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## The Future of Mediation in Religious Courts

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**ABSTRACT** This research is motivated by the fact that many mediation procedures performed in religious courts have failed. This failure was caused by the integration of judges in mediation through PERMA No. 1 of 2016 concerning Procedures for Mediation in Courts. This causes the judge's limited time to mediate and the additional duties and obligations of the judge. So this article will discuss two things, first, how is the conception of integration mediator judges in Indonesia; second, the Separation of Duties and Functions of Judges and mediators in mediation. The approach method used is a normative approach by placing law as a system of norms, be it principles, legal rules, decisions, courts, or the doctrines of experts. The research findings show that judges and mediators are two separate professions, where judges act as executors and mediators as negotiators. If the merger between judges and mediators continues, then judges will continue to have difficulty complying with two laws and two codes of ethics at once, therefore judges may not be involved in mediation anymore for the sake of effective mediation.

**KEYWORDS** Judges, mediators, code of ethics, PERMA No 1 of 2016, Law No 48 of 2009

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### INTRODUCTION

Divorce has always been one of the religious issues that has never dimmed in Indonesia. This is reflected in the data released by the Central Statistics Agency (BPS) regarding the surge in divorce rates in Indonesia in the last three years, where BPS stated that in 2022 there were 516,334 divorce cases. This figure is much higher than the number of divorces that occurred in the previous two years, where in 2021 there were 447,743 divorces, and in 2020 there were 291,677 divorces (Annur, 2023).

The divorce data is inversely proportional to the marriage data released by BPS in the last three years, where in 2019 there were 2 million marriages, then in 2020 there were 1.8 million marriages, and

in 2021 it decreased again to 1.7 million marriages (Annur, 2022).

The surge in divorce rates that occur in Indonesia from year to year has simply illustrated that there is a mismatch between the purpose of a marriage and what is happening in the field. Where the main purpose of marriage when referring to Article 1 of Law No. 1 of 1974 concerning Marriage and Article 3 of KHI, is marriage as a physical and mental bond that expects happiness and an eternal relationship.

Before the occurrence of a divorce, Article 39 paragraph 2 of Law No. 1 of 1974 has already emphasized that divorce can only occur because there are sufficient reasons regarding the impossibility of getting along again as a married couple, and then the divorce process can only be carried

out before a court session, after the Court tries and fails to reconcile the two parties in accordance with what is mandated in Article 36 of the Marriage Law (Indonesia, 1974).

When a couple wants to divorce, the local court is required to first make an effort to reach an amicable settlement, as a form of implementation of Article 36 above, and the peace process carried out is known as the mediation process. This mediation process is a must and an obligation to go through. The necessity of mediation is clearly mandated in paragraph 1 of Article 17 of PERMA No 1 of 2016, which states that on the day of the hearing that has been determined and attended by the Parties, the Case Examining Judge requires the Parties to take Mediation and if the parties do not take mediation, the case will be canceled by law.

Mediation is carried out not only in order to fulfill the litigation process, more than that, mediation is carried out in order to try to obtain peace for the litigants, and according to Garry Goodpaster, mediation is a problem-solving negotiation process, where an impartial outsider works with the disputing parties to help them reach a satisfactory agreement (Goodpaster, 1993).

Mediation in the process involves three parties, including; the first and second parties as litigants, then the third party as an intermediary commonly referred to as a mediator. The mediator who acts as an intermediary has important duties and functions in order to reach a peaceful agreement between the disputing parties, as explained in Article 14 of PERMA No. 1 Year 2016. The mediator can also be understood as a central person who holds control in controlling the mediation process, whether or not a mediation process will also be determined by the quality of the mediator (Kamaluddin, 2022).

In Article 1 paragraph 2 of PERMA No. 1 Year 2016, a mediator is defined as a judge or other party who has a mediator certificate, as a neutral party who assists the Parties in the negotiation process, in order to find various possibilities for resolving

disputes without resorting to deciding. The existence of mediators in controlling the high or low divorce rate that occurs, not only depends on the skills possessed by the mediator, but will also be influenced by the number of mediators available at a judicial institution.

