

The Ineffectiveness of Mediation in Divorce Disputes: A Case Study in the Palembang Religious Court

Sri Turatmiyah,* Joni Emirzon,* Annalisa Y,* and
Haniyatul Husna Binti Md Mohtar**

*Fakultas Hukum, Universitas Sriwijaya Palembang, Indonesia

**Politeknik Muadzam Shah, Pahang, Malaysia

Email: srituratmiyah@fb.unsri.ac.id

Abstract: This article examines the ineffective of the mediation process in divorce disputes at the Palembang Religious Court during the period from 2020 to 2022. Data was collected through observations, documentation, and interviews with litigants and judges involved in divorce cases at the Palembang Religious Court. Relying on the legal effectiveness theory, the study found that over a span of three years (2020, 2021, and 2022), the Palembang Religious Court successfully mediated only 33 divorce disputes (0.45%) out of a total of 7,338 cases. This indicates that mediation of divorce disputes at the court has not been effectively implemented. The article also reveals several factors contributing to this ineffectiveness, including (1) the complex background and reasons for the parties involved in the disputes, (2) an imbalance between the number of mediator judges and the number of cases brought to the court, (3) a lack of good faith on the part of the parties to engage in the mediation process, (4) inadequate resources and facilities, and (5) a low legal culture and poor legal awareness among the litigants. Thus, this article finds a number of other causes related to the ineffectiveness of mediation in divorce disputes that were not found in previous studies.

Keywords: *the effectiveness of mediation; divorce disputes; the Palembang Religious Court*

Abstrak: Artikel ini mengkaji problem tidak efektifnya proses mediasi sengketa perceraian di Pengadilan Agama Palembang selama rentang waktu 2020 hingga 2022. Data dikumpulkan melalui observasi, dokumentasi dan wawancara dengan sejumlah narasumber, baik yang berperkara maupun yang menangani perkara perceraian di Pengadilan Agama Palembang. Penelitian ini menemukan bahwa dalam kurun waktu tiga tahun (2020, 2021 dan 2022), Pengadilan Agama Palembang hanya berhasil memediasi 33 sengketa perceraian (0.45%) dari total 7.338 sengketa perceraian. Hal ini membuktikan bahwa mediasi sengketa perceraian di Pengadilan Agama Palembang belum berjalan secara efektif. Artikel ini juga menemukan sejumlah penyebab tidak efektifnya proses mediasi di Pengadilan Agama Palembang, yakni (1) kompleksnya latar belakang alasan para pihak yang bersengketa, (2)

tidak berimbang rasio jumlah hakim mediator dengan banyaknya jumlah perkara yang masuk ke pengadilan, (3) tidak adanya itikad baik dari para pihak untuk melakukan proses mediasi, (4) sarana dan fasilitas yang tidak memadai, dan (5) budaya dan kesadaran hukum yang rendah di kalangan para pihak yang bersengketa. Dengan demikian, artikel ini menemukan sejumlah penyebab lain terkait tidak efektifnya mediasi dalam sengketa perceraian yang tidak ditemukan dalam penelitian-penelitian sebelumnya.

Kata Kunci: *efektivitas mediasi; sengketa perceraian; Pengadilan Agama Palembang*

Introduction

Marriage is mostly understood as the physical and spiritual bond between a husband and wife, aimed at establishing a lasting and blissful family in accordance with the Divine Supreme Being.¹ Likewise, in Islamic Law, the significance of marriage lies in its portrayal as a solemn contract, known as "nikah," which embodies a strong commitment or *mitsaqan gholidzian* to obey the commandments of Allah as an act of worship.² Marriage aims to establish a harmonious, affectionate, and compassionate household, characterized by tranquility, love, and mercy.³ Through marriage, a man and a woman commit themselves to a religiously sanctioned relationship.⁴ However, not every couple in a marriage sustains a harmonious family life. Many husbands and wives frequently experience conflicts and disputes. In fact, a significant number of these disputes between spouses in marriages ultimately lead to divorce. This phenomenon is observed across various regions in Indonesia. In recent years, there has been an increase in the number of divorces in different parts of the country. In 2020, the number of divorces in Indonesia reached 291,677, followed by a notable increase in 2021 to 447,793, and further rose to 516,344 in 2022.⁵

¹Article 1 of Law Number 1 of 1974 about Marriage.

²Article 2 of Kompilasi Hukum Islam.

³Article 3 of Law Number 1 of 1974 about Marriage.

⁴Sofyan Hasan, Sri Turatmiyah, and Ahmaturrahman, *Perjanjian Perkawinan Sighat Taklik Talak Dalam Hukum Keluarga Islam*, ed. Noer Fikri Offset (Palembang, 2021), p. 1.

⁵"Statistik Indonesia," *Statistical Yearbook of Indonesia*, 2022, <https://www.bps.go.id>.

A similar situation is observed in the jurisdiction of the Palembang Religious Court. There is a significant influx of marital disputes brought to the court, which ultimately result in divorces. Data regarding cases in the Palembang Religious Court indicate a consistently high and increasing number of divorces over the past three years. In 2020, the number of divorces in this region reached 2,570. This figure further increased to 2,865 in 2021 and rose again to 2,903 in 2022.⁶

However, every divorce is inevitably processed through a court decision, as regulated in Article 39 paragraph (1) of Law No. 1 of 1974 and based on Article 4 paragraph (1) of the Supreme Court Regulation (Perma) No. 1 of 2016. According to this regulation, before a case is decided by the court, the parties are obligated to undergo a mediation process. This demonstrates a legal reform, wherein the inclusion of mediation in the court proceedings is part of the government's efforts to address the high divorce rates in Indonesia. However, despite these efforts, the divorce rate in Indonesia remains remarkably high. Therefore, the prevalence of divorce cases in Indonesia in general, and specifically in the Palembang Religious Court, can also be seen as a failure in the mediation process. This failure highlights that the effectiveness of Supreme Court Regulation No. 1 of 2016 has not been fully realized.

