

EFFECTIVENESS OF DISPUTE RESOLUTION IN RELIGIOUS COURTS THROUGH MEDIATION BY NON-JUDGE MEDIATORS WITHIN BANTEN

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Abstract

Mediation is a method of resolving disputes through a negotiation process with the assistance of either a judge or a non-judge mediator. The Supreme Court of Indonesia set a nationwide aim of 25% for settling disputes by mediation in 2023. However, the actual implementation in the jurisdiction of the Banten Religious High Court is only around 20,7% of the defined target, below the national success rate for religious courts, which has reached 39.85%. One of the main factors is the over-reliance on non-judge mediators and the mediator's ability to lead the mediation. Thus, mediation management must be improved, and the capacity of mediators, particularly non-judges, must be increased. This study seeks to discuss the effectiveness of dispute resolution by non-judge mediators and how to maximize the level of success in settling disputes by non-judge mediators. This article is a descriptive qualitative study using normative juridical and empirical

approaches. According to the findings of this study, the mediation process in religious court institutions, particularly in the jurisdiction of the Banten Religious High Court, has not been effective because most of the process is directed by non-judge mediators who are less qualified than judge mediators. To increase the success rate of the mediation implementation process, the court must take the following steps: Rewarding non-judge mediators, organizing coaching and training programs for non-judge mediators, determining national mediation settlement targets by involving non-judge mediators, implementing hybrid mediation (between judge mediators and non-judge mediators); and conducting regular evaluations of a non-judge mediator.

Keywords: effectiveness, disputes, non-judge mediators, mediation.

Introduction

Mediation is an alternative dispute resolution method that has evolved with the human need to resolve disputes appropriately, timely, and satisfactorily. Humans do not desire to get involved in long-term arguments or disagreements. They will want to avoid conflict, even though it is unavoidable in human life. Humans will continue to seek patterns of dispute settlement to fulfill their inherent need to live in harmony, safety, fairness, tranquillity, and prosperity.¹

The mediation process is one form of dispute settlement outside of the court, and it is prompted by the social reality that the court, as the only case resolution institution (litigation), is perceived as unable to resolve issues following public expectations. Many elements drive criticism of the judiciary, including the fact that its resolution is delayed (waste of time), formal (formalistic), and technical (technically), which results in the accumulation of cases.² Aside from all of this, another factor relates to the products produced. The products or decisions the

¹ Karmawan. "Mediation in the Religious Courts of Indonesia." *Abkam: Jurnal Ilmu Syariah*, vol. 20, no. 1, (2020). p. 79-86. <http://dx.doi.org/10.15408/ajis.v20i1.13249>; Ali Mutakin. "Resolusi Konflik Melalui Nilai-Nilai Kultur Pesantren." *An-Nidzam: Jurnal Manajemen Pendidikan Dan Studi Islam*, vol. 5, no. 2 (2018), p. 91-120. <https://doi.org/10.33507/an-nidzam.v5i2.176>.

² Rina Antasari. "Pelaksanaan Mediasi dalam Sistem Peradilan Agama." *Jurnal Intizar*, vol. 2, no. 1 (2013), p. 149. <http://jurnal.radenfatah.ac.id/index.php/-intizar/article/view/407>

judicial process makes almost always result in a win-lose situation. As a result, the decision tends to satisfy one party while dissatisfying the other.³ The conception of win-and-loss solutions from the trial process will trigger many legal remedies to higher courts, such as appeal, cassation, or judicial review. As a result, lawsuits will pile up, and parties will have to wait longer to enjoy the disputed object or property. Similarly, a party's costs may sometimes exceed the value of the contested property.

As Indonesia's highest judicial authority, the Supreme Court has taken many measures to shorten the dispute settlement procedure in court. One of the more forward-thinking ideas is to integrate mediation into a courtroom.⁴ The Supreme Court first expressed this concept in various rules, including the passage of Supreme Court Regulation (PERMA) No.2/2003, superseded by Supreme Court Regulation No.1/2008 and refined by PERMA No.1/2016.

The current PERMA makes mediation one of a series of case examination processes in court to encourage mediation to become a possibility for dispute resolution and increase the effectiveness of mediation implementation in court.⁵ As stated in the National Standards for Court Connected, one goal of integrating the mediation process is to improve the quality of justice for various types of litigation, improve citizens' access to justice, save court and litigant costs, and reduce case disposition delays.⁶

However, the number of cases handled through mediation still needs to be improved. The rate for dispute settlement through mediation in various appellate courts has yet to uniformly achieve the

³ Rika Lestari. "Perbandingan Hukum Penyelesaian Sengketa Secara Mediasi di Pengadilan dan di Luar Pengadilan di Indonesia." *Jurnal Ilmu Hukum*, vol. 3, no. 1 (2013), p. 218. <http://dx.doi.org/10.30652-/jih.v3i2.1819>.

