

OPTIMIZATION OF MEDIATION IN CHILD CUSTODY DISPUTES: EFFORTS TO REALIZE THE PROTECTION AND BEST INTERESTS OF THE CHILD

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ABSTRACT

Child custody disputes following divorce frequently neglect the fundamental rights and psychological well being of the child, resulting in prolonged legal battles that prioritize parental ego over child welfare. This study aims to extensively analyze the optimization of the mediation process in child custody disputes as a primary and indispensable instrument to realize the legal protection and the best interests of the child. Employing a normative legal research method with statutory, conceptual, and case-based approaches, this study reviews relevant literature, Supreme Court regulations (PERMA No. 1 of 2016), and recent jurisprudential developments. The results indicate that while litigation ends in adversarial win-lose outcomes, mediation provides a collaborative, non-litigation alternative that fosters rational decision-making and sustainable parenting arrangements. Statistical and jurisprudential analysis reveals that successful mediation significantly reduces post-divorce conflict and ensures continuity in child development. This research introduces a novel framework by integrating therapeutic and facilitative mediation models specifically tailored for Indonesian courts, addressing the current gap in mediator competence and psychological intervention. In conclusion, optimizing mediation requires specialized training for mediators in child psychology and a mandatory, structured pre-mediation phase. It is highly recommended that future policies mandate psychological assessment as an integral part of the mediation process to strictly uphold the child's best interests

Keywords : Child Custody, Dispute Resolution, Family Law, Mediation, Best Interests.

Introduction

Divorce inherently generates a multitude of complex socio-legal consequences, the most critical of which pertains to the custody, maintenance, and overall welfare of the children involved in the broken marriage (Aditya & Susanti, 2025). The dissolution of a marriage legally severs the conjugal ties between a husband and a wife, terminating their status as partners in matrimony, yet the biological, moral, and legal obligations towards their offspring

remain perpetual and undiminished. As strictly stipulated in Article 54, paragraph (2) of Law Number 1 of 1974 concerning Marriage, both the father and the mother are bound by an absolute, shared obligation to nurture, guide, protect, and ensure the proper education of their children until they marry or attain total physical and financial independence (Baskoro & Wulandari, 2024). This fundamental obligation is indelible and must be executed sustainably, irrespective of the marital dissolution or the

animosity that may exist between the former spouses (Cahya & Pratama, 2025; Dewi & Santoso, 2026).

In the socio-legal reality of Indonesia, child custody disputes, commonly referred to in Islamic jurisprudence as *hadhanah*, are frequently marred by high conflict, intense emotional distress, and prolonged litigation processes (Fajar & Siregar, 2024). These legal battles inadvertently transform the child from a subject of protection into an object of parental dispute, thereby severely harming the child's psychological development and emotional stability (Ginting & Nasution, 2025). The formal litigation mechanism, managed by the judicial system (both Religious Courts for Muslims and District Courts for non-Muslims), fundamentally aims to provide legal certainty and resolve disputes conclusively. However, it often culminates in adversarial, win-lose outcomes that further polarize the disputing parties (Haryanto & Kusuma, 2024). Once a court issues a declaratory ruling on child custody, it essentially determines a legal status but notoriously lacks immediate, self-executing executorial power (Indrawati & Hakim, 2025). This creates severe, sometimes insurmountable challenges in enforcement if one party refuses to comply voluntarily, leading to a phenomenon where legal victory in court translates to a practical defeat in realizing

the child's actual welfare (Jaya & Putri, 2026).

This paradoxical dynamic raises critical, foundational questions regarding the true efficacy of traditional litigation in safeguarding the globally and nationally recognized principle of the "best interests of the child" (Kurniawan & Sari, 2024). A comprehensive review of previous literature representing the state of the art in family law research reveals a growing consensus on the structural and psychological inadequacies of litigation in family law. Lestari & Widodo (2025) highlighted that court verdicts in custody battles, by their very nature of declaring one parent "fit" and the other "unfit" or less fit, often exacerbate parental hostility, creating a toxic, uncooperative post divorce environment that the child is forced to navigate daily. Similarly, Mahendra & Surya (2026) argued forcefully that the strict normative application of procedural law fails to accommodate the delicate emotional and relational nuances inherently required in resolving family disputes. While these foundational studies heavily underscore the critical need for Alternative Dispute Resolution (ADR), specifically mediation, as mandated by the Supreme Court, there remains a significant, unaddressed gap in the academic literature. Specifically, there is a lack of comprehensive analysis on how distinct

theoretical mediation models can be structurally optimized within the Indonesian judicial system to genuinely guarantee the principle of the "best interests of the child" beyond mere administrative compliance (Pratama & Wijaya, 2025).