According to Sakban Lubis, mediation is an alternative dispute resolution that is contentious, namely as a process of mediation assisted by someone as an intermediary in communicating between the disputing parties so that they can be understood and reconciled, but the peace agreement remains in the hands of the parties.⁷ Meanwhile, according Supreme Court Regulation Number 1 of 2016, mediation is a method of dispute resolution through negotiation facilitated by a mediator to reach an agreement between the parties.⁸ It is a mandatory step that a judge must take before proceeding to trial. Its purpose is to seek solutions for conflicts and disputes between married couples,

⁶Data obtained from the Case section Palembang Religious Court on 26 August 2022.

⁷Sakban Lubis, "Pandangan Islam Terhadap Mediasi Di Pengadilan Dalam Sengketa Perdata," *Jurnal Hukum Responsif* 7, no. 7 (2019), p. 12.

⁸Supreme Court Regulation Number 2016 concerning Mediation Procedures in Courts.

aiming to prevent divorce. However, in reality, divorce rates have been increasing in nearly all regions of Indonesia, including Palembang, over the past three years.

This article examines the ineffectiveness of the mediation process in divorce disputes within the jurisdiction of the Palembang Religious Court, particularly focusing on the factors contributing to this ineffectiveness. This study is important for two reasons: firstly, mediation is mandatory in resolving divorce disputes since the implementation of Supreme Court Regulation No. 1 of 2016, and secondly, mediation in the jurisdiction of the Palembang Religious Court has not significantly reduced the high divorce rates. Therefore, this article aims to analyze the problems related to the ineffectiveness of the mediation process in divorce disputes at the Palembang Religious Court, along with the factors that contribute to this ineffectiveness.⁹

Several scholars have conducted studies and research on mediation in divorce disputes. Fajar and Syahputra examined the role of mediators in resolving civil disputes in the jurisdiction of the Religious Court of West Sumatra. Their study primarily focused on optimizing the mediator's role in resolving civil disputes in general. On the other hand, studies or research that specifically focused on the effectiveness of mediation in resolving marriage disputes were conducted by Angraini and Elda, Andaryuni and Khairunisa, Ma'u, and Fadhil. Angraini and Elda's study examined the perspectives of judges acting as mediators in the Palembang Religious Court regarding the implementation of Supreme Court Regulation No. 1 of 2016 and the effectiveness of mediation in resolving divorce cases. The findings concluded that judges in the court regarded mediation merely as a procedural formality. Furthermore, the research also indicated that the success rate of mediation in the Palembang Religious Court in 2016

⁹The Religious Courts are one of the executors of the judicial bodies in Indonesia which are at the Regency/City level which are authorized to settle cases in the fields of marriage, endowments, inheritance, wills, zakat, grants, infaq, and dispute resolution in the field of sharia economics. See Muhammad Zainuddin Sunarto, "Mediasi Dalam Perspektif Maqasid Syariah: Studi Tentang Perceraian Di Pengadilan Agama," *At-Turās: Jurnal Studi Keislaman* 6, no. 1 (2019), p. 100.

was remarkably low, with only 21% of cases being successfully mediated.¹⁰

Meanwhile, Andaryuni, who conducted research in the Religious Courts of Samarinda and Tenggarong, East Kalimantan, also reached a similar conclusion that mediation in resolving divorce disputes in the courts of Samarinda and Tenggarong has not been effective, mainly due to the lack of certified mediator judges.¹¹ On the other hand, Khairunisa, Ma'u, and Fadhil, who examined the effectiveness of mediation in the Singkawang Court, concluded that the high divorce rates in Indonesia are attributed to the suboptimal implementation of mediation in resolving divorce disputes. This reflects the low effectiveness of mediation in the courts across Indonesia, including the Religious Court of Singkawang. This is primarily due to the limited number of mediators available to handle the mediation process.¹²

This article aims to complement and build upon previous studies by focusing on the examination of the ineffectiveness of mediation in marriage disputes within the jurisdiction of the Palembang Religious Court. Additionally, it seeks to delve into the factors contributing to the ineffectiveness of the mediation process within the last three years, specifically from 2020 to 2022.

This article represents a juridical-empirical study. The data presented in this article are based on both field data and literature sources. The initial data collection involved a comprehensive review of relevant legal literature, including an inventory of various laws and regulations related to mediation. Subsequently, field data were collected through purposive sampling, employing methods such as observation, documentation, and interviews. Key informants were selected,

¹⁰Dede Anggarini Elda, "Efektifitas Perma No. 1 Tahun 2016 tentang Prosedur Mediasi di Pengadilan terhadap Perkara Cerai Gugat di Pengadilan Agama kelas 1 A Palembang", *Laporan Penelitian*, Universitas Islam Raden Fatah Palembang, (2017), p. 79.

¹¹Lilik Andaryuni, Ratu Haika "Efektivitas Perma No. 1 Tahun 2016 Tentang Prosedur Mediasi Di Pengadilan Dalam Menekan Angka Cerai Di Pengadilan Agama," *Fenomena, Jurnal Penelitian* 10, no. 1 (2018), <https://doi.org/http://doi.org/10.21093/fj.v10i2.1231:114>.

¹²Tika Khairunisa, Dahlia Haliah Ma'u, and Moh. Fadhil, "Problematisasi Mediasi Perkara Perceraian Berdasarkan Pengalaman Hakim Mediator Pada Hakim Pengadilan Agama Singkawang," *AL-USROH* 2, no. 2 (2022), p. 357.

including the Palembang Religious Court Judges, three disputing parties in divorce cases, and two legal representatives. The collected data was then systematically and structurally organized and analyzed. The data analysis focused on addressing the main research questions regarding the ineffectiveness of mediation in resolving divorce disputes within the jurisdiction of the Palembang Religious Court and the factors contributing to it. The theoretical framework utilized for analyzing these issues is the legal effectiveness theory developed by Soekanto and other legal scholars. According to the legal effectiveness theory, a legal product is considered effective when it has been implemented and practiced by society as a legal subject.¹³ Hakim's perspective suggests that the success or failure of legal rules is determined, among other factors, by the level of compliance of the community with the legal rules, including the law enforcement authorities. This indicates that the effectiveness of a legal system is determined by the level of legal compliance, both by the society and the law enforcement agencies. The functioning of the law signifies the achievement of its objectives, which aim to preserve and protect the community in their social interactions.¹⁴ Novita, Prasetyo, Suparno, and Bereklaui identify five factors that influence or determine the effectiveness of a law. These factors are (a) the law itself, (b) the law enforcement authorities, (c) the infrastructure and facilities, (d) the community in which the law is applied, and (e) the legal culture. These factors collectively contribute to the overall effectiveness of law in achieving its intended objectives and ensuring compliance within society. By considering these factors, a comprehensive assessment can be made regarding the effectiveness of a particular legal framework.¹⁵

¹³Ria Ayu Novita, Agung Basuki Prasetyo, and Suparno, "Efektifitas Pelaksanaan UU No. 2 Tahun 1960 Tentang Perjanjian Bagi Tanah Hasil Pertanian (Tanah Kering) Di Desa Bringin, Kecamatan Bayan Kabupaten Purworejo," *Diponegoro Law Journal* 6, no. 2 (2017), p. 4.

