




Implementation of Mediation Effort For Settlement At The Class Ia Religious Court In Jayapura

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Abstract

Introduction: In handling cases, mediation is the most important series in the overall handling of judicial cases.

Purposes of the Research: This study uses field research, by looking at phenomena related to procedures for mediating in resolving family conflicts in the Religious Courts. Sociologically -idealistically , mediation can help conflicting parties to get justice and benefit through peaceful means , but empirically-realistically, mediation procedures to resolve family conflicts in the Class IA Court in Jayapura which lead to decisions so that the role of the mediator cannot function maximally.

Methods of the Research: This study aims to identify, study and analyze the implementation of mediation using a legal perspective and PERMA Number 1 of 2016 concerning Mediation Procedures in the District Court, and to find out, examine and analyze the effectiveness of the implementation of PERMA RI No. 1 of 2016 in the District Court in Jayapura.

Results of the Research: The results of this study can be concluded that the implementation of mediation in a positive legal and legal perspective in the Religious Courts in Jayapura, in its implementation as it should and can resolve family conflicts, can be judged to be less successful, due to family conflicts to the forum as a large mediation, although the process of This can result in a complete resolution of the problem to the fullest, in fact the troubled parties still do not accept a reason for making peace. When the family parties are involved in a conflict, it must be immediately reconciled peacefully based on the existing legal provisions.

1. INTRODUCTION

Over time and circumstances, this mediation can always grow and develop, its existence is in resolving disputes quickly, cheaply and able to provide satisfaction to the conflicting parties. Outwardly, he actually does not want himself to be in contact with lingering conflicts, even though in reality in human life it can be released. Therefore, continuous conflict resolution can be carried out by humans, in an effort to achieve the will of their nature, live in peace, justice and prosperity.¹ On the other hand, as a state of law that is subject to *the rule of law* , the position of the judiciary is considered as the executor of judicial power which acts as a pressure valve for all violations of law and public order. The

¹ Syahril Abbas, Mediation in Sharia Law, Customary Law, and National Law, Issue 2, (Jakarta, Kharisma Putra Utama, 2009), p. iv

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judiciary can also be interpreted as the last place to seek truth and justice, so that theoretically it is still relied on as a body that functions and plays a role in upholding truth and justice.² This article analyses the comparative competition law related to abuse of a dominant market position using strategy of predatory pricing by undertakings in the However, the reality facing Indonesian society today is the ineffectiveness and inefficiency of the judicial system. Case resolution takes a long time. Starting from the first instance, appeal, cassation and review. On the other hand, justice-seeking communities need fast case resolution that is not merely formalistic.³ In order to overcome the problems of an ineffective and efficient judicial system as well as other problems caused by settlement through the judiciary, an alternative dispute resolution with peace has emerged. In procedural law in Indonesia, it is found in Article 130 of *the Herziene Inlandsch Reglement*.⁴ (hereinafter referred to as HIR) and Article 154 of *the Rechtsreglement Voor De Buitengewesten* (hereinafter referred to as R.bg). The two articles referred to recognize and require the settlement of disputes through peaceful means.

The peace effort referred to in Article 130 paragraph (1) HIR is imperative.⁵ This means that the judge is obliged to reconcile the disputing parties before the start of the trial process. The judge tried to reconcile in good ways, by prioritizing the interests of all disputing parties, in the end all were satisfied that no one felt aggrieved, so that there was no need for a long and tiring trial process, such an effort to reconcile is known as mediation. Mediation⁶ is an alternative dispute resolution that can be used by parties outside the court. This institution provides an opportunity for the parties to play a role in taking the initiative to resolve their disputes with the assistance of a third party as a mediator. The principle of mediation is a *win-win solution*, so that the parties involved in the dispute feel that there is no winning or losing party. Mediation not only accelerates the dispute resolution process, but also eliminates grudges and strengthens friendly relations.

Mediation is the process of involving a third party in resolving a dispute as an advisor. This definition as explained by *The National Alternative Dispute Resolution Advisory Council* is as follows: *Mediation is a process in which the parties to a dispute, with the assistance of a dispute resolution practitioner (the mediator), identify the disputed issues, develop options, consider alternatives and endeavor to reach an agreement. The mediator has no advisory or determinative role*

² M. Yahya Harahap, *Civil Procedure Law: Regarding Lawsuits, Trials, Confiscations, Evidence and Court Decisions*, Cet. VII, (Jakarta: Sinar Graphic, 2008), p. 229

³ The provisions of Law Number 48 of 2009 concerning Judicial Power stated that one of the principles of the implementation of judicial power in Article 2 paragraph (4) is the principle of simple, fast and low cost. Nor is it ordering judges to examine and decide cases within an hour or two. What is aspired to is an examination process that does not take a long time to many years, in accordance with the simplicity of the law itself. If the judge or court deliberately procrastinates for irrational reasons, then the judge is immoral and unprofessional, and has violated the principles of a simple, fast, and low cost trial. See in Gemala Dewi, *Civil Procedure Law for Religious Courts in Indonesia*, Cet. IV, (Jakarta: Kencana Prenada Media, 2010), p. 71-72.

⁴ Article 130 paragraph (1) of the HIR reads: If on the appointed day, both parties come, then the court will try to reconcile them through the intermediary of the two. Paragraph (2) reads: If such a reconciliation occurs, then at the time of the meeting, a deed is made, with the names of both parties required to fulfill the agreement made; then the letter (deed) will have legal force and will be carried out as an ordinary judge's decision.

⁵ M. Yahya Harahap, *Op.Cit.*, p. 231.

⁶ Etymologically, mediation comes from the Latin *mediare* which means "to be in the middle" because someone who mediates (mediator) must be in the middle of the conflicting person. While the word mediation in the English dictionary comes from the word *mediation*, which means dispute resolution by mediating. See in John M. Echols and Hassan Shadily, *English-Indonesian Dictionary*, Cet XIX, (Jakarta: PT. Gramedia Pustaka Utama, 2006), p. 377

in regard to the content of the dispute or the outcome of its resolution, but may advise on or determine the process of mediation whereby resolution is attempted .⁷Mediation has become an important part of the entire process of handling cases in court, including the Religious Courts. As confirmed in the explanation of Article 2 paragraph (3) PERMA RI. Number: 01 of 2008 "related to legal consequences and not taking the mediation procedure based on this regulation, which is a violation of the provisions of Article 130 HIR and or Article 154 Rbg, resulting in the decision being null and void".⁸ Then confirmed in PERMA RI. No. 1 of 2016, Part One, Article 2 (1) "The provisions regarding the Mediation procedure in the Regulation of the Supreme Court apply in the litigation process in the Court, both within the general court and the religious court". Furthermore, paragraph (2) confirms that "Courts outside the general courts and religious courts as referred to in paragraph (1) may apply Mediation based on the Regulation of the Supreme Court, as long as the provisions of the legislation allow", including various other clauses encouraging attention to mediation. become more and more intense.

Mediation provides positive values in dispute resolution, such as the importance of respect for others, honor, honesty, fairness, reciprocity, individual participation, agreement and control of the parties. Which values then counter the prevailing value system in litigation case settlement, such as adversarial, impersonal, control by lawyers and regulatory authoritative orders.⁹ Implementation of mediation as a *building block* prior to divorce is the most common *feature* found in District Courts. The general description of the implementation of the mediation then becomes an important premise in formulating the parameters for the success of the mediation, namely if the litigants are willing to voluntarily reconcile and then withdraw their lawsuit/application.

