

## THE ESSENCE OF POLYGAMY AND ITS ASSOCIATION WITH INDONESIAN MARRIAGE LAW

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## ISLAMIC CRIMINAL LAW ON JARIMAH ZINA'S TESTIMONY: UNCOVERING THE CONFLICTS BETWEEN SHARIA DOCTRINE AND REALITY

Islamul Haq, Marilang, Kurniati

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Muhamad Ali Muhsim, Erfaniah Zuhriah, Ali Hamdan

## HISTORICAL CONCEPTION ACCORDING TO THE NATURAL MALAY TAFSIR OF TURJUMAN AL-MUSTAFAD: A TAFSIR STUDY OF THE NUSANTARA

M. Irfan Farraz Haecal, Dadan Rusmana



HIMPUNAN ILMUWAN DAN SARJANA SYARIAH INDONESIA

## Table of Content

**THE ESSENCE OF POLYGAMY AND ITS ASSOCIATION WITH  
INDONESIAN MARRIAGE LAW..... 1-19**

*Muh. Zaitun Ardi, Mujiburrahman*

**PROTECTION OF CHILDREN AS A PHILOSOPHICAL AND  
SOCIOLOGICAL BASE FOR THE AGE LIMIT: MAQĀṢID SHARĪ'A  
VERSION OF JASSER AUDA ..... 20-41**

*Rizqa Febry Ayu, Kamsi*

**THE LEGALITY OF SURROGATE MOTHERS FROM THE ISLAMIC  
LAW PERSPECTIVE ..... 42-51**

*Nurul Mujahidah, Sabri Samin, Syatirah Djalaluddin, M. Nur Hidayatullah*

**ISLAMIC CRIMINAL LAW ON JARIMAH ZINA'S TESTIMONY:  
UNCOVERING THE CONFLICTS BETWEEN SHARIA DOCTRINE  
AND REALITY ..... 52-62**

*Islamul Haq, Marilang, Kurniati*

**COMPARATIVE STUDY OF MEDIATION IMPLEMENTATION IN  
INDONESIA AND TURKEY ..... 63-77**

*Muhamad Ali Muhsim, Erfaniah Zuhriah, Ali Hamdan*

**HISTORICAL CONCEPTION ACCORDING TO THE NATURAL  
MALAY TAFSIR OF TURJUMAN AL-MUSTAFAD: A TAFSIR STUDY  
OF THE NUSANTARA ..... 78-92**

*M. Irfan Farraz Haecal, Dadan Rusmana*

## COMPARATIVE STUDY OF MEDIATION IMPLEMENTATION IN INDONESIA AND TURKEY

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### Abstract

Mediation as an alternative dispute resolution has its advantages. However, behind the advantages of dispute resolution, it is inversely proportional to the data on the success of mediation in Indonesia which is very low. Based on statistical data from the Semarang Religious Court during 2015-2019, less than 3% of mediations were successful. However, the data on the success of mediation in Indonesia contradicts that of Turkey. During 2017, more than 80% of cases were successfully resolved through mediation. Based on this data, it is necessary to compare the implementation of mediation between Indonesia and Turkey. This research is included in normative juridical research with a qualitative comparative approach. The results of this study indicate that there are similarities and differences in the implementation of mediation between Indonesia and Turkey. The equation lies in the terms of the mediator, the number of mediators and the place. The difference lies in regulation, mediation time, disputes that must be mediated, mediation implementation, mediator title, mediation fees, mediator audit, mediator membership fees and the strength of the peace deed.

**Keywords:** *Comparative; Mediation; Indonesia; Turkey*

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### INTRODUCTION

As a non-litigation and voluntary dispute resolution mechanism, mediation has a significant role in dispute resolution. This is inseparable from the advantages of

mediation. These advantages are dispute resolution through non-litigation, resulting in a win-win solution, confidentiality guarantees, does not require a long time due to procedural and administrative matters, case resolution is comprehensive and maintains good relations between the parties.<sup>1</sup>

Mustafa Serdar Ozbek, Ankara University Turkey professor stated that mediation is a flexible, comprehensive, problem solver, participatory procedure, emphasizing the importance of active participation from people affected by the case, such as victims, perpetrators, and the community.<sup>2</sup> In addition, mediation encourages perpetrators to feel responsible for completing rehabilitation and allows perpetrators to do good to victims so that good relationships will be re-established. Based on this, mediation is an efficient alternative to conflict resolution.<sup>3</sup>

M. Yahya Harahap stated that another reason that mediation is needed as part of alternative dispute resolution is due to the demands of the business world to resolve disputes simply, quickly, and at low cost as well as various general criticisms leveled against the judiciary.<sup>4</sup> Thus, it can be said that the presence of ADR is a critical answer to the formalistic dispute resolution method carried out by the judiciary.<sup>5</sup>

The mediator as a third party in the mediation process has a very significant role in helping the parties obtain agreements. Gunawan Wijaya explained that the mediator who was asked for his assistance to assist the dispute resolution process was passive and did not give him the authority to provide input, especially to decide disputes that occurred.<sup>6</sup> The process of resolving disputes through mediation involving a mediator and the parties is compromising without any coercion from the mediator.<sup>7</sup> Based on this, the resulting decision is based on mutual agreement and there is no coercion from anyone so as to produce a win-win solution that is expected by the parties.<sup>8</sup>

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<sup>1</sup> Afrik Yunari, "Alternative Dispute Resolution (ADR) Sebagai Penyelesaian Sengkete Non Litigasi," *Inovatif* 2, no. 1 (2016): 133-152.