¹⁴Nurul Hakim, "Efektivitas Pelaksanaan Sistem Arbitrase Dan Alternatif Penyelesaian Sengketa Dalam Hubungannya Dengan Lembaga Peradilan.," in <http://badilag.net/data/ARTIKEL/efektifitas.pdf>, 2023. Retrieved 26 May 2023.

¹⁵Novita, Agung Basuki Prasetyo, and Suparno, "Efektifitas Pelaksanaan UU No. 2 Tahun 1960 Tentang Perjanjian Bagi Tanah Hasil Pertanian (Tanah Kering) Di Desa Bringin, Kecamatan Bayan Kabupaten Purworejo." See also Brigitta Maria Bereklaui, "Implementasi Teori Efektifitas Terhadap Pelaksanaan Fungsi Pos Bakum Di Pengadilan Tata Usaha Negara Denpasar," *Jurnal Kertha Desa* 8, no. 8 (2020), p. 3.

This article aims to examine the issue of the ineffectiveness of mediation in marital disputes within the jurisdiction of the Palembang Religious Court, along with the factors that influence it, drawing upon the theory of legal effectiveness. The primary objective of this article is to contribute to the development of legal knowledge in general and the application of the theory of legal effectiveness in particular. Furthermore, this article seeks to complement and enhance existing studies on the ineffectiveness of mediation in resolving marital disputes, while simultaneously seeking to provide insights into the various factors that contribute to the ineffectiveness of the mediation process.

Mediation in Islamic Law and Legal Regulations in Indonesia

Mediation is a problem-solving process between two or more parties conducted through consultation and facilitated by a peacemaker or mediator. This mediation method is taught in the Quran as a way to address disputes and conflicts, both within the family and in society. This is emphasized, for example, in QS. an-Nisa [4]: 35, which highlights the necessity of engaging in mediation when family disputes arise.¹⁶ QS. an-Nisa [4]: 128 states that the resolution of divorce disputes within the family can be achieved by appointing a mediator (*hakam*) from the respective families of the husband and wife.¹⁷ QS. al-Hujurat [49]: 9 commands the practice of mediation in resolving disputes that arise between different communities or groups;¹⁸ and QS. al-Hujurat [49]: 10 commands the practice of mediation when disputes arise among the believers.¹⁹ This demonstrates that Allah strongly encourages mankind to engage in mediation as a means of peacefully

¹⁶“And if you are worried that there will be a dispute between the two, then send a peacemaker from a woman's family. If both of them (peacemakers) intend to make improvements, surely Allah will give *taufik* to the husband and wife. Verily, Allah is all-knowing, all-seeing.”

¹⁷Kamaruddin, “Mediasi Dalam Pandangan Hukum progresif Suatu Alternatif Penyelesaian Konflik Keluarga,” *Jurnal Al-Adl* 11, no. 2 (2018), p. 2.

¹⁸“And if two groups of those who believe are fighting, you should make peace between the two! But if one violates the agreement against the other, let the one who violates the agreement be fought until he recedes back to God's commands. If he has receded, reconcile between the two according to justice and be fair to you; verily Allah loves those who act justly.”

¹⁹“The believers are actually brothers. Therefore, make peace (improve the relationship) between your two brothers and fear Allah that you may receive mercy.”

resolving issues or disputes within families and communities through mutual consultation. The purpose is to seek the best possible resolution for both parties involved in the conflict or dispute. The mediation process can take place through judicial channels or outside of the court system, as emphasized in QS. an-Nisa [4]: 128.²⁰

In Islam, the practice of resolving issues through mediation has also been exemplified by the Prophet both before and after his prophethood. This can be observed, for example, during the conflict among the Quraish tribe regarding who had the right to reposition the Black Stone (Hajar Aswad) after it had been displaced from its original place, as well as the conflict between the disbelievers of Makkah and the Muslim community, which led to the Treaty of Hudaibiyah. The resolution of these conflicts concerning the repositioning of the Black Stone and the Treaty of Hudaibiyah was achieved by Prophet Muhammad through mediation, specifically through mutual consultation and reaching a consensus.²¹

Based on the explanation above, it is evident that the resolution of issues or disputes through consultation or mediation has a strong foundation in the Qur'an and the Sunnah of the Prophet.²² In the legal provisions of Indonesia, the settlement of disputes through mediation also lies on a strong juridical basis, namely: (a) the 1945 Constitution, which implies the use of the principle of consultation for consensus in resolving disputes; (b) Article 130 of the Civil Code and Article 154 of the Criminal Procedure Code; (c) Article 16(2) of Law No. 4 of 2004 concerning Judicial Power; (d) Article 65 and 82 of Law No. 7 of 1989, as amended by Law No. 3 of 2006, and further amended by Law No. 50 of 2009 concerning Religious Courts; (e) Article 31 of Government Regulation No. 9 of 1975; (f) Article 115, 131(2), Article 143(1) and (2), and Article 144 of the Compilation of Islamic Law; (g) Article 6 of Law No. 30 of 1999 concerning Alternative Dispute Resolution; (h) Circular

²⁰QS. an-Nisa [4]: 128.

²¹Bukido et al, p. 375.

²²With regard to the implementation of Islamic sharia values, Abdul Ghani Abdullah, as quoted by Kamsi, said that the implementation of Islamic values is recognized by the constitution because Islamic teachings are a way of life, moral ideals and aspirations of the majority of Muslims in Indonesia, and have an important role in realizing the basic state norms of Pancasila. See Kamsi, "Politics of Islamic Law in Indonesia: Indonesianization of Islamic Law," *Asy-Syir'ah Jurnal Ilmu Syari'ah Dan Hukum* 52, no. 1 (2018), p. 5.

