

Function of Non-Judge Mediators in Divorce Settlement Through Religious Courts

Mardalena Hanifah, Meidana Pascadinianti

Cite this article as

Hanifah, Mardalena, and Meidana Pascadinianti. "Function of Non-Judge Mediators in Divorce Settlement Through Religious Courts". *Unnes Law Journal* 9, no. 2 (2023): 377-418. <https://doi.org/10.15294/ulj.v9i2.75611>

AIMS AND SCOPE

The *Unnes Law Journal* has taken a broad and visionary approach to legal scholarship in Indonesia since its beginnings in 2012. The *Unnes Law Journal* has committed to become a law journal that foster a knowledge of law in empowering justice in Indonesia and global context. The *Unnes Law Journal* has since established itself as a leading journal for theoretical, interdisciplinary, comparative, and other conceptually oriented inquiries into law and law reform in Indonesia and global context, as well as comparative legal issues in Southeast Asia. The *Journal* **regularly published articles related to Indonesian legal studies in various perspectives of legal philosophy, law and economics, legal history, criminology, justice and crime, gender and feminist analysis of law, law and literature, political aspects in law, and law and culture in contemporary global context.** The *Unnes Law Journal* is currently one of the leading law journals in Indonesia. The *Journal* also received the reputable ranking for journal quality from the Ministry of Education, Research and Technology of Republic of Indonesia.

EDITORIAL TEAM

Editor in Chief: *Rahayu Fery Anitasari* (Universitas Negeri Semarang, Indonesia). **Managing Editor:** *Ridwan Arifin* (Universitas Negeri Semarang, Indonesia). **Editorial Board:** *Yoshiki Kurumisawa* (Waseda University, Japan), *Henk Addink* (Utrecht Universiteit, the Netherlands), *Sumanto Al Qurtuby* (King Fahd University, EAU), *Reid Mortensen* (University of Southern Queensland, Australia), *Dian Latifiani* (Universitas Negeri Semarang, Indonesia), *Muhammad Bahrul Ulum* (Queensland University of Technology, Australia), *Sholahuddin Al-Fatih* (Universitas Muhammadiyah Malang, Indonesia), *Dewa Gede Sudika Mangku* (Universitas Pendidikan Ganesha, Indonesia), *Amarru Muftie Holish* (Onati Socio Legal Institute, Spain), *Haykal Azhari* (University of Debrecen, Hungary). **Student Editors:** *Nadiyah Meyliana Putri* (Universitas Negeri Semarang, Indonesia), *Muhammad Iqbal Baiquni* (Universitas Negeri Semarang, Indonesia), *Septian Eka Adiyatma* (Universitas Negeri Semarang, Indonesia). **Online Editors:** *Yoris Adi Mareta* (Universitas Negeri Semarang, Indonesia), *Wahyudin* (Universitas Negeri Semarang, Indonesia).

Function of Non-Judge Mediators in Divorce Settlement Through Religious Courts

Mardalena Hanifah, Meidana Pascadinianti

ABSTRACT. Marriage is carried out until the death of one of the husband and wife. In certain conditions, some things require the dissolution of a marriage, meaning that if the marriage relationship continues, harm will occur which will lead to divorce. Mediation as an out-of-court dispute resolution process is used by courts as a divorce settlement process. Mediation is carried out by a mediator, both a judge mediator and a non-judge mediator. The problem discussed is how to resolve divorce cases through mediation by non-judge mediators in the Religious Courts. The research method used is empirical research with qualitative analysis. Qualitative analysis is a study related to the integration of the substance of laws and regulations on divorce mediation and resolution in Religious Courts. Based on the results of research, the mediation process in the Religious Courts must be carried out by PERMA Number 1 of 2016 concerning Mediation Procedures in Courts, in line with *Islah* as a peacemaker in Islam which has been carried out in the Religious Courts by mediator judges and non-judge mediators. The results of the study show that the success rate is very low. The cause of the failure of divorce settlement through mediation in the Religious Courts is the parties have the intention to divorce, making mediation only a requirement. In addition, the effectiveness of the mediator's function comes from the mediator's skills in handling divorce cases and the awareness of the parties to improve the household and the need for laws on mediation.

KEYWORDS. Divorce Settlement, Mediation, Non-Judge Mediator

Function of Non-Judge Mediators in Divorce Settlement Through Religious Courts

Mardalena Hanifah, Meidana Pascadinianti*

Introduction

Marriage is a sacred and great event for the family that carries it out in human life. Through marriage, a relationship of love, affection, and happiness is realized which is a means for creating harmony. In the Islamic view, apart from marriage being an act of worship, it is also the Sunnah of the Prophet.

Article 1 of Law Number 16 of 2019 Amendment to Law No. 1 of 1974 concerning Marriage, hereinafter referred to as the Marriage Law, states that marriage is a physical and spiritual bond between a man and a woman as husband and wife to form a happy and eternal household. based on the Almighty God.² From the definition above, it can be understood that in principle a marriage is aimed at building a happy and eternal family based on each person's beliefs. Article 2 paragraph (1) of the Marriage Law states that

* Mardalena Hanifa (Faculty of Law, Universitas Riau, Pekanbaru, Indonesia), Meidana Pascadinianti (Universitas Indonesia, Depok, Indonesia).
Corresponding email: mardalenahanifah@gmail.com

² Elucidation of Article 1 of the Marriage Law, as a country based on Pancasila, where the First Principle is Belief in One Almighty God, marriage has a very close relationship with religion and spirituality. Forming a happy family is closely related to offspring, which is also the goal of marriage, care and education are the rights and obligations of parents.

a marriage is valid if it is carried out according to the laws of each religion and belief.³ This is the legal basis for the application of Islamic marriage law in Indonesia as a special regulation in addition to the general regulations regulated in the Marriage Law for Indonesian citizens who are Muslim, most of whom adhere to the teachings of the Shafi'i school of thought. The marital relationship between husband and wife is a sacred agreement, namely *Mitsaaqan ghalidhaan*, a sacred and strong agreement, forming a family that is eternally happy and everlasting (QS. An Nisa': 19).⁴ Islam recommends marriage because holding a marriage, religious commands have been fulfilled to establish a *sakinah, mawadah, warahmah* household as specified in Surah Ar-Rum verse 21⁵, linked to Islamic law as contained in Article 2 of Presidential Instruction Number 1 of 1991 concerning Compilation. Islamic law, hereinafter referred to as KHI, states that "marriage is a very strong contract or *mitsaaqon ghalidan* to obey Allah's commands, and carrying them out is an act of worship". Based on QS. An-Nisa': 34, "Men are the leaders of women because Allah has preferred some of them (men) over others (women) and because they give away some of their wealth."

Marriage is carried out forever until the death of one of the husband and wife. This is actually what the Islamic religion desires. In certain circumstances, some things require the dissolution of the marriage, meaning that if the marital relationship continues, harm will occur. Al-Qur'an regulates several situations in the lives of husband and wife which indicate a rift in the household which can lead to divorce. The rift in the household started from non-compliance with the rules established by Allah SWT for the life of husband and wife in the form of rights and obligations that must be fulfilled by both parties. Allah SWT explains several efforts that must be made to deal with this crisis so that divorce does not happen. Allah SWT anticipates the possibility of divorce and places divorce as the last alternative.

³ With the formulation of Article 2 paragraph (1), there is no marriage outside the law of each religion and belief, this is by the 1945 Constitution. The law of each religion and belief includes the statutory provisions that apply to religious groups and their beliefs as long as they do not conflict with or are not specified in this law.

⁴ It is not lawful for you to inherit women by force, and do not cause them trouble, because they want to take back some of the (dowry) that you have given them, unless they commit a real abomination (adultery), associate with them (your wives) according to appropriate. If you hate them (be patient), because it may be that you hate something, while Allah has made a lot of goodness in it.

⁵ And among His signs, is that He created a mate for you from yourselves (your people) so that you may have pleasure in him and He will give each other love and mercy. Indeed, this is a sign for those who think.

FUNCTION OF NON-JUDGE MEDIATORS

The principle of making divorce difficult is like an emergency door on an airplane that does not need to be used except in an emergency to overcome a crisis. Divorce without control will harm not only both parties but also children, families, and society in general.⁶ The words of the Prophet Muhammad SAW which means “The act most hated by Allah is divorce.” (Hadith narrated by Abu Daud, Ibn Majah, and Al Baehaqy)

Indonesia regulates divorce procedures in Article 39 of the Marriage Law which states "Divorce is only considered valid if it is carried out in court". With the sound of this article, it can be understood that a divorce carried out outside a court session is considered invalid.

Without a mediator or hakam in mediation, it can result in the conflict getting longer and can have fatal consequences, because, in the case of shiqaq between husband and wife, there is no good communication. A person who has a problem must be accompanied by another party so that those involved in the case can think clearly and objectively. Therefore, Hakam must be able to be a wise and wise facilitator so that resolved conflicts result in a peaceful agreement (win-win solution).

The cause of divorce begins with conflict between husband and wife. Conflict is a natural part of human life, therefore Islam provides lessons and procedures for resolving conflict. These methods were used by the prophets. Likewise, the last prophet Muhammad, his life was full of various conflicts. Conflicts during the time of the Prophet Muhammad can be classified into two periods, the period before he was appointed a Rasulullah (*qabl al-bit'tsah*) and the period after he was appointed a Rasulullah.⁷ The conflict that arose when the Prophet Muhammad became a Rasulullah, the Prophet Muhammad took the role of mediator (*hakam*).⁸ In conflicts where the Prophet Muhammad was involved, he would negotiate with the opposing party. During his lifetime, the Prophet Muhammad SAW succeeded in resolving conflicts in his way.

Mediation is a negotiated settlement of cases to obtain agreement between both parties through the mediation of a mediator.⁹ Mediation, as a

⁶ Arso Sosroatmodjo and Wasit Aulawi, *Hukum Perkawinan Di Indonesia* (Jakarta: Bulan Bintang, 1998).

