

**MEDIATION ARRANGEMENTS IN RELIGIOUS COURTS AND
SHARIA COURTS**

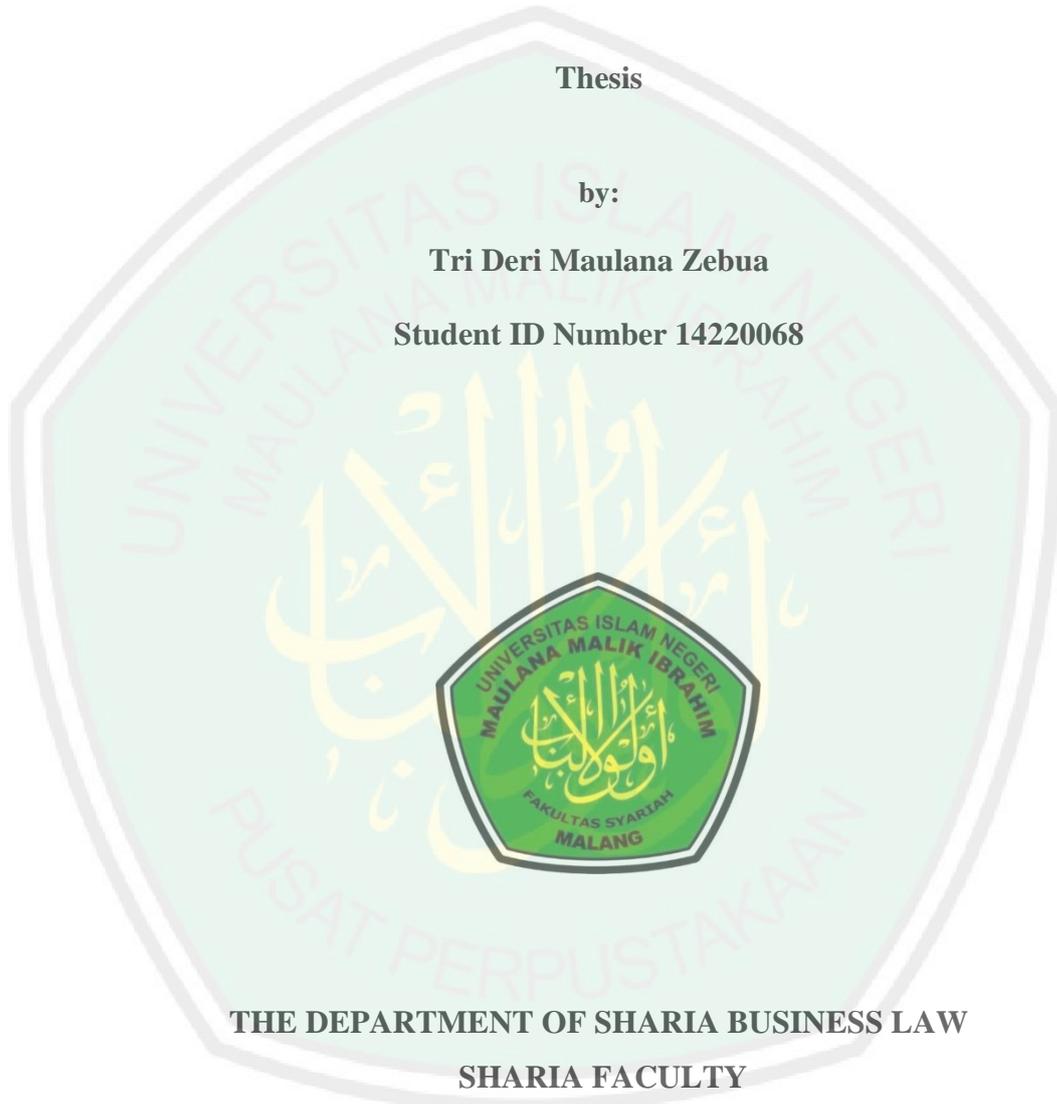
(Comparative Study in Indonesia and Malaysia)

Thesis

by:

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THE STATE ISLAMIC UNIVERSITY

MAULANA MALIK IBRAHIM

MALANG

2018

STATEMENT OF THE AUNTENTICITY

In the name of Allah (SWT),
With consciousness and responsibility towards the development of science, the
author declares that the thesis entitled:

***MEDIATION ARRANGEMENTS IN RELIGIOUS COURTS AND SHARIA
COURTS
(Comparative Study in Indonesia and Malaysia)***

is truly the author's original work. It does not incorporate any material previously
written or published by another person. If it is proven to be another person's work,
duplication, plagiarism, this thesis and my degree as the result of this action will
be deemed legally invalid.

Malang, 2nd March 2018



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**MEDIATION ARRANGEMENTS IN RELIGIOUS COURTS AND
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(Comparative Study in Indonesia and Malaysia)

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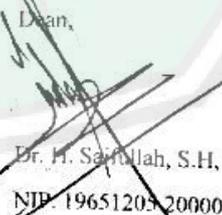
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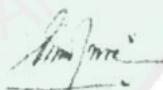
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MOTTO

وَقُلْ اَعْمَلُوا فَسَيَرَى اللّٰهُ عَمَلَكُمْ وَرَسُولُهُ وَالْمُؤْمِنُونَ ۗ وَسَتُرَدُّونَ اِلٰى عَالَمِ الْغَيْبِ وَالشَّهَادَةِ فَيُنَبِّئُكُمْ بِمَا

كُنتُمْ تَعْمَلُونَ (التوبة : 105)

“Dan Katakanlah: "Bekerjalah kamu, maka Allah dan Rasul-Nya serta orang-orang mukmin akan melihat pekerjaanmu itu, dan kamu akan dikembalikan kepada (Allah) Yang Mengetahui akan yang ghaib dan yang nyata, lalu diberitakan-Nya kepada kamu apa yang telah kamu kerjakan”

(QS. at-Taubah: 105)

ACKNOWLEDGMENT

All praise due to Allah, the Cherisher and Sustainer of all the worlds. There is neither might nor power but with Allah the Great, the Exalted. With only His grace and guidance, this thesis entitled “MEDIATION ARRANGEMENTS IN INDONESIAN RELIGIOUS COURTS AND SHARIA COURTS (Comparative Study in Indonesia and Malaysia)” could be completed, and also with His benevolence and love, peace and tranquility of the soul. Peace be upon the Prophet Muhammad (saw) who had brought us from the darkness into the light, in this life. May we be together with those who believe and receive intercession from Him in the day in Judgement. Amin.

With all the supports and help, discussions, guidance and directions from all parties involved during the process of completing this thesis, the author wishes to express his utmost gratitude to the following:

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2. Dr. H. Saifullah, S.H, M.Hum., as the Dean of The Sharia Faculty of The State Islamic University of Maulana Malik Ibrahim of Malang.
3. Dr. Fakhruddin, M.H.I., as the Head of The Department of Sharia Business Law of the Sharia Faculty, The State Islamic University of Maulana Malik Ibrahim of Malang.
4. Dr. Fakhruddin, M.H.I., as the Chairman and Dra. Jundiani. S.H., M.Hum., as the Secretary and Musleh Harry, S.H., M.Hum., as the Main Examiner. Thank you very much for the opportunity that has been given to the author, so the author can convey/deliver the results of my research.
5. Dra. Jundiani. S.H., M.Hum., as the thesis supervisor. The writer express her gratitude for the guidance, suggestion and directional motivation were given

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8. My beloved Father and Mother, "Mr. Yaedi Zebua and Mrs. Siti Masita" who have given me chance to get adequate education, love, material, and spiritual support, also endless praying until am able to complete my study excellently and to my beloved brother and sister, thanks for your prayers and support for your brother.
9. Thanks a lot to all those whom I can't mention one by one who has assisted me in the process until the completion of this research.

Hopefully, by imparting what has been learned during the course of study in the Sharia Faculty of The State Islamic University of Maulana Malik Ibrahim of Malang, it will benefit all readers and the researcher herself. Realizing the fact that error and weakness is impartial to being human, and that this thesis is still far from perfection, the author appreciates constructive critics and suggestion for the improvement and betterment of this thesis.

Malang, 2nd April 2018
Writer,



Tri Deri Maulana Zebua
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TRANSLITERATION GUIDANCE

A. Consonant

Arab	Latin	Arab	Latin
ا	A	ط	Th
ب	B	ظ	Zh
ت	T	ع	'
ث	Ts	غ	Gh
ج	J	ف	F
ح	H	ق	Q
خ	Kh	ك	K
د	D	ل	L
ذ	Dz	م	M
ر	R	ن	N
ز	Z	و	W
س	S	هـ	H
ش	Sy	ء	'
ص	Sh	ي	Y
ض	Dl		

B. Vocal, long-pronounce and diphthong

Vocal fathah = A

Vocal kasrah = I

Vocal Dlommah = U

Long-vocal (a) = A e.g. قال became Qala

Long-vocal (i) = Î e.g. قيل become Qîla

Long-vocal (u) = Û e.g. دون become Dûna

Diphthong (aw) = و e.g. قول become Qawlun

Diphthong (ay) = ي e.g. خير become Khayrun

C. Ta' Marbutah

Ta' marbûthah transliterated as “t” in the middle of word, but if Ta' marbûthah in the end of word, it transliterated as “h” e.g. الرسالة للمدرسة become al-risalat li al-mudarrisah, or in the standing among two word that in the form of mudlaf and mudlafilayh, it transliterated as t and connected to the next word, e.g. فى رحمة الله become fi rahmatillâh.

D. Auxiliary Verb and Lafdh al-Jalalah

Auxiliary verb “al” (ال) written with lowercase form, except if it located in the first position, and “al” in lafadhjalâlâh which located in the middle of two word or being or become idhâfah, it remove from writing.

- a. Al-Imâm al-Bukhâriy said ...
- b. Al-Bukhâriy in muqaddimah of his book said ...
- c. Masyâ' Allâhkânawamâ lam yasya' lam yakun.

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ABSTRACT

Tri Deri Maulana Zebua, 14220068, 2018. **MEDIATION ARRANGEMENT IN RELIGIOUS COURTS AND SHARIA COURTS (Comparative Study in Indonesia and Malaysia)**. Thesis, The Department of Islamic Business Law, Faculty of Sharia, State Islamic University Maulana Malik Ibrahim Malang. Supervisor: Dra. Jundiani, S.H., M.Hum.

Keywords: Indonesian Religious Court, Malaysian Sharia Court, Mediation, Mediation Arrangements.

The court environment recognizes peace as mediation, where this mediation has a goal of peace. The religion of Islam teaches its people that all disputes between Muslims should be settled with peace. As written in *al-Qur'an* Surah *al Hujarat* verse 10. Mediation in the Indonesian Religious Court is regulated in Supreme Court Regulation Number 1 of 2016 which requires that all civil cases entered in the Court must go through mediation process while in Malaysia set in Enactment Number 1 of 2010 which only requires that some cases that have to go through the mediation process other than that can be tried directly by the judge.

The study examines the mediation arrangements in the Indonesian Religious Courts and Malaysian Sharia Courts, with the aim of identifying the mediation arrangements in the Indonesian Religious Courts and Malaysian Sharia Courts and also elaborating the similarities and differences of both. This research is a normative research with approach of legislation and comparative approach.

From this research it is known that the Indonesian Religious Court requires that all civil cases submitted to the Court must go through the mediation process. The Malaysian Sharia Court only requires that some cases be mediated, and others are permitted to be tried directly by a judge.

The existence of this study contributes to the Malaysian Sharia Court in order to require any civil cases to mediate in order to reduce the accumulation of cases and also to implement the Sharia contained in *al-Qur'an* Surah *al-Hujarat* verse 10 and also to provide science treasures for both States in the arrangement mediation.

ملخص البحث

ترى ديري مولانا زيبوا, 14220068, 2018. ترتيبات الصلح في المحاكم الدينية والمحاكم الشرعية (دراسة المقارنة في إندونيسيا و ماليزيا). بحث الجامعي, قسم التجار الشرعية, كلية الشرعية, جامعة مولانا مالك إبراهيم الإسلامية الحكومية بمالانج. المشرفة: الدكتور جنديباني, الماجستير.

الكلمات الرئيسية: الصلح, ترتيبات الصلح, محكمة الدينية في إندونيسيا, محكمة الشرعية في ماليزيا. تعترف بيئة المحكمة سلام بالصلح, حيث تحتوي هذ الصلح على هدف السلام. دين الإسلام يعلم المسلمون أن كل المسألة بين المسلمين يجب أن يحلّ مسألتهم بالصلح. كما كتب في القرآن الكريم في السورة الحجرية الآية العاسرة. الصلح في المحاكم الدينية الإندونيسية مكتوب في انظمة محكمة العليا رقم الأول سنة الف و ستة عشر يشرح على انّ كالمسألة يجب بالصلح و اما قانون في محكمة الشرعية في ماليزيا تكتب في انظمة رقم الاول سنت الف وعشر الذي لايجب كل مسألة بالصلح إلا من بعض المسألة.

التحقيق في هذه الدراسة ترتيبات الصلح في المحاكم الدينية الإندونيسية والمحكمة الشرعية في ماليزيا, بهدف تحديد الإعداد الصلح في المحاكم الدينية الإندونيسية والمحكمة الشرعية في ماليزيا وأيضاً توضيح أوجه التشابه والاختلاف في كل منهما. هذا البحث هو بحث معياري مع نهج التشريع والنهج المقارن.

من هذا البحث أنه من المعروف أن المحاكم الدينية الإندونيسية تتطلب جميع القضايا المدنية المرفوعة أمام محكمة الحاجة إلى الذهاب من خلال عملية الصلح. ولكن يتطلب المحكمة الشرعية ماليزيا إلا من بعض القضايا التي تجب بالصلح, ويسمح للآخرين أن يحاكم مباشرة من قبل القاضي. بوجود هذا البحث يرجى للمحكمة الشرعية ماليزيا ان يوجب كل المسألة بالصلح لنقص القضايا في المحكمة و فعل ما يشارع في القرآن سورة الحجرية الآية العاسرة وكذلك إعطاء خزائن العلوم إليهما.

ABSTRAK

Tri Deri Maulana Zebua, 14220068, 2018. **PENGATURAN MEDIASI DI PENGADILAN AGAMA DAN MAHKAMAH SYARIAH (Studi Komparatif di Indonesia dan Malaysia)**. Skripsi, Jurusan Hukum Bisnis Syariah, Fakultas Syariah, Universitas Islam Negeri Maulana Malik Ibrahim Malang. Supervisor: Dra. Jundiani, S. H., M.Hum.

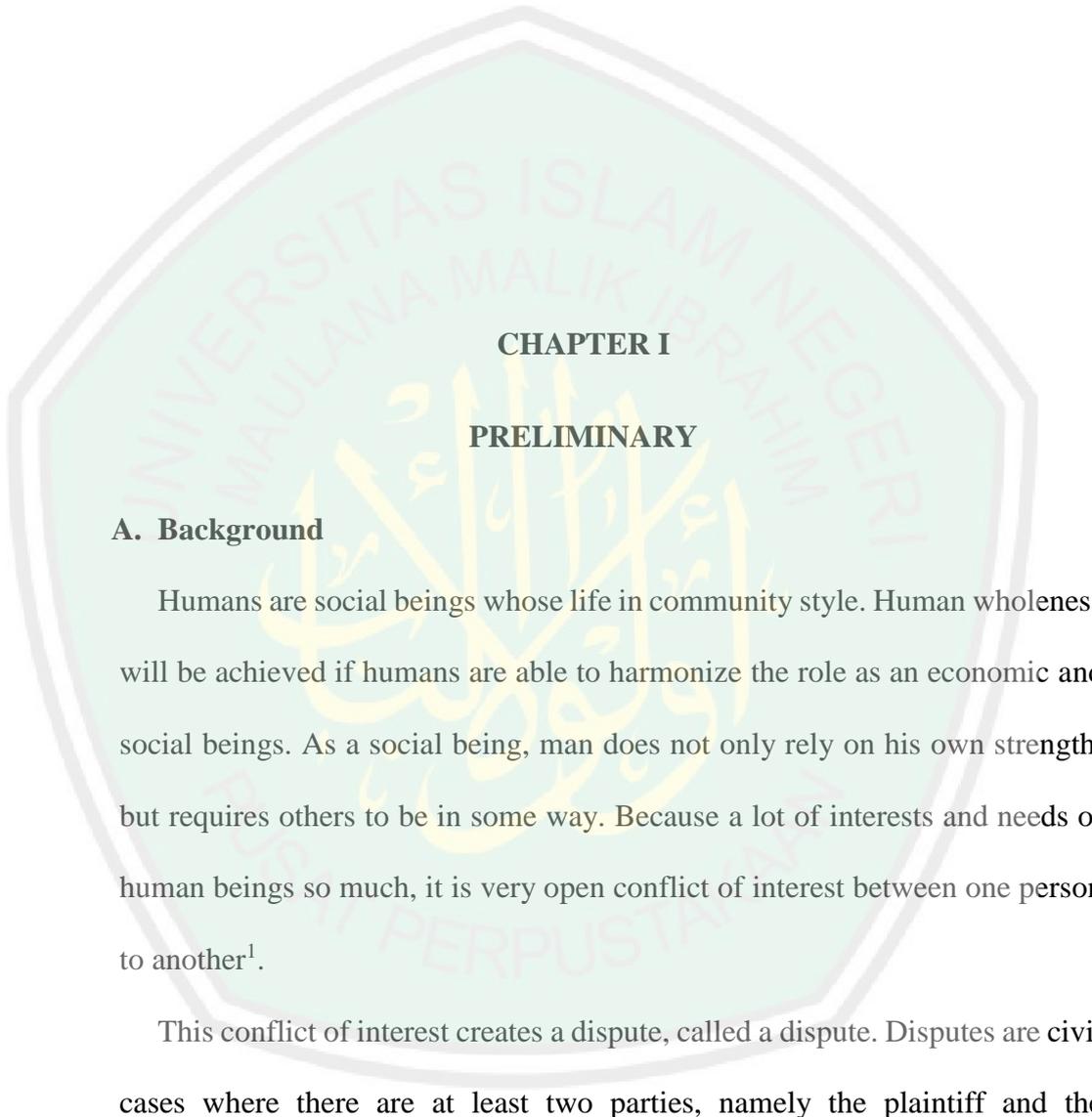
Kata Kunci: Mediasi, Pengaturan Mediasi, Pengadilan Agama Indonesia, Mahkamah Syariah Malaysia

Lingkungan peradilan mengenal perdamaian sebagai mediasi, dimana mediasi ini memiliki tujuan yaitu perdamaian. Agama islam mengajarkan kepada umatnya agar segala perselisihan yang terjadi antara umat Muslim hendaklah diselesaikan dengan perdamaian. Sebagaimana tertulis dalam Al-qur'an Surat Al hujarat ayat 10. Mediasi di Pengadilan Agama Indonesia diatur di Peraturan Mahkamah Agung Nomor 1 tahun 2016 yang mana mewajibkan segala perkara perdata yang masuk di Pengadilan harus melalui proses mediasi sedangkan di Malaysia diatur di Arahan Amalan Nomor 1 tahun 2010 yang mana hanya mewajibkan sebagian perkara saja yang harus melalui proses mediasi selain itu dapat diadili langsung oleh majlis hakim.