Letter of the Supreme Court No. 1 of 2002 on the Empowerment of First Instance Courts to Implement Mediation Institutions; (i) Minister of Religious Affairs Regulation No. 2 of 2003 on Mediation Procedures in Courts, as amended by Minister of Religious Affairs Regulation No. 1 of 2008, and further amended by Minister of Religious Affairs Regulation No. 1 of 2016. The existence of several legal regulations governing mediation implies the state's seriousness in supporting the implementation of mediation as an alternative dispute resolution method. In Indonesia, mediation is a habit that is often carried out by the community in solving problems or conflicts, namely through deliberations to reach a consensus. Therefore, mediation is a common thing that is done by various ethnic groups or Indonesian community groups, this makes the concept of mediation easier to accept, not even a formal thing.²³

Referring to Article 1, paragraph (1) of Supreme Court Regulation No. 1 of 2016, mediation is defined as a dispute resolution method through negotiation facilitated by a mediator in order to reach an agreement between the parties involved. This mediation, as regulated in the Supreme Court Regulation, is part of the judicial reform that is integrated with the judicial process. One of the objectives of mandatory mediation is to reduce the backlog of cases in the courts and resolve disputes through consultation to achieve consensus. Through the mediation process, it is expected that divorce disputes will not proceed to litigation because a solution to the dispute has already been found by the parties involved.²⁴ In addition, solving problems or conflicts through mediation also brings a number of benefits, namely: a) reducing the buildup of cases in court; b) increasing public legal awareness to familiarize themselves with mediation as the best solution in resolving disputes; c) facilitate the parties in obtaining justice; d) provide an opportunity for the parties to obtain a decision based on what is acceptable to all parties (win-win solution); e) is closed; f)

²³Abdul Aziz and Lukman Hakim, "Pelaksanaan Mediasi Perceraian Di Peradilan Agama Dalam Perspektif Hukum Islam," *AL-ASHLAH* 1, no. 2 (2022), p. 109.

²⁴Regarding the reasons and objectives for issuing Supreme Court Regulation Number 1 of 2016, see further details in Evalina Alissa and Yeni Erwita, "Studi Komparatif Mediasi Antara Peraturan Mahkamah Agung (Perma) Nomor I Tahun 2008 Dan Peraturan Mahkamah Agung (Perma) Nomor I Tahun 2016," *Jurnal Sains Sosio Humaniora* 3, no. 2 (2019), p. 218.

because it is based on an agreement, the relationship between the parties is still well established.²⁵

In practice, the implementation of mediation involves several stages, namely pre-mediation, the mediation process, and the implementation of the mediated agreement. These stages are mandatory and should be conducted by the mediator who leads the mediation process. Mediation should be offered in every legal proceeding, aiming to achieve reconciliation before proceeding to litigation.²⁶ In this case, the mediator has a fundamental role in the mediation process. It can be one of the factors causing the success or failure of mediation.²⁷

The implementation of mediation can be carried out by either judges or non-judges who hold a certificate as a mediator issued by an accredited institution, namely the Supreme Court.²⁸ A mediator must possess several skills in various aspects that enable them to facilitate the reconciliation of both disputing parties.²⁹ Based on the Supreme Court Decree (SKMA) No. 108 of 2016, a mediator in carrying out mediation must have 4 (four) competencies. First, interpersonal competence which includes the mediator's self-perception, interpersonal communication and self-management in the mediation process. Second, the competency of the Mediation Process which includes expertise in handling the mediation process and uncovering hidden agendas. Third, Mediation Management competence which includes the ability to design mediation processes, facilitate, maintain continuity and end mediation effectively and efficiently. Fourth, ethical

²⁵Mariah S.M. Purba, "Rekonstruksi Perma No. 1 Tahun 2016 Sebagai Alternatif Penyelesaian Sengketa Di Pengadilan," *Jurnal Hukum Samudra Keadilan* 13, no. 1 (2018), p. 22.

²⁶Wina Purnamasar, Fakhruddin, and Ahmad Dibul Amda, "Problematika Mediator Dalam Penyelesaian Perkara Perceraian di Pengadilan Agama Curup Kelas 1 B," *Al-Ihkam: Jurnal Hukum Keluarga* 13, no. 1 (2021), p. 88.

²⁷Qodariah Barkah and Abi Tandore, "Problem Hakim Mediasi Dalam Melaksanakan Mediasi Terhadap Kasus Perceraian Pada Masa Pandemi Covid-19 Di Pengadilan Agama Kelas 1B Kayuagung," *Wajah Hukum* 6, no. 2 (2022), p. 406.

²⁸Article 1 paragraph (2) *jo* Article 13 paragraph (1), Supreme Court Regulation Number 2016 concerning Mediation Procedures in Courts.

²⁹Regarding a number of aspects that must be mastered by a mediator, see further in Wina Purnamasar, Fakhruddin, and Ahmad Dibul Amda, "Problematika Mediator Dalam Penyelesaian Perkara Perceraian di Pengadilan Agama Curup Kelas 1 B," *Al-Ihkam: Jurnal Hukum Keluarga* 13, no. 1 (2021), p. 88.

competence and self-development. Through this competence, mediators are expected to demonstrate their professionalism and continuously develop their knowledge and skills.³⁰

The emergence of mediation is a result of the perceived slowness, complexity, and high cost of dispute resolution through the court system. Therefore, mediation is a method of dispute resolution conducted through consensual negotiations to achieve a peaceful agreement. As an effective and efficient non-litigation dispute resolution instrument, mediation provides numerous benefits and advantages to the parties involved. These include achieving a win-win solution, saving time, reducing costs, and maintaining a positive relationship between the disputing parties.³¹

The Inefficacy Mediation in the Palembang Religious Court

In accordance with Supreme Court Regulation No. 1 of 2016, which stipulates the mandatory use of mediation for every issue or dispute, the Palembang Religious Court has also implemented this provision. The mediation process is carried out through a series of stages. Firstly, there is the Pre-Mediation stage, wherein if the hearing schedule has been determined, the presiding judge is obligated to inform the parties about the option of pursuing mediation. Secondly, there is the stage of summoning the parties. The disputing parties are summoned under legal procedures. If, after the first summons, the parties fail to appear, a second summons is issued following the court proceedings. In the event that not all parties are able to attend on the designated day, even after the second summons, the mediation process is still conducted. Thirdly, there is the stage of the mediation process itself, which spans a maximum of 5 (five) days. The mediation is scheduled to be completed within 30 (thirty) days, starting from the determination of the mediation process. If an agreement is not reached

