

Effectiveness of Online Mediation Application on Divorce Cases Due to Economic Factors

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ABSTRACT

Data from the Religious Courts Class 1A Palu City reports of lawsuits from January to February 2021 were 289 cases. The Covid-19 pandemic has made the divorce rate increase. The reason is that the causes of divorce during the Covid-19 pandemic, on average, have increased in all regions in Indonesia; it is not the case that divorce is caused by family economic factors that are getting worse. The issuance of the Circular Letter of the Supreme Court Number 1 of 2020 concerning Guidelines for the Implementation of Duties During the Prevention of the Spread of Covid-19 in the Supreme Court and the Judicial Body. This study's results indicate that online mediation implementation is still carried out within the stages described in the rules for implementing conventional mediation. However, online mediation brings together the parties that rely heavily on internet connections. As well as related to the effectiveness of its implementation, the authors consider this to be less effective because it is based on the theory of Legal Effectiveness, it shows one indicator, namely the Legal Factor, in this case, the rules that form the basis for the implementation of mediation is not only guided by the Supreme Court Circular Number 10 of 2016 concerning mediation (conventional) so that law enforcement officers, in this case, the Mediator at the Religious Court Class 1a Palu City are reluctant to carry out Online Mediation.

As an implication of this research, it is stated that it is necessary to make laws and regulations that specifically regulate the implementation of mediation both conventionally and online, as well as the need for socialization among parties seeking justice to understand the importance of implementing Online Mediation

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1. INTRODUCTION

Throughout 2020, the COVID-19 pandemic has caused economic crises all over the world, and it cannot be denied that the Indonesian state is now struggling not only to cure the health crisis but also with an economic crisis that is getting worse. Contractions up to 5.32%".¹

¹ *Simposium Nasional Keuangan Negara 2020*. p 995.

At a time when physical distancing and social distancing have become two general terms in the last two years, questions have arisen about problems that do not seem to exist or at least have minimal solutions, including those seeking justice, justice seekers" if the elements of the gathering must be limited and even hampered by physical distancing and social distancing policies. The authority and purpose of the court to remain able to provide comprehensive access to justice to the community when the current pandemic conditions are starting to be widely questioned by many parties.

Data from the Religious Courts Class 1A Palu City reports of lawsuits from January to February 2021 were 289 cases.² The Covid-19 pandemic has increased the divorce rate because the cause of divorce is the family economy getting worse. The high demand for divorce is as if the current pandemic conditions have not shaken the "spirit of war" of justice seekers when "war" is not the only solution to obtain justice and one's legal rights.

Mediation is an alternative dispute resolution that is most often overlooked, ignored, or even forgotten.³ Mediation can be the answer to the search for a legal solution that is relatively safe and comfortable during this pandemic. However, even though it has been pushed in such a way by the judiciary, people seeking justice are still very inclined to underestimate the power of the "win-win solution" offered by mediation, both inside and outside the court, and society still has the mindset that war, with all its consequences, is the best way to get what you want. Therefore, physical encounters when there is a legal dispute are sometimes unavoidable.

Article 4 of PERMA No. 1 of 2016 concerning Mediation Procedures in Courts states that all lawsuits that enter the court must undergo a mediation process. In the current pandemic conditions, online mediation is vital, and several countries have now implemented online mediation to become a communication solution that is limited by space.⁴

Furthermore, the choice of mediation can be carried out online by disputing parties. It can be maximally applied to any mediation event because mediation generally only consists of negotiations and answers, and all of them can take place well through online media meetings. The parties, mediators, attorneys, and principals share the same spirit to resolve legal disputes quickly because many issues have emerged during this pandemic.

The online scheme has been proven to be very cost-effective and saves time for dispute resolution for the parties. Besides that, the online mediation system accelerates how mediation works. The parties, usually face-to-face or face-to-face, directly transform into a meeting using a video conference connection with several document transfer features. Carried out online.

