

Ideal Formulation for Strengthening Mediation in Civil Dispute Resolution in Indonesia

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Abstract. *Mediation as an alternative mechanism for resolving civil disputes in Indonesia still faces various challenges, despite having a strong legal foundation through Supreme Court Regulation (PERMA) Number 1 of 2016. This research analyzes the juridical, cultural, structural, and substantial aspects of civil dispute mediation and formulates an ideal model for strengthening its regulatory and institutional framework. The purpose of this study is to examine the legal basis, identify factors contributing to the low success rate, and propose an ideal formulation to strengthen mediation in civil dispute resolution in Indonesia. This research employs a doctrinal (normative legal) method and relies on secondary data obtained from literature sources. The findings indicate that mediation in civil dispute resolution in Indonesia has had a strong legal foundation since Article 130 of the Herzien Inlandsch Reglement (HIR) and has been reinforced through various Supreme Court regulations, including PERMA Number 1 of 2016. The low success rate of civil mediation in Indonesia is caused by a legal culture that prioritizes litigation, the uneven distribution of certified mediators, and the weak enforcement of sanctions under PERMA Number 1 of 2016 for parties acting in bad faith. The ideal formulation for strengthening mediation in Indonesia emphasizes revising PERMA Number 1 of 2016 to impose clearer and stricter sanctions for bad faith conduct, enhancing mediator capacity and public legal awareness, and optimizing electronic mediation (e-mediation) through PERMA Number 3 of 2022 to achieve an efficient, modern, and just dispute resolution system.*

Keywords: *Alternative; Dispute; Law; Mediation; Resolution.*

1. Introduction

Indonesia affirms itself as a state of law as stated in Article 1 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia (Jawade Hafidz, 2012). The meaning of this provision indicates that all aspects of national life must be carried out based on law, not solely on power. The law serves as a guideline for realizing justice and social order, as well as a tool for protecting citizens' rights (Lismanto and Yos Johan Utama., 2012). The concept of the rule of law in Indonesia is based on the values of Pancasila, which emphasizes a balance between legal certainty, utility, and justice. The implementation of law in Indonesia is not solely oriented towards written regulations but also takes into account the values of humanity, morality, and social justice that exist within society (Usman Heri Purwono, 2024).

Since ancient times, Indonesian society has known and implemented the culture of deliberation and consensus in various aspects of life, both to resolve problems and in determining a leader (Gindo L. Tobing, 2016). This tradition reflects the character of the nation which upholds the values of togetherness and social harmony (Aulia Nur Faradila dan Wahyu Sukma Dewi, 2023). The emergence of differences of opinion or interests that lead to disputes is inevitable, given that humans are interdependent social beings. Differing interests among individuals often give rise to disputes that require wise resolution to achieve balance and justice for all (Hasudungan Sinaga et al., 2024).

Civil disputes in Indonesia are still often resolved through litigation, a lengthy, rigid, and costly process. Court proceedings often drag on for years, placing both psychological and economic burdens on the parties (Sulistya Evinigrum and Dani Harianto, 2023). The length of the legal process often increases tension between the disputing parties and has the potential to damage previously good social relations (Susanti Adi Nugroho, 2017). Because the court adopts a win-lose solution system in resolving cases, there are parties who benefit and those who are disadvantaged (Erina Qurrota Ainy, 2014). This litigation mechanism is considered less flexible because the final outcome rests with the judge, often resulting in decisions that do not align with the wishes or interests of both parties. While the primary goal of the judiciary is to uphold justice, resolving disputes through this route is often considered ineffective and does not always satisfy the parties (Hilda Ananda and Siti Nur Afifah, 2023).

