



THE ROLE OF MEDIATION IN MUSLIM FAMILY DISPUTE RESOLUTION: QURANIC PERSPECTIVE AND CONTEMPORARY LEGAL PRACTICE

Mustafid

Universitas Islam Negeri Syekh Ali Hasan Ahmad Addary Padangsidempuan
mustafid@uinsyahada.ac.id

Safrizal

Universitas Islam Negeri Sultan Syarif Kasim Riau
safrizal.uin25@gmail.com

Hidayatullah Ismail

Universitas Islam Negeri Sultan Syarif Kasim Riau
hidayatullah.ismail@uin-suska.ac.id

Abstract

Mediation is one of the dispute resolution methods recommended in Islam and implemented in the contemporary legal system, including in the resolution of Muslim family disputes. This study aims to analyze the role of mediation in resolving Muslim family conflicts based on the perspective of the Qur'an and the legal practices applicable in religious courts. This research is a literature study with a qualitative approach through juridical-normative and sociological methods. Primary data include the Qur'an, Hadith, and regulations related to mediation, such as Law No. 7 of 1989. Secondary data are in the form of books, journals, and scientific articles. Data collection is carried out through text review and analyzed descriptively analytically. This study shows that mediation (Ishlah) in Islam is considered the best solution to resolve disputes, as emphasized in the Qur'an. However, its effectiveness is still hampered by low success, lack of awareness, and limited regulations and facilities. Although it has a strong foundation in Islam and positive law, its implementation needs to be strengthened to reduce the divorce rate. The synergy between legal institutions, mediators, and the community is required to increase awareness and improve the mediation system to be more effective in resolving Muslim family disputes reasonably and harmoniously.

Keywords: *Mediation, Muslim Family Disputes, Al-Quran, Islamic Law, Religious Courts*

Abstrak

Mediasi merupakan salah satu metode penyelesaian sengketa yang dianjurkan dalam Islam dan diimplementasikan dalam sistem hukum kontemporer, termasuk dalam penyelesaian sengketa keluarga Muslim. Studi ini bertujuan untuk menganalisis peran mediasi dalam penyelesaian konflik keluarga Muslim berdasarkan perspektif Al-Qur'an dan praktik hukum yang berlaku di pengadilan agama. Jenis penelitian ini adalah kepustakaan pendekatan kualitatif dengan metode yuridis-normatif dan sosiologis, Sumber data primer yang digunakan adalah Al-Qur'an, Hadis dan Undang-Undang dan regulasi terkait mediasi dalam penyelesaian sengketa keluarga di Indonesia, seperti UU No. 7 Tahun 1989 tentang Peradilan Agama dan peraturan terkait lainnya. Sedangkan data sekunder menggunakan buku, jurnal, dan artikel ilmiah terkait mediasi dalam hukum Islam dan hukum keluarga kontemporer. Teknik pengumpulan data dengan menelaah ayat-ayat Al-Qur'an, Hadis, kitab-kitab fiqh, serta regulasi hukum terkait mediasi. Selanjutnya data yang penulis dapatkan akan di analisa dengan menggunakan deskriptif analitis. Hasil penelitian ini menunjukkan bahwa dalam ajaran Islam, mediasi (ishlah) dipandang sebagai solusi terbaik dalam menyelesaikan perselisihan, sebagaimana ditegaskan dalam beberapa ayat Al-Qur'an yang menekankan pentingnya perdamaian. Namun, dalam praktiknya, efektivitas mediasi masih menghadapi berbagai kendala, seperti rendahnya tingkat keberhasilan, kurangnya kesadaran para pihak, serta keterbatasan regulasi dan fasilitas. Penelitian ini juga menemukan bahwa meskipun mediasi memiliki landasan yang kuat dalam Islam dan diakomodasi dalam hukum positif, implementasinya masih perlu diperkuat agar lebih efektif dalam menekan angka perceraian. Diperlukan sinergi antara lembaga hukum, mediator, dan masyarakat untuk meningkatkan kesadaran akan pentingnya mediasi serta memperbaiki sistem pelaksanaannya. Dengan pendekatan yang lebih optimal, mediasi dapat menjadi instrumen yang lebih efektif dalam menyelesaikan sengketa keluarga Muslim secara adil, harmonis, dan sesuai dengan prinsip-prinsip syariat Islam.