<sup>2</sup> Mustafa Serdan Ozbek, "The Principles and Procedure of Penal Mediation in Turkish Criminal Procedure Law," *Angkara Law Review*, no. 2 (2012): 153-220.

<sup>3</sup> Chrisna Bagus Edhita Praja, Budi Agus Riswandi, and Khudzaifah Dimyati, "Urgensi Mediasi Sebagai Alternatif Penyelesaian Sengketa Hak Cipta," *Kertha Patrika* 43, no. 3 (2021): 275-95, <https://doi.org/10.24843/kp.2021.v43.i03.p04>.

<sup>4</sup> M. Yahya Harahap, *Beberapa Tinjauan Mengenai Sistem Peradilan Dan Penyelesaian Sengketa* (Bandung: PT Citra Aditya Bakti, 1997), 168.

<sup>5</sup> Yunari, "Alternative Dispute Resolution (ADR) Sebagai Penyelesaian Sengkete Non Litigasi.", 133-152

<sup>6</sup> Kamaruddin, "Mediasi Dalam Pandangan Hukum Progresif Suatu Alternatif Penyelesaian Konflik Keluarga," *Jurnal Al-'Adl* 11, no. 2 (2018): 1-18, <https://doi.org/http://dx.doi.org/10.31332/aladl.v11i2.1246>.

<sup>7</sup> Revy S. M Korah, "Mediasi Merupakan Salah Satu Alternatif Penyelesaian Masalah Dalam Sengketa Perdagangan Internasional," *Jurnal Hukum UNSRAT* 21, no. 3 (2013): 33-42.

<sup>8</sup> Sri Puspitaningrum, "Mediasi Sebagai Upaya Penyelesaian Sengketa Perdata Di Pengadilan," *Spektrum Hukum* 15, no. 2 (2018): 275, <https://doi.org/10.35973/sh.v15i2.1121>.

However, behind the advantages possessed by mediation, it is inversely proportional to the data on the success of mediation in Indonesia. The success of mediation in Indonesia, based on data, shows that there is very little success. Based on statistical data from the Semarang Religious Court in 2015, there were 632 cases mediated with a success rate of 2.7% or 17 cases. In 2016 there were 568 cases mediated with a success of 1.8% or 10 cases. In 2017 there were 350 cases that were mediated with a success rate of 0.3% or only 1 case was successful. In 2018 there were 536 cases mediated with a success rate of 0.4% or only 2 cases were successful. In 2019 there were 476 cases mediated with a success rate of 1.1% or only 5 cases were successful.<sup>9</sup>

Data on the success of mediation in Indonesia contradicts Turkey. The success rate of mediation in Turkey is considered very significant. Based on statistical data from the Turkish Ministry of Justice, dispute resolution through mediation shows very good prospects. In 2017 there were 223,469 cases that went to mediation. Of these cases, more than 80% were successful in resolving disputes through mediation. Meanwhile, according to data from the Mediation Department, in the period between January 2, 2018 - May 27, 2018, there were 127,845 cases requiring dispute resolution through mediation with a success rate of 65%. As for the cases that went to mediation voluntarily as many as 15,655 cases with 97% success or 15,234 cases.<sup>10</sup>

Based on data on the success of mediation between Indonesia and Turkey, it shows that the effectiveness of mediation in Turkey is higher than Indonesia. Therefore, it is necessary to do a comparison of mediation in an effort to explore the differences and similarities between the mediation arrangements between Indonesia and Turkey and to find the strengths of the mediation arrangements in Turkey.

## METHOD

This research is a normative juridical research with a statutory approach and a comparative approach. The primary legal material used by the author as a source is Supreme Court Regulation Number 1 of 2016 concerning Mediation and Turkish Law number 6325. The secondary legal materials in this study are journals and books that discuss mediation in Indonesia and Turkey. The author uses documentation and literature study as a method of collecting legal materials in this research. The data collection method was carried out by literature study in order to obtain primary legal

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<sup>9</sup> Moh. Saifuddin and Muchamad Choirun Nizar, "Prosedur Pelaksanaan Dan Tingkat Keberhasilan Mediasi Di Pengadilan Agama Semarang," *Wahana Akademika* 8, no. 1 (2021): 71-78, <https://doi.org/doi.org/10.21580/wa.v8i1.6572>.

<sup>10</sup> Efe Kinikoglu and Yigit Parmaksiz, "Practical Law Q&A: Mediation in Turkey, Morals and Patners, 4 November 2019, accessed 6 April 2022. <https://www.bcct.org.tr/news/practical-law-qa-mediation-in-turkey/68731>

materials and secondary legal materials in the form of laws and regulations, books, articles and journals related to the object of research. The analysis technique uses descriptive methods to obtain information and legal comparisons on the application of mediation between Indonesia and Turkey. The theory used in analyzing this research is the theory of factors that influence law enforcement or better known as Soerjono Soekanto's theory of legal effectiveness.