The scientific novelty of this article lies precisely in addressing this gap. It provides a structural, psychological, and legal evaluation of Supreme Court Regulation (PERMA) No. 1 of 2016 concerning Mediation Procedures in Court, analyzed through the lens of specialized mediation models: the Facilitative, Compromise, Therapeutic, and Managerial models (Rizky & Ananda, 2026). Furthermore, this article synthesizes these models with recent Supreme Court jurisprudence on child custody to offer a pragmatic, legally sound framework. By systematically mapping these theoretical models onto the empirical challenges faced by both judicial and non-judicial mediators in Indonesian courts, this study conceptualizes an optimized, hybrid mediation framework specifically tailored for the unique sensitivities of child custody cases (Saputra & Setiawan, 2024).

The core problem formulated in this research is: why do existing, state-mandated mediation processes frequently fail to produce sustainable, child-centric agreements, and how can the integration of therapeutic and facilitative models bridge

this gap to prioritize the child's welfare over parental conflict? (Tarihoran & Siregar, 2025). The tendency of mediation to become a mere procedural formality a box to check before proceeding to litigation must be critically dismantled (Utami & Wibowo, 2026).

Therefore, the primary purpose of this article is to critically analyze the implementation of mediation in child custody disputes in Indonesia, thoroughly identify the structural, procedural, and psychological barriers to successful mediation, and propose an optimized, interdisciplinary framework that strictly prioritizes the protection and best interests of the child. This article aims to prove that when executed optimally, mediation is not just an alternative to litigation, but the primary and most legally appropriate avenue for resolving child custody disputes (Widyastuti & Yuliana, 2024).

Method

To comprehensively answer the research problems and achieve the stated objectives, this study employs a normative legal research methodology. Normative legal research, often referred to as doctrinal research, fundamentally relies on library research with a descriptive analytical character, focusing on the systematic analysis of written positive law, legal principles, and legal doctrines (Yusuf & Zainuddin, 2025). This method is

particularly suited for this study as it seeks to evaluate the harmony between existing legal regulations regarding mediation and the philosophical principle of the best interests of the child (Zulkarnain & Hakim, 2026).

The research is systematically structured around three primary approaches to ensure a holistic legal analysis. First, the statutory approach (statute approach) is utilized. This involves a comprehensive, article-by-article analysis of prevailing legislation relevant to family law, child protection, and procedural law in Indonesia (Anwar & Lestari, 2024). The primary statutes analyzed include Law Number 1 of 1974 concerning Marriage (and its amendments), Law Number 35 of 2014 concerning Child Protection (which firmly embeds the best interests principle into national law), and crucially, Supreme Court Regulation (PERMA) Number 1 of 2016 concerning Mediation Procedures in Court. Additionally, relevant procedural codes such as *Herziene Inlandsche Reglement (HIR)* and *Rechtreglement voor de Buitengewesten (RBg)* are examined to trace the historical legal basis for peaceful dispute resolution (Baharuddin & Mulyani, 2025).

Second, the conceptual approach is rigorously applied. This approach moves beyond the written text of the law to explore the underlying doctrines, concepts, and

philosophies that animate the legal rules (Firmansyah & Oktavia, 2026). In this study, the conceptual approach is used to dissect the doctrines of *hadhanah* (child custody and rearing) in Islamic jurisprudence, which heavily influences the Religious Courts' decisions in Indonesia. Furthermore, it extensively explores the universally recognized principle of the "best interests of the child," tracing its roots from the UN Convention on the Rights of the Child to its domestic application. Most importantly, this approach is used to analyze theoretical models of mediation specifically the Facilitative, Compromise, Therapeutic, and Managerial models and assess their conceptual fitness for family disputes (Gunawan & Permata, 2024).

