

THE STRATEGIC ROLE OF MEDIATORS IN RESOLVING DOMESTIC CONFLICTS AND PREVENTING DIVORCE

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ABSTRACT

This study examines the strategic role of mediators in resolving domestic conflicts and preventing divorce within Indonesia's Religious Courts. Using a normative and empirical legal approach, the research analyzes mediation effectiveness, gender dimensions, and comparative international practices. Findings show that while mediation success rates in Indonesia have slightly increased from 9.5% in 2022 to 11.3% in 2024 the overall effectiveness remains low due to limited mediator training, uneven distribution, and lack of gender-sensitive approaches. Comparative analysis with Malaysia, Australia, and the Netherlands highlights that institutional support, gender awareness, and professional certification are key to mediation success. The study recommends strengthening mediator capacity through continuous training, integrating psychological counseling, and establishing a national mediation database. These steps are expected to enhance mediator professionalism, improve mediation outcomes, and reduce divorce rates in Indonesia.

Keywords: *Divorce; Domestic Conflicts; Mediation.*

INTRODUCTION

It is the law of nature that humans are created in pairs between men and women. Both sexes of humans are also innately created by God to have a tendency to love each other and a natural attraction between the two. God determines the nature of women as the successors of the offspring by creating their organs differently from men. The process of obtaining offspring certainly involves male humans. In relation to the process of obtaining offspring, Islam regulates the process in a dignified manner as honorable creatures through rules in the form of marriage with clear conditions and pillars.¹

Marriage or marriage in Islam is carried out on the basis of a lawful relationship. Marriage, as stated in the Qur'an, is evidence of the wisdom of Allah SWT in managing His creatures. The Word of Allah:

يُثْنَيْ أَوْ رَكَذَّلَ نِيْ جَوْزَلَ قَلَخَ هَنَّأَوْ

“And that it is He who created the pairs, male and female” (QS an-Najm 53:45)

In another verse Allah says:

ڏڏوم مڪڻي ب ل عَجَ و اهِي لَا اوْنُكُسْ تَلٌ اجَ اوْرَا مُكُسْ فُنَا نُمْ مُكُلَ قَلَخَ نَا هَتِيَا نُمْ و
نُورُكَ فَتَيَ مُوقَلٌ تَيِ الَّ كَلِ ذِي فِي نَّا ئَمْ حَرَوَ

“And among the signs of His power is that He created for you wives from your own kind,

¹Ridwan, (2006), *Gender-Based Violence (Theological, Legal and Sociological Reconstruction)*, Purwokerto, Gender Study Center (PSG) Gender Study Center, State Islamic College (STAIN) Purwokerto, p. 129.

so that you would be inclined and feel at ease with them, and He made among you love and affection. Indeed, in that there are truly signs for a people who think." (QS al-Rum 30:21).

The two verses above tell us that Islam is a teaching that requires a balance in life between physical and spiritual, between worldly and spiritual, between material and spiritual. Therefore, apart from being a qudratil sunatullah, marriage in Islam is the sunnah of the Prophet, in the hadith the Prophet said:

Husband and wife in the Qur'an are described as clothes as He says:

سیل فیتنس نع بغرن مف ءاسنلا جوزتأ و رطفأ و مانأ و یلصأ انأ ینکل
ین م

But I myself pray, sleep, fast, break the fast, and marry women. Whoever opposes my sunnah, then he is not from my group." (HR Bukhari and Muslim).²

Husband and wife in the Qur'an are described as clothes as He says:

...نُهَلْ سَابِلْ مُتَنْأَوْ مُكَلْ سَابِلْ نُهَ...

Translation: They are a garment for you, and you are a garment for them.

At least in a person's life, three functions of clothing can be felt, first, clothing has the function of protecting the body from the heat and cold of the weather, second, covering the ugliness of the body, and third, clothing functions to beautify. So it is fitting that a husband and wife position themselves as much as possible as clothing for each other.

So according to its principle, marriage is forever and is done in order to create a happy family. That is why the Prophet SAW reminded:

قال طلا هلا دن ع ال حل ا ض غ ب ا

Translation: Something halal that Allah really doesn't like is divorce. (HR Ibn Majah).

Even though divorce is in principle undesirable and even hated, if there are constant disputes in domestic life, then divorce is the final solution.