The existence of alternative dispute resolution (ADR) is expected to resolve civil disputes more efficiently and create justice in general. According to Article 1 Number 10 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, ADR is an institution for resolving disputes or differences of opinion through procedures agreed upon by the parties, namely settlement outside the court by means of consultation, negotiation, mediation, conciliation, or expert assessment. The most frequently used ADR method is mediation, which is believed to offer more effective solutions, reduce the duration of the process, and save costs for the disputing parties (Faisal Riza and Rachmad Abduh, 2019).

Mediation efforts are already known in the peace provisions (*dading*) in Article 130 HIR (*Herzien Inlandsch Reglement*) and 154 RBg (*Rechtreglement voor de Buitengewesten*) (Marwan Suliandi and Adrian Bima Putra, 2024). Article 130 of the HIR explains that if both parties appear on the appointed day, the district court, through its chairman, will attempt to reconcile them. Meanwhile, Article 154 of the RBg explains that if both parties appear on the appointed day, the district court, through its chairman, will attempt to reconcile them (Erik Sabti Rahmawati, 2016).

Mediation is a mandatory step in civil court cases, as stipulated in Supreme Court Regulation No. 1 of 2016. The primary objective of this mechanism is to encourage the parties to reach a peaceful agreement before the case is further examined in court, although not all mediation processes end in peace. Based on Supreme Court Regulation No. 1 of 2016, mediation outcomes can be divided into three categories: successful mediation, unsuccessful mediation, and mediation that cannot be implemented. The last two terms often cause confusion because they have different causes and legal consequences (I Komang Wiantara, 2018).

Mediation is declared unsuccessful if the negotiation process has proceeded according to procedure, but the parties fail to reach an agreement due to differences in principle, withdrawal of one party, or the expiration of the mediation period without results. The case will still proceed to the main examination stage by the judge, and only partial agreements will be taken into consideration in the decision. Mediation is categorized as infeasible if there are administrative or procedural obstacles that prevent the negotiation process from starting, for example because the party does not appear after being properly summoned, does not have the authority to act, or the case is a type that is excluded from the obligation of mediation. The legal consequences of this condition are much more serious, because if the absence comes from the defendant, the case can be decided without the defendant's presence (default), whereas if the absence comes from the plaintiff, the lawsuit can be declared dismissed (Dian Maris Rahmah, 2019).

Based on data from the Supreme Court of the Republic of Indonesia in 2023, it was recorded that 41,198 civil cases had gone through the mediation process in the general court environment, with the results of 1,509 cases successfully reaching an agreement, 16,893 cases were declared unsuccessful, and 21,530 cases could not be implemented (Mahkamah Agung Republik Indonesia, 2024). This figure indicates that the success rate of civil case mediation in Indonesia remains relatively low. This is consistent with findings in several courts, such as the East Jakarta District Court, where out of 273 civil cases mediated as of April 2024, only 21 cases, or approximately 7.69 percent, resulted in settlement (Darius Naftali, 2024). The data shows that even though mediation has been expressly regulated through PERMA as a mandatory step before examining the main case, it is still not optimal due to the low success rate in reaching a peaceful agreement.

In Japan, civil mediation is known by two main terms: *wakai* and *chotei*, both of which serve as a means of resolving disputes outside of full litigation. *Wakai* refers to a form of peace or amicable agreement between parties that can be reached at any time during the legal process, either in or out of court. This agreement has the same legal force as a court decision once officially ratified. *Chotei* is formal mediation regulated by the Civil Mediation Act and conducted under court supervision, usually in summary court for minor cases or in district court for more serious cases. The *chotei* process is carried out by a Mediation Committee consisting of a judge as the chief mediator and several mediators or commissioners who are usually professionals such as lawyers, academics, or experts in specific fields. This mechanism is voluntary, except for certain types of disputes, such as rental cases, which are required to undergo mediation before entering the litigation stage. If the parties succeed in reaching an agreement, the results will be stated in a court deed and have permanent, binding legal force, making the *wakai* and *chotei* system in Japan a form of harmony between the values of social peace and legal certainty in resolving civil disputes (Indriati Amarini, 2017).