## RESULT AND DISCUSSION

### 1. Implementation of Mediation in Indonesia

Mediation in Indonesia is regulated in Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Courts. This regulation came into force on 03 February 2016.<sup>11</sup> Before this regulation was ratified, Indonesia had a special regulation on mediation, namely the Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2008 and the Regulation of the Supreme Court of the Republic of Indonesia Number 2 of 2003. The Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2008 is a renewal on the Regulation of the Supreme Court Number 2 of 2003 because several problems were found so that it was not effective in its application in court.<sup>12</sup> Meanwhile, Supreme Court Regulation Number 1 of 2016 is a complement to Supreme Court Regulation Number 1 of 2008 because it is not yet optimal to meet the needs of efficient mediation implementation and is able to increase the success of mediation in court.<sup>13</sup>

All civil disputes submitted to the Courts in Indonesia are required to go through mediation.<sup>14</sup> However, there are several cases where mediation is not required, such as (1) Disputes whose examination at the trial is determined by a time limit for settlement, including: (a) Disputes that are resolved through the Commercial Court procedure; (b) Disputes resolved through the Industrial Relations Court procedures; (c) Objection to the decision of the Business Competition Supervisory Commission; (d) Application for annulment of the arbitral award; (e) Objection to the decision of the Information Commission; (f) Settlement of political party disputes; (g) Objection to the decision of the Consumer Dispute Settlement Body; (2) a dispute whose examination is carried out without the presence of the plaintiff or the defendant who has been duly summoned; (3)

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<sup>11</sup> Selamat Lumban Gaol, "Pengaturan Hukum Mediasi Di Pengadilan Oleh Mahkamah Agung," *Jurnal Ilmiah Hukum Dirgantara* 7, no. 1 (2016): 77-110. <https://doi.org/10.35968/jh.v7i1.361>

<sup>12</sup> Syahrizal Abbas, *Mediasi Dalam Hukum Syariah, Hukum Adat Dan Hukum Nasional* (Jakarta: Kencana, 2011), 310.

<sup>13</sup> Wirda Hairani and Syawaluddin Ismail, "Problematika Mediasi Dalam Kasus Perceraian Di Mahkamah Syariah Langsa," *Al-Qadha* 5, no. 1 (2018): 38-47.

<sup>14</sup> Dian Maris Rahmah, "Optimalisasi Penyelesaian Sengketa Melalui Mediasi Di Pengadilan," *Jurnal Bina Mulia Hukum* 4, no. 1 (2019): 80, <https://doi.org/10.23920/jbmh.v4i1.174>.

Counterclaim (reconvention) and the inclusion of a third party in a case (intervention); (4) Disputes regarding the prevention, rejection, annulment and legalization of marriages; (5) Disputes submitted to the Court after attempted settlement outside the Court through Mediation with the assistance of a certified Mediator registered with the local Court but declared unsuccessful based on a statement signed by the Parties and the certified Mediator.<sup>15</sup>

Not all cases can get mediation facilities for free in Indonesia. Only mediation carried out with the services of judge mediators and court officials is free of charge.<sup>16</sup> Meanwhile, the costs for the services of non-judges and non-court clerks are borne by the parties based on the agreement of the parties.<sup>17</sup>

As for the mediator in Indonesia required to have a mediator certificate.<sup>18</sup> However, this is an exception for judges who carry out the function as mediators.<sup>19</sup> This exception applies in the absence or limited number of certified mediators.<sup>20</sup> From this certificate of mediator, there is no special title that will distinguish between a certified mediator and a non-certified mediator. The difference between certified and non-certified mediators is only the certificate of the mediator they have.

The time limit for the implementation of mediation in Indonesia is no later than 30 days from the date of the mediation order. However, this maximum limit can be extended. This extension of time applies if the parties request additional time with the provision of additional time of a maximum of 30 days.<sup>21</sup> Based on this, the maximum overall mediation period is 60 days.

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<sup>15</sup> Puspa Pasaribu, Rafi Aulia Ibrahim, and Zenitha Syafira, "Dilema Penerapan Asas Peradilan Cepat Setelah Mediasi Gagal," *PALAR (Pakuan Law Review)* 7, no. 2 (2021): 425-37.

<sup>16</sup> Mariah S.M. Purba, "Rekonstruksi Perma No. 1 Tahun 2016 Sebagai Alternatif Penyelesaian Sengketa Di Pengadilan," *Jurnal Hukum Samudra Keadilan* 13, no. 1 (2018): 20-31, <https://doi.org/10.33059/jhsk.v13i1.693>.

<sup>17</sup> Article 8 Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2016 concerning Mediation Procedures in Courts

<sup>18</sup> Maria Evita Indriani and Dewa Nyoman Rai. A.P., "Keabsahan Kesepakatan Penyelesaian Sengketa Wansprestasi Melalui Mekanisme Mediasi Yang Tidak Didaftarkan Ke Pengadilan," *Jurnal Kertha Wicara* Vol 09, no. 10 (2020): 1-11.

<sup>19</sup> Nurul Alimi Sirullah, "Peran Hakim Mediator Dalam Menunjang Efektifitas Mediasi Di Pengadilan Agama," *Jurnal Keislaman Terateks* 5, no. 2 (2020): 99-111.

<sup>20</sup> Article 13 Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2016 concerning Mediation Procedures in Courts

<sup>21</sup> I Komang Wiantara, "Penyelesaian Perkara Perdata Di Pengadilan Berdasarkan Peraturan Mahkamah Agung Republik Indonesia Nomor 1 Tahun 2016," *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 7, no. 4 (2018): 456-67, <https://doi.org/10.24843/jmhu.2018.v07.i04.p04>.