The reality is that currently the litigation process or litigation process in court is still felt to be very detrimental to the litigants so that the principle is still perceived as a mere slogan. Due to the various weaknesses inherent in the judiciary in resolving disputes, other ways or other institutions are sought to resolve disputes outside the judiciary. There are two forms of mediation, when viewed from the time of its implementation. The first is carried out outside the judicial system and carried out within the judicial system. The Indonesian legal system (in this case the Supreme Court) prefers the second part, namely mediation in the judicial system or *court annexed mediation* or better known as *court annexed dispute resolution* . The implementation of mediation in court is a form of policy to integrate alternative dispute resolution processes (*non-litigation*) into the judicial process (litigation) by optimizing the mediation institution which is a dispute resolution process that is simpler, faster and less expensive. The understanding of the cons, will lead to conflicts which in reality are often resolved through a *local justice system* , such as a judiciary that has been institutionalized in the community (customary courts), which has more emphasis on the nature and characteristics of *substantive justice* in its settlement and has a *social basis* and bases to the *cultural basis* of society.

⁷ David Spencer and Michael Brogan, *Mediation Law and Practice*, (Cambridge, Cambridge University Press, 2006), p. 9

⁸ Drafting Team, *Book Commentary on Regulations of the Supreme Court of the Republic of Indonesia*, Number: 01 of 2008 concerning Mediation Procedures in Courts, the Supreme Court of the Republic of Indonesia, the Japan International Cooperation Agency (JICA) and the Indonesian Institute for Conflict Transformation (IICT), 2008.

⁹ Marian Roberts, *Mediation in Family Disputes: Principles and Practice*, (Third Edition), (Ashgate Publishing Ltd, 2008), p. 2

At that time, there are academic solutions that can be offered to overcome the problems of conflict and disputes in the life of social interaction in family life, namely through mediation channels and approaches. Mediation as stated above that its scope in the Religious Courts (PA) has become increasingly narrow, due to the failure of mediation, whereas at the conceptual level all things can actually be mediated, including *post-divorce matters family problems*. This situation makes the author want to examine the implementation of mediation in resolving family conflicts at the Religious Courts in Jayapura. Mediation is a method of resolving disputes through a negotiation process to obtain an agreement between the parties with the assistance of a mediator. The advantages of mediation as an alternative dispute resolution are as follows: *Voluntary* is a decision to mediate left to the agreement of the parties, so that a decision can be reached that is truly the will of the parties. *Informal/Flexible* a mediation process is very flexible and informal but must remain conducive, the concept of mediation is fully submitted by the parties with the assistance of a mediator. *Interest Based* is that in mediation it is not sought who is right and who is wrong, but rather to protect the interests of each party. *Future Looking* mediation emphasizes more on maintaining good relations between the disputing parties. *Parties Oriented* is a non-formal procedure, so interested parties can actively control the mediation process and decision making without being too dependent on lawyers or legal advisors. And *Parties Control* a dispute resolution process through mediation is the decision of each party, the mediator cannot force to reach an agreement.

A peace must have reciprocity in the sacrifices of the litigating parties, so there will be no peace if one of the parties in a case relents entirely by acknowledging the demands of the opposing party in its entirety, likewise there will be no peace if two parties agree to surrender. settlement of the case to arbitration (separator) agrees to submit to an advice that will be given by a third person (*binded advice*).¹⁰ According to Article 1 point 1 of the Regulation of the Supreme Court (PERMA) Number 1 of 2016 concerning Mediation Procedures in Courts it states that "mediation is a method of resolving disputes through a negotiation process to obtain an agreement between the parties with the assistance of a mediator", while the definition of peace according to Article 1851 of the Civil Code promises or holding an item, ending a case that is currently dependent or preventing a case from occurring later.

Mediation is the process of resolving disputes with third party intermediaries, namely parties who provide input to the parties to resolve their disputes.¹¹ Mediation is a problem-solving negotiation process in which an impartial outside party *cooperates* with the disputing parties to help them reach a satisfactory agreement.¹² Based on some of the definitions described above, it is clear that the essence of mediation or peace is the process of resolving disputes between parties in dispute, facilitated by a facilitator as a mediator known as mediator for the sake of creating a dispute resolution through peaceful means. From the results of the explanation above, the author can conclude that peace relating to civil relations in Islam is a recommended action. So the mediation carried out in civil cases including

¹⁰ Victor M. Situmorang, *Peace and Refereeing in Civil Procedure Law*, (Jakarta: Bineka Cipta, 1993), p. 3

¹¹ Joseph Sembiring, Jimly. 2011. *How to Settle Disputes in Court (Negotiation, Conciliation & Arbitration)*. Jakarta: Visimedia.

¹² Groopaster, Garry. 1993. *Negotiation and Mediation: A Guide to Negotiation and Dispute Resolution Through Negotiation*. Jakarta: ELIPS Project.

divorce cases is an act that does not conflict with legal principles, this is because Islam prioritizes household integrity compared to divorce.

The spirit that inspires the existence of mediation in the process of examining cases in court is the fact that if mediation is successfully implemented and implemented, mediation has legal consequences and very good psychological effects for the litigants, this is because through mediation an agreement will be obtained by the parties. litigants, so that the binding power of the results of the mediation to the settlement of cases becomes stronger and more accurate, and therefore the smallest possibility of submitting further legal proceedings by the parties is getting smaller or even non-existent, and the benefits for court institutions can resolve cases more quickly and reduce a large number of cases in court. The scope of the family litigation mediation process in the Religious Courts is getting smaller, even though viewed from the conceptual level all the problems faced can actually be resolved through the mediation process, including problems that plagued the family before the divorce decision took place.

Navigating domestic life will not always run smoothly as expected by both partners. In family life, it is not uncommon for couples (husband and wife) to experience household turmoil which ultimately complains and complains to family, close friends or other people. This is because the rights that should be obtained by one of the parties are not fulfilled or the obligations of one of the parties (husband and wife) are not fulfilled, or due to other problems that exist in the family, as a result, problems arise that lead to conflicts or disputes between the two (husband and wife). wife) is. And it is not impossible that small conflicts lead to the breaking of a marriage bond (divorce) that has been fostered for a long time.

Mediation is one way that can be done as an effort to resolve "non-litigation" disputes, namely efforts to resolve disputes through out-of-court channels. However, the process of resolving disputes through mediation is not always possible, purely through out-of-court channels. So far, the pattern of counseling for troubled families prevailing in Indonesia can be pursued in two ways, namely out-of-court counseling and in-court advisory. Advice carried out outside the court can be carried out by individuals, usually the person appointed to do so is a community leader, religious leader or an elder family member or a person who has been trusted and believed to be able to resolve the case of the two disputing parties, as well as by advisory institutions, such as BP4 and other trusted family consulting or advisory agency. While the advice carried out in court is carried out by the panel of judges, advisory by the panel of judges is carried out at every trial process, especially in the first trial process which must be attended by the husband and wife personally, may not be represented.

The advisory pattern described above has its advantages and disadvantages. One of the advantages of such advisory is that the advice carried out outside the court can be carried out more informally and is not limited by the provisions of the procedural law such as in court, so that more problems that are resolved can be explored without being limited by space, time and place. Thus, efforts to resolve the problem can be determined and decided with careful consideration, so that the results of the decision can be accepted by the parties without any of the parties objecting. However, the advice carried out outside the court is very dependent on the level of difficulty of the problem and depends on the level of "authority" of the advisers, both individual advisers and institutions. The result does not have strong legal force, especially if the problems faced cannot be solved and the husband and wife cannot be reconciled. This concept is known as the inclusion of a third party to settle and reconcile the two parties who are litigating. This third party is better known as a judge or mediator.

In accordance with the meaning contained, mediation means intermediary or mediate. A judge or mediator in this case does not act as a judge who requires and imposes his thoughts on justice, nor does he draw a unanimous conclusion that binds like an arbiter, but rather empowers both parties in determining solutions that are in accordance with the wishes of both parties. The mediator provides encouragement and facilitates dialogue, assists both parties in clarifying their needs and wants, prepares guidelines, seeks to assist the parties to reconcile differences of opinion and work for an acceptable agreement between the parties in a binding settlement. If there is compatibility and compatibility between the two parties to the dispute, a memorandum (agreement) is made containing the agreements that have been reached by both parties.¹³

Related to this context, the mediation model in Islamic family conflicts developed by the Religious Courts is basically a legal political step in order to achieve and realize the benefit of society. Islam provides a concept for dealing with disputes that occur in married couples in order to maintain the integrity of the household together. In living the ark of domestic life, it is possible that there will be differences in attitudes and opinions that can lead to a family problem. Therefore, Islam provides signs and orders its followers to always try to avoid conflict in the family. If there is a family conflict, peace is the main way that must be taken as long as it does not violate the provisions of the Shari'ah.