Kata Kunci: *Mediasi, Sengketa Keluarga Muslim, Al-Qur'an, Hukum Islam, Pengadilan Agama.*

INTRODUCTION

Marriage aims to form a harmonious, eternal, and happy family.¹ However, in the journey of marriage, not all couples can continue to feel happiness without challenges. Ups and downs in married life are natural, where husband and wife must face various tests, both in terms of economy, communication, and differences of opinion.

In married life, disagreements between husband and wife are common occurrences, both in trivial matters that can be resolved through deliberation and in major conflicts that end in divorce. When the dispute reaches a point that cannot be reconciled,

¹ Mustafid, *Hukum Keluarga: Perkawinan dalam Islam dan Adat* (Kota Kupang: Tangguh Denaya Jaya, 2023), hlm. 12.

the husband and wife relationship ends in separation known as divorce. This divorce can occur at the initiative of the husband, which is called divorce talak, or at the request of the wife, which is known as divorce gugat.²

A marriage based on Islamic teachings will form a harmonious household because the husband and wife understand each other and carry out their respective responsibilities. The shortcomings of the couple will be complemented by each other, creating balance in household life. A man who marries in the name of Allah must realize that the bond is not just a social agreement, but also has dimensions of faith and worship.³ In Islam, if a wife commits nusyuz, there are three stages of resolution that must be carried out gradually, namely advising her well, and separating beds, and if it still does not change, it is permissible to give light physical punishment with full wisdom.

Islam has established strong principles in building a family and maintaining harmony in marriage to avoid disputes that can create discomfort in the household. Conflicts in the family, if not resolved properly, can lead to quarrels that even end in divorce. Divorce itself is the severance of the bond between husband and wife, which causes the loss of the marital relationship between the two. Although in Islam divorce is not recommended, it is permitted if all efforts for peace have been made and do not bring good to both parties, and divorce is considered the best solution for the common good.⁴

Mediation in Islam has a strong basis in the Qur'an, as stated in Surah An-Nisa verse 35: "*And if you fear a dispute between them, then send a hakam (peacemaker) from the man's family and a hakam from the woman's family. If they both intend to reconcile, Allah will make them both successful. Indeed, Allah is Knowing and Acquainted.*" (QS. An-Nisa [4]: 35).

This argument is the basis for determining the role of a mediator or arbitrator whose job is to reconcile couples in the best way agreed upon by both parties. If the instructions of the Qur'an are applied correctly, then conflicts in the household can be

² Heniyatun Heniyatun, Puji Sulistyaningsih, dan Siti Anisah, "Pemberian Mut'ah Dan Nafkah Iddah Dalam Perkara Cerai Gugat," *Profetika: Jurnal Studi Islam* 21, no. 1 (21 Juli 2020): hlm. 45., <https://doi.org/10.23917/profetika.v21i1.11647>.

³ Moh Subhan, "Rethinking Konsep Nusyuz Relasi Menciptakan Harmonisasi Dalam Keluarga," *Al-'Adalah: Jurnal Syariah dan Hukum Islam* 4, no. 2 (10 Desember 2019): hlm. 196., <https://doi.org/10.31538/adlh.v4i2.542>.

⁴ Saidil Mubarak, *Faktor Berhasil Dan Tidak Berhasilnya Mediasi Dalam Penyelesaian Konflik Keluarga Di Pengadilan Agama Kepahiang 2021-2023* (Curup: Fakultas Syariah dan Ekonomi Islam IAIN Curup, 2024), hlm. 2.

resolved through mediation without having to bring the case to court to be decided by a judge. With a more peaceful and familial resolution, divorce can be avoided so that the relationship between husband and wife can still be maintained well.⁵

The principle of mandatory reconciliation in Religious Courts, as regulated in Law No. 07 of 1989, is in line with Islamic teachings, which emphasize the importance of conflict resolution through the *Islah* or peace approach. In Islamic law, peace is an agreement between disputing parties to end an ongoing dispute or prevent the emergence of new cases.⁶