⁷ Muhammad Saifullah, *Mediasi Dalam Tinjauan Hukum Islam Dan Hukum Positif Di Indonesia* (Semarang: Walisongo Press, 2009).

⁸ In Islamic terminology, a mediator is called a hakam. This term is used in conflict issues in marriage

⁹ Supreme Court of the Republic of Indonesia, “Regulation of the Supreme Court of the Republic of Indonesia Concerning Mediation Procedures in Court (Perma No. 1 of

process for resolving cases outside of court, is currently used by the courts and is practiced in integration with the judicial process. Settlement of cases by mediation which is practiced in court has a unique feature, namely that it is carried out when the case has been registered in court (court-connected mediation)¹⁰. Its juridical foundation began in 2002. It is hoped that this regulation will be able to reduce the backlog of cases in court because mediation is more effective in the litigation process. This Supreme Court Regulation is refined by Supreme Court Regulation Number 1 of 2008, requiring that every case must be resolved through mediation, if the case is not resolved through mediation then the litigation process is null and void.

Mediation is an effective instrument for non-litigation dispute resolution which has many benefits and advantages. The benefits and advantages of using mediation include disputes that can be resolved with a win-win solution, the time spent is not prolonged, the costs are lower and the relationship between the two people in dispute is maintained.

One of the important roles of a mediator is being able to encourage and create an atmosphere of constructive discussion between the parties.¹¹

Negotiation is a procedure based on the "good faith" of the disputing parties who convey problems and will be resolved by the mediator because the disputing parties are unable to resolve them. The mediator will provide an innovative solution through a form of settlement that cannot be carried out by the court, but the parties to the dispute obtain mutual benefits.¹²

Method

2016)" (Jakarta, 2016), <https://jdih.mahkamahagung.go.id/legal-product/perma-nomor-1-tahun-2016/detail>.

¹⁰ Masykur Hidayat, "Keberadaan Lembaga Perdamaian (Dading) Setelah Berlakunya Perma No. 2 Tahun 2003 Tentang Prosedur Mediasi Di Pengadilan" (Airlangga University, 2005), <https://repository.unair.ac.id/35921/>.

¹¹ Zil Aidi, "Mediasi Elektronik Sebagai Alternatif Penyelesaian Sengketa Perdata Di Pengadilan Negeri Pada Era Pandemi Covid 19," *Jurnal Hukum Magnum Ops* 5, no. 1 (2022): 133–46, <https://jurnal.untagsby.ac.id/index.php/Magnumopus/article/view/6171/4648>.

¹² Mardalena Hanifah, "Kajian Yuridis: Mediasi Sebagai Alternatif Penyelesaian Sengketa Perdata Di Pengadilan," *ADHAPER: Jurnal Hukum Acara Perdata* 2, no. 1 (2016), <https://doi.org/10.36913/jhaper.v2i1.21>.

FUNCTION OF NON-JUDGE MEDIATORS

The research method used in this research is sociological legal research.¹³ Research using a socio-legal research approach means that law is not only seen as a mere normative rule but also seen as part of the process in people's lives. The scope of the study concerns whether or not the law functions in society by looking at aspects of the legal structure and law enforcement officials.

Marriage Divorce Settlement: A Discourse of the Role of Mediator

The mediator's function as a mediator in resolving disputes is related to the mediator's function, Lon Fuller states, "The central quality of mediation is the capacity to reorient the parties towards each other, not by imposing rules on them, but by helping them, to achieve a new and shared perception of their relationship, a perception that will redirect their attitudes and dispositions toward one another."

This research focuses on the role and function of the mediator as a catalyst, educator, translator, resource person, and agent of reality, as stated in Article 14 of the Mediation Regulations. In carrying out its functions, the mediator is tasked with:

- a. introduce yourself and allow the parties to introduce themselves to each other.
- b. explain the purpose, objectives, and nature of the mediation to the parties.
- c. explain the position and role of a mediator who is neutral and does not make decisions.
- d. create rules for implementing mediation with the parties.
- e. explains that the mediator can hold meetings with one party without the presence of the other party (caucus).
- f. prepare a mediation schedule with the parties.
- g. fill out the mediation schedule form.
- h. provide an opportunity for the parties to convey problems and peace proposals.
- i. Inventory problems and schedule discussions based on a priority scale.
- j. assist the parties in creating and formulating a peace agreement.

¹³ Soetandyo Wignjosoebroto, *Hukum : Paradigma Metode Dan Dinamika Masalahnya*, 1st ed. (Jakarta: Lembaga Studi dan Advokasi Masyarakat (ELSAM), 2002).

- k. submit a report on the success, failure, and/or inability to carry out mediation to the case examining judge.
- l. other tasks in carrying out its functions.

The Supreme Court regulations regarding mediation emphasize that a mediator is a neutral party in the negotiation process to find a resolution to a dispute without using methods to decide or force a resolution, so the judge's responsibility, which was previously only to decide or determine a case, has now developed into that of a mediator who must mediate and reconcile.

If mediation is implemented effectively, it will certainly be very beneficial for the disputing parties, especially in divorce cases, because by realizing this, the judiciary will indirectly help in realizing the goal of a marriage that is *sakinah, mawaddah, warahmah*, and eternal. However, these efforts need to be evaluated and improved when the reality is that divorce cases in the Religious Courts which are attempted to be resolved peacefully with the help of mediators have not been effective.

The mediation model according to Lawrence Boulle (a professor in law and Director of Dispute Resolution at Centre-Bond University) whose aim is to find the role of the mediator in looking at the position of the dispute and the role of the parties in efforts to resolve the dispute in the form of:

1. Settlement Mediation is mediation whose main objective is to encourage the realization of a compromise regarding the demands of both parties in conflict. This model contains several principles, including mediation to bring closer the differences in bargaining value for an agreement;
 - 1) The mediator only focuses on the problem;
 - 2) The mediator's position is to determine the position;
 - 3) Usually, the mediator is a person with high status and this model does not emphasize expertise in the mediation process or techniques.
2. Facilitative Mediation, is mediation whose main aim is to prevent the parties in dispute from their position and negotiate the needs and interests of the parties from their legal rights rigidly. This model contains several principles including:
 - 1) The process is more structured;
 - 2) The emphasis is more on the needs and interests of the disputing parties;
 - 3) The mediator directs the parties from positional negotiation to interest-based negotiation which leads to a mutually beneficial solution;
 - 4) The mediator directs the parties to be more creative in finding alternative dispute resolution;
 - 5) The mediator needs to understand the mediator's processes and

FUNCTION OF NON-JUDGE MEDIATORS

techniques without having to be an expert in the area of the dispute.

3. Transformative Mediation contains several principles including:
 - 1) Focus on a more comprehensive resolution and not only limited to dispute resolution but also reconciliation between the parties;
 - 2) The negotiation process leading to the return of the decision will not begin if the emotional relationship between the disputing parties has not been resolved;
 - 3) The mediator's function is to diagnose the causes of conflict and handle them based on psychological and emotional aspects;
 - 4) Mediators are expected to have more skills in counseling and mediation processes and techniques;
 - 5) The emphasis is more on therapy, both in the pre-mediation stages and in the continuation of the mediation process.
4. Evaluative Mediation, aims to seek agreement based on the legal rights of the disputing parties in the area anticipated by the court. This model contains several principles including:
 - 1) The parties hope that the mediator will use their skills and experience to direct the resolution of the dispute to a range that has been estimated for the problem;
 - 2) The focus is more on rights through the standard settlement of similar cases;
 - 3) The mediator must be an expert in the area of the dispute and may also be legally qualified. Mediators do not have to have expertise in mediation processes and techniques;
 - 4) The mediator tends to provide solutions and legal information to direct the parties toward a result that is appropriate and acceptable to both.

From the various provisions of this law, it turns out that it is by the principle adopted by the Religious Courts in Indonesia, namely the 'principle of obligation to reconcile' which must be guided by the judges' handling cases. Islam tells us to resolve every dispute and dispute through the *Ishlah* approach. Therefore, Religious Court judges are aware of and carry out a conciliatory function. However fair the verdict is, the outcome of peace will be better and fairer. The legal provisions related to dispute resolution through peace efforts do not specifically mention mediation as a form of dispute resolution in court, especially the Religious Courts. Provisions regarding new mediation are found in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, establishing Peace Institutions, and Supreme Court Regulation Number 2 of 2003 concerning Mediation Procedures in

Court. Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution regulates two main things, namely arbitration and alternative dispute resolution. In Article 1 it is stated: “Arbitration is a method of resolving a civil dispute outside the general court which is based on an arbitration agreement made in writing by the parties to the dispute”. Alternative dispute resolution is an institution for resolving disputes or differences of opinion through procedures agreed upon by the parties, namely settlement outside of court using consultation, negotiation, mediation, conciliation, or expert assessment. The provisions above emphasize that disputes that can be resolved through arbitration and alternative dispute resolution are civil disputes, not disputes that fall within the scope of public law, thereby making mediation part of the court process. Mediation in court strengthens peaceful efforts as stated in the procedural law, Article 130 HIR, or Article 154 RBg. This is confirmed in Article 2 of the PERMA concerning Mediation Procedures in Court, namely that all civil cases submitted to the court of first instance must first be resolved through peace with the help of a mediator.

The Indonesian Institute for Conflict Transformation (IICT) is an institution that collaborates with the Supreme Court in providing mediation training by the PERMA concerning Mediation in Court. Article 2 paragraph (3): “Failing to take mediation procedures based on this regulation is a violation of Article 130 HIR and/or Article 154 RBg which results in the decision being null and void”.

The Regulation on Mediation Procedures in Court provides opportunities for reconciliation for the parties not only at the first level, but also at the appeal, cassation, and judicial review levels. Article 21 states that the parties, based on their agreement, can make efforts to reconcile the case as long as the case has not been decided.

