

Gender, power, and court-annexed mediation in Indonesia

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Abstract

Certification trainings for court-annexed mediators have been conducted in Indonesia since 2003; however, the curriculum fails to include domestic and family violence and the impacts of gender and the abuse of power on women and children, which are crucial in a patriarchal country such as Indonesia. The authors contend that it is imperative to include these topics in the curriculum to raise mediators' awareness of the influence of patriarchy, on themselves and the disputants and on the process and outcomes for women and children. The authors assess the development and training of court annexed mediators in Indonesia and recommend changes to the current certification training curriculum, the development of national competency standards and a code of ethics and funding for research.

Women in Indonesia have long been thought to have higher status in the community than women in other countries in Southeast Asia (Atkinson & Errington, 1990; Blackburn, 2001). Women have been involved in the community in a variety of fields, such as trade, ambassadorial affairs and as rulers (Saptari, 2000). The constitution of Indonesia recognizes that men and women have equal rights, including the right to vote and to become elected public officials. However, in practice most women are still under the domination of men in almost every aspect of life (Koning, Nolten, Rodenburg, & Saptari, 2013), in particular in the private, domestic sphere.

In this paper we analyze the training curriculum for court-annexed mediators in Indonesia in relation to content on family violence and the impact of dominant gendered discourses and the abuse of power and argue that there is a need to raise mediators' and trainers' awareness of the influence of patriarchy and dominant social and cultural constructions of gender (masculinity and femininity) on themselves and the disputants and on the fairness of the process and outcomes for women and children.

1 | BACKGROUND: GENDER (IN) EQUALITY AND CONFLICT RESOLUTION IN INDONESIA

Patriarchy is pervasive in many countries, including Indonesia, despite the different customs, religions, and social backgrounds (World Health Organization, 2002). The nature of the patriarchal society in Indonesia, which involves the subordination of women and children to men, has not changed much since the reformation era started in 1998. Women have had difficulty voicing their interests, both in domestic and public spheres, due to patriarchal attitudes and standards, and have had limited access to education and lower salaries when they are in the workforce (Utomo, 2005).

Patriarchal standards, which are reinforced by dominant social and cultural constructions of masculinity and femininity, influence the male-dominated Indonesian bureaucracy and policy decision making. Lerner (1986) has argued that without the cooperation of women patriarchy cannot survive, however, in Indonesia women are in a relatively powerless position: they are indoctrinated, coerced, and discriminated against.

Lerner defined patriarchy as “the manifestation and institutionalization of male dominance over women and children in the family and the extension of male dominance over women in society in general” (Lerner, 1986, p. 239). However, from a post-structuralist perspective, Weedon (1997) and Walby (1990) contend that such notions of patriarchy are essentialist, in that they focus exclusively on a particular aspect of identity and tend to ignore the complexity of representations and descriptions, for example they do not take into account changing historical, social, and cultural constructions of masculinity and femininity.

The Indonesian Ministry of Women's Empowerment has challenged some laws which they perceived to have a patriarchal bias, including family law (Parawansa, 2002). The complex, patriarchal cultures and dominant gendered discourses in Indonesia directly and indirectly affect the way court-annexed mediators handle family disputes, particularly when women and children are involved. Therefore, it is essential for mediators to understand the influence of patriarchy and the complex and changing constructs of gender on themselves and the parties.

2 | COURT-ANNEXED FAMILY MEDIATION IN INDONESIA

Mediation as one of the dispute resolution processes in Indonesia has been substantially used since the 1990s. Mediation practice aligns with *musyawarah*, which is the indigenous way to settle disputes for both private and criminal cases in society. *Musyawarah* relates to five principles underpinning the nationhood of Indonesia, named *Pancasila*. One of the values of *Pancasila* calls for the people of Indonesia to be directed by the wisdom of *musyawarah*. The other principles are belief in God, a just and civilized humanity, the unity of Indonesia, and social justice for all people of Indonesia. Conflict in many fields of practice, such as insurance, banking, labor, and the environment, have been influenced by *musyawarah*, including court-annexed mediation (Rahmadi, 2010).

Mediation as a formal process was recently introduced to tackle case backlogs in the Supreme Court of Indonesia for a number of reasons: to avoid the prolonged, complex and costly process of litigation; to provide access to justice for disadvantaged people; and to create a judicial environment free of corruption (The Supreme Court of Indonesia, 2016a). A court-annexed mediation model was introduced in 2003 but its success rate is still below the

expectations of the judiciary and justice as the settlement rate is below 15% (The Supreme Court of Indonesia, 2017).

