decision of the Consumer Dispute Settlement Body.
 - 5) Application for annulment of the arbitral award.
 - 6) Objection to the decision of the Information Commission.
 - 7) Settlement of political party disputes.
 - 8) Disputes are resolved through a simple lawsuit procedure.
 - 9) Other disputes whose examination at trial is determined by a grace period for settlement in the provisions of laws and regulations.
- b. Disputes whose examination is carried out without the presence of the plaintiff or defendant who has been duly summoned.
- c. Counterclaim (*reconvention*) and the inclusion of a third party in a case (*intervention*).
- d. Disputes regarding the prevention, rejection, annulment and legalization of marriages.

- e. Disputes brought to court after attempted out-of-court settlement through mediation with the help of a certified mediator registered with the local court but declared unsuccessful based on a statement signed by the parties and the certified mediator.

Thus, the mediator plays an active role in bridging a number of meetings between the parties, leading the meeting and controlling the meeting, maintaining the continuity of the mediation process and demanding that the parties reach an agreement. The mediator must be able to build positive interaction and communication so as to be able to explore the interests of the parties.

1. Certified Mediator

The success or failure of mediation is largely determined by the role and professionalism of the mediator in carrying out the mediation process (expertise in the field of formal and material law, as well as expertise in the psychological field), the mediator judge must be certified, there is a clear and detailed legal substance or regulation to seek peace in earnest.

All mediator judges must have a mediator certificate to ensure that the mediator has the skills and abilities to resolve cases with good and effective techniques and mediation can be successful. In Article 1 Paragraph (3) Supreme Court Regulation No1 of 2016 concerning Mediation Procedures in Court, states that ([Supreme Court, 2016a](#)):

"Mediator Certificate is a document issued by the Supreme Court or an institution that has obtained accreditation from the Supreme Court stating that a person has attended and passed the Mediation certification training".

Meanwhile, Article 1 Paragraph (11) of the Regulation of the Supreme Court Number 1 of 2008 concerning Mediation Procedures in Court states that ([Supreme Court, 2008](#)):

"Mediator Certificate is a document that certifies that a person has attended mediation training or education issued by an institution that has been accredited by the Supreme Court".

From the above provisions, it can be concluded that a person can become a mediator when he has gone through the education level and obtained a mediator certificate issued by the Supreme Court or an institution that has obtained accreditation from the Supreme Court stating that a person has attended and has passed mediation certification education.

This is also confirmed by the data from interviews with several Mediator at the Ternate Religious Court Class IA and mediator at the Morotai Religious Court, as follows:

According to Abdul Rahman Salam, S.Ag., MH, as a mediator at the Ternate Religious Court Class IA with 80 cases that have been mediated and 60 cases have been successful in inheritance disputes, joint property, and divorce, said that:

"It would be better if the mediation was carried out by Judge Mediator, especially those who have been certified. Because, according to him, the mediator can suggest if in the trial process there is a desire to make peace, it should be submitted to the panel of judges" (Interview, April 14, 2022) ([Salam, 2012](#)).

The maximum result from this mediation is a peace agreement that is agreed upon and signed by the parties before the mediator and then the results of this agreement are submitted to the judge to obtain a peace deed. In Article 1 Paragraph (10) Regulation of the Supreme Court Number 1 of 2016 concerning Mediation Procedures in Court, states that:

"A peace deed is a deed that contains the contents of the peace text and the judge's decision that strengthens the Peace Agreement".

The strength of this peace deed has a higher position than court decisions which have permanent legal force, because court decisions can still be submitted for extraordinary

legal remedies for judicial review (PK). Meanwhile, the peace deed is completely closed to legal remedies. The power of this peace deed has inherent legal force as regulated in Article 1858 of the Civil Code and Article 130 Paragraph (2) and 3 of the HIR which of course provides a sense of security and comfort for the parties.