In the contemporary era, mediation in resolving family disputes has undergone significant development. Many Muslim countries, including Indonesia, have adopted a mediation system in religious courts to reduce divorce rates and provide space for couples to reconcile before a judge decides their cases. Mediation is not only carried out formally in judicial institutions but also informally through social institutions, religious figures, and families. This article will examine the role of mediation in resolving Muslim family disputes by reviewing the perspective of the Qur'an and contemporary legal practices that have been implemented in Indonesia. Thus, this study is expected to provide a deeper understanding of the effectiveness of mediation in maintaining family harmony and its legal implications in a modern context.

METHODS

This study uses a qualitative approach with juridical-normative and sociological methods. The juridical-normative approach is used to analyze the concept of mediation from the perspective of the Qur'an and Islamic law, while the sociological approach is used to understand how mediation practices are applied in the contemporary legal system. The primary data sources used are the Qur'an, Hadith and laws and regulations related to mediation in resolving family disputes in Indonesia, such as Law No. 7 of 1989 concerning Religious Courts and other related regulations. At the same time, secondary data uses books, journals, and scientific articles related to mediation in Islamic law and contemporary family law. Data collection techniques by examining verses of the Qur'an,

⁵ Ira Ramadani, Achmad Abubakar, dan Muhammad Irham, "Resolving Household Conflict From Al-Qur'an Perspective: Study Of Tahlili Qs.An-Nisa/4:35," *Sunan Kalijaga: International Journal on Islamic Educational Research* 8, no. 1 (2024): hlm. 56., <https://doi.org/10.14421/skijier.2024.81.05>.

⁶ Mubarak, *Faktor Berhasil Dan Tidak Berhasilnya Mediasi Dalam Penyelesaian Konflik Keluarga Di Pengadilan Agama Kepahiang 2021-2023*, hlm. 2.

Hadith, fiqh books, and legal regulations related to mediation. Furthermore, the data obtained by the author will be analyzed using an analytical description.

DISCUSSION

A. The Concept of Mediation in Islam

Every couple longs for a family that is *sakinah*, *mawaddah*, and *rahmah*, but in reality, household life does not always run smoothly. Disputes often arise due to an imbalance in carrying out each other's rights and obligations, which causes one party to feel dissatisfied with their partner. When responsibilities in marriage are not carried out properly, disharmony is difficult to avoid, thus potentially causing conflict in the relationship between husband and wife.⁷

When the conflict occurs, then another neutral person is needed to reconcile them, or what is often known as mediation. Mediation is etymological; the term mediation comes from the Latin *mediare*, which means "to be in the middle." This meaning describes the role of a third party, namely the mediator, in mediating and helping to resolve disputes between two conflicting parties. The position of "being in the middle" also means that the mediator must be neutral and impartial in carrying out his duties. As a facilitator, the mediator must maintain the interests of both parties fairly and equally so that they can build trust between them and encourage the achievement of solutions that benefit all parties.

In the Indonesian Legal Dictionary, mediation is defined as a process of peaceful dispute resolution involving a third party as a mediator. This term comes from the English word *mediation*, which refers to a mechanism in which a mediator helps disputing parties reach an agreement that is acceptable to both parties.⁸

Some important elements in mediation. *First*, mediation is a dispute resolution process based on negotiations between the disputing parties. *Second*, a mediator acts as a third party accepted by the disputing parties to facilitate the negotiation process. *Third*, the main task of the mediator is to help the parties find a solution that can resolve the conflict fairly. *Fourth*, the mediator does not have the authority to make decisions because the resolution remains in the hands of the disputing parties. *Finally*, the main goal of

⁷ Mughniatul Ilma, "Kontekstualisasi Konsep Nusyuz di Indonesia," *Jurnal Pemikiran Keislaman* 30, no. 1 (31 Januari 2019): hlm. 48., <https://doi.org/10.33367/tribakti.v30i1.661>.

