

Peaceful Way Before Separation: Examining the Effectiveness and Procedures of Mediation in Resolving Divorce Disputes in Religious Courts

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Abstract

The high divorce rate demands effective and peaceful dispute resolution efforts, primarily through mediation in court. This study aims to examine the effectiveness and procedures of mediation in court in resolving divorce disputes in a structured and peaceful manner. Using a normative legal research method with a descriptive-analytical approach, this study analyzes laws and regulations related to mediation procedures in Indonesia, including Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2016 concerning Mediation Procedures in Court. The study's results indicate that mediation has proven effective in reconciling couples about to divorce. According to the Regulation of the Minister of Religious Affairs Number 1 of 2016, the mediation procedure in the Religious Court begins with pre-mediation, continues with the mediation process facilitated by the mediator, and ends with the recording of the mediation conclusion. The success of mediation is marked by a peace agreement stated in a peace deed. This study suggests the importance of increasing the capacity of mediators, socializing the benefits of mediation, and developing innovative mediation models to optimize the function of mediation as a means of resolving divorce disputes effectively, efficiently, and peacefully.

Keywords: Divorce, dispute resolution, mediation, religious courts.



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INTRODUCTION

Divorce can be interpreted as the termination of a marriage between a husband and wife, which is determined by law or religion (talak). This occurs when the couple no longer shares mutual attraction, trust, or compatibility, resulting in domestic discord (Hayati & Adulama, 2022; Ramadhani & Krisnani, 2019). And currently, divorce in the present day seems to have become a common phenomenon in society (Nabilah, Amirudin, & Muzaki, 2022) and is no longer seen as something shameful (Praptiningsih, 2018). This is evidenced by the fact that there are still many (Suhastra, 2023) and even the increasing number of divorces every year in the Religious Courts in particular (Anwar, Sultan, & Mapuna, 2022; Fitri, 2022; Siregar et al., 2023).

Despite its increasing trend, divorce is rarely a simple process. Emotions run high, and legal and financial complexities can easily exacerbate conflicts (Jundan, 2020). To mitigate these challenges, a comprehensive understanding of the circumstances is needed (Fauzi, 2021). On the other hand, it is also necessary to encourage peaceful resolution (Lestari, 2014). In Indonesian law, it is found in Article 130 of the Herziene Inlandsch Reglement (HIR) and Article 154 of the Rechtsreglement Voor De Buitengewesten (R.Bg), both of which recognize and require the resolution of disputes through peaceful means (Tresna, 2018).

From there, the court, as an instrument of law enforcement, has implemented mediation since 2008 (Junus, Sarson, Elfikri, & Muntholib, 2024). Until now, many courts have integrated mediation procedures into the divorce process. The Supreme Court has also provided facilities or a place for holding mediation in the Religious Court quite well as stated in Article 11 of PERMA No.1 of 2016 concerning the Place of Mediation that mediation is held in the court mediation room or another place outside the court agreed by the parties as Article 11, Regulation of the Supreme Court of the Republic of Indonesia No.1 of 2016 concerning the Place of Mediation. This approach aims to achieve a structured and peaceful settlement that serves the best interests of all parties involved, especially if it involves children.

Moreover, from an Islamic perspective, before carrying out a divorce, it is necessary first to make peace. Peacemaking conducted within the Religious Court is frequently referred to as mediation. With mediation, it is hoped that a problem between the two parties can be resolved peacefully and good relations can be maintained between the parties involved (Mahendra, Budiartha, & Ujanti, 2023). However, the fact is that society and the courts themselves have not been able to use mediation as effectively as possible in resolving divorce disputes (Rizkq, Sulatri, & Ismail, 2022). Additionally, there are still numerous individuals who are unaware of the procedures for conducting mediation in religious tribunals in the context of divorce cases.

Based on the above explanation, this study will comprehensively review the mediation procedure in court to resolve divorce disputes. In addition, this article will also examine the benefits of mediation in achieving a fair, peaceful, and sustainable agreement for all parties involved.