³⁰See the Supreme Court Decree (SKMA) Number 108 of 2016 concerning the Management of Mediation in Courts, specifically the "Considering" section. See too: Wina Purnamasari, Fakhruddin, and Ahmad Dibul Amda, "Problematika Mediator Dalam Penyelesaian Sengketa Perceraian Di Pengadilan Agama Curup Kelas 1B," *Al-Ihkam: Jurnal Hukum Keluarga Jurusan Ahwal Al-Syakhsyiyah Fakultas Syariah LAIN Mataram* 13, no. 1 (2021), p. 87.

³¹Odelia Christy Putri Tjandra, "Efektivitas Pelaksanaan Mediasi Sebagai Alternatif Penyelesaian Sengketa Dalam Kasus Perceraian" *Jurnal Sapientia et Virtus* 6, no. 2 (2021), p. 119.

within the initial 30-day period, the mediation period can be extended for an additional 30 (thirty) days based on the agreement of both parties and their request to the mediator, supported by acceptable reasons.³²

If mediation is successfully conducted, both parties formulate a written agreement together, which is then signed by the parties and the mediator. Conversely, if the designated timeframe, as regulated in Supreme Court Regulation No. 1 of 2016, along with any granted extensions, expires without a successful mediation outcome, the mediator is obliged to declare the failure of the mediation process and convey it in writing to the judge. Upon receiving notification of the unsuccessful mediation process, the judge will promptly issue a determination letter stating the failure of mediation, thereby proceeding with the case examination per the provisions of the applicable legislation.³³

Although the Palembang Religious Court has implemented mediation processes for every divorce dispute, it can be said that they have not demonstrated a high success rate thus far. There is a significant number of domestic disputes that enter the court system, ultimately resulting in divorces. Data from the case records of the Palembang Court indicates that over the past three years, the divorce rate has been alarmingly high and has continued to increase annually. In 2020, the number of divorces within the jurisdiction of the Palembang Religious Court reached 2,570 cases. Subsequently, in 2021, it rose to 2,865 cases, and in 2022, it further increased to 2,903 cases.³⁴ Regarding the quantity and increase in divorce rates in the jurisdiction of the Palembang Religious Court, a more comprehensive overview can be observed in the following Table 1.

³²Observation results in Palembang Religious Court. See also Supreme Court Regulation Number 2016 concerning Mediation Procedures in Courts.

³³Supreme Court Regulation Number 2016 concerning Mediation Procedures in Courts.

³⁴Data obtained from the Case section Palembang Religious Court on 26 August 2022.

Table 1: The divorce rates in the jurisdiction of the Palembang Religious Court in the past three years³⁵

No.	Year	Divorce initiated by the husband	Divorce initiated by the wife	Total
1	2020	595	1.975	2.570
2	2021	617	2.248	2.865
3	2022	644	2.259	2.903

The high divorce rates in the jurisdiction of the Palembang Religious Court are not due to the absence of mediation. Rather, they are primarily attributed to the failure of mediation in resolving divorce disputes. In relation to this matter, the Chief of the Palembang Religious Court stated,

The divorce cases brought before the Court are processed in accordance with the applicable laws and regulations, specifically based on Article 39(1) of Law No. 1 of 1974 concerning Marriage, which stipulates that divorce can only be conducted in court after reconciliation efforts have failed. This refers to Supreme Court Regulation No. 1 of 2016, which mandates that divorce cases must undergo mediation as a preliminary step. Therefore, the Palembang Religious Court has implemented mediation processes following the provisions of the applicable laws and regulations. Mediation is conducted both within and outside the court. Mediation within the court is led by a judge acting as a mediator, who possesses the necessary competency and certification. However, the Palembang Religious Court allows the parties involved to decide the type of mediation they wish to pursue, whether it is mediation conducted by a mediator from the Palembang Religious Court or an external mediator.³⁶

The high divorce rate within the jurisdiction of the Palembang Religious Court, as well as the increasing trend shown in Table 1 above, is evidence that the mediation process in the Palembang Religious

³⁵Data obtained from the Case section Palembang Religious Court on 26 August 2022.

³⁶Interview with the chief of Palembang Religious Court on 26 August 2022.

Court has not been effective. Out of the thousands of divorce disputes or cases that have been brought before the Palembang Religious Court in the past three years (2020, 2021, 2022), only a small number have been successfully mediated. For instance, in 2020, out of the 2,570 divorce disputes brought before the Palembang Religious Court, only 12 were successfully mediated. In 2021, out of the 2,865 divorce disputes, only 8 were successfully mediated. Similarly, in 2022, out of the 2,903 divorce disputes, only 13 were successfully mediated.³⁷

This indicates that the success rate of mediation in resolving divorce disputes in the Palembang Religious Court can be considered very low. The comparison between the number of divorce cases brought before the Palembang Religious Court and the success rate of the conducted mediations can be seen more clearly in the following table.

Table 2: Divorce cases successfully mediated in the Palembang Religious Court³⁸

No.	Year	Total	Successfully mediated	Total (%)
1	2020	2.570	12	0,47
2	2021	2.865	8	0,28
3	2022	2.903	13	0,48

In response to the low success rate of mediation in resolving divorce disputes, the Chief of the Palembang Religious Court stated that the parties coming to the court are not primarily seeking mediation, but rather to file their divorce cases with the intention of having them processed through court hearings. The implementation of mediation is perceived as a mere formality, mandated by the obligations stipulated in Supreme Court Regulation No. 1 of 2016.³⁹ Therefore, for the parties involved, mediation is not considered a preferred option for resolving their divorce disputes. This sentiment is echoed by one of the

³⁷Data obtained from the Case Administrator of Palembang Religious Court, on 26 August 2022.

³⁸Data obtained from the Case Administrator of Palembang Religious Court, on 26 August 2022.