⁸ Mubarak, *Faktor Berhasil Dan Tidak Berhasilnya Mediasi Dalam Penyelesaian Konflik Keluarga Di Pengadilan Agama Kepahiang 2021-2023*, hlm. 16.

mediation is to reach an agreement that is acceptable to both parties so that the dispute can be resolved peacefully and effectively.⁹

To prevent prolonged conflict that can lead to divorce, the Qur'an offers an interesting approach as a solution to resolving disputes in marriage. One of the main concepts taught is mediation, where a third party acts as a mediator to help couples find a middle ground in resolving their problems.¹⁰

In the Qur'an, there is a verse that talks about mediation, namely the letter An-Nisa' verses 34-35:

الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ بِمَا فَضَّلَ اللَّهُ بَعْضَهُمْ عَلَى بَعْضٍ وَبِمَا أَنْفَقُوا مِنْ أَمْوَالِهِمْ فَالصَّالِحَاتُ قَانِتَاتٌ حَافِظَاتٌ لِّلْغَيْبِ بِمَا حَفِظَ اللَّهُ وَالَّتِي تَخَافُونَ نُشُوزَهُنَّ فَعِظُوهُنَّ وَأَهْجُرُوهُنَّ فِي الْمَضَاجِعِ وَاصْرَبُوهُنَّ فَإِنِ اطَّعْتِكُمْ فَلَا تَبْغُوا عَلَيْهِنَّ سَبِيلًا إِنَّ اللَّهَ كَانَ عَلِيمًا كَبِيرًا

Meaning: Men are leaders for women because Allah has preferred some of them (men) over others (women) and because they (men) have spent some of their wealth. Therefore, a pious woman obeys Allah and takes care of herself when her husband is not around because Allah has taken care of (them). Women whose nusyuz you are worried about, then advise them and, separate them in their beds, and beat them. Then, if they obey you, don't look for ways to trouble them. Indeed, Allah is Most High, Most Great.(Q.S An-Nisa':34).

This verse was revealed in response to an incident experienced by Sa'id bin Rabi', who slapped his wife, Habibah binti Zaid bin Abi Hurairah because she was considered to have committed Nusyuz or disobedience. Habibah then reported the incident to the Prophet Muhammad, who initially decided to impose qishash on Sa'id. However, before the decision was carried out, the Angel Gabriel came with a revelation in the form of Surah An-Nisa verse 34. Responding to the revelation, the Prophet Muhammad said that Allah's decision was better than what he had previously decided. With the revelation of this verse, the decision of qishash was revoked, confirming that settlements in the household must follow the principles that have been established in Islam.¹¹

⁹ Febri Handayani dan Syaflidar, "Implementasi Mediasi dalam Penyelesaian Perkara Perceraian di Pengadilan Agama," *Jurnal Al-Himayah* 1, no. 2 (2017): hlm. 236.

¹⁰ Ramadani, Abubakar, dan Irham, "Resolving Household Conflict From Al-Qur'an Perspective: Study Of Tahlili Qs.An-Nisa/4:35," hlm. 54.

¹¹ Imam Ali Bashori, "Mediasi Perspektif Hukum Islam (Studi Perma No. 1 Tahun 2008 Tentang Prosedur Mediasi Di Pengadilan)," *Istinbath: Jurnal Hukum* 12, no. 2 (2015): hlm. 7.

وَإِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَابْعَثُوا حَكَمًا مِّنْ أَهْلِهَا وَحَكَمًا مِّنْ أَهْلِهَا إِنْ يُرِيدَا إِصْلَاحًا يُوَفِّقُ اللَّهُ بَيْنَهُمَا إِنَّ اللَّهَ كَانَ عَلِيمًا خَبِيرًا

Meaning: And if you fear that there will be a dispute between the two, then send a hakam from the man's family and a hakam from the woman's family. If the two hakam intend to make amends, Allah will surely give success to the husband and wife. Indeed, Allah is Knowing and Acquainted. (Q.S An-Nisa':35).

