

## The Effectiveness of Mediation Based on Supreme Court Regulation Number 1 of 2016 in Divorce Cases at the Sintang Religious Court in 2019–2021

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### Abstract

*One of the objectives of this research is to understand how the tradition of band entertainment is carried out in the Pekawai Village, Sayan Sub-district, Melawi Regency, and how Islamic legal views on this tradition apply to the Walimatul Urs in Pekawai Village, Sayan Sub-district, Melawi Regency. This research uses a qualitative research method, specifically field research, and is descriptive in nature. In other words, this research explains, describes, and analyzes data obtained from the field. Data collection techniques used in this thesis include observation, interviews, and documentation, and the analysis is qualitative with a deductive thinking approach. The results of the research in Pekawai Village, Sayan Sub-district, Melawi Regency yield the following conclusions: 1) The Band Entertainment tradition is a practice that occurs after customary calculations and family approval. To provide entertainment, bands use single-organ musical instruments and perform with female vocalists until late at night. Currently, band entertainment is often misused for excessive alcohol consumption and gambling, leading to disturbances. Behind all this, there are communities that engage in entertainment within certain legal limits. 2) From an Islamic legal perspective, the Quran, Hadith, 'Urf (customs), and the Band Entertainment tradition in Walimatul Urs are considered. If conducted in accordance with Islamic law, it is permissible (mubah), but it becomes prohibited (haram) if excessive band performances and late-night entertainment with female vocalists are involved. Entertainment of this nature, which includes drinking parties, seclusion, and mingling while dancing provocatively, leads to disturbances. Therefore, Islam prohibits such types of entertainment and considers them 'Urf that is Fasid (corrupt).*

**Keywords:** Keywords: Islamic Law, Band Entertainment, Walimatul Urs, Pekawai Village.

### A. Introduction

Indonesia is a state of law as affirmed in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. The consequence of the principle of the rule of law is that there is a guarantee for the independent exercise of judicial power, free from

interference by any party, and serves to uphold law and justice for all citizens. Judicial power is one of the main pillars in realizing the rule of law and the protection of people's rights through an independent and fair judicial process.<sup>1</sup>

In the Indonesian constitutional system, the judiciary has a strategic position as the executor of judicial power that is authorized to examine, adjudicate, and decide cases. The judiciary not only functions as a means of resolving disputes, but also as the last resort of justice seekers in upholding truth and legal order in society. Therefore, the existence of judicial institutions is very important in maintaining social stability and providing legal certainty for justice seekers.<sup>2</sup>

However, law enforcement in Indonesia still faces various challenges. One of the problems that is quite prominent is the increasing number of disputes that occur in society from time to time, while the capacity of judicial institutions to handle cases is relatively limited. This condition causes the case settlement process to often take a long time and a lot of money. In fact, every conflict that arises in community life requires an effective, efficient, and in accordance with the applicable legal provisions so that it does not develop into a larger conflict.<sup>3</sup>

Conflicts also often occur in domestic life and are one of the main factors in divorce. In essence, marriage is a birth and mental bond between a man and a woman to form a happy and eternal family based on the One Godhead as regulated in Law Number 1 of 1974 concerning Marriage. Marriage is expected to last harmoniously until the end of life, but in practice various domestic problems can trigger disputes that lead to divorce (Subekti, 2018).

In the perspective of Islamic law, marriage is seen as a sacred contract (*mitsaqan ghalizhan*) and is recommended to be maintained for as long as possible. However, Islam also recognizes that in domestic life there can be prolonged disputes so that the purpose of marriage can no longer be realized. In such conditions, divorce is allowed as a last resort to avoid greater harm to both parties. Therefore, before divorce is decided, Islam advocates peace efforts and conflict resolution through deliberation or mediation (Syarifuddin, 2014).

As one of the judicial environments under the Supreme Court, the Religious Court has the authority to examine, adjudicate, and decide certain cases for Muslims as stipulated in Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts. These authorities include marriage, inheritance, wills, grants, waqf, zakat, infaq, alms, and sharia economics. Among these various types of cases, divorce cases are the most dominant cases and continue to increase every year in various Religious Courts, including the Sintang Religious Court.