Penelitian ini meneliti pengaturan mediasi di Pengadilan Agama Indonesia dan Mahkamah Syariah Malaysia, dengan tujuan untuk mengetahui pengaturan mediasi di Pengadilan Agama Indonesia dan Mahkamah Syariah Malaysia dan juga mengelaborasi persamaan dan perbedaan dari keduanya. Penelitian ini merupakan penelitian normatif dengan melakukan pendekatan perundang-undangan dan pendekatan komparasi.

Dari penelitian ini diketahui bahwa Pengadilan Agama Indonesia mewajibkan segala perkara perdata yang diajukan ke Pengadilan harus melalui proses mediasi yang diatur dalam Peraturan Mahkamah Agung Nomor 1 Tahun 2016. Sedangkan Mahkamah Syariah Malaysia hanya mewajibkan sebagian perkara saja untuk melalui proses mediasi diatur dalam Arahan Amalan Nomor 1 Tahun 2010, dan lainnya dibolehkan untuk diadili secara langsung oleh Hakim.

Adanya penelitian ini memberikan kontribusi kepada Mahkamah Syariah Malaysia agar mewajibkan segala perkara perdata apa saja untuk melakukan mediasi dan juga melaksanakan syariat yang termaktub dalam al-Qur'an surah al-Hujarat ayat 10 dan juga memberikan khazanah keilmuan bagi kedua Negara untuk mewujudkan suatu Negara yang lebih baik lagi di kemudian hari khususnya dalam pengaturan mediasi.



CHAPTER I

PRELIMINARY

A. Background

Humans are social beings whose life in community style. Human wholeness will be achieved if humans are able to harmonize the role as an economic and social beings. As a social being, man does not only rely on his own strength, but requires others to be in some way. Because a lot of interests and needs of human beings so much, it is very open conflict of interest between one person to another¹.

This conflict of interest creates a dispute, called a dispute. Disputes are civil cases where there are at least two parties, namely the plaintiff and the defendant. If in society there is a dispute that can't be solved by deliberation, then the parties who have the dispute must find ways to cope the problems they

¹https://freemanof.wordpress.com/tugas/manusia_s_makhluk_sosial/ Retrieved on Saturday 7 October 2017 19:45 pm.

face, namely a peaceful manner through mediation. Because peace is one of the best ways out and giving positive value to each other.

In Islam, Mediation or *Shulhu* is one way to resolve a dispute between two persons by deliberation. As has been explained in the word of ALLAH SWT in QS. *al-Hujarat*: 10:

إِنَّمَا الْمُؤْمِنُونَ إِخْوَةٌ فَأَصْلِحُوا بَيْنَ أَخَوَيْكُمْ وَاتَّقُوا اللَّهَ لَعَلَّكُمْ تُرْحَمُونَ

"Believers are truly brothers. Therefore reconcile (fix the relationship) between your two brothers and fear of Allah, that you may be gracious "(Surah al-Hujurat: 10)².

This ayat is still responding to the previous verse that is verse 9 which has *asbabunnuzul* narrated by asy Syaikhani has presented a hadith which is sourced from Anas RA that the Prophet Muhammad SAW. One day he was riding his donkey vehicle with a visit to Abdullah ibn Ubay Abdullah ibnu Ubay said: "stay away from me, because the smell of your eyelids stifles my nose "Said one of the Ansar's companions by taking his lead:" By God, the smell of the donkey is better than the smell of your body "One of his people (Abdullah) became angry at hearing the words, and finally the friends of the two men were at cruel. And the fight was happened between their two sides to each other with a punch and spatter³.

² QS. *al-Hujarat* (49):10.

³Al Mahalliy, Imam Jalaludin, *Tafsir Jalalain berikut Asbabun Nuzul Ayat Surat Az Zumar sampai dengan Surat An Nas*, (Sinar Baru, Bandung 1990), 2246.

From the above verse explanation explains that every believer is a brother. So let every between two disputing or litigants settle the matter in a peaceful way through mediation. Because peace is an action that gives positive values among others.

The Supreme Court Regulation Number 1 of 2016 explains that, Mediation is a way of resolving disputes through the negotiation process to obtain the agreement of the parties assisted by the Mediator. Mediation holds an important position in the Supreme Court Regulation Number 1 of 2016, because the mediation process is an integral part of the litigation process in the Court. Judges must follow the procedure for resolving disputes through mediation.

While in the Malaysian Sharia Court, cases that have to go through the mediation process are only certain cases as stated in the Direction of Practice Number 1 of 2010. In addition to cases that are not stated in the Direction of Practice Number 1 of 2010 it is permissible to be directly tried by judges without a mediation process.

It is different from the mediation process in Indonesia which is under the provision of the Supreme Court Regulation Number 1 of 2016 concerning the mediation process in the Court which requires every civil case to take the mediation process unless there is another provision from the Supreme Court.

Based on the information above, there are similarities and differences in a regulation between one country and another. Which in this study refers to the State of Indonesia and the State of Malaysia against the institutions of the

Religious Courts in Indonesia with the Malaysian Sharia Court. So the authors are interested in conducting a comprehensive study entitled ***MEDIATION ARRANGEMENTS IN RELIGIOUS COURTS AND SHARIA COURTS (Comparative Study in Indonesia and Malaysia)***.

B. Scope of problem

In this study the authors limit the problems to be studied, so then leads to the subject of research and not too widened the discussion. Among them:

1. Mediation arrangements in Supreme Court Regulation Number 1 of 2016 Article 3, 4, 6, 8 concerning mediation procedures in courts and mediation arrangements in Malaysia stipulated in the Direction of Practice Number 1 of 2010.
2. The territory of Malaysia which is the object of Mediation research in this research is the Sharia Court in Malacca State of Malaysia.

C. Problem Formulation

Based on the background of the above issues, for the purpose of writing this proposal are:

1. What is the arrangement of mediation in Indonesian Religious Courts and Malaysian Sharia Courts?
2. What are the similarities and differences of mediation in the Religious Courts of Indonesia and the Malaysian Sharia Courts?

D. Objective of Research

1. To understand the mediation arrangements in the Indonesian Religious Courts and Malaysian Sharia Courts.
2. To understand the similarities and differences of mediation arrangements in the Indonesian Religious Courts and Malaysian Sharia Courts.

E. Benefits Research

The results of this study are expected to provide useful theoretical and practical benefits, including:

1. Theoretical Benefits

Theoretically this research is expected to be useful as a reference or input for the development of knowledge in the field of law, this study is also expected to be used as a reference for all parties who want to conduct further research so that it can be used as information or input for readers in increasing knowledge and understanding so that able to contribute the thought to Muslims and candidates for law degree.

2. Practical Benefits

It is hoped that in this research can be useful for legal practitioners, to be considered in the case escort case in various countries and also can be used as guidance between countries in order to realize a good country and also be used as reference in applying Regulation, because every country must have deficiency and defferent excess.

F. Conceptual Definition

To avoid confusion in this study it is necessary to explain in the following conceptual definition:

1. Religious Courts is the first level that carries out judicial powers within the Religious Courts located in the capital district or city. The Religious Courts are established by Presidential Decree.
2. Sharia Court is an institution that talk and judiciary sentenced person of Islam to those who make a mistake and a crime the civil religion by the field of power reserved for him.
3. Article 1851 of the Civil Code Book 3 of the Civil Code "Peace is an agreement that states that by submitting, promising or holding an item, both parties end a case that is being examined by the court or prevent the occurrence of a case, this agreement only has the power of law, if it is made in writing".
4. Mediation, in accordance with Supreme Court Regulation Number 1 of 2016 defines that mediation is a way of dispute resolution through negotiation process to obtain agreement of the parties assisted by mediator.

G. Research methods

According Soerjono Soekanto research is a scientific activity related to the analysis, carried out methodologically, systematically, and consistently. Logical methods of methodology are in accordance with certain methods, systematically based on systems, while consistent means are based on the

absence of contradictions within a particular framework⁴. Legal research is a scientific activity, based on methods, systematics and certain thoughts, aimed at studying one or more particular legal phenomena, by analyzing them.

The methods used in writing this research is:

1. Types of research

This type of research is normative research, namely legal research focused on studying the application of norms or legal norms in positive law⁵. In this case it is related to the problem that be researched by the researcher related to the "*Mediation Arrangements in Religious Courts and Sharia Courts (Comparative Study in Indonesia and Malaysia)*".

2. Research approach

Research approach is a method or way of conducting research⁶. The approach used in this study is a conceptual approach that is close to the views and doctrines that developed in the field of law. This approach is important because an understanding of the growing doctrinal views of the field of law can be a foothold for building legal arguments when dealing the legal issues faced. The

⁴Soerjono Soekanto, *Introduction to Legal Research*, (Jakarta: University of Indonesia, 2010), 42.

⁵Jhonny Ibrahim. *Theory and Methodology of Normative Law Research*, (Malang, Bayumedia, 2006), 26.

⁶Suharsimi Arikunto, *Research Procedure: A Practice Approach*, (Jakarta: Rieneka Cipta, 2002), 23.

doctrine will clarify the idea by providing legal, and legal concepts relevant to the matter⁷.

In accordance with the type of research is normative legal research (normative juridical), it can be used more than one approach⁸. This study is using the approach of legislation (statute Approach) and comparative approach⁹.

The legislation approach was conducted to examine the regulations on mediation arrangements between Indonesia and Malaysia. While the comparative approach by comparing between Indonesia law and Malaysia law by regarding the same and also the differences in the regulation of mediation between the two countries.

3. Law Material

In a normative legal research using legal research resources obtained from the library instead of the field, thus known as a legal substance. In normative legal research the literature material is the basic material which in research science was generally called secondary law material¹⁰. In secondary law materials are divided primary and secondary legal materials.

⁷Peter Mahmud Marzuki, *Legal Research*, (Jakarta, Kencana, 2014), 177.

⁸Jhonny Ibrahim. *Theory and Methodology of Normative Law Research*, (Malang: Bayu media Publishing, 2006), 300.

⁹Muhammad Abdulkadir, *Law and Legal Research*, (Bandung:1st Print, Citra Aditya Bakti, 2004), 113.

¹⁰Soerjono Soekanto and Sri Mamudji, *Normative Legal Studies Overview*, (Jakarta: Rajawali Pers, 2006), 24.

a. Primary Law Material

Primary legal material is a legal material that is authoritative that means to have authority. The primary legal materials consist of:

- 1) Supreme Court Regulation Number 1 of 2016 on the Mediation Process in Courts.
- 2) Direction of Practice Number 1 of 2010 concerning Determination of case which should be referred to the *Majlis Sulh* in case registration rate.

b. Secondary Law Material

Is a legal material that is helpful or support the primary legal materials in research that will strengthen the explanation in it. Among the secondary legal materials in this study are the books, theses, and documents that deal with mediation arrangements in religious courts in Indonesia in Supreme Court Regulation Number 1 of 2016 and the Malaysian Sharia Court in Direction of Practice Number 1 Year 2010.

c. Tertiary Law Material

It is a legal material that provides guidance or explanation of primary and secondary legal materials such as legal dictionaries, encyclopedias, and others¹¹. In this study using several dictionaries that include:

¹¹Jhonny Ibrahim. *Theory and Methodology of Normative Law Research*, (Malang: Bayu media Publishing, 2006), 26.

- a. Indonesian Dictionary
- b. Collins English Dictionary and Thesaurus, Third Edition

4. Technique of Material Law Collecting

The method of collecting legal materials to be used in this research is document study or library materials. Document study is a tool for collecting written legal materials using content analysis¹².

Legal materials obtained from the results of the study are grouped according to the problem which is then carried out qualitative analysis. Qualitative analysis does not mean that analysis depends on the amount of legal material based on figures by numbering, but legal material being analyzed and described in sentences times mat. Normative legal approach means substance legal materials that analyzed according to a specific law. Based on the analysis of the above subject, then it can be interpreted by the method of interpretation known in science of low. The results of this juridical interpretation, is expected to answer all legal issues raised.

5. Material Law Analysis Technique

To manage the overall legal material obtained, the need for procedural management and analysis of legal materials in accordance with the approach used in accordance with the methods used in this reserch, legal material processing techniques used by the

¹²Soerjono Soekamto. *Introduction to Legal Research*, (Jakarta, UI Press, 1986), 21.

research is a qualitative descriptive analysis or non-statistical . The processing of legal materials used in this research is as follows:

a. Editing

Explain, choose the main points and focus to the important things that fit the formulation of the problem. In this editing technique, researchers will examine the completeness as well as the accuracy of the data obtained from the main respondents.

b. Classifying

Once there are legal materials from various sources, then classified and re-checked so that the legal material obtained proved valid. This classification aims to sort out the legal material obtained in accordance with the needs of research.

c. Verifying

Verification of legal materials is a step and activities undertaken by researchers to obtain legal materials. In this case, the researcher re-checked the legal materials that have been collected in order to obtain the validity of legal materials.

d. Analyzing

Analysis of legal materials is a process to regulate the rules of legal materials, organizing into a pattern of categories and a description. Sugiyono argues that the analysis of legal materials

is the process of searching and systematically compile the legal material obtained¹³.

e. Concluding

Withdrawal of conclusions from the existing problems, and this is the final stage of the research process and the answer to previous legal material exposure. At this conclusion, researchers pursue the above problem by describing the legal material in the form of a regular sentence, sequence, logical, non-overlapping, and effective, making it easier for readers to understand and interpret the legal material.

H. Literature review

1. Previous Research

- a. Fahrudin, 2010, "Effectiveness of Mediation in Civil Cases Based on Supreme Court Regulation Number 1 of 2008 (Case Study In Religious Court Salatiga 2010)"¹⁴

The results of this study discusses the effectiveness of Mediation and whether Mediation in the Religious Court of Salatiga is in conformity with Supreme Court Regulation Number 1 of 2008 and not contrary to the Civil Procedure Code, while research conducted by current researchers that will discuss about the arrangement of

¹³Sharia Faculty of Islamic State University of Maulana Malik Ibrahim Malang, *Scientific Writing Guideline*, (Malang: UIN press, 2012), 48.

¹⁴Fahrudin, *Effectivity of Mediation in Civil Law Based on Supreme Court Regulation Number 1 Year 2008, (Case Study in Religious Court of Salatiga)*, Thesis, (Salatiga: Salatiga State Islamic High School, Department of Sharia, 2010)

Mediation in the Indonesian Religious Court under Supreme Court Regulation Number 1 of 2016 and Malaysian Sharia Court based on Direction of Practice Number 1 of 2010.

- b. Zulzalali Walikrom, 2017, "Islamic Law Perspective on Implementation of Supreme Court Regulation Number 1 of 2016 Concerning Mediation Procedure (Study in Religious Courts Class 1A Tanjung Karang)"¹⁵

The results of this study discuss about the views of Islamic Law against Supreme Court Regulation Number 1 of 2016 on Mediation and also reviewed the supporting and inhibiting factors in the implementation of Mediation, while my research focuses on the differences and similarities of mediation arrangements between countries namely Indonesia and Malaysia.

- c. Wildan Ubaidillah Al-Anshori, 2014, "Effectiveness of Mediation Efforts on the Settlement of Divorce Cases in Jombang Religious Court"¹⁶

The results of this study lead to the successful completion of the case through mediation means and more specifically on the effectiveness of mediation in the settlement of divorce cases in Jombang Religious Court, while my research leads to how the

¹⁵Zulzalali Walikrom, *Islamic Law's Perspective on the Implementation of Supreme Court Regulation No. 1 of 2016 Concerning Mediation Procedures, (Studies in Religious Courts Class 1A Tanjung Karang)*. Thesis, (Lampung, Lampung State Islamic Institute, Faculty of Sharia, 2017).

¹⁶Wildan Ubaidillah Al-Anshori, *Effectiveness of Mediation Efforts on the Settlement of Divorce Cases in Religious Courts of Jombang*, Thesis, (Jombang: State Islamic University of Maulana Malik Ibrahim Malang, Faculty of Sharia, 2014).

mediation arrangements in the Religious Courts of Indonesia and the Malaysian Sharia Court.

- d. Erina Qurrota Ainy, 2014, " Implementation of Mediation in the Settlement of Private Section in Yogyakarta District Court for 2012-2013 (Study of Supreme Court Regulation Number 1 Year 2008) "¹⁷

The results of this study focused on the application of mediation in the settlement of civil cases in the District Court of Yogyakarta in accordance with whether or not with the provisions of Supreme Courts Regulation Number 1 of 2008 within a period of one year, while my research examines in Indonesia Religious Courts and Supreme Sharia Malaysia.

After conducting the discussion and search, the researcher has not found previous research related to mediation arrangement in Malaysia so that the researcher only put the previous research about this mediation arrangement which exist in Indonesia.

¹⁷Erina Qurrota Ainy, *Implementation of Mediation in the Settlement of Civil Dispute in Yogyakarta District Court for 2012-2013 (Study of Supreme Court Regulation No. 1 of 2008)*, Thesis, (Yogyakarta: Sunan Kalijaga State Islamic University, Faculty of Sharia and Law, 2014).

Table I**Previous Research*****Mediation Arrangements in Religious Courts and Sharia Courts******(Comparative Study in Indonesia and Malaysia).***

No	Writer's name	Research Title	Equation	Difference
1.	Fahrudin Department of Sharia Prodi Al ahwal as-syakhsiyah State Islamic High School Salatiga 2010	Effectiveness of Mediation in Civil Cases Based on Supreme Court Regulation Number 1 of 2008 (Case Study In Religious Court Salatiga 2010)	This study discusses the arrangement of mediation in one city in Indonesia	This study looks at whether the Mediation at the site of research is in conformity with Supreme Court Regulation Number 1 of 2008 and whether it is in accordance with the Civil Procedure Code
2.	Zulzalali Walikrom Sharia Faculty State Institute Raden Intan Lampung 2017	Islamic Law Perspective on Implementation of Supreme Court Regulation Number 1 of 2016 Concerning Mediation Procedure (Study in Religious Courts Class 1A Tanjung Karang).	This research equally refers to Supreme Court Regulation Number 1 of 2016 on Mediation at the Religious Court of Tanjung Karang	This research will later realize the Islamic view of Supreme Court Regulation Number 1 of 2016

3.	Wildan Ubaidillah Al-Anshori Department Al-ahwal al-shakhsyah Sharia Faculty State Islamic University Maulana Malik Ibrahim Malang 2014	Effectiveness of Mediation Efforts on the Settlement of Divorce Cases in Jombang Religious Court	Researchers argue that mediation is one of the quickest ways to get things done it's a matter	This mediation refers on the effectiveness of mediation in settling disputes divorce in Islamic courts Jombang
4.	Erina Qurrota Ainy Faculty of Sharia and Law State Islamic University Sunan Kalijaga Yogyakarta 2014	Implementation of Mediation in the Settlement of Private Section in Yogyakarta District Court for 2012-2013 (Study of Supreme Court Regulation Number 1 of 2008)	Has the same object that is mediation	Mediation in this research, mediation in the District Court and using Supreme Court Regulation Number 1 of 2008

I. Conceptual framework

1. The Definition of Mediation

Conceptually viewed Mediation comes from English mediation which means mediation¹⁸. While in the Dutch language is called *medio* means middle and in the Indonesian Dictionary, mediation means mediate¹⁹.