³⁹Interview with the chief of Palembang Religious Court, on 23 Sept 2022.

plaintiffs who directly expressed that the marital conflict originated from the husband's failure to provide financial support. Consequently, the wife, as the plaintiff, filed for divorce in the Religious Court with the sole intention of seeking dissolution of the marriage through divorce, considering the mediation process as merely a preliminary step towards proceeding to a court hearing.⁴⁰

The low success rate of mediation in the Palembang Religious Court is undoubtedly attributed to various factors, which are crucial to further investigate in order to find solutions that can enhance the effectiveness of mediation in resolving divorce disputes within the jurisdiction of the court. Therefore, the following section will examine in greater detail the factors that contribute to the ineffectiveness of mediation in divorce disputes in the area under the jurisdiction of the Palembang Religious Court.

Why Mediation of Divorce Disputes is Ineffective in Palembang Religious Court?

All legal regulations aim to create order and harmony in society. This can be achieved when a legal regulation operates effectively. However, not all legal regulations can be effectively implemented and complied with by the community in practice. When this occurs, it can be said that the legal regulation is not functioning effectively. The ineffectiveness of the law ultimately results in the failure to achieve the intended goals of the legal regulation.⁴¹ Regarding the effectiveness of a law, legal experts generally state that it is influenced by various factors, including legal substance, structure, culture, and available facilities. Additionally, the legal behavior of law enforcement officials and the community also significantly impact the effectiveness of a legal rule.⁴²

The ineffectiveness of mediation in resolving disputes or divorce cases in the Palembang Religious Court is influenced by several factors, namely: (1) the diversity of underlying causes of divorce disputes; (2) an imbalanced ratio of mediator judges compared to the number of cases filed in the court; (3) the lack of good faith from the

⁴⁰Interview with the litigant P (initial), a woman (wife) who filed a divorce suit at the Palembang Religious Court on the grounds that her husband had neglected his obligations by not providing alimony, on September 23, 2022 in Palembang.

⁴¹Salim HS and Erlies Septiana Nursyahbani, *Penerapan Teori Hukum Pada Penelitian Tesis Dan Disertasi*, (Jakarta: Raja Grafindo Persada, 2019), p. 302.

⁴²HS and Erlies Septiana Nursyahbani, p. 304.

parties to attend the mediation process directly; (4) inadequate resources and facilities; and (5) the legal culture of the society.⁴³

1. The complex grounds cause divorce disputes

The divorce disputes that have occurred in the jurisdiction of Palembang Religious Court over the past three years (2020, 2021, and 2022) are caused by various factors, such as adultery, intoxication, gambling, abandonment of one party, imprisonment, polygamy, domestic violence, physical disability, conflicts, constant arguments, forced marriage, apostasy, and economic reasons. Some couples even file for divorce or initiate divorce proceedings based on multiple factors simultaneously. This complexity makes it challenging to mediate couples who have filed for divorce or initiated divorce proceedings in court.⁴⁴ In relation to the underlying causes of the emergence of divorce disputes in the jurisdiction of the Palembang Religious Court, these factors can be observed in Table 3 below.

Table 3: Factors Causing Divorce at the Palembang Religious Court in the last three years (2020, 2021, and 2022)⁴⁵

Year	Adultery	Drunk	Narcotics	Gambling	Abandonment by Spouse	Prison Sentence	Polygamy	Domestic Violence	Continuous Conflict	Apostate	Economic Issues	Total
2020	0	3	11	4	214	14	12	227	1694	17	374	2570
2021	1	9	2	2	225	9	5	223	1647	27	715	2865
2022	0	1	4	1	45	6	4	13	2365	48	416	2903

Regarding above table 3, it can be stated that the common causes of divorce in the jurisdiction of the Palembang Religious Court are (1) Continuous conflict; (2) economic factors; (3) domestic violence

⁴³Interview with Askonsri, Chief of the Palembang Religious Court on 23 September 2022.

⁴⁴Factors causing divorce as stipulated in Article 19 Government Regulation No. 9 of 1975 concerning Implementation of Law no. 1 of 1974 concerning marriage and Article 116 of the Compilation of Islamic Law (KHI) states that there are 13 (thirteen) factors that cause divorce, namely: adultery, drunkenness, gambling, abandonment one of the parties, receiving prison sentences, polygamy, domestic violence, disability, disputes and constant fighting, forced marriage, apostasy, and economic reasons.

⁴⁵Data obtained from the Case Section Palembang Religious Court, on 26 August 2022.

(KDRT); and (4) abandonment by one party. These factors contributing to divorce disputes are sometimes interrelated, making the mediation process increasingly challenging to achieve. This is in line with the statement of the Chief of the Palembang Religious Court, highlighting that achieving peaceful agreements through mediation becomes difficult when underlying factors such as economic issues, prolonged disputes, domestic violence, and abandonment by one party are present. Economic instability within the family commonly leads to ongoing and prolonged disputes between both parties. Additionally, instances of domestic violence, particularly against the victimized spouse, further hinder successful mediation, as parties involved are generally unwilling to reconcile. Similarly, when one party abandons the other, mediation becomes exceedingly difficult, as typically, neither party is willing to participate in the process.⁴⁶ This is further supported by the Chief of the Palembang Religious Court, who states that the ineffectiveness of divorce mediation is predominantly influenced by economic factors that contribute to on going disputes and conflicts, domestic violence, and one party abandoning the other. When disputes and divorce conflicts arise due to these factors, reaching a mutual agreement between the parties becomes extremely challenging. Generally, one or both parties remain steadfast in their decision to pursue litigation and continue the process through court proceedings, which often culminate in divorce.⁴⁷ The parties acknowledge that with prolonged conflicts, divorce is considered the best option.⁴⁸

2. The imbalance between the number of mediators and the quantity of the divorce cases

The process of mediating divorce disputes in court is carried out by a mediator, whether they are judges or non-judges. Mediators must possess specialized skills and expertise in mediating cases. The competency and expertise of mediators are validated through the possession of a certificate obtained after undergoing specialized mediator education conducted by accredited institutions within the

⁴⁶Interview with chief of the Palembang Religious Court on 23 September 2022.

⁴⁷Palembang Religious Court on 26 August 2022.

