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The Legal Validity of Mediation in Marriage Annulment Cases Without the Respondent's Presence Under Supreme Court Regulation No. 1 of 2016

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Abstract:

This study examines the legal validity of mediation in marriage annulment cases conducted without the respondent's presence, focusing on its conformity with the provisions of Supreme Court Regulation (PERMA) No. 1 of 2016 on Court-Annexed Mediation Procedures. Employing a normative juridical research method with statutory and conceptual approaches, the analysis draws upon primary legal sources, including PERMA No. 1 of 2016, Law No. 1 of 1974 on Marriage, and the Compilation of Islamic Law (KHI), as well as relevant religious court decisions. Secondary sources consist of scholarly books, legal literature, and journal articles addressing mediation in marriage annulment and divorce cases. The findings indicate that, although marriage annulment proceedings are exempt from mandatory mediation, some religious courts still conduct mediation as a peace-seeking effort. However, declaring mediation successful in the absence of the respondent contravenes the fundamental principle of active party participation, undermines legal certainty, and potentially diminishes the protection of the rights of absent parties. The study concludes that mediation in annulment cases without the respondent's presence lacks strong legal validity under PERMA No. 1 of 2016, and may generate procedural injustice and uncertainty in religious court practice. It recommends stricter judicial adherence to mediation procedures, particularly regarding the mandatory presence requirement when mediation is undertaken, even in exempt cases.

Keywords: Mediation, Marriage Annulment, Legal Certainty, Justice.

Introduction

Marriage holds a central position in the legal, social, and religious life of Indonesian society. As a sacred and binding union between a man and a woman, marriage is not only intended to establish a happy and lasting family but also to provide the moral and legal foundation for the birth of legitimate offspring. This principle is affirmed in Article 1 of Law No. 1 of 1974 on Marriage and further elaborated in Article 2 of the Compilation of Islamic Law (KHI), which describes marriage as a *mitsaaqan ghalidzan*—a solemn covenant to obey the commands of God.[1]

In practice, however, not all marriages endure as intended by the lawmakers. Certain circumstances may give rise to grounds for annulment, particularly when essential requirements or pillars of marriage are not met, or when fraud is involved. Article 22 of Law No. 1 of 1974 and Article 72(2) of the KHI stipulate that a marriage may be annulled if it fails to meet the legal conditions or if one party engaged in deception, such as identity falsification. Such disputes frequently appear before the Religious Courts, and one mechanism often considered before examining the merits of the case is mediation. Under Supreme Court Regulation (PERMA) No. 1 of 2016 on Mediation Procedures in Court, the presence of both parties is a critical requirement for mediation to be considered valid and for any agreement to have binding legal effect[2]. Article 4(2) and Article 6 of PERMA No. 1 of 2016 specify that certain types of cases, including marriage annulment proceedings, are exempt from the mandatory mediation requirement. Nevertheless, if mediation is voluntarily undertaken in such cases, the attendance of both parties remains a non-negotiable element of procedural compliance.

Problems arise when mediation in marriage annulment cases is declared "successful" despite the absence of the respondent. This phenomenon raises questions regarding the legal validity of such mediation outcomes, as the absence of one party contradicts the fundamental principle of mediation—direct dialogue and mutual deliberation between the disputing parties. This situation creates tensions in the application of PERMA No. 1 of 2016 and potentially undermines two fundamental principles of the justice system: legal certainty and fairness. Legal certainty demands congruence between written law and its application, while fairness requires that both parties have an equal opportunity to present their positions. Recognizing mediation without the respondent's presence as valid risks procedural ambiguity and may erode the rights of the absent party. Against this backdrop, this research is important in order to critically examine the validity of mediation in marriage annulment cases conducted without the respondent's presence under PERMA No. 1 of 2016, as well as its implications for legal certainty and justice in the Indonesian Religious Court system.