As conveyed by Haeratun in her study entitled *The Effectiveness of Mediation as an Alternative to Settlement of Divorce Cases in Religious Courts*, where it is explained that the limited number of mediators is a factor in the ineffectiveness of mediation carried out, because the number of cases that enter the court, contrasts with the very limited number of mediator judges. So that the mediator judge cannot maximize the mediation process carried out, because the judge concerned must also hear other cases at the same time (Haeratun & Fatahullah, 2022).

The limited number of mediators in a court is an important issue that continues to occur in many courts, and this is one of the inhibiting factors in maximizing the function of mediation itself, in accordance with what was conveyed by Ahmad Bastomi in his study entitled *Settlement of Divorce Disputes Through Mediation in the Sakinah Heritage Program*, it was explained that the limited number of mediators was an obstacle in maximizing the mediation function carried out, coupled with the lack of experienced mediators (Ahmad Bastomi, 2021). This idea arises along with the fact that almost all stages of mediation are carried out by mediator judges.

Like the Religious Courts in West Sumatra, based on data obtained from each of the websites of the Religious Courts in West Sumatra, the number of judges and non-judge mediators available can be seen in the following table:

Table 1. Religious Courts in West Sumatra

No	Name of Religious Court	Number of Judges	Number of Non-Judge Mediators

1.	PA. Batusangkar	7	0
2.	PA. Bukittinggi	9	2
3.	PA. Lubuk Basung	3	0
4.	PA. Lubuk sikaping	4	0
5.	PA. Maninjau	-	-
6.	PA. Muara Labuh	3	0
7.	PA. Padang	11	3
8.	PA. Padang Panjang	4	0
9.	PA. Painan	3	0
10.	PA. Pariaman	6	0
11.	PA. Payakumbuh	4	1
12.	PA. Sawah Lunto	4	0
13.	PA. Sijunjung	4	0
14.	PA. Koto Baru	5	0
15.	PA. Talu	6	0
16.	PA. Solok	4	0
17.	PA. Tanjung Pati	5	0
18.	PA. Pulau Punjung	2	0
<b>Total</b>		<b>84</b>	<b>6</b>

*Sumber: Religious Court website*

*Notes: (-) data not found*

Based on the data above, it is known that there are only three courts that have non-judge mediators, including;

Bukittinggi Religious Court with two non-judge mediators, Padang Religious Court with three non-judge mediators, and Payakumbuh Religious Court with one non-judge mediator.

The lack of availability of non-judge mediators will indirectly impact on the maximization of the mediation process. Although in order to minimize the divorce rate there are many parties who are supposed to be responsible, starting from the judges as stated in Article 130 HIR/154 RBG where it is stated that if on the day of the hearing that has been determined and both parties are present, the court with the mediation of the chairman of the session tries to reconcile them (Papatungan, 2017).

Then the mediator, as mentioned in Article 14 of PERMA No. 1 of 2016 that the mediator must facilitate and encourage the Parties to seek various settlement options that are best for the Parties and work together to reach a settlement, then the parties mentioned in Article 26 of PERMA No. 1 of 2016 include; one or more experts, community leaders, religious leaders, or traditional leaders with the aim of obtaining peace for the litigants.

In principle, mediation in court must be conducted by a certified mediator, obtained after attending the Special Education for Professional Mediators (PKPM) organized by the Supreme Court or an institution accredited by the Supreme Court. On the other hand, PERMA No. 1 of 2016 provides an exception that if there are no certified judges in the court area, then judges within the court can function as mediators. Thus, judges who are not yet certified can also function as mediators.

This study will discuss two issues, first, what is the conception of mediators and judges in Indonesia; second, an analysis of the separation of duties and functions of mediators and judges in mediation. This study is expected to contribute to the future of mediation in Indonesia.

## METHODS

This research is a type of normative legal research, normative legal research is conducted on Law 48 of 2009 concerning Judicial Power and PERMA No. 1 of 2016 concerning Mediation Procedures in Court. The approach method used is a normative approach by placing the law as a building system of norms, be it principles, legal rules, decisions, courts, and doctrines of experts.

Peter Mahmud provides a definition of normative research as research that aims to find legal rules, legal principles, and legal doctrines in order to solve existing legal problems. The result of this research process is an argument, theory or new concept as a prescription for solving a problem (Fajar & Achmad, 2010).

