



Reconstruction of Mediation Regulations in the Settlement of Divorce Cases in Courts Based on the Value of Justice

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ABSTRACT

Mediation as one of the efforts to resolve disputes is expected to become an alternative to avoid divorce, which is detrimental to both parties. However, despite being regulated under the Supreme Court Regulation (Perma) No. 1 of 2016 on Mediation Procedures in Courts, the implementation of mediation has not been optimal and often results in unfair outcomes in divorce cases. This research aims to examine mediation regulations in divorce cases in court with a focus on the values of justice and the weaknesses in the implementation of these regulations. The research method used is a normative legal method by conducting a literature study to collect secondary data, and this research uses a constructivist paradigm. The results of the study indicate that mediation in divorce cases in Indonesia plays an important role in creating peaceful dispute resolution. However, the provisions regarding the obligation to be physically present and strict time limits in Perma No. 1 of 2016 are often inconsistent with social realities and the needs of the parties involved, particularly vulnerable groups such as persons with disabilities and victims of domestic violence (DV). This study reveals that existing regulations do not fully reflect the values of humanity, social justice, and wise deliberation according to Pancasila and the principles of justice as outlined by Imam Ghazali. A reconstruction of Article 6 Paragraph 1 and Article 24 Paragraph 2 of Perma No. 1 of 2016 is necessary to provide flexibility regarding physical presence and the duration of mediation, in order to create a more inclusive and fair process. This study also emphasizes the importance of changing the mindset of the public and legal officials so that mediation can be more effective and run in accordance with the principles of substantive justice.

Keywords: Mediation, Divorce, Justice

INTRODUCTION

Marriage is a fundamental right to form a happy and lasting family based on the belief in the One Supreme God, as stipulated in Article 28B Paragraph (1) of the 1945 Constitution and Law No. 1 of 1974 on Marriage (Satrio, 2020). Although the purpose of marriage is to create a harmonious family, domestic conflicts are often unavoidable and may even lead to divorce (Wahyuni, 2019). Divorce, while legally permissible, is considered socially disruptive, with studies showing its negative impact on children's well-being and social stability (Amalia, 2021). From an Islamic perspective, divorce is allowed but regarded as an act disliked by Allah SWT,

reflecting the religious emphasis on reconciliation and family preservation (Syamsuddin, 2022). Therefore, strengthening marital communication, emotional resilience, and social support is essential in reducing divorce rates and achieving the purpose of marriage as envisioned by both law and religion (Rahman & Abdullah, 2020).

Based on the above report, the number of divorce cases in Indonesia increased from 2015 to 2020. In 2015, there were 394,246 divorce cases, which then increased annually until reaching its peak in 2022 with 516,399 cases (BPS, 2023). In 2023, the number of divorces decreased to 464,632 cases, and in 2024, there were 408,347 cases. These figures illustrate the fluctuations in divorce rates in Indonesia during that period, reflecting broader social and economic pressures that often contribute to marital dissolution (Khasanah & Widodo, 2019). Studies highlight that financial stress, domestic conflict, and gender role negotiations remain dominant triggers of divorce in Indonesian households (Handayani, 2021). Moreover, the COVID-19 pandemic exacerbated family tensions, leading to an increase in divorce petitions filed during 2020–2022 (Utami, 2022). Divorce trends also mirror global patterns, where modernization and shifting cultural norms are linked with rising marital instability (Jones & Yeung, 2019). These dynamics underline the importance of legal, social, and psychological interventions to mitigate the rising divorce trend and strengthen family resilience in Indonesia (Putri & Andayani, 2020).

The majority of divorces in 2023 were divorce by lawsuit, i.e., divorce filed by the wife, with a total of 353,473 cases or about 76% of the total national divorce cases (BPS, 2023). The remaining 111,159 cases were divorces initiated by the husband. This pattern is consistent with prior research indicating that women in Indonesia are more likely to file for divorce, often due to financial hardship, domestic conflict, or lack of spousal support (Nugroho & Fauziah, 2020). West Java recorded the highest number of divorces in 2023, with 102,280 cases, followed by East Java and Central Java, with 88,213 and 76,367 cases, respectively, reflecting regional demographic pressures and high population density (Suhartono, 2021). Studies further highlight that legal reforms and easier access to religious courts have empowered women to seek divorce more frequently than in past decades (Cammack & Bedner, 2021). Additionally, cultural and economic dynamics in Java, where traditional gender roles intersect with modernization, have contributed significantly to the growing number of divorce lawsuits filed by wives (Syahrul & Putri, 2022). These figures illustrate not only statistical trends but also deeper socio-cultural transformations shaping family life in Indonesia (Siregar, 2019).

Based on this data, prolonged disputes and arguments were the main cause of divorce in 2021, with the number of cases reaching 279,205 (Rahma et al., 2023). Other divorce cases were triggered by economic reasons, one party leaving, domestic violence, and polygamy. In terms of trends, divorce cases in Indonesia over the past five years have shown fluctuations. The highest number of divorce cases occurred in 2021, while the lowest was recorded in 2020. However, there was a significant increase in the number of divorce cases from 2017 to 2019.

To address high divorce rates and promote peace, mediation efforts have been regulated in the Indonesian legal system, starting with Law No. 30 of 1999 on Arbitration and Alternative

Dispute Resolution, although this regulation focuses more on arbitration than mediation and has not been effective in practice. The Supreme Court subsequently issued Supreme Court Regulation (*Perma*) No. 2 of 2003, which was later amended to *Perma* No. 1 of 2008 and *Perma* No. 1 of 2016, to mandate mediation within the judicial system. The purpose of this *Perma* is to reduce the backlog of cases in the courts and provide broader access for the public to satisfactory and fair dispute resolution.

However, the implementation of *Perma* No. 1 of 2016 still faces weaknesses, particularly Article 6(1), which requires the direct presence of the parties, and Article 24(2), which limits the maximum duration of mediation to 30 days. These provisions have the potential to hinder the achievement of procedural and substantive justice, especially for vulnerable parties such as victims of domestic violence or those with geographical constraints. The success rate of mediation in general and religious courts remains low, at around 4% of the total registered cases.

Previous studies have examined the implementation of mediation in divorce cases within the Indonesian judicial system. For example, Murtadho et al. (2020) analyzed the effectiveness of mediation in family law disputes, revealing that while it reduces case backlogs, its impact on procedural justice is limited due to rigid regulations, particularly regarding the presence of the parties involved. Similarly, Sulaiman (2018) highlighted the challenges of applying Supreme Court Regulation (*Perma*) No. 1 of 2016, noting that the short duration of mediation and the requirement for parties to attend in person hinder access for vulnerable individuals, especially in remote areas or domestic violence cases. While these studies address the procedural shortcomings of mediation regulations, they do not fully explore how a more responsive and dignified mediation process could be structured to enhance justice in divorce cases.

Therefore, this study aims to reconstruct mediation regulations in divorce case resolution in courts based on the value of justice, in order to create a mediation mechanism that is more responsive, fair, and dignified. The benefit of this research is to improve the legal framework for divorce mediation in Indonesia, ensuring a more equitable and efficient system that upholds the values of procedural and substantive justice.

RESEARCH METHOD

This study uses a constructivist paradigm. This paradigm views social reality as a social construction, emphasizing subjective experiences and individual interpretations. It states that various social groups contribute symbolically to the formation of reality and that each individual's perspective is valid and must be respected. The constructivist approach allows for the reconstruction of existing regulations and the generation of new ideas or theories regarding mediation in divorce cases. The research method used in this study is a normative legal method by conducting a literature study to collect secondary data in the form of divorce numbers in both district courts and religious courts in Indonesia. Then, the collected data will be analyzed qualitatively to achieve a clear understanding of the issues to be discussed. Qualitative analysis

was chosen because this study does not focus on concepts that can be measured or expressed in the form of numbers or statistical formulas.

RESULTS AND DISCUSSION

Mediation regulations in Indonesia, particularly Perma No. 1 of 2016, still show weaknesses in realizing substantive justice, which can be analyzed through three main aspects of justice: Pancasila, justice according to Ghazali, Lawrence M. Friedman's Theory of the Legal System, and Satjipto Rahardjo's Progressive Theory of Law.

This subsection analyses the critical aspects of Perma No. 1 of 2016, particularly Article 6 Paragraph (1) and Article 24 Paragraph (2), from the perspective of Pancasila and the principles of justice according to Imam Ghazali.

The Values of Justice in Pancasila and Imam Ghazali

Humanitarian and Civilized Justice (Second Principle): The obligation of physical presence in Article 6(1) contradicts the principle of respect for human dignity and diversity. This disregards the needs of vulnerable groups (e.g., persons with disabilities, victims of domestic violence, individuals in remote areas), indicating a lack of accommodation for humanitarian aspects.

Democracy Led by Wisdom and Prudence (Fourth Principle): The 30-day mediation deadline in Article 24 Paragraph (2) hinders in-depth deliberation. Time pressure may overshadow meaningful discussions, especially in emotionally charged family conflicts, potentially reducing mediation to a mere procedural formality.

Social Justice for All Indonesian People (Fifth Principle): These provisions create disparities in access to justice. Restrictions on legal representation and disproportionate physical attendance requirements have an impact on individuals with economic, geographical, or physical limitations, thereby deepening structural injustice. The potential for recurring disputes conflicts with the holistic objectives of mediation.

According to Imam Ghazali, justice is "placing something in its proper place" and "giving rights to those who are entitled to them." This justice applies not only in the relationship between humans and God, but also between humans themselves, and even within an individual. For Al-Ghazali, the purpose of law is to uphold five fundamental principles, in accordance with the Maqashid al-Syariah (Islamic Legal Objectives): Mandatory mediation for victims of domestic violence (Article 6, Paragraph (1)) may cause repeated trauma, violating the protection of life/soul (*ḥifẓ al-nafs*). Administrative burdens (e.g., medical certificates) on economically disadvantaged individuals also threaten the protection of reason (*ḥifẓ al-'aql*) and property (*ḥifẓ al-māl*). Regulations that fail to consider public interests and diverse social contexts contradict the fundamental objectives of Islamic law.

- a. **Prevention of Oppression (Zulm):** Rigid requirements without adequate exceptions (Article 6(1), Article 24 (2) impose an unreasonable burden on vulnerable parties. This constitutes structural injustice, as the legal system's weak response to complex social realities harms

- individuals not because of their mistakes, but due to systemic weaknesses. Such laws only accommodate the powerful and fail to protect fundamental human rights.
- b. **Balance of Rights and Obligations:** The current provisions create an imbalance by imposing equal administrative and logistical burdens on all parties, regardless of their capacity or limitations. This violates the principle of proportional treatment, whereby obligations should be accompanied by guaranteed rights to prevent undue pressure on certain parties.
 - c. **Intent and Purpose of the Lawmaker:** If legal provisions are primarily driven by bureaucratic efficiency and institutional administrative interests, rather than principles of inclusivity and protection of marginalized groups, their underlying intent is questionable. Al-Ghazali argues that laws designed to maintain institutional dominance or simplify administrative tasks, without considering social realities, constitute a form of hidden oppression. Such laws fail to uphold the moral and spiritual objectives of lawmaking.

Weaknesses of Mediation Regulations in Divorce Cases in Court

This subsection details the specific weaknesses observed in the implementation of Perma No. 1 of 2016 through the lens of Friedman's legal system theory.

- a. **Weaknesses in Legal Substance:** Article 6 Paragraph (1) requires physical presence, which contradicts the basic principle of voluntary mediation. This compulsion can lead to uncooperative behaviour, waste of time and resources, and hinder genuine efforts at resolution. The obligation for parties to be physically present in mediation imposes a burden on individuals with physical or psychological barriers, such as victims of domestic violence (DV) who have experienced trauma, or those hindered by geographical distance. This requirement can worsen the mental condition of victims and threaten their physical safety, contrary to the principle of victim protection. Accessibility is also a serious problem for parties living far from the court, for example, from Papua to Pematang, as it requires considerable time, money, and effort. Data indicates that approximately 20% of Indonesia's population resides in areas with limited transportation access, and victims of domestic violence in remote areas have significantly lower participation rates in mediation. Additionally, parties unwilling to resolve disputes may exploit the mandatory attendance requirement to delay or undermine the mediation process, with around 25% of cases failing due to lack of good faith or the absence of parties. The 30-day time limit in Article 24(2), which limits the maximum duration of mediation to 30 days, is also a weakness. This short timeframe is insufficient for complex cases, such as divorce involving child custody and property division, which require in-depth discussions. This time constraint can lead to stress, result in sub-optimal decisions, and potentially cause recurring disputes. An example from Palembang shows that only 0.45% of divorce cases were successfully mediated within the limited time frame, and the average duration of successful mediation was around 8.5 months, far exceeding the 30-day limit. Systems in Australia, Canada, and the United Kingdom offer greater flexibility in terms of time, allowing the duration of mediation to be adjusted according to the complexity of the

case.

- b. **Structural Legal Weaknesses:** Structurally, the effectiveness of mediation is hampered by the limited number of non-judicial mediators accredited by the Supreme Court, which currently stands at only 28 institutions. This often results in judges having to act as mediators, despite their already heavy judicial workload. The shortage of professional mediators can reduce the quality of mediation. In addition, the implementation of information technology in mediation, although accommodated by PERMA No. 3 of 2022, still faces challenges such as uneven internet access (especially in rural areas), data security vulnerabilities, limitations in non-verbal interaction, and digital literacy gaps among the parties. The lack of clarity in regulations and standardization of online mediation procedures is also an issue, with 40% of mediators complaining about the absence of technical guidelines.

Inconsistent application of rules by judges is another weakness. Although Article 6(4) of PERMA No. 1 of 2016 provides an exception to physical presence for valid reasons, some judges have rejected absences on the grounds of geographical distance, even in cases where the principal party works abroad or in remote areas. This indicates that judges often disregard the flexibility provided by the regulations and insist on physical presence, which contradicts the spirit of access to justice. Additionally, the absence of clear control mechanisms to assess the quality of mediation leads mediators to focus on meeting administrative deadlines rather than achieving substantive agreements.

The weakness of the legal structure of Article 24(2) of Perma No. 1 of 2016 is constrained by a 30-day time limit that is disproportionate to the complexity of the case. This provision limits the mediator's ability to adapt an appropriate approach, especially when the judge acting as mediator also has other judicial duties, resulting in mediation that tends to be formalistic and lacking in substance. The low success rate of mediation, as reflected in statistics showing that only around 0.5% of divorce cases resolved by non-judge mediators are settled, indicates that the short duration hinders the achievement of satisfactory and fair agreements for the parties. Furthermore, the absence of a quality control mechanism for mediation constitutes a significant structural weakness. Mediators tend to focus on meeting administrative time targets rather than on the quality of the agreement reached, which can undermine the integrity of the mediation process as a whole. This situation often leads to mediation failure due to insufficient time for the parties to consult with legal counsel or engage in internal deliberations, as evidenced by court decisions indicating that mediation was brief and lacked substantive negotiation. The integration of clear and holistic evaluative indicators, including time efficiency and agreement quality, is crucial to improving the effectiveness of mediation, encouraging collaboration between parties, and building trust, thereby leading to more targeted and sustainable conflict resolution.

- c. **Cultural weaknesses in the legal system:** Culturally, Indonesians still tend to view the courts as a place to "win or lose" rather than a space for compromise, so mediation is often seen as a formality. Many parties choose not to attend in person and leave everything to their legal

representatives, demonstrating a lack of awareness of the importance of personal involvement in the reconciliation process. A social culture that values dominance and victory in legal disputes makes mediation a symbol of "failure to fight", and parties who are willing to reconcile are often seen as weak. In addition, the internal legal culture of the court apparatus still tends to view mediation as a mere administrative obligation. The lack of a culture of measuring the quality of mediation, where success is measured only quantitatively (successful or unsuccessful) without considering understanding or mutual agreement, is also a problem. The pragmatic attitude of the parties, who view the 30-day mediation period as a "transition period" rather than a last chance for reconciliation, also hinders the effectiveness of mediation. The 30-day mediation period as a "transition period" rather than a last chance to reconcile, also hinders the effectiveness of mediation. Although Indonesia has a rich tradition of customary mediation (e.g., sayam, suloh, peumat jaroe in Aceh; silih hampura in Baduy; barambangan in Dayak), this phenomenon indicates a decline in the use of traditional dispute resolution mechanisms, which have been replaced by litigation.

Reconstruction of Regulations in Supreme Court Regulation No. 1 of 2016 on Mediation Procedures Based on the Value of Justice

The reconstruction of divorce mediation regulations in Indonesia, particularly Perma No. 1 of 2016, is crucial to achieving substantive justice, given the implementation challenges posed by the requirement for physical presence and time constraints in mediation. Although mediation inherently aims to reduce the burden on the courts and facilitate humane resolution, Article 6(1), which requires physical presence, often fails to consider the physical, psychological (e.g., domestic violence trauma), and geographical barriers faced by the parties, thereby hindering effective participation and potentially leading to discrimination. Satjipto Rahardjo's progressive legal approach emphasizes the need for regulatory flexibility that is responsive to social dynamics and the real conditions of individuals, encouraging the use of online or separate mediation, and accommodating valid reasons for absence to create a more humane and safe process for all parties.

Additionally, Article 24(2) of Perma No. 1 of 2016, which limits the maximum duration of mediation to 30 days, also requires revision. This rigid timeframe is inadequate for complex divorce cases involving child custody issues, property division, and emotional recovery, potentially leading to rushed decisions that are suboptimal. Progressive law prioritizes substantive justice over formal efficiency, proposing flexibility in the duration of mediation tailored to the complexity of the case, with the mediator having the authority to conduct periodic evaluations and extend the time if necessary. This reconstruction aims to improve the quality of mediation, enable in-depth discussions, and produce wiser, fairer, and more sustainable agreements, while reducing the burden on the courts with greater efficiency in case resolution.

Table 1. Comparison of the Reconstruction of Article 6 Paragraph (1) and Article 24 Paragraph (2) of Perma No. 1 of 2016 on Mediation Procedures

Article	Before Revision	After Revision (Based on Progressive Law)
Article 6 Paragraph (1)	"The Parties are required to attend in person at the Mediation meeting with or without legal counsel."	"The Parties are required to attend the Mediation meeting in person, with or without legal representation, in addition to the subsection of Article 6 paragraph 4 which explains the valid reasons for non-attendance at mediation namely letter e, "performing work that cannot be abandoned, proven by a certificate of domicile at the place of work." and sub-paragraph letter f for the Party who is a Victim of Domestic Violence or disability."
Issues Faced	<ul style="list-style-type: none"> - The requirement of physical presence can be difficult for parties with physical or psychological constraints. - Access barriers for parties who live far from the court. 	<ul style="list-style-type: none"> - Accommodating conditions for parties who cannot physically attend because they must work. - Accommodating the real conditions of parties with physical limitations or psychological limitations
Recommendations for Change	- Physical presence must be mandatory without any alternatives.	- Provide options to accommodate various limitations without forcing physical presence.
Article 24 Paragraph (2)	"The Mediation shall take place for a maximum period of 30 (thirty thirty) days starting from the issuance the order to conduct mediation."	Article 24 Paragraph (2) is reconstructed as "The Mediation
		lasting a maximum of 60 (thirty) days from the date of the issuance of the order to conduct mediation, Similarly, the provision extending the time period in Article 24, paragraph 3 is amended to read: "Based on cumulative cases, the mediation period may be extended for a maximum of 60 (sixty) days from the expiration of the period referred to in paragraph 2
Issues Faced	<ul style="list-style-type: none"> - Strict deadlines lead to rushed resolutions. - Sometimes issues in mediation are more complex and require more time. 	- Adjusting the mediation timeline allows for flexibility in addressing more complex issues, providing space for more mature and fair agreements.
Recommendations for Change	- Limit the duration of mediation to 30 days.	- Allow for the possibility of extending the duration of mediation if necessary, with an evaluation by the mediator regarding the progress of the mediation and the need for more time.
Impact of the Revision	- The mediation process may be rushed and	- Improving the quality of mediation through flexible extensions for cases that more

Article	Before Revision	After Revision (Based on Progressive Law)
	suboptimal. - The decision of the Rushed possible Not reflect substantive justice.	complex. - Increasing the likelihood the resolution that fair and Comprehensive.

CONCLUSION

Mediation regulations in divorce cases in Indonesia, particularly *Perma* No. 1 of 2016, demonstrate procedural injustice due to the requirement of physical presence (Article 6(1)) and rigid time limits (Article 24(2)). These provisions are inconsistent with the values of *Pancasila*, which emphasize humanity that is just and civilized, social justice, and wise deliberation. From Imam Ghazali's perspective, these regulations have the potential to cause injustice by disregarding the public interest (*maslahah*) and the principle of balance between rights and obligations, especially for vulnerable groups such as victims of domestic violence, persons with disabilities, or those with geographical constraints. Substantial weaknesses lie in the burden placed on parties with physical, psychological, and geographical barriers, as well as inadequate time limits for complex cases. Structurally, the lack of non-judicial mediators and quality control mechanisms for mediation is problematic, exacerbated by inconsistent application of rules by judges. Culturally, a litigation-oriented mindset, viewing mediation as an administrative formality, and the decline of traditional mediation culture hinder its effectiveness.

Therefore, the reconstruction of *Perma* No. 1 of 2016 with a progressive legal approach is proposed to address these issues. Article 6 Paragraph (1) needs to be revised to provide flexibility in attendance, such as online or separate mediation, for parties with limitations, including work-related reasons or conditions as victims of domestic violence or disability. Article 24(2) should be amended to make the mediation duration more flexible—for example, 60 days with the possibility of a 60-day extension for cumulative cases, with periodic evaluations by the mediator—to allow for a more thorough and fair resolution. This restructuring is expected to create a more humane, responsive, and fair mediation process, reduce the burden on the courts, improve the quality of mediation, and produce wiser decisions.

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