Initially practiced in the District Courts, court-annexed mediation has also been widely practiced in the *Sharia* Courts in Indonesia, which deal with more family disputes than the District Courts. The Supreme Court of Indonesia adopted a Western model of court-annexed mediation, however, it has failed to address the issues of gender and imbalances of power, both in training and in practice, and therefore many settlements and/or outcomes have marginalized the interests and safety of female parties and their children (Abdul Syukur, 2012).

Most of the court-annexed mediators in Indonesia are judges who are used to adjudicating when settling disputes. The Indonesian civil procedure law obligates judges to try to settle civil disputes amicably prior to the litigation process and after the case has been filed in court. However, due to the lack of judges in some courts, the Supreme Court also allows nonjudges to be court mediators. There is no limitation in the regulation regarding who can become a nonjudge mediator, however, the Supreme Court prefers to appoint those who have a legal background, such as lawyers and law academics, and those who are used to mediating in the community, such as tribal and religious leaders (The Supreme Court of Indonesia, 2016b).

One crucial reason for introducing court-annexed mediation in Indonesia was to give wider access to justice for all parties. It is therefore of concern that in the regular practice of court-annexed mediation women's interests are often ignored, subordinated and/or marginalized. For example, in several cases, in particular in country courts, women are not allowed to attend mediation personally and have to be represented by the men in their family (IICT, 2005). This frequently occurs where indigenous conflicts over land and inheritance arise.

Mediation in courts in Indonesia is more popular for family disputes than for commercial disputes. By nature, disputants prefer to maintain their kinship harmony through mediation, a process which can minimize damage to relationships, which often occurs in the adversarial process of litigation. The Indonesian Institute of Economic and Social Research, Education and Information (*Lembaga Penelitian, Pendidikan dan Penerangan Ekonomi dan Sosial* or LP3ES) asserts that in Indonesia, especially in rural communities who draw on customary and *sharia* norms, a number of people consider that if a person takes legal action against his or her neighbor, it is a statement of war and is extremely disrespectful (LP3ES, 2005).

3 | GENDER AND POWER IN COURT-ANNEXED MEDIATION

Court-annexed mediation has been established in Indonesia since 2003, however, its settlement rate is still below 15% (The Supreme Court of Indonesia, 2017). Many constraints have hampered its successful implementation, including a failure to pay attention to the influence of patriarchy and the relatively powerless position of women in Indonesia. One of the objectives stated in the Supreme Court regulation when establishing court-annexed mediation was to provide access to justice for poor and vulnerable parties, so they could come up with agreements that address their interests. In theory, mediation can limit the exclusive rights of parties belonging to a particular class, race, and/or gender and can prevent or redress the abuse of power (Yuhassarie, 2005).

Before the enactment of the court-annexed mediation regulation in 2003, there had been confusion about the definition of mediation. Some academics stated that mediation was no different to conciliation (IICT, 2005) and others, especially community leaders, said they had been practicing mediation all along, even when they had been using an adjudication process to settle disputes

(Abdul Syukur, 2009). The law only mentioned mediation as one of the approaches to alternative dispute resolution but did not define mediation. Realizing the importance of having a uniform definition of mediation, in 2009 the Supreme Court of Indonesia defined mediation in the regulation on court-annexed mediation as “an alternative dispute resolution process involving a neutral and impartial mediator who assists disputants to seek alternative solutions to reach settlement (2003, p. 3).

In most Western theoretical approaches (e.g., Moore 2003, Boule 2005) mediation is proposed as an alternative to litigation in order to avoid damaging relationships, and to assist disputants to reach lasting agreements by considering the social and humanitarian aspects of disputes. Moreover, parties are given the opportunity to decide what they want in the mediation process. Mediation offers individuals the opportunity to speak for themselves and make their own decisions when discussing and resolving their disputes, whereas in litigation an advocate speaks for them and a judge makes the decisions (Bagshaw, 2009). In particular, in narrative mediation (Winslade & Monk, 2000) the mediator focuses on deconstructing dominant culturally and socially constructed discourses which enables the disputants to construct new or different ways of viewing their situation.

In Indonesia, women have difficulty in conveying their interests in any of the court processes, in particular where there is domestic or family violence, as most of the judges and mediators are men. In 2015, only 15% of the total number of judges in the District Court were women, and nonjudicial female mediators comprised 37% of the total number (The Supreme Court of Indonesia, 2017). However, nonjudicial mediators rarely have the chance to mediate a case in the courts; most disputants opt for judicial mediation as the services are free.