⁴ Siti Rahmah, M. Yakub Aiyub Kadir, Cut Megawati, Dewi Astini, and Aina Sulfy. "Resolution of Land Disputes Through Mediation". *Mahadi: Indonesia Journal of Law*, vol. 3, no. 1 (2024), p. 51-62. <https://doi.org/10.32734/mah.v3i01.15763>; Fajar Habib Ferian. "Optimizing The Role of Mediators in Settlement of Civil Disputes in The West Sumatra Religious Courts." *Jurnal Hukum Lex Generalis*, vol. 4, no. 4 (2023), p. 283-304. <https://doi.org/10.56370/jhlg.v4i4.370>

⁵ M. Nur. "Mediator Hakim Masih Menjadi Tulang Punggung Mediasi di Pengadilan", *Majalah Peradilan Agama*, Edisi 12 (2017), p. 96

⁶ Center for Dispute Settlement, the Institute of Judicial Administration, *National Standards for Court-Connected Mediation Program*, (Washington DC: SJI, n.d)

target established by the Indonesian Supreme Court, which is 25% nationwide.⁷ Within the Banten High Religious Court's jurisdiction, the rate of adequate dispute settlement by mediation in 2023 was just 20.07%, which falls below the established target by 77%. The result is significantly lower than the national success rate of mediation in religious courts, which is 39.85%. Therefore, it is necessary to enhance the process of resolving disputes through mediation in judicial institutions under the Supreme Court. This improvement should primarily focus on increasing the quantity of skilled personnel. Judge and non-judge mediators play crucial roles in ensuring the success of the mediation process, as stipulated in Supreme Court Regulation No. 1/2016 on Mediation Procedures.

Mastering information about the mediation process itself is critical to the success of a judge and non-judge mediator in settling disputes through mediation.⁸ The most crucial aspect, however, is mastery and an in-depth grasp of the legal norms and processes governing mediation and trials. Presently, many courts collaborate with mediators who are not judges, including courts under the Banten High Religious Court's jurisdiction. The objective is to enhance the court's efficiency in managing the legal process. Nevertheless, in certain instances, courts that exclusively depend on non-judge mediators have experienced a decline in the success rate of mediation settlements. For example, the Tangerang Religious Court had a success percentage of approximately 7.04%. This success rate contrasts with courts that still rely on judge mediators, such as the Rangkasbitung Religious Court, which has a success record of more than 61%, higher than the national average. Additionally, there have been numerous issues associated with mediation reports produced by non-judge mediators, such as creating agreements that are unenforceable or in violation of the law. These problems fail to relieve the court of its responsibilities and pose challenges for the court.

⁷ Supreme Court, *Supreme Court Performance Report 2023*, (Jakarta: MA RI, 2023), <https://www.mahkamahagung.go.id/id/sakip/5679/dokumen-sakip-mahkamah-agung-tahun-2023>

⁸ M. Natsir Asnawi, "Urgensitas Pendekatan Psikologi Dalam Pelaksanaan Mediasi di Pengadilan", *Jurnal Hukum dan Peradilan*, vol. 6, no. 3 (2017), p. 447-462. 10.25216/JHP.6.3.2017.447-462

According to the description provided above, the problem formulations covered in this paper are as follows:

1. What factors contribute to the reduced effectiveness of dispute resolution through mediation by non-judge mediators?
2. How are efforts to optimize the effectiveness of dispute resolution through mediation by non-judge mediators in Religious Courts?

This article is a descriptive qualitative study that seeks to explain the answer to the problem to gain a comprehensive picture of mediation implementation in court.⁹ As field research, this study focuses on ongoing events, with the researcher immediately involved in observation and data collecting from primary sources at the research site. This method enables the researcher to acquire more precise and contextualized insights into how the law is applied and interpreted in ordinary situations. In this context, the researcher conducted in-depth interviews with various junior law clerks (Panmud Hukum) about the implementation of mediation by non-judges. This research included both normative and empirical juridical approaches.¹⁰ This research uses the normative juridical approach to perform an in-depth analysis of normative rules, viewing the law as a norm that governs community behavior. This approach enables the researcher to comprehend the legal basis that serves as a reference in dispute resolution and how these norms are internalized in mediation. On the other hand, the empirical juridical method focuses on the legal evaluation of the subject of debate regarding the application of law in civil proceedings.

The findings of this research are expected to contribute to the development of mediation practices in the courts, to identify the factors contributing to the ineffectiveness of dispute resolution through mediation by non-judge mediators, and to analyze potential strategies for enhancing its effectiveness.

⁹ Fadli. "Memahami desain metode penelitian kualitatif." *Humanika: Jurnal Kajian Mata Kuliah Hukum*, vol. 21, no. 1 (2021), p. 33-54, <https://dx.doi.org/10.21831/hum.v21i1.38075>;

¹⁰ Kornelius Benuf and Muhamad Azhar. "Metodologi Penelitian Hukum sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer." *Gema Keadilan*, vol. 7, no. 1 (2020), p. 20-33. <https://doi.org/10.14710/gk.2020.7504>

Discussion

The Concept of Mediation and its Implementation in the Indonesian Legal System

Mediation is a procedure for resolving disputes between parties through negotiation or consensus with the assistance of a mediator.¹¹ Negotiation, which is the same as the process of deliberation or consensus, is the main component of the mediation process. During the mediation process, there should not be coercion to accept or reject an idea in line with the nature of negotiation, deliberation, or consensus. The parties must agree on everything. According to Lawrence Boulle, there are four recognized mediation models: evaluative mediation, transformative mediation, settlement mediation, and facilitative mediation.¹²