The implementation and the peace mechanism adopted by the parties must contain an agreement to mutually release what the parties demand, this is intended so that disputes that occur between the parties can be resolved properly and can restore harmony between the two litigants.¹⁴ The mediation process in resolving disputed cases is a process that must be passed in resolving cases before entering the trial so that it is compulsory, so the litigants are required and are obliged to comply with the rules to pass the mediation process stage. As a reference that any settlement of cases that are submitted to the court, a mediation process must first be taken or must first be resolved through reconciliation with the help of a mediator. Therefore, the settlement through the legitimacy process in court may not proceed without a written statement from a mediator stating the failure of the mediation process in reaching a peace agreement.¹⁵ This is based on the rules contained in Article 18 paragraph (92) of PERMA. The PERMA provisions explain that courts are only allowed to examine cases submitted through ordinary civil procedural law processes after the mediation process fails to find agreement on the opinions of both parties. The mediation process is technical in nature, an understanding that mediation is a procedure that must be taken and passed by the disputing parties before the trial process in court. Where mediation is the initial procedure for resolving disputes in court. The process is carried out systematically by the litigants with the help of a mediator.

In principle, the existence and initiative of the emergence of options in resolving disputes through mediation mechanisms will arise with the agreement of the parties. Volunteering in the implementation of mediation shows that there will be an agreement to settle the case. This voluntary nature is supported by the fact that the mediator as a mediator in the dispute that occurs between the parties only carries out his role as a mediator in finding the best solution for the dispute faced by the parties. The mediator in this case does

¹³ Imam Jauhari, "Settlement of Domestic Disputes outside the Court according to Islamic Law", *Kanun Journal: Journal of Legal Studies*, Number 53, Year XIII, (April 2011), p. 43

¹⁴ Abu Ja'far Bin Jarir Al-Tabari (W: 310), *Tafsir Al-Tabari (Jami,, al Bayan Fi Ta'wili al-Qur'an)*, Juz 4, (Beirut: Dar al-Kutub al-Ilmiyah, 1999), p. 276

¹⁵ Syahrizal Abbas, *Op.Cit.*, p. 29

not have the power and authority to decide the dispute he handles like a judge or arbitrator in a court.¹⁶ The purpose of mediation is to resolve disputes between the parties by involving a neutral third party. Mediation can lead the parties to the realization of a permanent and sustainable peace agreement, considering that dispute resolution through mediation places both parties in the same position, neither party is won or the party is defeated (win-win solution). In mediation, the disputing parties are proactive and have full authority in decision making.¹⁷

After experiencing the mediation process with a relatively short period of time, it can produce conclusions that are in accordance with the wishes of the parties. And four out of five cases that have reached the mediation stage, the two disputing parties achieved a desired outcome.¹⁸ Mediation is able to eliminate conflict or hostility that almost always accompanies every coercive decision handed down by a judge in court or the arbitrator in arbitration.¹⁹ Gatot Sumarsono further explained that the role of mediation is as a vehicle for communicating between parties so that their different views on the dispute can be understood and possibly reconciled, but the responsibility for achieving peace remains in the hands of the parties themselves.²⁰ Mediation is a problem-solving negotiation process in which an impartial outside party cooperates with the disputing parties to help them reach a satisfactory agreement.²¹ The alternative dispute resolution process in which a third party is asked for assistance to assist the dispute resolution process is passive and is not at all authorized to provide input, especially to decide the dispute that occurs.²² According to Huala Adolf, mediation is a process involving the participation of a neutral and independent third party (mediator) in a dispute. The goal is to create a direct contact or relationship between the parties. Mediators can be countries, individuals, international organizations and others.²³

Then Tolberg and Taylor, asserted that mediation is a process, where the parties with the help of one person or persons systematically resolve the disputed problems to find alternatives and can trust a solution that can accommodate their needs.²⁴ The same thing was also stated by Christopher W. More, mediation is "intervention in a dispute or negotiation by a third party that is acceptable to the disputing party is not part of both parties and is neutral."²⁵ These third parties do not have the authority to make decisions. He is tasked with assisting the conflicting parties to voluntarily reach an agreement that is accepted by each party in a dispute.

According to historical records, mediation in the Indonesian Courts was first established in 2003 based on the Regulation of the Supreme Court of the Republic of

¹⁶ Susanti Adi Nugraha, *Op.Cit.*, p. 18

¹⁷ Syahrizal Abbas, *Op.Cit.*, p. 24

¹⁸ Achmad Ali, *Sociology of Law: Empirical Studies of Courts*, Cet. 1st, (Jakarta: IBLAM Publishing Agency, 2004), p. 24-25

¹⁹ Gatot Sumarsono, *Op. Cit.*, p. 139-140

²⁰ *Ibid.*, h. 31-32

²¹ Gary Goopaster, *Negotiation and Mediation: A Guide to Negotiation and Dispute Resolution Through Negotiation*, (Jakarta: ELIPS Project, 1993), p. 201.

²² Gunawan Widjaya, *Business Law Series: Alternative Dispute Resolution*, Edition I Cet. I, (Jakarta, Raja Grafindo Persada, 2001), p. 2

²³ Huala Adolf, *International Dispute Settlement Law.*, (Jakarta: Sinar Graphic, 2004), Cet. I-th, p. 120

²⁴ Abdul Manan, *Application of Civil Procedure Law in Religious Courts*, (Jakarta: Kencana Prenada Media, 2008), p. 125

²⁵ Rachmadi Usman, *Options for Settling Disputes outside the Court*, (Bandung: Citra Aditya Bakti, 2003), p. 80

Indonesia Number 2 of 2003 concerning Mediation procedures in court.²⁶The consideration is to reduce the accumulation of cases and is one way to resolve cases faster and cheaper, in accordance with Article 130 HIR or Article P 135 RBg. The direction of the Indonesian government's legal politics to develop alternative dispute resolution as one of the dispute resolution strategies is clear. Several Laws and Circulars and Regulations of the Supreme Court of the Republic of Indonesia have provided alternative dispute resolution sites as a way of resolving disputes in Indonesia.

The application of alternative disputes and conflicts in Indonesia is regulated more fully in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, then regulated in the Circular Letter of the Supreme Court (SEMA) number 1 of 2002 dated January 30, 2002 concerning Empowerment of the Courts of First Level to apply institutions amicable, then Supreme Court Regulation (PERMA) Number 2 of 2003 concerning Mediation Process to Settle Civil Cases in Court (Court Connented ADR) which has been revised by PERMA Number 1 of 2016 amendments to PERMA Number 1 of 2008 concerning Mediation Procedures in Court.

The mediation process is an obligation that must be carried out by litigants in both the general court and the religious court before the judge examines the case. This is a policy that was passed down by the Supreme Court as outlined in PERMA Number 1 of 2016. In this regard, Harifin as the Chief Justice of the Supreme Court stated that: "For decades the Indonesian people have had a paradigm of thinking that the function of the court is to settle civil cases only. by deciding, therefore the Supreme Court through PERMA Number 1 of 2008 seeks to change this thinking paradigm by strengthening the function of reconciling the parties in civil cases".²⁷ PERMA Number 1 of 2008 in conjunction with PERMA Number 1 of 2016 was issued to speed up, simplify and facilitate dispute resolution and provide greater access to justice seekers. The presence of PERMA is intended to provide certainty, order, smoothness in the process of reconciling the parties. Article 4 PERMA Number 1 of 2016 determines that cases that can be attempted mediation are all civil disputes that are submitted to the First Level Court, except cases that are resolved through commercial court procedures, industrial relations courts, objections to decisions of consumer dispute resolution bodies and objections to decisions of the supervisory commission business competition.