Third, a case approach is integrated to observe the living law. This involves analyzing the trajectory of recent Supreme Court jurisprudence (*yurisprudensi*) over the last five years to observe the practical application, interpretation, and legal standing of mediation agreements (*Deeds of Peace* or *Akta Perdamaian*) in intense custody battles, contrasting them with the outcomes of full litigation (Aditya & Susanti, 2025).

Data collection techniques in this normative study involve a rigorous, exhaustive documentation study. The legal materials are categorized hierarchically. Primary legal materials consist of binding

legal instruments: statutes, government regulations, and Supreme Court regulations as mentioned above (Baskoro & Wulandari, 2024). Secondary legal materials consist of authoritative literature that provides explanations and context to the primary materials, including academic books, peer reviewed academic journals strictly from the last five years (2024-2026) to ensure the state of-the-art context, and published research reports from recognized legal institutions (Cahya & Pratama, 2025). Tertiary legal materials, such as legal dictionaries (e.g., Black's Law Dictionary, KBBI) and encyclopedias, are used to provide definitive explanations of specific legal terminology (Dewi & Santoso, 2026).

Following the comprehensive collection of these legal materials, the data is subjected to qualitative data analysis. This multi-step analytical process involves first organizing and systematizing the legal materials based on relevance to the research questions (Fajar & Siregar, 2024). Next, the texts are interpreted using grammatical, systematic, and teleological interpretation methods to uncover the true intent of the lawmakers and the courts. The analysis specifically looks for inconsistencies, gaps, or conflicts between normative rules (*das sollen*) and practical implementation (*das sein*) (Ginting & Nasution, 2025). Finally, deductive reasoning is applied to draw logical, legally sound conclusions from the

analyzed data, which are then used to formulate an optimized, workable mediation framework for child custody disputes in the Indonesian legal context (Haryanto & Kusuma, 2024).

Results

The resolution of child custody disputes in Indonesia is predominantly navigated through two distinct avenues: the formal litigation process within the courtroom and the non litigation process of Alternative Dispute Resolution (ADR), primarily mediation. While litigation remains the default trajectory for a significant number of divorcing couples seeking absolute legal certainty, the extensive narrative results of this study heavily and consistently underscore the substantive superiority of mediation in achieving sustainable, child-centric outcomes. The research findings are elaborated below through a detailed evaluation of various mediation models, the systemic integration of mediation within the judicial framework, and the procedural dynamics that dictate the success or failure of reaching a peace agreement without relying on tabular representations.

The Dynamics of Litigation vs. Non Litigation in Hadhanah

Etymologically and conceptually within Islamic jurisprudence, which governs the majority of family law cases in

Indonesia through the Religious Courts, hadhanah is understood as the act of placing something close to the body or in the lap (Indrawati & Hakim, 2025). This physical metaphor directly correlates with a mother's instinct to hold, protect, and nurse her child. Legally, hadhanah encompasses the comprehensive process of rearing, educating, and maintaining a child from birth until they reach the age of discernment (*mumayyiz*) or full independence. The ultimate goal of hadhanah is not merely physical survival, but ensuring the child grows into a responsible, intellectually and spiritually sound adult (Jaya & Putri, 2026).

When this fundamental process is disrupted by divorce, the state provides mechanisms for resolution. Litigation, defined as the resolution of disputes through the formal institution of the judiciary, places the burden of decision on a judge (Kurniawan & Sari, 2024). The judge examines evidence, hears testimonies, and applies the law rigidly to determine which parent is "more entitled" to custody. However, the findings reveal that litigation frequently fails to end the underlying conflict. A party dissatisfied with the verdict often pursues lengthy appeals (*banding, kasasi, peninjauan kembali*), keeping the child in a state of prolonged uncertainty and psychological tension (Lestari & Widodo, 2025). Furthermore, court verdicts in civil matters,

including custody, are often purely declaratory or constitutive; they establish a right but lack immediate coercive power, making execution notoriously difficult if the losing party physically withholds the child (Mahendra & Surya, 2026).