However, a different statement was made by the mediator, Drs. Djabir Sasole, MH and Miradiana, SH, MH who revealed that:

According to Drs. Djabir Sasole, MH; the mediator would be better done by a judge mediator because it does not burden the party for costs, but if the number of certified mediator judges is less, then it is submitted to non-judge mediators as long as the risk of mediator fees is submitted. (Interview Results April 20, 2022) (Sasole, 2022).

Meanwhile, Miradiana, SH, MH who has served in Ternate PA since March 2022 with a 100% success rate of mediation for joint property 3 cases, 3 successful divorces, 10 successful who stated the same thing:

"Judge mediators are more experienced and have mastered the ins and outs of cases in court, because before there was a regulation regarding mediation, judges in court also mediate in the form of advisory at trial, compared to non-judge mediators who lack experience" (Interview Results 28 April 2022) (Miradiana, 2022).

Thus, the difference of opinion between the mediators shows that the certification of the mediator which has been regulated by the Supreme Court has become an obstacle in the court itself. Seeing the number of cases in court, it becomes an important question why the mediation process is still not running optimally, while mediation at the court is arranged to reduce cases that go to court and to find a way so that problems that go to court can be resolved without a decision by the judges. Peace is the right way for the creation of justice for the parties to the dispute.

The first obstacle set by the Supreme Court is admitting an intermediary or third party in the mediation process with a certification issued by the Supreme Court. This is an obstacle, why is that? Because basically a third party or mediator in the mediation process is not required to have a mediator certificate.

A logical consequence that arises in the courts is also the limited number of judges with the high quality of cases which do not maximize the mediation process. The effectiveness of the implementation of peace efforts is influenced by the number of cases charged to judges. This will actually affect the performance of a judge in seeking peace for the parties.

Article 13 paragraph (2) of Perma No. 1 of 2016 regulates: "Based on the decision of the chairman of the Court, uncertified Judges can carry out the function of Mediator in the event that there is no or there is a limited number of certified Mediators".

This article shows that mediators in courts have a limited number of mediator judges. Then why is paragraph (1) made a standard for mediator certification, if indirectly the Supreme Court has acknowledged that a mediator or a third party as a mediator can carry out the mediation process. The fact that the implementation of peace efforts more often ends in failure than success, Judges who are registered as mediator judges and have received certification from the Supreme Court even though in practice do not necessarily have sufficient expertise when conducting mediation.

Basically, PERMA itself is inconsistent. On the one hand, placing a judge mediator and a certified mediator definitively authorized to mediate, but on the other hand still recognizing non-certified mediators and even acknowledging the product of the Peace Agreement made by non-certified mediators as stated in the provisions of Article 36 paragraph (1) PERMA namely "Parties with or without the assistance of a certified Mediator

who successfully resolve disputes outside the Court with a Peace Agreement may submit a Peace Agreement to the competent Court to obtain a Deed of Peace by filing a lawsuit".

2. Infrastructure

Facilities are everything that is used as a tool in achieving a goal or goal, while infrastructure is everything that is the main support for the implementation of a process. Supporting infrastructure has an influence on the success of mediation. Theoretically, a good mediation place is a neutral place or a place that is not under the control of either party.

In mediation negotiations through the judiciary, the disputing parties usually prefer the court as a place for negotiations on the grounds that the parties do not need to spend money on renting a place. Meanwhile, for mediation outside the court, the parties can choose at the mediator's office which is mutually agreed. However, it would be better if the place of negotiation was chosen by the disputing parties.

According to Moh. Khairul Anam as a mediator at the Morotai Religious Court revealed that:

"Basically, the facilities and infrastructure will ensure the creation of a quality mediation process or ongoing. A quality mediation process can encourage the potential for success to achieve peace agreement" (Interview 11 May 2022) (Anam, 2022).

On this basis, in mediation negotiations through the judiciary, the disputing parties usually prefer the court as a place for negotiations on the grounds that the parties do not need to spend money on renting a place. Meanwhile, for mediation outside the court, the parties can choose at the mediator's office which is mutually agreed. However, it would be better if the place of negotiation was chosen by the disputing parties.