2. METHOD

The type of research used in this study is empirical juridical research.⁵ Where in this study, researchers will directly go to the field to find factual data through data owned by the Class 1a Religious Court of Palu City and some data from interviews

² <https://Palu.Tribunnews.Com/2021/03/05/Gugatan-Cerai-Di-Pengadilan-Agama-Palu-Awal-2021-Capai-289-143-Wanita-Jadi-Janda-Baru>

³ Witanto. D.Y. 2012. *Hukum Acara Mediasi Dalam Perkara Perdata di Lingkungan Peradilan Umum dan Peradilan Agama*. Bandung. Alfabeta.p 34

⁴ Abdul Manan. 2008. *Penerapan Hukum Acara Perdata Di Lingkungan Pengadilan Agama*, Jakarta: Kencana.

⁵ Sugiyono. 2009. *Metode Penelitian Kuantitatif Kualitatif dan R&D Cet. VI*. Bandung: Alfabeta.p.78

conducted with mediators and principals who go through the online mediation process. In addition, the approach taken is normative⁶, where the author examines several rules that discuss the procedure for implementing mediation in court.

3. RESULTS AND DISCUSSION

3.1. Implementation of Divorce Online Mediation due to Economic Factors during the Covid-19 Pandemic

Mediation in court was instituted through the Circular Letter of the Supreme Court Number 1 of 2002 concerning Empowerment of the Courts of the First Level in implementing Peaceful Institutions. The SEMA was then refined by Supreme Court Regulation Number 2 of 2003, amended by Supreme Court Regulation Number 1 of 2008 concerning Mediation Procedures in Courts to strengthen and maximize mediation related to litigation processes in court.⁷ The Covid-19 epidemic has spread throughout the world since the beginning of 2020 and has changed the order of life for people in all around of the world.⁸ During the Covid-19 pandemic, which has just occurred since the beginning of 2019, the implementation of mediation which was previously carried out conventionally or directly where the principals were present directly in court, changed because, during the Covid-19 pandemic, there were policies issued by both the central government and the government. Area that there is a prohibition not to gather in the same place for several weeks, in addition to other policies, namely limiting access and entry and exit of transportation both land, sea, and air in all regional areas in Indonesia, this policy aims to prevent the transmission of the COVID-19 virus. Nineteen, which at that time was endemic, resulted in the paralysis of all the joints of human activity, including the process in the class 1a religious court of Palu city.

The data collected by researchers can describe the facts in the field related to the implementation of online mediation, where the source of data and information for this research comes from information submitted directly by the mediator judge, Online, Implementation of Online Mediation and Online Mediation Pres.

1. Online Pre-Mediation

In the initial stage, before entering the implementation of mediation, the religious court prepared everything called pre-mediation. The obligation to implement this mediation is binding on all parties under the provisions contained in PERMA 1 of 2016 Article 3 paragraphs (1) to (4) states Article 3: paragraph (1) every judge, Mediator, parties, and legal counsel must follow the procedure for resolving disputes through mediation. (2) the judge examining the case in consideration of the decision is obliged to state that the case has been attempted for reconciliation through mediation by mentioning the name of the Mediator. (3) the case examiner judge who does not order the parties to take mediation so that the parties do not mediate has violated the laws and regulations governing mediation in court.

⁶ Kalalo, J., & Febby, T. (2022). Local Government Policy Model in Utilization of Rice Harvested by the Merauke Community. *Musamus Law Review*, 4(2), 105-117.
<https://doi.org/10.35724/mularev.v4i2.4733>

⁷ Rachmadi Usman, *Mediasi Di Pengadilan Dalam Teori Dan Praktik* (Jakarta: Sinar Grafika, 2012), p.6.

⁸ Pawana, S., & Setyawan, V. (2022). Principles Audi Et Alteram Partem Compatibility in Litigation Process at State and Religious Court: Impact of Pandemic. *Musamus Law Review*, 4(2), 70-84.
<https://doi.org/10.35724/mularev.v4i2.4108>

The implementation of Online Pre-Mediation essentially prepares everything before the Online Mediation is carried out so that it can run smoothly without obstacles at the time of its implementation. It can be seen that the implementation of Online pre-mediation still refers to the conventional implementation of pre-mediation. It is just that the difference is the addition of point 3 in the explanation above, namely, preparing facilities and infrastructure such as teleconference rooms, zoom media, and internet networks, where the implementation is the IT team at the Religious Court class 1a Palu city.