Several previous studies have also highlighted the challenges of civil mediation in Indonesia. Syelin Gety's research understands the role of mediation in the context of civil procedural law and identifies the roles and positions of parties represented by legal counsel in the mediation process within the courts (Syelin Gety, 2024). Maulana Abdillah's research reveals and analyzes the suitability between PERMA Number 1 of 2016 and the Civil Procedure Law in force in Indonesia, the obstacles in undertaking mediation procedures carried out by the parties in the District Court and the Supreme Court, as well as efforts that must be made to provide justice to the parties in undertaking mediation procedures in the District Court (Maulana Abdillah, 2026). In contrast to previous research, this research analyzes the legal, cultural, structural and substantial aspects of dispute resolution through civil mediation and the ideal formulation of strengthening regulations and institutions.

The purpose of this study is to examine and analyze the legal basis for the application of mediation in resolving civil disputes, the causes of the low success rate of mediation in resolving civil disputes, and the ideal formulation for strengthening mediation in resolving civil disputes in Indonesia.

2. Research Methods

Research on the ideal formulation for strengthening mediation in civil dispute resolution in Indonesia is a type of doctrinal research. Doctrinal or normative legal research methodology focuses on the study of positive law by examining applicable legal principles, rules, and concepts. Normative legal research aims to analyze, interpret, and assess relevant laws and regulations to find clarity in the norms and legal principles that form the basis for resolving the legal problems being studied (Sholahuddin Al-Fatih, 2023).

3. Results and Discussion

3.1. Legal Basis for the Application of Mediation in Civil Dispute Resolution in Indonesia

Mediation in Indonesia, as an alternative form of dispute resolution, has a strong legal basis and is integrated into the judicial system. The provisions of Article 130 HIR and Article 154 RBg provide the historical basis for the implementation of mediation as part of efforts to reconcile the parties before the case is heard in court. Mediation is not merely a voluntary choice, but rather a mandatory stage that must be completed by the parties before the panel of judges proceeds with the main examination of the case, making its existence a vital part of the Indonesian civil procedural law system (Dwi Rezki Sri Astarini. 2021).

As a follow-up to the provisions of Article 130 HIR and Article 154 RBg, Supreme Court Circular Letter (SEMA) Number 1 of 2002 concerning the Empowerment of First Instance Courts to Implement Peace Institutions, became the initial milestone of the Supreme Court's commitment to improving dispute resolution effectively and efficiently (Muhammad Hidayat and Agus Yuspiain, 2025). Followed by Supreme Court Regulation (PERMA) Number 1 of 2008 as an improvement on PERMA Number 2 of 2003 concerning Mediation Procedures in Court, because the implementation of the previous regulation was deemed ineffective in court. The Supreme Court issued this PERMA with the aim of accelerating, simplifying, and reducing costs in resolving disputes, while expanding access for the public to obtain justice. PERMA Number 1 of 2008 is intended to provide certainty and order in the peace process between disputing parties in civil cases. Every judge is required to follow the dispute resolution procedures through mediation in accordance with applicable provisions, and if the judge ignores or does not apply these procedures, the resulting decision is considered null and void as regulated in Article 2 Paragraph (3) of the PERMA (Ivana Gloria Ompusunggu., 2020).

In 2016, the Supreme Court revised PERMA No. 1 of 2008, which was outlined in PERMA No. 1 of 2016 concerning Mediation Procedures in Court. This was done because the implementation of the previous PERMA was deemed ineffective due to numerous obstacles in the field. Based on research from the Indonesian Institute for Conflict Transformation (IICT), the success rate of mediation in 2014 only reached around 4% of the total cases in general and religious courts. Therefore, improvements are needed so that the mediation mechanism can run more optimally and provide real benefits for justice seekers (2021). This regulation emphasizes the importance of mediation as a mandatory step before a dispute proceeds to court. This aims to reduce reliance on more time-consuming and costly litigation. Mediation also supports a philosophy of justice that prioritizes restoring relationships between the disputing parties rather than simply imposing punishment (Sumirahayu Sulaiman et al., 2025).