## RESULT

### A. The Concept of Integrating Judge Mediators in Indonesia

#### 1. Mediator

A mediator is defined as a third party involved in the mediation process either individually or in the form of an independent institution that is neutral and impartial. Meanwhile, in Perma No. 1 of 2016 Article 1 point 2, a mediator is defined as a judge or other party who has a mediator certificate as a neutral party who assists the parties in the negotiation process to find various possible dispute resolutions without using a way to decide or impose a settlement (Asnur, 2017).

Then if understood based on Islamic law, the mediator is known as hakam, where the existence of hakam functions as an auxiliary party to resolve conflicts between husband and wife (syiqaq) (Taufiqurohman, 2021). Hakam is presented as a peacemaker to resolve household disputes, so that they can return to living in harmony and peace. So the formulation becomes, if there is a dispute between husband and wife (syiqaq), then an intermediary (hakam) is sent who is tasked with reconciling (ishlah) the disputing parties.

A mediator is sought to be produced from among those who have expertise and professionals, the aim is that the steps taken in resolving the conflict he handles can be carried out in a short time and maintain the professional code of ethics as a mediator. The professionalism and skills of a mediator support and are very important in carrying out their duties as a mediator, especially in relation to the process of implementing mediation. Mediators are also required to understand the roots of the causes of conflict and the map of conflict in the family. This is needed to unravel the conflict so that it can be understood and resolved (Abdul Aziz Dahlan, 1999)

Mediators who act as mediators are required to first have a mediator certificate obtained after attending and passing a mediator certification training held by the Supreme Court or an institution that has obtained accreditation from the Supreme Court (Article 13 Perma 1/2016). Mediators in the position of a blind party must be able to formulate and assist the parties to the dispute to obtain a satisfactory peace agreement.

The mediator does not have the authority to decide the dispute between the two parties, and is certainly different from the authority available to judges and arbitrators. The mediator has various functions, ranging from organizing meetings, leading negotiations, taking notes, making agendas, proposing settlements, maintaining order in the negotiations, to helping the parties develop an agreement (Mulyana, 2019).

In carrying out the mediation process, as a mediator must make every effort to be able to resolve the problems of the parties to the dispute completely, because the optimal measure of the implementation of mediation itself is where the mediator can reconcile the parties to the dispute with a final report to the panel of judges who hear the case, that the mediation carried out has reached an amicable agreement (Saladin, 2017)

Regarding the role of the mediator, Howard Raiffa quoted by Saifullah states that the mediator has two roles, namely the weakest role and the strongest role. The weakest role of the mediator is when the mediator only carries out the following roles: Organizing meetings, neutral discussion leaders, maintaining or maintaining negotiation rules so that debates in the negotiation process take place in a civilized manner, controlling the emotions of the parties, and encouraging parties or negotiation participants who are less able or reluctant to express their views.

The mediator's role is strongest if he/she does the following in the negotiation: preparing and noting the negotiation, formulating and articulating the parties' agreement, helping the parties to realize that the dispute is not a battle to be won, but to be resolved, drafting and proposing various problem-solving options, and helping the parties to analyze the various problem-solving options (Saifullah, 2009).

Fuller, Riskin and Westbrook mentioned 7 mediator functions, namely, as a catalyst, educator, translator resource person, bearer of bad news, agent of reality, and scapegoat (Margono, 2002):

1. As a "catalyst," it implies that the presence of a mediator in the negotiation process is capable of fostering a constructive atmosphere for discussion.
2. As an "educator," it means that one must strive to understand the aspirations, working procedures, and business constraints of the parties involved. Therefore, the mediator must endeavor to engage in the dynamics of differences between the parties.
3. As an "interpreter," it means the mediator must strive to convey and formulate proposals from one party to another through language or expressions that are clear and without diminishing the goals achieved by the proposer.
4. As a "source of information," it means a mediator must leverage available sources of information.

5. As a "bearer of bad news," it means a mediator must be aware that parties in the negotiation process may be emotional. Therefore, the mediator must hold separate meetings with relevant parties to accommodate various proposals.
6. As an "agent of reality," it means a mediator must endeavor to clearly explain to one party that their target is unlikely/impractical to be achieved through negotiation.
7. As a "scapegoat," it means a mediator must be prepared to be blamed, for example, in making agreements resulting from negotiations.