Settlement mediation, sometimes called compromise mediation, encourages a compromise between the two opposing parties' demands. Facilitative mediation, or interest-based or problem-solving mediation, tries to remove disputing parties from their positions and rigidly separate their needs and interests from their legal rights.¹³ Transformative mediation, also known as therapeutic and reconciliatory mediation, is a mediation model that focuses on identifying the root causes of problems between disputing parties and improving their relationship through recognition and empowerment as the foundation for conflict resolution in existing disputes.¹⁴ Moreover, evaluative mediation, also known as normative mediation, tries to establish an agreement based on the disputing parties' legal rights in the area foreseen by the court.¹⁵

¹¹ Haeratul and Fatahullah. "Efektivitas Mediasi Sebagai Alternatif Penyelesaian Perkara Perceraian Di Pengadilan Agama." *Batulis Civil Law Review*, vol. 3, no. 1 (2022), p. 29-59. <https://doi.org/10.47268/ballrev.v3i1.930>

¹² Revy S.M. Korah. "Mediasi Merupakan Salah Satu Alternatif Penyelesaian Masalah dalam Sengketa Perdagangan Internasional." *Jurnal Hukum UNSRAT*, vol. 21, no. 3 (2013), p. 34-35; Herlina Panggabean. "Tinjauan Hukum Atas Mediasi dalam Sengketa Pertanahan di Kantor Pertanahan Kabupaten Tapanuli Utara." *Jurnal Rectum*, no. 1, vol. 2 (2019), p. 195-196. <http://dx.doi.org/10.46930/jurnalrectum.v1i2.1376>.

¹³ Allan J. Stitt, *Mediation: A Practical Guide* (London: Routledge Cavendish, 2004), p. 2

¹⁴ Robert A. Baruch Bush, and Josep P. Folger, *The Promise of Mediation: Transformative Approach to Conflict* (USA: Willey, 2004), p. 41

¹⁵ Allan J. Stitt, *Mediation: A Practical Guide...* p. 2

Because mediation in Indonesia is connected with legal institutions, it cannot occur without first filing a case.¹⁶ Thus, in Indonesia, the parties can only use the mediation method after a lawsuit has been filed with the court. Therefore, when compared to Lawrence Boulle's mediation model, the mediation model in Indonesia is more akin to the evaluative mediation model.

Since the publication of PERMA No. 2/2003 on Court Mediation Procedures, court-annexed mediation has been in place in Indonesia. The purpose of this PERMA is to improve the Supreme Court Circular Letter (SEMA) No. 1/2002 on the Empowerment of Courts of First Instance in applying the institution of peace as provided in Article 130 *Herziene Inlandsch Reglemen* (HIR) and Article 154 *Rechtsreglement voor de Buitengewesten* (RBg). Both paragraphs govern the institution of peace and the obligation of judges to first reconcile the parties before proceeding with the case.¹⁷

PERMA No. 1/2008 superseded PERMA No. 2/2003 in 2008. PERMA No. 1/2008 stressed the responsibility to mediate in court. The Supreme Court strengthened the PERMA by enacting PERMA No.1/2016 on Court Mediation Procedures. Due to these regulations, mediation processes in court become part of civil procedural law.¹⁸ As a result, if the mediation process is skipped, the decision is rendered null and void.

There are various reasons for the practical application of mediation. *First*, the mediation procedure can address the issue of case overload in court. If mediation is effective, the parties will not pursue appeals or cassations, which would result in a backlog of cases. If a judge

¹⁶ Indrianti Amarini, "Penyelesaian Sengketa yang Efektif dan Efisien Melalui Optimalisasi Mediasi di Pengadilan", *Jurnal Kosmik Hukum*, 16, no. 2 (2016), p. 97. <https://doi.org/10.30595/kosmikhukum.v16i2.1954>; Muhammad Saifullah. "Efektivitas Mediasi dalam Penyelesaian Perkara Perceraian di Pengadilan Agama." *Al-Ahkam*, vol. 25, no. 2 (2015), p. 181-204. <https://doi.org/10.21580/-ahkam.2015.25.2.601>

¹⁷ Widjaja. "Business Disputes Settlement; History and Development of Mediation in Indonesia." *Remittances Review*, vol. 8, no. 2 (2023), p. 16-24. <https://doi.org/10.33182/rr.v8i2.02>.

¹⁸ Ro'fah Setyowati, Dewi Nurul Musjtari, and Indah Susilowati. "Effectiveness of Mediation in The Dispute Resolution of Islamic Economics In Indonesian Religious Courts." *Journal of Islamic Law Studies*, vol. 2, no. 3 (2019), p. 1-25. <https://scholarhub.ui.ac.id/jils/vol2/iss3/7>.

determines the case, the losing party will almost certainly file an appeal and seek cassation. Finally, all cases lead to the Supreme Court, resulting in a backlog of cases. *Second*, mediation can resolve problems more quickly and affordably than litigation. *Third*, mediation can increase the parties' access to a feeling of fairness. A sense of justice can be gained through the parties' litigation process and consensual deliberation because the eventual conclusion reflects their intent. *Fourth*, incorporating the mediation process into the legal system can strengthen and maximize the courts' role in dispute settlement. The more prominent function of the judicial institution in the past was deciding the case. However, since the implementation of this PERMA, the court has had another function: reconciling the parties.

