Proceedings of the International Conference on Sharia and Law (ICOSLAW) 2024
The Intersection of Sharia and Law in Today's World.
Vol. 3, no. 01 (2024)

IMPLEMENTATION AND LEGAL CULTURE OF THE MEDIATION PROCESS IN THE RELIGIOUS COURTS

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Abstract
After the enactment of PERMA number 1 of 2016 concerning Mediation Procedures in Court, it will certainly result in several conditions, especially regarding the implementation and legal culture that was built after the implementation of the a quo regulation. The initial data obtained shows that the ratio between cases that must go through the mediation process and cases that undergo mediation is significantly different. So this research aims to determine the implementation of the existing mediation process at the Sukoharjo religious court after the implementation of PERMA number 1 of 2016 concerning Mediation Procedures in Courts. Furthermore, this research also examines the legal culture of the mediation process in religious courts in terms of the concept of legal culture (legal system sub-theory) by Lawrence M. Friedman. This type of research is field research with a qualitative approach. This research uses interviews, documentation, and observation as data sources. The data in this research will be analyzed using four sequential steps, namely data collecting, data reduction, data display, and data interpretation. The results of this research describe the implementation of PERMA number 1 of 2016 concerning Mediation Procedures in Courts in religious courts and the success factors of the mediation process. Next is an explanation of the legal culture that is developed in the mediation process in religious courts.

Keywords
Legal Culture, Implementation, Mediation, Religious Courts.

Introduction

The Religious Court (PA) in its absolute authority has a vital role in resolving conflicts related to religious civil matters. According to Article 4, paragraph (1) of the Republic of Indonesia Supreme Court Regulation (PERMA) Number 1 of 2016 concerning Mediation Procedures in Court [1](hereinafter referred to as PERMA Number 1 of 2016 concerning Mediation) It is explained that all civil disputes submitted to the Court include cases of *verzet, partij verzet,* or *derden verzet* regarding decisions that are *incracht,* it is mandatory to resolve the dispute through a mediation process, unless otherwise stipulated in this Supreme Court

[1] "Supreme Court Regulation Number 1 of 2016 Concerning Mediation Procedures in Court" (2016).

Regulation (PERMA). For excluded cases, you must go through the mediation process mentioned in Article 4 paragraph (2) PERMA Number 1 of 2016 concerning Mediation. Thus, all cases regulated in Article 49 of Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts [2]must go through a mediation process before the panel of judges examines the subject matter of the case. According to data obtained from the Sukoharjo Religious Court (PA), in 2022 there will be 330 cases going through the mediation process. The results of the mediation resulted in 73 cases whose mediation was successful, with a distribution of 12 cases resulting in a deed of peace/decision, 49 cases partially successful, 12 cases resulting in a revocation decree. This year there were 210 cases where mediation was unsuccessful and 3 cases where mediation could not be carried out. Meanwhile, in 2023 there will be 319 cases going through the mediation process. The results of the mediation resulted in 105 cases whose mediation was successful, with 10 cases resulting in a deed of peace/decision, 89 cases partially successful, and 6 cases resulting in a revocation decree. This year, there were 178 cases where mediation was unsuccessful and 2 cases where mediation could not be carried out.

Looking at the conditions described by the data above, what is very visible is that more mediations are unsuccessful than successful ones. Then, even though it is successful, the number of cases where the mediation results are partially successful is very dominant. In this case, it means that the parties continue to examine the subject matter of the case, even though several things have been agreed upon.

Several previous studies discuss mediation or alternative dispute resolution in a court environment. In an article written by Dakwatul Chairah [3], the research results found concluded that the caucus method had a good impact in reconciling the parties. Every year from 2018 to 2020 the percentage of peace achieved increased from 71% to 100%. Furthermore, it was explained that the factors that influence the success of a mediation are a professional mediator, the caucus method used in the mediation, and the participation of the mediated parties themselves.