The high divorce rate encourages the Supreme Court to optimize the dispute resolution mechanism through mediation. These efforts are realized through the Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2016

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<sup>1</sup> Jimly Asshiddiqie. *Constitution and Indonesian Constitutionalism*. (Jakarta: Sinar Grafika, 2019)

<sup>2</sup> Sudikno Mertokusumo. *Indonesian Civil Procedure Law*. (Yogyakarta: Liberty, 2019)

<sup>3</sup> Rahmadi's Destiny. *Mediation of Dispute Resolution through a Consensus Approach*. (Jakarta: Rajawali Press, 2017)

concerning Mediation Procedures in Courts. Article 17 paragraph (1) of PERMA Number 1 of 2016 emphasizes that on the day of the trial attended by both parties, the judge is obliged to order the parties to go through the mediation process first before the examination of the subject matter continues. This provision shows that mediation is an integral part of the court proceedings that must be taken by the parties.<sup>4</sup>

According to PERMA Number 1 of 2016, mediation is a way of resolving disputes through a negotiation process to obtain agreement between the parties with the help of a mediator. A mediator is a neutral party who assists the parties in seeking a possible dispute resolution without having the authority to decide or force a settlement. Thus, the success of mediation is highly dependent on the mediator's ability to facilitate communication and build understanding among the parties to the dispute.<sup>5</sup>

The application of mediation in the judicial environment aims to realize the principle of a simple, fast, and low-cost judiciary. In addition, mediation is also expected to be able to reduce the accumulation of cases in court while providing wider access to justice to the community through peaceful dispute resolution that benefits both parties. In divorce cases, mediation has a very important role because it can be a means of reconciliation to maintain the integrity of the household before the divorce is actually decided by the court.<sup>6</sup>

The Sintang Religious Court as one of the first-level religious justice institutions also applies mediation procedures in every divorce case that is eligible for mediation. However, based on the results of initial observations made by researchers, not all divorce cases can go through the mediation process because often one of the parties is not present at the trial. In addition, the success rate of mediation in divorce cases is still relatively low compared to the number of cases mediated.

Data from the Sintang Religious Court shows that in 2019 there were 6 divorce cases that were successfully mediated and 45 cases that were not successfully mediated. In 2020, the number of successful mediation cases increased to 15 cases with 42 cases not successfully mediated. Furthermore, in 2021 there were 26 cases that were successfully mediated and 38 cases that were not successfully mediated. Thus, during the 2019–2021 period, there were only 47 cases that were successfully mediated out of a total of 174 cases that underwent the mediation process. Meanwhile, the number of divorce cases that entered the Sintang Religious Court during the period reached 1,031 cases.

The data shows that the success rate of mediation in divorce cases at the Sintang Religious Court is still relatively low compared to the number of cases filed and undergoing the mediation process. This condition raises questions about the effectiveness of the implementation of mediation as mandated in PERMA Number 1 of 2016. The low success rate of mediation can indicate the existence of various factors that affect the effectiveness

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<sup>4</sup> Supreme Court of the Republic of Indonesia. Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Courts.

<sup>5</sup> Abbas Syahrizal. *Mediation in the Perspective of Sharia Law, Customary Law, and National Law*. (Jakarta: Kencana, 2017)

<sup>6</sup> M. Yahya Harahap. *Civil Procedure Law: Regarding Lawsuits, Seizures, Proofs and Court Decisions*. (Jakarta: Sinar Grafika, 2017)

of the implementation of mediation, both from the parties, mediators, and institutional aspects of the court itself.

Based on this description, this research is important to be conducted to analyze the effectiveness of mediation in divorce cases at the Sintang Religious Court during the 2019–2021 period. This research is expected to provide an overview of the success rate of mediation and the factors that affect its implementation so that it can be an evaluation material for efforts to optimize mediation in resolving divorce cases in the Religious Court.