METHOD

This study uses a normative legal research method, which focuses on studying legal regulations governing mediation procedures in resolving divorce disputes in court. This type of research is

descriptive-analytical, where researchers will analyze relevant laws and regulations, such as the Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2016 concerning Mediation Procedures in Court, and review court decisions related to the application of procedures in mediation. In addition, this study will review legal literature, books, scientific articles, and previous research that discuss mediation in the context of divorce to understand how mediation procedures are regulated and implemented according to a favorable legal perspective. Data in this study will be collected through literature studies by reviewing legal documents, regulations, and court decisions related to mediation in divorce disputes. Data analysis was carried out qualitatively.

RESULTS AND DISCUSSION

Mediation as an Effort to Reconcile Marriage Couples Who Want to Divorce Peacefully

Mediation is one of the ways to resolve disputes, or "non-litigation," namely a settlement carried out outside the Court (Court) (Bustamam, 2018; Muhammad & Sanjaya, 2023). This method of conflict resolution is frequently presented as an alternative to legal processes and tribunals, which parties involved in a dispute use to attempt to resolve their differences. As an impartial third party, the mediator's objective is to assist the parties in achieving their desired resolution. When clients attend mediation, the mediator summarizes or formulates their complaints and experiences (Stokoe & Sikveland, 2016). And this mediation has become part of the legal framework that regulates divorce matters (McGowan, 2018).

Divorce is a painful relational experience that results in losing a bond or relationship (Kaleta & Mróz, 2023). In the case of divorce, it is known as "divorce mediation," which is a mediation strategy in divorce using an alternative approach to resolving conflicts between two divorcing parties facilitated by an impartial third party (Olmer & Brown, 2016). This aims to reconcile the two partners who want to divorce. In divorce cases, the judge is responsible for efforts to reconcile, as mediation must be conducted in accordance with the Supreme Court Regulations on Mediation Procedures. In court, peace is attempted through mediation in the Religious Court so that couples who wish to divorce change their minds and reconcile (Salamah, 2013).

In cases like this, many research results prove that mediation, especially in divorce cases, can provide peace between the two parties. Examples include the success of divorce mediation at the Soreang Religious Court (Zalfa, Sopian, Kusmayanti, & Faisal, 2024), Palopo Religious Court (Hasmawati & Syahril, 2020), Sumenep and Pamekasan District Religious Courts (Ach Rois & Galuh Widitya Qomaro, 2023), and several other successful cases at other Religious Courts. Marpaung & Mukhsin (2024) explain that the success of mediation depends on the parties' willingness and cooperation and the mediator judge's professionalism in facilitating the process. Therefore, mediation has now become an obligation and is appropriate for application in religious courts in Indonesia (Setyowati, Musjtari, & Susilowati, 2021).

Mediation procedures by Non-Judge Mediators at the Majalengka Religious Court

Cases submitted to the Court after an attempt to resolve the dispute through mediation are assisted by a certified mediator; through this mediation, it is hoped that not only will the backlog

of cases be reduced, but most importantly, there will be a tool for the community to resolve cases simply and at low cost. In addition, this regulation does not assume that mediation is just a formality but an obligation of the judge as governed by statutory regulations (Safudin, 2018). There are three procedures for implementing mediation (Devi & Mahadewi, 2022; Purnamasari, Fakhruddin, & Amda, 2021; Syaifudin, 2018; Terok, Munawir, & Lubis, 2021), namely:

1. Pre-Mediation Procedures

In this procedure, the Majalengka Religious Court mediator is limited to examining the issues or cases registered by one of the parties at the Majalengka Religious Court. The mediator has stated that in the general pre-mediation process at the Majalengka Religious Court, the mediator is only required to study the lawsuit material. Consequently, beginning the lawsuit material study at the posita is imperative. Petitum: What is it? Should this be the case, the parties are requested to promptly access the mediation forumptly. This adheres to the mediation process adopted by the Majalengka Religious Court. In accordance with Perma No. 1 of 2016 regarding Mediation Procedures in Court, the mediator remains in the mediation room when the Judge instructs the parties to be present in the room to engage in mediation with the mediator.