Non-judge mediators are increasingly involved because they are believed to have qualitative advantages compared to judge mediators due to their educational, experience, and professional background. A non-judge mediator can have a varied educational background (not just from law school). This is of course very useful for looking at a dispute not only from a legal perspective but from various multidisciplinary aspects. ³ In addition,

FUNCTION OF NON-JUDGE MEDIATORS

non-judge mediators are increasingly involved in the mediation process for court cases, considering that the burden on judges is quite high.¹⁴

With the enactment of this regulation, Supreme Court Regulation Number 2 of 2003 concerning Mediation Procedures in Court is declared invalid. To optimize mediation, Supreme Court Regulation Number 1 of 2016 was issued. Article 1 of the Marriage Law defines marriage as an inner and outer bond between a man and a woman as husband and wife to form a family (happy household) and eternal life based on God. The Almighty.

Based on this definition, there are 5 (five) elements in marriage, namely:

1. Physical and spiritual ties;
2. Between a man and a woman;
3. As husband and wife;
4. Forming a happy and everlasting family (household);
5. Based on the belief in the Almighty God

According to Article 1 of the Marriage Law, it is stated that marriage is a sacred alliance. Marriage cannot be separated from the religion of husband and wife. Living together as a husband and wife in marriage is not solely for orderly sexual relations between husband and wife but can form a happy home, a harmonious, safe, and harmonious household between husband and wife.

In terms of its content, the Marriage Law contains material legal rules regarding everything related to marriage. The material content of the Marriage Law regulates the following main issues:

- a. The basis of marriage;
- b. Conditions of marriage;
- c. Prevention of marriage;
- d. Marriage annulment;
- e. Marriage agreement;
- f. Rights and obligations of husband and wife;
- g. Property in marriage;
- h. Marriage breakdown and its consequences;
- i. Child's position;
- j. Rights and obligations between parents and children;

¹⁴ Rika Saraswati et al., "Peranan Mediator Hakim Dan Mediator Non Hakim Melindungi Hak-Hak Anak Dalam Penyelesaian Sengketa Perceraian," *Jurnal Hukum Justitia Et Pax* 36, no. 2 (2020): 159–79, <https://doi.org/https://doi.org/10.24002/jep.v36i2.3164>.

- k. Guardianship;
- l. Other provisions;
- m. Closing.

With the Islamic Law Compilation guidelines, judges are expected to be able to enforce uniform laws and legal certainty without reducing the possibility of variable decisions. The equality of perception and uniformity of decisions through the Compilation of Islamic Law still opens up the freedom for judges to hand down decisions that contain variables, as long as they remain casuistically proportional.¹⁵ In detail, the material content of the marriage law provisions contained in the Compilation of Islamic Law is as follows:

- a. General requirements
- b. Basics of marriage
- c. Proposal
- d. Harmony and terms of marriage
- e. Mahar
- f. Prohibition of marriage
- g. Marriage agreement
- h. Pregnant married
- i. Having more than one wife
- j. Prevention of marriage
- k. Cancellation of marriage
- l. Rights and obligations of husband and wife
- m. Assets in marriage
- n. Child care
- o. Guardianship
- p. Breakup of marriage
- q. As a result of the breakdown of the marriage
- r. Reconcile marriage
- s. Mourning period

¹⁵ M. Yahya Harahap, *Kedudukan Kewenangan Dan Acara Peradilan Agama UU No. 7 Th. 1989* (Jakarta: Cambridge University Press, 2007).

FUNCTION OF NON-JUDGE MEDIATORS

Principles of National Marriage Law

The Marriage Law determines the principles regarding everything related to marriage which have been adapted to developments and demands of the times. The principles stated in the Marriage Law are as follows:

a. Principles of Eternal Marriage

Every marriage aims to form a happy and eternal family. This means that marriage should last for life. In this regard, Islam prohibits marriage for a certain time, for example only 2 or 3 months. This kind of marriage in Islamic law is called mut'ah marriage. The main purpose of marriage is to create true social bonds and blood relations. To achieve this goal, one form of valid marriage is a permanent contract. The principle of eternal marriage can be seen in Article 1 of the Marriage Law which states that "Marriage is an inner and outer bond between a man and a woman as husband and wife to form a happy and eternal family (household) based on the belief in the Almighty God.

b. Principles of Marriage according to Religious Law or Religious Beliefs

A marriage is valid if it is carried out according to religious law or the religious beliefs held by the prospective bride and groom. This principle prioritizes religious balance (*kafa'ah*) as the basis for marriage. The prospective bride and groom must be of the same religion or faith unless the laws of their religion or belief state otherwise. This principle can be found in Article 2 paragraph (1) of the Marriage Law which determines that marriage is valid if it is carried out according to the laws of each religion and belief.

c. Principles of Registered Marriage

A marriage that is not registered has no legal force according to the Marriage Law. This principle is confirmed in Article 2 paragraph (2) of the Marriage Law which stipulates that every marriage is recorded according to the applicable laws and regulations.

d. Principles of Monogamous Marriage

In principle, in a marriage, a man can only have one wife, and a woman can only have one husband at the same time. This means that at the same time, a husband or wife is prohibited from marrying another woman or man. This principle is confirmed in Article 3 paragraph (1) of the Marriage

Law which states that basically in a marriage a man can only have one wife, and a woman can only have one husband.

e. Marriage is based on Voluntary or Free Will (without coercion)

Marriage is one of the human rights, therefore a marriage must be based on the willingness of each party to become husband and wife to accept and complement each other, without any coercion from any party. A marriage that is not based on the consent of both parties entering into the marriage can be used as a reason to cancel the marriage. This principle is confirmed in Article 6 paragraph (1) of the Marriage Law which determines that marriage must be based on the consent of the bride and groom.

f. Balance of Rights and Position of Husband and Wife

Husband and wife can carry out legal actions within the framework of certain legal relationships. The husband is the head of the household and the wife is the housewife. In deciding everything, everything is negotiated jointly between husband and wife. This principle is further explained in Article 31 of the Marriage Law.

g. Principle of Not Recognizing Polyandrous Marriages

This provision is regulated in Article 3 paragraph (1) of the Marriage Law, which does not allow polyandry marriages where a woman only has one husband at the same time.

There are 2 types of marriage conditions, namely material conditions and formal conditions. Material requirements are conditions that exist and are inherent in the parties entering into a marriage, also known as subjective requirements. Meanwhile, formal requirements are the procedures or procedures for carrying out a marriage according to religious law and law, also known as objective requirements.¹⁶ The conditions for marriage in national law are regulated in the provisions of Article 6 - Article 12 of the Marriage Law which includes material and formal requirements. In carrying out a marriage, the parties must fulfill the marriage requirements regulated or determined in the laws of their respective religions or beliefs, including provisions in other laws that apply to their religious groups and beliefs.

Material requirements regarding prospective brides and grooms wishing to get married, namely:

¹⁶ Abdulkadir Muhammad, *Hukum Perdata Indonesia*, 5th ed. (Bandung: Citra Aditya Bakti, 2014), <https://simpus.mkri.id/opac/detail-opac?id=9981>.

FUNCTION OF NON-JUDGE MEDIATORS

- a. There is consent from both prospective bride and groom;
- b. The prospective bride and groom must be 19 (nineteen) years old for men and women;
- c. Not tied to marriage with other people, except for men who have more than one wife or are in the waiting period or iddah period.

Provisions that apply specifically to the marriage of certain people, namely:

- a. Not subject to prohibitions on marriage either according to the law or the laws of each religion or belief;
- b. There is no prohibition on remarrying for the third time after getting married and divorcing again for the second time based on the laws of each religion and belief.
- c. Obtaining permission from the parents or guardians of the prospective bride and groom and obtaining court permission for those who wish to have more than one wife (polygamy).

The Material and Formal Requirement of Marriage

The material and formal requirements contained in the provisions of Article 2 have civil aspects and administrative aspects. The civil aspect talks about substantive functions and the registration aspect talks about administrative functions. The final function is to provide legal clarity and certainty regarding the existence of a marriage between husband and wife for society and the state.

The marriage requirements contained in Law Number 1 of 1974 consist of substantive requirements and adjective requirements.

a. Substantive requirements are requirements that concern the personality of the prospective husband and prospective wife. The substantive requirements are as follows:

- 1) Marriage must be based on the consent (agreement) of the prospective husband and wife (Article 6 paragraph (1));
- 2) The age of the prospective husband and wife is at least 19 years (article 7 paragraph (1)); If the bride and groom are not yet 21 years old, they must obtain permission from both parents. If the parents have died, a guardian is obtained and if there is no guardian, permission from the local court is obtained;

- 3) The prospective wife is not bound by marital ties with other parties (Articles 3, 9);
- 4) There is a waiting period for women who have terminated their marriage before entering into a second marriage (Article 11 in conjunction with Government Regulation No. 9 of 1975);
- 5) Prospective husband and wife have the same religion.

b. Adjective requirements are requirements related to the procedures or formalities of marriage carried out according to the laws of each religion and belief. The adjective requirements are as follows:

- 1) Both prospective husband and wife or both parents or their representatives shall notify the marriage registrar at the place where the marriage will take place verbally or in writing;
- 2) Notification at least 10 working days before the marriage takes place;
- 3) The registrar's employee who receives the notification examines all documents relating to the identity of the prospective husband and wife;
- 4) Announcement regarding the time of marriage at the Marriage Registration Office is publicly known. Usually, it is posted on the notice board in the office so that it is easy for the public to read;
- 5) The marriage takes place after the tenth day after the announcement;
- 6) The marriage is carried out in the presence of a registrar and attended by 2 witnesses;
- 7) The marriage certificate is signed by both prospective husband and wife followed by witnesses and the registrar. The marriage certificate is made in 2 copies. The first copy is kept by the registrar and the second copy is kept by the Registrar of the Court in the area of the marriage registrar's office. The husband and wife are given an extract of the marriage certificate.