[2] "Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts" (2006).

[3] Dakwatul Chairah, "Implementation of Caucuses in Mediation Based on PERMA RI Number I of 2016 Perspective of Mediator Judges at the Pasuruan Religious Court," *Al-Qanun: Journal of Islamic Legal Thought and Reform* 23, no. 2 (December 19, 2020): 236, https://doi.org/10.15642/alqanun.2020.23.2.215-237.

The findings above are related to the article by Taufik Abdullah [4]which succeeded in explaining several pillars of mediation that must be revealed in the mediation process and the effectiveness of the mediation process itself. The pillars of mediation in this article are: the principle of deliberation to reach consensus; the principle of mutual forgiveness; the principle of mutual respect; and, the principle of justice. Furthermore, the effectiveness of the mediation carried out is by mediating around: around child custody and education; post-divorce maintenance for wife; guaranteed maintenance of joint assets after divorce. Although this article specifically discusses mediation in divorce cases, it cannot be denied that several things that are closely related to mediation in court in general.

It was explained that the four pillars above have an important position in mediation. The principle of deliberation is important for all parties who will carry out mediation to understand so that they have the same perspective that the mediation process is solely in the form of deliberation and does not use force. The principle of mutual forgiveness is needed to ensure that the mediation that takes place is to try to resolve the problem, so it is important to be preceded by mutual forgiveness for the parties to each other. Furthermore, the principle of mutual respect has an important positioning in mediation because it will be difficult for deliberations to proceed until they find an agreement if the parties involved do not base themselves on the principle of mutual respect. Lastly is the principle of justice, which absolutely cannot be left behind, let alone lost in the mediation process. This is because it harms the spirit of mediation itself. We all understand that the mediation process is based on a dispute between the parties. When going through the mediation process, the parties involved will fight for their respective interests to reach an agreement. The noble goals of mediation will not be possible to achieve if the principle of justice is lost in the mediation process, because the parties will find it difficult to accept clauses that are born without justice in giving birth to these clauses.

In an article written by Bakhrul Amal, [5]it was found that the mediation process in resolving legal disputes is not something new and has been used for quite a long time by people in other parts of the world. However, we need to understand first that this article does not take religious courts as its object, but the concepts discussed and its findings are very related

[4] Abdullah Taufik, "The Settlement Principles and Effectiveness of Divorce by Mediation of Islamic Civil Perspective: A Critical Review of The Supreme Court Regulation," *Justicia Islamica* 18, no. 1 (June 4, 2021): 169–70, https://doi.org/10.21154/justicia.v18i1.2139.

[5] Bakhrul Amal, "Nolle Prosequi as a New Innovation in the Field of Criminal Procedure Law," *Al-Jinayah: Journal of Islamic Criminal Law* 8, no. 2 (December 12, 2022): 114–15, https://doi.org/10.15642/aj.2022.8.2.102-116.

to this article. PERMA Number 1 of 2016 concerning Mediation seems to open up space for disputing parties to discuss solutions to their disputes again without interference from the litigation process. As we know, the results of mediation are in the form of *a win-win solution,* which is different from litigation decisions, which are *win-lose solutions.*

Rini and Ermi [6]found that in the mediation process in religious courts, the panel of judges had the opportunity to carry out *ijtihad* in interpreting the rules that covered the mediation process. In this article, it is explained that the mediation time carried out is longer than the time allocated by PERMA, this is based on the fact that the mediation of the case which is the object of study in this article has great potential to be successful. One more interesting thing in this article is that this mediation process was successful in dividing the inheritance in a *takharruj manner* after the heirs knew their respective shares.

In the article written by Herliana [7], it was revealed that mediation in health dispute cases has a strategic position in reaching an agreement. It was also explained that the mediator has an important role in providing a cooperative atmosphere, paying attention to the interests of all parties and has the aim of increasing mutual understanding between the parties to make it easier to find a solution that specifically suits their interests. The three points above are seen as important elements and must be present in the mediation process. It was further explained that mediators must be proactive by improving communication and having sufficient knowledge about the substance of the dispute before mediation.