Based on the results of the interview with Masturo as a non-judge mediator at the Religious Court, he stated that in the first mediation, of course, he introduced himself because that is a mandatory SOP for us first to carry out the mediation process at the beginning. Then, we build the same perception that our intention here is to find a solution to the problems faced by the parties. Then, we assure the parties that we do not have any interest in the parties' problems and only sincerely help so that later, the direction will be towards the benefit of each party.

2. Mediation Process Procedure

In this mediation process, the mediator helps the parties to resolve the existing problems peacefully. By communicating in-depth, establishing good relations between the parties, and carrying out the role of the mediator to the maximum, it is hoped that the mediation can run smoothly with satisfactory results for both parties. According to the mediator, the mediator can explore the mediation of truth related to the context of the problem presented in the lawsuit. Is it like that, or are there things hidden by the parties? According to the author's observations and the results of interviews with Agus Asri Sabana at the Majalengka Religious Court as a non-judge mediator at the Majalengka Religious Court, mediation can be carried out if there is a good relationship between the parties and the mediator and mutual trust so mediation can run smoothly and in accordance with the mutual agreement. Then, the mediator explains the procedures and mechanisms of mediation, especially in divorce practice at the Majalengka Religious Court, as conveyed by the non-judge mediator.

According to PERMA No. 1 of 2016 concerning Mediation Procedures in Court, the mediator waits in the room when the judge orders the parties to be present in the mediation room to conduct mediation with the mediator. Then, the mediator determines the date with the parties. Furthermore, the mediator's meeting with the parties will explain the mediation procedure and ask whether the parties are present alone or accompanied by their attorney, if there is an attorney then a video call is made, because mediation cannot be represented in principle.

According to Perma Number 1 of 2016, the mediator is responsible for determining the date of mediation after determining the mediator's appointment and fulfilling the obligation to resolve the dispute through mediation. This is a requirement for non-judge mediators at the Majalengka Religious Court.

3. Final Mediation Procedure

Based on the interview with Cecep Makmun, a non-judge mediator at the Majalengka Religious Court, he stated that the mediator inquired about the conclusions of each party at the conclusion of the mediation process, whether there was a desire to reconsider the case, withdraw it, or potentially agree to the solutions that were discussed in the forum. If so, the mediator will document the parties' statements and submit them to the panel of judges in writing for their consideration in the subsequent trial's provisions. This will serve as the agenda for the panel of judges to review the mediation results.

According to the non-judge mediator, in general, if the procedure of the process helps the parties, of course, the mediator will discuss the problems they face first, so if the mediator has discussed the problems faced by the parties, the mediator sees the response from each party because sometimes the problems faced by one party and the other party are not the same. For example, if one party considers that A is a problem for the other party but for the other party, problem A is sometimes not a problem for him, then to build that perception, we discuss it broadly if later if there is indeed a solution to the problem, we also facilitate the parties to make a written agreement, if the written agreement is agreed upon in general. The direction is in the area of improving their household or revoking the registration of the case at the Majalengka Religious Court. The mediator asks the panel of judges to determine the peace deed the parties have agreed upon, forcing anything that results from the agreement to be done voluntarily.

At this stage, the mediator convinces the parties by asking again about the results of the agreements. If the mediation leads to a settlement of the case, then written evidence is made, and a peace deed is requested from the examining judge. However, suppose the mediation is unsuccessful, or one party still wants to continue their intention to divorce. In that case, the mediation is declared a failure, and the mediator still provides his report to the judge that the mediation cannot be carried out. The mediator will find information that can then find the truth of the problem, which will then be asked again to the parties how they respond, then if they have found agreements, the mediator will put it in writing which then finds a solution. So, the mediator, who is not a judge, requests that the judges execute a peace deed, deemed a joint decision. This is consistent with Perma Number 1 of 2016 regarding Mediation Procedures; a peace agreement is the conclusion of the mediation process, which signifies that the litigation is withdrawn and re-stated in the form of peace if the parties consent to it. The Religious Court's mediation process is designed to alleviate the burden of cases and offer straightforward and cost-effective solutions to the community. Premeditation is a component of mediation procedures in which the mediator analyzes the case that has been submitted and organizes a meeting with the parties.