According to M. Yahya Harahap, the principles of the Marriage Law are:

1. Accept all the facts living in Indonesian society today. The Marriage Law designs all elements of the legal provisions of each religion and belief.
2. There is emancipation from the demands of contemporary developments. The purpose of contemporary developments is the fulfillment of women's aspirations which demand emancipation, in addition to socio-economic developments, and scientific and technological developments which have had implications for social mobility in all areas of life and thought.
3. The purpose of marriage is to form an eternal happy family. The purpose of this marriage can be elaborated into three things. First, husband and

FUNCTION OF NON-JUDGE MEDIATORS

wife help each other and complete each other. Second, each can develop their personality. Third, the final goal that the Indonesian family wants to pursue is a happy family that is spiritually and materially prosperous.

4. Awareness of the religious laws and beliefs of each citizen of the Indonesian nation, namely that marriages must be carried out based on the laws of their respective religions and beliefs. This was the crucial point that almost sank this law. In addition, marriages must comply with government administration in the form of registration (marriage certificate).
5. The marriage law adheres to the principle of monogamy, but there is still the opportunity to practice polygamy as long as religious law permits it.
6. Marriage and family formation are carried out by individuals who have matured in body and soul.
7. The position of husband and wife in family life is equal.

The Four Principles of Marriage based on Al-Qur'an

1. The principle of *mawaddah warahmah*

This principle is based on the word of Allah QS. ar-Rum: 21. *Mawaddah warahmah* is a human character that other creatures do not have. If animals engage in sexual relations solely for the needs of sex and to reproduce, human marriage aims to achieve Allah's approval in addition to biological goals.

2. The principle of complementarity and mutual protection

This principle is based on the words of Allah SWT contained in QS al-Baqarah: 187 which explains that wives are clothes like men and also clothes for women. Marriage between men and women is intended to help and complement each other because each person has strengths and weaknesses.

3. The principle of *mu'asarah bi al-ma'ruf*

This principle is based on the word of Allah contained in QS an-Nisa': 19 which orders every man to treat his wife in a *ma'ruf* manner. In this principle, the main message is protection and respect for women.

4. Eternal principle

Article 1 of the Marriage Law stipulates that the purpose of marriage is to form a happy and eternal family based on religion or in the language of

the Compilation of Islamic Law, it is called *mistaqan ghalizan* (strong bond). However, in reality, these marriages often fail in the middle of the road, resulting in the dissolution of the marriage, either due to death, divorce, or because of a court decision based on conditions set by law.¹⁷

Article 38 of the Marriage Law states that a marriage can be dissolved because:

- a. death,
- b. divorce and
- c. based on the Court's decision.

Death is one of the causes of marriage dissolution if one of the parties, either the husband or wife, dies. The termination of a marriage by court decision is when one of the parties leaves without news for a long time. The Marriage Law does not state how long the period is to determine whether someone is missing or is considered dead. Even in the explanation of Article 38 of the Marriage Law, this article is considered “quite clear”. If referring to Article 493 of the Civil Code, it states: “Apart from intentionally leaving one's place of residence, one of the husband and wife has been absent from their place of residence for more than ten years, while they have never received any news about his life or death, then the wife or husband who is left behind, with permission from the District Court where the husband and wife live together, has the right to summon the absent party with three consecutive general summons in the manner prescribed in Articles 467 and 468.” According to Lili Rasjidi, what is meant by Articles 467 and 468 of the Civil Code are the provisions relating to the presumed death of a person which, among other things, requires that at least no news be heard for five years or more, that is, from the last period that news was heard that person is still alive. At the request of interested parties, the Religious Court will summon the missing person through a public distribution to appear within three months. This call will be repeated up to three times if the first and second calls are not answered. After that, the court will decide on whether the person is considered dead. This is what is meant by a Court Decision. If after a Court Decision, it is discovered that the person has died and he returns, then he has no right to return to his wife. If his wife has remarried, then she also has the right to remarry.

Article 39 of the Marriage Law states that:

¹⁷ Martiman Prodjohamidjojo, *Hukum Perkawinan Indonesia*, 3rd ed. (Jakarta: Indonesia Legal Center Publishing, 2011).

FUNCTION OF NON-JUDGE MEDIATORS

- 1) Divorce can only be carried out in front of a court session after the court concerned has tried and failed to reconcile the two parties.
- 2) To carry out a divorce, there must be sufficient reasons that the husband and wife will not be able to live in harmony as husband and wife.
- 3) Procedures for divorce before a court hearing are regulated in the statutory regulations themselves.

The consequences of breaking up a marriage due to divorce are contained in Article 41 of the Marriage Law:

- a. Whether the mother or father is still obliged to care for and educate their children, solely based on the interests of the child, if there is a dispute regarding control of the child, the Court makes its decision.
- b. The father is responsible for all maintenance and education costs required by the child. If the father is unable to fulfill these obligations, the court can determine that the mother also bears these costs.
- c. The court can require the ex-husband to provide living expenses and/or determine obligations for the ex-wife.

In contrast to the dissolution of a marriage due to death, which is a provision of God that cannot be rejected, divorce is a mistake that originates from humans themselves. The occurrence of divorce, for example, is more due to the inability of the husband and wife to realize the goals of the marriage itself.

Divorce must be carried out in front of a religious court, as stated in Article 115 of the Compilation of Islamic Law, while the causes of divorce are explained extensively in Article 116 of the Compilation of Islamic Law. In article 116 of the Compilation of Islamic Law, there are two additional reasons for divorce compared to article 19 of Government Regulation no. 9 of 1975, namely that the husband violates the divorce agreement and apostates. This addition is relatively important because it didn't exist before. Talaq is a promise or statement that is usually read by the husband after the marriage contract. If the husband breaks the "promise" that has been made and the wife is not willing to complain to the court, then the court on behalf of the husband will impose a divorce on the wife. So talaq as new ijthihad is very important to protect women's rights.

Different from the Law on Religious Courts, the Compilation of Islamic Law also contains rules on procedures for carrying out divorce. This can be seen in Article 129 of the Compilation of Islamic Law as follows, "A husband who wishes to give divorce to his wife submits a request, either verbally or

in writing, to the religious court in the area where the wife lives, accompanied by reasons for requesting that a hearing be held for that purpose.”

Article 148 Compilation of Islamic Law, states:

- 1) A wife who files a divorce suit using the khulu' method, submits her request to the Religious Court in the area where she lives accompanied by the reason or reasons.
- 2) The Religious Court summons the wife and husband at the latest one month to hear their respective statements.
- 3) During the trial, the Religious Court explains the consequences of khulu” and provides advice.
- 4) After both parties agree on the amount of the ransom, the Religious Court issues a decision regarding permission for the husband to pledge divorce in front of the Religious Court session. This decision cannot be appealed or cassationed.
- 5) The next settlement is taken as regulated in Article 31 paragraph (5).

Some conclusions from the legislative formulation above are:

Firstly, divorce by talaq or divorce may occur because husband and wife will not be able to live in harmony as husband and wife in the same household. Thus, divorce is seen as the best way for couples. The party determining whether talaq is the best way is a third party, namely the court.

Second, the reasons for divorce, all have the same resolution process principles, namely (1) the party deciding on the divorce is the court, (2) the steps that must be taken are (a) submitting a petition or lawsuit from one of the parties, (b) summons for examination by the court, and (c) decision by the court.

Third, the occurrence of divorce, either by talaq or divorce, starts from the decision of the Religious Court, the marriage decision can only be proven by a divorce certificate.

For Al-Haddad, there are at least ten reasons why it is important to pledge divorce in front of a court. The four most important reasons include:

- 1) The presence of the court is to straighten out any actions that deviate from the law to conform to Islamic teachings. In the case of divorce, a husband must think deeply about the impact of his decision before getting a divorce so that he becomes more careful and rational.
- 2) Through the court process, it is hoped that the right to divorce will be exercised correctly and applied only in emergency conditions.
- 3) The court functions as a judicial authority as recommended by Islamic sharia.

FUNCTION OF NON-JUDGE MEDIATORS

- 4) The court is expected to play a role in guaranteeing the rights of each party as a result of divorce, for example guaranteeing compensation in talaq and *mut'ah*.¹⁸

Terms, Roles, and Functions of Mediator

Mediator is a noble and tough profession. The mediator must be able to be wise, wise, neutral and not take sides with any of the parties to the dispute. In resolving disputes, mediators must meet the following requirements:

1. Agreed by the parties to the dispute;
2. Do not have a blood family relationship with any of the parties to the dispute;
3. Do not have a working relationship with one of the parties to the dispute;
4. Has no financial or other interest in the agreement between the parties;
5. Has no interest in the ongoing negotiation process or its results.¹⁹

The general conditions above are very important so that the mediation results can satisfy the parties to the dispute. In PERMA, a mediator is a party who is neutral and impartial (article 1 point 6). A mediator is a person who has been trained and has a certificate as a mediator.

In carrying out their profession, the presence of a mediator is very important in the mediation process. Mediators have a big role in creating peace because a mediator is a facilitator who mediates in disputes. In carrying out its functions, mediators have the main tasks, namely:

1. Bringing together different interests to reach common ground which can be used as a basis for solving problems.
2. Help the parties to the dispute understand the perceptions of each party.
3. Make it easier for parties to provide information to each other
4. Encourage parties to discuss differing interests and perceptions.
5. Manage the parties in negotiations in a cool atmosphere and avoid emotional attitudes.
6. Encourage the parties to achieve peace with a win-win solution.

Howard Raiffa, as quoted by Rachmadi Usman, sees the role of mediator as a vulnerable line from the weakest role to the strongest role. The weakest side of the role is if the mediator only carries out the following roles:

¹⁸ Al-Thahir Al Hadad and M. Adib Bisri, *Wanita Dalam Syariat Dan Masyarakat* (Jakarta: Pustaka Firdaus, 1993).