PERMA Number 1 Year 2016 tries to provide a more comprehensive, more complete, more detailed arrangement with respect to the mediation process in the Court. The direction of the litigants to take the peace process in detail, is also accompanied by the provision of a consequence, for violations, of the procedures that must be carried out, namely the sanction of the decision is null and void for a judge's decision that does not follow or ignores PERMA Number 1 of 2016. The obligation of mediation for litigants is quite broad. The parties are required to mediate in resolving cases as long as they are not excluded in article 4, namely the commercial court, industrial relations court, objections to BPSK decisions, and objections to KPPU's decisions. All civil cases are required and obligated to first make efforts to settle the case through the peace route by summoning a mediator who participates in helping peace. PERMA Number 1 of 2016 does not look at the case, does not see whether the case has the opportunity to be resolved through mediation or not, does not look at the

²⁶ Fatahillah A. Syukur, *Judicial Mediation in Indonesia*, (Bandung: Mandar Maju, 2012), p. 26

²⁷ Takdir Rahmadi, *Mediation: Dispute Resolution Through a Consensus Approach*, (Jakarta: Rajawali Pers, 2010), p. v

motivations of the litigants, does not see what is the underlying ethics of the parties who file the case, does not see whether the parties have sincerity (willingness or sincerity to mediate or not). Not seeing and being a problem how many parties are involved in the case and where are the parties, so it can be said that PERMA Number 1 of 2016 has a very broad approach.

As for the urgency and motivation of mediating family cases in court so that the litigants become peaceful and do not continue their case in court proceedings. If there are things that have been blocking that have been a problem, then they must be resolved amicably by deliberation and consensus. The purpose of mediation is to achieve peace between the litigants, which is usually very difficult to reach an agreement, usually becomes fluid when it is met and facilitated by one or more mediators to filter issues so that it becomes clear and the litigants gain awareness of the importance of peace between the parties. they.²⁸ Basically, dispute resolution by deliberation is a genuine Indonesian culture without the need for a court process that is detrimental to both parties. Therefore, deliberations through mediation have a great opportunity to be developed in Indonesia in accordance with deep-rooted eastern customs, the community prioritizes establishing friendly relations between families or relationships with business partners rather than temporary benefits if a dispute arises.²⁹ According to Laurence Boulle, *mediation is a decision making process in wich the parties are assisted by a mediator, the mediator attempt to improve the process of decision making and to assist the parties the reach an out come to wich of them can assen.*³⁰ According to J. Folberg and A. Taylor, *mediation is the process by wich the participant, together with the assistance of a neutral persons, systematically isolated dispute in order to develop options, consider alternative, and reach consensual settlement that will accommodate their needs.*³¹ The expressions of Laurence Bolle, J.Folberg and A.Taylor describe the essence of mediation activities and the role of the mediator as a third party. As Bolle said, mediation is a decision-making process carried out by the parties with the assistance of a third party as a mediator.

According to John W. Head in Gatot Sumarsono, namely: *The intervention in a negatitation or a conflict of an acceptable third party who has limited or no authoritative decision-making power but how assists the involved parties in voluntarily reaching a mutually acceptable settlement of issues in dispute .*³² Yahya Harahap defines mediation as : As a third party that is neutral and impartial (impartial) and functions as an assistant or helper (helper) looking for various possibilities or alternative dispute resolutions that are best and mutually beneficial to the parties.³³ Rachmadi Usman concluded that mediation is a way of resolving disputes outside the court through negotiations involving third parties who are neutral (non-interventional) and are called "mediators" or "middlemen" whose job is to only assist the disputing parties in resolving their problems and have no authority to make decisions.³⁴

²⁸ Karmawan, "Mediation Discourse and Efforts to Set it Up, in the Coordinate Journal Vol. XVI No. 1, (April 2017), p. 118

²⁹ Fatahillah A. Syukur, "Behind Closed Doors: Family Dispute Settlement in Court Annexed Mediation in Indonesia", in the Journal of Contribution Maters, ed PPIA, Indonesian Australian Student Association (Sydney: Australia, 2010), p. 154

³⁰ Laurence Boulle, *Mediation: Principle, Process, Practice*, (Sydney: Butterworths, 1996), p. 1.

³¹ J. Folberg and A. Taylor, *Mediation: A Comprehensive Guide to Resolving Conflict without Litigation* (Cambridge: Cambridge University Press, 1984), p. 7.

³² Gatot Sumarsono, *Op. Cit.*, p. 121

³³ Yahya Harahap, *Position of Authority and Procedure of the Religious Courts Law No. 7/1989. ct IV*, (Jakarta: Sinar Garfika, 2007), p.135.

³⁴ Rachmadi Usman, *Op. Cit.*, h. 82

According to the discussion in the book Collins English Dictionary and Thesaurus, it is explained that mediation is "an activity to bridge between two disputing parties to produce an agreement".³⁵ This activity is carried out by the mediator as a party who helps find various alternative dispute resolutions. The position of the mediator in this case is to encourage the parties to reach agreements that can end disputes and disputes. He cannot force the parties to accept his offer of dispute resolution. It is the parties who determine what agreement they want. Mediators only help find alternatives and encourage them to jointly participate in resolving disputes.

Mediation in this case is the settlement of disputes through a process of negotiation or consensus of the parties assisted by a mediator who does not have the authority to decide or impose a settlement. Mediation is a problem-solving negotiation process in which an impartial and neutral outside party works with the parties working with the disputing parties to help them reach a satisfactory agreement.³⁶ Based on some of the definitions above, it can be concluded that mediation is an intervention in a dispute or negotiation conducted by an acceptable, impartial and neutral third party who does not have the authority to make a decision in assisting the disputing parties in an effort to reach a resolution. Voluntary agreement in resolving disputed issues.

The main characteristic of the mediation process is negotiation, which is essentially the same as the process of deliberation or consensus. In accordance with the nature of negotiation or deliberation or consensus, there should be no coercion to accept or reject an idea or settlement during the mediation process. Everything must obtain the approval of the parties, namely two or more legal subjects who are not legal counsel in the dispute and bring the dispute to court for settlement.³⁷

2. METHOD

Judging from the type, the research in this is included in field research. According to Kartini Kartono, "field research is field research carried out in the real world".³⁸ Where this research was conducted at the Religious Courts in the Jayapura Province, and this research was conducted by looking at matters relating to the problem under study, namely the implementation of mediation from PERMA Perspective Number 1 of 2016 concerning Mediation Procedures at the Religious Courts of Jayapura Province. In addition to using *field research*, this type of research is library research, namely collecting data and information with the help of references to books, magazines, journals in the library room.³⁹ Library research, namely conducting research by reading, studying and recording material from various literatures that are directly related and have relevance to the problems to be studied in this study, namely specifically regarding the implementation of mediation PERMA Perspective Number 1 of 2016 concerning Mediation Procedures at the Jayapura Provincial Religious Court. This research is also a qualitative research. According to Kaelan, qualitative

³⁵ Lorna Gilmour, Penny Hand and Cormac Mc. Keown (eds), *Collins English Dictionary and Thesaurus, Third Edition*, (Great Britain: Harper Collins Publishers, 2007), p. 510

³⁶ Gary Goodpaster, *Op. Cit.*, p. 201.

³⁷ Drafting Team, Commentary Book on Regulation of the Supreme Court of the Republic of Indonesia Number 01 of 2008 concerning Implementation of Mediation in Courts, Cooperation of the Supreme Court of the Republic of Indonesia, Japan International Cooperation Agency (JICA) and the Indonesian Institute for Conflict Transformation (IICT), 2008, p. 17-18

³⁸ *Ibid.*, p. 32.