Then D.Y. Witanto in his book mentions that a mediator has several important roles in mediation as follows: Conducting conflict diagnosis, identifying issues and critical interests, setting agendas, facilitating and controlling communication, teaching parties about the process and negotiation skills, assisting parties in gathering important information, resolving issues to achieve options, diagnosing disputes to facilitate issue resolution (D.Y. Witanto, 2012).

PERMA No. 1 of 2016 itself mentions the duties and obligations of a mediator in reconciling the parties as follows::

1. Every Judge, Mediator, Parties, and/or legal representatives are obliged to follow the dispute resolution procedure through Mediation (Article 3 paragraph 1).
2. Judges and Court Officials are prohibited from conducting Mediation outside the Court (Article 11 paragraph 2).
3. (1) Every Mediator must have a Mediator Certificate obtained after attending and passing the Mediator certification training organized by the Supreme Court or an institution accredited by the Supreme Court (2) Based on the decision letter of the chief judge, uncertified Judges can perform the function of Mediator if there are no certified Mediators available or if there is a

shortage of certified Mediators (Article 13).

4. Mediators are tasked with facilitating and encouraging the Parties to: explore and uncover the interests of the Parties, seek various best settlement options for the Parties, and collaborate to reach a resolution (Article 14 paragraph j).
5. Every Mediator, in carrying out their function, must adhere to the Mediator's Code of Conduct (Article 15).

In addition to PERMA No. 1 of 2016 on Mediation Procedures in Court, which serves as the basis for guidelines for a mediator in conducting mediation, there is a mediator's code of ethics as another guideline that must be adhered to by the mediator as their behavioral compass. As a behavioral guide for the mediator, through the mediator's code of ethics established by the National Mediation Center.

Based on the mediator's code of ethics, the mediator has responsibilities, namely; first, to assist and encourage the parties to communicate and cooperate to achieve a resolution in good faith, second, to help the parties identify and communicate their issues, interests, and expectations to each other, third, to develop and consider various alternative forms of resolution, fourth, to assess and provide consideration of possible risks, fifth, to assist the parties in resolving their disputes voluntarily, sixth, to remain impartial and maintain confidentiality by safeguarding mediation notes, records, and files, seventh, the mediator is also obliged to submit a written report to the National Mediation Center regarding the names of the parties and the success of the mediation within two weeks after the mediation process ends.

## 2. Judge

Normatively, the status and position of a judge as a state official have been stipulated through several legal regulations, such as Law No. 48 of 2009 concerning Judicial Authority and Law No. 5 of 2014 concerning State Civil Apparatus. In the Judicial Authority Law, there are two articles that mention the status and position

of judges as state officials, namely Article 19 and Article 31 paragraph (1). In Article 19, judges and constitutional judges are state officials exercising judicial authority as regulated by law. Then in Article 31 paragraph (1) which states that judges of courts under the Supreme Court are state officials exercising judicial authority within the judicial bodies under the Supreme Court (Novianto Murti Hartoro, Monika Suharyati, Denico Doly, 2017).

Law Number 7 of 1989 concerning Religious Courts in Article 2 explains that Religious Courts are one of the implementers of judicial authority for Muslim people seeking justice regarding certain civil cases regulated in this Law. Furthermore, in Article 3, it explains that Judicial Authority within the Religious Courts is carried out by: a. Religious Courts; b. Religious High Courts.

In Article 1 of Law No. 48 of 2009 concerning Judicial Authority, a judge is defined as a judge in the Supreme Court and judges in the subordinate courts within the framework of general courts, religious courts, military courts, administrative courts, and judges in special courts within these judicial frameworks. The term "judge" comes from the word "hakama-yahkumu-hakimun," which has the same meaning as "qadi" derived from the word "qada-yaqdi-qadin," meaning to adjudicate. According to the Kamus Besar Bahasa Indonesia (KBBI), a judge is a wise person or someone who decides cases and determines them (Muhammad Salam Madkur, 1979, hal. 11)

Judges, under the guise of judicial independence, may act arbitrarily in delivering verdicts, while every judge's decision must be deemed correct and respected (*res judicata pro veritate habetur*) (Sunarto, 2016, hal. 252). Many literatures state that the main duty of a judge is to receive, examine, adjudicate, and resolve every case brought before them. In adjudicating civil cases, judges are obligated to uphold the law and justice (Mertokusumo, 2009).