From the previous research above, it can be seen that several studies started from a question regarding how to implement mediation in resolving disputes in court. We all understand that the mediation process in court (both state and religious) does not only involve the mediator or the parties, but both the parties and the mediator. Mediation is a model for resolving disputes by producing several agreements between the parties that do not include the mediator in agreeing to the peace clause. In our opinion, there is still a gap in research regarding the implementation of the mediation process in court. We also need a point of view from the parties involved in the dispute and taking part in mediation. We need to understand their mindset, the values they adhere to and their aspirations in participating in this mediation process.

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[6] Rini Fahriyani Ilham and Ermi Suhasti, "Mediation In Resolution Of Inheritance Disputes: Study of Decision No. 181/Rev. G/2013/PA.Yk," *Al-Ahwal: Journal of Islamic Family Law* 9, no. 1 (March 1, 2017): 85–86, https://doi.org/10.14421/ahwal.2016.09105.

[7] Herliana Herliana, "Maqasid Al-Sharia in Court-Mediation Reform: A Study on Efficiency and Social Justice in Medical Disputes," *De Jure: Journal of Law and Sharia* 15, no. 2 (December 29, 2023): 225–26, https://doi.org/10.18860/j-fsh.v15i2.23962.

This article is of the type of field research, because the data obtained is data taken from the field through interviews with sources. Furthermore, this article also takes the research location in the Sukoharjo PA environment. The qualitative approach is the approach taken in this article because the data sought uses descriptive data, which comes from writing, or someone's expressions and behavior obtained from other people. In this article, the legal implementation approach and the concept of Legal Culture from Lawrence M. Friedman are used in this research. Primary data sources were obtained from interviews and observations. The resource persons (community) who will be interviewed consist of mediator, court's staff and litigants. Meanwhile, secondary data sources are data obtained from several literatures which provide information about mediation in general, PERMA Number 1 of 2016 concerning Mediation, a general description of legal implementation and the Friedman Legal Culture concept, and literature which is considered to complete the discussion in this article. Data analysis uses the following process: Data collecting, data reduction, data display, data interpretation, and concluding. Meanwhile, to ensure the validity of the data obtained using the data triangulation method.

Discussion

A. Implementation of the Mediation Process in Religious Courts

1. Mediation's Concept in Legal System in Indonesia

Mediation is a resolution process dispute through a negotiation process or consensus of the parties with assisted by a mediator who does not have authority disconnect or force A solution. Characteristic main mediation process is essential negotiations The same with a deliberation process or consensus. In accordance with essence negotiations or discussion or consensus, then no There is coercion For accept or reject something idea or solution during the mediation process taking place. All something must obtain agreement from the parties.[8]

2. Development of Mediation in Legal System in Indonesia

Mediation is alternative solution disputes can be used by the parties court. This institution gives a chance to the Parties to finish the dispute the with the helped party as a mediator. Principle from mediation *win-win solution* so that the disputing

[8] Rina Antasari, "Implementation of Mediation in the Religious Court System (Study of the Implementation of Mediation in Settlement of Cases in Palembang Class IA Religious Courts)," *Intizar* 19, no. 1 (2016): 147–62.

parties do not feel there is winning side or a losing side. Application Draft Mediation will bring maximum results if all parties have the same commitment, good faith and mutual understanding of concepts offered by all parties, including prioritizing positives offered by the mediator [9].