3.2. Reasons for the Low Success Rate of Mediation in Civil Dispute Resolution in Indonesia

The main obstacles to the implementation of civil mediation in Indonesia can be seen from three aspects: cultural, structural, and substantive. Culturally, the majority of Indonesians still view dispute resolution through the courts or litigation as a prestigious symbol of legal victory. This mindset often leads to mediation being perceived as a form of compromise that can weaken the legal position of certain parties. People tend to seek final and binding legal justification from a judge's decision, rather than a peaceful agreement born of dialogue. This competitive culture in litigation is a major obstacle to the development of a spirit of dispute resolution through deliberation and family.

Structural constraints arise from the limited number of certified mediators available in the courts. The Supreme Court has not yet published official figures for the national total number of certified mediators active in all courts (both civil and religious). While the Supreme Court regulates mediator certification mechanisms and requires the availability of mediators in every court, it does not publicly release individual numbers in its annual reports or publicly available court registry data. The Supreme Court currently publishes a list of accredited non-judge-based mediator certification institutions. As of June 2024, there were at least 26 non-judge-based mediator certification institutions recognized by the Supreme Court, including the Justitia Training Center and the Indonesian Institute for Conflict Transformation (IICT), each established by a Chief Justice's Decree and valid until 2025 (Mahkamah Agung Republik Indonesia).

In terms of the supply of mediators, several training institutions claim to have produced thousands of mediators. Justitia Training Center, one of the Supreme Court-certified institutions, claims to have produced thousands of certified mediators (more than 2,500-3,000 certified mediator alumni) who are spread across various courts (Media Justitia). Although the Supreme Court has mandated that every court provide mediators, their distribution remains uneven, particularly in first-instance courts outside Java. This makes it difficult for many courts to effectively implement mediation due to limited human resources and a lack of competent mediator training. High caseloads also hamper the effectiveness of mediation, as mediator judges often have to divide their time between their judicial duties and the mediation process. This situation demonstrates the need for strengthening institutional support for mediation implementation to ensure more professional and efficient mediation.

Obstacles in the substantial aspect, namely PERMA Number 1 of 2016 does not provide clear regulations regarding sanctions for parties who do not act in good faith during the mediation process. Many parties participate in mediation merely as a procedural formality without a real desire to reach an amicable agreement. The absence of clear sanctions makes the implementation of mediation lose its moral and legal impetus, because there are no consequences for uncooperative parties. Yet the primary spirit of mediation is to encourage active participation of

the parties in resolving disputes peacefully through open dialogue. These three aspects of obstacles are interrelated and collectively become factors that hinder the low success rate of civil case mediation in Indonesia.

3.3. The Ideal Formula for Strengthening Mediation in Civil Dispute Resolution in Indonesia

For mediation to truly function as an effective dispute resolution tool, strategic steps are necessary. One important effort is to revise Supreme Court Regulation No. 1 of 2016 by adding strict provisions regarding sanctions for parties who do not act in good faith during the mediation process. Articles 22 and 23 of Supreme Court Regulation No. 1 of 2016 actually contain provisions regarding sanctions for parties who do not act in good faith during the mediation process, but the provisions are still normative and lack operational clarity, thus not having a deterrent effect (Ajrina Yuka Ardhira and Ghansham Anand, 2018). The provision only requires the mediator to note bad faith in the mediation report and authorizes the examining judge to impose additional costs without clear parameters. This PERMA regulation is needed to make sanctions more stringent and measurable, by establishing indicators of uncooperative behavior, proportional sanction amounts, and strengthening the mediator's authority to enforce mediation discipline. This update is crucial to ensure that mediation is conducted in good faith and truly functions as an effective means of restorative justice, not merely a procedural formality.