The verse above emphasizes that mediation is highly recommended when there is a conflict, dispute, or quarrel in a household that has the potential to cause new problems that can lead to divorce. One of the methods taught is to send representatives from each of the husband and wife's families to act as hakam or peacemakers. The role of hakam is to help find the best solution without siding with one party so that a fair agreement can be reached and the integrity of the household can be maintained.¹²

According to Ibn Kathir's interpretation, if there is a dispute between husband and wife, the judge acts as a mediator whose duty is to judge the case fairly and prevent unjust actions from either party. If the conflict drags on, the judge will appoint two trusted people, one from the wife's family and one from the husband's family, to jointly consider the best solution for the couple. These two representatives will assess whether it is more beneficial for them to separate or to maintain the marriage. However, in the view of Islamic law, maintaining the integrity of the household is more advisable as long as it brings goodness to both parties.¹³

In Islam, there is a term known for resolving conflict, namely *Islah*; *Islah* is a method of resolving conflict by effectively reconciling the disputing parties without causing disputes or hostility. In educational institutions, *Islah* is often applied in resolving interpersonal conflicts through mechanisms such as mediation, negotiation, or deliberation, with the aim of reaching an agreement that accommodates the interests of all parties. However, in QS. Al-Hujurat [49]: 9, it is explained that if in a conflict, there is a party who commits injustice, then firm action is needed until they return to the right path. This shows that if there is a party who harms others, they must face the

¹² Misbahul Munir dan Muhammad Holid, "Konsep Mediasi Konflik Suami Istri Menurut Tafsir Surah An-Nisa' Ayat 35," *ASA* 3, no. 2 (2 Agustus 2021): hlm. 19., <https://doi.org/10.58293/asa.v3i2.28>.

¹³ Imaduddin Abu al-Fida' Isma'il bin Umar bin Katsir, *Tafsir al-Qur'anul Adzhim, Jilid 3, Cet. 1* (Beirut: Dar al-Kutub al-Ilmiyyah, 1998), hlm. 259.

consequences of their actions and be given a warning to realise their mistakes and not repeat them in the future.¹⁴

The main principle in *Islah* is to choose a solution that is beneficial for both parties without causing harm. *Islah* allows for a faster resolution of conflicts and benefits all parties involved. In social life, conflict is something natural, but it must be resolved peacefully so as not to cause division. The main goal of *islah* is to create a fair solution, prevent prolonged disputes, and maintain unity among Muslims. In the process, a third party can be involved to help find the best way out so that the conflict can be resolved immediately, properly and effectively.¹⁵

Based on the arguments that have been mentioned, there are several important elements in resolving disputes through peace. First, there is a sincere intention to achieve *ishlah* or reconciliation between the disputing parties. Second, the involvement of a *hakam* or mediator who plays a role in mediating and helping to find a fair solution. Third, the *Ishlah* process must be in line with the principles of Islamic law and not contradict the provisions of *Sharia*. These principles are the main basis in every mediation process in Islam, which aims to achieve a peaceful and just solution.¹⁶

B. Mediation in Contemporary Legal Systems

In the legal context in Indonesia, laws are often referred to as "statutory law," which consists of various levels, one of which is "Undang-Undang." When associated with Islam, what is meant is "Islamic Law." However, in Indonesian, this term is not entirely identical to the meaning of UU in the state legal system. Islamic law in this context is a translation of *Sharia* law, which has been formulated in *fiqh* and regulates the behaviour of Muslims in worldly life and the hereafter. Although Islamic law is binding on Muslims, its implementation is not always under the authority of the state. Over time, the understanding of law has developed, especially among legal experts who are oriented towards the Western legal system. They define law as rules that regulate social interaction and are resolved through judicial institutions. Therefore, in the modern legal system, the

¹⁴ Fantika Febry Puspitasari, "Model Manajemen Konflik Lembaga Pendidikan Islam: Tinjauan Komparatif Tafsir Ibn Katsir dan Tafsir Jalalain," *TADBIR MUWAHHID* 6, no. 1 (29 April 2022): hlm. 107., <https://doi.org/10.30997/jtm.v6i1.4950>.

¹⁵ Maryam Kasim, Herson Anwar, dan Lian G Otaya, "Manajemen Konflik Dalam Perspektif Al-Qur'an Dan Hadis," *Jurnal Himalayah* 3, no. 2 (2019): hlm. 267.