The Urgency of Mediators in Dispute Resolution through the Mediation Process

The term mediator is inextricably linked to the mediation process itself. According to Article 1, paragraph 1 of PERMA No. 1/2016, mediation is a method of resolving disputes through a negotiation process to reach an agreement between the Parties with the help of a Mediator. This description is consistent with Folberg and Taylor's interpretation in Hariyanto, which explains that mediation is a procedure in which the parties systematically address disputed issues with the assistance of someone or several individuals to develop alternatives and reach a settlement that meets their needs.¹⁹ Based on this view, a mediator is a third party who assists in settling the parties' dispute while not intervening in decision-making. The mediator meets with the parties, conducts negotiations, administers and maintains the negotiation process, and presents possibilities for the parties to reach an agreement.²⁰

According to PERMA No. 1/2016, a mediator is a judge or other neutral party who aids the parties in the negotiating process to

¹⁹ Budi Hariyanto. "Mediasi Sengketa Perbankan Antara Bank Dan Nasabah Menggunakan Alternatif Penyelesaian Sengketa." *IUS: Jurnal Ilmiah Fakultas Hukum*, vol. 6, no. 2 (2021), p. 92-105. <https://doi.org/10.51747/ius.v6i2.659>

²⁰ Abdul Mustopa, *Teknik Mediator dalam Penyelesaian Sengketa* (Yogyakarta: Ruas Media, 2020), pp. 29; Lalu Moh. Fahri. "Mediator dan Peranannya dalam Resolusi Konflik." *PENSA*, vol. 3, no 1 (2021), p. 114-125. <https://ejournal-stitpn.ac.id/index.php/pensa/article/view/1216>

find several possible conflict resolutions without using an approach to determine or enforce a settlement. A mediator is primarily a neutral or impartial third party whose purpose is to help parties settle their conflicts through an agreement between the two.²¹ The essence of a mediator's unbiased and fair attitude is obtained from the meaning of mediation, namely "mediate," which means "in the middle."²² This PERMA divides mediators into three categories: (1) mediators from judges, non-judge mediators outside court employees, and non-judge mediators from court employees.

A judge mediator is any judge with a mediator certificate or mediator based on the chairman's decision if there is no certified mediator. Non-judge mediators outside court employees are any persons with a mediator certificate issued by the accreditation body of the mediator certification agency established by a Decree of the Chief Justice of the Supreme Court. Moreover, non-judge mediators from court employees are any court employee, such as clerks, secretaries, substitute clerks, bailiffs, substitute bailiffs, prospective judges, and other employees with a mediator certificate.²³

Mediation is a good-faith forum in which the parties to a dispute express the subject matter through their means so that the conflict can be resolved through mediation by the mediator.²⁴ As a result, the success of mediation can be influenced by various factors, including the mediator's quality (training and professionalism), the parties' trust in the mediation process, the mediator, and each party.²⁵

²¹ Muhammad Karmuji. "Peran dan Fungsi Mediator Dalam Penyelesaian Perkara Perdata." *Ummul Qura: Sekolah Tinggi Agama Islam Raden Qosim (STAIRA) Lamongan*, vol. 7, no. 1 (2016), p. 30-52. <http://ejournal.kopertais4.or.id/pantura/index.php/qura/article/view/3040>.

²² Zulkifli Yus. "Mediasi dalam Penyelesaian Sengketa Perkawinan pada Mahkamah Syar'iyah di Aceh." *el-Usroh: Jurnal Hukum Keluarga*, vol. 5, no. 2 (2022), p. 1-28. <http://dx.doi.org/10.22373/ujhk.v5i2.17893>.

²³ M. Radhi Abdullah, Puthut Syahfarudin, and Ilham Yuli Isdiyanto. "Menyoal Akreditasi Pendidikan Mediator oleh Mahkamah Agung." *Kertha Semaya: Journal Ilmu Hukum*, vol. 9, no. 4 (2021), p. 628-642. <https://doi.org/10.24843/KS.2021.v09.i04-p07>.

²⁴ Mulyani Zulaeha. "Asas Itikad Baik dalam Mediasi." *Banua Law Review*, vol. 4, no. 2 (2022), p. 156-168. <https://doi.org/10.32801/balrev.v4i2.43>.

²⁵ Budi Hariyanto, *Mediasi Sengketa Perbankan...*, p. 92-105

The Effectiveness of Dispute Resolution by Non-Judge Mediators in Religious Court Institutions

Everything that demonstrates the accomplishment of a goal is referred to as effectiveness.²⁶ This definition indicates that something can be deemed effective if all efforts are directed toward the intended outcomes. In comparison, Peter Drucker stated that doing the right things is directly tied to effectiveness.²⁷ In addition to the above definition, *effectiveness* is defined as the fit between the person performing the task and the intended target, which is closely related to the comparison of the level of achievement of goals and previously prepared plans or the comparison of actual results and planned results. Effectiveness is another word that describes the accomplishment of a goal.²⁸

An organization might be deemed effective if it successfully attains the predetermined objectives. Effectiveness is commonly defined as the degree to which operative and operational goals are accomplished. The effectiveness of dispute resolution through mediation discussed in this article refers to achieving the goals of a mediator's efforts, particularly those of a non-judge mediator, in settling disputes through the mediation he conducts.