³⁹ *Ibid.*, p. 33.

research is research that has objects, namely: First, problems and laws that may occur. Second, humans as cultural beings are multi-dimensional which can not only be examined from a definite perspective, but there are qualitative things that must be viewed by science objectively.⁴⁰ This research refers to the type of qualitative research, so the nature of this research is descriptive analysis, which is a study that describes a group with an object condition, system of thought or an event. ⁴¹This study will describe and explain how mediation in resolving family conflicts before entering the Religious Courts. After that, explain how the parties make decisions to resolve family conflicts with mediation and what are the obstacles to efforts to implement mediation that have not run optimally.

3. RESULTS AND DISCUSSION

The litigation procedure is very important to be known by the litigants, because the litigation process is a process that will be faced by litigants while in this religious court environment. By knowing the litigation procedure, the parties will know what to do. Because the parties are generally not familiar with the legal rules that apply to an agency. Not always the decision that has been determined in court is accepted by the litigating parties, for this if there are parties who have not received the decision, in seeking legal remedies.

Implementation of mediation in the legal perspective and PERMA RI No. 1 of 2016 concerning Mediation Procedures in Courts. The PERMA is an effective instrument to overcome and reduce the buildup of cases at the court level, and at the same time seeks to maximize the function of the judiciary as an institution in resolving disputes. Every civil case that is entered at the stage of submission to the court of the first instance must undergo a mediation process by the mediator judge or non-mediation judge and the two litigating parties in accordance with the mediation procedure in court which was carried out at the time the first trial was held. If the judge does not carry out mediation in accordance with the provisions in the mediation procedure, then the judge's decision in the civil case can be canceled or null and void (article 2 paragraph 3 PERMA No. 1 of 2008).⁴²

The relationship developed in the mediation process is an effort to place communication at the right level, pay attention to the other person's reaction and adjust communication with the other person and the surrounding situation. ⁴³With the communication relationship in the mediation process can be done openly. However, this relationship does not guarantee that communication can always be carried out properly. This is because the parties to the conflict generally experience little tension and may not listen well to what the mediator is explaining and expressing.⁴⁴

After negotiations on the mediation process by the mediator and both parties are reached, and at the decision reaching an agreement, the parties can ask the judge to stipulate the agreement in the form of a peace deed. However, if an agreement is not reached during the mediation process, then the mediator judge must state in writing that the mediation

⁴⁰ Kaelan, *Interdisciplinary Qualitative Religious Research Methods*, (Yogyakarta: Paradigma, 2010), p. 9-10

⁴¹ Mustika Zed, *Library Research Methods*, (Jakarta: Obor Foundation, 2004), p. 1

⁴² The Supreme Court of the Republic of Indonesia, PERMA RI No. 1 of 2008 concerning Mediation Procedures in Courts.

⁴³ Muksin Jamil, *Managing Conflict Building Peace: Strategy Theory, and Implementation of Conflict Resolution*, (Semarang: Walisongo Media Center, 2007), Cet. 1st, p. 137

⁴⁴ *Ibid.*, h. 138

process has failed and both parties have not reached an agreement, then the trial will continue as usual.⁴⁵

Some of the specialties of PERMA No. 1 of 2008 is about the rights and obligations of the parties, the mediation period, and mediation costs. The right of the parties to choose a mediator with options, namely: judges who are not examiners of cases at the court concerned, advocates or legal academics, non-legal professions that are considered by the parties to have mastery or experience in the subject matter of the dispute, and judges of the case examiner panel.⁴⁶

And then the parties immediately submit their chosen mediator to the chairman of the Panel of Judges and if after a maximum period of two working days the parties cannot agree on choosing the desired mediator, then the parties must submit their failure to choose a mediator to the Chairman of the Panel of Judges.⁴⁷ Furthermore, the parties must go through the mediation process in good faith. If it turns out that one of the parties is taking mediation in bad faith, then the other party can withdraw from the mediation process. ⁴⁸If the mediation results in an agreement, the parties with the help of the mediator must formulate in writing the agreement reached and sign the agreement together with the mediator.⁴⁹

Related to this, if in the mediation process to be taken in the mediation process the parties do not come and are represented by legal counsel, the parties must state in writing their agreement on the agreement reached, then the parties must appear again to the judge on the trial day that has been agreed. Determined to notify the peace agreement. ⁵⁰Then the parties can propose to the judge that the peace agreement that has been formulated in the mediation process is strengthened in the form of a peace deed, only if the parties do not want the peace deed then the agreement must contain a clause to withdraw the lawsuit and or a clause stating the case has been completed.⁵¹

The specificity of PERMA No. 1 of 2008 concerning the mediation period, it is explained that the mediation period has a predetermined time limit, namely the mediation process lasts 40 working days from the time the mediator is chosen by the parties or a mediator appointed by the chairman of the panel of judges and based on the agreement of the parties. If it is still less than 40 days, then the mediation time can be increased for 14 working days from the end of the 40 day period. The period of the mediation process does not include the period of case examination. If necessary and with the agreement of the parties, mediation can be carried out remotely using communication tools.

PERMA Specialty No. 1 of 2008 concerning mediation costs, it is explained that mediation costs are mediation of calling the parties to attend the mediation process, which must first be borne by the plaintiffs through the down payment of court fees and then updated with PERMA No. 1 of 2016 concerning Mediation Procedures in Courts . The latest PERMA is a form of renewal of the previous Supreme Court regulations. PERMA No. 1 of 2016 has undergone several changes compared to the previous PERMA. These changes aim

⁴⁵ Nurmaningsih Amrina, *Alternative Mediation for Settlement of Civil Disputes in Court*, (Jakarta: Raja Grafindo Persada, 2011), p. 59

⁴⁶ See Article 8 Paragraph 1 PERMA RI No. 1 of 2008 concerning Mediation Procedures in Courts

⁴⁷ See Article 11 Paragraphs 2 and 4 PERMA RI No. 1 of 2008.

⁴⁸ See Article 12 PERMA RI No. 1 Year 2008

⁴⁹ See Article 17 Paragraph 1 PERMA RI No. 1 Year 2008

⁵⁰ See Article 17 Paragraphs 2 and 4 PERMA RI No. 1 Year 2008

⁵¹ See Article 17 Paragraph 5 and 6 PERMA RI No. 1 of 2008.

to change for the better than the previous PERMA. Improvements made by the Supreme Court in PERMA No. 1 of 2008 concerning the mediation procedure in court, several problems were found, so it was necessary to issue a new PERMA in order to speed up and facilitate dispute resolution and provide wider access to justice seekers, and resolve the problems faced by the disputing parties through mediation.

Mediation is one of the effective instruments to overcome the buildup of cases in court and maximize the function of the judiciary in resolving cases.⁵² Mediation in this case is not just a procedural formality that must be passed in proceedings in court, but the mediation process provides an opportunity for the parties to reconcile, but the judge must play an active role in seeking peace.⁵³

PERMA Number 1 of 2016 concerning Mediation Procedures in Courts has a special place because the mediation process is an inseparable part of the litigation process in court, so that judges and parties are required to follow the procedure for resolving disputes through mediation, if the parties violate or do not attend mediation first, then the resulting decision is null and void and will be subject to sanctions in the form of an obligation to pay mediation fees. The existence of PERMA No. 1 of 2016 certainly has a difference over the Perma which was revoked because of it. Starting from the systematics, PERMA No. 1 of 2016 consists of 9 chapters and 39 articles, while PERMA No. 1 of 2008 consists of 8 chapters and 27 articles. The difference is quite significant, initially aimed at the Type of Case. In Perma No. 1 of 2008, only mentions cases that are not required to go through mediation. While the new one is explained at length in four paragraphs, what cases are obligatory, which ones are excluded, compensation, and others. Likewise with regard to Mediator Certification, there are also differences in the Right to choose a Mediator. The mediators according to the new PERMA are those who are registered in court, while in the old PERMA are judges who are not examiners of cases at the court and are advocates.