¹⁹ Gunawan Widjaja, *Alternatif Penyelesaian Sengketa* (Jakarta: PT RajaGrafindo Persada, 2005), <https://opac.perpusnas.go.id/DetailOpac.aspx?id=569165>.

1. Meeting organizer;
2. Neutral discussion leader;
3. Maintaining negotiation rules so that debate in the negotiation process takes place in a civilized manner;
4. Controlling the emotions of the parties; And
5. Encouraging parties or negotiation participants who are less able or reluctant to express their views.

The mediator's strong role is if he does the following things:

1. Prepare and take minutes of negotiations;
2. Formulate and articulate the parties' agreement;
3. Help the parties realize that a dispute is not a battle that must be won, but rather must be resolved;
4. Develop and propose various problem-solving options; And
5. Helping parties to analyze various problem-solving options.

According to Gary Goodpaster, mediators have a big role such as analyzing disputes, identifying problems and critical interests, setting agendas, smoothing and controlling communication, resolving problems with several options, and diagnosing disputes making it easier to solve problems.

Mediation and Mediators

Mediation regulations provide a clear formulation of mediation and mediators. This concept can be used for mediation processes in court and outside court. The concept of mediation developed by PERMA is quite broad because it includes the substantial elements of mediation and the role of the mediator who is tasked with helping the parties resolve their disputes. From the provisions of Article 1 of this PERMA, it can be understood that the essence of mediation is deliberation between the disputing parties guided by a third party (mediator). Deliberations will result in several agreements that can end the dispute. During the negotiations, negotiations are carried out between the parties regarding the interests of each party, assisted by a mediator. In mediating between the parties, the mediator acts neutrally and does not take sides with either party. The mediator's bias towards one party will threaten the failure of the mediation. The mediator tries to find possible alternative resolutions for the parties' disputes. The mediator must have several skills that can help him find several possible dispute resolutions. The

FUNCTION OF NON-JUDGE MEDIATORS

mediator referred to in this PERMA is a mediator who carries out his duties in court. The mediator serving in court may come from a court judge or an outside court mediator. A mediator judge is a judge who carries out mediation duties after an appointment from the head of the panel of judges. The judge acting as a mediator is not the judge who handles the case being mediated, but another judge who has nothing to do with the examined case.

Striving for peace is a duty inherent in a judge or mediator judge. The judge makes continuous peaceful efforts in every case examination process he handles. A mediator judge carries out mediation in cases in which he is not involved in examining and adjudicating the case he is mediating. The mediator judge is appointed by the panel of judges or by the parties who request a judge to mediate their case. The judge must be willing to act as a mediator if he is asked by the parties to resolve their case through mediation.

Considering the limited number of judges who have mediation skills, the Supreme Court Regulations allow non-judge mediators to carry out mediation in court, especially on cases that are being handled by a panel of judges. The more mediators there are in court, the better because the parties will have many choices of mediators so that the right mediator will be found who has expertise and can help resolve their dispute. The list of mediators at the court must have a curriculum vitae and mediator experience so that the parties can know which mediator has sufficient capacity and expertise in mediation. The chairman of the court conducts an annual evaluation of the list of mediators to ensure additional mediators and the level of mediator activity. This evaluation is also important to include new mediators who want to help the parties to the dispute in court.

Judges who have mediation skills obtained through several trainings are called judge mediators, while non-judges are those who have mediation skills as proven by a mediation certificate. Mediation certificates are issued by institutions that have received accreditation from the Supreme Court of the Republic of Indonesia.

The main aim of the mediation process is to reach an agreement that can be accepted by both parties to the dispute. Mediation is a controlled process, where a neutral and objective party can be accepted by both parties to the dispute, helping the parties to find an agreement that is acceptable to both of them to end the dispute between them. Provided that the parties still

have the freedom to determine their wishes to find a resolution to the dispute.²⁰

The decision to hold a caucus is in the hands of the mediator and should also require approval from the parties. The mediator must consider the positive and negative sides if a caucus is held because holding a caucus sometimes also raises suspicions between one party towards the mediator or the other party. Discussions in a caucus are very closed and unknown to other parties, except only the mediator and one of the parties. However, on the other hand, a caucus is needed because it can anticipate situations where the parties cannot meet face-to-face.

Apart from the caucus, to expedite the mediation process and help the parties, the mediator can invite one or more experts in a particular field to provide explanations or considerations that can help the parties resolve their differences of opinion. The presence of one or more experts in the mediation process must obtain approval from the parties and if this is not permitted then the expert cannot be present in the mediation process. The costs of the services of one or more experts are borne by the parties based on the agreement contained in Article 10 of PERMA Number 2 of 2003.

If mediation produces an agreement, then the agreement signed by the parties includes, among other things;

- a. Full name and residence of the parties;
- b. The mediator's full name and residence;
- c. A brief description of the disputed issue;
- d. The stance of the parties;
- e. The mediator's considerations and conclusions;
- f. Statement of willingness to implement the agreement;
- g. A statement of willingness from one or both parties to bear all mediation costs (if the mediator comes from outside the court);
- h. Prohibition of offensive or personally attacking disclosures and/or statements;
- i. The presence of observers or experts (if any);
- j. Prohibition of disclosing records of the agreement process and results;
- k. The place where the parties carry out negotiations (agreement);

²⁰ Faridatul Hasanah, "Pendekatan Persuasif Mediator Dalam Praktik Mediasi Kasus Perceraian Di Pengadilan Agama Gresik," *Shakhsyah Burhaniyah: Jurnal Penelitian Hukum Islam* 6, no. 1 (2021): 25–48, <https://ejournal.unhasy.ac.id/index.php/ShakhsyahBurhaniyah/article/download/1639/1164>.

FUNCTION OF NON-JUDGE MEDIATORS

- l. Deadline for implementing the contents of the agreement; And
- m. The case withdrawal clause or case statement has been completed.

So that the results of the mediation agreement do not face problems in implementation, it is hoped that the parties who have formulated the agreement will carefully study the results of the formulation before signing it. Because once they have signed the agreement, they cannot take back the agreement.

The agreement that has been reached and signed by the parties in the mediation process must be reported to the judge to be stipulated in the peace deed. Mediation in court as an integral part of the process in court requires that the mediator and the parties be bound by the legal process in court. The mediator and/or the parties need to report to the judge as soon as possible so that the judge can hold a hearing to confirm the agreement as a deed of peace. If the agreement has been confirmed in the peace deed, then formally, the mediation has been completed and the trial process in court has ended. Confirmation of the mediation agreement in the form of a peace deed will automatically end the dispute between the parties.

In the mediation process in court, whether an agreement is reached or an agreement is not reached (failed), the mediator must still notify the judge within 22 working days of the selection or appointment of the mediator. The notification is intended so that the judge can find out whether the trial of the case being mediated is continuing or whether it can be closed. If an agreement is obtained, the judge will end the trial process in court, conversely if the mediation does not reach an agreement, then the trial will continue where the judge will continue examining the case based on the applicable procedural law.

Mediation provisions describe that the mediation process is a confidential and closed process, where the public cannot know the main dispute between the parties. The mediator and the parties both commit not to reveal their respective secrets to the public. This confidentiality is what differentiates the mediation process from the dispute resolution process through court. The process of resolving cases in court adheres to the principle of being open to the public. The public can access the entire examination process in court.

On average, mediation is not successful because they have had problems for a long time that were not resolved quickly, resulting in

heartache that is so deep that it has the power to divorce. There was no agreement between the parties so mediation failed.²¹

Mediation costs are usually paid jointly by both parties to the dispute, but in practice, it is sometimes found that mediation costs are paid by one party and agreed to by the other party. This mediation fee is intended for the costs of mediator services, materials needed in the mediation process such as photocopies of documents, venue costs or costs for bringing in experts, and various other incidental costs.

If the mediation venue is used in one of the first-instance courtrooms, then the parties to the dispute do not need to pay rent, but if the parties designate another location as the venue for holding the mediation, then the venue rental costs must be paid by the parties. The mediator's service fees must be paid by the parties, but the amount and time of payment depends on the agreement between the mediator and the parties. If the mediator is a judge, then the parties are not charged any fees, whereas if the mediator is not a judge, then the parties must pay for their services, unless the parties cannot afford it, it will be paid by the state (*prodeo*).

Payment for mediator services can be made at the start of the mediation, while it is underway, or at the end of the mediation process. Some mediation costs should be paid at the beginning of the mediation process, especially to finance document materials, venue or to bring in experts for the mediation process. The financing mechanism for the entire mediation process is very dependent on the agreements between the parties and the agreement between the parties and the mediator. The amount and when the mediation fees are paid by the parties also really depends on the situation and conditions as well as mutual agreement.

The mediation process is carried out by the National Mediation Center. Based on the provisions of the PMN, the steps that must be taken in carrying out the mediation process are:

1. Pre-mediation process
 - a. The parties to the dispute registered their case with PMN.
 - b. The parties jointly appoint a mediator appropriate to the nature of the case.

²¹ Mifta Zulfalah Azzahro, "Faktor Penghambat Mediator Non-Hakim Dalam Penyelesaian Perkara Perceraian Pada Kasus Lanjut Usia," *El-Faqih: Jurnal Pemikiran Dan Hukum Islam* 9, no. 1 (2023): 39–55, <https://doi.org/https://doi.org/10.58401/faqih.v9i1.863>.