⁴⁸Sri Turatmiah et al., "Does Judge Has Ex Officio Rights In Determining Mut'ah and Iddah?," *Srinwijaya Law Review* Issue 3, no. 2 (2019), p. 191, <https://doi.org/10.28946/slrev.Vol3.Iss2.249.pp187-193>.

Supreme Court. In the Palembang Religious Court, there are 15 judges, but only 5 judges have obtained mediator certificates. This significant disparity between the number of available mediators and the volume of divorce cases in Palembang Religious Court is a constraint and one of the causes of the ineffectiveness of the mediation process. This issue is also emphasized by the Chief Justice of the Palembang Religious Court, who stated,

The main obstacle encountered thus far is the imbalance between certified mediator judges and the number of cases filed in the Religious Court. To increase the number of certified mediator judges, it is necessary to wait for the formation from the Supreme Court. Subsequently, the Chief of the court proposes and sends several judges to undergo professional mediator education.⁴⁹

In addition to the limited number of mediators in the Palembang Religious Court, mediation is essentially considered an additional task for judges. Consequently, judges generally concentrate more on their primary duties of examining and adjudicating cases. This situation undoubtedly hampers the optimal implementation of mediation. Furthermore, the additional responsibilities have also led to an increasing backlog of cases in the court. In relation to this matter, the Chief Justice of the Palembang Religious Court stated:

The obligation to conduct mediation in the resolution of divorce disputes is an additional task for judges, alongside their primary duties of examining and adjudicating cases. Therefore, the inclusion of this additional task of mandatory mediation in the resolution of divorce disputes has resulted in an accumulation of cases in the court.⁵⁰

Based on the above presentation, it can be stated that the imbalance between the number of mediators and the number of divorce disputes entering the Palembang Religious Court has been one of the causes of the ineffectiveness of mediation implementation. This ultimately results in an increasing number of marital disputes that end in divorce. Furthermore, it can also be concluded that the mediation conducted in the Palembang Religious Court is predominantly

⁴⁹Interview with Askonsri, Chief of the Palembang Religious Court on 23 September 2022.

⁵⁰Interview with Askonsri, on 23 September 2022.

formalistic in nature, merely fulfilling the requirements as stipulated in Supreme Court Regulation No. 1 of 2016.

3. Lack of good faith of the parties

Based on the provisions of Article 6 paragraph (1) of Supreme Court Regulation No. 1 of 2016, disputing parties are obligated to attend mediation meetings directly, with or without legal representation. The mediator has the right and authority to oblige the parties to be present in the mediation process without being represented by their attorney.⁵¹ The obligation to attend the mediation process significantly determines the success of the mediation itself. The presence of the parties in the mediation process can reduce individual ego and foster effective communication, leading to the achievement of a peaceful settlement. Furthermore, the presence of the parties in the mediation process demonstrates their good faith and willingness to reconcile. The absence of the parties makes mediation unable to run effectively. If within 30 days the parties are not present, the mediation is declared a failure and the issue of divorce dispute is continued in court.⁵²

Based on the provisions of Article 24 paragraph (2) of Supreme Court Regulation Number 1 of 2016, a time limit of 30 days is established for the mediation process from the scheduled mediation date. The parties involved in mediation are required to demonstrate good faith by attending the mediation process, with or without legal representation unless there are valid reasons for their absence. Valid reasons may include illness supported by a medical certificate, being located outside the country or performing state duties, or having tasks or work obligations that cannot be left behind.⁵³ The presence of the parties involved significantly determines the success of the mediation process. Conversely, if the parties do not exhibit good faith, it has the potential to render the mediation process unsuccessful. The mediator

⁵¹Wirda Hairani and Syawaluddin Ismail, "Problematika Mediasi Dalam Kasus Perceraian Di Mahkamah Syari'ah Langsa," *Al-Qadhā* 5, no. 1 (2018), p. 43.

⁵²Muhammad Ilham Rizkq, Kristina Sulatri, and Yudhia Ismail, "Faktor-Faktor Yang Mempengaruhi Efektifitas Mediasi Terhadap Sengketa Di Bidang Perkawinan Di Pengadilan Agama Pasuruan," *Yurijaya Jurnal Ilmiah Hukum* 4, no. 3 (2022), p. 244.

⁵³Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Court.

may deem the parties to lack good faith if: (a) they are absent without valid reasons on two consecutive occasions, (b) even if present, they do not respond to or engage with each other regarding the matter, (c) the parties or one of the parties refuse to sign the agreed-upon draft settlement agreement without providing valid reasons.⁵⁴

One of the reasons for the ineffectiveness of divorce mediation is the lack of good faith from the parties involved to attend the mediation process at the court. Mediation, as an alternative dispute resolution method, can be effective when all the components that influence the functioning of the legal system operate according to their respective functions, including the behavior of the society. This includes the willingness of the parties to attend the divorce mediation process. Successful mediation of divorce disputes is more likely when both parties are willing to participate in each mediation session. The absence of one or both parties during the mediation process results in the failure of the mediation's objectives, leading to the absence of a settlement agreement, and this is also a common occurrence in the Palembang Religious Court. Concerning this matter, Askonsri, the Chief of the Palembang Religious Court, stated:

Nearly 50% of divorce cases filed in the Palembang Religious Court are initiated by the wives, and generally, the plaintiffs do not attend the mediation summons. Even when they do attend, it is usually only for the first or second summons, and thereafter, they delegate representation to their legal counsel.⁵⁵

The statement made by the Chief is confirmed by the statement of one of the wives who filed for divorce. She stated that she did not personally attend the court proceedings but instead delegated representation to her legal counsel. This was done to ensure that her lawsuit could proceed to court with the expectation of obtaining a divorce judgment.⁵⁶ This demonstrates that the absence of one or both

⁵⁴Article 7 paragraph (1) and (2) Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Court. See also Ajrina Yuka and Ghansham Anand, "Itikad Baik Dalam Proses Mediasi Perkara Perdata Di Pengadilan" *Media Iuris* 2, no. 1 (2018), p. 203. DOI: 10.20473/mi.v1i2.8821.

⁵⁵Interview with Askonsri, Chief of the Palembang Religious Court on 23 September 2022.

⁵⁶ P (initials) the wife as the plaintiff who filed for divorce at the Palembang Religious Court due to economic factors, namely the husband no longer fulfilling his

disputing parties in a family dispute can be a significant factor contributing to the failure of the mediation process.