Furthermore, in principle mediation can be interpreted broadly and

¹⁸E. Pino and T. Wittermans, *A Complete English-Indonesian, Indonesian-English Dictionary*, Ed.VI, (Jakarta: PT Pratnya Paramita, 1983), 268 also read Wojowasito and Tito Wasito, *English-Indonesian Complete Dictionary, Indonesian-English*, Cet.1, (Bandung: Space Offeset,1982), h. 111

¹⁹Editorial of Your Work, the *Popular International Dictionary*, (Surabaya: Your Work), 223.

narrowly. Broadly, that is, the settlement of disputes conducted by either a third party outside the judicial system or within the judicial system. Those exercised outside the judicial system are mediation, arbitration, and others. While implemented in the court system known as *Court Annexed Mediation* or also called *Court Annexed Dispute Resolution*.

Meanwhile, basically the mediation as set forth in the 3rd Book of the Civil Code is one form of engagement, the mediation which is also known as this peace of understanding is formulated in Article 1851 Civil Code which reads as follows:

"Peace is an agreement which contains that by handing, promising or holding an item, both parties end a case that is being examined by the court or prevent a case, this agreement has only the force of law, if it is made in writing"

Meanwhile, concerning the mediation of J. Folberg and A. Taylor in his book entitled "*Mediation, A. Comprehensive Guide to Resolving Conflict Without Litigation* (1984, page 7) edited by Said Faisal defines that mediation is *The process by which the participants, together with the assistance of a neutral persons, systematically isolate disputed issues in order to develop options, consider alternatives, and reach a consensual settlement that will accommodate their needs*²⁰.

Furthermore from the general characteristics in the above mediation can be drawn red thread that mediation is one way (solution) in the solution of land conflicts in Indonesia in general and the settlement of civil disputes in particular. In relation to land conflict issues, the choice of conflict

²⁰Suharto, "*Direction in Order Mediator Training in Welcome of Application Supreme Courts Regulation Court annexed Mediation in the Indonesian Courts*", Papers in the Supreme Court, Mediation and Peace, (Jake avg: Pusdiklat MA RI, 2005), 11-12.

resolution through negotiation or mediation has advantages over completion through litigation or court proceedings.

The advantages of such mediation according to Maria SW Sumardjono Cs is as follows:²¹

1. Save time, cost, energy and mind
2. Mediation gives the parties a sense of unity and the determination of the outcome of negotiations is achieved by mutual agreement without pressure and coercion.
3. The resulting solution boils down to a *win-win solution*

Furthermore, in the general explanation of Law No. 30 of 1999 on Arbitration and the settlement of Alternative Dispute explains that the Alternative Dispute Settlement is a dispute resolution or disagreement institution through a procedure agreed upon by the parties, namely non-court settlement by way of consultation, negotiation, mediation, conciliation, or expert judgment. Then also explained about the advantages of mediation as follows:

1. Guaranteed confidentiality of the parties' disputes as the result of the decision is not published.
2. Can be avoided delays caused by procedural and administrative matters.

²¹Maria SW Sumardjono Cs, *Land Dispute Mediation Potential of Application of Alternative Dispute Resolution (ADR) in the Land Affairs*, Volume II, (Jakarta: Kppas Media Nusantara, 2008), 4.

3. The parties may choose an arbitrator (mediator) who believes to have sufficient knowledge, experience, and background on issues of disputes, fairness and fair.
4. The parties may decide the choice of law to resolve the matter as well as the process and place of arbitration (mediation).
5. The decision of the arbitrator (mediator) is a decision that binds the parties and through the procedure (procedure) simple or straightforward can be implemented.

In the provision of Supreme Court Regulation Number 1 of 2016 also defines mediation, namely the way of dispute resolution through negotiation process to obtain agreement of Parties with assisted by Mediator.

2. Terms, Roles and Functions of the Mediator

Mediators are noble and heavy professions. He must be able to be wise, wise, neutral and impartial to one of the parties to the dispute. In the dispute resolution mediator must meet the following requirements:

- a. Approved by the parties to the dispute
- b. Not having a family relationship of blood to second degree with one of the parties to the dispute
- c. Not having a working relationship with one of the parties to the dispute
- d. Has no financial interest or other interest in the agreement of the parties

- e. Has no interest in the process of ongoing negotiations or results²²

In carrying out its profession, the existence of a mediator is very important in the mediation process. He has a big role in creating peace. In accordance with the definition that the mediator is a facilitator who mediates in the dispute. In performing his function as mediator he has the main tasks:

- a. Bring together different interests in order to reach the common ground that can be used as a starting point for problem solving.
- b. Assist the parties to the dispute to understand the perceptions of each party.
- c. Make it easier for the parties to give each other information.
- d. Encourage the parties to discuss different interests and perceptions
- e. Manage the parties in negotiating with the cool atmosphere and away from the attitude of emotion.
- f. Encourage the parties to achieve peace with the win-win solution.

As for the strong role side of the mediator if he does the following things in the negotiations:

- a. Prepare and negotiate notes.
- b. Formulate and articulate the agreement of the parties.
- c. Helping the parties to realize that the dispute is not a fight to be won, but to be resolved.
- d. Compile and propose various troubleshooting options and

²²Gunawan Widjaja, *Alternative Dispute Settlement*, (Jakarta: Rajawali Pers, 2001), 34-35.

- e. Helping parties to analyze various problem-solving options.

According to Gary Goodpaster²³ Mediators have a large role such as analyzing and diagnosing dispute. Therefore, mediators have an important role to play: making a conflict diagnosis, identifying problems and critical interests, organizing the agenda, facilitating and controlling communications, teaching the parties in the process and gaining skills, helping the parties in gathering important information, solving problems with some choice, and diagnose the dispute so as to facilitate the problem solving.

According to Christopher W More²⁴. The mediator plays a very important function for determining the dispute resolution option by doing the following:

- a. Being a reality tester, whether the way taken is a realistic way to meet the needs and really can be done.
- b. Check if the troubleshooting really meets the needs or matches one's interests.
- c. Help the parties to the dispute to compare the options and compare for the long term and the short term.
- d. It raises doubts as to whether the parties involved have a better choice than the options already in the negotiations.

²³Gary Goodpaster, *Negotiation and Mediation: A Negotiation and Dispute Settlement Manual through Negotiation*, (Jakarta: ELIPS Project, 1993), 253-254.

²⁴Summarized from Christopher W Moore, *Environmental Mediation*, (Jakarta: Indonesian Center for Environmental Lawans CDR Associates, 1995), 41.

- e. Help parties evaluate and modify dispute resolution options better and meet the needs of the parties.
- f. Helping parties to see the best, worst and most possible alternative to the negotiated deal.
- g. Help the parties to identify the benefits of the way they go and identify the costs incurred if they resolve and do not solve the problem.

J. Systematic Discussion

With the intent that in the preparation of the research will be more systematic and focused on one thought, the researcher presents a systematic discussion of the general overview of research writing later. The results of this study consists of 5 chapters, where the systematic writing is as follows:

Chapter I: Introduction

In this Chapter contains an introduction that includes a background that explains the reason the researcher chose this title. The formulation of the problem which is the core of the implementation of the research, problem boundaries, research objectives and the benefits of research that convey the impact of this research both theoretically and practically and the Research Method is used as an instrument in research to produce more directed and systematic research. Among them include: types of research, approach to research, legal materials, methods of

collecting legal materials, methods of processing legal materials, literature review and systematic discussion.

Chapter II: Literature Review

In this chapter discuss the theoretical basis. Next outlines the research framework and previous theory or theoretical basis. Previous research provides information and research that has been carried out in previous studies, both in books that have been published and still in the form of dissertations, theses, or theses that have not been published. The theoretical framework or foundation theory contains a theory or explanation, which becomes a research analysis tool.

Chapter III: Findings and Discussion

In this Chapter discusses and explains the results of research and discussion which consists of two sub-chapters, namely exposure to legal materials and analysis of legal materials. Researchers' argumentation on the analysis of legal material by linking the results of field legal material with the literature review.

Chapter IV: Conclusion and Suggestion

In this Chapter discusses and describes conclusions drawn from the overall description contained in this study and also contains suggestions.

Next is containing attachments containing some legal material as additional information and evidence of legal validity that the researchers have actually carried out the research.



CHAPTER II

LITERATURE REVIEW

A. Definition of Mediation

1. Mediation

Epistemologically, mediation originally comes from English which means intercession²⁵. While in Dutch is called *medio* means the middle and in Indonesian dictionary means intercede²⁶. Furthermore, in its principle, mediation can be interpreted broadly and narrowly. Broadly, the settlement of disputes is conducted by either a third party outside judicial system or within judicial system. Those which are exercised outside the judicial system are

²⁵E. Pino and T. Wittermans, *A Complete English-Indonesian, Indonesian-English Dictionary*, Ed.VI, (Jakarta: PT Pratnya Paramita, 1983), 268 also read Wojowasito and Tito Wasito, *English-Indonesian Complete Dictionary, Indonesian-English*, Volume.1, (Bandung: Space Offeset, 1982), 111.

²⁶Editorial of Your Work, *The Popular International Dictionary*, (Surabaya: Your Work), 223.

mediation, arbitration, and others. While, those are implemented in the court system are known as *Court Annexed Mediation* or also called *Court Annexed Dispute Resolution*.

Meanwhile, basically mediation as set forth in the 3rd Book of the Civil Code is one form of engagement. Mediation which is also known as peace, the definition has been formulated in Article 1851 Civil Code which reads as follows:

"Peace is an agreement that contains by handing, promising or holding an item, both parties end a case that is being examined by the court or preventing a case, this agreement only has the force of law, if it is made written"

Meanwhile, concerning the mediation of J. Folberg and A. Tailor in his book entitled "Mediation, A. Comprehensive Guide to Resolving Conflict Without Litigation (1984, page 7) edited by Said Faisal defines that mediation is The process by which the participants, together with the assistance of a neutral persons, systematically isolate disputed issues in order to develop options, consider alternatives, and reach a consensual settlement that will accommodate their needs²⁷

Furthermore, from the general characteristics of mediation above, it can be define that mediation is one of ways (solution) in solving land conflicts in Indonesia in general and the settlement of civil lawsuit particularly. In relation to land conflict issues, the choice of conflict resolution through negotiation or mediation has advantages over completion through litigation or court proceedings.

²⁷Suharto, "Direction in Order Mediator Training in Welcome Application Supreme Religious Court annexed Mediation in the Indonesian Courts", Papers in the Supreme Court, Mediation and Peace, (Jakarta: Pusdiklat MA RI, 2005), 11-12.

According to Maria SW Sumardjono Cs, the advantages of mediation are as follows:²⁸

1. Save time, cost, energy and mind
2. Mediation gives all parties a sense of unity and the determination of the result of negotiation is achieved by mutual agreement without pressure and coercion.
3. The final solution leads to *win-win solution*

Moreover, in the general explanation of Law Number 30 Year 1999 concerning Arbitration and Settlement of Alternative Dispute states that Alternative Dispute Settlement is a dispute resolution or disagreement institution through procedure agreed by all parties, that is settlement outside court by consulting, negotiating, mediating, conciliating , or expert judgment. Then it is also explained about the advantages of mediation as follows:

1. Guaranteed all party secrecy disputes despite of the result is not published.
2. Can be avoided delays caused by procedural and administrative matters.
3. All parties may choose an arbitrator (mediator) who believed to have sufficient knowledge, experience, and background on issues of the disputes, fairness and fair

²⁸Maria SW Sumardjono Cs, *Land Dispute Mediation Potential of Application of Alternative Dispute Resolution (ADR) in the Land Affairs*, Volume .II, (Jakarta: PT. Kompas Media Nusantara, 2008), 4.

4. All parties may decide the choice of law to solve they matters also the process and place of arbitration (mediation)
5. Arbitrator (mediator) is a verdict which is binding all parties through simple procedure or can be implemented directly.

In stipulation of Supreme Religious Court Number 1 of 2016 also defines mediation, which it is the way of dispute resolution through negotiation process to acquire agreement of parties with assisted by the mediator.

2. Terms, Roles and Functions of the Mediator

Mediator is an honourable and difficult profession. He must be able to be wise, neutral and impartial to one of dispute parties. In the dispute settlement a mediator must follow the following requirements:

1. Approved by the dispute parties
2. Not having a family relationship of blood to second degree with one of the dispute parties
3. Not having a working relationship with one of the dispute parties
4. Has no financial interest or other interest in the agreement of the parties
5. Has no interest to the process of ongoing negotiations or results²⁹

In doing his profession, the existence of a mediator is very important in the mediation process. He has a big role in creating peace. As its definition, mediator is a facilitator who mediates in a dispute. In performing his function as mediator he has the main orders:

²⁹Gunawan Widjaja, *Alternative Dispute Settlement*, (Jakarta: Rajawali Pers, 2001), 34-35.

1. Uniting different interests in order to achieve a meeting point that can be used as a starting point for solving the problem.
2. Assisting the dispute parties to understand the perceptions of each party.
3. Making all parties easier to give each other information.
4. Encouraging all parties to discuss different interests and perceptions
5. Managing all parties in negotiating with calm atmosphere and away from emotion attitude.
6. Encouraging all parties to achieve peace with the *win-win solution*.

The strong role side of the mediator if he does the following things in the negotiations:

1. Preparing and notating notes.
2. Formulating and articulating the agreement of the parties.
3. Helping the parties to realize that the dispute is not a fight to be won, but to be resolved.
4. Arranging and proposing various troubleshooting options and
5. Helping parties to analyse various problem-solving options.

According to Gary Goodpaster³⁰. A mediator has a big role such as analysing and diagnosing disputes. Therefore, mediators have an important role to play: making a conflict diagnosis, identifying problems and critical interests, Arranging agenda, facilitating and controlling communications, teaching the parties

³⁰Gary Goodpaster, *Negotiation and Mediation: A Negotiation and Dispute Settlement Manual through Negotiation*, (Jakarta: ELIPS Project, 1993), 253-254.

in the process and gaining skills, helping the parties to collect important information, solving problems with some choices, and diagnosing the dispute to facilitate the problem solving.

According to Christopher W Moore³¹ a mediator plays a very important role to determine the dispute resolution option by doing the following:

1. Being a reality examiner, whether the way taken is a realistic way to deal and can be done.
2. Checking whether the troubleshooting surely deals or matches an interest.
3. Helping the dispute parties to compare the options and compare for the long term and the short term.
4. Make doubt to whether the parties involved have a better choice than the options that already in the negotiations.
5. Helping parties evaluate and modify dispute resolution options better and meet the needs of the parties.
6. Helping parties to see the best, worst and most possible alternative to the negotiated deal.
7. Helping the parties to identify the benefits of the way they go and identify the costs incurred if solving and not solving the problem.

³¹Summarized from Christopher W Moore, *Environmental Mediation*, (Jakarta: Indonesian Center for Environmental Law and CDR Associates, 1995), 41.

3. Mediation Arrangements

a) Mediation Arrangements in Indonesian Religious Courts

In the Indonesian Religious Courts mediation arrangements have undertaken several stages of dismissal of the contents of mediation rules that currently apply to Supreme Court Regulation Number 1 of 2016 and previously there is a Supreme Court Regulation Number 1 of 2008 and the previous Supreme Court Regulation Number 2 of 2003. The expenditure of the current Regulation of Supreme Court Regulation Number 1 of 2016 is because of the previous regulation is considered not detailed yet in discussing relation of Mediation process so that in the Current Regulation can give more detail explanation from the previous Regulation, such as: First, Mediation is seen shorter than 40 days to 30 days commencing from the order to do Mediation. Second, the obligation of the parties to be present directly in the Mediation whether accompanied by legal counsel or not, unless there are valid reasons such as residence or residence of parties abroad, the health of the party who is not possible to attend directly in Mediation by the letter testimony from a physician, under the ability, or perform a State duty, a profession that can't be abandoned. Third, the most recent thing is the existence of the rules of Good conviction in the mediation process and the legal consequences of the parties that do not have a good conviction in the mediation process. Article 7 states: (1) The Parties and / or their attorneys shall be required to pursue Mediation in good faith. (2) One party or its Parties and / or its attorney may be declared

unlawful by the Mediator in respect of: a. not present after being summoned twice consecutively in a Mediation meeting for no legitimate reason; b. attended the first mediation meeting, but was never present at the next meeting despite having been summoned twice consecutively for no legitimate reason; c. repeated absences that interfere with the meeting of Mediation meetings without valid reasons; d. attending Mediation meetings, but not filing and / or not responding to the Resume of the Case of the other party; and / or e. did not sign the agreed concept of the Peace Agreement without a valid reason³².

b) Mediation Arrangements in Malaysian Sharia Courts

At this time the Malaysian Sharia Court Mediation Arrangement is governed in Referrals Number 1 of 2010 which previously has No Referral Directive. 3 of 2002 and then amended to Enactment Number 4 year 2006.

Referrals Number 3 of 2002 explains that all matters which after being registered in Malaysian sharia courts no more than 21 days have to mediate with *Majlis Sulh* and the result of the *Majlis Sulh* is registered and notified to the judge. In the application of this *Majlis sulh* not included in the case of marriage and ancestry.

Referrals Number 4 of 2006 explains that in the event of a concurrence of the Mediation proceeds it is not possible to carry out Mediation prior to the order of the Sharia Court. If the Mediation is successful in whole or in

³²<http://www.hukumonline.com/berita/baca/lt56bb2d4541fd5/ini-poin-penting-yang-diatur-dalam-perma-no1-tahun-2016> Retrieved on Monday 22nd January at 08:11 pm.

part then the Mediator only prepares the draft / deed of approval with signed by both parties then the Mediator submits the draft / deed to the Sharia Court to be registered the deed of the Agreement. Then Reality Number 1 of 2010 explains the related Cases of what must do Mediation before the lawsuit to the court case, while.