C. Steps that can be taken so that the existence of mediators in the mediation process for civil disputes in the Court is in accordance with the mandate of Perma Number 1 of 2016

1. Good faith Mediator

The Supreme Court Regulation Number 1 of 2016 concerning mediation states that mediation is a way of resolving disputes through a negotiation process to obtain an agreement between the parties with the assistance of a mediator. As one of the procedures in the trial, mediation is mandatory for the parties to carry out. In fact, this obligation must also be carried out or provided for by the trial council in which the Case Examining Judge is obliged to instruct the parties to first resolve the dispute by means of negotiation with a mediator.

The obligation to settle through mediation has consequences for the Case Examining Judge who does not order the parties to take mediation. It is stated in article 3 paragraph 3, that the Case Examining Judge does not order the parties to take mediation so that if the parties do not mediate, then the judge has violated the provisions of the laws and regulations governing mediation in court.

The existence of an obligation to mediate on the one hand provides benefits, and on the other hand also causes consequences for the parties. The benefits of mediation as explained in Perma Number 1 of 2016 are to resolve disputes in a simpler, faster and less costly way, according to needs and interests, and maintain good relations. While on the other hand, the consequence for the parties is the obligation to attend the mediation assembly and carry it out in good faith.

Perma on mediation explains that mediation must be based on "good faith" by the parties. One of the good faiths referred to is indicated by the presence of the parties during the mediation calls. In practice, the presence of the parties actually becomes an

obstacle to the mediation process itself and indirectly hinders dispute resolution in court. This is because the presence of the parties together in mediation can rarely take place only once. Even though the mediation time limit has been determined at the latest 30 (thirty) days as of the stipulation of the order to mediate by the Case Examining Judge or 60 (sixty) days if there is an extension.

The absence of the parties according to the author's own observations is influenced by several factors such as:

- a. The principal has not been able to attend or the mediator himself has postponed the mediation to give the principal the opportunity to attend the next meeting,
- b. Attendance technical constraints (eg costs and party readiness),
- c. The desire to procrastinate the trial of certain parties, especially with regard to the auction of credit guarantees (auction article 6 UUHT).

In the literature of Perma Number 1 of 2016, the absence of which causes the parties to be considered "not in good faith" is further regulated in Article 7 paragraph (2) as follows:

1. Not present after being properly summoned 2 (two) times in a row in mediation meetings without valid reasons;
2. Attended the first mediation meeting, but never attended the next meeting despite being properly summoned 2 (two) times in a row without valid reasons;
3. Repeated absences that interfere with scheduled mediation meetings for no valid reason;
4. Attending mediation meetings, but not submitting and/or not responding to other party's case resumes; and/or
5. Not signing the draft peace agreement that has been agreed without a valid reason.

Whereas in the next article (Article 22), the consequence for the Plaintiff who is declared not to have good intentions in the mediation process as referred to in the point above, the lawsuit is declared unacceptable by the Case Examining Judge. Plaintiffs who are declared to have no intention are also subject to the obligation to pay mediation fees.

There are at least two conditions that can be used as a basis, namely: a) Consistency of the presence of the Plaintiff, and b) Consistency of the mediator to apply the discipline of the presence of the parties (in person) as a parameter stating good faith or bad faith.

The first basis is, of course, effective with the support of the mediator to consistently apply the discipline of in-person presence as a parameter of good faith. Without firmness from the mediator, the mediation session continues to run slowly due to frequent delays with the excuse of giving the parties the opportunity to attend in full. Although the complete presence of the parties themselves have good intentions, such as achieving a win-win solution, a sense of security, and comfort in matters between them, the Supreme Court itself admits in the MA RI 2020-2024 Strategic Plan book that the success rate of mediation using the win-win method - a win solution and takes no more than two months not more than 20% so that it has not been effective in increasing the productivity of case settlement.

Observing the background of the Mediation institution, it can be said that it is an ideal thing in realizing the principle of a fast, simple and low cost trial if it is successfully implemented. Why not by taking into account the background of the Supreme Court of the Republic of Indonesia requiring parties to take Mediation before the case is decided by the judge through Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Court, where the Mediation process is expected to overcome the

accumulation of cases. Second, mediation is seen as a faster and cheaper way of resolving disputes than the litigation process. Third, the implementation of Mediation is expected to expand access for the parties to obtain a sense of justice.