1. Implementation of Online Mediation

In this stage, the disputing parties will meet with each other, then provide a resume to the parties involved in the mediation, including the Mediator. The first step at this stage begins with the Mediator giving a speech; then, the parties will describe the story they experienced, explain, sequence, and clarify the problems that occurred, after that the parties will be invited to discuss and negotiate the agreed issues in order to find options and points of agreement. The next step is the Mediator formulating the decision, recording and recounting the decision, and closing the mediation. If an agreement has been reached, the parties, with the help of the Mediator, must conclude in writing the agreement that has been reached and signed by the parties and the Mediator (Article 17, paragraph 1)⁹, under the provisions of PERMA Number 1 of 2016, article 24, paragraph (2) that the mediation process lasts no later than 30 (thirty) days from the date of the order to mediate. Article (3) further explains that based on the agreement of the parties, the mediation period may be extended for a maximum of 30 (thirty) days from the end of the period, as referred to in paragraph (2). This shows that there is flexibility in the implementation of the mediation depending on the agreement of the disputing parties. The state, in this case, the judiciary, provides many opportunities for the parties to resolve disputes by peaceful means through mediation. Unlike online mediation, the terms related to the period remain the same in line with the principle that the administration of judicial power is a simple, fast, and low-cost trial.

When arranging and sorting issues, the Mediator should group and ask the parties about the issues and needs that are important to them based on the issues that have been clarified. After the Mediator has grouped the problems and found each party's needs, the Mediator can write and describe them on paper. After obtaining the approval of each party stating the need.¹⁰

2. Post Online Mediation

At this last stage, the parties will undergo the results of the agreements submitted from each party in the form of a written agreement based on the commitments they have shown during the mediation process.¹¹ Mediation is expected to resolve disputes efficiently and pay more attention to each other's interests in real

⁹ Muslih MZ, *Pengantar Mediasi: Teori Dan Praktik*, (Semarang:Walisongo Mediation Centre,2007), p.120.

¹⁰ *Ibid.* p.123.

¹¹ *Ibid.* p.155.

terms, then provide opportunities for related parties to participate and be active in resolving the problems experienced.¹² Furthermore, the judge will determine the agreement as a deed of peace. However, if the reconciliation does not materialize, the Mediator will write that the mediation failed and convey it to the judge. Then an examination of the main points of the case will be followed.

The online mediation process is not much different from dispute resolution through conventional mediation. The difference is in the use of technology. The use of technology in question is not limited to using e-mail to conduct discussions because conventional mediators can also use e-mail in the dispute resolution process.

In online mediation, the provider provides communication tools that integrate e-mail with other communication tools, such as electronic conferencing, online chat, video conferencing, facsimile, and telephone. Even some providers can arrange a meeting of the parties directly if necessary, and conditions allow. The implementation of virtual mediation does not change the norm; even PERMA Number 1 of 2016, Article 5 paragraph (3), and Article 6 paragraph (2) have opened up opportunities for online mediation to be carried out.

3.2. The Effectiveness of Online Mediation in Dispute Resolution of Divorce Cases during the Covid-19 Pandemic at the Class 1a Religious Court of Palu City.

Theory of Legal Effectiveness, according to Soerjono Soekanto, suggests 5 (five) factors that must be considered in law enforcement that can measure the effectiveness of a law application. Law enforcement is an activity to harmonize the relationship of values spelled out in solid and embodied rules and attitudes as a series of final stages of value translation to create, maintain and maintain peace in society. The five factors include:¹³

1) Legal or Legislative Factors

According to Soekanto, law or law, in a material sense, is a written regulation that is generally accepted and made by legitimate central and regional authorities. The regulation is divided into 2 (two) types, namely, the central regulation that applies to all citizens or a specific group or only applies to parts of the country. Furthermore, local regulations only apply in a particular place or area. In addition, legal regulations must have the following elements:¹⁴

a. If the rule of law is based on a higher-level rule, if it is formed according to a predetermined method, or if it shows a mandatory relationship between a condition and its consequences, then the law applies juridically.

b. If the rule is effective, according to the theory of power, it means that the government can be enforced by the authorities, or in the idea of recognition, it is accepted and recognized by the community, the law applies sociologically, and

¹² Syahrizal Abbas, *Mediasi Dalam Perspektif Hukum Syariah, Hukum Adat, dan Hukum Nasional*, p. 26.