Presently, numerous courts are collaborating with non-judge mediators to enhance the court's efficiency in managing cases. However, in certain instances where courts depend exclusively on non-judge mediators, the effectiveness of mediation settlements has declined, and numerous issues have arisen regarding the mediation reports produced by these non-judge mediators. These issues include creating mediation agreements that cannot be enforced and violate the

²⁶ Taufik Hidayat. "Penerapan Prinsip Efektif dan Efisien dalam Pelaksanaan Monitoring Kegiatan Penelitian." *Majalah Media Perencana*, vol. 2, no. 1 (2021), p. 42-50. <https://mediaperencana.perencanapembangunan.or.id/index.php/mmp/article/view/15>.

²⁷ Peter, J. D. *Consumer Behavior and Marketing Strategy*. (Boston: McGraw-Hill, 2012), p. 67

²⁸ Syamsuddin. "Efektifitas Kepemimpinan dalam Memotivasi Pustakawan di Lingkungan Perpustakaan." *Baitul 'Ulum: Jurnal Ilmu Perpustakaan dan Informasi*, vol. 1, no. 1 (2018), p. 47-50. <https://doi.org/10.30631/baitululum.v2i1.29>; Edward Mandala, Neng Suryanti Nengsih, and Kurnia. "Efektivitas Kerja Pegawai PT Angkasa Pura II (Persero) Tanjungpinang (Studi Pada Divisi Kepegawaian dan Umum)." *JISIPOL: Jurnal Ilmu Sosial dan Ilmu Politik Raja Haji*, vol. 2, no. 2 (2021), p. 461-476. <https://doi.org/10.56552/jisipol.v2i2.48>.

law. Consequently, rather than easing the burden on the court, these challenges have emerged, as exemplified by the Bandung Religious Court, where the success rate of mediation has steadily decreased over the years, eventually reaching a mere 0.8%. The decline occurred when the mediation procedure was exclusively entrusted to mediators who were not judges.²⁹

Across the country, particularly in religious courts, the success rate achieved through mediation stood at 39.85%. The percentage had a 40.66% increase compared to the previous achievement in 2022, which stood at 28.33%. However, these achievements have not been evenly distributed across the religious courts. In 2023, just two courts under the jurisdiction of the Banten Religious High Court outperformed the national average. The Rangkasbitung Religious Court achieved a rate of 61.73%, while the Cilegon Religious Court had a rate of 51.02%. Most courts had a mediation success rate that fell below the national average, with some courts achieving as low as 5%. To obtain additional information, please consult the table provided below:³⁰

Table

Data on Case Resolution through Mediation at Courts within the Banten Religious High Court

| No | Religious Court of | Number of Mediation Cases | Success Status |
|----|--------------------|---------------------------|------------------|
| 1 | Serang | 1120 | 73 cases/5,98% |
| 2 | Tangerang | 596 | 42 cases/7,04% |
| 3 | Tigaraksa | 1110 | 372 cases/33,50% |
| 4 | Pandeglang | 127 | 40 cases/31,49% |
| 5 | Rangkasbitung | 115 | 71 cases/61,73% |
| 6 | Cilegon | 196 | 100 cases/51,02% |

The results align with the practice of court leaders who have engaged non-judge mediators to resolve cases through mediation. The success rate remains high for religious courts that primarily utilize judge mediators, but courts that mainly rely on non-judge mediators

²⁹ Bandung Religious Court. *Government Agency Performance Report (LKJiP) of the Bandung Religious Court for 2020-2022*. Retrived from <https://www.pa-bandung.go.id/transparansi/laporan/laporan-lkjiip>

³⁰ Banten Religious High Court, *Annual Report 2023* (Serang: PTA Banten, 2024), p. 6-12

experience a lower success rate. This fact aligns with expert research that asserts that judge mediators are preferable to non-judge mediators. Louise Otis and Eric H. Reiter, as quoted by M. Nur, have explained the superiority of judge mediators over non-judge mediators. They argue that judge mediators have two distinct advantages: the parties' perception of their position and expertise.³¹ Judge mediators can address the parties' perceptions more due to their expertise as judges, including a deep understanding of the law. This expertise enables them to facilitate agreements that align with relevant regulations and can be effectively implemented while avoiding conflicts.

The author's analysis identifies three primary elements that contribute to the ineffective resolution of disputes through mediation by non-judge mediators:

1. The quality of non-judge mediator certification training graduates

According to the terms of PERMA No. 1/2016 on Mediation Procedures in Courts, any non-judge mediator who performs mediation functions in court must possess a mediator certificate. Non-judge mediators must first attend and pass mediator certification training organized by a recognized mediator certification authority to earn a mediator certificate. To obtain Supreme Court accreditation, mediation certification bodies must follow the provisions of the Chief Justice of the Supreme Court's Decree No. 117/KMA/SK/VI/2018 on the procedures for granting and extending accreditation of mediator certificate provider institutions for non-judges.