The lack of female judges and mediators is partly due to the dominant cultural perception in Indonesian society that women are not suitable to be third parties in settling disputes. Women are perceived to be less rational than men and too sentimental (Machali, 2001). For example, one professor in an Indonesian law school stated in a class attended by one of the authors that women's emotions, especially when they are menstruating, could cloud their logical thinking and prevent them from delivering sound judgments in settling disputes, and therefore they may injure parties' rights. This dominant stereotypical cultural view is discriminatory and forms a barrier to women being appointed as judges and mediators.

The rate of participation of women in the work force in Indonesia is far lower than the participation of men and those that are employed are more likely to do specific jobs that are viewed as acceptable for women, along with lower salaries. The Ministry of National Development Planning stated that for the past two decades women's participation in the work force was 50%, whereas men's participation was 84%.¹

4 | GENDER-BASED VIOLENCE AND ITS IMPACT ON WOMEN AND CHILDREN

World Health Organization studies indicate that domestic violence is prevalent in most, if not all, countries and cultures in the world (World Health Organization, 2017). Domestic violence is very difficult to detect due to the relatively powerless position of victims and their inability or unwillingness to disclose mistreatment and abuse due to fear, intimidation, shame, social isolation and/or cultural, religious and gendered norms, among other factors. Global and national data indicates that most men do not use violence against women, but when violence against women and men occurs, it is perpetrated overwhelmingly by men.

The World Health Organization's (2008) World Report of a multi-country study “Violence against women by intimate partners,” noted that in all of the countries in their study it was

commonly the husband or partner who perpetrated violence against women. They also highlighted that violence against women is frequently invisible:

...it happens behind closed doors, and often systems and cultural norms do not treat it as a crime, but rather as a "private" family matter, or a normal part of life" (World Health Organization, 2008).

Their study focused on physical and sexual violence, emotional abuse and controlling behaviors by current partners or ex-partners, and they found that these had serious consequences for women's health worldwide (World Health Organization, 2008).

The United Nations Declaration on the Elimination of Violence against Women defined the term "violence against women" as:

Any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life (United Nations, 1984)

In 2017, the World Health Organization reported that, worldwide, almost one-third (30%) of all women who have been in a relationship had experienced physical and/or sexual violence by their intimate partner and as many as 38% of all murders of women were committed by their intimate partners (World Health Organization, 2017). Women are most at risk when they are separating from or divorcing their partner, it is therefore essential that court-annexed mediators in Indonesia, judicial and nonjudicial, are trained to screen for violence against women (prior to and during intervention), to recognize and understand the effects of violence on women and children, and to put safeguards in place, including making appropriate referrals to ensure the safety of the women and children involved.

Article 4AB of the Australian Family Law Act, 1975 defines family violence as "violent, threatening or other behavior by a person that coerces or controls a member of the person's family (the *family member*), or causes the family member to be fearful" (Government of Australia, 1975). This definition of family violence further specifies that when children witness or hear domestic violence it is a form of child abuse. The definition was expanded after a number of research studies indicated the women's and children's allegations of domestic and family violence and child abuse during separation and divorce were often disbelieved (Bagshaw et al., 2011).

To our knowledge, there has not been any research on the effects of separation, divorce and domestic and family violence on children in Indonesia, nor on how to include children's concerns and wishes in decisions made about them in court-annexed family mediation post separation. This is crucial because the voices of children are seldom heard, nor are they interviewed where there are allegations of child abuse and/or family or domestic violence.

Article 12 of the United Nations Convention on the Rights of the Child stipulates that all parties must ensure that the rights and interests of children are given due weight, according to the age and maturity of the child, and their voices are heard in any judicial and administrative proceedings affecting the child, directly or indirectly through their representatives and in accordance with existing national regulations.

Child inclusive mediation is well developed in Australia (Brown & Alexander, 2007) and could serve as a model for developments in Indonesia, taking into account the cultural and legislative differences between the two countries.