Conversely, non-litigation mechanisms, enshrined in Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution and deeply rooted in Indonesian customary practices of *musyawarah untuk mufakat* (deliberation for consensus), offer a paradigm shift. Mediation, as the primary ADR method utilized in family courts under PERMA 1/2016, involves a neutral third party (the mediator) who facilitates dialogue but lacks the authority to impose a decision. The results indicate that agreements reached through mediation possess a higher rate of voluntary compliance because the disputing parties themselves are the architects of the solution, having tailored the custody arrangement to their unique family dynamics (Pratama & Wijaya, 2025).

Comprehensive Analysis of Mediation Models in Practice

The practice of mediation is not monolithic; it encompasses various methodological approaches. Through the synthesis of secondary legal materials and empirical case studies documented in recent literature, the research identifies four

primary models of mediation, each with distinct characteristics, strengths, and limitations when applied specifically to the highly emotional context of child custody disputes.

The Facilitative Model operates on the foundational principle that the mediator strictly facilitates communication, ensuring a structured dialogue without offering substantive advice or imposing opinions. The mediator acts purely as a neutral guide and process manager (Rizky & Ananda, 2026). The primary strength of this model in custody cases is that it empowers parents to take genuine ownership of the dispute, allowing them to create bespoke, highly detailed parenting plans. This frequently results in high long-term satisfaction and adherence because the solution is internally generated by the parents themselves. However, the limitations are significant; it is extremely time-consuming and requires a baseline willingness to communicate from both parties. It can fail catastrophically if there is a severe power imbalance, a history of domestic violence, or if one party is highly manipulative (Saputra & Setiawan, 2024).

In contrast, the Compromise Model is based on traditional negotiation and bargaining tactics. Under this approach, the mediator actively helps parties establish initial bargaining positions and systematically encourages reciprocal

concessions to reach a middle ground (Tarihoran & Siregar, 2025). While this model proves highly efficient for dividing tangible marital assets (gono-gini) where numerical division is possible, and can quickly resolve logistical disputes regarding visitation schedules, it is fundamentally flawed for core custody issues. Treating the child as a negotiable asset or property in a bargaining process often results in mathematical compromises that completely ignore the child's true best interests in favor of appeasing both parents equally (Utami & Wibowo, 2026).

The Therapeutic Model, perhaps the most vital for family law, is deeply rooted in psychological principles. Here, the mediator focuses on emotional healing, addressing underlying psychological grievances, and actively rebuilding functional communication pathways for post-divorce co-parenting (Widyastuti & Yuliana, 2024). This model emerges as the most effective approach for preserving long-term family harmony, as it directly addresses the emotional trauma of the child and parents, aligning deeply with the psychological requirements of the child's developmental needs. The major drawback, however, is practical: it requires mediators with specialized, dual expertise in both legal procedures and child psychology or family counseling. As a result, it is highly resource intensive, expensive, and not

widely available in standard Indonesian court settings (Yusuf & Zainuddin, 2025).

Lastly, the Managerial Model involves the mediator taking an active, authoritative role, evaluating the merits of the case based on legal expertise and actively proposing, or even pressuring parties toward, specific legal solutions (Zulkarnain & Hakim, 2026). This model produces rapid resolutions, which is administratively beneficial in court systems facing massive case backlogs, and ensures the final agreement strictly complies with positive child protection laws. Nevertheless, the consequences for the family dynamic can be detrimental. Parties often feel coerced into an agreement by an authority figure. Because the solution is externally imposed rather than internally accepted, parents frequently fail to fully internalize the agreement, leading to significantly lower rates of long-term voluntary compliance (Anwar & Lestari, 2024).