## B. Research Methods

This research uses an empirical legal research method (empirical juridical). Empirical legal research is a study that examines how law works in society (law in action), namely by observing the implementation of applicable legal provisions and comparing them with the facts that occur in the field. In this study, the law in question is the Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2016 concerning Mediation Procedures in the Court which is applied in the settlement of divorce cases at the Sintang Religious Court. The empirical juridical method was chosen because this study aims to determine the level of effectiveness of the implementation of mediation as well as the factors that affect its success and failure in judicial practice.<sup>7</sup>

This study uses a qualitative approach with the type of field research. A qualitative approach was used to gain an in-depth understanding of the implementation of mediation in divorce cases at the Sintang Religious Court through the collection of data directly from informants and documents related to the object of research. This approach allows researchers to describe systematically and factually the effectiveness of mediation based on conditions that occur in the field.<sup>8</sup>

The location of the research was carried out at the Sintang Religious Court Class II, Sintang Regency, West Kalimantan. The selection of the research location was based on the high number of divorce cases handled and the availability of mediation data that can be used to assess the level of success and effectiveness of the implementation of mediation in the 2019-2021 period. In addition, the Sintang Religious Court is an institution that directly implements the provisions of PERMA Number 1 of 2016 in every divorce case that is eligible for mediation.

The data sources in this study consist of primary data and secondary data. Primary data was obtained directly through interviews with mediator judges, case examining judges, clerks, and parties related to the implementation of mediation at the Sintang Religious Court. Meanwhile, secondary data was obtained through literature studies in the form of laws and regulations, law books, scientific journals, results of previous research, annual reports of the Sintang Religious Court, and other official documents related to

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<sup>7</sup> Dahlia Darus. "The Effectiveness of Mediation in Divorce Cases After the Enactment of Supreme Court Regulation Number 1 of 2016 at the Serang Religious Court", *Journal of Islamic Law Students*, Vol. 1 No. 1 (2022), available at: *Journal of UIN Banten*

<sup>8</sup> Tomi Pramana Putra, Yulia A. Hasan, and Zulkifli Makkawaru. "Legal Analysis of the Implementation of Divorce Mediation in the Sengkang Religious Court", *Indonesian Journal of Legality of Law*, available at: *Indonesian Journal of Legality of Law*.

mediation and divorce.<sup>9</sup>

The data collection techniques used in this study include interviews, documentation, and literature studies. The interview was conducted directly to the informant who was considered to know and was involved in the mediation process of divorce cases. Documentation is carried out by collecting data in the form of annual reports, case statistics, mediation reports, and other documents related to research. Meanwhile, literature studies are carried out to obtain a theoretical and normative foundation that supports research analysis.<sup>10</sup>

Data analysis is carried out in a qualitative descriptive manner, namely by collecting, grouping, processing, and interpreting data obtained from the results of field research. Furthermore, the data was analyzed by comparing the applicable legal provisions, especially PERMA Number 1 of 2016 concerning Mediation Procedures in Courts, and its implementation in the Sintang Religious Court. The results of the analysis were then used to assess the level of effectiveness of mediation in divorce cases and identify factors that supported and hindered the success of mediation during the 2019–2021 period.<sup>11</sup>

## C. Results and Discussion (Bold)

### 1. The Effectiveness of Mediation in Settlement of Divorce Cases at the Sintang Religious Court in 2019–2021

Mediation is a form of alternative dispute resolution that places neutral third parties as facilitators in helping the parties reach a peaceful agreement. In the Indonesian judicial system, mediation has become an integral part of the process of proceedings in court as stipulated in the Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2016 concerning Mediation Procedures in Court. Article 1 number 1 of PERMA Number 1 of 2016 defines mediation as a way of resolving disputes through a negotiation process to obtain agreement between the parties with the help of a mediator. The main goal of mediation is to create a win-win solution and reduce the accumulation of cases in court.<sup>12</sup>

The implementation of mediation in divorce cases at the Sintang Religious Court has been normatively carried out in accordance with the provisions of PERMA Number 1 of 2016. Based on the results of an interview with the Mediator Judge of the Sintang Religious Court, all divorce cases that meet the requirements must first go through the mediation process before entering the main examination stage. The implementation of mediation includes the appointment of mediators, summoning the parties, the implementation of negotiations, and the preparation of a report on the results of