FUNCTION OF NON-JUDGE MEDIATORS

- c. The appointed mediator holds a meeting with all parties to discuss the mediator's role, procedures, and costs.
2. Mediation-negotiation process
 - a. The mediator holds separate meetings with the parties to gather initial information.
 - b. The mediator holds meetings with all parties to jointly define the problems, interests, and needs of the disputing parties.
 - c. The mediator helps the parties to develop alternative solutions to the problems, interests, and needs that have been defined.
 - d. The parties who negotiate to reach an agreement or alternative settlement are guided by the mediator.
3. End of mediation
 - a. If an agreement is reached, the parties will sign a dispute resolution document which will then be processed into a binding agreement.
 - b. If an agreement is not reached, the parties can end the mediation by submitting their withdrawal from the mediation process.

The role and function of judges are to resolve and decide based on legal considerations so the presence of non-judge mediators from professional organizations certified by the Supreme Court needs to be encouraged to cover the shortage of mediators in judicial institutions so that judges can focus on carrying out their duties as judges and non-mediators. Judges can be more professional in carrying out their duties and responsibilities as mediators by the code of ethics.²²

Procedures for Mediation in Religious Courts

The flow and procedures for Mediation in Religious Courts based on PERMA Number 1 of 2016, are as follows:

1. Pre-Mediation Stage

On the day of the first hearing attended by both parties, the judge requires the parties to undergo mediation. The judge postponed the case trial process to provide an opportunity for the mediation process for a maximum of 30 working days. The judge explains the mediation procedure to the parties to the dispute. The parties select a mediator from

²² Erie Hariyanto, Moh. Efendi, and Sulistiyawati, "Dilema Hakim Pengadilan Agama Dalam Menyelesaikan Perkara Hukum Keluarga Melalui Mediasi," *Volksgeist* 4, no. 1 (2021): 115–24, <https://ejournal.uinsaizu.ac.id/index.php/volksgeist/article/view/4333/2436>.

the list of names available on the first hearing day or no later than the next 2 working days. If within the period stated in point 4, the parties cannot agree on selecting the desired mediator, the chairman of the panel of judges shall immediately appoint a judge who is not the main case examiner to carry out the function of mediator.

2. Mediation Process Stage

Within 5 working days after the parties appoint an agreed mediator or after being appointed by the Chief Judge, each party can submit a resume of the case to the appointed Mediator Judge. The mediation process lasts a maximum of 30 working days from the time the mediator is selected by the parties or appointed by the Panel of Judges. The mediator is required to prepare a mediation meeting schedule for the parties to agree on. The mediator is obliged to declare that the mediation has failed if one of the parties or their legal representatives has not attended the mediation meeting twice in a row according to the agreed schedule without any reason after being properly summoned.

3. Mediation Reaches Agreement

If mediation results in a peace agreement, it must be formulated in writing and signed by the parties and the mediator. If the mediation is represented by legal counsel, the parties are required to state in writing the agreement or agreement reached. The parties can submit a peace agreement to the Judge to be confirmed in the form of a "Deed of Peace". If the parties do not want the peace agreement to be confirmed in the form of a Deed of Peace, they must create a clause for withdrawing the lawsuit and/or a clause stating that the case has been resolved.

4. Mediation does not reach an agreement

If mediation does not produce an agreement, the mediator is obliged to state in writing that the mediation process has failed and notify the Judge of this failure.

5. Place for holding mediation

Judge Mediator may not hold Mediation outside the Court. There is no charge for holding mediation in one of the Religious Courtrooms.

6. Conciliation at the Appeal, Cassation, and Judicial Review levels

The parties who agree to pursue peace at the Appeal/Cassation/Judicial Review level are required to submit it in writing to the Chairman of the Religious Court adjudicating. The Chairperson of the Religious Court adjudicating immediately notifies the Chairperson of the High Religious Court (for appeal cases) or the Chairperson of the Supreme Court (for

FUNCTION OF NON-JUDGE MEDIATORS

cassation and judicial review cases) about the parties' intentions to reach peace. The appeal/cassation/judicial review judge is obliged to postpone the examination of the case in question for 14 working days after receiving the notification. The parties, through the Chair of the Religious Court, can submit a peace agreement in writing to the Panel of Appeal/Cassation/Judicial Review Judges to be confirmed in the Deed of Peace. The Deed of Peace is signed by the Panel of Appeal/Cassation/Judicial Review Judges no later than 30 working days after it is recorded in the Case Master Register.

The results in the mandatory mediation process can be categorized into 4 types of mediation results, namely:

1. Pre-mediation Stages

At the first hearing, the judge will first explain the mediation procedures to the parties or married couples, as explained in PERMA No. 1 of 2016 Article 17 paragraphs (6) and (7), explains that:

(6) The judge examining the case is obliged to explain the mediation procedures to the parties.

(7) The explanation as intended in paragraph (6) includes:

- a. Attend the mediation meeting directly as well as the legal consequences for behavior not in good faith in the mediation process.
- b. Costs that may arise due to the use of non-judge mediators and non-court employees.
- c. The choice of following up the peace agreement through a peace deed or withdrawal of the lawsuit.
- d. The parties' obligation to sign the mediation explanation form.

How quickly the mediation takes place in the mediation room depends on the situation of both parties, and whether both parties are willing to convey solutions or suggestions to each other. The minimum mediation time is 30 minutes. The meeting between the two parties for mediation is not only held once but can be held several times, but the mediation process lasts a maximum of 30 days from the date the order for mediation is issued. If the mediation has not been completed, the mediation time can be extended according to the agreement of both parties for a maximum of 30 days from the end of the first period, as explained in PERMA mediation Article 24 paragraphs (2) and (3), which reads:

- (2) The Mediation process lasts a maximum of 30 days from the stipulation of the order to conduct Mediation.
- (3) Based on the agreement between the parties, the Mediation period can be extended for a maximum of 30 days from the end of the period as referred to in paragraph (2).

During divorce mediation, only both parties are allowed to enter the mediation room so that both parties are free to express their hidden feelings and not involve outside parties because that could make the atmosphere bad. The presence of both parties during mediation is very important because it can influence the course of the mediation process, but if one of the parties is abroad or has other reasons that make him unable to attend, mediation can be carried out virtually or can also be represented by a proxy who has power of attorney to conduct mediation.

The judge examining the case in considering the decision is obliged to state that an attempt has been made to reconcile the case through mediation by mentioning the name of the mediator. The judge examining the case who does not order the parties to undergo mediation so that the parties do not mediate has violated the provisions of the laws and regulations governing mediation in court. If there is a violation of these provisions, if legal action is filed, the Court of Appeal or the Supreme Court with an interim decision order the Court of First Instance to carry out a mediation process. The author conducted a questionnaire to respondents regarding whether the parties followed all stages of the mediation process. The results of the questionnaire conducted by the author with respondents can be seen in the table below:

TABLE 1. The Parties' Answers when Following All Stages of the Mediation Process

No.	The Parties' Answers	Number of Parties	Percentage
1.	Yes	15	75%
2.	No	5	25%
Total		20	100%

Source: Processed Data, 2022

Based on the research results, as many as 75% of the 20 respondents answered that they followed all stages of the mediation process and as many as 25% of the 20 parties answered that they did not follow all stages of the mediation process. So, it can be seen that more parties are taking part in the

FUNCTION OF NON-JUDGE MEDIATORS

mediation process and some parties who are not following all stages of the mediation process at the Religious Courts prefer to use the services of lawyers so it is appropriate for the Mediator Judge to summon both parties to ensure the expected mediation process takes place. In the mediation process, the period and stages of the mediation process are explained by PERMA mediation as follows: “Within a maximum period of 5 days from the date of determination, the parties can submit a resume of the case to the other party and the mediator. The mediation process lasts a maximum of 30 days from the date the mediation order is issued. Upon agreement between the parties, the mediator can submit a request to the Case Examining Judge accompanied by the reasons to extend the mediation process for a maximum of 30 days from the end of the specified period.” Mediation meetings can also be conducted via long-distance audio-visual communication media which allows all parties to see and hear each other directly and participate in the meeting. In carrying out the mediation process, the mediator is a person who plays an important role in reconciling the disputing parties.

The mediator, in carrying out his role, only has the authority to provide advice or determine the mediation process in seeking to resolve the dispute. The mediator does not have the authority and role to determine the content of the dispute, the mediator only monitors how the mediation process can run to produce an agreement.

TABLE 2. The Parties' Answers to Reasons for Not Wanting to Carry Out the Mediation Process

No.	The Parties' Answers	Number of Parties	Percentage
1.	Not wanting to make peace	10	50%
2.	Tend to want to resolve it through a judicial process	10	50%
Total		20	100%

Source: The results of field research, 2019

Based on the research results, as many as 50% of the 20 parties answered that they did not want to mediate as the reason the parties did not want to carry out the mediation process and as many as 50% of the 20 answered that they tended to want to resolve it through a judicial process as the reason the parties did not want to carry out the mediation process. It can

be seen that the parties do not want to mediate because the parties are determined to divorce and do not want to make any more peace efforts.

For the success of mediation in religious courts in resolving divorce cases to progress, it is necessary to have a special family dispute resolution institution (family court) and addition of mediation judges who know and understand psychology.²³

By having this training certificate, the mediator from the judge element has the right to mediate in court proceedings as intended in Perma chapter II article 4 which states that the court is obliged to provide a list of names of mediators from the court element of at least 2 people.

According to Christopher W More, mediators play a very important function in determining dispute resolution options by doing the following:

1. Become a reality checker, whether the method taken is a realistic way to meet needs and can be done.
2. Check whether the problem solution meets needs or is in line with one's interests.
3. Help the disputing parties to compare options, and compare the long-term and short-term.
4. Raise doubts about whether the parties involved have better options than the options already available in the negotiations.
5. Help the parties evaluate and modify dispute resolution options that better meet the parties' needs.
6. Help the parties to see the best, worst, and most possible alternatives to the negotiated agreement.
7. Help the parties to identify the benefits of the method taken and identify the costs incurred if they resolve and do not resolve the problem.

To describe the professionalism of mediators, training is needed so that mediators can be wise, and wise, and not force their will so that the hope of a win-win solution can be realized.