This common perspective needs to be built from the start so that all parties do not get caught up in feelings of egoism and feeling that they are the most correct. All party must own determination for agreed end dispute and search solution mutually accurate profitable, for all party bound and able held material peace. The peace material is stated in the form of a letter or minutes and has a strong legal basis.[10]

In Islamic concept of Mediation known with term *Shulhu / Ishlah*, a number of *fuqaha* give almost the same definition although in different redaction, meaning disconnect something dispute.[11] In Islamic civil law, the civil dimension contains human rights (*huququl 'ibad*) which can be maintained through a peaceful agreement between the disputing parties. Most from disputes that occur, take road with method finish the dispute past track law in Court, for dimensions law Islamic civil law then direction to Religious courts. Religious justice as one executor power judiciary has practice mediation in the settlement process matter. By theoretical, solution dispute through mediation in religious courts brings a number benefits, including case can completed with fast and cost light and reducing congestion and accumulation case (*court congestion)* in court [12].

[9] Syahrizal Abbas, *Mediation in the Perspective of Sharia Law, Customary Law and National Law,* (Jakarta: Kencana Media Group, 2009), 24.
[10] Gunawan Wijaya, *Alternative Dispute Resolution* (Jakarta: Raja Grafindo Persada, 2001), 10.
[11] Auliya Ghazna Nizami, "Islam and Modern Conflict Resolution (Islah) in Media: Case of Controversial Thread On Flex Menstrual Disc," *TSAQAFAH* 21, no. 1 (May 11, 2025): 1–25, https://doi.org/10.21111/tsaqafah.v21i1.11577.
[12] Rachmadi Usman, *Options for Dispute Resolution Outside of Court* (Bandung: Citra Aditya Bakti, 2003), 79.

3. Implementation of the Mediation Process in Religious Courts

In review history justice in Indonesia, settlement dispute through effort peace or known with term peace *(dading)* has arranged in Article 130 HIR[13]/ Article 154 RBg[14]. Perma No. 1 of 2016 Concerning Mediation And some regulation other. However effort peace in question in regulation on different with mediation as it develops now. For describe level success and failure mediation according to the data that has been provided obtained from Sukoharjo Religious Court (PA), in 2022 there will be 330 cases going through the mediation process. Result of mediation the resulting in 73 mediation cases succeed with distribution of 12 cases produce deed peace / decision, 49 cases succeed partly, 12 cases produce determination retraction. In the year of This there were 210 cases where mediation was unsuccessful and 3 cases mediation is not possible held. Meanwhile, in 2023 there will be 319 cases going through the mediation process. Result of mediation the resulting in 105 mediation cases succeed with distribution of 10 things produce deed peace / decision, 89 cases succeed partly, 6 cases produce determination retraction. In the year of This there were 178 cases where mediation was unsuccessful and 2 cases mediation is not possible held.

4. Factors Contributing to Successful Mediation

a. Mediator's Perspective

The success of mediation seen from the mediator aspect can be identified from the mediator's persistence in realizing the success of the mediation and the mediator's excellent abilities/skills and mastery of mediation techniques. Apart from that, the mediators within PA Sukoharjo have passed the qualifications and have Mediator certification issued by an institution accredited by the Supreme Court of the Republic of Indonesia.

[13] "Herziene Indonesisch Reglement (HIR)," 16 Staatblad § (1848).
[14] "Reglement Tot Regeling Van Het Rechtswezen In De Gewesten Buiten Java En Madura (RBg)," 227 Staatblad § (1927).

b. Aspect Case

The successful of mediation from aspects of the case can be identified based on the characteristics of the case behind it. The success of mediation cannot be generalized. For example, every case that is motivated by jealousy has a high potential for success, whereas cases that are motivated by jealousy do not always succeed. Just as mediated domestic violence cases often fail, divorce cases that are motivated by domestic violence do not always fail because sometimes they succeed. The success and failure of a case is more appropriately viewed as a mediation experience in each court. Characteristics of successful mediated divorce cases include cases that are submitted to court but the parties are not mature enough to discuss them, or the motivation for going to court is intended to teach a lesson to one of the parties, cases that are motivated by jealousy, income, one of the parties being a drunkard, not being open about financial problems and being offended by one of the parties repeatedly.