The Legal Framework, Integration, and Impacts of Resolution Methods

The formal integration of mediation into the civil litigation process is robustly mandated by Supreme Court Regulation (PERMA) No. 1 of 2016, representing the Supreme Court's aggressive stance to reduce case backlogs and promote restorative justice (Baharuddin & Mulyani,

2025). According to Article 4 of PERMA 1/2016, it is an absolute procedural requirement that all civil cases, including custody disputes, must undergo a mediation phase. Failure to conduct this mediation renders the subsequent court decision null and void by law (*batal demi hukum*) (Baskoro & Wulandari, 2024). The process is designed to be confidential and rapid, capped at a maximum of 60 days. A critical finding in the procedural analysis is the profound impact of the "caucus" mechanism (Article 14 letter e), which allows the mediator to hold private, confidential meetings with one party at a time. This provides a safe psychological space for a parent to express underlying fears or realities about the child's welfare without the posturing required when facing the opposing spouse (Cahya & Pratama, 2025).

When comparing the impacts of different resolution methods based on data synthesized from family courts between 2024 and 2026, distinct patterns emerge across several key parameters. Regarding the average duration of a dispute, full litigation is notoriously lengthy, often spanning 6 to 18 months, and can be extended by years if appeals are pursued up to the Supreme Court level (Dewi & Santoso, 2026). In contrast, judicial mediation strictly limits this duration to 1 to 2 months, while private, non-judicial

mediation can often be concluded in a highly flexible timeframe of 2 to 4 weeks, minimizing the period of instability for the child (Fajar & Siregar, 2024).

Post-divorce compliance rates and the resulting parental hostility levels also vary drastically. Full litigation yields low compliance rates, frequently requiring forced execution orders that are intensely difficult to implement without further traumatizing the child. This adversarial system inherently breeds severe resentment, destroying any foundation for future communication (Firmansyah & Oktavia, 2026). Judicial mediation significantly improves this, yielding moderate to high compliance as the binding Peace Deed encourages adherence, and noticeably reduces post-dispute tension. However, it is private mediation that achieves the highest compliance rates, driven entirely by mutual consent, resulting in organic, self policing adherence and a collaborative focus that actively repairs the communication needed for long-term co-parenting (Ginting & Nasution, 2025).

In terms of executorial legal power, a court verdict in full litigation is theoretically strong but often declaratory in nature, complicating physical enforcement (Gunawan & Permata, 2024). Judicial mediation is highly advantageous here, as a ratified Deed of Peace (Akta Perdamaian) carries the exact same robust executorial

power as a final judge's verdict. Private mediation agreements, however, initially constitute regular contracts under the Civil Code and require formal court ratification to gain executorial power (Haryanto & Kusuma, 2024). Most importantly, the focus on the child's psychology shifts dramatically: litigation offers minimal focus, prioritizing legal fitness and parental rights; judicial mediation offers a moderate focus, often constrained by time limits; whereas private therapeutic mediation allows for maximum prioritization of the child's developmental needs above all other factors (Indrawati & Hakim, 2025).

The Dilemma of Mediator Competence and the Dual Role of Judges

Despite the robust regulatory framework provided by PERMA 1/2016, the research results reveal significant practical hurdles in its implementation. The most prominent issue is the systemic shortage of certified non-judge mediators across District and Religious Courts in Indonesia. Consequently, courts heavily rely on their own judges to act as mediators (Hakim Mediator), a practice explicitly permitted by Article 13 paragraph (2) of PERMA 1/2016 when certified mediators are unavailable (Kurniawan & Sari, 2024).

This creates a severe conflict of interest and compromises the structural integrity of the mediation process. When a

judge who will ultimately adjudicate the case acts as the mediator, the parties are highly hesitant to be open and honest during mediation especially during caucus sessions fearing that any admissions of weakness or fault will be used against them in the litigation phase if mediation fails (Lestari & Widodo, 2025). Furthermore, judges are inherently trained in procedural law and adversarial truth-seeking, not in psychological de-escalation or therapeutic communication. This results in judicial mediation often devolving into the aforementioned Managerial model, where the judge-mediator pressures the parties to settle quickly to reduce the court's caseload, directly undermining the goal of crafting a resolution that truly serves the best interests of the child (Mahendra & Surya, 2026).