Previous studies provide a foundation but have not fully addressed this specific issue. Mugi Astuti's research on mediation in marriage annulment cases found that while mediation is not compulsory, judges often still conduct it as a peace-seeking effort, with

[1] Dengan Rakhmat et al., *UU No. 1 Tahun 1974 Tentang Perkawinan*, 1974, 1–15.
[2] Lilis Handayani, 'Prosedur Perceraian Ditinjau Berdasarkan Hukum Fiqh Dan Hukum Positif', *Journal of Legal and Cultural Analytics* 1, no. 1 (2022): 1–18, https://doi.org/10.55927/jlca.v1i1.897.

its effectiveness highly dependent on the attendance of both parties[3]. Destira Budi Nugraheni emphasized the importance of party attendance for achieving fair and binding agreements but did not focus on the legality of mediation in the respondent's absence[4]. Dermina Dalimunthe and Zulfan Efendi Hasibuan analyzed mediation in divorce cases attended by only one party, concluding that such mediation is ineffective and contrary to core mediation principles—findings that are relevant by analogy to annulment proceedings[5].

Despite the existence of previous studies examining mediation in marriage annulment and divorce proceedings, there remains a notable research gap. Earlier works have primarily discussed the procedural framework of mediation in general terms or have focused on the benefits and challenges of mediation in family disputes, without offering a targeted analysis of the legal validity of mediation outcomes in the specific scenario where the respondent is absent. Even in studies addressing one-sided mediation in divorce cases, the legal implications have been treated descriptively rather than through a normative doctrinal assessment anchored in the provisions of PERMA No. 1 of 2016. Consequently, there is a lack of comprehensive legal scholarship that systematically evaluates whether mediation in annulment cases—when conducted without the respondent's presence—can be considered valid under Indonesian positive law, and how such practice aligns with the principles of legal certainty and fairness.

The novelty of this research lies in its explicit focus on bridging that gap by providing a detailed normative legal analysis of mediation in marriage annulment cases without respondent attendance, examined through both statutory and conceptual approaches. This study does not merely describe the phenomenon but critically tests it against the mandatory procedural elements established in PERMA No. 1 of 2016, while also integrating relevant principles from Islamic family law. By combining doctrinal legal interpretation with cross-references to judicial practice, the research offers an original contribution to the discourse on procedural integrity in religious court mediation and proposes grounded recommendations for harmonizing judicial practice with the governing legal framework..

Method

This study adopts a normative juridical research method aimed at examining the legal validity of mediation in marriage annulment cases conducted without the respondent's presence. The choice of this method is grounded in the research objective, which is to provide a doctrinal and literature-based analysis within the framework of Indonesian positive law, rather than to explore empirical patterns of practice in the courts. The normative juridical approach enables the researcher to critically interpret statutory

[3] Mugi Astuti, 'Mediasi dalam perkara pembatalan perkawinan' (other, UIN Sunan Gunung Djati Bandung, 2021), https://digilib.uinsgd.ac.id/46621/.
[4] Destri Budi Nugraheni, *Urgensi Penggunaan Mediasi Dalam Penyelesaian Perkara Pembatalan Perkawinan Di Pengadilan Agama | Al-Manahij: Jurnal Kajian Hukum Islam*, 4 December 2020, https://ejournal.uinsaizu.ac.id/index.php/almanahij/article/view/4177.
[5] Dermina Dalimunthe and Zulfan Efendi Hasibuan, 'Implementasi PERMA No. 01 Tahun 2016 Dalam Proses Mediasi Perkara Perceraian Di Pengadilan Agama Padangsidimpuan', *I'tiqadiah: Jurnal Hukum Dan Ilmu-Ilmu Kesyariahan* 1, no. 3 (2024): 251–69, https://doi.org/10.63424/itiqadiah.v1i3.124.

provisions and legal principles while situating them in the broader context of procedural justice and family law.

Two complementary approaches are employed in this study. The first is the statutory approach (statute approach), which involves the systematic examination of primary legal sources, including Supreme Court Regulation (PERMA) No. 1 of 2016 on Court-Annexed Mediation Procedures, Law No. 1 of 1974 on Marriage, and the Compilation of Islamic Law (Kompilasi Hukum Islam or KHI). Other relevant legislative instruments, such as Law No. 48 of 2009 on Judicial Power and Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution, are also considered where applicable. The second is the conceptual approach (conceptual approach), which is used to analyze foundational legal concepts such as legal certainty, fairness, and participatory justice, alongside relevant Islamic legal principles, particularly islah (reconciliation) and tahkim (arbitration), that underpin the normative framework of mediation.