¹⁶ Bashori, "Mediasi Perspektif Hukum Islam (Studi Perma No. 1 Tahun 2008 Tentang Prosedur Mediasi Di Pengadilan)," hlm. 8.

term "law" is more often associated with rules that can be enforced through the judicial process, either in the form of written laws or unwritten laws.¹⁷

Law No. 7 of 1989 specifically regulates Religious Courts in Indonesia, including their position, authority, and judicial procedures. Article 49 states that Religious Courts have the duty and authority to handle, decide, and resolve cases at the first level involving Muslims in several areas, such as marriage, inheritance, wills, Islamic law-based grants, and waqf.¹⁸ Although this law is part of the state legal system, its substance is based on the principles of Islamic law, so it can be categorized as a law that accommodates Islamic law in the national judicial system.

In resolving divorce cases in the religious court environment, judges are required to seek peace between the parties. Two main provisions form the basis for this process, namely Article 154 R.Bg/130 HIR and Supreme Court Regulation (PERMA) No. 1 of 2016 concerning mediation procedures in court. This PERMA was issued to increase the effectiveness of the implementation of mediation in court so that dispute resolution can be carried out more optimally by prioritizing deliberation and peaceful agreement before the case continues to the judge's decision.¹⁹

Peace in divorce cases is preferred over coercive decisions, especially if the disputing couple already has children. Therefore, the mediator must make maximum efforts in the mediation process to reach a fair agreement for both parties. The mediation process is divided into two stages, namely inside (Litigation) and outside the courtroom (Non-Litigation).²⁰ If carried out in the courtroom, mediation is led by a judge, while outside the courtroom, this role is carried out by a certified mediator. In accordance with PERMA No. 1 of 2016 Article 1 Paragraph (2), the mediator acts as a neutral party who helps the parties in negotiations to find the best solution without forcing a decision.

¹⁷ M. Umar Umar, "Hukum Islam; Telaah Perkara Perceraian Melalui Proses Mediasi," *Jurnal Literasiologi* 4, no. 2 (13 Oktober 2020): hlm. 177., <https://doi.org/10.47783/literasiologi.v4i2.152>.

¹⁸ Andi Intan Cahyani, "Peradilan Agama sebagai Penegak Hukum Islam di Indonesia," *Jurnal Al-Qadau: Peradilan dan Hukum Keluarga Islam* 6, no. 1 (30 Juni 2019): hlm. 128., <https://doi.org/10.24252/al-qadau.v6i1.9483>.

¹⁹ Beni Ashari, "Peran Mediator Dalam Perkara Perceraian (Studi Solusi Konflik Rumah Tangga Di Pengadilan Agama Jember)," *Mabahits: Jurnal Hukum Keluarga* 1, no. 2 (2020): hlm. 77., <https://doi.org/10.62097/mabahits.v1i2.573>.

²⁰ Robi Awaludin, "Penyelesaian Sengketa Keluarga Secara Mediasi Non Litigasi Dalam Kajian Hukum Islam Dan Hukum Positif," *Al Maqashidi : Jurnal Hukum Islam Nusantara* 4, no. 2 (2021): hlm. 2., <https://doi.org/10.32665/almaqashidi.v4i2.918>.

A mediator, either a judge or a certified individual, acts as a neutral party who helps the disputing parties find the best solution through deliberation without having the authority to make decisions or force a settlement. In an effort to reduce the divorce rate, the role of a mediator is very important as an alternative conflict resolution offered by the judicial institution. With an impartial approach, the mediator functions as an intermediary who facilitates communication between the two parties in order to reach a fair and mutually acceptable agreement.²¹

The role of a mediator is very important in resolving conflicts, especially in the context of a trial or peaceful dispute resolution. The mediator must be able to position himself neutrally between the disputing parties, acting as an impartial third party. This attitude ensures that the mediator can carry out his role fairly and not be biased towards one party. By being the party in the middle, the mediator can create a conducive atmosphere to reach an agreement that benefits both parties.

In addition, the mediator must maintain the independence of the mediation process. The mediator is not a judge who determines who is right or wrong, nor is he a legal advisor who provides legal direction or solutions. His role is more as a facilitator who helps the parties find the best solution for the common interest. Therefore, a mediator must limit himself to not providing legal advice or acting as an advisor but rather focus on his role as a listener and helper in finding the best way out of the existing problem.