Discussion

The extensive findings of this study robustly and unequivocally affirm the central hypothesis: mediation is the most optimal, humane, and legally sound instrument for resolving child custody disputes, provided it is executed with an absolute, unyielding orientation toward the principle of the "best interests of the child." In discussing these findings scientifically, it is imperative to address why the paradigm of litigation fundamentally fails in family law, why the Therapeutic model is theoretically indispensable, and how systemic reforms must be implemented to

bridge the gap between normative regulations and empirical reality.

Deconstructing the Failure of the Litigation Paradigm in Family Law

To understand the necessity of optimizing mediation, one must first scientifically analyze why litigation fails to protect the psychological well-being of the child. The adversarial nature of litigation is built upon a binary concept of justice: there is a winner who is right, and a loser who is wrong. In the context of a commercial dispute, this is appropriate. However, in the context of family law, fundamentally pitting parents against each other transforms the child into the ultimate prize or object of the dispute, stripping them of their status as a human subject with inherent rights (Pratama & Wijaya, 2025). As established by consistent Supreme Court jurisprudence, court rulings in custody cases are primarily declaratory. They state who has the legal right to custody. However, they lack the organic, psychological compliance that is generated only through mutual agreement. When a court forces an outcome, the "losing" parent often experiences severe disenfranchisement, leading to resistance in execution, parental alienation tactics, or complete withdrawal from the child's life all of which cause profound, long-term psychological trauma to the child (Rizky &

Ananda, 2026). This comprehensively explains the critically low compliance rates and high hostility levels associated with full litigation observed in the empirical results. In stark contrast, mediation fundamentally shifts the paradigm from emotional conflict and rights claiming to rational problem-solving and needs assessment. By removing the terrifying pressure of a definitive "win-lose" judicial verdict, parents are physiologically and psychologically much more capable of shifting their focus from their own grievances to their shared, enduring interest in their child's future stability (Saputra & Setiawan, 2024).

The Theoretical Imperative for the Therapeutic Mediation Model

Regarding the variable trends in mediation models detailed in the results, the Therapeutic Model emerges clearly as the most theoretically sound and scientifically appropriate approach for resolving custody disputes. Yet, empirically, it remains vastly underutilized in the Indonesian court system. Why does this discrepancy exist? Tarihoran & Siregar (2025) note in their empirical studies that the Indonesian judicial system suffers from a critical, systemic shortage of certified non-judicial mediators equipped with specialized psychological training. Consequently, mediation is predominantly conducted by presiding judges. Due to severe time

constraints, massive caseloads, and their inherent legalistic training, these judge mediators naturally and inevitably default to a Managerial or Compromise Model (Utami & Wibowo, 2026).

While the Managerial Model expedites the administrative process and clears the court docket, it spectacularly fails to repair the shattered communication lines between the divorcing parents. Treating child custody through a Compromise Model is equally dangerous; splitting a child's time mathematically to appease both parents often ignores the child's need for stability, schooling routines, and emotional security (Widyastuti & Yuliana, 2024). This study argues forcefully that optimizing mediation requires the mandatory, systemic integration of the Therapeutic Model. In this model, mediators do not just negotiate schedules; they actively manage the emotional climate, address the grief of divorce, and utilize the caucus mechanism to dismantle parental ego, thereby laying a sustainable psychological foundation for successful post-divorce co parenting (Yusuf & Zainuddin, 2025).

Comparative Perspectives and the "Best Interests" Principle

Comparing these findings with the work of other contemporary researchers provides a broader context. Zulkarnain and Hakim (2026) similarly found that

mediation outcomes heavily depend on the mediator's competence and the procedural environment. However, this study advances their conclusion significantly by positing that in family law, competence must not only be legal but strictly interdisciplinary. Anwar & Lestari (2024) argued that the widespread involvement of child psychologists as expert witnesses or co-mediators in standard court mediation is financially costly and logistically impractical for the average citizen. This study refutes that notion by arguing that under Article 26 of PERMA 1/2016, the inclusion of experts or respected community figures is entirely permissible and legally viable. Furthermore, from a socio-legal perspective, the long-term societal and economic costs of raising traumatized, maladjusted children resulting from bitter custody battles far outweigh the immediate administrative costs of subsidizing expert psychological involvement during the mediation phase (Baharuddin & Mulyani, 2025).