The legal materials examined in this study are categorized into three types. Primary legal materials consist of statutory provisions, the relevant PERMA, the KHI, judicial guidelines—especially the Supreme Court's Buku II Guidelines on the Administration of Justice—and selected Religious Court decisions, including case No. 3887/Pdt.G/2017/PA.Cmi. Secondary legal materials include scholarly books, journal articles, and prior studies that discuss mediation, annulment proceedings, and procedural compliance within the Religious Courts. Tertiary legal materials, such as legal dictionaries and encyclopedias, are consulted to clarify technical terminology and provide definitional precision.

Data collection is conducted entirely through library research. This process involves identifying, classifying, and reviewing statutory texts, court rulings, and scholarly commentaries relevant to the research question. The analysis proceeds through several stages: first, an inventory of applicable legal norms is compiled; second, these norms are compared with documented judicial practices; third, a doctrinal assessment is carried out to determine whether mediation without the respondent's presence fulfills the formal and substantive requirements established by PERMA No. 1 of 2016; and finally, the results of statutory interpretation and conceptual analysis are synthesized to reach conclusions about the legal validity of such mediation and its implications for legal certainty and justice. Through this structured methodology, the research aims to deliver a comprehensive, literature-based legal analysis that not only clarifies the normative status of mediation in these cases but also offers recommendations to promote consistency in judicial application.

Discussion

Regulation of Mediation in Marriage Annulment Cases under Indonesian Positive Law

Mediation is formally recognized as one of the dispute resolution mechanisms within the Indonesian legal system, including in the jurisdiction of the Religious Courts[6]. Its procedural framework is comprehensively governed by Supreme Court Regulation

[6] Muhammad Afiful Jauhani, 'Kepastian Hukum Penyelesaian Sengketa Medis Melalui Mediasi Di Luar', *Welfare State* 1, no. April (2022): 29–58.

(PERMA) No. 1 of 2016 on Court-Annexed Mediation Procedures. In the judicial context, mediation is positioned as a non-litigation effort to be undertaken prior to the examination of the merits of the case, with the primary purpose of encouraging the parties to reach a peaceful settlement. This arrangement reflects the spirit of resolving disputes in a manner that is fast, simple, and low-cost, as mandated by Article 2(4) of Law No. 48 of 2009 on Judicial Power. In civil procedural law, mediation has become an integral stage of court proceedings, where judges are obliged to seek reconciliation between the parties before proceeding to substantive adjudication.

The regulation of mediation in Indonesia has undergone significant development since the enactment of PERMA No. 1 of 2008, which was later revised through PERMA No. 1 of 2016. The revision aimed to strengthen the effectiveness of mediation and address weaknesses observed in its implementation. Article 4(2) of PERMA No. 1 of 2016 provides that not all types of cases are subject to mandatory mediation. The exceptions include voluntary or uncontested cases and certain matters concerning legal status, such as *isbat nikah* (marriage confirmation), marriage annulment, and cases where one of the parties does not attend court hearings. Nevertheless, in practice, many judges continue to attempt mediation in marriage annulment cases, motivated by the view that an amicable settlement would be more beneficial to the parties and would reduce the court's caseload. Marriage annulment under Law No. 1 of 1974 (Article 22) means that a marriage is considered void from the beginning (ex tunc). Its legal implications include the absence of marital rights and obligations, although children born from such marriages remain legitimate if conducted in good faith (Article 28 of the Marriage Law).

In annulment proceedings, mediation occupies a distinctive position. Article 22 of Law No. 1 of 1974 stipulates that a marriage may be annulled if it does not fulfill the legal requirements for its validity. The Compilation of Islamic Law (KHI) further details the grounds for annulment, including fraud or mistaken identity, as stated in Article 72(2) KHI. Disputes over annulment are typically determinative in nature, meaning that judges decide based on whether the legal grounds for annulment have been proven. Therefore, mediation is often not seen as essential, since the core dispute concerns the legal validity of the marriage contract rather than merely relational or emotional matters.