It is in accordance with the mediation procedure, instructing the mediator to wait for the judge's order before beginning mediation. Mediation Process: The mediator helps the parties

reach a peaceful solution by exploring the issues, establishing good relationships, and facilitating communication. The mediation process also explains the mediation procedure, as regulated in Perma Number 1 of 2016. Final Mediation Procedure: The mediator records and reports the parties' conclusions to the judge. If an agreement is reached, a peace deed is made in accordance with the agreement of the parties. However, if mediation is unsuccessful, the mediator reports the results to the judge. In mediation, the mediator acts neutrally and helps the parties reach an agreement without imposing their will. The mediation results are stated in the form of a peace deed if a peace agreement is reached, per the provisions of PERMA Number 1 of 2016.

CONCLUSION

This study ultimately concluded that mediation, especially in divorce cases, has proven effective in reconciling couples about to divorce, and various studies in other religious courts in Indonesia support this. This study also found that the mediation procedure in the Religious Court, in accordance with Supreme Court Regulation (PERMA) Number 1 of 2016, begins with pre-mediation, where the mediator studies the case files and prepares an initial meeting with the parties. During the mediation process, the mediator builds good communication, explores the root of the problem, and facilitates communication to find a mutually agreed solution. At the end of the mediation, the mediator records the conclusions and reports them to the judge; if there is a peace agreement, it is stated in a peace deed, while if mediation fails, the trial continues.

To optimize the mediation function in the Majalengka Religious Court to resolve divorce disputes effectively, efficiently, and peacefully, it is necessary to increase the capacity and competence of non-judge mediators through training, workshops, and periodic supervision. In addition, more intensive socialization regarding the benefits and procedures of mediation needs to be increased so that the community prefers mediation in resolving divorce disputes. By utilizing information and communication technology, innovative mediation models and techniques are also essential so that mediation remains relevant to the times. Further research on the factors that influence the success of mediation and its impact on post-divorce life is needed to ensure the effectiveness of mediation in creating peace for the disputing parties.

REFERENCES

Ach Rois, & Galuh Widitya Qomaro. (2023). Tren Keberhasilan Mediasi di Pengadilan Agama Wilayah Madura dan Faktor-faktor yang Memengaruhinya. *BUSTANUL FUQAHĀ: Jurnal Bidang Hukum Islam*, 4(3), 424–439. <https://doi.org/10.36701/bustanul.v4i3.1116>

Anwar, H. M., Sultan, L., & Mapuna, H. D. (2022). Fenomena Perceraian Di Kalangan Wanita Karir Tahun 2020-2021 Perspektif Hukum Islam. *Qadauna: Jurnal Ilmiah Mahasiswa Hukum Keluarga Islam*, 3(3), 659–672. <https://doi.org/10.24252/QADAUNA.V3I3.28670>

Bustamam, U. (2018). Peranan Mediator Dalam Memediasi Perkara Perceraian. *Dusturiyah: Jurnal Hukum Islam, Perundang-Undangan Dan Pranata Sosial*, 7(2), 31–45. <https://doi.org/10.22373/dusturiyah.v8i1.3415>

Devi, N. K. C. N., & Mahadewi, K. J. (2022). Skema Penyelesaian Sengketa Melalui Proses Mediasi Berdasarkan Perma No. 1 Tahun 2016. *Jurnal Kewarganegaraan*, 6(2), 5213–5220. <https://doi.org/10.31316/JK.V6I2.3059>

Fauzi, A. (2021). Hakikat Perceraian (Sebuah tinjauan filosofis terhadap makna perceraian). *Mahkamah : Jurnal Kajian Hukum Islam*, 6(1), 55. <https://doi.org/10.24235/mahkamah.v6i1.7542>

Fitri, I. S. (2022). Faktor Penyebab Tingginya Angka Cerai Gugat Di Pengadilan Agama Bandung. *Al-Ahwal Al-Syakhsiyah: Jurnal Hukum Keluarga Dan Peradilan Islam*, 3(1), 101–116. <https://doi.org/10.15575/as.v3i1.17547>