¹³ Soerjono Soekanto, *Faktor-Faktor yang mempengaruhi penegakan hukum*, (Jakarta : Raja Grafindo, 2008), p. 8.

¹⁴ Rachmadi Usman, 2012. *Mediasi Di Pengadilan Dalam Teori Dan Praktik*. Jakarta: Sinar Grafika.

c. The law applies philosophically.

2) Law enforcement factors

Law enforcement is related to those directly involved in law enforcement, including those who apply the law (Law Enforcement) and Peace Maintenance. Law enforcement officials include the notion of law enforcement institutions and law enforcement officers. The relevant law enforcers referred to in this study are mediators within the Religious Courts Class 1a Palu.

3) Factors of facilities or facilities

Supporting facilities can be formulated as a means to achieve goals. Its scope is mainly physical to achieve the goal. The range is primarily physical facilities that function as supporting factors. Supporting facilities include educated and skilled human resources, good organization, adequate equipment, sufficient finance, and Et cetera. In addition to the availability of maintenance facilities, it is also essential to maintain sustainability. If these things are not met, law enforcement can't achieve its objectives. The facilities and facilities referred to here are all facilities and facilities to support the mediation process, which is carried out online, such as proper mediation, application or media platform used, electronic telecommunications equipment, and internet networks.

4) Community factor

Law enforcement aimed at achieving peace in society. The public has certain opinions about the law, dramatically affecting their legal compliance. That means the law's effectiveness also depends on the will and legal awareness of the community. Low awareness of the community will complicate law enforcement, while the steps that can be taken care of socialization involve social layers, power holders, and law enforcers themselves. The formulation of the law must also pay attention to the relationship between social changes and the law. In the end, the law can be effective as a means of regulating people's behavior. The success or failure of a mediation depends on the will and legal awareness of the community, namely the disputing parties.

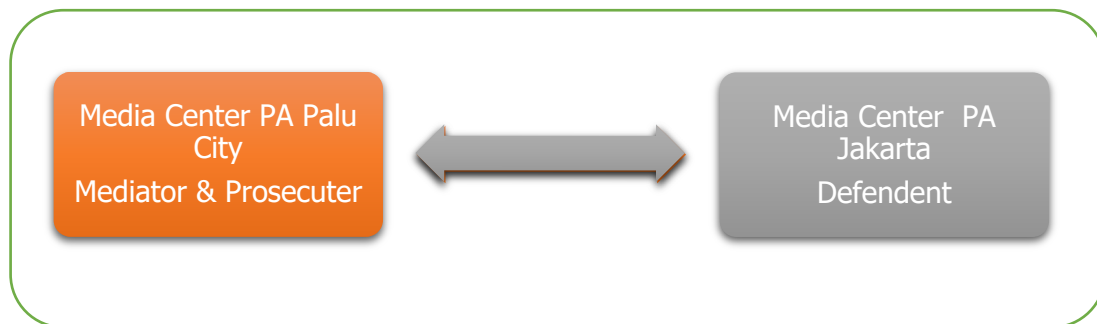
5) Cultural factors

Cultural factors include the values that underline applicable law. Culture is defined as the result of work, creativity, and taste based on the human initiative in life association. In addition, culture is a habit carried out by the community regarding the treatment of the existence of a rule. This can be seen whether or not there is a treatment against the authorities made a habit by the community, both good practices and those that are contrary to the rules.

The first analysis of Online Mediation was carried out based on Article 5 Paragraph 3 of PERMA Number 1 Year 2016, which states, "Mediation Meetings can be conducted through long-distance audio-visual communication media which allows all parties to see and hear each other directly and participate in meetings." The article indirectly confirms that online mediation is an alternative provided by Supreme Court Regulation Number 1 of 2016; if the parties are not possible to be in the same area or

obstacles that do not allow the parties to attend sitting in the same room, this is very This is in line with the Covid-19 pandemic which has just hit the country of Indonesia and is still with vigilance that it will spread again, where the Covid-19 pandemic requires residents at that time to obey health protocols with various kinds of social distancing policies that make restrictions on social relations. The community, especially justice seekers at the Class 1a Religious Courts of Palu City, where the Class 1a Religious Courts of Palu City imposed restrictions on the presence of justice seekers at the location of the Class 1a Religious Courts of Palu City, in addition to the implementation of policies on the schedule of officers imposed by the Shift system, all agencies worked more extra so that the service continues to run effectively even though it is faced with conditions that are not as usual.