The mediator is also required to control reactions and emotions in the mediation process. He must be a good listener, respect the opinions of both parties and control any bad impression that may arise during the negotiation. The ability to speak in neutral and clear language is necessary to avoid misunderstandings. In addition, the mediator must be able to analyze the problem objectively, understand the complexity of the facts, and think broadly without getting caught up in his personal opinion.

Finally, the mediator must maintain the confidentiality of information obtained during the mediation process. All discussions and data disclosed by the disputing parties must be considered confidential information that must not be disseminated. This aims to maintain the trust of the parties in the mediation process. The agreement reached must also be formulated in the form of a fair compromise for both parties, where no one feels

²¹ Erly Pangestuti dan Linda Setianingsih, "Peranan Mediator Dalam Menurunkan Angka Perceraian Di Pengadilan Agama Tulungagung.," *Yustitiabelen* 10, no. 2 (1 Agustus 2024): hlm. 177., <https://doi.org/10.36563/yustitiabelen.v10i2.1164>.

they have lost or won absolutely. With this approach, mediation can be an effective solution in resolving conflicts with the principle of a win-win solution.²²

The main differences between judge and non-judge mediators lie in their background, authority, and position in the mediation process. A judge mediator is a judge who acts as a neutral party in resolving disputes in court, has formal authority and understands the legal aspects in depth. Meanwhile, a non-judge mediator is an individual who has obtained a mediator certification but is not a judge, such as an advocate, academic, or other legal practitioner.²³ Non-judge mediators are usually more flexible in their approach, often using interpersonal communication-based negotiation methods without any ties to the judicial system. Although both aim to help the parties reach a peaceful agreement, judge mediators operate within the judicial system, while non-judge mediators may work outside the courts, such as in mediation institutions or communities.

C. Effectiveness of Mediation in Resolving Muslim Family Disputes

Mediation is an alternative way to resolve family disputes that aim to reduce divorce rates by prioritizing deliberation and mutual agreement. In the context of Muslim family cases, mediation plays an important role in reconciling disputing couples to maintain their household. The success of mediation not only impacts the continuity of marriage but also contributes to maintaining social stability and the welfare of children and families.

Research conducted in 2015-2017 showed that the success of mediation in resolving Muslim family cases is still very low, with only 10% of cases successfully reaching a peaceful agreement. This figure reflects the great challenges in implementing mediation as an alternative solution to family disputes. Although mediation aims to find a fair middle ground for both parties, in reality, there are still many cases that end in the litigation process.²⁴

Then there is also data that the author obtained from one of the Religious courts in Indonesia, namely the Tulung Agung Religious Court. Based on case mediation data in 2023, the total number of cases mediated reached 359 cases, with a low success rate.

²² Kusroh Lailiyah, "Optimalisasi Peran Mediator Pengadilan Agama Dalam Mengurangi Angka Perceraian Melalui Pendekatan Humanistik," *Journal of Criminology and Justice* 1, no. 3 (2022): hlm. 64.

²³ Dessy Sunarsi, Yuherman Yuherman, dan Sumiyati Sumiyati, "Efektifitas Peran Mediator Non Hakim Dalam Penyelesaian Perkara Perceraian Di Pengadilan Agama Kelas 1a Pulau Jawa," *JURNAL HUKUM MEDIA BHAKTI* 2, no. 2 (27 Februari 2020): hlm. 142., <https://doi.org/10.32501/jhmb.v2i2.26>.

²⁴ Sunarsi, Yuherman, dan Sumiyati, hlm. 139.

Of that number, only 15 cases were successfully resolved completely through mediation, while 89 cases reached partial agreement, and the majority of cases, namely 248 cases, were not successfully resolved through mediation.