The results of the mediation in Indonesia are included in the peace deed.<sup>22</sup> The agreement is final by binding on the parties to be implemented in good faith.<sup>23</sup> However, in terms of legal force, if there is no good faith, direct legal action cannot be carried out. This is because the results of the mediation agreement are only limited to a peace deed and do not have the power of execution. The result of the mediation agreement can have the power of execution if it submits a request for execution to the court.<sup>24</sup>

## 2. Implementation of Mediation in Turkey

A brief history of mediation in Turkey begins with the adoption of the Dispute Law Number 6325 on 22 June 2012 in Turkey.<sup>25</sup> With the adoption of the Law on Disputes No. 6325, the Turkish government gave a positive response with the preparation of the Mediation Act on Legal Disputes, Ethics Rules of Mediation and Minimum Wage Rates for Mediation.<sup>26</sup> The mediation law came into force in Turkey on June 22, 2013 and the first time mediators who passed the exam were registered for the mediator registration in December 2013. The implementation of mediation legally by implementing the Mediation Act in early 2014.<sup>27</sup>

Before the emergence of the mediation law in Turkey, Turkey actually had regulations that were still scattered. There is no unification/unification of regulations regarding mediation. The laws are: (1) Criminal Procedure Act Number 5271 (Article 253), (2) Expropriation Number 2942 (Article 13), (3) Actions of Community Unions and Collective Bargaining Agreement Number 6356 (Article 50), (4) Act on Protection of Consumer Number 4077 (Article 22/5-6), (5) Attorney's Number 1136 (Article 35/A), (6) Act of Establishment on Labour Courts Number 5521 (Article 7), (7) Act of Establishment on Family Court Number 4787 (Article 7), (8) Civil Procedure Act Number 6100 (Article 137).<sup>28</sup>

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<sup>22</sup> Article 27 Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2016 concerning Mediation Procedures in Courts

<sup>23</sup> Rachmadi Usman, *Mediasi Di Pengadilan Dalam Teori Dan Praktik* (Jakarta: Sinar Grafika, 2012), 24.

<sup>24</sup> Dedy Mulyana, "Kekuatan Hukum Hasil Mediasi Di Dalam Pengadilan Dan Di Luar Pengadilan Menurut Hukum Positif," *Jurnal Wawasan Yuridika* 3, no. 2 (2019): 177-98, <https://doi.org/10.25072/jwy.v3i2.224>.

<sup>25</sup> Ash Gurbuz Usluel, "Mandatory or Voluntary Mediation Recent Turkish Mediation Legislation and a Comparative Analysis with the EU 's Mediation Framework," *Journal of Dispute Resolution* 2020, no. 2 (2020): 1-21.

<sup>26</sup> Serpil Işık, "Mediation as an Alternative Dispute Resolution Method and Mediation Process in Turkish Law System: An Overview," *Annales de La Faculte de Droit d'Istanbul* 65, no. 48 (2016): 55-87.

<sup>27</sup> Suleyman Dost, "Mediation for Disputes in Private Law in Turkey," *International Journal of Academic Research in Business and Social Sciences* 4, no. 10 (2014): 5-9, <https://doi.org/10.6007/ijarbss/v4-i10/1210>.

<sup>28</sup> Dost.



The government's response to the development of mediation in Turkey is very significant. This is indicated by various institutions and regulations that respond to student needs. In 2014, the Istanbul Arbitration Center (ISTAC) was established as an institution that provides arbitration and mediation services for domestic and international commercial actors. In November 2019, to respond to regulatory needs according to legal dynamics and needs in Turkey, there was an amalgamation of mediation and arbitration rules (Med-Arb) which combines the characteristics of mediation and arbitration. In Turkey there is also the Istanbul Chamber of Commerce's Arbitration and Mediation Center (ITOTAM) which has been serving mediation since 2018 and has used the Mediation-Arbitration (Med-Arb) Rules.<sup>29</sup>

The problems that can be resolved through mediation in Turkey are civil (private) issues in business and transaction matters. The cases that cannot be resolved by mediation are cases related to public order and criminal cases.<sup>30</sup> However, if we compare it with other countries such as Austria, Germany and China, they apply administrative and criminal dispute resolution with limited mediation.<sup>31</sup>

The implementation of mediation prior to the emergence of the 2013 Mediation Law was carried out voluntarily. There is no obligation for a case to go through mediation first. However, mediation is now a prerequisite for taking cases in court. Beberapa perkara khusus diwajibkan untuk melakukan mediasi terlebih dahulu disebabkan kebutuhan kecepatan penanganan kasus dan penuhnya perkara yang masuk di pengadilan<sup>32</sup> The cases that require mediation first are labor disputes starting in 2018, commercial disputes starting in 2019 and consumer disputes in 2020. On 28 July 2021 Turkey has enacted amendments to the Civil Procedure Code and Certain Laws through article 73/A which contains mediation as a condition of the lawsuit against the Consumer Protection Law Number 6502. Since this amendment takes effect, parties who wish to conduct proceedings in court with the provision that the dispute exceeds TRY 10,390

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<sup>29</sup> The United Nations Commission On International Trade Law (UNCITRAL) "Turkey's View on Uncitral Draft Mediation Rules" accessed on 9 April 2022 [https://uncitral.un.org/sites/uncitral.un.org/files/media/documents/uncitral/en/comments\\_on\\_uncitral\\_draft\\_mediation\\_rules\\_turkey.pdf](https://uncitral.un.org/sites/uncitral.un.org/files/media/documents/uncitral/en/comments_on_uncitral_draft_mediation_rules_turkey.pdf)

<sup>30</sup> Suleyman Dost, "Mediation for Dispute in Private Law in Turkey", 82.