CHAPTER III

FINDINGS AND DISCUSSION

MEDIATION ARRANGEMENTS IN INDONESIAN RELIGIOUS COURTS AND MALAYSIAN SHARIA COURTS

A. Mediation Arrangements in Indonesian Religious Courts

Religious courts are the official designation for any of the four judicial circles of the State or the legitimate judicial authority in Indonesia³³. The other three courts of the State are general courts, military courts, and state administrative courts. Whereas in the new law the Law no. 4 of 2004 on the authority of the judiciary coupled with the Constitutional Court.

Religious courts are one of the special courts in Indonesia. The other two special courts are the military court and state administrative court. It says a special court because the religious court adjudicates certain cases or concerns certain factions. In this case the religious court only authorized in certain civil fields alone does not cover all civil Islam, excluding the criminal field and only specifically for the people of Islam in Indonesia.

³³State Gazette of the Republic of Indonesia of 2009 Number 157 Supplement to the State Gazette of the Republic of Indonesia Number 5076, (Editorial: Explaining the notion of religious court).

Religious courts are Islamic courts in Indonesia, because of the types of cases that may be prosecuted, all of them are types of cases according to Islamic religion. The inclusion of Islamic judicial words with in Indonesia is because the types of cases that may be prosecuted, does not cover all kinds of cases according to the Islamic judiciary universally. The assertiveness of religious courts is a limiting Islamic court, which has been adapted to the circumstances of Indonesia³⁴.

The cases that can be tried in Islamic religious court in Indonesia include:

- a. Marriage
- b. Inheritance
- c. Will
- d. Grant
- e. Endowments
- f. Zakat
- g. Infaq
- h. Alms
- i. Sharia Economics³⁵

³⁴Erfaniah Zuhriah, *Religious Courts in Indonesia*, (Malang, Setara Press, 2014), 10.

³⁵State Gazette of the Republic of Indonesia of 1989 Number 49, Supplement to the State Gazette of the Republic of Indonesia Number 3400, (Editorial: Act No. 3 of 2006 states which cases are eligible and who can be tried in Islamic religious courts in Indonesia).

a) Similarities

1. Supreme Court Regulation Number 1 of 2016 article 14 about the function of mediators.

Basically this article describes the stages of the mediator's work, but we can see that from the work of our mediators we can draw the conclusion that the mediator's task is to mediate the parties and to help mediation proceed smoothly and produce a peace agreement.

2. Supreme Court Regulation Number 1 of 2016 article 27 about success or failure of the mediation process.

In article 27 explains the achievement of an agreement between the two parties in this mediation process. If an agreement is reached between the two parties, the mediator prepares a written draft submitted to the judge of the court examiner which contains that the mediation reaches the peace signed by both parties.

While in article 32 explains if the mediation does not reach agreement or can't be implemented. Thus the mediator provides a draft in writing which contains that the mediator does not reach agreement or the parties are not in good faith and the draft is submitted to the judge of the case examiner.

b) Differences

1. Supreme Court Regulation Number 1 of 2016 article 27 about time of mediation

The time of mediation which was previously stipulated in Supreme Court Regulation Number 1 of 2008 states that the time of mediation of 40 days, then in the Supreme Court Regulation Number 2016 in Article 3, paragraph 6 mentioned that the time of mediation is 30 days from receipt of the decision notice.

2. Supreme Court Regulation Number 1 of 2016 article 27 about the type of case that must take mediation.

a. All civil disputes submitted to the Court include a *verzet* on the verdict of *verstek* and the resistance of both the litigant (*partij verzet*) and the third party (*derden verzet*) against the execution of a permanently enforceable ruling, shall firstly seek settlement through Mediation, unless otherwise stipulated under this Supreme Court Regulation.

b. Disputes exempted from settlement obligations through Mediation as referred to in paragraph (1) shall include:

1) a dispute whose examination in the hearing is determined the deadline of completion includes among others:

a). disputes resolved through the Commercial Court procedure

- b). dispute settled through the Industrial Relations Court procedure
- c). objection to the decision of the Commission for the Supervision of Business Competition
- d). objection to the decision of the Consumer Dispute Settlement Board
- e). request for cancellation of the arbitral award
- f). object to the Information Commission ruling
- g). settlement of political party disputes
- h). disputes settled through simple and lawsuit procedures
- i). other disputes whose examination in the hearing is determined by the time limit of the settlement in the provisions of laws and regulations
- j). disputes whose investigations are conducted in the absence of a plaintiff or defendant who has been properly summoned
- k). backlash (reconvention) and the inclusion of a third party in a case (intervention)
- l). disputes concerning the prevention, rejection, cancellation and endorsement of marriage
- m). disputes submitted to the Court after attempted settlement outside the Court through Mediation with the help of a certified Mediator registered with the local Court but

declared unsuccessful based on statements signed by the Parties and the certified Mediator.

- c. Statement of non-settlement Mediation as referred to in paragraph (2) letter e and certified copy of Mediator Certificate is attached in Letter of Application
- d. Subject to the agreement of the Parties, the disputes that are excluded from Mediation liabilities as referred to in paragraph (2) a, c, and e, shall still be settled through voluntary Mediation at the stage of examination of the case and level of remedy.³⁶

3. Regulation of the Supreme Court Number 1 of 2016 Article 6 concerning the obligation to attend mediation.

Article 6 paragraph 3 of the Supreme Court Regulation Number 1 of 2016 requires the parties to attend the mediation process. If the parties are not present then the mediation process can't be implemented. However, in this regulation it provides exceptions to those who are unable to attend this mediation process represented by a lawyer with valid reasons. As:

- a. One of the sick parties, which is required by showing a doctor's certificate.
- b. In capability
- c. Have a residence, residence or overseas position

³⁶State Gazette Number 175 of 2016 Supreme Court Regulation Number 1 of 2016 concerning mediation proceedings in Court, (Editorial: explaining cases that are required to mediate and also the result of mediation attached to the lawsuit).

- d. Perform State duties, professions or occupations that can't be abandoned by the parties.

4. Regulation of the Supreme Court Number 1 of 2016 Article 8 concerning the Cost of Mediation

Mediation is one form of alternative dispute settlement between the parties by involving neutral and impartial third parties. In mediation the disputants are pro-active and have full authority in decision making. The mediator has no full authority in decision-making. The mediator has no authority in decision-making, but he only assists the parties in maintaining the mediation process in order to realize their peace agreement.

Bringing the mediators together with the bailiffs to inform you of a call in the mediation process. The calling of the parties is deferred to the plaintiff who registered the case with a fee charge. In the event of any additional cost, it shall be borne jointly or upon the agreement of the parties and if between the parties there is not a good intention then suspended to the loser is exempted if the case is a divorce case within the religious court.

B. Mediation Arrangements in Malaysian Sharia Court

The Sharia Court is a judicial institution that discusses and punishes Muslims for the culpability and crime of religion following the field of power intended for him.

Sharia Court of country in Malaka has been established under Section 39 Enactment Administration of syarak Melaka State Law, 1959. Since the beginning of its inception to 1989, Malaka Sharia Courts put under administration Melaka State Islamic Religious Department (self-respect).

However, Administration Sharia Courts of Country in Malaka initially sequestered than JAIM in 1990 and operates in the Islamic *Majlis* building, road building Tengkeru then moved to Red Road Town, then in Kee Ann Streets. In 1995, Sharia Courts of Malaka has moved once again to the Court Complex Melaka, Lebu Ayer Keroh, Malaka up to now.

Field power Sharia Courts of Malaka is in handling cases Mal, Crime and *Faraidh* in all ranks Court that Court Lower Sharia Court Sharia High and Supreme Flirt Sharia by allotment under Enactment Act Family Islam (State Melaka) 2002, Enactment administration of Islam (State Melaka) 2002, Enactment Procedure Mal Sharia Court (State Melaka) 2002, Enactment Procedure Sharia Crime (State Melaka) 2002, Enactment Information Sharia Law (State Melaka) 2002 and Enactment Error Sharia 2001. When the 46

delegation of the Sharia lower court is also distributed to the three regions namely Melaka Tengah, Alor Gajah and Jasin³⁷.

a. Similarities

1. M.P.U 6/2004 Rules Mal Malaysian Sharia Court (*Sulh* 2014) rule 5 number 3 on the procedure *Sulh*.³⁸

This rule explains that a mediator should assist the parties in solving the case by listening and taking information submitted by both parties in which the case is expected to be resolved and the mediator may also suspend mediation by allowing the parties to think in advance the case processed in this mediation.

2. P.U. (A) 18/2004 Methods of Mal (*Sulh*) territories of 20004 rule 6 concerning Judgment of recognition or approval and 7 of the Report if there is no settlement³⁹.

The mediator would expect a case to be settled with peace, but all that can be done with the agreement of the parties. So when this mediation reaches agreement, the mediator provides a draft in writing which contains that mediation reaches peace and the draft is submitted to the judge of the examination of the case which will later be created a peace deed.

On the contrary, if the mediation process does not reach agreement, the mediator shall provide a written draft which contains

³⁷<http://www.mahsyariahmelaka.gov.my/index.php/ms/profil-korporat/profil/latar-belakang>
Retrieved on December 10th 2017 at 09:23 pm.

³⁸M.P.U 6/2004 Rules Mal Hall Sharia Court (*Sulh* 2014) rule 5 number 3 on the procedure *Sulh*.

³⁹P.U. (A) 18/2004 Methods of Mal (*Sulh*) areas of communion 2004 rule 6 concerning Judgment on recognition or approval and 7 on Report if no settlement.

that the mediation process does not result in an agreement which will be given to the judge of the case investigator.

b. Difference

1. Phg.P.U.19/2005 Rules of Procedure Mal Sharia Courts (*Sulh*)

2005 about setting date *Sulh*⁴⁰.

The mediation process takes sufficient time to bring the parties together and agreement in settling the case. The Malaysian Sharia Court Regulation mentions in its rules in item 1 letter a that the mediation process takes 3 months, if within 3 months has passed the mediation is said to have failed so that the parties can file to the Court for the trial process.

2. Referral Practice number 1 of 2010 on the Claims and Requests that may be made through the *Sulh* process.

Between the suitability of *Mal's* claims or the petition in the Sharia Law Court and the Sharia High Court that may be settled through *Majlis Sulh* refer to Referral No. References. 1 Year 2010 is:

- a. 009 - Compensation Engagement Requests
- b. 016 - *Mut'ah* Demands
- c. 017 - Demand for Lost Treasures
- d. 018 - The demand for wife's livelihood
- e. 019 - Livelihood Requests to Unemployed Parties

⁴⁰Phg.P.U.19 / 2005 Rules Procedure of Mal Sharia Court (*Sulh*) 2005 on Determination of Date of *Sulh*.

- f. 020 - Demands for Livelihood
 - g. 021 - Demands for *Iddah's* Life
 - h. 022 - Demand for Changing the Command of Life
 - i. 023 - The demand for delinquent livelihood
 - j. 024 - Demands Child's Lives
 - k. 025 - Demands for Changing Orders for Child Care / Child Support
 - l. 026 - Demands for Changing Child Rights / Child Care Agreement
 - m. 028 - *Hadhanah's* demand
 - n. 049 - Compensation Marriage Demands
 - o. 059 - Residential Rights Requests
 - p. 060 - The Commandment Requests for Husband to Live With Us
 - q. 062 - The Immutable Wife's Demands
 - r. 063 - Dowry demands⁴¹.
3. M.P.U.6 / 2004 Rules of Procedure of Mal Sykul (*Sulh*) 2004 Court on Procedure *Sulh*⁴².

This mediation process is conducted in a single council in the Sharia Court with the presence of the parties and assisted by a mediator as mediator of the existing problems. Parties are

⁴¹JKSM. BPKR / 5/5/2 / volume 2 (9), Referral Practice Number 1 of 2010 on the determination of sessions that need to be referred to council *sulh* on the rank of registration case.

⁴²M.P.U.6 / 2004 Rules of Procedure of Mal Sykul (*Sulh*) 2004 Court on the procedure of *Sulh*.

required to be present in this mediation process, not allowed to be represented by anyone. If the parties are not present in this process then the mediation process can't be implemented.

4. M.P.U.6 / 2004 Rules of Procedure of Mal Sykul Sharia Court (*Sulh*) 2004 concerning none⁴³.

The Malaysian Sharia Court in this mediation process does not provide any costs to the plaintiff and the defendant, in the hope that the parties can resolve the matter well.

C. Similarities and differences in mediation arrangements in Indonesian Religious Courts and Malaysian Sharia Courts

From the explanation above we are able know there are some differences and similarities between the two countries in the mediation arrangements in the Religious Courts of Indonesia and the Malaysian Sharia Court. Among them:

1. Similarities

a. Mediator Function

The Indonesian Religious Courts and the Malaysian Sharia Court both provide mediator functions as mediators of the parties in the mediation process.

b. The achievement or failure of the mediation process

The Indonesian Religious Court and the Malaysian Sharia Court explain that if a case reaches an agreement then the mediator states in writing that the mediation process has reached a peace agreement and

⁴³M.P.U.6 / 2004 Rules of Procedure of Mal Sykul Sharia Court (*Sulh*) 2004 about no cost.

will be submitted to a case review judge. Likewise, if the case does not reach an agreement, the mediator also states in writing that the mediation process did not reach an agreement and the statement was given to the case review judge.

2. Differences

a. Mediation Time

Indonesian Religious Court takes 30 days (1 month) while the Malaysian Sharia Court takes 90 days (3 months) in the mediation process.

b. The type of case that must take the mediation process

Indonesian Religious Court requires that all civil cases that enter the Court have to go through a mediation process while the Malaysian Sharia Court requires that only a portion of the cases must undergo a mediation process, in which part of the cases are mentioned in the Direction of Practice Number 1 of 2010.

c. The obligation of the parties to attend the mediation process

Indonesian Religious Courts require parties to attend the mediation process, and if one of the parties cannot attend it can be represented by a legal counsel by providing a valid reason, while the Malaysian Sharia Court also requires the parties to attend the mediation process and if one from parties who are unable to attend, they should not be represented by legal counsel etc.

d. Mediation Fee

The Indonesian Religious Courts provide mediation fees that are made at the beginning of the case registration or commonly known as a case cover that is borne by the plaintiff, and if there is an additional court fee then it is deferred to the loser or based on a joint decision. Defendant in this mediation process.



CHAPTER IV

CONCLUSIONS AND SUGGESTIONS

A. Conclusion

From the explanation of the above discussion about the analysis of "Mediation Arrangements in Religious Courts and Sharia Courts (Comparative Study in Indonesia and Malaysia), the authors provide the following conclusions:

1. The Mediation Arrangement in Indonesian Religious Court requires all civil matters except the application to conduct mediation before being tried by a Judge. Whereas the Malaysian Sharia Court only requires some cases. How to Arrange the Arrangement of the Malaysian Sharia Court in Directives Number 1 of 2010 mentions only a few cases that are required to conduct Mediation, other than those mentioned in the Direction of Practice, the case can be submitted to the Sharia Court and can be directly tried by a Judge.

2. There are similarities and differences in mediation arrangements between the Religious Courts in Indonesia and the Malaysian Sharia Court. Among them:

a. Similarities

1) Mediator Function

The Indonesian Religious Courts and the Malaysian Sharia Court both provide mediator functions as mediators of the parties in the mediation process.

2) The achievement or failure of the mediation process

The Indonesian Religious Court and the Malaysian Sharia Court explain that if a case reaches an agreement then the mediator states in writing that the mediation process has reached a peace agreement and will be submitted to a case review judge. Likewise, if the case does not reach an agreement, the mediator also states in writing that the mediation process did not reach an agreement and the statement was given to the case review judge.

b. Differences

1) Mediation Time

Indonesian Religious Court takes 30 days (1 month) while the Malaysian Sharia Court takes 90 days (3 months) in the mediation process.

2) The type of case that must take the mediation process

Indonesian Religious Court requires that all civil cases that enter the Court have to go through a mediation process while the Malaysian Sharia Court requires that only a portion of the cases must undergo a mediation process, in which part of the cases are mentioned in the Direction of Practice Number 1 of 2010.

3) The obligation of the parties to attend the mediation process

Indonesian Religious Courts require parties to attend the mediation process, and if one of the parties cannot attend it can be represented by a legal counsel by providing a valid reason, while the Malaysian Sharia Court also requires the parties to attend the mediation process and if one from parties who are unable to attend, they should not be represented by legal counsel etc.

4) Mediation Fee

The Indonesian Religious Courts provide mediation fees that are made at the beginning of the case registration or commonly known as a case cover that is borne by the plaintiff, and if there is an additional court fee then it is deferred to the loser or based on a joint decision. Defendant in this mediation process.

B. Suggestion

The author suggestions to convey this research are including:

1. Should the arrangement of mediation in the Malaysian sharia courts do the same as the Indonesian religious courts, where every case that goes to court should be mediated not only by certain cases that are required through the mediation process. Because of the fellow Muslims should settle the dispute among them peacefully
2. Indonesian Religious Court and Malaysian Sharia Courts should make this difference and equation as a reflection in governing a country so that the future can realize a good country.



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APPENDIXES

The Results of Interviews through Social Media (Gmail) with the Employee

Malaysian Sharia Courts

assalamualaikum mam Kotak Masuk x

08/10/17

deri zebua <derizebua06@gmail.com>
ke izzahanani3, izzah_hanani

Saya mahasiswa dari Indonesia yang pernah melawat ke Mahkamah Syariah di Malaka yang ingin meneliti perbezaan mediasi di Indonesia dengan Majlis Sulh di Malaysia

Saya mau nanya yang dimaksud dengan ?

1. apa yang dimaksud case interim dalam arahan amalan no 01 tahun 2010 ?
2. Kenapa case-case selain yang terdapat dalam arahan amalan no 01 tahun 2010 tidak ada mediasinya ?

terima kasih mam.
mohon bantuannya dalam melakukan penelitian ini

10/10/17

izzah hanani <izzahanani3@gmail.com>
ke saya

Melayu > Indonesia Terjemahkan pesan Nonaktifkan untuk: Melayu x

Assalamualaikum, maaf lewat membalas email adik kerana kekangan masa di program...

Saya cuba menjawab soalan adik dengan semakan oleh ketua jabatan juga.,allah

Jawapan untuk soalan 1:

Kes-kes interim(sementara)/exparte(sebelah pihak) adalah kes yg melibatkan kesegeraan atau wujud keperluan yg mendesak spt kes perintah interim hadhanah (hak jagaan anak) untuk menghalang anak dibawa keluar negara.. Oleh itu kes ini tidak perlu 'sulu' disebabkan kes ini perlu diselesaikan dan dapat perintah segera. Jika lambat boleh menjejaskan keadaan sesuatu kes seperti contoh anak telah dibawa lari.Jika ke proses sulh, ia akan melambatkan penyelesaiannya. Sedangkan kes exparte/interim boleh dibuat secara sebelah pihak.