5 | CERTIFICATION TRAINING FOR COURT-ANNEXED MEDIATORS

The quality and scarcity of human resources in Indonesian courts has been a major problem, especially in relation to the judges' competence and capacity to handle complex family law cases, in particular where there are allegations or indications of domestic and family violence (Abdul Syukur, 2012). Judges possess basic legal knowledge, but this does not assist them when handling complex cases (Puslitbang Hukum dan Peradilan, 2003). There is a lack of ongoing training for judges due to funding shortages (Manan, 2003). Another problem occurs in the initial recruitment stage when the finest law graduates are reluctant to become judges (Bedner, 2001; Juwana, 2003), possibly because of low wages and the negative image of judges in the community due to a history of corruption and unfair judgments. In addition, a law graduate may have to pay a bribe to be accepted as a judge (Juwana, 2003).

The Supreme Court has been cooperating with other departments and international donors since 2003 to conduct training programs for judges (Manan, 2003) and has attempted to overcome the problems we have identified by establishing two training centers: *Legal Technical Education* and *Management and Leadership* (The Supreme Court of Indonesia, 2006). In collaboration with foreign donors, the Supreme Court Training Centre has also conducted some court-annexed mediator trainings (The Sustain Project EU-UNDP, 2018); however, these are insufficient in number given the number of judges and courts throughout the country (The Supreme Court of Indonesia, 2017).

In order to practice in courts, nonjudicial and judicial mediators are obligated to undergo formal certification training. They must pass a theoretical and practical exam in order to be certified as a mediator. Judges are obliged by law to be mediators in court-annexed mediation. However, due to the shortage or lack of judges in some courts, the Supreme Court sometimes allows professionals from different backgrounds to become mediators, either with a proceeding judge or acting alone. The 2016 regulation also allows judges who have not been certified to perform as mediators if there is no certified mediator available (The Supreme Court of Indonesia, 2016a). Parties can choose nonjudicial mediators who have professional backgrounds suitable to their cases, but their services are not free and there is no standard rate. Most parties therefore choose the free service of judicial mediators.

The Supreme Court should be able to monitor the practice of professional mediators and have the authority to give sanctions when any complaints are made, or rules or ethics are not adhered to. However, family mediation standards and a code of ethics have not yet been developed in Indonesia. Sourdin, Fisher, and Moloney (2004) assert that there should be different standards for competencies in various jurisdictions. The most common competencies mentioned in the literature relate to "service quality (knowledge, skills and ethics) and access and fairness (assessment, neutrality, and confidentiality)" (Boulle, 2005; Moore, 2003, p. 78).

Court-annexed mediation certification training is currently based on a 40-hr workshop with a syllabus drafted by the Supreme Court of Indonesia and accredited institutions (IICT, 2005). To date, this 40-hr workshop has been applicable for nonjudge certification training, however, the 2016 regulation has increased the required workshop time to 80-hr, particularly for judges, which will gradually be applied to nonjudge mediators as well (The Supreme Court of Indonesia, 2016b).

After the issuance of the 2003 regulation, two nongovernment organizations (NGOs) were appointed by the Chief Justice to conduct mediation certification trainings: the *Indonesian Institute for Conflict Transformation* (IICT) and the *National Mediation Centre* (*Pusat Mediasi Nasional* or PMN) (Abdul Syukur, 2008). Later the *Tarumanegara University*, a private university, was also accredited by the Supreme Court. These three institutions have been responsible

for all court-annexed mediation training in Indonesia, which has been difficult because of the vast area that needed to be covered (Abdul Syukur, 2011).

To open the possibility for other institutions to be accredited for training, the 2008 regulation stipulated some requirements, which included: submitting an application to the Chief Justice; employing instructors/trainers who have undergone mediation training and conducted at least two noncertification mediation trainings; and submitting a curriculum for approval by the Supreme Court (The Supreme Court of Indonesia, 2008). Since this revision, there have been more than 30 mediation institutes accredited by the Supreme Court to provide mediation certification trainings throughout Indonesia (The Supreme Court of Indonesia, 2016a).

If mediators are trained to be mindful of the effects of patriarchal, socially constructed cultural norms and to identify when domestic or family violence has occurred or is occurring, mediation may be useful in settling family disputes where women and children are involved, because it offers more flexibility than litigation (Danaher, Schirato, & Webb, 2000). Weedon asserts that women need a discursive space in order to be empowered, which mediators can provide under certain conditions (Weedon, 1997, p. 107). However, for this to happen, it is crucial for family mediators to be educated and trained to have a high level of knowledge, understanding and awareness of the impact of patriarchal and gendered discourses on themselves and the parties in order to recognize and respond appropriately to relationships involving imbalances of power (Bagshaw, 2003). As previously argued, domestic and family violence is prevalent in most, if not all societies and more often than not involves women and children as victims and men as perpetrators (WHO, 2009). In Australia, for example, it is compulsory for accredited family dispute resolution practitioners working under the Australian Family Law Act 1975 (Government of Australia, 1975), to have a degree in law and/or the social sciences plus a 1 year Graduate Diploma in Family Dispute Resolution with a significant component on family violence and gender, including the impact of domestic and family violence on children (Attorney General of Australia, 2019).