In particular, the success rate is also relatively small in divorce and divorce lawsuits, which have the largest number of cases. Of the 132 divorce cases that were mediated, only 3 were successful, 51 were partially successful, and 75 failed to reach an agreement. The same thing happened in divorce lawsuits, where out of 212 cases that were mediated, only 10 were completely successful, and 164 cases ended without results.²⁵

Based on data from the Supreme Court, the success rate of mediation in Religious Courts is still low, reaching only around 20%. This shows that the mediation process has not been running effectively and still tends to be merely a formality. Mediation, which should be an alternative solution in resolving family disputes, especially divorce, has not been able to provide optimal results. Thus, mediation in family cases still needs to be improved in its effectiveness so that it can be a more optimal solution in reducing the divorce rate.

Mediation in Muslim family cases faces various challenges that can hinder the dispute resolution process. *First*: low awareness of the importance of peace. Many parties prefer litigation because they assume that court decisions are more beneficial or have more legal force. In fact, mediation aims to achieve a more flexible solution that benefits both parties without any party feeling defeated. The lack of understanding of the benefits of mediation often makes the disputing parties reluctant to take the mediation process seriously.

In addition, *Second*: the absence of one of the parties in the mediation process is also a major obstacle. In many cases, one of the parties is reluctant to attend because they feel there is no need to negotiate or consider that mediation will only prolong the conflict without clear results. This absence certainly hinders the mediation process because the negotiation process cannot run effectively without both parties. In some situations, this absence can also be caused by emotional reasons, such as still having deep feelings of anger or disappointment so that the party concerned refuses to discuss it directly.

²⁵ Pangestuti dan Setianingsih, "Peranan Mediator Dalam Menurunkan Angka Perceraian Di Pengadilan Agama Tulungagung," hlm. 184.

Third, The uncooperative attitude of the parties involved is also a major challenge in Muslim family mediation. Some parties who have already become stubborn and reluctant to find a middle ground often make it difficult to reach an agreement. They focus more on their desires than on finding a fair solution for both parties. The inability to communicate well and the tendency to maintain each other's egos also make it difficult for mediation to reach a common ground.²⁶ Therefore, the role of a mediator is needed who is able to build trust, create a conducive atmosphere, and convince the parties that peace is the best choice for both parties.

Several factors inhibit the mediation process of Muslim family cases. *First*, legal regulations still have limitations in regulating the mediation mechanism in detail, so its implementation is less than optimal. *Second*, inadequate facilities and infrastructure, such as mediation rooms that do not support privacy and comfort, can also inhibit the effectiveness of mediation. *Third*, human resources, both in terms of the number and competence of mediators who understand aspects of Islamic law and local culture, also become obstacles in reaching a fair and balanced agreement for both parties.

On the other hand, the fourth factor, the disputing parties, also play a role in hindering mediation. Their inability to cooperate, high emotions, or unwillingness to reconcile often make the mediation process not run well. Fifth, cultural factors also become a challenge, especially in communities that still adhere to certain customs that sometimes conflict with the concept of modern mediation. In some cultures, dispute resolution is more entrusted to traditional figures or extended families, so formal mediation efforts in court often do not receive full support.²⁷ All of these factors need to be considered so that mediation in Muslim family cases can run effectively and provide fair results for all parties.

CONCLUSION

Mediation as a method of resolving family disputes still faces various obstacles, such as low success rates, low awareness of the importance of peace, absence of one of the parties in the mediation process, uncooperative attitudes from the parties involved, lack of awareness of the parties, limitations in regulations and facilities and cultural

²⁶ Pangestuti dan Setianingsih, "Peranan Mediator Dalam Menurunkan Angka Perceraian Di Pengadilan Agama Tulungagung," hlm. 184.

²⁷ Arif Arif, Baso Madiung, dan Waspada Waspada, "Efektivitas Peran Mediator Dalam Memediasi Perkara Perceraian," *Indonesian Journal of Legality of Law* 6, no. 1 (5 Desember 2023): hlm. 96., <https://doi.org/10.35965/ijlf.v6i1.3815>.

factors. Data shows that the success rate of mediation is still far from optimal, with the majority of cases not reaching an agreement. This shows that mediation is still not fully effective in reducing divorce rates and resolving family conflicts peacefully. Therefore, improvements are needed in various aspects so that mediation can function more optimally as a fair and sustainable solution.

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