Even so, PERMA No. 1 of 2016 allows judges some discretion to conduct mediation in cases exempt from the mandatory requirement. This discretion is typically exercised if the judge believes there is potential for an amicable settlement or voluntary withdrawal of the claim by the petitioner. However, such discretion is vulnerable to controversy, especially when mediation is carried out without fulfilling the formal and substantive conditions set by the PERMA, such as the obligation to ensure the direct attendance of both parties. Article 6 of PERMA No. 1 of 2016 expressly requires the parties to be physically present during mediation sessions, unless represented by a legal counsel with full authority and a valid reason for absence.

The requirement of physical attendance by both parties has a strong philosophical foundation. Direct presence facilitates honest and open two-way communication, fostering a mutual understanding that can lead to a balanced resolution of the dispute[7].

[7] Sekar Wiji Rahayu Nisa P. Basti, Sanggup L Agustian, 'HUKUM WARIS DAN KEBUTUHAN BISNIS DALAM WARIS', *Jurnal Aktual Justice* 6, no. 2 (2021): 211–29.

Without one party's attendance, mediation risks becoming a mere administrative formality that fails to fulfill its substantive purpose of accommodating the interests of both parties equally. Thus, even in cases such as marriage annulment—where mediation is not mandatory—if it is nonetheless conducted, the attendance requirement should be respected to ensure the validity and credibility of the mediation outcome.

Beyond PERMA No. 1 of 2016, guidance on mediation in annulment cases can also be found in the Supreme Court's Buku II Guidelines on the Administration of Justice. These guidelines confirm that legal status cases, such as marriage annulment, are generally not subject to mediation. However, if the parties wish to pursue a peaceful settlement, the judge may facilitate mediation, provided that the process adheres to applicable procedural rules. This reinforces the position that mediation in annulment cases is optional but valid only if it meets all formal requirements, including the attendance of both parties.

In addition, Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution provides a general legal basis for mediation as a form of Alternative Dispute Resolution (ADR)[8]. While the statute is oriented primarily toward commercial and general civil disputes, the principles it enshrines—such as voluntariness, equality of the parties, and confidentiality—are equally applicable to family mediation in the Religious Courts. These principles inherently require the active participation of all disputing parties, making the absence of the respondent fundamentally inconsistent with the very essence of mediation.

From the perspective of Islamic law, mediation is aligned with the Qur'anic injunction to reconcile those in dispute, as expressed in Surah Al-Hujurat, verse 10: "The believers are but brothers, so make peace between your brothers, and fear Allah that you may receive mercy." This verse underscores that reconciliation is not only a legal mechanism but also a moral and spiritual act of social worship[9]. Nevertheless, such spiritual motivation cannot be invoked to disregard procedural rules under positive law, since these rules are designed to safeguard the rights of all parties.

The intersection of positive law and Islamic law in regulating mediation in annulment cases reflects an attempt to harmonize formal legal certainty with ethical and moral imperatives. Judges in the Religious Courts often face the dilemma of whether to strictly enforce procedural requirements or to allow flexibility in the interest of perceived benefit (maslahah) for the parties. This dilemma frequently leads to mediation being conducted in annulment cases even when it is not mandatory.

A relevant example is found in the decision of the Religious Court of Cimahi, case No. 3887/Pdt.G/2017/PA.Cmi., where mediation was conducted despite the respondent's absence. In the Decision, the Cimahi Religious Court declared mediation 'successful' because the petitioner (KUA) withdrew the annulment claim. The judges based their reasoning on considerations of utility (maslahah), despite the absence of the respondent. This practice is problematic as it contradicts Article 6 of Supreme Court Regulation No.

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[8] Amanda Tikha Santriati, 'Penyelesaian Sengketa Perbankan Syariah Melalui Badan Arbitrase Syariah Nasional', *El-Wasathiya: Jurnal Studi Agama* 9, no. 1 (2021): h. 38-54.