Therefore, in carrying out all their responsibilities, judges are required to provide legal certainty for all cases brought to the court, whether regulated by legislation or not. Judges, as state officials appointed by the head of state with the duty of upholding law and justice, are expected to resolve the issues before them in accordance with applicable laws (Hasan Bisri, 2001). Because judges are the main component of the judiciary, they are even considered synonymous with the court itself.

According to Law No. 48 of 2009 concerning Judicial Authority, it is stated that the duties of a judge include:

1. In carrying out their duties and functions, judges are required to maintain the independence of the judiciary (Article 3).
2. Judges must adjudicate according to the law without discrimination (Article 4 paragraph 1).
3. (1) Judges are required to explore, follow, and understand the legal values and sense of justice prevailing in society. (2) Judges must have integrity and an unblemished character, be honest, fair, professional, and experienced in the field of law. (3) Judges must adhere to the Code of Ethics and Guidelines for Judicial Conduct (Article 5).
4. When considering the severity of punishment, judges must take into account the good and bad nature of the defendant (Article 8 paragraph 2).
5. (1) Courts are prohibited from refusing to examine, adjudicate, and decide a case on the grounds that the law does not exist or is unclear, but are required to examine and adjudicate it. (2) The provision referred to in paragraph (1) does not preclude efforts to settle civil cases amicably (Article 10).
6. A judge must recuse themselves from a trial if they are related by blood or marriage up to the third degree, or are married even if divorced, to the chairperson, one of the member judges,

prosecutor, lawyer, or court clerk (Article 17 paragraph 3).

7. The chairperson of the panel, member judges, prosecutor, or court clerk must recuse themselves from a trial if they are related by blood or marriage up to the third degree, or are married even if divorced, to the party being tried or the lawyer (Article 17 paragraph 4).
8. A judge or court clerk must recuse themselves from a trial if they have a direct or indirect interest in the case being examined, whether at their own discretion or at the request of the party involved (Article 17 paragraph 5).
9. Judges as referred to in paragraph (1) cannot hold dual positions, unless otherwise determined by law (Article 31 paragraph 2).

In examining, adjudicating, and deciding a case, judges are protected and endowed with independent and unrestricted authority by the state from any intervention by any party and in any form, as a guarantee of the judge's impartiality except towards the law and justice for the realization of the rule of law in the Republic of Indonesia. Therefore, in realizing legal certainty and order for society, judges are obliged to explore, follow, and understand the legal values and sense of justice prevailing in society.

In addition to Law No. 48 of 2009 concerning judicial authority, which regulates the rights and obligations of a judge, there are also ethical codes for judges and guidelines for judicial conduct that must be adhered to by judges, in accordance with the mandate of Article 5 of Law No. 48 of 2009, where the ethical code serves as a reference for the behavior of a judge and also ensures the moral quality of the individual's profession in the eyes of society. And in the professional context, judges are required to maintain high integrity, honesty, and professionalism in carrying out judicial duties and in daily life.

The basic principles of the Code of Ethics and Guidelines for Judicial Conduct are implemented through several



behavioral rules, including: (1) Behaving justly, where justice means placing things in their rightful place and giving what is due, based on the principle that all individuals are equal before the law. Therefore, the most fundamental demand of justice is to provide equal treatment and opportunities to everyone. Thus, someone who carries out duties or professions in the judicial field bears the responsibility of upholding fair and just laws by always acting justly without discrimination.

(2) Behaving honestly, honesty means courageously stating that what is right is right and what is wrong is wrong. Honesty fosters the development of strong individuals and raises awareness of what is just and unjust. Thus, it will result in a personal stance that is impartial to everyone both in and out of court. (3) Being independent means being able to act alone without the assistance of others, free from any interference or influence. Independence encourages the formation of resilient judicial behavior, adhering firmly to principles and convictions of truth according to moral demands and applicable laws.