2. Mediator's Understanding

The success of mediation can also be seen from the effectiveness of the implementation of mediation which relies on the professionalism of the mediator judge in carrying out the mediation process (expertise in the field of formal and material law, as well as expertise in the psychological field), the mediator judge must be certified, the legal substance or regulations are clear and detailed to strive for peace in earnest. All mediator judges must have a mediator certificate to ensure that the mediator has the skills and abilities to resolve cases with good and effective techniques and mediation can be successful (Mustakid, 2020).

The success or failure of mediation is largely determined by the role and professionalism of the mediator in carrying out the mediation process (expertise in the field of formal and material law, as well as expertise in the psychological field), the mediator judge must be certified, there is a clear and detailed legal substance or regulation to seek peace in earnest.

The results showed that the mediator's good faith based on mediation is a way of resolving disputes through a negotiation process to obtain an agreement between the parties with the assistance of a mediator. As one of the procedures in the trial, mediation is mandatory for the parties to carry out. In fact, this obligation must also be carried out or provided for by the trial council in which the Case Examining Judge is obliged to instruct the parties to first resolve the dispute by means of negotiation with a mediator (Salamah, 2013).

The involvement of mediators who have significant scientific qualifications with the causes of the conflict will make it easier for the parties to solve problems and find appropriate solutions. For example, disputes that are motivated by economic conflicts, where the husband becomes the defendant on the grounds of inability to provide a living. In the case of constant fighting, where both parties claim each other, it is the other party who is at fault, negligent or unable to fulfill their duties. This happens a lot in the mediation process, which requires a mediator who is an expert in psychology or spirituality to provide the right solution for both parties.

According to the researcher, the success of mediation can also be seen from the effectiveness of the implementation of mediation which relies on the professionalism of the mediator judge in carrying out the mediation process. The expertise referred to by the researcher is not necessarily understandable based on formal law in Perma No. 1/2016, there is a clear and detailed legal substance or regulation to seek peace in earnest. Rather, it requires material understanding, namely expertise in the psychological field. The reason is intended to close the gap for another conflict to occur after each party is pursued amicably.

CONCLUSION

Factors causing the unsuccessful mediation process carried out by the mediator in resolving civil disputes. First, Certified mediator, The first obstacle regulated by the Supreme Court is admitting an intermediary or third party in the mediation process with a certification issued by the Supreme Court. A logical consequence that arises in the courts is also the limited number of judges with the high quality of cases which do not maximize the mediation process. The effectiveness of the implementation of peace efforts is influenced by the number of cases

charged to judges. This will actually affect the performance of a judge in seeking peace for the parties. Another obstacle is the facilities and infrastructure in carrying out mediation.

Important steps are taken so that the existence of mediators in the mediation process of civil disputes in the Court is in accordance with the mandate of Perma Number 1 of 2016, namely the Good Faith of the Mediator and the Mediator's Understanding both formally and materially.