However, in practice, many non-judge mediators who have received mediator certificates from accredited mediator certification bodies are of below-average quality. This is evidenced by the meager mediation success rate in courts where non-judge mediators lead the mediation process, as previously described. The training process is one aspect that contributes to the inadequate performance of non-judge mediator certification training graduates. Mediator certification training organized by institutions other than the Supreme Court often lasts 5 to 7 days and is even held online. As a result, the implementation of training becomes ineffective. Indeed, the Supreme Court Training Center's training programs typically last between 14 and 30 days.

According to this, the training should be arranged for at least ten days and conducted in person (offline). This is supported by a

³¹ M. Nur, *Mediator Hakim Masih*, p. 80-81

requirement stated in the Decree of the Chief Justice of the Supreme Court No. 108/KMA/SK/VI/2016 regarding the management of mediation in the courts. According to this requirement, mediation certification bodies seeking accreditation from the Supreme Court must have their curriculum for mediation education and training. This curriculum should consist of at least 40 lesson hours and align with the Mediator Certification Education and Training Curriculum.

2. The large number of non-judge mediators who do not have a legal education background

A significant quantity of non-judge mediators needing a legal education background pose challenges to their comprehension of legislative requirements and other regulations that govern mediation and the creation of agreements. As a result, several draft agreements created by mediators who are not judges often include provisions that cannot be enforced, need to be clarified, or contravene legal principles.

A prominent illustration of the use of the mediation process by mediators who are not judges is the notable deficiency in achieving successful outcomes in the "partial success" category. Indeed, this is feasible as it pertains to the realization of the rights of women and children following a divorce. For instance, provisions about child maintenance, *iddah*, or *mut'ah* should be incorporated, even if they are not explicitly stated in the lawsuit or petition. According to Supreme Court Regulation Number 1 of 2016, discussion materials in mediation procedures that go beyond the specific claims made in the lawsuit are allowed. Article 25, paragraph (1) of the regulation states that the negotiation material in mediation is not restricted to the specific claims made in the lawsuit. One explanation is that non-judge mediators, particularly those employed in the courts, need more comprehension of the PERMA due to their educational background being unrelated to the law. Incorporating child maintenance, *iddah*, and *mut'ah* into the mediation process can enhance the effectiveness of mediation implementation and expedite the resolution of cases in the Religious Courts. This will ensure that simple, fast, and affordable principles are upheld.³²

3. The absence of intention to resolve conflicts through mediation

³² Article 2 paragraph (4) of Act No. 48/2009 on Judicial Power

Another significant element contributing to the effectiveness of conflict resolution by non-judge mediators is the absence of enthusiasm and drive on the part of these mediators to actively assist the parties in resolving their problems, resulting in the mediation process being a simple procedural requirement. Several reasons contribute to the lack of interest in this matter, including the absence of incentives offered by the courts and the lack of involvement of non-judge mediators in establishing targets for conflict resolution through mediation or promoting the targets set by the Supreme Court on this matter.

Optimizing the Effectiveness of Dispute Resolution through Mediation by Non-Judge Mediators in Religious Court Institutions

According to the preceding explanation, the implementation of mediation in religious courts still needs to be improved, particularly mediation conducted by non-mediator judges. Based on the author's research and findings, the following steps can be performed to strengthen the mediation implementation process:

1. Implementing rigorous criteria for considering collaboration with non-judge mediators

The responsibility of deciding whether a non-judge mediator is approved lies with the head judge of the court, as specified in Decree No. 108/KMA/SK/VI/2016 issued by the Chief Justice of the Supreme Court, which pertains to the administration of mediation in courts. Nevertheless, this law solely governs administrative prerequisites. If the mediator, who is not a judge, fulfills the given criteria, the head of the court must approve their appointment. The regulation does not impose additional rules regarding the educational background and expertise required for non-judge mediators. They must be granted acceptance if they have obtained mediator certification that the Supreme Court acknowledges. Indeed, the head of the court should be given the power to choose mediators who are not judges based on the court's requirements. If their educational background aligns with the requirements or possess other relevant certifications of expertise, they may be deemed eligible to serve as a mediator in that particular court. Alternatively, the application could face rejection. To effectively deploy non-judge mediators, it is advisable to prioritize cooperation with

retired judges, clerks, or scholars who possess a comprehensive understanding of law and sharia.

2. Rewarding non-judge mediators

According to the Mediation Certification Training Module for Courts, the foundation, which includes components of interest and motivation, is one of the most significant parts of the mediator's house.³³ If the preceding explanation is correct, one of the reasons for the ineffective implementation of mediation in the Bandung Religious Court is a lack of interest and motivation on the part of non-judge mediators to assist the parties in resolving their disputes, so that the mediation process appears to be merely a formality. This lack of interest stems from non-judge mediators needing compensation (reward). Hence, the mediator needs an incentive (award) to resolve the dispute between the parties. It is critical to recognize and reward non-judge mediators' performance in addition to their pay. Rewards are closely related to increasing a person's seriousness, interest, and performance motivation.³⁴ In this case, the award will improve the performance and motivation of non-judge mediators in leading the mediation process.