<sup>31</sup> Suleyman Dost, "Mediation for Dispute in Private Law in Turkey", 82.

<sup>32</sup> Dilek Cengiz, "Principles of Mandatory Mediation in Commercial Disputes in Turkish Law with Determinations and Comments on Its Applications," *Annales de La Faculté de Droit d'Istanbul* 0, no. 70 (2021): 1-52, <https://doi.org/10.26650/Annales.2021.70.0001>.

must carry out mediation before submitting a lawsuit to the court.<sup>33</sup> In addition to these problems, family law disputes are also must go through the mediation process.<sup>34</sup>

In the implementation of mediation of civil cases in Turkey, they can choose the implementation of mediation before or during the judicial process. The court may advise and encourage parties to apply to a mediator. When they have done mediation before the judicial process, they do not need to mediate again during the judicial process.<sup>35</sup>

Mediators in Turkey have a special title as a mediator. There is a list of mediators owned by countries that have the right to use the title of mediator and powers under this title.<sup>36</sup> With the title and certificate held by the mediator, the legal consequences of the agreement concluded with the mediator have the same legal force as the decision.

The outcome of mediation in Turkey has very strong legal force. After the content of the agreement in mediation is reached, the results can be made and applied through the parties in the courts and law enforcement authorities to resolve the dispute. The execution of the results of the mediation can be carried out without having to register with the court.<sup>37</sup>

To oversee the quality of mediation in Turkey, there is a special institution that handles it, namely the Mediation Department (The Mediation Department Presidency). This institution has a list of names of people who are entitled to mediate in private (civil) matters and this institution will send a written warning letter to the mediator who has violated the provisions of the law. If the mediator does not heed the warning, then the mediator can be removed from the register so that it loses legality under Turkish law.<sup>38</sup> In the Turkish Mediation Department there is a Directorate General of Law which carries out audits to oversee all transactions and applications related to the provision of mediation services, Mediation training institutes and mediators.

In the mediation process, the mediator is obliged to keep the entire process in mediation confidential unless the parties wish otherwise. All data submitted by the parties must also be kept confidential. If the mediator violates the provisions of the

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<sup>33</sup> Zeynep Derya Tarman, "Mandatory Mediation Process Has Been Introduced in Turkey Relating to Certain Consumer Disputes," *Conflict of Laws.net: Views and News in Private International Law*, 15 September 2020, accessed on 9 November 2021, <https://conflictoflaws.net/2020/mandatory-mediation-process-has-been-introduced-in-turkey-relating-to-certain-consumer-disputes/>

<sup>34</sup> Cengiz, "Principles of Mandatory Mediation in Commercial Disputes in Turkish Law with Determinations and Comments on Its Applications."2.

<sup>35</sup> Deniz Ilter and Attila Dikbas, "Construction Mediation in Turkey and an Overview of the Draft Mediation Law," 2. accessed 4 April 2022. <https://www.Irbnet.De/Daten/Iconda/Cib14509.Pdf>

<sup>36</sup> Suleyman Dost, "Mediation for Dispute in Private Law in Turkey", 82.

<sup>37</sup> Deniz Ilter and Attila Dikbas, "Construction Mediation in Turkey and an Overview of the Draft Mediation Law," 8-9

<sup>38</sup> Deniz Ilter and Attila Dikbas, "Construction Mediation in Turkey and an Overview of the Draft Mediation Law," 8-9

confidentiality of the parties, the mediator will be sentenced to imprisonment between 6 months to 2 years.<sup>39</sup>

The implementation of mediation in Turkey is carried out for 3 months or if the parties want additional time, it can be added 3 more months.<sup>40</sup> This calculation process begins when the parties in the judicial process state that they will apply for a mediator and will mediate the dispute they face. In this case, the court will postpone the trial for three months and can be extended for another three months if the parties want additional time.<sup>41</sup>

### **3. Comparison of Mediation Implementation between Indonesia and Turkey**

From the explanation of the implementation of mediation in Indonesia and Turkey, there are similarities and differences between the two countries. The mediation equation between Indonesia and Turkey lies in the terms of the mediator, the number of mediators and the place. First, the requirements for mediators in Indonesia and Turkey must complete mediator education with evidence of a mediator certificate. However, judges as mediators in Indonesia are not required to have a mediator certificate. second, the number of mediators in Indonesia and Turkey is the same, namely 1 person. Third, the parties and the mediator can make an agreement regarding the place of mediation and do not have to go to court