6 | CURRICULUM OF CERTIFICATION TRAININGS

Since 2003, mediation certification trainings for Indonesian judges have been conducted by the Supreme Court Training Centre in cooperation with accredited institutions, sponsored by either the state or foreign donors, including The Asia Foundation, Indonesia-Australia Legal Development Facility, Japan's International Cooperation Agency and The European Union (IICT, 2005). Certification trainings have also been conducted by accredited institutions with independent fundraising (Abdul Syukur, 2009). The background of trainees has included community leaders and NGO workers, judges, academics, doctors, teachers and law students (IICT, 2005).

The 40-hr workshop for approved mediation training is based on an adult learning model, using simulations, role plays, and mediation games (Mahkamah Agung Republik Indonesia, 2010a). The trainers consider the skills, experiences and backgrounds of participants who are used to dealing with disputes in the course of their duties (Abdul Syukur, 2009). The training is generally conducted over four to 5 days and participants have to attend 90% of the sessions in order to be eligible to undertake theory and practice exams (IICT, 2005). The authors analyze the syllabus that the mediation certification training includes: an overview of alternative dispute resolution; an introduction to negotiation; negotiation strategies based on identified issues, positions and interests; conflict analysis; arbitration-mediation; an introduction to mediation; the mediation stages; mediator skills and techniques; defining issues; formulating the agenda; reframing; caucusing; uncovering hidden interests; mediator traps; multi-party mediation;

mediator's code of conduct; and drafting a settlement (Abdul Syukur, 2008). The syllabus is derived from the Western mediation model espoused by Christopher Moore of CDR-Associates in the United States (Moore, 2003) but, unlike the education and training of family mediators in Australia and other Western countries, it does not include an examination of the impact of patriarchy, gender and power on the mediator, participants, the mediation process or outcomes nor is there any substantial input on the nature of family and domestic violence and the effects on women and children. In addition, the model used is Western and does not take into account traditional approaches or cultural differences in attitudes and approaches to conflict, which we have addressed in other publications (Abdul Syukur & Bagshaw, 2018; Bagshaw, 2009).

The 80-hr workshop recently introduced for judges by the Supreme Court has expanded the curriculum and addresses four competencies that court-annexed mediators should have. These include: interpersonal skills, the mediation process, mediation management, mediators' ethics and continuing education. Major topics which are covered by each competency can be observed in Table 1 (The Supreme Court of Indonesia, 2016a):

We can observe from these competencies that while the issue of “power balance” is mentioned, there is no specific topic on domestic and family violence or the influence of dominant cultural discourses in relation to gender on the mediation process and outcomes. There is an introduction to aspects of culture, gender, and social class under the major topic of “power balance” but these are not explored in depth. In 2017, members of the Supreme Court's “Working Group on Mediation” were interviewed when monitoring and evaluating the court-annexed mediation implementation and training in collaboration with the EU-UNDP Sustain Project. Their feedback confirmed that there is minimal coverage of gender issues in the curriculum of certification training. Gender issues are only addressed in one or two power point slides with little discussion and no associated role play (The Sustain Project EU-UNDP, 2018).

Participants in certification trainings have to undergo theory and practice examinations (IICT, 2005). A theoretical exam is given at the beginning and end of training to measure the improvements a participant has made. This exam is comprised of 30 multiple choices questions and has a time limit of 45 min. The practice exam is given at the end of the training and assesses the way that each trainee performs as a mediator in a role play. Participants are divided into groups of three and are given a case simulation to be mediated. A trainer from an accredited institution is assigned to each group and decides whether or not each participant is competent to be court mediator.