The obstacles faced by mediators are that mediators do not prioritize elements of professionalism, neutrality, and rush in handling mediated cases, including:

- 1) Unpreparedness of Mediator:
 - a. Related to the case.

²³ Andi Hartawati, Sumiati Beddu, and Elvi Susanti, "Model Mediasi Dalam Meningkatkan Keberhasilan Penyelesaian Perkara Perceraian Di Pengadilan Agama," *Indonesia Journal of Criminal Law* 4, no. 1 (2022): 59–73, <https://journal.ilinstitute.com/index.php/IJoCL/article/view/1551/550>.

FUNCTION OF NON-JUDGE MEDIATORS

- i. The circumstances of the dispute and the parties.
- ii. Causes of conflict.
- iii. Interference that may arise.
- iv. Organizing problems.
- b. Related to the general circumstances of mediation.
 - i. Mediation techniques, skills and strategies
 - ii. Emotions of the parties

2) Losing Control

- a. The main function of the mediator as an outsider to the case is to provide structure and control throughout the mediation.
- b. The mediator may allow minor violations to occur, but should not allow violations of the parties that lose control.

3) Loss of Neutrality

- a. By advising one party in the presence of the other party.
- b. Using body language that reflects his disagreement with one party's proposal or argument.
- c. Asking one party too directly. Neutrality is difficult to avoid if the mediator is an expert in the disputed field.

4) Ignoring Emotions

Emotions are accommodated in the mediation process. In contrast to litigation, the mediation process is very accepting of the psychological and emotional dimensions of the parties. The mediation process allows parties to express, acknowledge, and validate emotions, for example in cases of claims for physical harm.

5) Rushing in Pursuit of Solutions

Wanting to quickly discuss a solution, while the needs and interests of the parties have not been expressed, can create a risk of failure. Concern that parties will focus only on material issues and ignore emotional issues and process values.

6) Too controlling and pushy.

This issue is the most debated in mediation theory. Can cause danger:

- a. Loss of trust of the parties
- b. The parties feel forced to make peace to the point of not misrepresenting their interests.
- c. The mediator pursues his agenda.

The judge is also obliged to postpone the trial process of the case to allow the parties to undergo mediation and to notify that if a case does not undergo mediation, the case will result in being null and void. Apart from

that, the judge is obliged to explain the mediation procedures as required in PERMA Number 1 of 2016. The panel of judges is obliged to explain the delay for mediation purposes of a maximum of 30 days. The judge explained that if an agreement is reached (the mediation is successful) then the case can be withdrawn or the Panel of Judges will make a peace deed, and conversely if the mediation fails then the litigation process will continue.

Mediator's Expertise in Mediating in Court

a. Good faith from both parties

The goodwill of a husband and wife to reconcile determines the success of mediation. The good faith of the parties is to want to carry out mediation, to be present, to give suggestions, to have a long and free time to meet with the parties, and to have a mediation space that is conducive and comfortable for the parties.

b. Mediator abilities

The role of the mediator is very influential in the success of a mediation carried out to resolve a problem or dispute. The mediator must build positive interactions and communication so that the mediator can understand the interests of the parties and try to offer alternatives to fulfill those interests. In providing solutions or offering alternatives, the mediator cannot force the solutions provided to be accepted by the parties. Mediators who are good at managing conflict and communicating can seek common ground between the parties, which will easily encourage peace. It requires the mediator's astuteness to uncover the problems between the parties and the mediator's wisdom in providing solutions so that the parties succeed in resolving the problem peacefully and well.

c. Mediation Room

The room used for mediation should be a room that can make the minds and hearts of the parties more comfortable and peaceful. A cool room and a good layout will make them more open to receiving various positive input for their lives. The atmosphere of the mediation room will also be an obstacle to the success of the mediation because the atmosphere of the mediation room is uncomfortable, especially for parties who are already uncomfortable from home. As a result, the parties participate in the mediation process without seriousness, in other words, the parties participate in the mediation process only as a formality.

FUNCTION OF NON-JUDGE MEDIATORS

TABLE 3. The Parties' Answers Regarding the Mediation Room Being Adequate for the Mediation Process

No.	The Parties' Answers	Number of Parties	Percentage
1.	Comfortable	4	20%
2.	Not comfortable	16	80%
Total		20	100%

Source: The results of field research, 2022

Based on the table above, it is known that 16 respondents, or 80% stated that the mediation room was not adequate for carrying out mediation, while 4 respondents or 20% stated that the mediation room was adequate for carrying out mediation.

Failure of Mediation in Court

a. Absence of the parties

The absence of the parties in the mediation process is crucial because the mediation process can't be carried out if one of the parties is not present at the scheduled meeting. Attendance will also determine the good faith of the parties in pursuing the peace process. If the parties or one of the parties does not want to attend the scheduled meeting, it can be seen that the parties do not have good intentions to resolve the dispute peacefully

b. Exceeded the deadline given by PERMA

The second reason that mediation may fail or cannot be carried out is because the time limit specified in the PERMA provisions has passed. Considering that the time given for mediation with mediators from the Religious Courts is quite small, it is hoped that the mediator judges can develop appropriate strategies so that they can make better use of their time. This is what the Mediator Judges in the Religious Courts must do to be able to prevent decisions from occurring. divorce on the other hand and the other hand being able to carry out the mandate of existing laws and

regulations for the sake of upholding law and harmony in building a family that is *sakinah, mawadah warahmah*.²⁴

c. The mediation process was carried out in bad faith

The mediation process in bad faith means that the parties have bad intentions behind the ongoing mediation process. The mediation process must be shown only to resolve disputes peacefully and there must be no other intention behind the desire to resolve the dispute. Violation of this requirement can result in the mediation process being declared a failure, whether at the suggestion of any of the parties or the initiative of the mediator. This principle of good faith can be a benchmark for disputing parties to continue or not pursue peace through mediation in court. The outcome of peace must also be based on agreement from both parties.²⁵

d. There is a lack of parties

In principle, the peace process is a dispute resolution process that has the nature of ending the case, so the peace process must involve all parties involved in the dispute so that after the results of the agreement are confirmed into a peace deed, new disputes will not arise in the future. If in the peace process, there are parties who should be involved but are not involved, then the peace process becomes lacking in parties.

e. The terms of the peace agreement were not met

A mediator has the authority to examine the material of the agreement made by the parties before the agreement is submitted before the judge examining the case to be confirmed as a deed of peace. If the contents of the peace agreement contain things that are contrary to the law or are impossible to implement through legal procedures or there is bad faith on the part of one of the parties in agreeing to the peace agreement, then the mediator still has the right to declare that the mediation has failed.

f. Not all mediator judges have a mediator certificate

It is reasonable if the judge's knowledge of mediation theories and skills to carry out the mediator's function are inadequate. According to H. Abdul Aziz, MHI, not all mediators have certificates at the Pekanbaru Religious Court, which is an obstacle faced by mediator judges in optimizing the

²⁴ Khoirul Anam, "Strategi Hakim Mediator Dalam Mencegah Terjadinya Perceraian," *Jurnal Hukum - Yustitiabelen* 7, no. 1 (2021): 115–27, <https://journal.unita.ac.id/index.php/yustitia/article/download/323/299>.

²⁵ Farhan Asyhadi, "Efektivitas Mediasi Dalam Perkara Perceraian Di Pengadilan Agama Karawang," *Justisi: Jurnal Ilmu Hukum* 4, no. 1 (2019): 32–48, <https://doi.org/https://doi.org/10.36805/jjih.v4i1.642>.

FUNCTION OF NON-JUDGE MEDIATORS

success of the divorce case mediation process. According to Rina Eka Fatma, mediation processed by certified mediator judges influences the success of the mediation process, because certified mediator judges have been professionally trained, while non-certified mediator judges carry out the mediation process based on experience. According to Zulfadli M.H., however, certified judges certainly have more ability to handle the mediation process by the knowledge they have specifically learned to approach parties in dispute.

Mediation is seen as an effective, fast, and cheap means of resolving cases. Mediation also provides satisfactory and fair results for the parties. Apart from aiming to reduce the backlog of cases in court, mediation aims to optimize the role of judges in reconciling the disputing parties.²⁶

In practice, every mediator certainly tries to ensure that the problem for which he is asked for assistance is resolved completely. The methods and strategies that are usually used include; cool things down, improve communication flow, help create and develop options. However, returning to the principle of mediation everything to reach an agreement is left to the parties. Mediators are also ethically prohibited from interfering too deeply, let alone intervening or forcing the parties. It should be noted that the essence of the mediator's role is to build empathy for the parties, creating a conducive atmosphere for negotiating with the hope of reaching an agreement.²⁷

From the description above, which refers to the provisions in Article 11 of PERMA Number 1 of 2016, it can be seen that the procedure for appointing a mediator is regulated as follows:

- a. The parties themselves negotiate to select and determine the mediator;
- b. If the parties fail to elect a mediator, the head of the panel of judges will appoint a judge who is not a certified case examiner;
- c. If the relevant court does not have a judge who is not a certified case examiner, the head of the panel of judges appoints a case examiner judge or another judge without a certificate.

²⁶ Septi Wulan Sari, "Mediasi Dalam Peraturan Mahkamah Agung Nomor 1 Tahun 2016," *AHKAM* 5, no. 1 (2017): 1–16, <https://ejournal.uinsatu.ac.id/index.php/ahkam/article/view/669/480>.

²⁷ Mutholib, Lily Faizal, and H. Muhammad Zaki, "Analisis Hukum Islam Terhadap Pelaksanaan Mediasi Perkara Perceraian Di Pengadilan Agama Gedong Tatan Dan Pengadilan Agama Pringsewu Lampung," *Al-Manhaj: Jurnal Hukum Dan Pranata Sosial Islam* 4, no. 2 (2022): 83–92, <http://repository.radenintan.ac.id/20384/>.