[9] Muhammad Subki, Fitrah Sugiarto, Sumarlin, 'Penafsiran QS. Al-Hujurat [49] Ayat 13 Tentang Kesetaraan Gender Dalam Al-Qur'an Menurut Quraish Shihab Dan Sayyid Quthb', *Al Furqan: Jurnal Ilmu Al Quran Dan Tafsir* 4, no. 1 (2021): 12–28, https://doi.org/10.58518/alfurqon.v4i1.634.

1 of 2016, which requires the presence of both parties. The case illustrates that in practice, some courts treat mediation as an administrative step to facilitate claim withdrawal, without considering whether the attendance requirement has been met. From a procedural standpoint, however, mediation outcomes that fail to meet formal requirements risk being legally invalid and could form the basis for future legal challenges.

In conclusion, the regulation of mediation in marriage annulment cases under Indonesian positive law presents a complex picture. On the one hand, PERMA No. 1 of 2016 and the Supreme Court guidelines exempt such cases from mandatory mediation, making the process optional. On the other hand, if mediation is conducted, all formal requirements—particularly the attendance of both parties—must be observed to ensure its validity. This reflects a broader effort in Indonesian law to balance the flexibility of dispute resolution with the procedural certainty that underpins judicial legitimacy. In this context, mediation is not merely a procedural formality but an embodiment of fundamental legal principles, namely justice, legal certainty, and utility.

Analysis of the Validity of Mediation Without the Respondent's Presence in Marriage Annulment Cases

The validity of a mediation process cannot be assessed solely on the basis of the existence of a settlement agreement; it must also be evaluated in light of its compliance with the governing procedural rules. Under Supreme Court Regulation (PERMA) No. 1 of 2016 on Court-Annexed Mediation Procedures, a valid mediation must satisfy both formal and substantive elements. These include the mandatory attendance of both parties, the active role of the mediator, the voluntary nature of the agreement, and the formal documentation of the results in a written settlement signed by the parties[10]. Article 6(1) of the PERMA explicitly stipulates that "the parties are obliged to attend the mediation session in person, with or without legal counsel," thereby making personal attendance a fundamental requirement for procedural validity.

In marriage annulment cases, the presence of the respondent carries particular significance because such disputes typically involve highly personal issues, such as the legal status of the marriage, the validity of the marriage contract, or allegations of identity fraud. These matters require direct clarification from the parties themselves so that the mediator can facilitate genuine, open communication. If the respondent is absent, the mediator is limited to hearing only one side of the dispute, compromising neutrality and potentially introducing bias into the process. Moreover, the absence of the respondent can give rise to an inference of bad faith, which, under procedural law, may justify proceeding to trial without a substantive mediation effort.

The specific case examined in this study is the Religious Court of Cimahi decision in case No. 3887/Pdt.G/2017/PA.Cmi., where mediation was declared "successful" despite the respondent's absence. The "success" in this instance was interpreted as the withdrawal of the annulment petition by the petitioner—the Office of Religious Affairs (KUA)—which had initially filed the case due to suspected identity falsification by the male party. This practice is problematic because, although PERMA No. 1 of 2016 exempts annulment cases from mandatory mediation, when mediation is nevertheless

[10] Mahkamah Agung Republik Indonesia, 'Sistem Informasi Penelusuran Perkara Pengadilan Agama Jakarta Selatan'.

conducted, the procedures stipulated in the regulation must still be followed, including the requirement for both parties to attend.

From a procedural law standpoint, declaring mediation successful in the absence of the respondent raises serious doubts about its validity. Article 7(2) of PERMA No. 1 of 2016 allows exceptions to the attendance requirement only if the absent party provides a valid reason and is represented by legal counsel with full authority[11]. In the Cimahi case, there was no evidence that the respondent had granted such special authority. Consequently, the mediation process failed to meet the formal requirements set forth in the regulation.

The inconsistency between the formal legal provisions and actual court practice prompts further inquiry into why the judge nonetheless declared the mediation "successful." A likely explanation lies in pragmatic considerations, where the withdrawal of the claim by the petitioner is deemed sufficient to terminate the dispute, regardless of whether the mediation process fully complied with the formal requirements. However, from a doctrinal perspective, such a practice risks undermining the integrity of mediation and could set a precedent for procedural shortcuts in future cases.