The differences between mediation in Indonesia and Turkey are: First, in terms of regulation, Indonesia has a special regulation that discusses mediation. In Indonesia, the first mediation law was passed in 2003, namely Supreme Court Regulation Number 2 of 2003. Currently, the applicable mediation regulation in Indonesia is Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Courts. Meanwhile, in Turkey, the first regulations governing the challenge of mediation began in 2013 namely the Dispute Law number 6325 and the last regulation, namely the Consumer Protection Law Number 6502. Second, the implementation of mediation between Indonesia and Turkey takes longer in Turkey. The implementation of mediation in Indonesia is only 30 days or another 30 days can be added. While the implementation of mediation in Turkey for 3 months or can be added another 3 months. Third, disputes that must be mediated in Indonesia and Turkey are different. Commercial disputes and industrial disputes in Indonesia are not required to mediate. Meanwhile, in Turkey,

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<sup>39</sup> Deniz Ilter and Attila Dikbas, "Construction Mediation in Turkey and an Overview of the Draft Mediation Law," 8-9

<sup>40</sup> Işık, "Mediation as an Alternative Dispute Resolution Method and Mediation Process in Turkish Law System: An Overview."

<sup>41</sup> Deniz Ilter and Attila Dikbas, "Construction Mediation in Turkey and an Overview of the Draft Mediation Law," 8-9

commercial disputes and industrial disputes are mandatory because they include business and transaction disputes. Fourth, the timing of mediation in Indonesia can choose between before the trial or during the trial. As for Turkey, certain disputes must be carried out before the trial. The timing of mediation in Indonesia can choose between before the trial or at the time of the trial. As for Turkey, certain disputes must be carried out before the trial. The timing of mediation in Indonesia can choose between before the trial or at the time of the trial. As for Turkey, certain disputes must be carried out before the trial.

Fifth, Academic degree. In Indonesia, it is not required for a mediator to have a special title of mediator. Meanwhile, in Turkey, mediators are required to have a mediator title and a mediator certificate. Sixth, mediation costs. In Indonesia, the implementation of mediation can be free of charge (free) if the mediator used is a judge who functions as a mediator. Whereas in Turkey all mediation activities are paid on the basis of a minimum wage and the parties' agreement with the mediator. Seventh, the mediator audit. In Indonesia, the mediator is not audited by the mediator supervisory agency, while in Turkey, the mediator is required to report and be audited every year by the mediator supervisory agency. Eighth, membership fees for mediators. In Indonesia, there are no special rules that require payment of mediator membership in the form of entrance fees and annual fees. However in Turkey registered mediator members are required to pay an entrance fee and an annual fee. Ninth, the Power of Judgment. The results of the mediation in Indonesia are only included in the peace deed which has no executorial power. Whereas in Turkey the results of mediation are the same as court decisions and have executorial power so there is no need to file a lawsuit in court

Table 1. Comparison of Mediation in Indonesia and Turkey

	<b>Indonesia</b>	<b>Turkey</b>
Regulation	Supreme Court Regulation Number 1 Year 2016 concerning Mediation Procedures in Court	Dispute Act Number 6325
Time	30 Days and can be added 30 days if the parties agree	3 months and can be added 3 months if the parties agree
Disputes that require mediation before trial	There is not any.	Labor disputes, commercial disputes, consumer disputes, and consumer protection.

Mediation time	Can choose before or during the court process	In certain cases, it is mandatory before the trial
Number of Mediators	1 person	1 person
Mediator Terms	Mediation certificate	Mediation certificate
Title	No Degree	Must have a degree and be registered
Mediation fee	Free if with a judge who carries out the function of mediator	All mediation activities are paid
Audit	No audit for mediator	Must be audited every year
Scientific update	Not mandatory	Minimum 8 hours required every year
Administration fee for mediator	There is not any	Must pay regular entrance and annual fees
Execution power	Must be registered with the Court first	Executorial power

Based on the table above, several differences in mediation arrangements between Indonesia and Turkey can be drawn. Some of these regulations, according to this paper, are closely related to the success of mediation. This is in accordance with the theory of factors that influence law enforcement or better known as the theory of legal effectiveness. Based on this theory, there are 5 factors that influence the effectiveness of the law, namely legal factors, law enforcement factors, facilities factors, community factors, and cultural factors.<sup>42</sup>

*First*, Indonesia's mediation regulations do not meet the needs of the community. This can be seen in the aspect of the strength of the results of the mediation agreement, the timing of the implementation of mediation and legal reform. In Turkey a peace deed has the same legal force as a court decision that can be executed, while in Indonesia a peace deed is not equivalent to a court decision and does not have the power of execution. The mediation time in Turkey is longer, namely a maximum of 3 months or an additional 3 months. Meanwhile, the mediation time in the mediation law in Indonesia is only 30 days and can be added another 30 days. With a longer time, of course, the mediation process will be maximized and not as a formality.

*Second*, law enforcement officers or mediators in Turkey have competencies that must be renewed every year. This is with the aim of increasing competence, skills and

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<sup>42</sup> Soerdjono Soekanto, *Faktor-Faktor yang Mempengaruhi Penegakkan Hukum* (Jakarta: PT. Raja Grafindo Persada, 2008), 8.

updating methods in mediation. However, in Indonesia there is no obligation to update knowledge for mediators. Mediators in Turkey are supervised by a special institution that will audit and provide warnings to mediators who violate. The mediator can be terminated in the event of a violation. In addition, in the aspect of law enforcement in Indonesia, it was also found how many shortcomings were the reluctance of advocates (lawyers) to encourage their clients to mediate, mediators were not serious in handling mediation, judges felt burdened with additional duties as mediators without additional incentives.<sup>43</sup>

*Third*, the availability of facilities between Indonesia and Turkey can be said to be the same. This is because apart from having a mediation place for each party and the mediator can choose another place according to the desired facilities. *Fourth*, the Indonesian people are reluctant to mediate properly because of their prestige, self-respect, not understanding mediation and mediation are considered to prolong the judicial process.<sup>44</sup> However, in Turkey there has been an understanding in the community regarding the existence of mediation so that they are willing to carry out mediation optimally.