The award can be offered to non-judges, such as the Supreme Court awards lawyers who use E-Court or E-Litigation services optimally in court. As indicated in the letter of the Chief of Supreme Court Development No. 100/Tuaka-Bin/VIII/2022, the award for case settlement through mediation is now only shown to Judge Mediators. In the future, the Supreme Court may create a specific category for non-judge mediators to encourage them to lead the mediation process in court more effectively.

The Supreme Court and Religious Courts or Religious High Courts can issue awards to non-judge mediators. The awarding can

³³ Supreme Court Research, Development, Education, Legal and Judicial Training Board (BALITBANGKUMDIL MA RI, *Mediator Certification Training Module*, (Bogor: BALITBANGKUMDIL, 2015)

³⁴ Ivan Tomi Putra, Ismail, et al. "Pengaruh Reward Terhadap Motivasi Kerja Karyawan (Studi pada Karyawan PT. Makitamega Makmur Perkasa)". *AKSELERASI: Jurnal Ilmiah Nasional*, 2, no. 3 (2020), p. 75-85; Andi Mardiana, "Pemberian Reward Terhadap Peningkatan Motivasi Kerja Karyawan dalam Perspektif Islam." *Mutawazin: Jurnal Ekonomi Syariah IAIN Sultan Amai Gorontalo*, vol. 2, no. 1 (2021), p. 1-14

occur as part of the court's innovation in dispute resolution through in-court mediation.

3. Organizing coaching and training programs for non-judge Mediators

Indeed, the court or the Supreme Court of Indonesia is not required to create coaching and training programs for non-court staff. The same applies to adopting non-judge mediators' coaching and training programs. Each mediator is responsible for increasing their capability and ability as a Non-judge Mediator. This is confirmed by the Mediator Code of Conduct in the Chief Justice of the Supreme Court's Decree Number 108/KMA/SK/VI/2016 about Mediation Governance in Courts. According to Article 8, mediators are actively encouraged to improve their mediation abilities or skills through education, training, seminars, or conferences. However, because the non-judge mediators conduct the mediation in the court and the results of their work substantially impact the court's performance, the court leadership should also be concerned with the capacity building of the Non-judge Mediator. One of the materials that non-judge mediators must study is an understanding of the implementation of PERMA No. 1/2016 and PERMA No. 3/2022 on Electronic Court Mediation.

Non-judge mediators have never considered women's rights after divorce, such as child support, iddah, or mut'ah, while processing divorce cases in religious courts, particularly at the Bandung Religious Court. At the same time, non-judge mediators can address these issues throughout the mediation process. The agreement, if successfully agreed upon by the parties, can improve the court's performance.

The Supreme Court must review the coaching process for non-judge mediators in light of this. Court authorities must take the initiative to assist non-judge mediators to improve their effectiveness. Such mentoring can be led directly by the court leadership or delegated to Judges with a mediator certificate or have attended the Technical and Judicial Training Center of the Supreme Court's Training of Trainers (ToT) for advanced mediation certification.

4. Establishing a target for dispute resolution through mediation with non-judge mediators

Court work units should refer to national targets or follow the targets set by the Indonesian Supreme Court when determining targets for dispute resolution through mediation. Any target disparity between

the Supreme Court and the court work units will make meeting the national target impossible.

The Supreme Court must impose strict discipline on the court work units for what has been established to apply nationally. Aside from implementing national targets, the court must take another step to improve the effectiveness of case settlement through mediation, including the mediator's role in defining these targets. Each mediator, in this case, the Non-judge Mediator, must be aware of the court's objectives. As a result, each mediator will strive to accomplish the goals that have been established. This will strengthen the Non-judge Mediator's motivation to complete or at least substantially complete the mediation procedure.

5. Conducting Mediation with a Combination of Judge Mediators and Non-judge mediators

Implementing the mediation process in the courts should only partially be left to non-judge mediators. This is because many non-judge mediators need more judicial experience. One of the conditions for a peace agreement to be strengthened to become a deed of peace (*Acta van dading*) through a court decision, according to Article 27 paragraph (2) of PERMA 1/2016, is that it does not contain provisions that are contrary to law, public order, or decency, harmful to third parties, or cannot be implemented/executed. This means a mediator must grasp the rules and regulations and have judicial knowledge. As a result, if circumstances cause the mediation process in court to be delegated to non-judge mediators, the delegation must be selected, for example, by favoring cooperation with retired judges or academics who understand law and Sharia.

Another option is to continue assigning Judge Mediators alongside non-judge mediators to implement the mediation process. It is envisaged that a hybrid assignment between Judge and Non-judge mediators will result in a transfer of knowledge and experience among them, increasing the effectiveness of dispute resolution and appropriately achieving the Supreme Court's targets. Continuing to assign Judge Mediators to lead the mediation process can add benefits and experience for him. As a result, the Supreme Court Judicial Technical Training Center's issuing of mediation certifications is appropriate, both for the judges who carry it out and for the judicial institutions and the Supreme Court in general.