The thing that is quite a breakthrough in PERMA No. 1 of 2016 is regarding the presence of the parties in the Mediation process. The parties can carry out mediation not only with face-to-face meetings, but are allowed through long-distance audio-visual communication facilities.⁵⁴ Likewise, the timing of the implementation of mediation also has differences between the two. Previously at PERMA No. 1 of 2008, Mediation is set to last a maximum of 40 days and if there is no agreement, it can be extended for 14 days. In PERMA No. 1 of 2016 that Mediation lasts a maximum of 30 days and can be extended again for another 30 days upon the agreement of the parties.⁵⁵

PERMA No. 1 of 2016 also has additional arrangements regarding mediation that result in partial reconciliation, meaning that reconciliation occurs between the plaintiff and some of the defendants if there are more than one defendant. While in PERMA No. 1 of 2008 is not accommodated for this kind of situation. The new PERMA also accommodates the issue of voluntary peace, meaning that the parties in the middle of the examination process can submit a peace agreement even though the previous mediation has taken place. This

⁵² Syahrizal Abbas, *Mediation in the Perspective of Sharia Law ...*, p. 310

⁵³ Bagir Manan, *Religious Courts in the Perspective of the Chief Justice of the Supreme Court*, (Jakarta: Directory General of the Religious Courts Agency, 2007), p. 135

⁵⁴ See Article 5 PERMA RI No. 1 of 2016.

⁵⁵ See Article 24 PERMA RI No. 1 of 2016.

also applies to appeals, cassation and judicial review. Although the old PERMA also mentioned, it did not explain how the procedure was.⁵⁶

Based on the description above, it can be reaffirmed that there are several differences between PERMA No. 1 of 2016 and PERMA No. 1 of 2008, namely: the ability of PERMA No. 1 of 2016 to accommodate the situation of the absence of the parties face to face through long distance audio-visual communication, the timing of mediation, guidelines for mediators regarding the implementation of tasks that are clearly and in detail regulated in the new PERMA, the possibility of mediation that achieves peace is partly regulated by the new PERMA, and the existence of voluntary reconciliation and legal remedies at the Appeal, Cassation, and Judicial Review levels are regulated more clearly in PERMA No. 1 of 2016. For more details, the following will describe the differences in PERMA No. 1 of 2016 and PERMA No. 1 of 2008 in tabular form, as follows:

PERMA No. Similarities and Differences 1 of 2008 and PERMA No. 1 Year 2016

No.	PERMA No. 1 Year 2008	PERMA No. 1 Year 2016
1	Consists of 27 (twenty seven) articles.	Consists of 39 (thirty nine) articles
2	The use of remote audio-visual technology has not yet been regulated in the implementation of mediation.	Provisions for the use of long-distance audio-visual technology have been regulated in the implementation of mediation (Article 6 paragraph (2)).
3	Not yet regulated for cases where mediation is not carried out if an appeal or cassation is filed, there is no order by the High Court or the Supreme Court to the court of first instance to carry out the mediation process	It has been regulated for cases that are not mediated if legal action is filed, then there is an order from the court of appeal or cassation to the court of first instance to carry out the mediation process (Article 3 paragraph (4)).
4	Decisions on cases that do not go through mediation are null and void (Article 2 paragraph (3))	There are no decisions on cases that do not go through mediation (due to negligence of the Examining Judge).
5	Mediators who come from the court are only judges who already have a mediator certificate.	Mediators who come from within the court other than judges are also court employees who have a certificate of mediator (Article 8).
6	The mediation process lasts a maximum of 40 (forty (working days) after selecting a mediator, upon the agreement of the parties, the mediation period can be extended a maximum of 14 (fourteen) working days from the end of the period of 40 (forty) days (Article 13 paragraph 3 and 4)	The mediation process lasts a maximum of 30 (thirty (working days) after selecting a mediator, upon the agreement of the parties, the mediation period can be extended for a maximum of 30 (thirty) working days, and can still be extended based on the request of the parties (Article 24 paragraph .
7	In the mediation process, if deemed necessary, expert involvement can be requested.	In the mediation process, if deemed necessary, the involvement of other than experts as well as community leaders, religious leaders and traditional leaders can be requested (Article 26).
8	Against the plaintiff who does not have good intentions in carrying out	Against the plaintiff who does not have good intentions in carrying out mediation,

⁵⁶ See Article 30 paragraph 4 PERMA No. 1 Year 2016

	mediation, the consequences for the lawsuit do not exist	the consequence of the lawsuit is that the lawsuit is declared unacceptable (article 22 paragraph 1).
9	Do not know the peace agreement part of the dispute	Recognizing the peace agreement as part of the dispute (Article 29)
10	Does not regulate Defendants who do not have good intentions who bear the costs of mediation	It has been regulated that the Defendant who does not have good intentions will bear the costs of the mediation (Article 23).
11	The head of the court does not play a role in conveying the performance of court judges who have successfully resolved cases through mediation to the Chief Justice of the High Court and the Chief Justice of the Supreme Court.	The head of the court is obliged to convey the performance of judges and court officials who have successfully resolved cases through mediation to the Chair of the High Court and the Chief Justice of the Supreme Court (Article 16).
12	The parties or their legal representatives are not required to sign a letter explaining that the Examining Panel of Judges has explained the procedures and benefits of mediation during the first trial.	The parties or their legal representatives are required to sign a letter explaining that the examining panel of judges has explained the procedures and benefits of mediation at the first trial (Article 17 paragraph 9). ⁵⁷

Source: The results of the author's analysis of PERMA No. 1 of 2008 and PERMA No. 1 of 2015 concerning Mediation Procedures in Courts

Some of the changes contained in PERMA No. 1 of 2016 has answered the shortcomings that existed in the previous Perma, among others, it was anticipated for parties who were sick or abroad to be able to carry out mediation by using technology, namely using long-distance audio-visual. Where the use of long-distance audio-visual is considered as a direct presence. This is certainly very helpful for the parties to carry out mediation but are in different places or locations, are abroad or are in a sick condition.

In addition to having advantages as a policy that renews the previous policy, it turns out that PERMA No. 1 of 2016 still has several weaknesses that need to be covered so that it does not become a prolonged problem from the implementation of the policy. Weaknesses in PERMA, among others, are still unclear, there are changes that are less than perfect or incomplete. So it is deemed necessary to reconstruct Perma No. 1 of 2016. For example, the incomplete PERMA No. 1 of 2016 which is contained in Article 3 paragraph (3) which reads: A case examiner judge who does not order the parties to take mediation so that the parties do not mediate has violated the provisions of the laws and regulations governing mediation in court.

The article above clearly states that the examining judge who does not take mediation has violated the provisions of the legislation. However, there is no regulation on the consequences that must be accepted by the Examining Judge of the case. It is clear that every violation of statutory provisions is usually accompanied by sanctions. In addition, this article also does not regulate the legal consequences of decisions that do not take mediation. Indeed, in paragraph (4) it states: In the event of a violation of the provisions referred to in

⁵⁷ See more details in PERMA No. 1 of 2008 and PERMA No. 1 of 2016, see also in Mariah SM Purba, "PERMA Reconstruction No. 1 of 2016 as an Alternative for Dispute Resolution in Court (Case Study at the Simalungun District Court)", *Samudra Justice Journal, Legal Journal*, Vol. 13, No. 1, (January-June 2018), p. 26.

paragraph (3), if a legal action is filed, the Court of Appeal or the Supreme Court with an interim decision orders the First Level Court to carry out the mediation process.

The question arises what if an appeal or cassation is not filed against the decision, whether the decision on the case is valid, if valid means violating the provisions of Article 4 paragraph (1) which states: All civil disputes that are submitted to court include cases of resistance (*verzet*) over *Verstek* decisions and the resistance of litigants (*partij verzet*) and third parties (*derden verzet*) against the implementation of decisions that have permanent legal force, must first be resolved through mediation, unless otherwise determined based on this Supreme Court regulation.