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<sup>9</sup> Dwi Ratna Cinthya Dewi. "Analysis of PERMA No. 1 of 2016 on Mediation Procedures in Courts", available at: El-Qisth Journal

<sup>10</sup> Jeni Restuning Triutami and Ramdan Fawzi. "Analysis of PERMA No. 1 of 2016 on the Low Success Rate of Mediation in the Garut Religious Court", available at: Islamic Family Law Research Journal

<sup>11</sup> Hikmawati Ribi. "The Effectiveness of Mediation in Divorce Cases in Religious Courts: A Normative Study of the Implementation of PERMA No. 1 of 2016", available at: Indonesian Journal of Intellectual Publication.

<sup>12</sup> PERMA No. 1 of 2016 concerning Mediation Procedures in Court. <https://peraturan.bpk.go.id/Home/Details/178087/perma-no-1-tahun-2016>

mediation. Thus, procedurally the Sintang Religious Court has carried out its mediation obligations as mandated by the Supreme Court.<sup>13</sup>

However, the effectiveness of mediation is not only measured by the implementation of mediation procedures, but also by the level of success of mediation in reconciling the parties. The effectiveness of the law according to Soerjono Soekanto's theory can be measured from the level of compliance with the law and the achievement of the goals to be realized by the rule of law. In this context, the purpose of PERMA Number 1 of 2016 is to encourage peaceful dispute resolution and reduce the number of cases decided through litigation.<sup>14</sup>

Based on data from the Sintang Religious Court, during the 2019-2021 period there were 1,031 divorce cases entered. Of these, only 174 cases are eligible for mediation because some cases cannot be mediated due to the absence of one of the parties in the trial. Of the 174 cases mediated, only 47 cases managed to reach a peace agreement, while the other 127 cases were declared unsuccessful. The data showed that the success rate of mediation was only around 27.01% of all mediated cases and around 4.56% of the total divorce cases received during the study period.

When viewed based on annual data, the success of mediation shows an increasing trend. In 2019, there were 6 cases that were successfully mediated and 45 cases that failed to be mediated. In 2020, it increased to 15 successful cases and 42 failed cases. Furthermore, in 2021, the number of successful cases increased to 26 cases, while cases that failed to be mediated decreased to 38 cases. Despite the increase, this number is still relatively low when compared to the number of divorce cases that come in every year. This finding is in line with research conducted by Triutami and Fawzi which states that the success rate of mediation in divorce cases within the Religious Court in general is still in the low category due to various internal and external factors.<sup>15</sup>

The low success rate of mediation shows that the implementation of mediation at the Sintang Religious Court has not fully achieved the goals expected by PERMA Number 1 of 2016. Normatively, mediation has been carried out according to procedures, but substantively, the goal of maintaining the integrity of the household and reducing the divorce rate has not been optimally achieved. Thus, the effectiveness of mediation in divorce cases at the Sintang Religious Court during 2019-2021 can be categorized as ineffective.

## 2. Factors Affecting the Effectiveness of Mediation

Based on the results of the research, there are several factors that affect the success or failure of mediation in divorce cases at the Sintang Religious Court. The first factor is the limited number of mediator judges compared to the number of cases that

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<sup>13</sup> Supreme Court of the Republic of Indonesia, Guidelines for Mediation in Court. <https://badilag.mahkamahagung.go.id>

<sup>14</sup> Soerjono Soekanto, The Theory of Legal Effectiveness. <https://ejournal.undip.ac.id/index.php/mmh/article/view/10462>

<sup>15</sup> Jeni Restuning Triutami & Ramdan Fawzi, Analysis of the Success of Mediation in Divorce Cases. <https://journals.unisba.ac.id/index.php/JRHKI/article/view/4369>

must be handled. The high burden of the case causes the mediator judge to have relatively limited time to approach the parties in dispute in depth. This condition affects the quality of the mediation process carried out.<sup>16</sup>