6. Conducting Regular Evaluations of Non-judge mediators

The evaluation of any work program is critical for an institution because only through the evaluation process can the institution determine whether or not the determined program has been running effectively. Cross, in Suarga, states, "Evaluation is a process that determines the extent to which objectives have been achieved."

³⁵ According to this definition, evaluation is tied to reaching a specific aim or target.³⁶

M. Chabib Thoaha noted that evaluation can be used to identify an object's condition using an instrument, and the results can then be utilized as a benchmark to draw certain conclusions.³⁷ In this situation, the evaluation results can be used for research by gathering, evaluating, and presenting meaningful information about the subject under consideration.³⁸ Furthermore, the evaluation results can be compared with specified evaluation markers to make conclusions about the item under consideration. As a result, Owen has stated that the evaluation outcomes must include facts, findings, judgments, and suggestions.³⁹ Meanwhile, as mentioned by Arikunto and Jabar in Ashiong P. Munte, the implementation of evaluation is more focused on knowing whether or not the program has been implemented. According to him, the assessment process must have 7 (seven) elements: focusing on the evaluation, designing, collecting information, analyzing and

³⁵ Suarga. "Hakikat, Tujuan dan Fungsi Evaluasi dalam Pengembangan Pembelajaran". *JIP: Inspiratif Pendidikan*, vol. 8, no. 2 (2019), p. 327-338. <https://doi.org/10.24252/ip.v8i2.12344>.

³⁶ N. Patimah, "Evaluasi dalam Manajemen Diklat." *An-Nidhom: Jurnal Manajemen Pendidikan Islam*, vol. 3, no.1 (Juni, 2018), p. 50-68 <http://dx.doi.org/10.32678/annidhom.v3i1.4465>

³⁷ Ina Magdalena, Hadana, and Raafiza Putri. "Pentingnya Evaluasi Dalam Pembelajaran dan Akibat Memanipulasinya." *Bintang: Jurnal Pendidikan dan Sains*, vol. 2, no. 2 (2020), p. 247

³⁸ Idrus. "Evaluasi Dalam Proses Pembelajaran." *Adaara: Jurnal Manajemen Pendidikan Islam*, vol. 9, no. 2 (2019), p. 920-935. <https://doi.org/10.35673/ajmpi.v9i2.427>

³⁹ John M. Owen, *Program Evaluation: Forms and Approaches* (Crows Nest: Allen & Unwin, 2006), p. 20

interpreting, reporting information, managing, and evaluating the evaluation.⁴⁰

According to this explanation, courts that have worked with non-judges must undertake frequent and scheduled evaluations. As Owen describes, the implementation of the assessment should result in numerous things, including evidence of program implementation, conclusions or a resume of the program, specific considerations of the program carried out, and recommendations for the future program. The evaluation results can be used to develop future goals, such as developing capacity-building programs for non-judge mediators, awarding non-judge mediators, or analyzing previous collaborations.⁴¹

The performance of non-judge mediators is evaluated by the court unit and the Supreme Court, in this case, the non-judge Mediator Accreditation Team. The Team must ensure that the provisions of the Chief Justice of the Supreme Court's Decree No. 117/KMA/SK/2018 on Procedures for Granting and Renewing Accreditation of Mediator Certification Institutions for Non-judge mediators have been implemented by mediation training institutions that have received Supreme Court accreditation. The Team also must ensure that training institutions that are to be granted or will be extended certification by the Supreme Court have and run the curriculum following the Mediator Certification Education and Training Curriculum in the Chief Justice of the Supreme Court's Decree No. 108/KMA/SK/VI/2016 on Mediation Management in Court.

Conclusion

From the argumentation above, the authors can deduce the following:

1. Using non-judge mediators for dispute resolution in religious courts, particularly under the Banten Religious High Court's authority, can be deemed ineffectual. This phenomenon occurs due to the increased reliance on non-judge mediators in certain courts, leading to a decline in the efficacy of mediation. Several factors contribute to this issue, including the caliber of

⁴⁰ Ashiong P. Munte, "Pentingnya Evaluasi Program di Institusi Pendidikan: Sebuah Pengantar, Pengertian, Tujuan, dan Manfaat", *Scholaria*, vol. 5, no. 2 (Mei 2015), p. 5-6

⁴¹ John M. Owen, *Program Evaluation ...*, p. 20

certification training for non-judge mediators, the prevalence of non-judge mediators without a legal education background, and a general lack of enthusiasm for settling disputes through mediation.

2. To increase the success rate of the mediation implementation process, the court must take the following steps: Rewarding non-judge mediators, organizing coaching and training programs for non-judge mediators, determining national mediation settlement targets by involving non-judge mediators, implementing hybrid mediation (between judge mediators and non-judge mediators); and conducting regular evaluations of a non-judge mediator.

Suggestion

The Researcher proposes that the Supreme Court establish a transparent monitoring and evaluation system regarding the management of mediation in courts by non-judge mediators, including the regulation that courts can consider the educational background of non-judge mediator candidates through amendments to the Supreme Court's Decree No. 108/KMA/SK/VI/2016 on Mediation Management in Court.

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