Implementing Online Mediation in class 1 religious courts of Palu City itself generally uses "Zoom Meeting" as an application that is used in the implementation of online trials and mediation. Besides that, mediators also often use the WhatsApp Video Call application to mediate the disputing parties via Hand Phone; Mediator is conducted because the use of the WhatsApp application is simpler to use, only with a Hand Phone / HP and Internet package. After all, the existence and use of a cellphone or phone are no longer commonplace in our society.



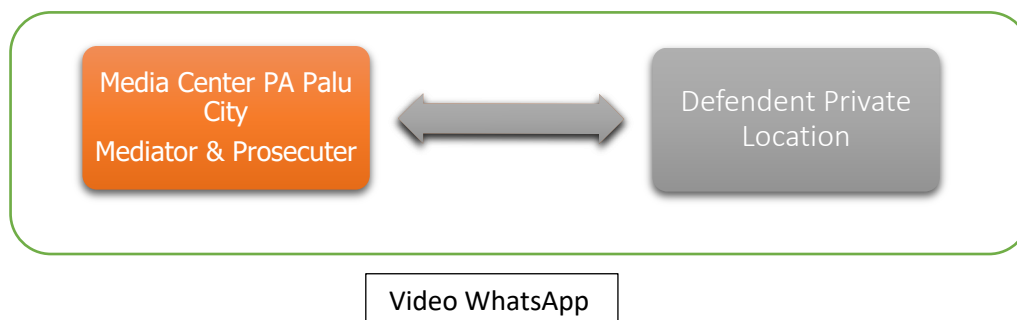
Scheme A. Implementation of online mediation Using zoom meeting.

The implementation of online mediation that has been carried out by the Class 1a Religious Court of Palu City has the following implementation scheme:

The implementation of Online mediation in scheme A is carried out by the Religious Court Class 1a Palu City, utilizing the Zoom Meeting application facility where the parties are in each media center room in the Religious Courts in different locations, where the Prosecutor is at the site of the media center room of the Religious Courts Class 1a Palu City while the other party, namely the Defendant, was at the location of the West Jakarta Religious Court's media center room which had previously been written to by the Palu City Religious Court class 1a through an intermediary from the West Jakarta Court. The implementation of this mediation is quite effective because each of them can communicate well, and the Mediator can carry out his duties by using mediation methods and strategies to find solutions and solutions to divorce cases that

the Prosecutors have filed. However, according to the writing of the scheme, the implementation of online mediation like this can be an obstacle for the parties if those who have reasonably solid activities, besides the Covid-19 pandemic situation, make people reluctant to do activities outside the home.

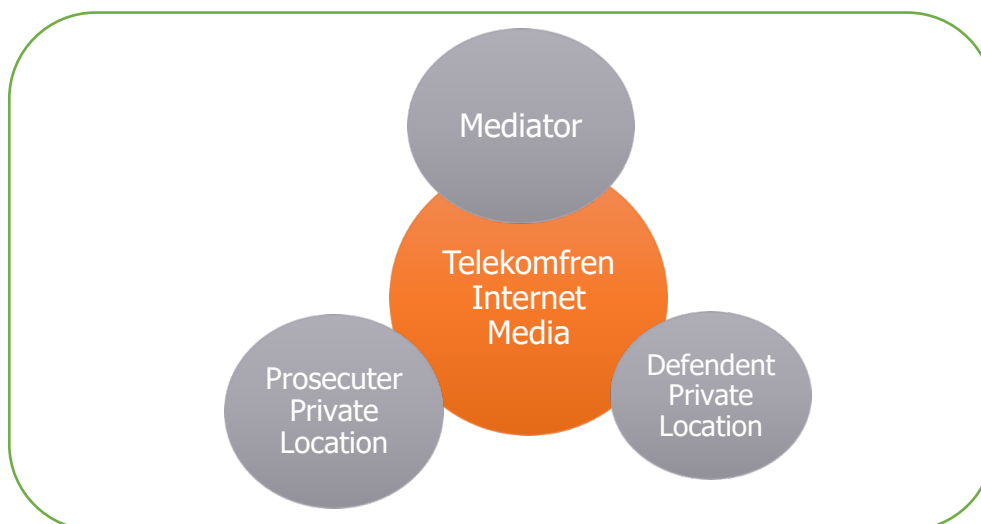
Furthermore, an online mediation implementation mode has been carried out by the Class 1a Religious Court of Palu City with the following scheme model.