(4) Having high integrity entails having an intact personality and character, being authoritative, honest, and unwavering. High integrity essentially manifests in a steadfast loyalty and adherence to values or norms in carrying out duties. High integrity will encourage the development of individuals who courageously reject temptation and all forms of intervention, prioritizing the demands of conscience to uphold truth and justice and always striving to perform duties in the best possible manner to achieve the best goals.

(5) Being responsible means being willing to carry out to the best of one's ability all tasks and duties within one's authority and having the courage to bear all consequences of performing those tasks and duties. (6) Acting professionally means having a moral attitude driven by a commitment to performing one's chosen work with dedication, supported by expertise based on knowledge, skills, and

broad insights. Professionalism encourages the formation of individuals who always maintain and uphold the quality of their work, striving to improve knowledge and performance, thus achieving the highest quality of work results, effectively and efficiently.

One important aspect highlighted by the community in trusting judges is the behavior of the judges themselves, both in carrying out their judicial duties and in their daily lives. In line with the duties and authority of a judge, judges are required to always uphold and enforce honor, dignity, ethics, and behavior. Based on their authority and duties as the main actors in the judiciary function, the attitude of judges symbolized by the kartika, cakra, candra, sari, and tirta reflects the behavior of judges that must always be implemented and realized by all judges in attitudes and behaviors based on the principles of the One Almighty God, fairness, wisdom, and authority (Wahyuni, 2023).

The obligation of judges to maintain honor, dignity, and behavior is stated in legislation and the principles of the code of ethics and guidelines for judicial conduct, and must be implemented concretely and consistently both in carrying out their judicial duties and outside their judicial duties, as it is closely related to efforts to uphold the law and justice. The honor that is the glory or reputation of judges must always be guarded and maintained to the best of their ability by judges in carrying out the functions of the judiciary.

## **B. Separation of Duties and Functions of Mediators from Judges in Mediation**

The integration of mediation in Supreme Court Regulation No. 1 of 2019 concerning Mediation Procedures in Courts is a step taken by the Supreme Court to realize the greatness of the Indonesian judiciary. One of them is through mediation as an instrument to enhance public access to justice. The implementation of the principle of providing simple, fast, and cost-effective judicial services through peaceful dispute

resolution that is appropriate, effective, and achieves satisfactory and fair outcomes.

The institutionalization of the mediation process is expected to broaden access for parties to obtain a sense of justice. Where justice is not only achieved through litigation processes but also through consensus-building processes by the parties, providing an opportunity to collectively seek and find final outcomes. Another goal is to strengthen and maximize the functions of the judiciary itself in dispute resolution (Dessy Sunarsi, Yuherman, 2018).

Garry Goodpaster also emphasizes that mediation is a negotiation process, where a third party engages in dialogue with the disputing parties and tries to find possible resolutions to the dispute. The presence of the third party is intended to assist the disputing parties in finding a solution, thereby leading to an agreement or settlement that satisfies both parties (Goodpaster, 1993).

Then, Takdir Rahmadi in his book argues that mediation is a dispute resolution process between two or more parties through negotiation or consensus with the assistance of a neutral party who does not have decision-making authority. This neutral party is called a mediator, whose task is to provide procedural and substantive assistance. Thus, from this definition or understanding of mediation, the essential elements of mediation can be identified (Takdir Rahmadi, 2017), namely; a method of dispute resolution through negotiation based on a consensus approach or agreement among the parties, and the mediator does not have decision-making authority but only assists the disputing parties.

The separation of Mediation from the Litigation process for simplicity provides an illustration that judges and mediators are in different places and positions, as judges are within the litigation process, while mediators are outside the litigation process. A judge assigned to be a mediator can be seen as an additional workload because the

basic task of a judge is to render judgments, and the integration of judges as mediators in Supreme Court Regulation No. 1 of 2019 has proven that the workload of judges has increased.

Judges are not permitted to establish relationships with parties involved in litigation, either directly or indirectly, which contrasts sharply with mediators who must meet face-to-face and communicate as effectively as possible with the litigating parties to obtain as much information as possible. Even in the mediation process itself, a mediator is allowed to meet with one party without the presence of the other party, to explore the respective interests of the litigating parties in order to formulate the best way out.