TABLE 1 Competencies of court-annexed mediators

Interpersonal	Mediation process	Mediation management	Mediator ethics & continuing education
<ul style="list-style-type: none"> • Communication • Emotional control • Social perception • Self-management 	<ul style="list-style-type: none"> • Basics of mediation • Handling the mediation process • Interview techniques • Hidden agendas • Conflict resolution • Negotiation skills • Reframing • Methods and techniques 	<ul style="list-style-type: none"> • Planning and managing • Conflict analysis • Building trust • Power balance • Facilitating parties • Ending the mediation process 	<ul style="list-style-type: none"> • Principles and ethics • Legal consequences for ethical breaches • Professional development • Certification

A cultural perspective is incorporated into the mediation training in accordance with the background of participants (Abdul Syukur, 2009). However, minimum attention is paid to culture in the guidebook on how to conduct mediation training (Mahkamah Agung Republik Indonesia, 2010b). All training materials are written in Indonesian language and trainers have to follow the formal procedure set down by the courts, with some room for flexibility so the trainer can respond to individual needs.

When conducting mediation training for community leaders, a culturally sensitive approach is taken (Abdul Syukur, 2009). The materials are delivered in simple language or translated into native language if necessary. The materials, simulations, role-plays, and games are adjusted to the local context and feedback from the participants is encouraged.

7 | RECOMMENDATIONS AND CONCLUSIONS

There is an urgent need for research to assess the nature and prevalence of family and domestic violence during separation and divorce in Indonesia and its impact of women and children, and to determine whether and how mediation could be helpful in these cases and under what circumstances. In Australia, for example, in order to be accredited practitioners in the field of family law, family dispute resolution practitioners in Australia are required by the Commonwealth Attorney General's Department to complete core units in a one-year Graduate Diploma, in addition to their undergraduate degree, which include:

- responding to domestic and family violence in family work;
- facilitating dispute resolution in the family law context;
- implementing family dispute resolution strategies;
- facilitating dispute resolution in an impartial manner and adhering to ethical standards;
- creating an environment that supports the safety of vulnerable parties in dispute resolution; and
- operating in a family law environment (Commonwealth of Australia, 2012).

Given the influence of dominant gendered discourses, patriarchal cultural norms, and abuses of power on the fairness of court-annexed mediation processes and outcomes and the prevalence of violence against women before, during and after separation and divorce, our second recommendation is that the current certification training curriculum for court-annexed mediators handling family disputes in Indonesia be expanded to include substantial content on the nature and effects of patriarchy, dominant gendered discourses and domestic and family violence on the participation of and mediation outcomes for women and children, similar to the training of family dispute resolution practitioners in Australia (Bagshaw, 2018). The current certification training in Indonesia is insufficient for court-annexed mediators to be competent to recognize or handle complex cases where there is high-level conflict and imbalances of power, in particular cases involving domestic and family violence. The Supreme Court could draw on the training conducted by Indonesia's *National Commission on Violence against Women* and by the *Ministry of Women's Empowerment* to deepen their understanding of the nature and effects of domestic violence on women and children (Mahkamah Agung Republik Indonesia, 2010a; Mahkamah Agung Republik Indonesia, 2010b). Family mediators working in family courts are often faced with complex cases and, given the prevalence of family violence in

most societies and the patriarchal nature of Indonesian society, we argue that it is essential that all family mediators, including judicial mediators in Indonesia, should be required to have:

- an ethical code of conduct and comprehensive mediation standards to adhere to;
- knowledge, training and techniques to raise their awareness of gendered and cultural biases that may affect their interventions and assessments;
- knowledge and understanding of relevant research, including the nature and effects of domestic and family violence on victims (who are usually women and children);
- the knowledge and skills to screen for and address domestic and family violence and imbalances of power;
- advanced communication skills, including the ability to handle strong emotions;
- the ability to refer appropriately to community services to ensure the safety of vulnerable parties and
- continuing education and professional development.

There is also an urgent need to develop competency standards and a code of ethics for family and court-annexed mediators in Indonesia. Until now, there has not been any prerequisites or national accreditation standards for mediators, except the requirement to undertake 40 hr of certification training. By comparison, in Australia and other countries there are prerequisites in relation to minimum education requirements, level of experience and professional background, and a requirement to adhere to a code of ethics and national standards (Attorney General of Australia, 2019; Mediator Standards Board, 2019). In addition, mediators who have completed certification training in Indonesia have no obligation to undertake continuing training and education to maintain their skills and knowledge, which is also essential for family mediators in Australia (Sourdin et al., 2004) and other Western countries.

Finally, we also recommend that there needs to be funding made available for research on the prevalence and the effects of separation, divorce and domestic and family violence on women and children in Indonesia, and on how to include children's concerns and wishes in decisions made about them in court-annexed family mediation post separation.