The second factor is the absence of the parties in the mediation process. Based on the provisions of PERMA Number 1 of 2016, the parties are obliged to attend the mediation directly in good faith. However, in practice, there are still parties who are not present even though they have been summoned properly. This absence caused the mediation process to not be carried out optimally and even led to the failure of mediation. The research of Putra, Hasan, and Makkawaru also shows that the low level of attendance of the parties is one of the main causes of mediation failure in divorce cases.<sup>17</sup>

The third factor is the strong desire of the parties to divorce. In divorce cases, conflicts that occur have generally lasted for a long period of time so that the emotional relationship between husband and wife is difficult to restore. Many parties come to court not to seek a peaceful solution, but to obtain a divorce decision. This condition causes mediators to have difficulty in building communication and creating opportunities for peace. The findings are in line with Hikmawati Ribi's research which states that the psychological and emotional factors of the parties greatly determine the success of the mediation process.<sup>18</sup>

Another factor is the low public understanding of the benefits of mediation. Some people still consider mediation to be just a formality that must be passed before entering the trial stage. In fact, mediation provides an opportunity for the parties to resolve disputes faster, simpler, and less cost-effective than the litigation process. Therefore, more intensive socialization efforts are needed regarding the importance of mediation in resolving family disputes.<sup>19</sup>

### 3. The Role of Mediator Judges in Increasing the Success of Mediation

The success of mediation is greatly influenced by the ability and professionalism of the mediator. In divorce cases, mediators not only function as communication facilitators, but also play a role in building a conducive dialogue atmosphere so that the parties can express their interests and problems openly. Abbas explained that mediators have the function of helping the parties identify the root of the conflict, build effective communication, and encourage the achievement of an agreement that is acceptable to both parties.<sup>20</sup>

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<sup>16</sup> Research on the Effectiveness of Mediation in Divorce Cases in Religious Courts. <https://journal.intelekmadani.org/index.php/ijipublication/article/view/730>

<sup>17</sup> Tomi Pramana Putra, et al., Legal Analysis of the Implementation of Divorce Mediation. <https://journal.unibos.ac.id/ijlf/article/view/2609>

<sup>18</sup> Hikmawati Ribi, The Effectiveness of Mediation in Divorce Cases. <https://journal.intelekmadani.org/index.php/ijipublication/article/view/730>

<sup>19</sup> Dahlia Darus, The Effectiveness of Mediation After PERMA No. 1 of 2016. <https://fsy.uinbanten.ac.id/journal/index.php/jurhis/article/view/6839>

<sup>20</sup> Syahrizal Abbas, Mediation in the Perspective of Sharia Law, Customary Law, and National Law. <https://repository.ar-raniry.ac.id/id/eprint/12748/>

Based on the results of the interview with the Mediator Judge of the Sintang Religious Court, the mediator has made maximum efforts to reconcile the parties through various approaches, including providing advice, opening communication spaces, and offering various alternative settlements. However, the success of mediation still depends heavily on the willingness of the parties to reconcile. In many divorce cases, the parties have already had a strong decision to end the marriage so the chances of reaching a peaceful agreement are very small.

From the perspective of Islamic law, peace efforts are a step that must be prioritized before divorce is decided. However, if peace actually causes greater harm to the parties, then divorce can be a justified solution. Therefore, the success of mediation is not solely measured by the achievement of peace, but also by the success of the mediator in providing the parties with the opportunity to reconsider their decisions rationally and wisely.<sup>21</sup>

Overall, it can be concluded that the mediator judge at the Sintang Religious Court has carried out his duties and authorities in accordance with the provisions of PERMA Number 1 of 2016. The neutral, fair, and impartial attitude shown by the mediator during the mediation process has reflected the basic principles of mediation. However, the success of mediation is still influenced by various external factors, especially the psychological condition of the parties, the level of legal awareness of the community, and the high burden of cases handled by mediator judges.

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<sup>21</sup> Amir Syarifuddin, Islamic Marriage Law in Indonesia. <https://opac.perpusnas.go.id/detail-opac?id=1131528>

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