Scheme B. Implementation of Online Mediation using WhatsApp Video Call media

The implementation of online mediation in scheme B is carried out by the Religious Court Class 1a Palu City by utilizing the WhatsApp Video Call facility, where the Prosecutor whose area is domiciled in Palu City goes to the Class 1a Religious Court of Palu City. The appointed Mediator is also in the exact location, namely the City of Palu. Palu and the Defendant are in different areas, namely Jakarta, in this case, the location of Defendant's home/workplace, so because the Defendant has been notified that online mediation will be carried out, online mediation is carried out with an intermediary Mediator who brings together the Prosecutor and the Defendant in a liaison application to discuss matters of substance related to the lawsuit filed by the Prosecutor against the Defendant.

Furthermore, in addition to the 2 (two) schemes above, it is not only sufficient, but other ways are more effective and time efficient, namely by using the following method or procedure:



Scheme C. Implementation of Mediation Using Teleconference Media in the form of Zoom Meetings, WhatsApp Video Calls or Google Meets, and Et cetera.

The implementation of online mediation in scheme C has never been carried out by the Class 1a Religious Court of Palu City; performance with the scheme method is possible because, according to the author, it minimizes the reasons for the absence of the parties who are generally constrained by reasons of work that do not allow the parties to be present at the event. Besides the constraints of the social distancing policy due to the covid-19 pandemic, the court did not make the parties' reasons to carry out or meet at the mediation stage even though the implementation was conducted online.

in addition, from the empirical data found by the author, the high divorce rate in Palu City delivered in the Class 1a Religious Court of Palu City has no connection with the Covid 19 Pandemic, primarily due to Economic Factors. The success of the mediation process in court is determined mainly by the disputing parties; as well as to increase the effectiveness of the implementation of online mediation, judges or mediators need to be given training specifically related to the use of electronic media that supports the execution of online mediation. The implementation of virtual mediation does not change the norm; even PERMA Number 1 of 2016, Article 5 paragraph (3), and Article 6 paragraph (2) have opened up opportunities for online mediation to be carried out. The implementation of online mediation at the Religious Courts Class 1a Palu City is more specifically related to divorce cases due to economic factors that have not been fully effective; if studied based on the Effectiveness Theory proposed by Sarjono Soekanto, that of the five indicators to measure effectiveness, in this case, the Legal factor, the Law Enforcement Factor, Facilities and Infrastructure Factors, Community Factors and Cultural Factors. It was found that the most fundamental thing about the facts that occurred in the field was that in its implementation, the Religious Courts did not yet have detailed guidelines governing Online Mediation, so the performance of Online mediation carried out by the Class 1 Religious Courts of Palu City was merely a form of initiative and policy in general, which in its implementation caused some doubts that were allowed for an error to occur by the Mediator at the Class 1a Religious Court of Palu City.

4. CONCLUSION

The application of online mediation carried out in the Religious Courts as a whole is still guided by the Supreme Court Regulation Number 1 of 2008 concerning Mediation Procedures in Courts, where the implementation of online mediation is divided into 3 (three) stages, namely Pre-Online Mediation, Online Mediation Implementation, and Post-Online Mediation. The implementation of online mediation at the Religious Courts Class 1a Palu City is more specifically related to divorce cases due to economic factors that have not been fully effective; that of the five indicators to measure effectiveness, in this case, the Legal factor, the Law Enforcement Factor,

Facilities and Infrastructure Factors, Community Factors and Cultural Factors. It was found that the most fundamental thing about the facts that occurred in the field was that in its implementation, the Religious Courts did not yet have detailed guidelines governing Online Mediation, so the performance of Online mediation carried out by the Class 1 Religious Courts of Palu City was merely a form of initiative and policy in general, which in its implementation caused some doubts that allowed for an error to occur by the Mediator at the Class 1a Religious Court of Palu City.

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