Hasmawati, H., & Syahril, M. A. F. (2020). The Effectiveness of Mediation Process to Press Divorce Rates. *Amsir Law Journal*, 1(2), 78–84. <https://doi.org/10.36746/alj.v1i2.26>

Hayati, R., & Adulama, D. O. (2022). Fenomena Yang Terjadi Pada Pasangan Suami dan Istri dalam Ketahanan Keluarga. *AL-WARDAH: Jurnal Kajian Perempuan, Gender Dan Agama*, 16(1), 33–51. <https://doi.org/10.46339/AL-WARDAH.V16I1.847>

Jundan, G. (2020). PERCERAIAN USIA TIGA TAHUN PERKAWINAN DARI PASANGAN MUDA. *Al-Ahwal Al-Syakhsiyah: Jurnal Hukum Keluarga Dan Peradilan Islam*, 1(1), 39–60. <https://doi.org/10.15575/as.v1i1.7801>

Junus, N., Sarson, M. T. Z., Elfikri, N. F., & Muntholib, J. W. (2024). Integration of Mediation in Divorce Cases Reviewed from Supreme Court Regulation on Court Mediation Procedures. *Jambura Law Review*, 6(1), 183–205. <https://doi.org/10.33756/jlr.v6i1.19370>

Kaleta, K., & Mróz, J. (2023). Posttraumatic Growth and Subjective Well-Being in Men and Women after Divorce: The Mediating and Moderating Roles of Self-Esteem. *International Journal of Environmental Research and Public Health*, 20(5), 3864. <https://doi.org/10.3390/ijerph20053864>

Lestari, R. (2014). Perbandingan Penyelesaian Sengketa Perceraian Secara Mediasi Di Pengadilan Dan Di Luar Pengadilan Di Kabupaten Kampar. *Jurnal Hukum Ius Quia Iustum*, 21(2), 309–332. <https://doi.org/10.20885/iustum.vol21.iss2.art8>

Mahendra, G. A. K., Budiartha, P. D. I. N. P., & Ujianti, N. M. P. (2023). Analisis hukum mediasi perceraian di pengadilan agama Legal analysis of divorce mediation in religious courts. *Jurnal Analogi Hukum*, 5(2), 150–155. <https://doi.org/10.22225/AH.5.2.2023.150-155>

Marpaung, D. A. I., & Mukhsin, A. (2024). Efektivitas Mediasi dalam Upaya Penyelesaian Perceraian di Pengadilan Agama Sei Rampah. *Amnesti: Jurnal Hukum*, 6(2), 186–196. <https://doi.org/10.37729/amnesti.v6i2.5323>

McGowan, D. (2018). Reframing the mediation debate in Irish all-issues divorce disputes: from mediation vs. litigation to mediation and litigation. *Journal of Social Welfare and Family Law*, 40(2), 181–194. <https://doi.org/10.1080/09649069.2018.1444445>

Muhammad, D., & Sanjaya, U. H. (2023). The Role of Mediation Agreement of Divorce Which Ended Amicably (Case at Yogyakarta Religious Court). *Justitia Jurnal Hukum*, 6(2), 93–109. <https://doi.org/10.30651/justitia.v6i2.17179>

Nabilah, A., Amirudin, & Muzaki, I. A. (2022). Fenomena Cerai Gugat di Masyarakat Pada Masa Pandemi. *Asy-Syari'ah : Jurnal Hukum Islam*, 8(1), 41–52. <https://doi.org/10.55210/ASSYARIAH.V8I1.642>

Olmer, R. M., & Brown, K. S. (2016). Divorce Mediation in the United States. In *Encyclopedia of Family Studies* (pp. 1-4). Wiley. <https://doi.org/10.1002/9781119085621.wbefs033>

Praptiningsih, N. A. (2018). Komunikasi dan Adaptasi Pernikahan Kembali Sesudah Bercerai. *Communicare : Journal of Communication Studies*, 3(2), 29. <https://doi.org/10.37535/101003220163>