Doctrinally, mediation requires the active engagement of both parties to achieve a genuinely consensual, win–win resolution. Without the respondent's direct participation, it is difficult to conclude that the agreement—especially one resulting in a unilateral withdrawal—reflects a balanced compromise between the parties. Some studies have argued in the context of divorce proceedings, mediation attended by only one party cannot be considered valid, as it fails to meet the principles of participatory justice[12].

When analyzed through Hans Kelsen's theory of legal certainty, mediation without the respondent's presence yet deemed "successful" represents a disconnect between *das sollen* (what ought to be) and *das sein* (what is). The normative rules clearly require both parties to attend, yet in practice, this requirement is disregarded. Such a gap erodes legal certainty by creating the precedent that procedural law may be ignored in the interest of expediency. Similarly, from the perspective of John Rawls' theory of justice, mediation without the respondent's attendance violates the principle of fairness, as one party is denied the opportunity to present their case, defend themselves, or agree to the settlement terms on equal footing.

Within Islamic law, the principles of dispute resolution emphasize *tahkim* (arbitration) and *islah* (reconciliation), both of which require the active participation of the disputing parties. Without such involvement, the substantive value of reconciliation is lost. The Qur'an, in Surah An-Nisa, verse 35, instructs that when discord arises between a husband and wife, arbiters from each side should be appointed to reconcile them—

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[11] Amara Thalia, *Analisis Hukum Acara Perdata Dalam Penyelesaian Sengketa Hak Atas Tanah Akibat Tumpang Tindih Sertifikat Di Wilayah Perkotaan*, 2025, 2063–72.

[12] Muhammad Syaifudin Amin et al., 'Analysis of Non Judge Mediators' Efforts In The Settlement of Civil Cases Based On Perma Number 1 Year 2016 Concerning Mediation Procedures', *PRANATA HUKUM* 17, no. 2 (2022): 165–86, https://doi.org/10.36448/pranatahukum.v17i2.290; Muhamad Hasan Sebyar et al., *Divorce Mediation at Panyabungan Religious Court: Transforming the Desire for Divorce into Reconciliation through Cultural Values in Contemporary Islamic Jurisprudence | Al-Manahij: Jurnal Kajian Hukum Islam*, 12 June 2025, https://ejournal.uinsaizu.ac.id/index.php/almanahij/article/view/12255.

indicating that both parties must be represented and engaged in the process[13]. Thus, from an Islamic legal perspective, mediation conducted without the respondent's presence, and without valid syar'i justification, cannot be considered a legitimate form of *islah*.

The analysis demonstrates that, while PERMA No. 1 of 2016 grants judges the discretion to conduct mediation in annulment cases, this discretion is bounded by the requirement to comply with all procedural rules. The absence of the respondent without valid reason and without granting special authority eliminates the element of participation essential for mediation's validity. In such circumstances, the "success" of mediation in cases like the Cimahi decision is more accurately described as a unilateral withdrawal of the petition, rather than a genuine, bilateral settlement.

Such practices can have significant implications for subsequent proceedings. If the respondent later brings a new claim or files an objection, they may argue that the mediation agreement underlying the withdrawal was legally defective due to procedural irregularities. This possibility increases the risk of future litigation, undermines judicial efficiency, and may erode public confidence in the mediation process. Therefore, to preserve the validity of mediation and uphold the principles of legal certainty and fairness, judges and mediators must enforce the attendance requirement as mandated by PERMA No. 1 of 2016.

Legal Implications of Mediation Without the Respondent's Presence for the Principles of Legal Certainty and Justice

The practice of declaring mediation "successful" in marriage annulment cases without the respondent's attendance carries significant legal implications for two foundational principles of the Indonesian legal system: legal certainty and justice. These principles serve as critical benchmarks for assessing the legitimacy and effectiveness of judicial processes. In the view of Hans Kelsen, legal certainty requires that the law be clear, firm, and consistently applied, allowing parties to predict how rules will be implemented in practice[14]. In contrast, John Rawls' theory of justice emphasizes fairness in the distribution of rights and obligations, ensuring that each party is afforded an equal opportunity to protect their interests. When mediation is conducted without fulfilling the formal requirement of party attendance, both principles are put at risk.