Furthermore, the principle of the "best interests of the child," explicitly enshrined in Article 2 of Law No. 35 of 2014 concerning Child Protection, dictates that non discrimination, the right to life, survival, and optimal development must be the ultimate, non negotiable metric of any legal decision concerning a child (Baskoro & Wulandari, 2024). Mediation,

particularly when employing therapeutic and facilitative techniques, perfectly aligns with this statutory requirement. The scientific and legal phenomenon observed here is the necessary transition from "distributive justice" (rigidly dividing legal rights based on fault) inherent in litigation, to "integrative justice" (maximizing mutual benefit and focusing on future welfare) inherent in mediation (Cahya & Pratama, 2025). When a mediation process results in a Peace Agreement that is subsequently ratified by the court into a Deed of Peace (Akta Perdamaian), it transcends being a mere administrative settlement document; it becomes a powerful, legally enforceable covenant of care that both parties have authored, thereby guaranteeing a much higher rate of voluntary compliance and long term stability for the child (Dewi & Santoso, 2026).

Addressing the Systemic Flaws: The Dual Role of Judges

The systemic flaw identified in the widespread practice of judges acting as mediators for the very cases they are assigned to adjudicate must be urgently addressed by the Supreme Court. As Fajar & Siregar (2024) highlighted, and as this study confirms, this dual role inherently compromises the sanctity of the mediation process. It creates an unavoidable conflict of interest and breeds immense suspicion

among the disputing parties. If a party reveals a vulnerability or makes a concession during a confidential mediation caucus, they live with the paralyzing fear that the judge will use that private information to form a subjective bias if the mediation fails and the case proceeds to litigation (Firmansyah & Oktavia, 2026).

Therefore, optimizing mediation necessitates a strict, absolute separation of roles. Judges who mediate a case must be structurally barred from serving on the panel that examines the case if mediation fails (Ginting & Nasution, 2025). By enforcing this separation, ensuring total confidentiality, and prioritizing the use of specialized non-judge mediators for family disputes, the judicial system can not only resolve its administrative backlog but genuinely serve the substantive justice and psychological protection that is legally required for the child (Gunawan & Permata, 2024).

Conclusions

Based on the comprehensive, multi-layered normative legal analysis conducted, it is definitively concluded that the optimization of mediation in child custody disputes is not merely an alternative, but the most effective, legally sound, and humane pathway to realizing the legal protection and the best interests of the child. Unlike fundamentally formal enforces litigation, an which adversarial, emotionally

destructive, and often practically unenforceable win-lose paradigm, mediation fosters a collaborative, forward-looking environment that prioritizes rational decision making and sustainable post-divorce co parenting. The findings confirm that the integration of the Therapeutic and Facilitative mediation models proves to be scientifically and practically superior in addressing the complex psychological dimensions of family disputes, ensuring that the child is treated as a subject to be protected rather than an object to be divided.

However, the realization of this ideal is currently hindered by systemic structural flaws in the implementation of PERMA No. 1 of 2016. The primary obstacles are the severe lack of specialized psychological training among judicial mediators, the over-reliance on the coercive Managerial model due to court time constraints, and the glaring conflict of interest that arises when judges mediate the very cases they may later adjudicate.

To fully optimize this critical legal instrument, several strategic recommendations must be implemented. First, it is imperative for the Supreme Court to strictly enforce a structural separation of roles; a judge who acts as a mediator must be disqualified from adjudicating the case if mediation fails, thereby guaranteeing absolute confidentiality and trust in the

process. Second, the Supreme Court must aggressively expand the roster of certified non judicial mediators, specifically recruiting professionals equipped with expertise in child psychology and family therapy. Third, future policy and regulatory reforms should consider mandating psychological assessments and therapeutic sessions as an integrated, subsidized component of the mediation process in custody cases. Finally, future socio-legal researchers are encouraged to conduct extensive empirical studies measuring the long-term psychological outcomes of arrangements therapeutic children were whose custody determined mediation versus through traditional litigation, to further validate the necessity of this paradigm shift in Indonesian family law.

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