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ENDNOTE

- ¹ <https://finansial.bisnis.com/read/20181108/9/858028/bappenas-partisipasi-perempuan-dalam-dunia-kerja-masih-rendah>, accessed on September 26, 2019.

REFERENCES

- Abdul Syukur, F. (2008). Constraints hampering the implementation of Indonesian court-annexed mediation and some proposed solutions. *4th Asia Pacific Mediation Forum Conference*. International Islamic University, Kuala Lumpur, Malaysia.
- Abdul Syukur, F. (2009). Community mediation training in Bali and Papua: Access to justice in Indonesia. *Asian Mediation Association Conference*. Singapore.
- Abdul Syukur, F. (2011). *Mediasi Perkara KDRT (Kekerasan Dalam Rumah Tangga) Teori dan Praktek di Pengadilan Indonesia (Court-annexed mediation for settling domestic violence in Indonesia: Theory and practice)*. Bandung CV. Mandar Maju.

- Abdul Syukur, F. (2012). *Court-annexed mediation for settling family disputes in Indonesia*, PhD thesis. Adelaide, School of Social Work and Social Policy, University of South Australia.
- Abdul Syukur, F., & Bagshaw, D. (2018). Indonesia: The role of the traditional, indigenous Musyawarah Mufakat process of mediation. *Conflict Resolution in Asia. Mediation and Other Cultural Models*. S. P. Stobbe. New York, Lexington Books: 13–34.
- Atkinson, J., & Errington, S. (1990). *Power and difference: Gender in Island Southeast Asia*. Stanford: Stanford University Press.
- Attorney General of Australia. (2019). *Accreditation as a family dispute resolution practitioner*. Attorney General of Australia. Retrieved from <https://www.ag.gov.au/FamiliesAndMarriage/Families/FamilyDisputeResolution/Documents/FactSheetAccreditationasaFamilyDisputeResolutionPractitioner.pdf>
- Bagshaw, D. (2003). Language, power and mediation. *Australian Dispute Resolution Journal*, 14(2), 128–142.
- Bagshaw, D. (2009). Challenging western constructs of mediation. In B. Bagshaw & E. Porter (Eds.), *Mediation in the Asia-Pacific Region: Transforming conflict and building peace* (pp. 13–30). New York and London: Routledge.
- Bagshaw, D. (2018). Mediation of disputes in the Australian family law system. In S. Rice, A. Day, & L. Briskman (Eds.), *Chapter 10. Social work in the shadow of the law* (pp. 147–177). Annandale, NSW: The Federation Press.
- Bagshaw, D., Brown, T., Wendt, S., Campbell, A., McInnes, E., Tinning, B., ... Arias, P. F. (2011). The effect of family violence on post-separation parenting arrangements. *Family Matters*, 86, 49–61.
- Bedner, A. (2001). *Administrative courts in Indonesia: A socio-legal study*. The Hague: Kluwer Law International.
- Blackburn, S. (2001). Gender relations in Indonesia: What women want. In G. Lloyd & S. Smith (Eds.), *Indonesia today: Challenges of history* (pp. 270–282). Singapore: Institute of Southeast Asian Studies.
- Boulle, L. (2005). *Mediation: Principles, process, practice*. New South Wales: Butterworths.
- Brown, T., & Alexander, R. (2007). *Child abuse and family law: Understanding the issues facing human service and legal professionals*. Allen & Unwin: New South Wales.
- Commonwealth of Australia. (2012). Vocational graduate diploma of family dispute resolution. Retrieved from <http://training.gov.au/Training/Details/CHC80308>.
- Danaher, G., Schirato, T., & Webb, J. (2000). *Understanding Foucault*. St Leonards, NSW: Allen & Unwin.
- Government of Australia. (1975). *Australian Family Law Act*. Retrieved from http://classic.austlii.edu.au/au/legis/cth/consol_act/fla1975114/.
- IICT. (2005). *Monitoring on the implementation of court-annexed mediation pilot project*. IICT: Jakarta.
- Juwana, H. (2003). Dispute resolution process in Indonesia. *IDE Asian Law Series* (21).
- Koning, J., Noltén, M., Rodenburg, J., & Saptari, R. (2013). *Women and households in Indonesia: Cultural notions and social practices*. New York, NY: Routledge.
- Lerner, G. (1986). *The creation of patriarchy*. Oxford: Oxford University Press.
- LP3ES. (2005). *The development of village mediation center*. Jakarta, Lembaga Penelitian: Pendidikan dan Pengembangan Ekonomi dan Sosial.
- Machali, R. (2001). Women and the concept of power in Indonesia. In S. Blackburn (Ed.), *Love, sex and power: Women in Southeast Asia* (pp. 1–16). Victoria: Monash University Press.
- Mahkamah Agung Republik Indonesia. (2010a). *Cetak Biru Pembaruan Peradilan (blueprint of judiciary reform)*. Jakarta: MARI.
- Mahkamah Agung Republik Indonesia. (2010b). *Laporan Tahunan 2010 (annual report of 2010)*. Jakarta: MARI.
- Manan, B. (2003). Sambutan Pengarahan (Introduction speech). *Proceeding of Arbitration and Mediation*. Jakarta, PPH: xxiii–xxvi.
- Mediator Standards Board. (2019). *Becoming an accredited mediator*. <https://msb.org.au/becoming-mediator>.
- Moore, C. W. (2003). *The mediation process: Practical strategies for resolving conflict*. San Fransisco: Jossey-Bass.
- Parawansa, K. I. (2002). Institution building: An effort to improve Indonesian women's role and status. *Women in Indonesia: Gender, equity and development*. K. Robinson, S. Bessell. Singapore, Institute of Southeast Asian Studies: 68–77.
- Puslitbang Hukum dan Peradilan. (2003). *Naskah Akademik mengenai Court Dispute Resolution*. Mahkamah Agung RI: Academic Draft on Court Dispute Resolution.
- Rahmadi, T. (2010). *Mediasi: Penyelesaian Sengketa Melalui Pendekatan Mufakat*. Jakarta: PT. RajaGrafindo Persada.