Judge mediators or court employees appointed as mediators can determine the time for mediation to take place, after obtaining a determination on the appointment of a mediator by the Case Examining Judge. Judge mediators or appointed court employees can use the court building and there is no charge for this to the parties. The mediator calls the parties for assistance from the bailiff or substitute bailiff. Successful mediation reaches an agreement between the parties assisted by a mediator, which is then formulated in writing in an Agreement.²⁸

The results of the appointment of a mediator by the parties to the dispute are stated in an agreement form to select a mediator signed by both parties to the dispute, which contains the name of the appointed mediator and an agreement on the costs of mediation in court.

In contrast to non-judge mediators, they must submit an application to be placed as a mediator on the Mediator Name List at the relevant court of first instance. In connection with the provisions of the Mediation Regulation, "certified non-judge mediators can submit a request to the Chief Justice to have their names placed on the list of mediators at the relevant court." So, before being placed on the List of Mediator Names, certified non-judge mediators are required to apply for the Head of the Court to have their names included in the list of mediators at the relevant court. The chairman of the court of first instance concerned will verify and ensure that the applicant has a valid mediator certificate. If the result is that the mediator's certificate is declared valid, then there is no reason for the Chief Justice to refuse to place the non-judge mediator on the List of Mediator Names at the court of first instance concerned.

In contrast, a judge who is a certified mediator does not need to register himself so that his name is included in the Mediator Name List at the court of first instance where the judge concerned serves. The chairman of the court of first instance enters the names of certified mediator judges into the Mediator Name List without going through the application process as is done by certified non-judge mediators.

To maintain professionalism and maintain the quality of mediators, the list of mediators will be regularly evaluated and updated by the Chief Justice every year. It is stated in the mediation regulations, that "the Chief

²⁸ Erie Hariyanto and Moh. Efendi Sulistiyawati, "Dilema Hakim Pengadilan Agama Dalam Menyelesaikan Perkara Hukum Keluarga Melalui Mediasi," *Volksgeist* 4, no. 1 (2021): 115–24, <https://doi.org/10.24090/volksgeist.v3i1.4333>.

FUNCTION OF NON-JUDGE MEDIATORS

Justice annually evaluates and updates the list of mediators". So, the head of the court of first instance concerned is obliged to periodically review and update the placement of the names of mediators listed in the List of Mediator Names in his court every year.

Conclusion

Finally, this study highlighted and concluded that the mediation process consists of the Pre-Mediation Stage, Mediation Process Stage, Mediation Reaches Agreement, and Mediation Does Not Reach Agreement. Mediation has not been effective due to the low success of peace in resolving divorce within the Pekanbaru High Religious Court. In addition, this study also emphasized that judge mediators and non-judge mediators will explain the mediation process by PERMA Mediation in Court starting from the stages, registration, pre-mediation, mediation, and mediation results. The mediator's expertise is needed to mediate, both by providing advice so that the parties can reconcile, as well as the need for facilities and infrastructure for a peaceful, conducive, and calm mediation space. Legislation regarding Mediation is needed that is equivalent to the Law so that the effectiveness of mediation, the terms and conditions of the mediator, and the process are better and more perfect than the current Supreme Court Regulations.

References

- Aidi, Zil. "Mediasi Elektronik Sebagai Alternatif Penyelesaian Sengketa Perdata Di Pengadilan Negeri Pada Era Pandemi Covid 19." *Jurnal Hukum Magnum Ops* 5, no. 1 (2022): 133–46. <https://jurnal.untag-sby.ac.id/index.php/Magnumopus/article/view/6171/4648>.
- Anam, Khoirul. "Strategi Hakim Mediator Dalam Mencegah Terjadinya Perceraian." *Jurnal Hukum - Yustitiabelen* 7, no. 1 (2021): 115–27. <https://journal.unita.ac.id/index.php/yustitia/article/download/323/299>.
- Asyhadi, Farhan. "Efektivitas Mediasi Dalam Perkara Perceraian Di Pengadilan Agama Karawang." *Justisi: Jurnal Ilmu Hukum* 4, no. 1 (2019): 32–48. <https://doi.org/https://doi.org/10.36805/jjih.v4i1.642>.
- Azzahro, Mifta Zulfalah. "Faktor Penghambat Mediator Non-Hakim Dalam Penyelesaian Perkara Perceraian Pada Kasus Lanjut Usia." *El-Faqih: Jurnal Pemikiran Dan Hukum Islam* 9, no. 1 (2023): 39–55. <https://doi.org/https://doi.org/10.58401/faqih.v9i1.863>.

- Hadad, Al-Thahir Al, and M. Adib Bisri. *Wanita Dalam Syariat Dan Masyarakat*. Jakarta: Pustaka Firdaus, 1993.
- Hanifah, Mardalena. "Kajian Yuridis: Mediasi Sebagai Alternatif Penyelesaian Sengketa Perdata Di Pengadilan." *ADHAPER: Jurnal Hukum Acara Perdata* 2, no. 1 (2016). <https://doi.org/10.36913/jhaper.v2i1.21>.
- Harahap, M. Yahya. *Kedudukan Kewenangan Dan Acara Peradilan Agama UU No. 7 Th. 1989*. Jakarta: Cambridge University Press, 2007.
- Hariyanto, Erie, Moh. Efendi, and Sulistiyawati. "Dilema Hakim Pengadilan Agama Dalam Menyelesaikan Perkara Hukum Keluarga Melalui Mediasi." *Volksgeist* 4, no. 1 (2021): 115–24. <https://ejournal.uinsaizu.ac.id/index.php/volksgeist/article/view/4333/2436>.
- Hariyanto, Erie, and Moh. Efendi Sulistiyawati. "Dilema Hakim Pengadilan Agama Dalam Menyelesaikan Perkara Hukum Keluarga Melalui Mediasi." *Volksgeist* 4, no. 1 (2021): 115–24. <https://doi.org/10.24090/volksgeist.v3i1.4333>.
- Hartawati, Andi, Sumiati Beddu, and Elvi Susanti. "Model Mediasi Dalam Meningkatkan Keberhasilan Penyelesaian Perkara Perceraian Di Pengadilan Agama." *Indonesia Journal of Criminal Law* 4, no. 1 (2022): 59–73. <https://journal.ilinstitute.com/index.php/IJoCL/article/view/1551/550>.
- Hasanah, Faridatul. "Pendekatan Persuasif Mediator Dalam Praktik Mediasi Kasus Perceraian Di Pengadilan Agama Gresik." *Shakhsiyah Burhaniyah: Jurnal Penelitian Hukum Islam* 6, no. 1 (2021): 25–48. <https://ejournal.unhasy.ac.id/index.php/ShakhsiyahBurhaniyah/article/download/1639/1164>.
- Hidayat, Masykur. "Keberadaan Lembaga Perdamaian (Dading) Setelah Berlakunya Perma No. 2 Tahun 2003 Tentang Prosedur Mediasi Di Pengadilan." Airlangga University, 2005. <https://repository.unair.ac.id/35921/>.
- Muhammad, Abdulkadir. *Hukum Perdata Indonesia*. 5th ed. Bandung: Citra Aditya Bakti, 2014. <https://simpus.mkri.id/opac/detail-opac?id=9981>.
- Mutholib, Liky Faizal, and H. Muhammad Zaki. "Analisis Hukum Islam Terhadap Pelaksanaan Mediasi Perkara Perceraian Di Pengadilan Agama Gedong Tatan Dan Pengadilan Agama Pringsewu Lampung." *Al-Manhaj: Jurnal Hukum Dan Pranata Sosial Islam* 4, no. 2 (2022):

FUNCTION OF NON-JUDGE MEDIATORS

- 83–92. <http://repository.radenintan.ac.id/20384/>.
- Prodjohamidjojo, Martiman. *Hukum Perkawinan Indonesia*. 3rd ed. Jakarta: Indonesia Legal Center Publishing, 2011.
- Saifullah, Muhammad. *Mediasi Dalam Tinjauan Hukum Islam Dan Hukum Positif Di Indonesia*. Semarang: Walisongo Press, 2009.
- Saraswati, Rika, V Hadiyono, Yuni Kusniati, and Emanuel Boputra. “Peranan Mediator Hakim Dan Mediator Non Hakim Melindungi Hak-Hak Anak Dalam Penyelesaian Sengketa Perceraian.” *Jurnal Hukum Justitia Et Pax* 36, no. 2 (2020): 159–79. <https://doi.org/https://doi.org/10.24002/jep.v36i2.3164>.
- Sari, Septi Wulan. “Mediasi Dalam Peraturan Mahkamah Agung Nomor 1 Tahun 2016.” *AHKAM* 5, no. 1 (2017): 1–16. <https://ejournal.uinsatu.ac.id/index.php/ahkam/article/view/669/480>.
- Sosroatmodjo, Arso, and Wasit Aulawi. *Hukum Perkawinan Di Indonesia*. Jakarta: Bulan Bintang, 1998.
- Supreme Court of the Republic of Indonesia. “Regulation of the Supreme Court of the Republic of Indonesia Concerning Mediation Procedures in Court (Perma No. 1 of 2016).” Jakarta, 2016. <https://jdih.mahkamahagung.go.id/legal-product/perma-nomor-1-tahun-2016/detail>.
- Widjaja, Gunawan. *Alternatif Penyelesaian Sengketa*. Jakarta: PT RajaGrafindo Persada, 2005. <https://opac.perpusnas.go.id/DetailOpac.aspx?id=569165>.
- Wignjosoebroto, Soetandyo. *Hukum : Paradigma Metode Dan Dinamika Masalahnya*. 1st ed. Jakarta: Lembaga Studi dan Advokasi Masyarakat (ELSAM), 2002.

*Justice grows out of
recognition of ourselves in
each other — that my liberty
depends on you being free too.*

Barack Obama