*Fifth*, the culture of mediation order in Indonesia is very low. This can be seen in the mediation process which is often not attended by either party or both parties. Indonesian people are reluctant to carry out mediation in an orderly and earnest manner because they see mediation as not a solution to their problems. However, in Turkey, in certain cases mediation is required to be carried out, if it is not present then it is considered that the parties do not meet the legal provisions so that the case submitted cannot be continued in the trial process.

Of the five factors that influence law enforcement or better known as the theory of the effectiveness of Turkish law, it meets the criteria. Aspects of the advantages possessed by Turkey are in line with the mediation results which show a positive direction. Meanwhile, Indonesia still has shortcomings that must be corrected for the success of mediation as an alternative dispute resolution.

## CONCLUSION

Mediation between Indonesia and Turkey has similarities and differences. The equation lies in the terms of the mediator, the number of mediators and the place. The differences in mediation between Indonesia and Turkey lie in regulation, mediation time, disputes that must be mediated, mediation implementation, mediator title, mediation

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<sup>43</sup> Candra Irawan, *Alternatif Penyelesaian Sengketa di Indonesia* (Bandung: CV. Mandar Maju, 2017).

<sup>44</sup> Candra Irawan, "Problematika Penerapan Peraturan Mahkamah Agung Republik Indonesia Nomor 1 Tahun 2008 Dalam Penyelesaian Sengketa Perdata Di Indonesia," *Adhaper* 1, no. 2 (2015): 61-73, <https://doi.org/10.36913/jhaper.v1i2.11>.

fees, mediator audit, mediator membership fees and the strength of the peace deed. These differences have an impact on the success of mediation in each country. Of course, from each country there are substances that need further research that can be implemented in each country that will improve the quality and effectiveness of mediation. Further research needs to be encouraged, especially in the development of legal politics of mediation in Indonesia and Turkey because mediation cannot be separated from the regulations that govern it which is the result of legal politics. It is hoped that the results of the comparison of Indonesia and Turkey's mediation mapping can be used as a reference for improving the implementation of mediation in Indonesia and Turkey which will increase the effectiveness of mediation in each country.

## REFERENCES

### Books:

- Abbas, Syahrizal. *Mediasi Dalam Hukum Syariah, Hukum Adat Dan Hukum Nasional*. Jakarta: Kencana, 2011.
- Irawan, Candra. *Alternatif Penyelesaian Sengketa Di Indonesia*. Bandung: CV. Mandar Maju, 2017.
- Harahap, M. Yahya. *Beberapa Tinjauan Mengenai Sistem Peradilan Dan Penyelesaian Sengketa*. Bandung: PT Citra Aditya Bakti, 1997.
- Soekanto, Soerdjono. *Faktor-Faktor Yang Mempengaruhi Penegakkan Hukum*. Jakarta: PT. Raja Grafindo Persada, 2008.
- Usman, Rachmadi. *Mediasi Di Pengadilan Dalam Teori Dan Praktik*. Jakarta: Sinar Grafika, 2012.

### Journals:

- Cengiz, Dilek. "Principles of Mandatory Mediation in Commercial Disputes in Turkish Law with Determinations and Comments on Its Applications." *Annales de La Faculté de Droit d'Istanbul* 0, no. 70 (2021): 1-52. <https://doi.org/10.26650/Annales.2021.70.0001>.
- Dost, Suleyman. "Mediation for Disputes in Private Law in Turkey." *International Journal of Academic Research in Business and Social Sciences* 4, no. 10 (2014): 5-9. <https://doi.org/10.6007/ijarbss/v4-i10/1210>.
- Gaol, Selamat Lumban. "Pengaturan Hukum Mediasi Di Pengadilan Oleh Mahkamah Agung." *Jurnal Ilmiah Hukum Dirgantara* 7, no. 1 (2016): 77-110.
- Indriani, Maria Evita, and Dewa Nyoman Rai. A.P. "Keabsahan Kesepakatan Penyelesaian Sengketa Wansprestasi Melalui Mekanisme Mediasi Yang Tidak Didaftarkan Ke Pengadilan." *Jurnal Kertha Wicara Vol 09*, no. 10 (2020): 1-11.