Pihak plaintif(pihak yang menuntut)boleh memohon perintah interim utk kes hadhanah di mahkamah sebelum menfaikan kes hadhanah untuk dibawa ke majlis sulh sekiranya ada keterdesakan.sekiranya tiada keterdesakan yang timbul,pihak plaintif perlu menfaikan kes hadhanah sahaja.

Jawapan untuk soalan 2:

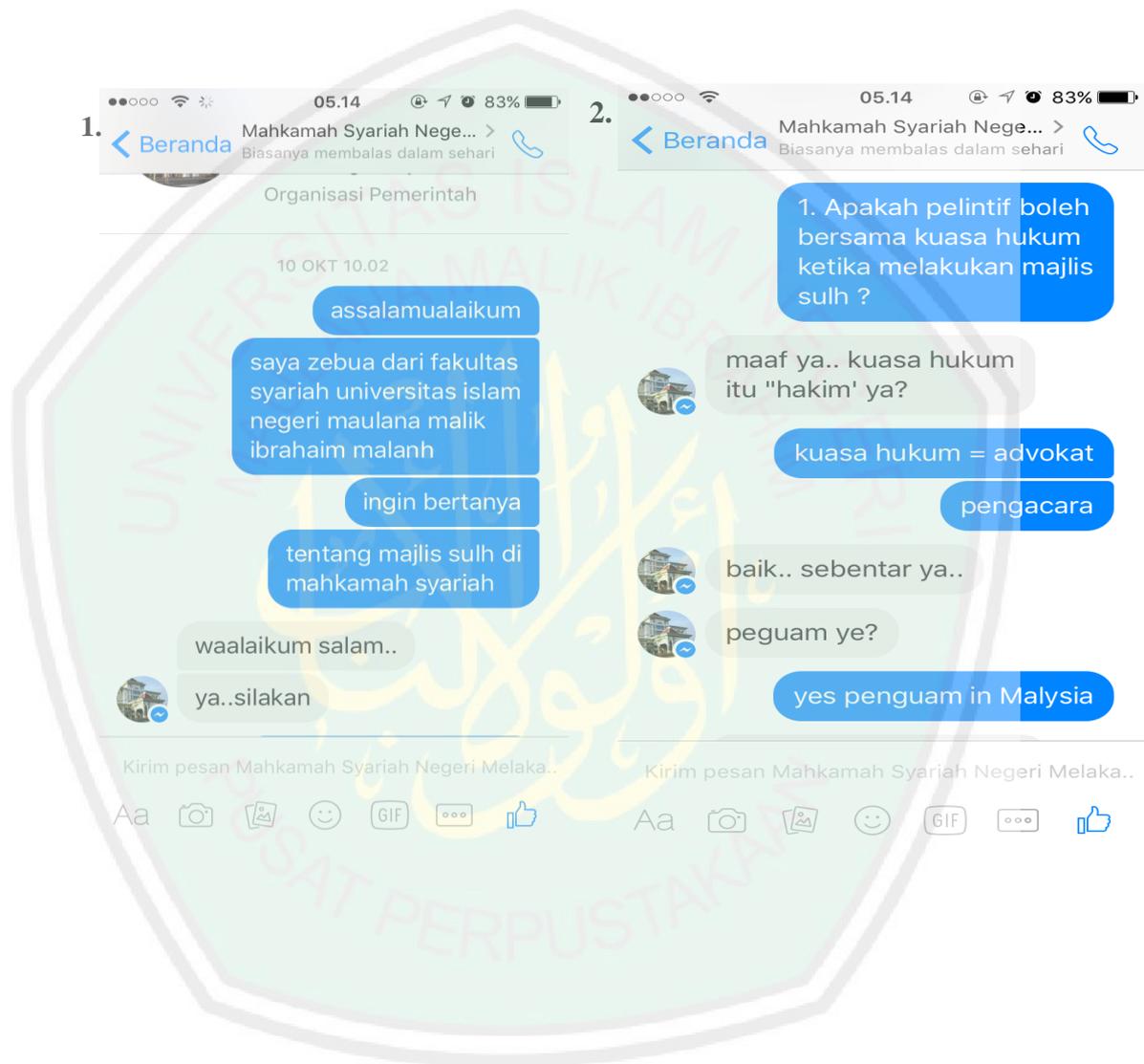
Tidak semua kes di bawa ke majlis sulh disebabkan penilaian dibuat kepada kes-kes yg boleh dibuat penyelesaian secara sulh melalui tafsiran oleh Hukum Syarak dan pada masa yg sama utk melihat kesesuaian dan kesediaan unit sulh dr segi sumber manusia iaitu pegawai sulh yang mencukupi dan prosedur penyampaian yang sempurna.

Semoga jelas dengan jawapan ini ia,jika tidak jelas, bole ditanya lagi 🙏

11/10/17

deri zebua <derizebua06@gmail.com>
ke izzah

The results of interviews through social media (Facebook) with one of the employee in the Malaysian Sharia Court



3.

05.14 83%
 Beranda Mahkamah Syariah Negeri Melaka
 Biasanya membalas dalam sehari

Peguam tidak dibenarkan bersama dgn anak guam ketika majlis sulh berlangsung.

berapa lama majlis sulh berlangsung ?

maksud cik? dalam sehari? jika dalam sehari di peruntukkan 1 jam bagi setiap sesi sulh

dalam 1 jam harus sudah ada keputusan hasil dari majlis sulh

Kirim pesan Mahkamah Syariah Negeri Melaka..

4.

05.14 82%
 Beranda Mahkamah Syariah Negeri Melaka
 Biasanya membalas dalam sehari

berhasil atau tidaknya majlis sulh

apakah seperti itu ?

Ya Cik. Samaada keputusan BERJAYA (persetujuan bersama) GAGAL(Tiada Persetujuan pihak-pihak) atau TIDAK HADIR (Plaintif atau Defendan atau kedua-duanya)

saya sudah membaca arahan amalan no 1 tahun 2010, tapi saya masi tidak paham di

Kirim pesan Mahkamah Syariah Negeri Melaka..

5.

20.16 70%
 Beranda Mahkamah Syaria... Messenger
 Biasanya membalas dalam sehari

saya sudah membaca arahan amalan no 1 tahun 2010, tapi saya masi tidak paham di nomor 2 dan 3>

bolehkan saya minta untuk diterangkan maksud dari nomor 2 dan 3

Bagi menjawab penjelasan arahan amalan No 1 2010 adalah seperti berikut:-

1) bagi kes Ex parte (Interim) -adalah kes yang melibatkan permohonan perintah

Kirim pesan Mahkamah Syariah Negeri Melaka..

6.

20.16 70%
 Beranda Mahkamah Syaria... Messenger
 Biasanya membalas dalam sehari

(interim) -adalah kes yang melibatkan permohonan perintah sebelah pihak sahaja yang mana pihak Plaintiff atau Defendan memfailkan permohonan perintah sementara ke mahkamah. maksud disini bagi permohonan perintah sementara tersebut, tidak perlu melalui proses majlis sulh. yang melalui proses majlis sulh adalah permohonan seperti dilampirkan di dalam Arahan Amalan No 1 2010 tersebut.

Kirim pesan Mahkamah Syariah Negeri Melaka..

7.

bagi menjawab persoalan no 3 Arahan Amalan No 1 2010 adalah seperti berikut:-

1) Di Malaysia kami mempunyai satu jabatan yang dinamakan sebagai Jabatan Bantuan Guaman (JBG) yang mana salah satu fungsinya adalah bertindak bagi pihak-pihak (Plaintif atau Defendan) dalam tuntutan kes di Mahkamah Syariah. dalam erti kata yang lain adalah satu badan Kepeguaman Kerajaan.

JBG ini masih satu bagian dari Mahkamah Syariah ?

8.

di JBG, ada disediakan satu proses mediasi dimana peguam JBG akan memanggil defendan untuk berbincang sepertimana majlis sulh. hasil perbincangan tersebut adalah samada berjaya atau gagal atau tidak hadir juga. bagi kes yang telah melalui proses mediasi tersebut di JBG, tidak perlu lagi kes tersebut di rujuk ke majlis sulh lagi.

Jika dibolehkan

9.

tidak

jadi selain case yang tertulis di arahan amalan nomor 1 tahun 2010 tidak diharuskan ke majlis sulh, melainkan langsung ke mahkamah syariah (hakim) ?

10.

terima kasih kembali kepada encik yang bertanya. semoga maklumat yang kami berikan memberi manfaat kepada encik.

10 OKT 12.01

amin ya rabbalamin

5 NOV 11.23

assalamualaikum

maaf saya mau bertanya kembali

5 NOV 11.43

Walaikumussalam

11. 20.17 69%
 < Beranda Mahkamah Syariah... Messenger

Walaikumussalam, apa yang kami boleh bantu saudara?

di enakmen arahan amalan no 1 tahun 2010 dijelaskan bahwa ada 18 perkara yg harus melakukan mediasi di mahkamah syariah.

kemudia selain perkara 18 tersebut bisa diselesaikan melalui JBG

yang mau saya tanyakan apakah enakmen selain arahan amalan no 1 tahun 2010 yang mengatur secara rinci

12. 20.17 69%
 < Beranda Mahkamah Syariah... Messenger

mengatur secara rinci proses mediasi di Malaysia ?

Bagi menjawab persoalan saudara berkenaan Arahan amalan No 1 tahun 2010 adalah seperti berikut:-
 1) kes selain drpd 18 perkara yg melalui proses sulh adalah dirujuk terus ke dewan (mahkamah) dan bukan JBG.

2) punca kuasa asal mengenai sulh adalah Sek 99 Enakmen

13. 20.17 69%
 < Beranda Mahkamah Syariah... Messenger

Tatacara Mal (Negeri Melaka) 2002

kemudian fungsi dari JBG seperti apa ?

2) punca kuasa asal mengenai sulh adalah berdasarkan Sek 99 Enakmen Tatacara Mal Mahkamah Syariah (Negeri Melaka) 2002. Selain daripada itu terdapat juga Kaedah Sulh dan Manual Kerja Sulh

Sepertimana yang telah dijelaskan sebelum ini Jabatan Bantuan

14. 20.17 68%
 < Beranda Mahkamah Syariah... Messenger

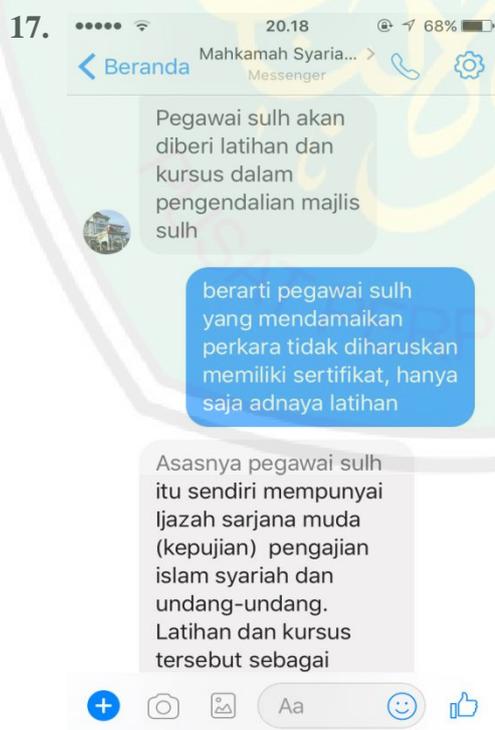
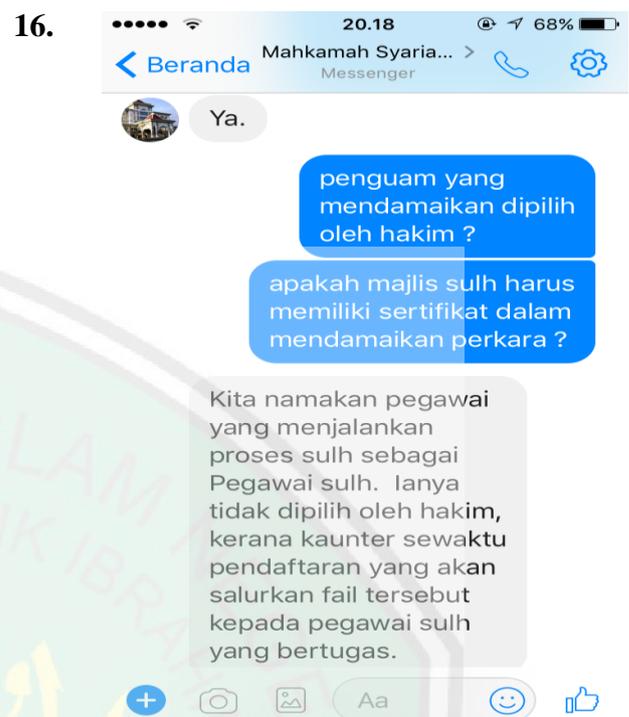
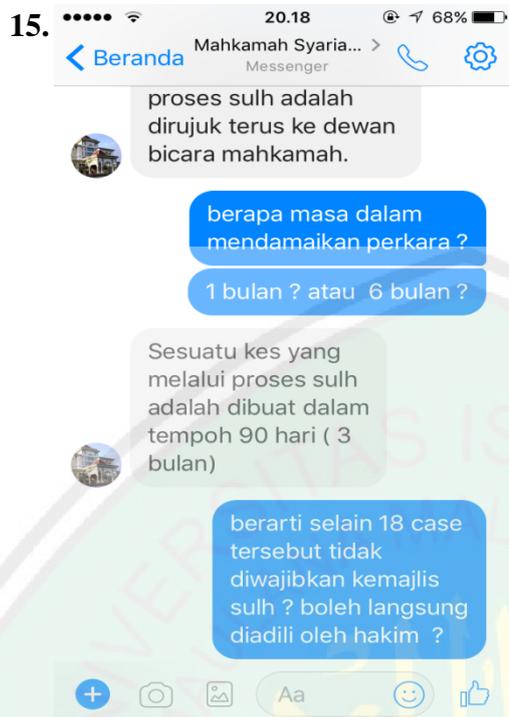
Guaman (JBG) adalah badan keperguaman kerajaan.

Fungsi JBG, mohon saudara layari laman web mereka.

berarti ketika ada perkara selain dari 18 perkara yg terdapat dalam arahan amaln no 1 tahun 2010 boleh diajukan ke mahkamah syariah ?

terima kasih nanti saya kunjungi web JBG

Ya, kes selain drpd 18 perkara yang dirujuk ke





The Results of Interviews through Social Media (Facebook) with One of the Advocate/Penguar (Legal Counsel) in the Malaysian Sharia Court

1. **WhatsApp Chat 1:** Peguam Syarie: Pusat Komuniti Syariah. 5 NOV 11.27. Messages: "assalamualaikum", "saya mau bertanya bolehkah?", "bagaimana proses mediasi di mahkamah syariah malaysia", "???", "terima kasih".
2. **WhatsApp Chat 2:** Peguam Syarie: Pusat Komuniti Syariah. 12 NOV 15.33. Message: "Wasalam. Proses mediasi melalui sulh bagi kes2 tertentu dikendslisn oleh pegawai mahkamah".
3. **WhatsApp Chat 3:** Peguam Syarie: Pusat Komuniti Syariah. JUN 15.12. Messages: "proses mediasi tiada dalam enakmen. boleh cari arahan amalan mahkamah syariah", "Bolehkah saya tau arahan amalan tersebut?".
4. **WhatsApp Chat 4:** Peguam Syarie: Pusat Komuniti Syariah. 10.54. Messages: "apakah penguar boleh ikut dengan pelintif ketika majlis sulh berlangsung?", "[peguar tidak dibenarkan masuk]".

5. 


tidak ada alasan apapun yang membolehkan penguam ikut ke majlis sulh ?

mmg x boleh klu mana2 pihak x dpt hadir sulh akn hantar kes tersebut ke mahkamah dan ishtiharkan proses sulh gagal

JUM 16,01

baik terima kasih banyak, maaf mengganggu waktunya

Dilihat

semoga bermanfaat



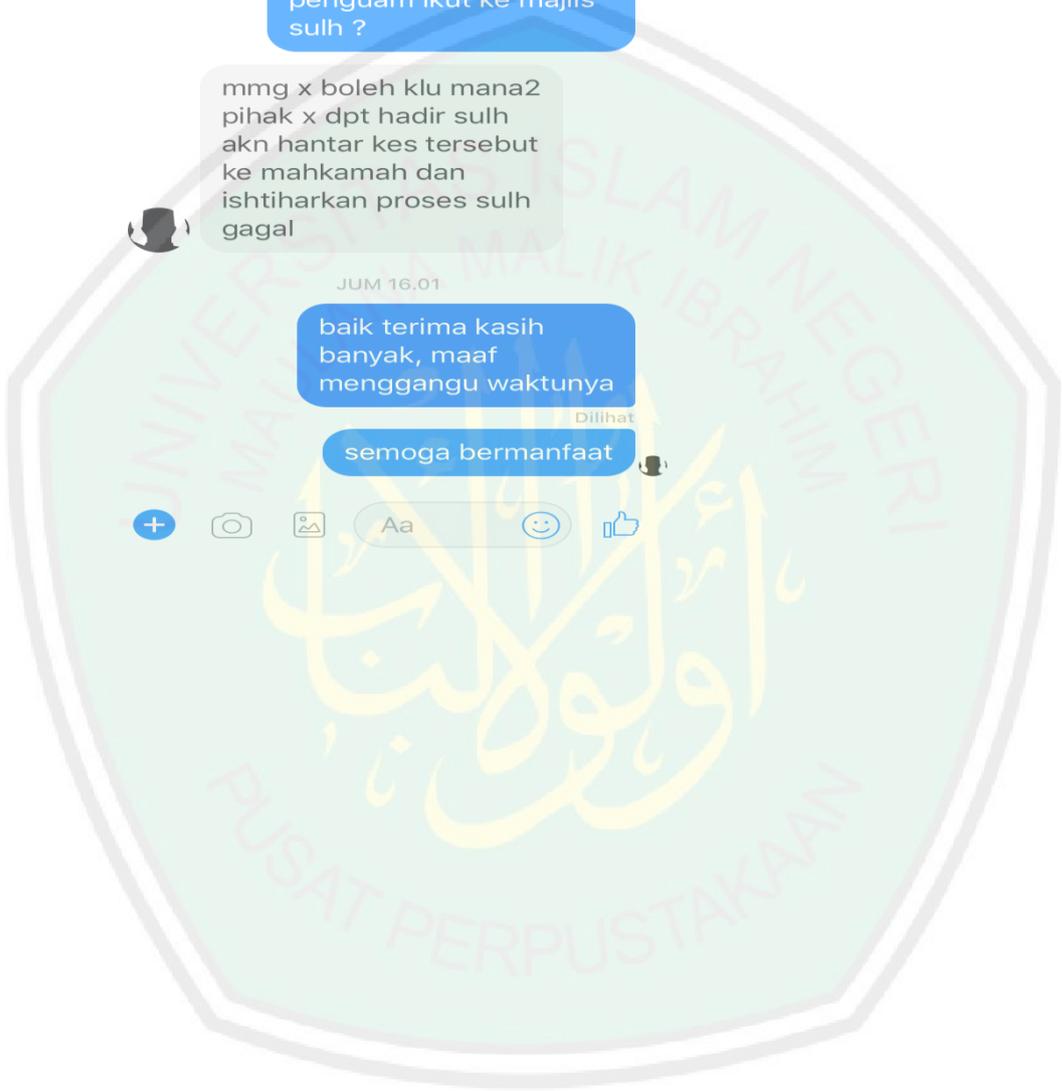




Photo with some employees in the Malaysian Sharia Courts

Interview with (Izzah Hanani) one of Mediator (Officer *Sulh*) in Malaysian Sharia Courts