Purnamasari, W., Fakhruddin, & Amda, A. D. (2021). Problematika Mediator Dalam Penyelesaian Perkara Perceraian Di Pengadilan Agama Curup Kelas 1B. *Al-IHKAM: Jurnal Hukum Keluarga Jurusan Ahwal Al-Syakhshiyah Fakultas Syariah IAIN Mataram*, 13(1), 85-108. <https://doi.org/10.20414/alihkam.v13i1.3745>

Ramadhani, P. E., & Krisnani, H. (2019). Analisis Dampak Perceraian Orang Tua Terhadap Anak Remaja. *Focus : Jurnal Pekerjaan Sosial*, 2(1), 109. <https://doi.org/10.24198/focus.v2i1.23126>

Rizkq, M. I., Sulatri, K., & Ismail, Y. (2022). Faktor-Faktor Yang Mempengaruhi Efektivitas Mediasi Terhadap Sengketa Dibidang Perkawinan Di Pengadilan Agama Pasuruan. *Yurijaya : Jurnal Ilmiah Hukum*, 4(3). <https://doi.org/10.51213/YURIJAYA.V4I3.83>

Safudin, E. (2018). *Alternatif Penyelesaian Sengketa dan Arbitrase*. Malang: Intrans Publishing.

Salamah, Y. Y. (2013). Urgensi Mediasi dalam Perkara Perceraian di Pengadilan Agama. *AHKAM : Jurnal Ilmu Syariah*, 13(1), 81-88. <https://doi.org/10.15408/ajis.v13i1.953>

Setyowati, R., Musjtari, D. N., & Susilowati, I. (2021). Effectiveness Of Mediation In The Dispute Resolution Of Islamic Economics In Indonesian Religious Courts. *Journal of Islamic Law Studies*, 2(3).

Siregar, D., Sitepu, K., Darma, M., Na'im, K., Tarigan, M. T. U., Razali, R., & Harahap, F. S. (2023). Studi hukum tentang tingkat perceraian dan efeknya terhadap anak. *Jurnal Derma Pengabdian Dosen Perguruan Tinggi (Jurnal DEPUTI)*, 3(2), 178-185. <https://doi.org/10.54123/deputi.v3i2.276>

Stokoe, E., & Sikveland, R. (2016). Formulating solutions in mediation. *Journal of Pragmatics*, 105, 101-113. <https://doi.org/10.1016/j.pragma.2016.08.006>

Suhastra, P. (2023). Mediation Procedure in Religious Courts in Indonesia in the Perspective of Thought Wahbah Al-Zuhaily. *Jurnal Mahkamah : Kajian Ilmu Hukum Dan Hukum Islam*, 8(1), 97-108. <https://doi.org/10.25217/jm.v8i1.3486>

Syaifudin, A. (2018). Efektifitas Peraturan Mahkamah Agung Tentang Prosedur Mediasi Terhadap Peran Mediator Di Pengadilan Agama Sidoarjo. *AL-HUKAMA'*, 7(2), 412-436. <https://doi.org/10.15642/alhukama.2017.7.2.412-436>

Terok, K. I., Munawir, Z., & Lubis, A. A. (2021). Pengaruh Mediasi Dalam Penyelesaian Sengketa Waris. *JUNCTO: Jurnal Ilmiah Hukum*, 3(1), 12-23. <https://doi.org/10.31289/juncto.v3i1.471>

Tresna, R. (2018). *Komentar : Atas Reglemen Hukum Atjara Didalam Pemeriksaan Dimuka Pengadilan negeri atau H.I.R*. Jakarta: Pradnya Paramita.

Zalfa, E., Sopian, A., Kusmayanti, H., & Faisal, P. (2024). Optimalisasi Peran Mediator sebagai Upaya Perdamaian dalam Rangka Mengurangi Angka Perceraian di Pengadilan Agama

Soreang Ditinjau dari Peraturan Perundang-Undangan Terkait. *Jembatan Hukum : Kajian Ilmu Hukum, Sosial Dan Administrasi Negara*, 1(3), 336–357.
<https://doi.org/10.62383/JEMBATAN.V1I3.650>