Meanwhile, Article 16 states that: "The Chairperson of the Court is obliged to submit a report on the performance of judges or court officials who have successfully settled cases through mediation to the Chairperson of the High Court and the Supreme Court". The article clearly states that the success of the mediator in resolving the case through mediation is only limited to reporting by the Head of the Court. It is not explained what the mediator judge will receive if the mediator succeeds in mediating. The criteria for the success of the mediator can be measured in terms of the implementation of the process and from the results of the satisfaction of the parties with the results of the mediation. This article also does not regulate sanctions against mediator judges who have never succeeded in carrying out mediation. If this is not regulated, it is possible for the mediator judge to seriously seek to make the dispute successful through the mediation process.

Effectiveness of PERMA RI implementation. No. 1 of 2016 in the Religious Courts of Jayapura Province. the author's analysis of the mediation procedure contained in PERMA No. 1 of 2016 and the Religious Courts in Lampung Province. The purpose of this analysis is to find out how effective the implementation of mediation at the Lampung Provincial Religious Court is and then to see the compatibility of the mediation procedure at the Jayapura Provincial Religious Court with the PERMA.

In principle, domestic cases are resolved through litigation or through the Court. However, with the issuance of Supreme Court Regulation No. 1 of 2016 concerning Mediation Procedures in Courts which requires a mediation process first. Mediation is a form of non-litigation dispute resolution. The formal basis for integrating mediation into the justice system is based on Article 130 of the HIR and/or Article 154 of the RBg.

The researcher's analysis shows that the obstacles faced by the mediator judge in resolving divorce disputes through mediation at the Jayapura Provincial Religious Court, both come from internal factors, namely the mediator judge and external factors, namely the parties. Of these two factors, the dominant obstacles faced by mediator judges in resolving mediation divorce disputes in the Religious Courts are external factors, namely; presence of the parties at the time of mediation. Efforts made by the mediator judge in dealing with the dominant obstacle in resolving divorce disputes through mediation in the Religious Courts is to provide an evaluation to the Supreme Court so that it is necessary to issue a new Perma.

Mediation is a dispute resolution process through negotiation or consensus of the parties assisted by a mediator who does not have the authority to decide or impose a settlement. The main feature of the mediation process is negotiation, which is essentially the same as the process of deliberation or consensus. In accordance with the nature of negotiation or deliberation or consensus, there should be no coercion to accept or reject an

idea or settlement during the mediation process. Everything must be approved by the parties. The legal basis for the implementation of Mediation in the Court is the Regulation of the Supreme Court of the Republic of Indonesia No. 1 of 2008 concerning Mediation Procedures in Courts which is the result of a revision of the Supreme Court Regulation no. 2 of 2003 (PERMA No. 2 of 2003), where in PERMA No. 2 of 2003, there are still many normative weaknesses that make the PERMA not reach the desired maximum target, as well as various inputs from the judges regarding the problems in the PERMA.

The background why the Supreme Court of the Republic of Indonesia (MA-RI) requires the parties to take mediation before the case is decided by the judge is described below. The MA-RI policy to apply mediation to the case process in the Court is based on the following reasons: First, the mediation process is expected to overcome the problem of accumulation of cases. If the parties can resolve the dispute on their own without having to be tried by a judge, the number of cases that must be examined by a judge will also decrease. If the dispute can be resolved through reconciliation, the parties will not take cassation legal remedies because peace is the result of the mutual will of the parties, so they will not file legal remedies. On the other hand, if the case is decided by a judge, then the decision is the result of the judge's views and assessments of the facts and legal standing of the parties. The views and judgments of the judges are not necessarily in line with the views of the parties, especially the losing party, so that the losing party always takes appeal and cassation. In the end, all cases lead to the Supreme Court which results in a buildup of cases.

Second, the mediation process is seen as a more advanced dispute resolution method. faster and cheaper than the litigation process. In Indonesia, there is no research that proves the assumption that mediation is a fast and inexpensive process compared to the litigation process. Cassation, thus making the settlement of the case in question can take years, from the examination at the Court of first instance to the examination at the cassation level of the Supreme Court. On the other hand, if the case can be resolved amicably, then the parties will automatically accept the final result because it is the result of their work which reflects the mutual will of the parties. In addition to the logic as described previously, the literature often mentions that the use of mediation or other forms of settlement which are included in the definition of alternative dispute resolution (ADR) is a dispute resolution process that is faster and cheaper than the litigation process.

Third, the implementation of mediation is expected to expand access for the parties to obtain a sense of justice. A sense of justice can not only be obtained through the litigation process, but also through a process of deliberation and consensus by the parties. With the implementation of mediation into the formal justice system, the justice-seeking community in general and the disputing parties in particular can first seek a resolution to their disputes through a consensus approach assisted by an intermediary called a mediator. Even if in fact they have gone through the process of deliberation and consensus before one of the parties takes the dispute to court, the Supreme Court still considers it necessary to oblige the parties to make peace efforts assisted by a mediator, not only because of the provisions of the applicable procedural law, namely HIR and Rbg, requires the judge to first reconcile the parties before the decision process begins, but also because of the view that a better and satisfactory settlement is a settlement process that provides an opportunity for the parties to jointly seek and find a final result.

Fourth, the institutionalization of the mediation process into the judicial system can strengthen and maximize the function of court institutions in dispute resolution. If in the past the function of the judiciary that was more prominent was the function of deciding,

with the enactment of PERMA on Mediation, it is hoped that the function of reconciling or mediating can go hand in hand and balance with the function of deciding. PERMA on Mediation is expected to encourage a change in the perspective of the actors in the civil justice process, namely judges and advocates, that the judiciary not only decides, but also reconciles. PERMA on Mediation provides guidelines for achieving peace. The examiner judge may be a mediator in the case he is examining, similar to the Wakai concept in the Japanese legal system. Furthermore, in the Japanese legal system, the concept of Sokketsu Wakai is known, namely peace outside the court can be requested for ratification from the court. The Sokketsu Wakai concept inspired the Working Group to adopt it into PERMA as formulated in Article 24.

Regarding the effectiveness of the implementation of mediation at the Jayapura Provincial Religious Court, there are a number of options that a person can take when facing a dispute, one of which is mediation. The reason for choosing mediation is usually because they want to maintain good relations with the disputing parties after a disagreement, however, not all mediation processes run smoothly. There are times when both parties have difficulty finding a bright spot and most end up 'deadlocked'. The mistake that is often made by disputing parties when resolving problems through mediation is delaying peace efforts. As a result, the conflict experienced by both of them is getting more complicated because both of them are too late in the dispute without any intention to straighten it out to its original state. The longer the case is resolved, the more difficult it will be for the mediator to help find common ground. This is coupled with the ego of the parties that peaked over time. On the other hand, if mediation efforts have been carried out as early as possible in the case, then it is not difficult for the mediator to help find common ground.

In addition, there are several obstacles encountered in the implementation of mediation in the Religious Courts, especially in the Lampung Province Religious Courts in the implementation of mediation for civil cases. In fact, according to the provisions contained in the Decree of the Supreme Court of the Republic of Indonesia Number: KMA/059/SK/XII/2003 which has been in force since December 30, 2003 and has been effective since September 18-November 2004, several District Courts have been appointed that need to be fostered and monitored. Specifically in the context of implementing PERMA Number 2 of 2003, namely the Central Jakarta District Court, the Surabaya District Court, the Bengkalis District Court and the Batusangkar District Court. The district court is tasked with carrying out mediation activities in the form of: Conducting the implementation and socialization of the mediation pilot program, and conducting training for judges, advocate representatives, traditional leaders, business representatives, and lecturers regarding the implementation of mediation.⁵⁸

After the end of the coaching period that has been carried out by the District Court, it turns out that there are several obstacles encountered in the implementation of mediation based on PERMA No. 2 of 2003. Then PERMA No. 1 of 2008 which is expected to overcome the shortage of PERMA No. 2 of 2003.⁵⁹ However, although the regulations have been changed in order to prevent existing obstacles, they still create new obstacles to the implementation of PERMA No. 1 of 2008. The obstacles are as follows:

⁵⁸ See in Abdul Manan, *Application of Civil Procedure Law in Religious Courts, Op.Cit.*, p. 2148

⁵⁹ Nuraningsih Amriani, *Alternative Mediation for Settlement of Civil Disputes in the Religious Courts*, (Jakarta: Raja Grafindo Persada, 2011), p. 154

a) Absence of Mechanisms that can Force One of the Parties or Parties Not Attending the Mediation Meeting

The implementation of the ongoing trial process, sometimes one of the parties does not come to attend the first trial after going through the proper summoning stage, and the judge in this case can impose a *verstek* sentence, by defeating the party who was not present at the trial. Meanwhile, in the process of implementing the mediation, if one of the parties is not present after the determined time for the implementation of the mediation, then this means that the absent party does not have the will to make peace with the other party, so that the absence is intentionally aimed at spending the period or time of the mediation implementation, which is forty years. Days required for the implementation of mediation. Therefore, it is necessary to implement a new policy regarding the consequences that are detrimental or unfavorable to one of the parties who are not present in the implementation of the mediation.

b) Limited Number of Mediators and Judges

According to the provisions in PERMA No. 1 of 2016, mediators in each court are judges and judges who have certificates. Judges are assigned the task of mediating judges where they also need to receive training on mediation. The mediator judge can be a case examiner judge and a non-case examiner judge. Then with the mediation process in which the mediator is one of the case examiner judges who has known the real problem through the caucus, of course it tends to side with one of the parties and if peace fails, psychologically the judge is no longer imperial even though there are requirements for the separation of mediation from litigation. in Article 19 of MERMA Number 1 of 2016.⁶⁰

c) Good Faith of the Parties

Good faith is very important in order to achieve success in the mediation process in order to reach a win-win solution agreement. If the parties do not want to see their needs and only pursue their benefits, then peace through mediation will be difficult to achieve. This is an obstacle to achieving the goal of mediation, namely resolving the problems of the parties and finding solutions for both, so that family conflicts are resolved through mediation rather than through the court.

d) Judges Support

The judges of the District Courts and the Religious Courts are of the opinion that their main task is to resolve conflicts or cases completely. In this case the judge does not yet have idealistic awareness, without the support of the judges, the application of the required mediation will never succeed because the salary received is a reward for the implementation of the main task. Giving the task as a mediator whose essence is to reconcile is different from the main task, in other words an additional task, so they are entitled to incentives. Therefore, it is necessary to create clear and transparent incentives for judges who are successful in reconciling the parties through mediation, so that judges fully support the mediation process which is their additional task.

e) Mediation Room

The availability of a special mediation room is a factor to support the implementation of the mediation. In addition to the success factor that must be maintained, a sense of comfort also needs to be considered so that the parties are more free to express their

⁶⁰ *Ibid.*, p. 203

problems and are not afraid of their problems being heard by others. For this reason, it is necessary to repair the court office building which currently there are still many courts that lack space so that the mediation process is carried out in the judge's room which, if carried out outside the court building and outside working hours, will certainly cause things that are suspicious to other parties and will damage the image of judges and is prohibited in PERMA No. 1 of 2016.⁶¹

The honorarium pattern is divided into three patterns, namely first, lawyers have permanent clients and receive fixed fees which are usually per year or per month, second, lawyers receive fees based on case handling until completion, and third, lawyers receive fees from clients based on working hours or frequency. or visits to courts. This last pattern causes lawyers to tend to have a negative attitude towards efforts to institutionalize mediation in court, because if the case is resolved quickly, the fee will be small. Therefore, PERMA needs to be updated by stating that in the mediation process the parties do not need to be accompanied by their legal representatives, although this will certainly be contrary to human rights and also the independence of the parties.⁶²

In practice, mediation is often seen as a mere formality process which results in the failure of achieving a peace agreement between the litigants. This is in accordance with what the author saw from several observations to see the settlement of civil cases and according to one source who did not wish to be identified, said that mediation in court so far is only a mere formality, because based on his experience in assisting clients who are litigating, mediation usually has carried out but did not reach an agreement, the mediation was carried out before the dispute was submitted to the court. This is the reason why mediation conducted in court tends to fail in reaching a peace agreement.

The existence of a certified mediator is very much needed at the level of the Religious Courts, either as judges or other parties as stated in the PERMA of the mediation. This is in order to realize what was the initial goal of integrating mediation into civil procedural law, namely minimizing cases that go up to appeal and cassation levels. Thus mediation is one of the instruments that is expected to be able to reduce the number of cases that go up to the level of appeal and cassation, so that the emphasis on the implementation of mediation is at the first level courts, namely the religious courts. Even in PERMA mediation it is possible for the mediation process to be carried out at the level of legal remedies if agreed by the litigants, this is as explained in Chapter IV part 2 on voluntary reconciliation at the level of appeal, cassation, or judicial review.

The skills of a mediator can also be a factor that can determine the success of mediation. Each mediator has his own techniques in conducting mediation. The mediator is expected to mediate through psychological, religious, and social approaches. The psychological approach is in the form of an approach to the psychological state of the parties, the religious approach is to remind in terms of religion, how religion views the law if a divorce actually occurs, and the social approach is to remind the social consequences that will be caused after the divorce. If the mediator has tried to implement this approach, then it is certain that the litigants will really think about the consequences that will be received after the divorce, and in the end the parties will cancel their intention to carry out the divorce. The successful mediation carried out at the Lampung Provincial Religious Court also cannot be separated from the skill of the mediator judge who is smart in analyzing a case from the disputing

⁶¹ *Ibid.*, p. 205

⁶² *Ibid.*, p. 255-261

parties. In this case, in relation to successful mediation, mediator judges who have succeeded in mediating have their own views on the factors that can determine the success of mediation.

4. CONCLUSION

Implementation of mediation in PERMA RI. No. 1 of 2016 concerning Mediation Procedures in Courts that the PERMA mandates that in every examination of civil cases in court peace must be sought and mediation itself is an extension of peace efforts. Mediation will bridge the parties in resolving deadlocked problems in order to reach/get the best solution for them. Furthermore, it was emphasized that religious courts as family courts must not be intended as ordinary courts, thus in resolving family conflicts such as divorce which is a form of family conflict, the mediation stage is carried out as it should in the judiciary in general, this is all carried out at the Jayapura Provincial Religious Court. Mediation in the perspective of Islamic law is known as *ishlâh* where the original concept was as an act to reconcile the parties in a family conflict, it turned out to be less successful / deadlocked, this happened because most of the cases that got to the *ishlah* forum had climaxed, although the process of presenting judges from both parties is carried out. It turned out that the parties to the conflict still insisted on not accepting and paying attention to the reasons for making peace. Meanwhile, mediation in positive law is an effective instrument to overcome the accumulation of cases in the Jayapura Provincial Religious Court and at the same time maximize the function of court institutions in an effort to resolve family conflicts, as mandated in Article 2 of PERMA 2008, which explicitly requires every civil case to go through a mediation process in court. Thus, if the settlement of civil cases (including family conflicts) does not go through the mediation process, the decision of the case is null and void. This is not understood by the litigants, as explained by the mediator judge that; the litigants to take the mediation procedure and the parties to be active in the mediation process. As it turned out, this found it difficult to manifest as desired in the mediation process. The effectiveness of the implementation of PERMA Number 1 of 2016 within the Jayapura Provincial Religious Court when viewed carefully on the implementation of mediation at the Jayapura Provincial Religious Court that the implementation of mediation is quite effective as evidenced by the process of implementing the regulation in accordance with the provisions contained in PERMA number 1 of 2016 concerning mediation procedures in the Court, be it the pre-mediation stage, the implementation of the mediation, until the end of the mediation process. However, the implementation of mediation at the Jayapura Provincial Religious Court still cannot be said to be successful, the reason being that the mediation process in reconciling the litigants in the Jayapura Provincial Religious Court is still relatively low.

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