c. Aspects of the Parties

There are factors that contribute to the success of mediation from the parties' perspectives, namely the age of marriage, the level of complexity of the case faced by the parties, the parties' good intentions to end the dispute through mediation, and the parties' awareness of making peace and realizing their mistakes.

d. Facilities/ Infrastructure Aspect

At the Sukoharjo Religious Court room mediation available with adequate. This matter can follow help the success process mediation. A number of available facilities is: existence room special For complete mediation with table big and enough seats For accommodate the parties, *air conditioner,* computer and printer, as well as fragrance room. PA Sukoharjo also provides room special for the caucus process and preparing a media center for mediation carried out online or hybrid. Beside the mediators are supported full of staff court with completeness of administrative formulas mediation, so mediation Can held with effective.

B. Legal Culture of the Mediation Process in Religious Courts

1. Legal Culture: A Concept (sub- Theory Legal System)

According to Friedman, culture law described as a number of strength social ones simultaneous move law. Friedman's depiction of culture law stated in statement How the above powers-renew, destroy, turn off, turn on, choose which law will use, reject, replace, bypass and bypass-the law That Alone. Friedman explains that scope than culture law is on-customs, habits, opinions, ways act and respond as well as think-that gives effect for law That myself, fine towards (in harmony) or away from (opposite) to law [15].

Nelken explains Friedman divide two culture law, *first* culture internal and *second* laws culture law external [16]. Friedman explains question That in paragraph following :

Legal culture, as I have defined the term, refers to ideas, values, expectations and attitudes towards law and legal institutions, which some public or some part of the public holds. Like 'public opinion' (a not unproblematic idea itself), legal culture refers to measurable phenomena; Indeed, it is an umbrella term to cover a range of measurable phenomena [17].

Culture law, as I define as term, refers to ideas, values, expectations, and attitudes to laws and institutions law, which is adhered to by some or part public. Like just like ' opinion public ' (which it is not is unproblematic ideas), culture law refers to phenomena that can be measured; indeed, this is term general coverage series phenomenon measurable.

Meanwhile, Friedman describes culture law external with expression :

[15] Lawrence M. Friedman, *Legal Systems: A Social Science Perspective* (Bandung: Nusa Media, 2019), 17.
[16] David Nelken, "Using the Concept of Legal Culture," in *Legal Theory and the Social Sciences,* by Maksymilian Del Mar, ed. Del Mar Maksymilian and Michael Giudice, 1st ed. (Routledge, 2017), 9, https://doi.org/10.4324/9781315091891-11. see also Lawrence M. Friedman, "The Concept of Legal Culture: A Reply," in *Comparing Legal Cultures,* ed. David Nelken (New York: Routledge, 2016), 39–40.
[17] Lawrence M. Friedman, "The Concept of Legal Culture: A Reply," 34.

What sets these processes in motion, or determines their shape or their outcome, are the pressures that are the direct result of changes in legal culture [18].

Silbey summarizes this concept with internal legal culture, including the way legal practitioners work towards external legal culture originating from citizens who are regulated by the legal system. [19].

2. Internal Legal Culture in the Mediation Process in Religious Courts

Nelken conveys that Friedman explains culture Internal laws are assessed as *ideas and practices of legal professionals* (ideas and practices of practitioners law)[20]. So from That scope from culture law external is all practice and thinking from practitioners law. in context article These, are mediators and staff religious courts. However, in context implementation mediation, the mediator has more role than staff religious courts. After searching, there is a number of typology culture law growing external in the mediation process.

First, be active progressive. Depiction typology This is that practitioners the law involved in the mediation process own liveliness for try finish dispute between the parties going to track peace. Progressive values are present is when the mediator tries offers the parties For negotiate things that the parties did not actually convey in lawsuit like for example right foster children and living children, living for ex-wife after divorce, living *mut'ah,* livelihood *madhiyah* and so forth. However need emphasized that agreement question offer from the previous mediator still is in the hands of the parties. The parties still own right For talk about offer That or leave him.