From the perspective of legal certainty, the most evident implication is the emergence of inconsistency between the written norm (das sollen) and its practical application (das sein). PERMA No. 1 of 2016 clearly mandates the attendance of both parties in mediation, except in narrowly defined circumstances—such as representation by a specially authorized legal counsel due to a valid reason for absence. When this rule is ignored, it creates a potential inconsistency in judicial application that undermines predictability in the legal system. Litigants may be uncertain about whether judges and

[13] Laras Shesa et al., 'Eksistensi Hukum Islam Dalam Sistem Waris Adat Yang Dipengaruhi Sistem Kekerabatan Melalui Penyelesaian Al-Takharujj', *Al-Istinbath: Jurnal Hukum Islam* 6, no. 1 (2021): 145–64, https://doi.org/10.29240/jhi.v6i1.2643.

[14] Nur Talita Prapta Putri and Ananda Aulia, 'Penerapan Teori Positivisme Hans Kelsen Di Indonesia', *Jurnal Kajian Kontemporer Hukum Dan Masyarakat* 2, no. 1 (2024): 1–25, https://doi.org/10.11111/dassollen.xxxxxxx.

mediators will enforce attendance requirements in future cases, thereby weakening trust in the procedural framework.

This inconsistency also generates a dangerous precedent. If mediation without the respondent's presence continues to be treated as valid, it opens the door for parties acting in bad faith to deliberately avoid attendance, fabricate excuses, and yet still obtain a favorable outcome—such as the withdrawal of a case or a settlement without scrutiny. Such a practice not only subverts the participatory nature of mediation but also risks reducing it to a mere administrative formality, rather than a substantive dispute resolution mechanism. The intended purpose of PERMA No. 1 of 2016—to promote mediation as an effective and meaningful process—would thereby be distorted.

From the standpoint of justice, the implications are even more serious. Justice, in this context, requires fairness in procedure, meaning that each party must have an equal chance to present their arguments, produce evidence, and negotiate settlement terms. In mediation attended solely by the petitioner, the respondent is entirely deprived of this opportunity. Even if the petitioner withdraws their claim, the decision is unilateral and does not result from interaction, negotiation, or compromise between the parties. Consequently, the "agreement" reached in such a mediation is not the product of mutual consent but a procedural mischaracterization of a one-sided action.

The loss of the opportunity to participate can have lasting consequences for the absent party. For example, in an annulment case based on alleged identity fraud, the respondent should be entitled to provide clarification or defend themselves against the allegation. The absence of such participation eliminates the possibility of a fair and balanced resolution, and if mediation is declared "successful" under these circumstances, the respondent may be unfairly perceived as uncooperative or guilty, without ever having been heard. This runs contrary to the universal procedural principle of *audi et alteram partem*—"hear the other side as well."

In Islamic law, the absence of the respondent also undermines the moral and spiritual dimension of dispute resolution. Mediation (islah) in the Islamic tradition is understood as a form of reconciliation that necessitates the direct or represented involvement of the disputing parties. The Qur'an, in Surah An-Nisa, verse 35, instructs that when marital discord arises, arbiters from each spouse's family should be appointed to mediate—a clear indication that both parties must be represented and participate in the process. Without such involvement, the essence of *islah* is lost, and the outcome cannot be considered a genuine reconciliation according to Islamic principles.

Another practical implication concerns the enforceability of mediation outcomes. In practice, the results of mediation are formalized in a settlement deed (akta perdamaian) or mediation minutes (berita acara mediasi), which may have executory force once approved by the judge. However, if such an agreement is reached without the participation of one party, its enforceability may be challenged on procedural grounds. The absent party can argue that the agreement is null and void due to a fundamental procedural defect, potentially leading to new litigation. This not only threatens the sustainability of the settlement but also undermines the very efficiency that mediation is intended to promote.

The credibility of the judiciary is also at stake. The public expects the courts, including the Religious Courts, to apply the law consistently and fairly. When the judiciary validates mediation outcomes that are procedurally defective, it risks

diminishing its legitimacy and authority. This perception could reduce public willingness to use formal legal mechanisms for dispute resolution, potentially pushing parties toward informal or extra-legal solutions.