- Irawan, Candra. "Problematika Penerapan Peraturan Mahkamah Agung Republik Indonesia Nomor 1 Tahun 2008 Dalam Penyelesaian Sengketa Perdata Di Indonesia." *Adhaper* 1, no. 2 (2015): 61–73. <https://doi.org/10.36913/jhaper.v1i2.11>.
- Işık, Serpil. "Mediation as an Alternative Dispute Resolution Method and Mediation Process in Turkish Law System: An Overview." *Annales de La Faculte de Droit d'Istanbul* 65, no. 48 (2016): 55–87.
- Kamaruddin. "Mediasi Dalam Pandangan Hukum Progresif Suatu Alternatif Penyelesaian Konflik Keluarga." *Jurnal Al-'Adl* 11, no. 2 (2018): 1–18. <https://doi.org/http://dx.doi.org/10.31332/aladl.v11i2.1246>.
- Korah, Revy S. M. "Mediasi Merupakan Salah Satu Alternatif Penyelesaian Masalah Dalam Sengketa Perdagangan Internasional." *Jurnal Hukum UNSRAT* 21, no. 3 (2013): 33–42.
- Mulyana, Dedy. "Kekuatan Hukum Hasil Mediasi Di Dalam Pengadilan Dan Di Luar Pengadilan Menurut Hukum Positif." *Jurnal Wawasan Yuridika* 3, no. 2 (2019): 177–98. <https://doi.org/10.25072/jwy.v3i2.224>.
- Ozbek, Mustafa Serdan. "The Principles and Procedure of Penal Mediation in Turkish Criminal Procedure Law." *Angkara Law Review*, no. 2 (2012): 153–220.
- Pasaribu, Puspa, Rafi Aulia Ibrahim, and Zenitha Syafira. "Dilema Penerapan Asas Peradilan Cepat Setelah Mediasi Gagal." *PALAR (Pakuan Law Review)* 7, no. 2 (2021): 425–37.
- Praja, Chrisna Bagus Edhita, Budi Agus Riswandi, and Khudzaifah Dimiyati. "Urgensi Mediasi Sebagai Alternatif Penyelesaian Sengketa Hak Cipta." *Kertha Patrika* 43, no. 3 (2021): 275–95. <https://doi.org/10.24843/kp.2021.v43.i03.p04>.
- Purba, Mariah S.M. "Rekonstruksi Perma No. 1 Tahun 2016 Sebagai Alternatif Penyelesaian Sengketa Di Pengadilan." *Jurnal Hukum Samudra Keadilan* 13, no. 1 (2018): 20–31. <https://doi.org/10.33059/jhsk.v13i1.693>.
- Puspitaningrum, Sri. "Mediasi Sebagai Upaya Penyelesaian Sengketa Perdata Di Pengadilan." *Spektrum Hukum* 15, no. 2 (2018): 275. <https://doi.org/10.35973/sh.v15i2.1121>.
- Rahmah, Dian Maris. "Optimalisasi Penyelesaian Sengketa Melalui Mediasi Di Pengadilan." *Jurnal Bina Mulia Hukum* 4, no. 1 (2019): 1. <https://doi.org/10.23920/jbmh.v4i1.174>.
- Saifuddin, Moh., and Muchamad Choirun Nizar. "Prosedur Pelaksanaan Dan Tingkat Keberhasilan Mediasi Di Pengadilan Agama Semarang." *Wahana Akademika* 8, no. 1 (2021): 71–78. <https://doi.org/doi.org/10.21580/wa.v8i1.6572>.
- Sirullah, Nurul Alimi. "Peran Hakim Mediator Dalam Menunjang Efektifitas Mediasi Di Pengadilan Agama." *Jurnal Keislaman Terateks* 5, no. 2 (2020): 99–111.



Usluel, Ash Gurbuz. "Mandatory or Voluntary Mediation Recent Turkish Mediation Legislation and a Comparative Analysis with the EU ' s Mediation Framework." *Journal of Dispute Resolution* 2020, no. 2 (2020): 1-21.

Wiantara, I Komang. "Penyelesaian Perkara Perdata Di Pengadilan Berdasarkan Peraturan Mahkamah Agung Republik Indonesia Nomor 1 Tahun 2016." *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 7, no. 4 (2018): 456-67. <https://doi.org/10.24843/jmhu.2018.v07.i04.p04>.

Wirda Hairani, and Syawaluddin Ismail. "Problematika Mediasi Dalam Kasus Perceraian Di Mahkamah Syariah Langsa." *Al-Qadha* 5, no. 1 (2018): 38-47.

Yunari, Afrik. "Alternative Dispute Resolution (ADR) Sebagai Penyelesaian Sengketa Non Litigasi." *Inovatif* 2, no. 1 (2016): 133-52.

### **Regulations:**

Dispute Law Number 6325 or Turkey

Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2016 concerning Mediation Procedures in Courts

### **Internet:**

Ilter, Deniz and Attila Dikbas, "Construction Mediation in Turkey and an Overview of the Draft Mediation Law," 2. 5 April 2022. URL: <https://www.Irbnet.De/Daten/Iconda/Cib14509.Pdf>

Kinikoglu, Efe and Yigit Parmaksiz, "Practical Law Q&A: Mediation in Turkey, Morals and Patners, 4 November 2019. 6 April 2020. URL: <https://www.bcct.org.tr/news/practical-law-qa-mediation-in-turkey/68731>

The United Nations Commission On International Tarde Law (UNCITRAL) "Turkey's View on Uncitral Draft Mediation Rules". 9 April 2020. URL: [https://uncitral.un.org/sites/uncitral.un.org/files/media/documents/uncitral/en/comments\\_on\\_uncitral\\_draft\\_mediation\\_rules\\_turkey.pdf](https://uncitral.un.org/sites/uncitral.un.org/files/media/documents/uncitral/en/comments_on_uncitral_draft_mediation_rules_turkey.pdf)