4. Inadequate facilities and amenities

Mediation in divorce disputes is a crucial process for couples to reconcile and continue their married life. In this process, apart from requiring skilled mediators and good faith from the disputing parties, adequate facilities and resources are also necessary to ensure a comfortable mediation experience. However, in reality, the Palembang Religious Court lacks the necessary facilities and resources. In this regard, the court only has one mediation room to accommodate numerous divorce disputes that come before it. Consequently, the queue for mediation becomes excessively long, leading to frustration and fatigue among the parties waiting for their turn. As a result, they often prefer and hope for their cases to be promptly adjudicated in court to obtain a final judgment. This situation poses a significant obstacle and contributes to the ineffectiveness of the mediation process in the court. In relation to the limitations of facilities and resources in the mediation room, which hinder the effective progress of the mediation process, the Chief of the Palembang Religious Court stated:

The ineffectiveness of divorce mediation in the Palembang Religious Court is attributed to the limited availability of mediation rooms, which necessitates scheduling for their usage. Currently, the Palembang Religious Court only possesses one mediation room equipped with air conditioning, a square table, and a few chairs. The lack of mediation facilities and resources results in the parties feeling frustrated due to the lengthy waiting time for the provided mediation schedule, given the limited space available. As a consequence, the parties express a desire to proceed with their cases in court.⁵⁷

The aforementioned situation confirms that the limitations in resources and facilities for the mediation process have become a distinct cause of the ineffectiveness of mediation in the Palembang Religious Court. Divorce conflicts are matters of the heart, thus

obligation to provide for the family for a long time. The interview was held on 26 September 2023 at Palembang Religious Court.

⁵⁷Interview with Askonsri, Chief of the Palembang Religious Court on 23 September 2022.

requiring good communication within the family, supported by the provision of comfortable and adequate resources and facilities.

5. The lack of legal awareness among the parties

Society and the law are two inseparable aspects. The existence of legal regulations aims to govern and protect the interests of society, thereby creating a safe, peaceful, and prosperous community. To achieve this, the knowledge and legal awareness of society regarding the importance of law compliance are crucial. Without these two elements, it would be challenging to effectively enforce legal regulations. The low level of legal knowledge and awareness is prevalent among individuals who file divorce disputes in the Palembang Religious Court. Many of them are even unaware of what mediation is, let alone its provisions and procedures. Most of them only understand that once a case is filed in court, they will receive a court decision. This is confirmed by the statement of a person whose child filed for divorce. According to him, "his child filed for divorce in the Religious Court with the sole intention of getting a divorce."⁵⁸ In addition, they also do not understand what mediation is, the purpose, and benefits of mediation.⁵⁹

In addition to having relatively inadequate legal knowledge, most of them also lack legal awareness. Legal awareness pertains to voluntary compliance with the law, including adherence to all legal processes. However, legal awareness among the disputing parties in the Palembang Religious Court remains relatively low. This was also affirmed by Askonsri, the Chief of the Palembang Court, who stated,

The effectiveness of legal rules is significantly influenced by the behavior of the involved parties in litigation. The parties are often reluctant to engage in mediation and lack the good faith to attend the mediation process. This contradicts the provisions stated in Supreme Court Regulation No.1 Year 2016, which require the parties to act in good faith during the mediation proceedings. However, in reality, the community, particularly the disputing parties, frequently fail to attend the mediation process

⁵⁸ Interview with the parents of some litigants, on 26 September 2022.

⁵⁹ Interview with the parents of some litigants.

due to their limited understanding of the benefits and advantages of mediation, both in terms of time and cost.⁶⁰

The lack of legal knowledge results in the parties' unawareness and misunderstanding of the purpose and benefits of engaging in and following the mediation process in divorce disputes. They fail to comprehend that divorce disputes do not necessarily have to end in divorce but can still be resolved through mutual agreement facilitated by a mediator. Furthermore, they lack understanding that preserving the integrity of marriage is far more important than merely obtaining a court judgment that leads to separation from their spouse.

The facts explained above indicate that the mediation process in the jurisdiction of the Palembang Religious Court can be considered ineffective, leading to a high number of divorce cases in this court's jurisdiction and even a rising trend. This is caused by various factors, as discussed earlier. Therefore, improvements are needed in all aspects to ensure a successful mediation process, reconcile disputing parties, and ultimately reduce the high divorce rates in Indonesia in general and specifically in the legal jurisdiction of the Palembang Religious Court.

Conclusions

Based on the above study, it can be concluded that: firstly, mediation is essentially a dispute resolution process through negotiation between the parties, facilitated by a mediator, aimed at achieving a peaceful settlement. According to Supreme Court Regulation No. 1 of 2016, mediation is a mandatory step for parties in resolving divorce disputes. However, the implementation of mediation does not always run effectively and successfully reconcile the disputing parties. This article found evidence that mediation in the Palembang Religious Court shows a low success rate. In a period of three years (2020, 2021, and 2022), out of a total of 7,338 divorce cases submitted to the Palembang Religious Court, only 33 cases were successfully mediated (0.45%). This indicates that mediation in divorce disputes in the Palembang Religious Court has not been effective.

Secondly, this article also found evidence of several factors that contribute to the ineffectiveness of the mediation process in the Palembang Religious Court, namely: (1) the diverse background

⁶⁰Interview with the parents of some litigants.

reasons of the disputing parties or those filing for divorce, although generally dominated by economic reasons, domestic violence, and one party abandoning the other; (2) the imbalance between the ratio of the number of mediator judges and the number of cases filed in the court. Moreover, for the judges, mediation is essentially an additional duty, so they generally prioritize their primary task of examining and deciding on cases; (3) the lack of goodwill from the parties to engage in the mediation process at the court, as indicated by their low attendance during mediation proceedings; (4) inadequate facilities and resources, with the Palembang Religious Court having only one mediation room, leading to long queues of parties seeking to engage in mediation and hindering the optimal and effective conduct of the mediation process; and (5) the minimal knowledge and legal awareness among the disputing parties, where those who file divorce disputes in the court only have awareness of and hope for their case to be decided by the court.

Conflicts of Interest

The authors have no conflict of interest with any party in writing this article.

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