From a legal policy perspective, the recognition of mediation without the respondent's attendance could result in uneven practices across Indonesia's Religious Courts[15]. Some courts may rigidly enforce attendance requirements, while others may adopt a more lenient approach in the interest of expediency. This inconsistency produces a disparity in the treatment of litigants, contrary to the principle of equality before the law enshrined in Article 27(1) of the 1945 Constitution[16].

Addressing these implications requires decisive action from the Supreme Court. Clearer guidance is needed to prevent procedural deviations that may harm the rights of parties and erode core judicial principles. Moreover, mediators in the Religious Courts should receive continuous training and supervision to ensure a uniform understanding of PERMA No. 1 of 2016, particularly concerning the legal consequences of mediation conducted without fulfilling the attendance requirement.

In summary, mediation without the respondent's presence in marriage annulment cases produces complex and far-reaching effects on the principles of legal certainty and justice. In terms of legal certainty, it creates procedural inconsistencies and sets a potentially harmful precedent. In terms of justice, it denies the absent party an equal opportunity to participate and compromises the legitimacy of any agreement reached. These implications are not merely technical but strike at the heart of public trust in the judicial system. For these reasons, strict enforcement of the attendance requirement and harmonization of mediation practices across all Religious Courts are essential to preserving the integrity of mediation as a fair, certain, and beneficial dispute resolution mechanism.

Conclusion

This study concludes that declaring mediation "successful" in marriage annulment cases without the respondent's presence lacks solid legal grounding under Supreme Court Regulation (PERMA) No. 1 of 2016. Although annulment proceedings are explicitly exempt from mandatory mediation under Article 4(2) of the PERMA, once mediation is voluntarily undertaken, all procedural requirements must still be fulfilled, including the direct attendance of both parties or representation through a valid special power of attorney. The absence of the respondent without lawful justification undermines the participatory character of mediation, compromises the principles of legal certainty and fairness, and creates the risk of producing procedurally defective agreements that may be challenged in future litigation. From the perspective of both Indonesian positive law and Islamic family law principles, such mediation does not meet the substantive and procedural standards required for a valid and equitable settlement.

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[15] Nur Insani et al., 'Empowering Muslim Women: Bridging Islamic Law and Human Rights with Islamic Economics', *De Jure: Jurnal Hukum Dan Syar'iah* 16, no. 1 (2024): 88–117, https://doi.org/10.18860/j-fsh.v16i1.26159.

[16] Intan Nevia Cahyana, 'Perlindungan Hukum Terhadap Keberadaan Dan Peran Serta Masyarakat Hukum Adat Dalam Pengelolaan Hutan Di Kawasaan Hutan Adat', *Jurnal Hukum PRIORIS*, ahead of print, 2017, https://doi.org/10.25105/prio.v6i2.2440.

The research is limited by its exclusive reliance on a normative juridical method, which focuses on statutory interpretation, doctrinal analysis, and literature review. It does not draw on empirical data, such as field observations, interviews, or statistical evidence of mediation practices in the Religious Courts. As such, while the conclusions provide strong doctrinal clarity, they do not capture variations in actual judicial practice across different regions. This limitation confines the findings to an evaluation of normative validity, rather than an assessment of prevalence or societal impact.

In light of these findings, the study recommends that the Supreme Court and the Directorate General of the Religious Courts provide explicit technical guidance affirming that mediation in exempt cases must still comply with the attendance requirements stipulated in PERMA No. 1 of 2016. Religious Courts should also avoid designating unilateral claim withdrawals as "successful mediation" when they occur without the presence of both parties, in order to preserve procedural accuracy and integrity. Strengthened judicial oversight is essential to ensure that mediators accurately record party attendance and reasons for absence, with such documentation forming part of the official case record. Consistency in practice should be pursued through national-level judicial training, highlighting the procedural consequences of non-compliance. Furthermore, future normative studies could benefit from comparative analyses with other jurisdictions, particularly those applying Islamic family law, to refine mediation regulations and promote harmonization between doctrinal requirements and practical application.

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