REFERENCES

- Abbas, D. R. S. (2017). *Mediasi: dalam hukum syariah, hukum adat, dan hukum nasional*. Jakarta; Prenada Media. [Google Scholar](#)
- Abdurrahmat, F., & Si, M. (2006). *Metodologi penelitian & teknik penyusunan skripsi*. Jakarta: PT Rineka Cipta. [Google Scholar](#)
- Amriani, N. (2012). *Mediasi Alternatif Sengketa di Pengadilan*. Surakarta: PT Raja Grafindo Persada. [Google Scholar](#)
- Anam, M. K. (2022). *Hasil Wawancara dengan Moh. Khairul Anam, S.H, selaku mediator di Pengadilan Agama Ternate Morotai, Date 11 May 2022*.
- Arikunto, S. (2013). *Prosedur penelitian suatu pendekatan praktik*, Jakarta: Rineka Cipta. [Google Scholar](#)
- Gună, D. A. (2014). Observations regarding the international regulation of mediation, as a diplomatic way to resolve the conflicts between states. *Procedia-Social and Behavioral Sciences*, 149, 376-381. [Scopus](#)
- Kelly, E. J., & Kaminskienė, N. (2016). Importance of emotional intelligence in negotiation and mediation. *International Comparative Jurisprudence*, 2(1), 55-60. [Scopus](#)
- Sumanto, D. Syamsinah. (2015). *Mediasi Dan Hakam Dalam Hukum Acara Peradilan Agama*. Al Mizan. 1(1). pp 152-162 [Google Scholar](#)
- Miradiana. (2022). *Hasil Wawancara dengan Miradiana S.H, selaku mediator di Pengadilan Agama Ternate Kelas IA, Tanggal 28 April 2022*.
- Mulyana, D. (2008). *Metodologi penelitian kualitatif, paradigma baru Ilmu Komunikasi dan ilmu sosial lainnya*. Bandung: Remaja Rosdakarya. [Google Scholar](#)
- Mustakid, D. (2020). *Proses Mediasi Perkara Perceraian Di Peradilan Agama*. Edulaw : Journal of Islamic Law and Jurisprudence, 1(1). Pp 21 - 30, [Google Scholar](#)
- Religious Court. *Surat Keputusan Ketua Pengadilan Agama Morotai Nomor: W29-A4/78/OT.01.3/II/2018 tanggal 02 Februari 2018 sebagai implementasi dari Undang-Undang Nomor 25/2009 tentang Pelayanan Publik.* , (2009).
- Saifullah, M. (2015). *Mediasi Peradilan*. Semarang: Karya Abadi Jaya. [Google Scholar](#)
- Salam, A. R. (2012). *Hasil Wawancara dengan Abdul Rahman Salam, S.Ag.,M.H, selaku mediator di Pengadilan Agama Ternate Kelas IA, Tanggal 14 April 2022*.
- Salamah, YY. (2013). *Urgensi Mediasi Dalam Perkara Perceraian di Pengadilan Agama*, Jurnal

Ahkam. 8(1). Pp 31-46 [Google Scholar](#)

Sasole, D. (2022). *Hasil Wawancara dengan Drs. Djabir Sasole, M.H, selaku mediator di Pengadilan Agama Ternate Kelas IA, Tanggal 20 April 2022.*

Soekanto, S. (2014). *Faktor-faktor yang mempengaruhi penegakan hukum, Jakarta: Raja Grafindo Persada* [Google Scholar](#)

Sugiyono. (2013). *Metode Penelitian Kuantitatif, Kualitatif dan R&D.* Bandung: CV. Alfabeta. [Google Scholar](#)

Supreme Court. *Pasal 1 Ayat (11) Peraturan Mahkamah Agung Nomor 1 Tahun 2008 Tentang Prosedur Mediasi Di Pengadilan.* , (2008).

Supreme Court. *Pasal 1 Ayat (3) Peraturan Mahkamah Agung Nomor 1 Tahun 2016 Tentang Prosedur Mediasi Di Pengadilan.* , (2016).

Supreme Court. *Pasal 4 ayat (1) dan ayat (2) Peraturan Mahkamah Agung Nomor 1 Tahun 2016 Tentang Prosedur Mediasi Di Pengadilan.* , (2016).

Sururie, RW. (2012) Implementasi mediasi dalam sistem peradilan agama. *Ijtihad, Jurnal Wacana Hukum Islam dan Kemanusiaan.* 2(2) Pp 145-164 [Google Scholar](#)

Saladin, T. (2017). Penerapan Mediasi Dalam Penyelesaian Perkara Di Pengadilan Agama. *Mahkamah: Jurnal Kajian Hukum Islam.* 2(2). Pp 16-28 [Google Scholar](#)

Copyright holder:

Fahri Latukau, Nam Rumkel, Suwarti (2022)

First publication right:

Journal of Social Science

This article is licensed under:

