

The Effectiveness of Application Mediation in Reducing Divorce Cases at Jombang Religious Court

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Abstract

The reason for the occurrence of divorce at the Jombang Religious Court is due to several factors, but in how many years the pandemic has increased other factors such as a moral crisis, no responsibility, persecution, biological defects, economic problems and other factors, jealousy, forced marriage and no household harmony and underage marriage, divorce is a legal way to deal with marital conflicts under the umbrella of Indonesian law and formalized Islamic law, it is hoped that mediation will be the mediating point of all kinds of divorce issues, Mediation is a process of judicial proceedings regulated in PERMA No. 1 of 2016 concerning mediation procedures in court. the implementation of mediation at the Jombang Religious Court has been carried out according to procedure, but in the last 4 years the Jombang Religious Court has experienced an increase in cases and the number that cannot be mediated is quite a lot due to the absence of the parties even though they have been summoned more than twice but the parties still choose not present so that the case continues and cannot be mediated, while cases that can be mediated are influenced by the peaceful intentions of both parties so that the mediation can be carried out or those who are being mediated choose to come because they demand their rights as in the case of divorce talak is alimony arising from divorce, so the authors found the ineffectiveness of mediation in its implementation which was unsuccessful due to several obstacles in its implementation, namely the strong desire between parties, ignorance of the importance of mediation by the community, the role of advocates. The author also provides a solution to the obstacles to the ineffectiveness of mediation by maximizing the panel of judges, mediation training, the role of the mediator, the role of the government, and evaluating the performance of the mediator.

Keywords: Mediation; Effectiveness; Divorce.

Abstrak

Penyebab terjadinya perceraian di Pengadilan Agama Jombang ini karna beberapa faktor namun dalam berapa tahun ini pandemi meningkatkan faktor lainnya seperti krisis moral, tidak ada tanggung jawab, penganiyaan, cacat biologis permasalahan ekonomi serta faktor lain cemburu, kawin paksa dan tidak ada adanya keharmonisan rumah tangga dan perkawinan dibawah umur, perceraian merupakan jalan legal dalam mengatasi konflik pernikahan dalam payung hukum Indonesia dan hukum islam yang telah diformalkan, maka diharapkan mediasi menjadi titik penengah dari segala jenis permasalahan perceraian, Mediasi adalah proses dari acara peradilan yang diatur dalam PERMA No 1 tahun 2016 tentang prosedur mediasi di pengadilan. , pelaksanaan mediasi di Pengadilan Agama Jombang telah dilaksanakan sesuai prosedur, namun dalam 4 tahun terakhir ini di Pengadilan Agama Jombang mengalami

peningkatan kasus dan jumlah yang tidak bisa dimediasi terhitung cukup banyak dikarenakan ketidakhadiran para pihak meskipun telah dilakukan pemanggilan lebih dari dua kali namun para pihak tetap memilih tidak hadir sehingga perkara tetap dilanjutkan dan tidak bisa dimediasi, sedangkan perkara yang bisa dimediasi dipengaruhi akan niat damai kedua belah pihak sehingga pelaksanaan mediasi dapat dijalankan atau mereka yang dimediasi memilih datang karna menuntut hak mereka seperti dalam kasus cerai talak ialah nafkah yang timbul dari perceraian, sehingga penulis menemukan ketidakefektifan mediasi dalam pelaksanaannya yang mana ketidakberhasilan dikarenakan beberapa hambatan dalam pelaksanaannya yaitu keinginan kuat antar pihak, Ketidaktahuan pentingnya mediasi oleh masyarakat, peran Advokat. Penulis juga memberikan solusi dari hambatan-hambatan dari ketidakefektifan mediasi dengan memaksimalkan dari majelis hakim, pelatihan mediasi, peran mediator, peran pemerintah, dan mengevaluasi kinerja mediator.

Kata Kunci: Mediasi; Efektivitas; Perceraian.



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A. INTRODUCTION

Allah has determined the Shari'a in marriage and has also made it a strong foundation for humans to live life itself and in it have good goals for humans themselves, as creatures created by Allah SWT. Giving instructions for life as well as Amar Ma'ruf Nahi Munkar and providing Islamic law and law so that it can be practiced correctly and properly. Marriage has that goal in Islam not only to fulfill lust, but it also has another meaning, namely forming an eternally happy family based on Belief in the One and Only God.¹

Marriage in Law No. 1 of 1974 CONCERNING MARRIAGE "Marriage is an inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on Belief in the One and Only God". and women. The purpose of marriage itself is to have good and sincere initial intentions to reach a family filled with affection, which is of course the goal of marriage itself.² But in reality it is not easy, married life does not always run smoothly, there are always problems such as financial needs that can lead to divorce itself.³ Divorce in Islam is something that is prohibited. Because if this happens, then they are considered as people with bad character.⁴ Why can it be seen from the signs of the Messenger of Allah SAW, actually divorce is contested and divorce is something that is hated by Allah, because divorce is the last resort that can be taken if a family can no

¹ Moh Faizur Rohman, "Implikasi Putusan Mahkamah Konstitusi Nomor 69/PUU/XIII/2015 Tentang Perjanjian Perkawinan Terhadap Tujuan Perkawinan," *Al-Daulah: Jurnal Hukum Dan Perundangan Islam* 7, no. 1 (September 19, 2017): 1–27, <https://doi.org/10.15642/ad.2017.7.1.1-27>.

² Pitrotussaadah Pitrotussaadah, "Konseling Pranikah Untuk Membentuk Keluarga Sakinah Dan Menekan Angka Perceraian," *Jurnal Perspektif* 6, no. 1 (July 16, 2022): 25, <https://doi.org/10.15575/jp.v6i1.164>.

³ Harjianto Harjianto and Roudhotul Jannah, "Identifikasi Faktor Penyebab Perceraian Sebagai Dasar Konsep Pendidikan Pranikah Di Kabupaten Banyuwangi," *Jurnal Ilmiah Universitas Batanghari Jambi* 19, no. 1 (January 22, 2019): 35, <https://doi.org/10.33087/jiubj.v19i1.541>.

⁴ Ah Badawi and Khoiruddin Nasution, "Deviiasi Seksual Sebagai Alasan Perceraian Perspektif Hukum Islam," *Millah* 20, no. 2 (February 28, 2021): 417–48, <https://doi.org/10.20885/millah.vol20.iss2.art9>.

longer be maintained.^{5,6} Its own nature as a form of the final settlement in Islam itself, before a divorce occurs it is advisable to make peace efforts between parties because marriage is a holy and sturdy thing (Ahmad Rofiq, 1995).^{7,8}

Cases that enter and are resolved in the Religious Courts (PA) through the path of peace are the dreams of the parties concerned. In accordance with applicable regulations, reconciliation must be carried out in court. This was proven in the first trial, the parties must be present in person and cannot be substituted or represented. The judge will reconcile before continuing the case and giving advice. However, it is known that those who have brought their case to court can be sure that their hearts are broken and that it is certain that peace efforts will not bring much results. So in the divorce dispute itself which must be avoided in the marriage process, it becomes a settlement process by granting legal rights as he has regulated in several legal concepts, divorce throughout 2018 to 2021 especially in the pandemic era in Jombang district the number of divorces increased based on data from the Jombang Religious Court.⁹

There are several factors that cause divorce according to research (Prianto, et.al 2013)¹⁰, such as disharmony, no responsibility, economic factors, moral factors, jealousy, crises, unhealthy polygamy, imprisonment, forced marriage, persecution (violence in the home stairs), and biological defects. Current conditions divorce is a legal way to deal with marital conflicts under the umbrella of Indonesian law and formalized Islamic law (Islamic law complications) caused by both parties, because the divorce process requires that it be a complete solution, without any legal consequences in the future. In handling divorce cases, divorce cases at the Jombang Religious Court, the plaintiff is of productive age or under 40 years of age. In fact, they filed for divorce because they married under the age of 19 according to government regulations, meaning that they married with Dispensation. Because they themselves were not ready materially, psychologically, so in the end the divorce returned to the Religious Court, so 80 percent were still aged 19 to 35, the rest were above that age.

The high number of divorce cases in Jombang Regency, the writer wants to know what efforts have been made by the Jombang Religious Court in reducing divorce cases, in this case which is quite high, is it effective for the process of realizing it so that it is interesting to make it the object of the research itself, because of that the writer makes the object of the problem

⁵ Asriani Asriani and Abdul Wahid Haddade, "Kedudukan Taklik Talak Dalam Pernikahan Perspektif Mazhab Zahiri Dan Kompilasi Hukum Islam," *Shautuna: Jurnal Ilmiah Mahasiswa Perbandingan Mazhab Dan Hukum*, June 8, 2021, <https://doi.org/10.24252/shautuna.v2i2.19348>.

⁶ Laily Lukita Nilam Sari, Wasis Suprayitno, and Kukuh Dwi Kurniawan, "Pelaksanaan Eksekusi Hak Asuh Anak Dalam Perkara Perceraian (Studi Kasus Putusan No 1618/Pdt.G/2020/PA.Smp)," *Indonesia Law Reform Journal* 2, no. 2 (November 12, 2022): 166–81, <https://doi.org/10.22219/ilrej.v2i2.22075>.

⁷ Syaikh Syaikh, "MENTHALAQ ISTERI SEDANG HAID TINJAUAN DALAM HADITS," *El-Mashlahah* 9, no. 1 (July 25, 2019), <https://doi.org/10.23971/el-mas.v9i1.1333>.

⁸ Rasyidin & Mayang Diwana, "Faktor Perceraian Suami Perantau Dalam Perspektif Hukum Keluarga," *Al-Qadha: Jurnal Hukum Islam Dan Perundang-Undangan* 8, no. 2 (December 31, 2021): 144–59, <https://doi.org/10.32505/qadha.v8i2.3577>.

⁹ www.idntimes.com, *Pandemik, 2.168 Perempuan di Jombang Gugat Cerai Suami*, diakses pada tanggal 10/02/2022.

¹⁰ Budhy Prianto, Nawang Warsi Wulandari, and Agustin Rahmawati, "RENDAHNYA KOMITMEN DALAM PERKAWINAN SEBAGAI SEBAB PERCERAIAN," *KOMUNITAS: International Journal of Indonesian Society and Culture* 5, no. 2 (February 18, 2014), <https://doi.org/10.15294/komunitas.v5i2.2739>.

into script form in the Title “The Effectiveness of Application Mediation Reducing Divorce Cases at Jombang Religious Court”.

B. METHOD

The type of research used in this research is empirical juridical. Empirical juridical research is research on problems related to juridical matters and is based on facts obtained from field studies directly on the object.¹¹ This study examines the behavior that arises from interacting with existing norms. The author uses the interview method, as well as documents relevant to the author's research and all of them are obtained directly at the research location. Data collection techniques in this type of empirical legal research used in this study are by examining interviews with Naharudin S.Ag., M.H as judge and Fatha Aulia S.Hi., S.H also a judge in religious court of Jombang and literature or literature study as supporting data.

C. RESULTS AND DISCUSSIONS

1. Application of Jombang Religious Court Mediation in divorce cases.

After the researchers conducted research at the Jombang Religious Court, research results were obtained regarding how the application of mediation and the effectiveness of mediation in reducing divorce cases in Jombang PA, article 4 paragraph (1) PERMA No. 1 of 2016 concerning the mediation process states that every civil dispute that enters the Court must first seek a mediation settlement process along with research data that has been obtained and attached in tabular form:

Tabel 1. Number of divorce mediation cases at the Jombang Religious Court.

Years	Accepted Case	Case can't being mediated	Number case of mediated
2018	3297	2208	516
2019	3400	2459	450
2020	3604	5963	456
2021	3951	3492	478
Jumlah	14.252	14.122	1900

Tabel 2. Number of presentations on the implementation of divorce mediation at the Jombang Religious Court.

Years	Presentation case can being mediated	Presentation case cannot being mediated
2018	66,9%	15,6%
2019	72,3%	13,2%
2020	165,4%	12,5%
2021	88,3%	12%

In the 4 year period from 2018 to 2020, approximately 14,252 divorce cases were entered, of which some refused mediation totaling 14,122 cases and some conducted mediation totaling

¹¹ Soerjono Soekanto, *Pengantar Penelitian Hukum* (Penerbit Universitas Indonesia (UI-Press), 2006).

1900. many cases chose not to mediate, even the peak of those who chose not to mediate in 2020 reached 5963 cases. In this table the researcher divides into two main issues:

a. The number of cases that cannot be mediated

In this case it can be said that it cannot be mediated with a total of 14,122 cases accumulated in 4 years which in 2018 reached 2208, 2019 reached 2459, 2020 reached 5963 and 2021 reached 3492 cases because both parties refused to come to mediation so the court re-subpoenaed but still did not come, the party that participated was only the attorney, not the litigant, so it could not be maximized even though the presence of the attorney was the mandate of the litigant, a mediation process was carried out and a divorce decision would be followed.¹²

b. The cases want being mediated

Mediated cases accumulatively 4 years 1900 cases which each year reached, 2018 reached 516, 2019 reached 450, 2020 reached 456, 2021 reached 478 cases, has several possibilities where parties are still cooperative, still want peace so that the divorce process does not continue and want claim rights in the mediation process, for example in the divorce process, the respondent will discuss child maintenance, iddah income and debt support, so in the mediation process it is not only reconciling but also fulfilling and discussing the rights of the parties.¹³

From the results of research in the Jombang PA, the first was carried out before mediation on the day of the hearing which was determined and attended by the parties to the dispute, the judge examined the case and required the judges to mediate and on that very day or no later than the next two days to negotiate choosing a mediator including costs that will arise from the use of non-judge mediators and non-court employees. If the disputing parties cannot successfully agree on choosing a mediator within the allotted time, the head of the panel of judges will issue a stipulation containing the appointment of the mediator and the implementation of the mediation and adjournment of the trial to provide an opportunity for the parties to mediate.

The Jombang religious court in carrying out the mediation process in divorce disputes based on the RI Supreme Court regulation Number 1/2016 regarding mediation procedures in court:¹⁴

- a. Registering divorce cases with PA Jombang.
- b. The head of the court determines the panel of judges.
- c. At the first trial, the judge must explain the mediation flow to the disputing parties.
- d. Selection of mediators :
 - 1) The appointment of a mediator is based on the agreement of the disputing parties
 - 2) The presiding judge of the panel appoints the mediator
- e. The Mediator receives a summary of the case
- f. The total duration with a longer period is 30 days calculated from the determination of mediation, if the disputing party requests an extension then the judge can extend the duration of the mediation.

¹² Interview with non-judge mediator Fatha Aulia S.Hi., S.H. Jombang Religious Court. July 06, 2022.

¹³ *Ibid.*

- g. The output of the mediation is in the form of a report, the mediator will make a report for
- h. The panel of judges examining the case consists of :
 - 1) Successful mediation.
 - 2) Mediation could not be carried out/was not successful.

The technique of implementing mediation in PA Jombang is as follows:¹⁵

- 1) The disputing party who filed a lawsuit and the case has been registered. Cases entered and processed to issue a registration number can then be delegated to the head of the court and then order the panel of judges and set a trial day, based on the author's observations it is in accordance with the premediation stage of article 17 Perma No 1 of 2016 concerning mediation procedures regarding mediation procedures regarding mediation procedures.
- 2) The first process on the day of the hearing is that both parties are present, the chairman of the assembly will encourage and explain so that the parties mediate with a mediator that has been approved by both parties. In this case the Jombang Religious Court has provided its own mediator but in the process of selecting a mediator it is fully handed over to the Jombang Religious Court due to the limited number of mediators. After the parties meet the mediator. The mediator will introduce himself to the parties. The initial step taken by the mediator is to greet the parties and show their identity. The mediator explains what his duties are in the mediation process, namely to help the parties find an agreement on the settlement of cases that reach an agreement of both parties. Besides that, the mediator also provides information related to the basic rules of mediation, informs confidentiality and questions, and the mediator determines the schedule related to the mediation process. In this way, the mediator has fulfilled the stages of the mediator's duties in Article 14 Perma No. 1 of 2016 concerning mediation procedures. About mediation procedures. About mediation procedures.
- 3) Implementation of mediation if there are parties who are not present will be summoned twice in a row and never attend, then the mediation is considered a failure of course there are several valid legal reasons if summoned and not present but those who fail here are in accordance with Article 7 paragraph 2 letter B Perma No 1 of 2016 concerning mediation procedures regarding mediation procedures concerning mediation procedures. In mediation, the mediator encourages the parties to seek various options for the best settlement. Questions between the mediator and one of the parties whether or not one of the other parties is carried out if this is necessary. There are two possibilities in the mediation process:
 - a) Mediation failed

Mediation can be called a failure in its implementation if it complies with the provisions of Article 32 Perma No. 1 of 2016 concerning mediation procedures. Regarding mediation procedures, the mediator will report to the

¹⁵ Interview with Judge NAHARUDDIN, S.Ag., M.H. at the Jombang Religious Court, on July 6, 2022.

assembly on the failure of the mediation that has been taken. And the assembly will continue the examination in accordance with the provisions of the applicable procedural law.

b) Mediation Succeed

Success in its implementation means that the aims and objectives of mediation have been fulfilled, namely a peace agreement which is in accordance with Article 27 of Perma No. 1 of 2016 Concerning Mediation Procedures About Mediation Procedures Regarding Mediation Procedures, a peace agreement can be made in written form and the parties are allowed:

- (1) Submitting the results of a peace agreement to the panel of examiners of cases can be confirmed in the form of a deed of peace (in the case of a divorce, if there is a settlement, only one possibility will arise, namely the lawsuit is withdrawn)
 - (2) Do not want a peace agreement that is confirmed in the form of a peace deed. If so, the peace agreement must be contained in a clause for repealing the claim and a clause stating that the case has been resolved.
- 4) The mediation process is complete, the mediator will make a report to the assembly, and the substitute clerk reports to the junior clerk of the lawsuit to be recorded in the mediation register:
- a) The process continues in accordance with the initial provisions, there is no need to set a date for a trial. Again, if in the trial the same agrees to mediate in the first trial the mediator will direct the second session to be carried out by appointing and selecting a mediator.
 - b) During the trial process the opportunity has been given for mediation, and has not yet determined the day of the next hearing (then the first session the mediator appoints the day and the second session in this case the parties are given the opportunity for two days to choose a mediator), after the assembly summons the parties (with PHS) to attend at court for further proceedings. There are two possibilities here:
 - (1) The parties want additional time for the mediation process, if they have been given a maximum of 14 working days from the end of the 40 days that have been provided.
 - (2) Do not ask for additional time. Then the trial continued in the next process.

The results of interviews with one of the non-judge mediators who are certified by the Jombang religious court show that with the presence of Perma No. 1 of 2016 concerning mediation procedures regarding mediation procedures regarding mediation procedures regarding mediation, judges feel helped by their duties as a mediator in reconciling parties with sufficient free time in providing understanding related to peace, is more effective in direct terms, easier to direct and automatically right on target than conducting general education to the public, registered cases continue to increase every year while the number of judges/mediators is very limited.

The factors causing the litigants not to participate in the mediation process are cultural, environmental and HR factors and other factors including:¹⁶

- a. Bad intentions of the parties Mediation involves people having a variety of attitudes, so it's clear that some parties are forced to go through the process because it's only a limit of obligation, they even take it for granted and tend to be absent and regard the other party as an enemy so they can't understand each other.
- b. Absence of one of the parties The presence of both parties is the key to peace, but in fact, often the parties are not present in the mediation process even though they have been summoned successively so that the trial process continues without mediation until it is finally terminated.
- c. The presence of a third party Third parties are present and arise from anywhere, for example lack of support from the Advocate, in carrying out mediation they do not contribute and give answers that are rejecting and tend to represent litigants in the trial process so that the mediation process cannot be carried out because the litigants are not directly involved.
- d. duration In applying the "principle of fast and low cost" in the implementation process it is quite difficult to implement which mean the duration of mediation in general it can reach 40 days of implementation and can be added 14 days of implementation if it fails, long conditions and makes the waiting process not suitable for those who are terminate the marriage/divorce relationship.
- e. Limitations of mediators in the number of cases that are submitted to the Jombang Religious Court, the number of judges is limited and there are only two non-judge mediators, which affects the mediation process by giving the workload of judges, this affects the performance of the mediator judges.
- f. Lack of Socialization Ignorance of the parties about mediation. Mediation is a way of peacefully resolving disputes that can open access to all parties to obtain the fairest results.¹⁷ The core of the process is deliberation, regardless of whether the process is not balanced or not. The parties also participated in mediation because they had no intention of their own, did not see an opportunity to profit from mediation, not because of good intentions to obtain amicable terms. Most also think mediation will cause the decision to be canceled if mediation is not carried out beforehand.

The factors causing the litigants to want to participate in the mediation process:

- a. Good faith of the parties The parties to the dispute voluntarily without coercion sincerely participate in the mediation process in the hope of reconciling their families which they have built with sincere intentions not willing their families to be destroyed.
- b. There is a third party In addition to the wishes of the disputing parties, the role of the family is very important in providing motivation so that both parties can participate in the mediation process, besides that the presence of children is also a benchmark for finding a point of peace, peace does not only come from the disputing

¹⁶ Interview with Judge NAHARUDDIN, S.Ag., M.H. at the Jombang Religious Court, on July 6, 2022.

¹⁷ M Umar Umar, "Hukum Islam; Telaah Perkara Perceraian Melalui Proses Mediasi," *Jurnal Literasiologi* 4, no. 2 (October 13, 2020), <https://doi.org/10.47783/literasiologi.v4i2.152>.

parties, the people around them and the family are also the determinants mediation success rate.

2. The effectiveness of the application of mediation in reducing divorce cases in the Jombang Religious Court.

According to the author's observations, what Jombang has done about "The Effectiveness of Application Mediation Reducing Divorce Cases at Jombang Religious Court" is known to have not shown significant results for divorce cases in Jombang Regency. In order to clearly see whether mediation is effective or not in reducing divorce cases in Jombang PA, the author will also present a description of the data in tabular form as follows:

Tabel 3. Number of mediation divorce cases at the Jombang Religious Court.

Years	Case being mediated	Mediation settlement report	
		Failed	Success
2018	516	458	8
2019	450	443	1
2020	456	443	6
2021	478	393	10
Jumlah	1900	1735	25

Tabel 4. Presentation number of mediation divorce cases at the Jombang Religious Court.

Tahun	Tidak berhasil	Berhasil
2018	88,7%	1,5%
2019	98,4%	0,2%
2020	97,1%	1,31%
2021	82,2%	2,09%

This shows how little success there is with a total of 14,244 cases from 2018-2021 with a total of 1735 cases that could not be mediated and only 25 that were successfully mediated, mediation in Jombang PA. Whether or not mediation is effective is of course based on lack of good will to get along Back. at first the disputing parties and going to court yielded no results and the family's attempts to reconcile both yielded no results. So it is quite difficult for the mediator to make efforts to reconcile the two. It should also be considered regarding conflicts that occur between parties which are already very complicated and protracted, even in mediation the parties cannot suppress their emotions, so that the parties can no longer listen to suggestions objectively from the mediator and feel self-righteous. The reality on the ground is also that the beginning of peace is to forgive each other. Forgiving each other will make wholeness stronger and happiness restored.¹⁸ But, on the contrary those who are in dispute generally don't want to forgive each other so that it becomes a cause for not being able to get along again.

In addition to the causes of failed/ineffective mediation in reducing divorce cases in Jombang, due to the strong stance of the two parties in dispute, each individual's central ego.

¹⁸ Maidiantius Tanyid, "Konflik Dalam Pernikahan," *Jurnal Jaffray* 3, no. 1 (June 1, 2005): 19, <https://doi.org/10.25278/jj71.v3i1.137>.

Thinking of divorce is the last resort because a household cannot be repaired after repairs, peace and so on.¹⁹ So this is why it is difficult for mediators to find peace for those who are in dispute.²⁰

Whether this is effective or not can be seen from “PERMA No. 1 of 2016 concerning Mediation Procedures that the causes of mediation to become less effective are case factors, parties' factors, the ability of the mediator and not having good faith. Those things are:²¹

- a. The factor of the parties in which the parties have a strong desire to continue to carry out divorce and reconciliation efforts is just a formality, but if they still love each other and still love each other and want to continue to be together and make peace/make up then it can be said that the word peace can held.
- b. The case factor here can be said when cases are based on various backgrounds, such as starting from domestic violence and infidelity, then this can make it difficult for the mediator to reconcile. one party/applicant cannot forgive the defendant. Besides that, the ability of the mediator in carrying out mediation is very influential in determining success in finding the final result, namely the success or failure of mediation. The mediator also has an important function in guiding the disputing parties to carry out negotiations until there is an agreement that binds the parties.²²yus
- c. Not having good faith can be said as follows :²³
 - 1) Parties who remain absent even though they have been summoned to mediation without any valid reason.
 - 2) Attend mediation but do not submit or respond to resumes of other cases.
 - 3) Do not approve or sign the peace agreement without a valid reason.

This ineffectiveness refers to Soerjono Soekanto's theory that the causes of ineffective mediation in the Jombang Religious Court are as follows:

- a. Legal factors

The Mediation Process itself has been regulated in Perma No. 1 of 2016 Concerning Mediation Procedures Regarding Mediation Procedures About Mediation Procedures starting from the type of mediation which is divided into two which are carried out outside the court and in court, regarding the qualifications of mediators with standards determined by the Supreme Court regarding mediator certification and the duration of the mediation itself, from the legal factor there is no problem because there is no legal vacuum itself, mediation itself is a process of negotiation for consensus the mediation parties do not have the authority to decide or force a settlement.

¹⁹ Muchimah Al Anshor, “PERCERAIAN DI KALANGAN BURUH MIGRAN DI BANJARSARI, NUSAWUNGU, CILACAP,” *Al-Ahwal: Jurnal Hukum Keluarga Islam* 8, no. 2 (August 23, 2016): 203, <https://doi.org/10.14421/ahwal.2015.08207>.

²⁰ Interview with Judge NAHARUDDIN, S.Ag., M.H at the Jombang Religious Court, on March 22, 2022.

²¹ *Ibid.*

²² Yusna Zaidah and Mutia Ramadhania Normas, “Mediasi Online Dalam Penyelesaian Perkara Perceraian Di Era Pandemi,” *JOURNAL OF ISLAMIC AND LAW STUDIES* 5, no. 3 (January 12, 2022), <https://doi.org/10.18592/jils.v5i3.5847>.

²³ Untung Prasetya, “Analisis Asas Audi Et Alteram Partem Dalam Proses Persidangan Perkara Perdata (Perkara Nomor 20/Pdt.G/2019/PN Pwr),” *Amnesti Jurnal Hukum* 2, no. 2 (August 25, 2020): 57–75, <https://doi.org/10.37729/amnesti.v2i2.657>.

The main characteristic of mediation is the process of negotiation or deliberation.^{24,25} In accordance with the purpose of negotiation or deliberation, there should be no coercion to accept or reject ideas or settlements during mediation, everything must obtain the consent of both parties and in order to avoid prolonged conflict, in the observation of the Jombang religious court researchers have implemented the Perma in accordance with article 1 of the Perma No. 1 of 2016 concerning mediation procedures concerning mediation procedures concerning mediation procedures, in this case the Perma also regulates the stages of pamediation in article 17 of Perma No. 1 of 2016 concerning mediation procedures concerning mediation procedures regarding mediation procedures which contain judges requiring a meeting of the parties to the case , then the Perma also regulates the stages of the mediation process which are regulated in article 24 of Perma No. 1 of 2016 concerning mediation procedures regarding mediation procedures regarding mediation procedures which in this article regulates the identification of problems by the way both parties submit re sum of cases to facilitate the mediation process, and the output of the mediation series is failed and successful mediation which has been regulated in Perma No. 1 of 2016 Concerning Mediation Procedures Regarding Mediation Procedures.

Regarding the mediation procedure, if the mediation is successful as set forth in article 27 of Perma No. 1 of 2016 concerning mediation procedures regarding mediation procedures regarding mediation and mediation procedures fail is also regulated in article 32 of Perma No. 1 of 2016 concerning mediation procedures

About mediation procedures About mediation procedures well enough so that in the implementation of law it is considered quite effective because it is in accordance with applicable regulations.

b. Law enforcement factors

The number of non-judge mediators certified at the Jombang court is only 2 people in 2018 reaching 464 cases, 2019 reaching 444 cases, 2020 reaching 449 cases, 2021 reaching 403 cases with accumulative 4 years total cases 1760, carrying out mediation 15-30 minutes per case depending on the level of complexity cases handled, the mediator himself has fulfilled the prerequisites to become a mediator in accordance with article 13 of Perma No. 1 of 2016 concerning mediation procedures regarding mediation procedures.

The mediator is an important benchmark in determining success in mediation.²⁶ Based on the reality on the ground, mediators are only a formality, because in court

²⁴ Rika Lestari, "Perbandingan Penyelesaian Sengketa Perceraian Secara Mediasi Di Pengadilan Dan Di Luar Pengadilan Di Kabupaten Kampar," *Jurnal Hukum Ius Quia Iustum* 21, no. 2 (2014): 309–32, <https://doi.org/10.20885/iustum.vol21.iss2.art8>.

²⁵ Rudi Hermawan, "PERAN LEMBAGA MEDIASI DALAM PENYELESAIAN SENGKETA BISNIS SYARIAH," *Et-Tijarie: Jurnal Hukum Dan Bisnis Syariah* 5, no. 1 (December 4, 2018), <https://doi.org/10.21107/ete.v5i1.4595>.

²⁶ Mahmud Hadi Riyanto, "EKSISTENSI MEDIASI TERHADAP PERKARA PERCERAIAN DI WILAYAH PTA MAKASSAR," *Jurisprudentie : Jurusan Ilmu Hukum Fakultas Syariah Dan Hukum* 5, no. 1 (June 8, 2018): 124, <https://doi.org/10.24252/jurisprudentie.v5i2.5435>.

they prioritize peace.²⁷ However, in some cases, the mediator must listen and reiterate the reasons for the divorce and then decide whether mediation is successful or not, the mediator only carries out administrative tasks, lacks initiative and tends to be a listener the advice given is also simple advice and will immediately decide if it is felt that it cannot be reconciled, the lack of psychological and religious approach which is only focused on the reasons for divorce so that Article 14 letter J Perma No 1 2016 concerning Mediation Procedures is not so applied.

c. Facility factor or supporting facilities.

The system related to the flow of mediation services is quite good and has been digitized, but the Jombang Religious Court only provides one special room for mediation. In carrying out the mediation, the mediation room is able to serve in 2018 reaching 464 cases, 2019 reaching 444 cases, 2020 reaching 449 cases, 2021 reaching 403 cases with an accumulation of 4 years, the total number of cases in mediation is 1,760 cases, but because of the trial schedule and mediation, the researchers found that the mediation room does not have a mediation schedule every day, only on certain days, but in this case there are no difficulties in handling mediation every day, the number of cases in one year is considered sufficient to accommodate the litigants and will carry out mediation, in this case the use of supporting facilities and facilities is in accordance with article 11 of Perma No. 1 of 2016 concerning Mediation Procedures.

d. Community factors

2016 First Instance Judge Regarding Mediation Procedures About Mediation Procedures About Mediation Procedures is a benchmark for the effectiveness of mediation in its own implementation, the contribution of the community by being present and in good faith can be a determinant of the success rate of mediation itself but once again the reality on the ground is very different from the regulations made, based the author's observations with the remaining cases that the author wants to mediate can conclude that those who took part in mediation and did not mediate had mediated beforehand within the internal family and had reached a consensus and of course the result had been found.

Namely the divorce itself so that when submitted in court, the mediation carried out within the court is considered a mere formality in fulfilling the prerequisites in the divorce itself and even the number of married couples who choose mediation and not mediation is more who do not choose mediation because they have found the answer by mediation in m their respective internal families, then obligations are related when they are married to each other so that when one party injures a legal obligation, people tend to choose to separate, especially if the divorce case starts with a domestic affair which cannot be treated by mediation itself because if it reaches court then the case is already severe because the family itself is less able

²⁷ Rifana Tunajah, "Implementasi PERMA Nomor 01 Tahun 2016 Tentang Prosedur Mediasi Di Pengadilan Dalam Menyelesaikan Sengketa Perceraian (Studi Kasus Di Pengadilan Agama Serang)," *Syaksia : Jurnal Hukum Perdata Islam* 19, no. 2 (September 26, 2020): 291–339, <https://doi.org/10.37035/syaksia.v19i2.3316>.

to reconcile, apart from these reasons the development of society in legal awareness affects the efficiency of mediation fair and consensus.

e. Cultural factors

Jombang residents consider divorce to be a common thing, this can be proven by the increase in cases in a period of 4 years, namely 2018 reaching 3297 cases, 2019 reaching 3400 cases, 2020 reaching 3604 cases, 2022 reaching 3951 cases, divorce is no longer a shame nowadays, especially if divorce departing from the case in accordance with article 116 KHI, the majority of the people of Jombang are Muslim and tend to be obedient in religion so that they consider marriage a sacred thing.

Marriage is not just a culture but more tend to choose to let go rather than retain something that has no benefits, basically the people of Jombang tend to use traditional mediation compared to modern which, if you look at the development of traditional mediation such as family deliberations, tends to be carried out first in cases of divorce aian and it has been ensured that a consensus is reached, meanwhile, modern mediation seeks to integrate the mediation itself into procedural law, which means binding the peace of the parties and finally it can be ensured that the parties must adhere to their respective wishes and consider mediation to be just a process, mediation outside the court is the answers they are looking for while the mediation that is carried out in court is only a process of divorce so that peace will not reach itself.

D. ENDING

1. Conclusion

- a. Mediation in Religious court Jombang has been carried out in accordance with Perma No 1/2016. Jombang has carried out the premediation stages in accordance with article 17 Perma No 1/2016 and the mediation process stage stipulated in article 24 Pema No 16/2016, so that in fact the mediation carried out by PA Jombang from 2018 to 2021 the number of cases that were submitted reached 14,244 and those who wished to be mediated were only around 1900 cases, and those who did not want to be mediated reached 14,122 cases. Mediation in its implementation is quite low compared to cases that cannot be mediated, this is influenced by several factors such as: bad faith of the parties, the absence of the parties, the presence of a third party, the duration of the mediation, limited mediators and lack of outreach.
- b. Results Analysts of effectiveness in mediation to reduce divorce cases in Jombang show that it has not been effective referring to research data. The source of the problem is the community factor that does not understand the importance of mediation itself to achieve peace. This can be seen in relation to the data in 2018-2021 of the 14,244 divorce cases handled successfully by mediation, only 25 cases and 1735 unsuccessful mediations. Regarding the cause of this, the public lacks understanding regarding the importance of mediation, both parties do not have good intentions for peace, and when viewed from law enforcement factors also influence the effectiveness of mediation in reducing divorce cases. From the number of cases above compared to the number of

mediators on duty, it will affect the effectiveness of the mediator's performance in carrying out their duties. Monotonous work makes mediators tend to immediately want to complete the mediation process so that it is less than optimal in its implementation.

2. Suggestion

- a. Husband and wife must open their hearts and understand that mediation efforts can provide the main path to peace itself by depending only on the court regarding the implementation of mediation alone will not be carried out optimally, so the court has a big task to increase peace efforts through mediation considering that many people do not can be mediated, so that family relationships can increase their faith again, and remember that the purpose of marriage is to become a Sakinah mawadah warohmah family, and don't think of marriage only as a channel for inner and outer needs, but also marriage is a form of worship and to Allah SWT which must be according to Islamic law.
- b. To Religious Court Jombang to continue to make maximum mediation efforts, by increasing the number of certified mediators in order to increase human resources which will have an impact on the effectiveness of successful mediation in obtaining a peace, as well as the role of mediators so that they always carry out their duties in accordance with the Supreme Court Regulations which mediation in its implementation must be optimally not as a formality so that the results will be less than optimal..

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