The reason for separating judges from practicing mediation can be seen from several factors as follows: First, mediator certification. A mediator certificate is a document issued by the Supreme Court or an institution accredited by the Supreme Court, stating that someone has completed and passed Mediation certification training. The mediator certificate, which is a mandatory requirement for a mediator to conduct mediation in court, serves as evidence of someone's eligibility to work as a mediator. This requirement is stipulated in Article 13, which states that Every Mediator must have a Mediator Certificate obtained after completing and passing the Mediator certification training organized by the Supreme Court or an institution accredited by the Supreme Court.

Certified mediators have been equipped with knowledge and skills in resolving disputes. In their education and training, mediators are trained on how to map out issues, manage communication with the parties involved, and accommodate the best solutions to the conflicts experienced by the parties. Through this training, mediators are equipped with mediation techniques to make the mediations they conduct more systematic, especially in exploring the interests and needs of the litigating parties. Resolving cases based on these two rights, not based on positions. This way, interests

and needs can be easily captured and shifted to find win-win solutions.

Mediator certification/training also impacts how mediators handle cases. Rika Saraswati explains that what is meant by interests are what the parties actually want, and needs are what the parties should have. Thus, the mediation process is based on these two aspects, not solely based on positions. The meaning of a position is what is 'said' is what is 'wanted' (what we say that we want). A position is also interpreted as a conscious choice made by one party and opposed to the choice made by the other party. If this happens, it is impossible to fulfill, because by fulfilling one, it means negating the other (Saraswati et al., 2020).

On the other hand, the presence of judges in the mediation process at the Court is exempted, where judges are not required to obtain a mediator certification. This explains that without mediation skills, judges can serve as a mediator, and this will clearly affect the outcome of the mediation, as judges and mediators are two conflicting professions.

Judges, whose main task is to adjudicate cases by providing fair judgments, contradict the role of a mediator, who assists disputing parties in reconciling through negotiation without the authority to make decisions. The assumption is that the third party/mediator should be able to change the strength and social dynamics of conflict relationships by influencing the behavior of the parties by providing more effective knowledge or information. Thus, mediators can help parties resolve disputed issues (Salamah, 2013).

Second, the code of ethics. Professional ethics or professional code of ethics serves as a reference for individual or company behavior and is considered the standard behavior followed by participants in professional activities. Professionals possess specialized knowledge and skills, and have specifically formulated a code of ethics to govern the use of such knowledge and skills, especially regarding ethical issues.

In the code of ethics for judges and the guidelines for judicial conduct, a judge is required to possess certain characteristics. One key point in the code of ethics for judges and the guidelines for judicial conduct states that a judge has the duty and obligation to make decisions based on conscience. In contrast, in the guidelines for mediator conduct, a mediator is described as not having the authority to make decisions, as the mediator is a negotiator rather than an executor.

Furthermore, a mediator must be able to listen to the issues of the parties involved by demonstrating enthusiasm and showing concern for the problems faced by the parties without taking sides or supporting the opinions of either party. With good listening skills, it is hoped that the disputing parties will be willing to open up to the mediator and develop trust that the mediator is a solution for them to resolve the dispute. In addition to possessing the aforementioned skills, mediators must also have skills in managing conflicts (Rizky & Muchamad Coirun Nizar, 2021).

## Conclusion

Based on the above discussion, it can be concluded that in order to achieve the desired mediation as outlined in PERMA No. 1 of 2019 regarding Mediation Procedures in Court as a peaceful, accurate, and effective dispute resolution, it is appropriate for judges not to be involved in the mediation process in court.

Judges, whose main duty is to adjudicate cases by delivering fair judgments, can perform their role optimally. Meanwhile, mediators, whose main duty is to assist disputing parties in reaching a settlement through negotiation, can also function effectively. It would be very difficult for a judge to comply with and adhere to two laws and two codes of ethics simultaneously

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## **B. Regulations**

- PERMA Number 1 of 2016 concerning Mediation Procedures in Courts.
- Law Number 1 of 1974 concerning Marriage.
- Law Number 5 of 2014 concerning State Civil Apparatus.
- Law Number 7 of 1989 concerning Religious Courts.
- Law Number 48 of 2009 concerning Judicial Authority.