Second, active non- progressive. Typology This depicted with a permanent mediator active in lead mediation, only just not enough freely in give offer points discussed. This matter it's not without reason, the above situation happen because the parties to

[18] Lawrence M. Friedman, 34.
[19] Susan S. Silbey, "Legal Culture and Cultures of Legality," in *Routledge Handbook of Cultural Sociology* (Routledge, 2018), 472, https://www.taylorfrancis.com/chapters/edit/10.4324/9781315267784-46/legal- culture-cultures-legality-susan-silbey.
[20] Nelken, "Using the Concept of Legal Culture," 8.

the dispute Already more *advance* in discuss dispute they. Sometimes before to court for register things, them Already do outside mediation normal court guided by family, power law, figure society, notaries and other people who they point for help they reach bullet points agreement. Apart from doing the things above, a number of parties have mutually agreed on a number of things, then they take part in this mediation to make the agreements they have made more legal.

3. External Legal Culture in the Mediation Process at the Religious Courts

The external legal culture conceptualized by Friedman is described by Nelken as *is the name given to the opinions, interests, and pressures brought to bear on law by wider social group* (is the name given to the opinions, interests and pressures exerted on the law by wider social groups). Furthermore, according to Nelken, Friedman has advanced his argument that it is not "internal legal culture" that has a strong influence in influencing changes in the socio-legal field of a society, but this portion should be given to "external legal culture" which has an important position in dictating implementation. from a rule. With such a concept, it is found that there are several typologies of external legal culture in the mediation process in religious courts:

First, active progressive. This typology is illustrated by the litigants actively participating in mediation and providing suggestions for matters that should be discussed in the mediation process. In some cases, sometimes the parties present with the condition that they have brought several notes or even a draft agreement that they have previously agreed to. Then, the parties asked the mediator to put their notes or draft into a peace agreement which of course they would happily agree to.

Second, active non-progressive. There are quite visible differences between this typology and the previous typology. This second typology is illustrated by a situation that initially does not propose anything to achieve peace. However, all that changed when we received an explanation from the mediator that there were several things that could of course be discussed during the mediation process. In the end, the parties begin to listen to the

explanation and discuss it and the result is sometimes an agreement is reached or nothing at all.

Third, passive progressive. This typology is actually a bit similar to the second typology. The progressive passivity of the parties is assessed from their initial attitude towards the mediation process. What this means is that in this typology, the parties initially refuse to discuss things that would be a way to achieve peace. The reason is that most of the parties feel like they want to go straight to the trial process and feel that mediation will be a futile process. But then there was a turning point after there was an explanation from the mediator about things that could be discussed and tried to be discussed. Regardless of whether an agreement is reached or not, there is good progress in the mediation process in this typology.

Fourth, passive non-progressive. This typology is illustrated by the parties being mediated from start to finish persisting in sticking with what is in their interests and not giving more room to the possibilities for achieving peace. Parties with this typology usually argue that there is nothing further to reconcile and want to immediately continue the trial process. Even though the concept and benefits of the mediation process have been explained, the parties with this typology remain closed to mediation.

Conclusion

In the end, it was concluded that the implementation of mediation in the religious courts that we encountered was in accordance with PERMA Number 1 of 2016 concerning the Mediation Process in Courts. Furthermore, we found that there are several factors that encourage the success of mediation which can be seen from several aspects: the mediator aspect; aspect of the case; aspects of the parties; and aspects of facilities/infrastructure. From a legal culture perspective, what was then discovered was several typologies. In the internal legal culture there is a typology of active progressive and active non-progressive. Then in external legal culture there is a typology of active progressive, active non-progressive, passive progressive and passive progressive. More deeply, we recommend to stakeholders in policy makers in court proceedings to make the mediation mechanism play a bigger role in helping resolve cases.

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