Photo interview with employee in Malaysian Sharia Courts



**KETUA MAHKAMAH AGUNG
REPUBLIK INDONESIA**

**PERATURAN MAHKAMAH AGUNG REPUBLIK INDONESIA NOMOR 1
TAHUN 2016**

TENTANG

**PROSEDUR MEDIASI DI PENGADILAN DENGAN RAHMAT TUHAN
YANG MAHA ESA
KETUA MAHKAMAH AGUNG REPUBLIK INDONESIA,**

Menimbang:

- a bahwa Mediasi merupakan cara penyelesaian sengketa secara damai yang tepat, efektif, dan dapat membuka akses yang lebih luas kepada Para Pihak untuk memperoleh penyelesaian yang memuaskan serta berkeadilan;
- b bahwa dalam rangka reformasi birokrasi Mahkamah Agung Republik Indonesia yang berorientasi pada visi terwujudnya badan peradilan Indonesia yang agung, salah satu elemen pendukung adalah Mediasi sebagai instrumen untuk meningkatkan akses masyarakat terhadap keadilan sekaligus implementasi asas penyelenggaraan peradilan yang sederhana, cepat, dan berbiaya ringan;
- c bahwa ketentuan hukum acara perdata yang berlaku, Pasal 154 Reglemen Hukum Acara untuk Daerah Luar Jawa dan Madura (*Reglement Tot Regeling Van Het Rechtswezen In De Gewesten Buiten Java En Madura, Staatsblad 1927:227*) dan Pasal 130 Reglemen Indonesia yang diperbaharui (*Het Herziene Inlandsch Reglement, Staatsblad 1941:44*) mendorong Para Pihak untuk menempuh proses perdamaian yang dapat didayagunakan melalui Mediasi dengan mengintegrasikannya ke dalam prosedur berperkara di Pengadilan;

- d bahwa Prosedur Mediasi di Pengadilan menjadi bagian hukum acara perdata dapat memperkuat dan mengoptimalkan fungsi lembaga peradilan dalam penyelesaian sengketa;
- e bahwa Peraturan Mahkamah Agung Republik Indonesia Nomor 1 Tahun 2008 tentang Prosedur Mediasi di Pengadilan belum optimal memenuhi kebutuhan pelaksanaan Mediasi yang lebih berdayaguna dan mampu meningkatkan keberhasilan Mediasi di Pengadilan;
- f bahwa berdasarkan pertimbangan sebagaimana dimaksud dalam huruf a, huruf b, huruf c, huruf d dan huruf e, perlu menyempurnakan Peraturan Mahkamah Agung tentang Prosedur Mediasi di Pengadilan.

Mengingat :

1. Reglemen Hukum Acara untuk Daerah Luar Jawa dan Madura (*Reglement Tot Regeling Van Het Rechtswezen In De Gewesten Buiten Java En Madura, Staatsblad 1927:227*);
2. Reglemen Indonesia yang diperbaharui (*Het Herziene Inlandsch Reglement, Staatsblad 1941:44*);
3. Undang-Undang Nomor 3 Tahun 2009 tentang Perubahan Kedua Atas Undang-Undang Nomor 14 Tahun 1985 tentang Mahkamah Agung (Lembaran Negara Republik Indonesia Tahun 2009 Nomor 3, Tambahan Lembaran Negara Nomor 4958);
4. Undang-Undang Nomor 48 Tahun 2009 tentang Kekuasaan Kehakiman (Lembaran Negara Republik Indonesia Tahun 2009 Nomor 157 Tambahan Lembaran Negara Republik Indonesia Nomor 5076);

MEMUTUSKAN:

Menetapkan : PERATURAN MAHKAMAH AGUNG TENTANG PROSEDUR MEDIASI DI PENGADILAN.

BAB I KETENTUAN UMUM

Pasal 1

Dalam Peraturan Mahkamah Agung ini yang dimaksud dengan:

1. Mediasi adalah cara penyelesaian sengketa melalui proses perundingan untuk memperoleh kesepakatan Para Pihak dengan dibantu oleh Mediator.
2. Mediator adalah Hakim atau pihak lain yang memiliki Sertifikat Mediator sebagai pihak netral yang membantu Para Pihak dalam proses perundingan guna mencari berbagai kemungkinan penyelesaian sengketa tanpa menggunakan cara memutus atau memaksakan sebuah penyelesaian.

3. Sertifikat Mediator adalah dokumen yang diterbitkan oleh Mahkamah Agung atau lembaga yang telah memperoleh akreditasi dari Mahkamah Agung yang menyatakan bahwa seseorang telah mengikuti dan lulus pelatihan sertifikasi Mediasi.
4. Daftar Mediator adalah catatan yang memuat nama Mediator yang ditunjuk berdasarkan surat keputusan Ketua Pengadilan yang diletakkan pada tempat yang mudah dilihat oleh khalayak umum.
5. Para Pihak adalah dua atau lebih subjek hukum yang bersengketa dan membawa sengketa mereka ke Pengadilan untuk memperoleh penyelesaian.
6. Biaya Mediasi adalah biaya yang timbul dalam proses Mediasi sebagai bagian dari biaya perkara, yang di antaranya meliputi biaya pemanggilan Para Pihak, biaya perjalanan salah satu pihak berdasarkan pengeluaran



7. nyata, biaya pertemuan, biaya ahli, dan/atau biaya lain yang diperlukan dalam proses Mediasi.
8. Resume Perkara adalah dokumen yang dibuat oleh Para Pihak yang memuat duduk perkara dan usulan perdamaian.
9. Kesepakatan Perdamaian adalah kesepakatan hasil Mediasi dalam bentuk dokumen yang memuat ketentuan penyelesaian sengketa yang ditandatangani oleh Para Pihak dan Mediator.
10. Kesepakatan Perdamaian Sebagian adalah kesepakatan antara pihak penggugat dengan sebagian atau seluruh pihak tergugat dan kesepakatan Para Pihak terhadap sebagian dari seluruh objek perkara dan/atau permasalahan hukum yang disengketakan dalam proses Mediasi.
11. Akta Perdamaian adalah akta yang memuat isi naskah perdamaian dan putusan Hakim yang menguatkan Kesepakatan Perdamaian.
12. Hakim adalah hakim pada Pengadilan tingkat pertama dalam lingkungan peradilan umum dan peradilan agama.
13. Hakim Pemeriksa Perkara adalah majelis hakim yang ditunjuk oleh ketua Pengadilan untuk memeriksa dan mengadili perkara.
14. Pegawai Pengadilan adalah panitera, sekretaris, panitera pengganti, juru sita, juru sita pengganti, calon hakim dan pegawai lainnya.
15. Pengadilan adalah Pengadilan tingkat pertama dalam lingkungan peradilan umum dan peradilan agama.
16. Pengadilan Tinggi adalah pengadilan tingkat banding dalam lingkungan peradilan umum dan peradilan agama.
17. Hari adalah hari kerja

BAB II

PEDOMAN MEDIASI DI PENGADILAN

Bagian Kesatu Ruang Lingkup

Pasal 2

- 1) Ketentuan mengenai Prosedur Mediasi dalam Peraturan Mahkamah Agung ini berlaku dalam proses berperkara di Pengadilan baik dalam lingkungan peradilan umum maupun peradilan agama.
- 2) Pengadilan di luar lingkungan peradilan umum dan peradilan agama sebagaimana dimaksud pada ayat (1) dapat menerapkan Mediasi berdasarkan Peraturan Mahkamah Agung ini sepanjang dimungkinkan oleh ketentuan peraturan perundang-undangan.

Pasal 3

- 1) Setiap Hakim, Mediator, Para Pihak dan/atau kuasa hukum wajib mengikuti prosedur penyelesaian sengketa melalui Mediasi

- 2) Hakim Pemeriksa Perkara dalam pertimbangan putusan wajib menyebutkan bahwa perkara telah diupayakan perdamaian melalui Mediasi dengan menyebutkan nama Mediator.
- 3) Hakim Pemeriksa Perkara yang tidak memerintahkan Para Pihak untuk menempuh Mediasi sehingga Para Pihak tidak melakukan Mediasi telah melanggar ketentuan peraturan perundang-undangan yang mengatur mengenai Mediasi di Pengadilan.
- 4) Dalam hal terjadi pelanggaran terhadap ketentuan sebagaimana dimaksud pada ayat (3), apabila diajukan upaya hukum maka Pengadilan Tingkat Banding atau Mahkamah Agung dengan putusan sela memerintahkan Pengadilan Tingkat Pertama untuk melakukan proses Mediasi.
- 5) Ketua Pengadilan menunjuk Mediator Hakim yang bukan Hakim Pemeriksa Perkara yang memutuskan.
- 6) Proses Mediasi sebagaimana dimaksud pada ayat (4) dilakukan paling lama 30 (tiga puluh) hari terhitung sejak diterimanya pemberitahuan putusan sela Pengadilan Tinggi atau Mahkamah Agung.
- 7) Ketua Pengadilan menyampaikan laporan hasil Mediasi berikut berkas perkara sebagaimana dimaksud pada ayat (6) ke Pengadilan Tinggi atau Mahkamah Agung.
- 8) Berdasarkan laporan sebagaimana dimaksud pada ayat (7), Hakim Pemeriksa Perkara pada Pengadilan Tinggi atau Mahkamah Agung menjatuhkan putusan.

Bagian Kedua

Jenis Perkara Wajib Menempuh Mediasi

Pasal 4

- 1) Semua sengketa perdata yang diajukan ke Pengadilan termasuk perkara perlawanan (*verzet*) atas putusan verstek dan perlawanan pihak berperkara (*partij verzet*) maupun pihak ketiga (*derden verzet*) terhadap pelaksanaan putusan yang telah berkekuatan hukum tetap, wajib terlebih dahulu diupayakan penyelesaian melalui Mediasi, kecuali ditentukan lain berdasarkan Peraturan Mahkamah Agung ini.
- 2) Sengketa yang dikecualikan dari kewajiban penyelesaian melalui Mediasi sebagaimana dimaksud pada ayat (1) meliputi:
 - a. sengketa yang pemeriksaannya di persidangan ditentukan tenggang waktu penyelesaiannya meliputi antara lain:
 1. sengketa yang diselesaikan melalui prosedur Pengadilan Niaga;
 2. sengketa yang diselesaikan melalui prosedur Pengadilan Hubungan Industrial;
 3. keberatan atas putusan Komisi Pengawas Persaingan Usaha;
 4. keberatan atas putusan Badan Penyelesaian Sengketa Konsumen;
 5. permohonan pembatalan putusan arbitrase;

6. keberatan atas putusan Komisi Informasi;
 7. penyelesaian perselisihan partai politik
 8. sengketa yang diselesaikan melalui tata cara gugatan sederhana; dan
 9. sengketa lain yang pemeriksaannya di persidangan ditentukan tenggang waktu penyelesaiannya dalam ketentuan peraturan perundang-undangan;
- b. sengketa yang pemeriksaannya dilakukan tanpa hadirnya penggugat atau tergugat yang telah dipanggil secara patut;
 - c. gugatan balik (rekonvensi) dan masuknya pihak ketiga dalam suatu perkara (intervensi);
 - d. sengketa mengenai pencegahan, penolakan, pembatalan dan pengesahan perkawinan;
 - e. sengketa yang diajukan ke Pengadilan setelah diupayakan penyelesaian di luar Pengadilan melalui Mediasi dengan bantuan Mediator bersertifikat yang terdaftar di Pengadilan setempat tetapi dinyatakan tidak berhasil berdasarkan pernyataan yang ditandatangani oleh Para Pihak dan Mediator bersertifikat.
- 3) Pernyataan ketidakberhasilan Mediasi sebagaimana dimaksud pada ayat (2) huruf e dan salinan sah Sertifikat Mediator dilampirkan dalam surat gugatan.
 - 4) Berdasarkan kesepakatan Para Pihak, sengketa yang dikecualikan kewajiban Mediasi sebagaimana dimaksud pada ayat (2) huruf a, huruf c, dan huruf e tetap dapat diselesaikan melalui Mediasi sukarela pada tahap pemeriksaan perkara dan tingkat upaya hukum.

Bagian Ketiga
Sifat Proses Mediasi

Pasal 5

- 1) Proses Mediasi pada dasarnya bersifat tertutup kecuali Para Pihak menghendaki lain.
- 2) Penyampaian laporan Mediator mengenai pihak yang tidak beriktikad baik dan ketidakberhasilan proses Mediasi kepada Hakim Pemeriksa Perkara bukan merupakan pelanggaran terhadap sifat tertutup Mediasi.
- 3) Pertemuan Mediasi dapat dilakukan melalui media komunikasi audio visual jarak jauh yang memungkinkan semua pihak saling melihat dan mendengar secara langsung serta berpartisipasi dalam pertemuan.

**Bagian Keempat Kewajiban
Menghadiri Mediasi**

Pasal 6

- 1) Para Pihak wajib menghadiri secara langsung pertemuan Mediasi dengan atau tanpa didampingi oleh kuasa hukum.
- 2) Kehadiran Para Pihak melalui komunikasi audio visual jarak jauh sebagaimana dimaksud dalam Pasal 5 ayat (3) dianggap sebagai kehadiran langsung.
- 3) Ketidakhadiran Para Pihak secara langsung dalam proses Mediasi hanya dapat dilakukan berdasarkan alasan sah.
- 4) Alasan sah sebagaimana dimaksud pada ayat (3) meliputi antara lain:
 - a. kondisi kesehatan yang tidak memungkinkan hadir dalam pertemuan Mediasi berdasarkan surat keterangan dokter;
 - b. di bawah pengampuan;
 - c. mempunyai tempat tinggal, kediaman atau kedudukan di luar negeri; atau
 - d. menjalankan tugas negara, tuntutan profesi atau pekerjaan yang tidak dapat ditinggalkan.

Bagian Kelima

Iktikad Baik Menempuh Mediasi

Pasal 7

- (1) Para Pihak dan/atau kuasa hukumnya wajib menempuh Mediasi dengan iktikad baik
- (2) Salah satu pihak atau Para Pihak dan/atau kuasa hukumnya dapat dinyatakan tidak beriktikad baik oleh Mediator dalam hal yang bersangkutan:
 - a. tidak hadir setelah dipanggil secara patut 2 (dua) kali berturut-turut dalam pertemuan Mediasi tanpa alasan sah;
 - b. menghadiri pertemuan Mediasi pertama, tetapi tidak pernah hadir pada pertemuan berikutnya meskipun telah dipanggil secara patut 2 (dua) kali berturut-turut tanpa alasan sah;
 - c. ketidakhadiran berulang-ulang yang mengganggu jadwal pertemuan Mediasi tanpa alasan sah;
 - d. menghadiri pertemuan Mediasi, tetapi tidak mengajukan dan/atau tidak menanggapi Resume Perkara pihak lain; dan/atau
 - e. tidak menandatangani konsep Kesepakatan Perdamaian yang telah disepakati tanpa alasan sah.

Bagian Keenam Biaya Mediasi

Paragraf 1 Biaya Jasa Mediator

Pasal 8

- (1) Jasa Mediator Hakim dan Pegawai Pengadilan tidak dikenakan biaya.
- (2) Biaya jasa Mediator nonhakim dan bukan Pegawai Pengadilan ditanggung bersama atau berdasarkan kesepakatan Para Pihak.

Paragraf 2

Biaya Pemanggilan Para Pihak

Pasal 9

- (1) Biaya pemanggilan Para Pihak untuk menghadiri proses Mediasi dibebankan terlebih dahulu kepada pihak penggugat melalui panjar biaya perkara.
- (2) Biaya pemanggilan sebagaimana dimaksud pada ayat (1) ditambahkan pada perhitungan biaya pemanggilan Para Pihak untuk menghadiri sidang.
- (3) Dalam hal Para Pihak berhasil mencapai Kesepakatan Perdamaian, biaya pemanggilan sebagaimana dimaksud pada ayat (1) ditanggung bersama atau sesuai kesepakatan Para Pihak.
- (4) Dalam hal Mediasi tidak dapat dilaksanakan atau tidak berhasil mencapai kesepakatan, biaya pemanggilan Para Pihak dibebankan kepada pihak yang kalah, kecuali perkara perceraian di lingkungan peradilan agama..

Pasal 10

Biaya lain-lain di luar biaya jasa Mediator sebagaimana dimaksud dalam Pasal 8 dan biaya pemanggilan Para Pihak sebagaimana dimaksud dalam Pasal 9 dibebankan kepada Para Pihak berdasarkan kesepakatan.

Bagian Ketujuh

Tempat Penyelenggaraan Mediasi

Pasal 11

- (1) Mediasi diselenggarakan di ruang Mediasi Pengadilan atau di tempat lain di luar Pengadilan yang disepakati oleh Para Pihak.
- (2) Mediator Hakim dan Pegawai Pengadilan dilarang menyelenggarakan Mediasi di luar Pengadilan.
- (3) Mediator non hakim dan bukan Pegawai Pengadilan yang dipilih atau ditunjuk bersama-sama dengan Mediator Hakim atau Pegawai Pengadilan dalam satu perkara wajib menyelenggarakan Mediasi bertempat di Pengadilan.
- (4) Penggunaan ruang Mediasi Pengadilan untuk Mediasi tidak dikenakan biaya.

Bagian Kedelapan
Tata Kelola Mediasi di Pengadilan

Pasal 12

- (1) Untuk mendukung pelaksanaan Mediasi di Pengadilan, Mahkamah Agung menetapkan tata kelola yang di antaranya meliputi:
 - a. perencanaan kebijakan, pengkajian dan penelitian Mediasi di Pengadilan;
 - b. pembinaan, pemantauan dan pengawasan pelaksanaan Mediasi di Pengadilan;
 - c. pemberian akreditasi dan evaluasi lembaga sertifikasi Mediasi terakreditasi;
 - d. penyebarluasan informasi Mediasi; dan
 - e. pengembangan kerjasama dengan organisasi, lembaga atau pihak lainnya, baik tingkat nasional, regional, maupun internasional dalam bidang Mediasi.
- (2) Ketentuan lebih lanjut mengenai tata kelola sebagaimana dimaksud pada ayat (1) ditetapkan dengan Keputusan Ketua Mahkamah Agung.

BAB III MEDIATOR

Bagian Kesatu

Sertifikasi Mediator dan Akreditasi Lembaga

Pasal 13

- (1) Setiap Mediator wajib memiliki Sertifikat Mediator yang diperoleh setelah mengikuti dan dinyatakan lulus dalam pelatihan sertifikasi Mediator yang diselenggarakan oleh Mahkamah Agung atau lembaga yang telah memperoleh akreditasi dari Mahkamah Agung.
- (2) Berdasarkan surat keputusan ketua Pengadilan, Hakim tidak bersertifikat dapat menjalankan fungsi Mediator dalam hal tidak ada atau terdapat keterbatasan jumlah Mediator bersertifikat.
- (3) Ketentuan lebih lanjut mengenai syarat dan tata cara sertifikasi Mediator dan pemberian akreditasi lembaga sertifikasi Mediator ditetapkan dengan Keputusan Ketua Mahkamah Agung.

Bagian Kedua Tahapan

Tugas Mediator

Pasal 14

Dalam menjalankan fungsinya, Mediator bertugas:

- a. memperkenalkan diri dan memberi kesempatan kepada Para Pihak untuk saling memperkenalkan diri;
- b. menjelaskan maksud, tujuan, dan sifat Mediasi kepada Para Pihak;
- c. menjelaskan kedudukan dan peran Mediator yang netral dan tidak mengambil

- keputusan;
- d. membuat aturan pelaksanaan Mediasi bersama Para Pihak;
 - e. menjelaskan bahwa Mediator dapat mengadakan pertemuan dengan satu pihak tanpa kehadiran pihak lainnya (kaukus);
 - f. menyusun jadwal Mediasi bersama Para Pihak;
 - g. mengisi formulir jadwal mediasi.
 - h. Memberikan kesempatan kepada Para Pihak untuk menyampaikan permasalahan dan usulan perdamaian;
 - i. Menginventarisasi permasalahan dan mengagendakan pembahasan berdasarkan skala prioritas;
 - j. memfasilitasi dan mendorong Para Pihak untuk:
 - 1. menelusuri dan menggali kepentingan Para Pihak;
 - 2. mencari berbagai pilihan penyelesaian yang terbaik bagi Para Pihak; dan
 - 3. bekerja sama mencapai penyelesaian;
 - k. membantu Para Pihak dalam membuat dan merumuskan Kesepakatan Perdamaian;
 - l. menyampaikan laporan keberhasilan, ketidakberhasilan dan/atau tidak dapat dilaksanakannya Mediasi kepada Hakim Pemeriksa Perkara;
 - m. menyatakan salah satu atau Para Pihak tidak beriktikad baik dan menyampaikan kepada Hakim Pemeriksa Perkara;
 - n. tugas lain dalam menjalankan fungsinya

Bagian Ketiga Pedoman Perilaku Mediator

Pasal 15

- a. Mahkamah Agung menetapkan Pedoman Perilaku Mediator.
- b. Setiap Mediator dalam menjalankan fungsinya wajib mentaati Pedoman Perilaku Mediator sebagaimana dimaksud pada ayat (1).

Pasal 16

Ketua Pengadilan wajib menyampaikan laporan kinerja Hakim atau Pegawai Pengadilan yang berhasil menyelesaikan perkara melalui Mediasi kepada Ketua Pengadilan Tinggi dan Mahkamah Agung.

BAB IV TAHAPAN PRAMEDIASI

Bagian Kesatu

Kewajiban Hakim Pemeriksa Perkara

Pasal 17

- (1) Pada hari sidang yang telah ditentukan dan dihadiri oleh Para Pihak, Hakim Pemeriksa Perkara mewajibkan Para Pihak untuk menempuh Mediasi.
- (2) Kehadiran Para Pihak sebagaimana dimaksud pada ayat (1) berdasarkan panggilan yang sah dan patut.
- (3) Pemanggilan pihak yang tidak hadir pada sidang pertama dapat dilakukan pemanggilan satu kali lagi sesuai dengan praktik hukum acara.
- (4) Dalam hal para pihak lebih dari satu, Mediasi tetap diselenggarakan setelah pemanggilan dilakukan secara sah dan patut walaupun tidak seluruh pihak hadir.
- (5) Ketidakhadiran pihak turut tergugat yang kepentingannya tidak signifikan tidak menghalangi pelaksanaan Mediasi.
- (6) Hakim Pemeriksa Perkara wajib menjelaskan Prosedur Mediasi kepada Para Pihak.
- (7) Penjelasan sebagaimana dimaksud pada ayat (6) meliputi:
 - a. pengertian dan manfaat Mediasi;
 - b. kewajiban Para Pihak untuk menghadiri langsung pertemuan Mediasi berikut akibat hukum atas perilaku tidak beriktikad baik dalam proses Mediasi;
 - c. biaya yang mungkin timbul akibat penggunaan Mediator nonhakim dan bukan Pegawai Pengadilan;
 - d. pilihan menindaklanjuti Kesepakatan Perdamaian melalui Akta Perdamaian atau pencabutan gugatan; dan
 - e. kewajiban Para Pihak untuk menandatangani formulir penjelasan Mediasi.
- (8) Hakim Pemeriksa Perkara menyerahkan formulir penjelasan Mediasi kepada Para Pihak yang memuat pernyataan bahwa Para Pihak:
 - a. Memperoleh penjelasan prosedur Mediasi secara lengkap dari Hakim Pemeriksa Perkara;
 - b. memahami dengan baik prosedur Mediasi; dan
 - c. bersedia menempuh Mediasi dengan iktikad baik.
- (9) Formulir penjelasan Mediasi sebagaimana dimaksud pada ayat (8) ditandatangani oleh Para Pihak dan/atau kuasa hukum segera setelah memperoleh penjelasan dari Hakim Pemeriksa Perkara dan merupakan satu kesatuan yang menjadi bagian tidak terpisahkan dengan berkas perkara.

- (10) Keterangan mengenai penjelasan oleh Hakim Pemeriksa Perkara dan penandatanganan formulir penjelasan Mediasi sebagaimana dimaksud pada ayat (9) wajib dimuat dalam berita acara sidang.

Bagian Kedua Kewajiban Kuasa Hukum

Pasal 18

- (1) Kuasa hukum wajib membantu Para Pihak melaksanakan hak dan kewajibannya dalam proses Mediasi.
- (2) Kewajiban kuasa hukum sebagaimana dimaksud pada ayat (1) di antaranya meliputi:
 - a. menyampaikan penjelasan Hakim Pemeriksa Perkara sebagaimana dimaksud dalam Pasal 17 ayat (7) kepada Para Pihak;
 - b. mendorong Para Pihak berperan langsung secara aktif dalam proses Mediasi;
 - c. membantu Para Pihak mengidentifikasi kebutuhan, kepentingan dan usulan penyelesaian sengketa selama proses Mediasi;
 - d. membantu Para Pihak merumuskan rencana dan usulan Kesepakatan Perdamaian dalam hal Para Pihak mencapai kesepakatan;
 - e. menjelaskan kepada Para Pihak terkait kewajiban kuasa hukum.
- (3) Dalam hal Para Pihak berhalangan hadir berdasarkan alasan sah sebagaimana dimaksud dalam Pasal 6 ayat (4), kuasa hukum dapat mewakili Para Pihak untuk melakukan Mediasi dengan menunjukkan surat kuasa khusus yang memuat kewenangan kuasa hukum untuk mengambil keputusan.
- (4) Kuasa hukum yang bertindak mewakili Para Pihak sebagaimana dimaksud pada ayat (3) wajib berpartisipasi dalam proses Mediasi dengan iktikad baik dan dengan cara yang tidak berlawanan dengan pihak lain atau kuasa hukumnya.

Bagian Ketiga

Hak Para Pihak Memilih Mediator

Pasal 19

- (1) Para Pihak berhak memilih seorang atau lebih Mediator yang tercatat dalam Daftar Mediator di Pengadilan.
- (2) Jika dalam proses Mediasi terdapat lebih dari satu orang Mediator, pembagian tugas Mediator ditentukan dan disepakati oleh para Mediator.
- (3) Ketentuan lebih lanjut tentang Daftar Mediator sebagaimana dimaksud pada ayat (1) diatur dalam Keputusan Ketua Mahkamah Agung.

Bagian Keempat
Batas Waktu Pemilihan Mediator

Pasal 20

- (1) Setelah memberikan penjelasan mengenai kewajiban melakukan Mediasi sebagaimana dimaksud dalam Pasal 17 ayat (7), Hakim Pemeriksa Perkara mewajibkan Para Pihak pada hari itu juga, atau paling lama 2 (dua) hari berikutnya untuk berunding guna memilih Mediator termasuk biaya yang mungkin timbul akibat pilihan penggunaan Mediator nonhakim dan bukan Pegawai Pengadilan.
- (2) Para Pihak segera menyampaikan Mediator pilihan mereka kepada Hakim Pemeriksa Perkara.
- (3) Apabila Para Pihak tidak dapat bersepakat memilih Mediator dalam jangka waktu sebagaimana dimaksud pada ayat (1), ketua majelis Hakim Pemeriksa Perkara segera menunjuk Mediator Hakim atau Pegawai Pengadilan.
- (4) Jika pada Pengadilan yang sama tidak terdapat Hakim bukan pemeriksa perkara dan Pegawai Pengadilan yang bersertifikat, ketua majelis Hakim Pemeriksa Perkara menunjuk salah satu Hakim Pemeriksa Perkara untuk menjalankan fungsi Mediator dengan mengutamakan Hakim yang bersertifikat.
- (5) Jika Para Pihak telah memilih Mediator sebagaimana dimaksud pada ayat (1) atau ketua majelis Hakim Pemeriksa Perkara menunjuk Mediator sebagaimana dimaksud pada ayat (3) atau ayat (4), ketua majelis Hakim Pemeriksa Perkara menerbitkan penetapan yang memuat perintah untuk melakukan Mediasi dan menunjuk Mediator.
- (6) Hakim Pemeriksa Perkara memberitahukan penetapan sebagaimana dimaksud pada ayat (5) kepada Mediator melalui panitera pengganti.
- (7) Hakim Pemeriksa Perkara wajib menunda proses persidangan untuk memberikan kesempatan kepada Para Pihak menempuh Mediasi.

Bagian Kelima
Pemanggilan Para Pihak

Pasal 21

- (1) Mediator menentukan hari dan tanggal pertemuan Mediasi, setelah menerima penetapan penunjukan sebagai Mediator.
- (2) Dalam hal Mediasi dilakukan di gedung Pengadilan, Mediator atas kuasa Hakim Pemeriksa Perkara melalui Panitera melakukan pemanggilan Para Pihak dengan bantuan juru sita atau juru sita pengganti untuk menghadiri pertemuan Mediasi.
- (3) Kuasa sebagaimana dimaksud pada ayat (2) adalah demi hukum tanpa perlu dibuat surat kuasa, sehingga tanpa ada instrumen tersendiri dari Hakim Pemeriksa Perkara, juru sita atau juru sita pengganti wajib melaksanakan perintah Mediator Hakim maupun nonhakim untuk melakukan panggilan.

Bagian Keenam

Akibat Hukum Pihak Tidak Beriktikad Baik

Pasal 22

- (1) Apabila penggugat dinyatakan tidak beriktikad baik dalam proses Mediasi sebagaimana dimaksud dalam Pasal 7 ayat (2), gugatan dinyatakan tidak dapat diterima oleh Hakim Pemeriksa Perkara.
- (2) Penggugat yang dinyatakan tidak beriktikad baik sebagaimana dimaksud pada ayat (1) dikenai pula kewajiban pembayaran Biaya Mediasi.
- (3) Mediator menyampaikan laporan penggugat tidak beriktikad baik kepada Hakim Pemeriksa Perkara disertai rekomendasi pengenaan Biaya Mediasi dan perhitungan besarnya dalam laporan ketidakberhasilan atau tidak dapat dilaksanakannya Mediasi.
- (4) Berdasarkan laporan Mediator sebagaimana dimaksud pada ayat (3), Hakim Pemeriksa Perkara mengeluarkan putusan yang merupakan putusan akhir yang menyatakan gugatan tidak dapat diterima disertai penghukuman pembayaran Biaya Mediasi dan biaya perkara.
- (5) Biaya Mediasi sebagai penghukuman kepada penggugat dapat diambil dari panjar biaya perkara atau pembayaran tersendiri oleh penggugat dan diserahkan kepada tergugat melalui kepaniteraan Pengadilan.

Pasal 23

- (1) Tergugat yang dinyatakan tidak beriktikad baik sebagaimana dimaksud dalam Pasal 7 ayat (2), dikenai kewajiban pembayaran Biaya Mediasi.
- (2) Mediator menyampaikan laporan tergugat tidak beriktikad baik kepada Hakim Pemeriksa Perkara disertai rekomendasi pengenaan Biaya Mediasi dan perhitungan besarnya dalam laporan ketidakberhasilan atau tidak dapat dilaksanakannya Mediasi.
- (3) Berdasarkan laporan Mediator sebagaimana dimaksud pada ayat (2), sebelum melanjutkan pemeriksaan, Hakim Pemeriksa Perkara dalam persidangan yang ditetapkan berikutnya wajib mengeluarkan penetapan yang menyatakan tergugat tidak beriktikad baik dan menghukum tergugat untuk membayar Biaya Mediasi.
- (4) Biaya Mediasi sebagaimana dimaksud pada ayat (3) merupakan bagian dari biaya perkara yang wajib disebutkan dalam amar putusan akhir.
- (5) Dalam hal tergugat sebagaimana dimaksud pada ayat (1) dimenangkan dalam putusan, amar putusan menyatakan Biaya Mediasi dibebankan kepada tergugat, sedangkan biaya perkara tetap dibebankan kepada penggugat sebagai pihak yang kalah.
- (6) Dalam perkara perceraian di lingkungan peradilan agama, tergugat sebagaimana dimaksud pada ayat (1) dihukum membayar Biaya Mediasi, sedangkan biaya perkara dibebankan kepada penggugat.

- (7) Pembayaran Biaya Mediasi oleh tergugat yang akan diserahkan kepada penggugat melalui kepaniteraan Pengadilan mengikuti pelaksanaan putusan yang telah berkekuatan hukum tetap.
- (8) Dalam hal Para Pihak secara bersama-sama dinyatakan tidak beriktikad baik oleh Mediator, gugatan dinyatakan tidak dapat diterima oleh Hakim Pemeriksa Perkara tanpa penghukuman Biaya Mediasi.

BAB V TAHAPAN PROSES MEDIASI

Bagian Kesatu

Penyerahan Resume Perkara dan Jangka Waktu Proses Mediasi

Pasal 24

- (1) Dalam waktu paling lama 5 (lima) hari terhitung sejak penetapan sebagaimana dimaksud dalam Pasal 20 ayat (5), Para Pihak dapat menyerahkan Resume Perkara kepada pihak lain dan Mediator.
- (2) Proses Mediasi berlangsung paling lama 30 (tiga puluh) hari terhitung sejak penetapan perintah melakukan Mediasi.
- (3) Atas dasar kesepakatan Para Pihak, jangka waktu Mediasi dapat diperpanjang paling lama 30 (tiga puluh) hari terhitung sejak berakhir jangka waktu sebagaimana dimaksud pada ayat (2).
- (4) Mediator atas permintaan Para Pihak mengajukan permohonan perpanjangan jangka waktu Mediasi sebagaimana dimaksud pada ayat (3) kepada Hakim Pemeriksa Perkara disertai dengan alasannya.

Bagian Kedua

Ruang Lingkup Materi Pertemuan Mediasi

Pasal 25

- (1) Materi perundingan dalam Mediasi tidak terbatas pada posita dan petitum gugatan.
- (2) Dalam hal Mediasi mencapai kesepakatan atas permasalahan di luar sebagaimana diuraikan pada ayat (1), penggugat mengubah gugatan dengan memasukkan kesepakatan tersebut di dalam gugatan.

Bagian Ketiga

Keterlibatan Ahli dan Tokoh Masyarakat

Pasal 26

- (1) Atas persetujuan Para Pihak dan/atau kuasa hukum, Mediator dapat menghadirkan seorang atau lebih ahli, tokoh masyarakat, tokoh agama, atau tokoh adat.
- (2) Para Pihak harus terlebih dahulu mencapai kesepakatan tentang kekuatan

mengikat atau tidak mengikat dari penjelasan dan/atau penilaian ahli dan/atau tokoh masyarakat sebagaimana dimaksud pada ayat (1).

Bagian Keempat Mediasi Mencapai Kesepakatan

Pasal 27

- (1) Jika Mediasi berhasil mencapai kesepakatan, Para Pihak dengan bantuan Mediator wajib merumuskan kesepakatan secara tertulis dalam Kesepakatan Perdamaian yang ditandatangani oleh Para Pihak dan Mediator.
- (2) Dalam membantu merumuskan Kesepakatan Perdamaian, Mediator wajib memastikan Kesepakatan Perdamaian tidak memuat ketentuan yang:
 - a. Bertentangan dengan hukum, ketertiban umum, dan/atau kesusilaan;
 - b. merugikan pihak ketiga; atau
 - c. tidak dapat dilaksanakan.
- (3) Dalam proses Mediasi yang diwakili oleh kuasa hukum, penandatanganan Kesepakatan Perdamaian hanya dapat dilakukan apabila terdapat pernyataan Para Pihak secara tertulis yang memuat persetujuan atas kesepakatan yang dicapai.
- (4) Para Pihak melalui Mediator dapat mengajukan Kesepakatan Perdamaian kepada Hakim Pemeriksa Perkara agar dikuatkan dalam Akta Perdamaian.
- (5) Jika Para Pihak tidak menghendaki Kesepakatan Perdamaian dikuatkan dalam Akta Perdamaian, Kesepakatan Perdamaian wajib memuat pencabutan gugatan.
- (6) Mediator wajib melaporkan secara tertulis keberhasilan Mediasi kepada Hakim Pemeriksa Perkara dengan melampirkan Kesepakatan Perdamaian.

Pasal 28

- (1) Setelah menerima Kesepakatan Perdamaian sebagaimana dimaksud dalam Pasal 27 ayat (6), Hakim Pemeriksa Perkara segera mempelajari dan menelitinya dalam waktu paling lama 2 (dua) hari.
- (2) Dalam hal Kesepakatan Perdamaian diminta dikuatkan dalam Akta Perdamaian belum memenuhi ketentuan sebagaimana dimaksud dalam Pasal 27 ayat (2), Hakim Pemeriksa Perkara wajib mengembalikan Kesepakatan Perdamaian kepada Mediator dan Para Pihak disertai petunjuk tentang hal yang harus diperbaiki.
- (3) Setelah mengadakan pertemuan dengan Para Pihak, Mediator wajib mengajukan kembali Kesepakatan Perdamaian yang telah diperbaiki kepada Hakim Pemeriksa Perkara paling lama 7 (tujuh) hari terhitung sejak tanggal penerimaan petunjuk perbaikan sebagaimana dimaksud pada ayat (2).
- (4) Paling lama 3 (tiga) hari setelah menerima Kesepakatan Perdamaian yang telah memenuhi ketentuan sebagaimana dimaksud dalam Pasal 27 ayat (2), Hakim Pemeriksa Perkara menerbitkan penetapan hari sidang untuk membacakan Akta Perdamaian.
- (5) Kesepakatan Perdamaian yang dikuatkan dengan Akta Perdamaian tunduk pada ketentuan keterbukaan informasi di Pengadilan.

Bagian Kelima Kesepakatan Perdamaian Sebagian

Pasal 29

- (1) Dalam hal proses Mediasi mencapai kesepakatan antara penggugat dan sebagian pihak tergugat, penggugat mengubah gugatan dengan tidak lagi mengajukan pihak tergugat yang tidak mencapai kesepakatan sebagai pihak lawan.
- (2) Kesepakatan Perdamaian Sebagian antara pihak sebagaimana dimaksud pada ayat (1) dibuat dan ditandatangani oleh penggugat dengan sebagian pihak tergugat yang mencapai kesepakatan dan Mediator.
- (3) Kesepakatan Perdamaian Sebagian sebagaimana dimaksud pada ayat (2) dapat dikuatkan dengan Akta Perdamaian sepanjang tidak menyangkut aset, harta kekayaan dan/atau kepentingan pihak yang tidak mencapai kesepakatan dan memenuhi ketentuan Pasal 27 ayat (2).
- (4) Penggugat dapat mengajukan kembali gugatan terhadap pihak yang tidak mencapai Kesepakatan Perdamaian Sebagian sebagaimana dimaksud pada ayat (1).
- (5) Dalam hal penggugat lebih dari satu pihak dan sebagian penggugat mencapai kesepakatan dengan sebagian atau seluruh pihak tergugat, tetapi sebagian penggugat yang tidak mencapai kesepakatan tidak bersedia mengubah gugatan, Mediasi dinyatakan tidak berhasil.
- (6) Kesepakatan Perdamaian Sebagian antara pihak sebagaimana dimaksud pada ayat (1) tidak dapat dilakukan pada perdamaian sukarela tahap pemeriksaan perkara dan tingkat upaya hukum banding, kasasi, atau peninjauan kembali.

Pasal 30

- (1) Dalam hal Para Pihak mencapai kesepakatan atas sebagian dari seluruh objek perkara atau tuntutan hukum, Mediator menyampaikan Kesepakatan Perdamaian Sebagian tersebut dengan memperhatikan ketentuan Pasal 27 ayat (2) kepada Hakim Pemeriksa Perkara sebagai lampiran laporan Mediator.
- (2) Hakim Pemeriksa Perkara melanjutkan pemeriksaan terhadap objek perkara atau tuntutan hukum yang belum berhasil disepakati oleh Para Pihak.
- (3) Dalam hal Mediasi mencapai kesepakatan sebagian atas objek perkara atau tuntutan hukum, Hakim Pemeriksa Perkara wajib memuat Kesepakatan Perdamaian Sebagian tersebut dalam pertimbangan dan amar putusan.
- (4) Kesepakatan Perdamaian Sebagian sebagaimana dimaksud pada ayat (1), ayat (2) dan ayat (3) berlaku pada perdamaian sukarela tahap pemeriksaan perkara dan tingkat upaya hukum banding, kasasi, atau peninjauan kembali.

Pasal 31

- (1) Untuk Mediasi perkara perceraian dalam lingkungan peradilan agama yang tuntutan perceraian dikumulasikan dengan tuntutan lainnya, jika Para Pihak tidak mencapai kesepakatan untuk hidup rukun kembali, Mediasi dilanjutkan

- dengan tuntutan lainnya.
- (2) Dalam hal Para Pihak mencapai kesepakatan atas tuntutan lainnya sebagaimana dimaksud pada ayat (1), kesepakatan dituangkan dalam Kesepakatan Perdamaian Sebagian dengan memuat klausula keterkaitannya dengan perkara perceraian.
 - (3) Kesepakatan Perdamaian Sebagian atas tuntutan lainnya sebagaimana dimaksud pada ayat (2) hanya dapat dilaksanakan jika putusan Hakim Pemeriksa Perkara yang mengabulkan gugatan perceraian telah berkekuatan hukum tetap.
 - (4) Kesepakatan Perdamaian Sebagian atas tuntutan lainnya sebagaimana dimaksud pada ayat (2) tidak berlaku jika Hakim Pemeriksa Perkara menolak gugatan atau Para Pihak bersedia rukun kembali selama proses pemeriksaan perkara.

Bagian Keenam

Mediasi Tidak Berhasil atau Tidak dapat Dilaksanakan

Pasal 32

- (1) Mediator wajib menyatakan Mediasi tidak berhasil mencapai kesepakatan dan memberitahukannya secara tertulis kepada Hakim Pemeriksa Perkara, dalam hal:
 - a. Para Pihak tidak menghasilkan kesepakatan sampai batas waktu paling lama 30 (tiga puluh) hari berikut perpanjangannya sebagaimana dimaksud dalam Pasal 24 ayat (2) dan ayat (3); atau
 - b. Para Pihak dinyatakan tidak beriktikad baik sebagaimana dimaksud dalam Pasal 7 ayat (2) huruf d dan huruf e.
- (2) Mediator wajib menyatakan Mediasi tidak dapat dilaksanakan dan memberitahukannya secara tertulis kepada Hakim Pemeriksa Perkara, dalam hal:
 - a. melibatkan aset, harta kekayaan atau kepentingan yang nyata-nyata berkaitan dengan pihak lain yang:
 1. tidak diikutsertakan dalam surat gugatan sehingga pihak lain yang berkepentingan tidak menjadi salah satu pihak dalam proses Mediasi;
 2. diikutsertakan sebagai pihak dalam surat gugatan dalam hal pihak berperkara lebih dari satu subjek hukum, tetapi tidak hadir di persidangan sehingga tidak menjadi pihak dalam proses Mediasi; atau
 3. diikutsertakan sebagai pihak dalam surat gugatan dalam hal pihak berperkara lebih dari satu subjek hukum dan hadir di persidangan, tetapi tidak pernah hadir dalam proses Mediasi.
 - b. Melibatkan wewenang kementerian/lembaga/instansi di tingkat pusat/daerah dan/atau Badan Usaha Milik Negara/Daerah yang tidak menjadi pihak berperkara, kecuali pihak berperkara yang terkait dengan pihak-pihak tersebut telah memperoleh persetujuan tertulis dari kementerian/lembaga/instansi dan/atau Badan Usaha Milik Negara/Daerah untuk mengambil keputusan dalam proses Mediasi.
 - c. Para Pihak dinyatakan tidak beriktikad baik sebagaimana dimaksud dalam Pasal 7 ayat (2) huruf a, huruf b, dan huruf c.

- (3) Setelah menerima pemberitahuan sebagaimana dimaksud pada ayat (1) dan ayat (2), Hakim Pemeriksa Perkara segera menerbitkan penetapan untuk melanjutkan pemeriksaan perkara sesuai dengan ketentuan hukum acara yang berlaku.

BAB VI PERDAMAIAN SUKARELA

Bagian Kesatu

Perdamaian Sukarela pada Tahap Pemeriksaan Perkara

Pasal 33

- (1) Pada tiap tahapan pemeriksaan perkara, Hakim Pemeriksa Perkara tetap berupaya mendorong atau mengusahakan perdamaian hingga sebelum pengucapan putusan.
- (2) Para Pihak atas dasar kesepakatan dapat mengajukan permohonan kepada Hakim Pemeriksa Perkara untuk melakukan perdamaian pada tahap pemeriksaan perkara.
- (3) Setelah menerima permohonan Para Pihak untuk melakukan perdamaian sebagaimana dimaksud pada ayat (2), ketua majelis Hakim Pemeriksa Perkara dengan penetapan segera menunjuk salah seorang Hakim Pemeriksa Perkara untuk menjalankan fungsi Mediator dengan mengutamakan Hakim yang bersertifikat.
- (4) Hakim Pemeriksa Perkara wajib menunda persidangan paling lama 14 (empat belas) hari terhitung sejak penetapan sebagaimana dimaksud pada ayat (3).

Bagian Kedua

Perdamaian Sukarela pada Tingkat Upaya Hukum Banding, Kasasi, atau Peninjauan Kembali

Pasal 34

- (1) Sepanjang perkara belum diputus pada tingkat upaya hukum banding, kasasi atau peninjauan kembali, Para Pihak atas dasar kesepakatan dapat menempuh upaya perdamaian:
- (2) Jika dikehendaki, Para Pihak melalui ketua Pengadilan mengajukan Kesepakatan Perdamaian secara tertulis kepada Hakim Pemeriksa Perkara tingkat banding,

kasasi, atau peninjauan kembali untuk diputus dengan Akta Perdamaian sepanjang memenuhi ketentuan Pasal 27 ayat (2).

- (3) Kesepakatan Perdamaian sebagaimana dimaksud pada ayat (2) wajib memuat ketentuan yang mengesampingkan putusan yang telah ada.
- (4) Akta Perdamaian ditandatangani oleh Hakim Pemeriksa Perkara tingkat banding, kasasi, atau peninjauan kembali dalam waktu paling lama 30 (tiga puluh) hari terhitung sejak diterimanya Kesepakatan Perdamaian.
- (5) Apabila berkas perkara banding, kasasi, atau peninjauan kembali belum dikirimkan, berkas perkara dan Kesepakatan Perdamaian dikirimkan bersama-sama ke Pengadilan Tinggi atau Mahkamah Agung.

BAB VII KETERPISAHAN MEDIASI DARI LITIGASI

Pasal 35

- (1) Terhitung sejak penetapan perintah melakukan Mediasi dan penunjukan Mediator sebagaimana dimaksud dalam Pasal 20 ayat (5), jangka waktu proses Mediasi sebagaimana dimaksud dalam Pasal 24 ayat (2) dan ayat (3), serta Pasal 33 ayat (4) tidak termasuk jangka waktu penyelesaian perkara sebagaimana ditentukan dalam kebijakan Mahkamah Agung mengenai penyelesaian perkara di Pengadilan tingkat pertama dan tingkat banding pada 4 (empat) lingkungan peradilan.
- (2) Terhadap Putusan yang menyatakan gugatan tidak dapat diterima sebagaimana dimaksud dalam Pasal 22 ayat (4) dan Pasal 23 ayat (8) serta penetapan penghukuman Biaya Mediasi sebagaimana dimaksud dalam Pasal 23 ayat (3) tidak dapat dilakukan upaya hukum.
- (3) Jika Para Pihak tidak berhasil mencapai kesepakatan, pernyataan dan pengakuan Para Pihak dalam proses Mediasi tidak dapat digunakan sebagai alat bukti dalam proses persidangan perkara.
- (4) Catatan Mediator wajib dimusnahkan dengan berakhirnya proses Mediasi.
- (5) Mediator tidak dapat menjadi saksi dalam proses persidangan perkara yang bersangkutan.
- (6) Mediator tidak dapat dikenai pertanggung jawaban pidana maupun perdata atas isi Kesepakatan Perdamaian hasil Mediasi.

BAB VIII PERDAMAIAN DI LUAR PENGADILAN

Pasal 36

- (1) Para Pihak dengan atau tanpa bantuan Mediator bersertifikat yang berhasil menyelesaikan sengketa di luar Pengadilan dengan Kesepakatan Perdamaian dapat mengajukan Kesepakatan Perdamaian kepada Pengadilan yang berwenang untuk memperoleh Akta Perdamaian dengan cara mengajukan gugatan.

- (2) Pengajuan gugatan sebagaimana dimaksud pada ayat (1) harus dilampiri dengan Kesepakatan Perdamaian dan dokumen sebagai alat bukti yang menunjukkan hubungan hukum Para Pihak dengan objek sengketa.
- (3) Hakim Pemeriksa Perkara di hadapan Para Pihak hanya akan menguatkan Kesepakatan Perdamaian menjadi Akta Perdamaian, jika Kesepakatan Perdamaian sesuai dengan ketentuan Pasal 27 ayat (2).
- (4) Akta Perdamaian atas gugatan untuk menguatkan Kesepakatan Perdamaian sebagaimana dimaksud pada ayat (1) harus diucapkan oleh Hakim Pemeriksa Perkara dalam sidang yang terbuka untuk umum paling lama 14 (empat belas) hari terhitung sejak gugatan didaftarkan.
- (5) Salinan Akta Perdamaian sebagaimana dimaksud pada ayat (4) wajib disampaikan kepada Para Pihak pada hari yang sama dengan pengucapan Akta Perdamaian.

Pasal 37

- (1) Dalam hal Kesepakatan Perdamaian diajukan untuk dikuatkan dalam bentuk Akta Perdamaian tidak memenuhi ketentuan sebagaimana dimaksud dalam Pasal 27 ayat (2), Hakim Pemeriksa Perkara wajib memberikan petunjuk kepada Para Pihak tentang hal yang harus diperbaiki.
- (2) Dengan tetap memperhatikan tenggang waktu penyelesaian pengajuan Akta Perdamaian sebagaimana dimaksud dalam Pasal 36 ayat (4), Para Pihak wajib segera memperbaiki dan menyampaikan kembali Kesepakatan Perdamaian yang telah diperbaiki kepada Hakim Pemeriksa Perkara.

BAB IX KETENTUAN PENUTUP

Pasal 38

Pada saat Peraturan Mahkamah Agung ini mulai berlaku, Peraturan Mahkamah Agung Nomor 01 Tahun 2008 tentang Prosedur Mediasi di Pengadilan dicabut dan dinyatakan tidak berlaku.

Pasal 39

Peraturan Mahkamah Agung ini mulai berlaku pada tanggal diundangkan.

Agar setiap orang mengetahuinya, memerintahkan pengundangan Peraturan Mahkamah Agung ini dengan penempatannya dalam Berita Negara Republik Indonesia.

Ditetapkan di Jakarta
pada tanggal 03 Februari 2016

KETUA MAHKAMAH AGUNG
REPUBLIK INDONESIA

ttd

MUHAMMAD HATTA ALI

Diundangkan di Jakarta
pada tanggal 04 Februari 2016

DIREKTUR JENDERAL
PERATURAN PERUNDANG-UNDANGAN KEMENTERIAN HUKUM DAN
HAK ASASI MANUSIA REPUBLIK INDONESIA,

ttd

WIDODO EKATJAHJANA



جباةن كها كمن شرعية مالسيا

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Jabatan Kehakiman Syariah Malaysia
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BERITA NEGARA REPUBLIK INDONESIA TAHUN 2016 NOMOR 175

SALINAN SESUAI DENGAN ASLINYA



KETUA BIRO HUKUM DAN HUMAS
BADAN URUSAN ADMINISTRASI
MAHKAMAH AGUNG
REPUBLIK INDONESIA,

AN MANSYUR

Ruj. Kami : JKSM.BPKR/100-5/5/2 Jld. 2 (9)

Tarikh : 16 Sya'ban 1431H/ 28 Julai 2010M

**Y.A.A Ketua -Ketua Hakim Syarie,
Mahkamah-mahkamah Syariah
Negeri-negeri.**

ARAHAN AMALAN NO. 1 TAHUN 2010

**Penentuan Kes Yang Perlu Dirujuk Ke Majlis Sulh Pada Peringkat Pendaftaran
Kes**

Saya ingin menarik perhatian Y.A.A kepada keputusan Mesyuarat Jawatankuasa Induk Arahan Amalan Mahkamah Syariah Bil. 1 Tahun 2010 pada 14 Sya'ban, 1431H bersamaan 26hb. Julai 2010 telah bersetuju dan mengesahkan bahawa kes-kes yang dinyatakan di bawah ini perlu dirujuk ke Majlis Sulh semasa peringkat pendaftaran kes

di Mahkamah Syariah.

- 009 - Tuntutan Gantirugi Pertunangan
- 016 - Tuntutan Muta'ah
- 017 - Tuntutan Harta Sepencarian
- 018 - Tuntutan Nafkah Isteri
- 019 - Tuntutan Nafkah Kepada Pihak Tak Upaya
- 020 - Tuntutan Cagaran Nafkah
- 021 - Tuntutan Nafkah Eddah
- 022 - Tuntutan Mengubah Perintah Nafkah 023 - Tuntutan Tunggakan Nafkah
- 024- Tuntutan Nafkah Anak
- 025- Tuntutan Mengubah Perintah Hak Jagaan Anak/Nafkah Anak
- 026 - Tuntutan Mengubah Perjanjian Hak Jagaan Anak/Nafkah Anak
- 028 - Tuntutan Hadhanah
- 049 - Tuntutan Gantirugi Perkahwinan
- 059 - Tuntutan Hak Tempat Tinggal
- 060 - Tuntutan Perintah Supaya Suami Tinggal Bersama Semula
- 062 - Tuntutan Isteri Kembali Taat
- 063 - Tuntutan Mas Kahwin

2. Bagi kes-kes ex-parte (interim) tidak perlu melalui proses Sulh.
3. Bagi kes-kes yang telah melalui proses pengantaraan di Jabatan Bantuan Guaman Malaysia tidak perlu dirujuk ke Majlis Sulh pada peringkat pendaftaran
4. Arahan Amalan No. 1 Tahun 2000, No. 9 Tahun 2003, No. 14 Tahun 2004 dan No. 14 Tahun 2005 adalah berkaitan.

Arahan ini berkuatkuasa mulai 30 Julai 2010.



(Tan Sri Ibrahim Lembut)

Ketua Pengarah/Ketua Hakim Syarie Jabatan Kehakiman Syariah Malaysia.
PUTRAJAYA

CURRICULUM VITAE

Personal Detail



Name : Tri Deri Maulana Zebua
Birth Place : Sei Rampah
Birth Date : 6th April 1996
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Formal Education

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2002 – 2008	:	SD 104283 Jaharun B
2008 – 2011	:	MTS Darularafahraya, Lau Bakeri, Deli Serdang
2011 – 2014	:	MAS Darularafahraya, Lau Bakeri, Deli Serdang
2014 - 2018	:	S1 Hukum Bisnis Syariah Universitas Islam Negeri Maulana Malik Ibrahim Malang