Improving the capacity of mediators: Many mediators in court lack adequate training in conflict facilitation techniques or persuasive communication, often resulting in suboptimal mediation. Regular training and national certification programs need to be expanded, involving professional institutions and law schools to produce mediators with integrity, legal insight, and an understanding of the psychological aspects of the parties. Improving the quality of mediators is expected to increase the effectiveness of mediation, as its success depends heavily on the mediator's ability to build trust and encourage fair compromise.

Legal outreach to the public needs to be strengthened so that the paradigm of peaceful resolution through mediation can grow into a new legal culture in Indonesia. Until now, the public still views dispute resolution in court as a symbol of victory and legal justification, resulting in low awareness of voluntary peacemaking (Ridwan Anshary Malawat dan Hadi Tuasikal, 2025). Through ongoing legal education, whether through judicial institutions, universities, or community organizations, public understanding of the benefits of mediation can be enhanced. By fostering legal awareness based on deliberation and peace, mediation will no longer be considered an additional procedure, but rather a primary solution for achieving swift, simple, and low-cost justice, in keeping with the spirit of the national justice system (Ahmad Heru Romadhon et al., 2024).

Another step being developed to strengthen civil dispute resolution is the implementation of a digital mediation system, or e-mediation, which has now been legally established through Supreme Court Regulation No. 3 of 2022

concerning Electronic Mediation in Courts. This regulation serves as the foundation for the modernization of the Indonesian judicial system, implementing mediation through electronic communication as part of an information technology-based judicial process. This regulation also represents a continuation of the transformation of the e-court and e-litigation systems, which previously enabled online case registration, trials, and document submission. With the issuance of Supreme Court Regulation No. 3 of 2022, the Supreme Court seeks to provide legal certainty for the implementation of electronic mediation so that agreements reached through digital media retain legal force and are equal to those of conventional mediation.

The development of e-mediation also depends heavily on the readiness of the court's technological infrastructure and the parties' ability to use the system. Some regional courts still face technical constraints such as limited internet connections, electronic devices, and human resources who are not yet fully familiar with digital systems. Data security and information confidentiality during the mediation process are crucial to prevent information leaks that could harm the parties. The Supreme Court needs to regularly monitor and update the system, as well as provide technical training for mediator judges and court officials to ensure that e-mediation is implemented in accordance with the principles of fairness, efficiency, and accountability.

The novelty of this research lies in its comprehensive approach, combining legal, cultural, structural, and substantive analysis in assessing civil mediation in Indonesia. This research highlights the need to revise Articles 22 and 23 of Supreme Court Regulation No. 1 of 2016 to make sanctions for parties who do not act in good faith more stringent and clear, rather than merely symbolic. It also highlights the need to develop modern law through the implementation of Supreme Court Regulation No. 3 of 2022 concerning electronic mediation (e-mediation). This is expected to strengthen the success of mediation in resolving civil disputes quickly, efficiently, and fairly.

4. Conclusion

The implementation of mediation in civil dispute resolution in Indonesia has a strong legal basis, starting from Article 130 HIR and Article 154 RBg to regulatory updates through PERMA Number 1 of 2016 and PERMA Number 3 of 2022 concerning Electronic Mediation in Courts. However, civil dispute mediation still faces several obstacles stemming from cultural, structural, and substantive factors. Low public awareness of the importance of peaceful resolution, the limited number of certified mediators, and the absence of strict sanctions for parties who do not act in good faith have resulted in low success rates for mediation. Strategic steps are needed in the form of regulatory revisions, increasing mediator capacity, developing an e-mediation system, and establishing a legal culture that positions mediation as the primary solution for fast, simple, and low-cost dispute resolution. By strengthening legal aspects, institutions, and

social awareness, mediation is expected to become an effective instrument in realizing justice and efficiency in the judiciary in Indonesia.

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