- Saptari, R. (2000). Women, family and household: Tensions in culture and practice. In J. Koning, M. Noltén, J. Rodenburg, & R. Saptari (Eds.), *Women and households in Indonesia: Cultural notions and social practices* (pp. 10–25). Surrey: Curzon Press.
- Sourdin, T., Fisher, T., & Moloney, L. (2004). *Towards quality standards for family dispute practitioners* Victoria. La Trobe University.
- The Supreme Court of Indonesia. (2006). *Annual report of 2005*. Jakarta: The Supreme Court of Indonesia.
- The Supreme Court of Indonesia. (2008). *The revision of supreme court regulation on mediation procedures in courts*. Jakarta: The Supreme Court of Indonesia.
- The Supreme Court of Indonesia. (2016a). *Court-annexed mediation procedures in Indonesia*. Jakarta: The Supreme Court of Indonesia.
- The Supreme Court of Indonesia. (2016b). *Management of court-annexed mediation*. 108/2016. Jakarta: The Supreme Court of Indonesia.
- The Supreme Court of Indonesia. (2017). *Laporan Tahunan 2017 (Annual Report 2017)*. Jakarta: The Supreme Court of Indonesia.
- The Sustain Project EU-UNDP. (2018). *Monitoring and evaluation on court-annexed mediation implementation*. Jakarta, The Supreme Court Working Group on Mediation.
- UNICEF. (1989). *United Nations convention on the rights of the child*. New York, NY: United Nations.
- United Nations. (1984). *Declaration on the elimination of violence against women*. New York, NY: United Nations.
- Utomo, I. D. (2005). Women's lives: Fifty years of change and continuity. In T. Hull (Ed.), *People, population and policy in Indonesia* (pp. 71–124). Singapore: Equinox Publishing (Asia) Pte. Ltd..
- Walby, S. (1990). *Theorising patriarchy*. Oxford: Basil Blackwell.
- Weedon, C. (1997). *Feminist practice and poststructuralist theory*. New York: Basil Blackwell.
- WHO. (2009). *Combating gender-based violence in the South-East Asia region*. New Delhi, India: World Health Organization.
- Winslade, J., & Monk, G. (2000). *Narrative mediation. A new approach to conflict resolution*. San Francisco: Jossey-Bass.
- World Health Organization. (2002). *World report on violence and health*. Geneva: WHO.
- World Health Organization. (2008). *Violence against women by intimate partners*. Retrieved from http://www.who.int/gender/violence/who_multicountry_study/summary_report/chapter2/en/index.html
- World Health Organization. (2017). *Violence against women*. Retrieved from <http://www.who.int/news-room/fact-sheets/detail/violence-against-women>
- Yuhassarie, E. (2005). Pendahuluan: Mediasi dan akses to justice (introduction: Mediation and access to justice). *Proceeding of mediation dan court-annexed mediation*. Jakarta, PPH.

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