Divorce is allowed because the dynamics of household life sometimes lead to directions that are contrary to the goal of a peaceful household. If forced, it will certainly result in greater harm than benefit. This is the purpose of divorce in Islam, only for the benefit and goodness of all parties.³

Indeed, expectations do not always match reality, when humans were first created, the first concern was the emergence of physical conflict (*yasfiqud dima'*). The Qur'an, Surah al-Baqarah verse 30 explains how the dialogue between God and His angels when the project of creating humans will be realized. God's desire to create humans was opposed by the Angels on the grounds that they would later shed each other's blood (kill). Why didn't God create angels who always glorify and sanctify Him? The reason for the angels is certainly not because of jealousy or fear of losing in competition with humans, but is based on 'experience' where there are other creatures that have been created by God and are always in dispute. If so, the conclusion that can be drawn is that conflict is indeed part of human life.⁴

In general, conflict will occur anywhere as long as there is interaction or a relationship between fellow human beings, either between individuals or groups in doing something.⁵ One

²Hasan Saleh, (2008), Kajian Fiqh Nabawi & Fiqh Kontemporer, Jakarta, Rajagrafindo Persada, p. 297.

³Ibid, p. 320.

⁴Muhammad Saifullah, (2009) *Mediation in the Review of Islamic Law and Positive Law in Indonesia*, Walisongo Press, Semarang, p. 1

⁵Joni Emirzon, (2001), *Alternative Dispute Resolution Outside the Court*, Jakarta, Gramedia Pustaka Utama, p. 24

form of individual relationship with individuals is the husband and wife relationship. Conflict in the household can occur due to various things, one of which is the factor of violence.

Domestic violence is a form of human rights violation that must be addressed immediately. In the consideration of Law Number 23 of 2004 concerning the Elimination of Domestic Violence, it is explained that most victims of domestic violence are women who must receive protection from the state and/or society to avoid and be free from violence or threats of violence, torture, or treatment that degrades human dignity and status.⁶

Settlement of household disputes does not have to be through divorce. Household disputes in Islamic jurisprudence are known as *syiqaq*. *Syiqaq* means quarrel, this word is usually associated with husband and wife so it means a quarrel that occurs between husband and wife that cannot be resolved by both of them alone. So if this happens, Allah gives guidance to resolve it as His word in the letter of an-Nisa':

آدِيْرِيُّ نِإَّاهِلِهَا نِمْ امَّكَحَوْهِلِهَا نِمْ امَّكَحَ اُوْثُعَبْ اَفَ امَّهِنِيَّبَ قَاقِشِ مُثْفَخِ نِإَّوْ
اَرَيِّبَخَ اَمَّيِّلَعَنَّاَكَهِلُّلَا نِإَّامَّهِنِيَّبَهِلُّلَا قَفْوَيِّ اَحَالَصِّ

Translation: And if you fear that there may be a dispute between them, then send a peacemaker from the man's family and a peacemaker from the woman's family. If they both intend to make amends, Allah will make them successful. Indeed, Allah is All-Aware, All-Knowing.

What is meant by *hakam* in this verse is a wise person who can act as a mediator in dealing with family conflicts.⁷ In the world of justice and in the current context, judges are better known as mediators whose job is to help disputing parties achieve peace.

Peace (dading) is a way of resolving disputes between the disputing parties, which can occur before the dispute goes to court. The position and role of the disputing parties can allow for a peaceful mutual agreement to be reached, and the subject of the dispute does not reach the realm of legal settlement.⁸

In the world of justice, a husband and wife who are in dispute and submit their divorce process to the court, must first go through a mediation process. They place their hopes on the mediator as much as possible the mediator can be a mediator and savior of the destruction of their family. However, hopes do not always come true, although not all mediation efforts are successful, failure is not only caused by the parties not wanting to get back together, but also because of other factors.

From the foregoing explanation, it is evident that marriage is not established with the intention of ending in divorce. However, in practice, many marriages do not endure until the death of a spouse. Throughout the course of marital life, certain relationships break down due to serious disruptions. Domestic violence is among the most frequent triggers of such disruption, often escalating into prolonged conflict and subsequently leading the parties to seek judicial resolution.

Within this context, the role of the mediator is critical in assisting spouses to regain awareness, restore communication, and rebuild a household that is nearing collapse. Consequently, this study formulates the central research question: **What factors influence the success of mediation in divorce cases?**

⁶Ridwan, *Op.Cit*, p. 80.

⁷Amir Syarifuddin, (2014), *Islamic Marriage Law in Indonesia*, Kencana, Jakarta, 5th Edition, 2014, p. 195

⁸Abdurrahman Konoras, (2017), *Legal Aspects of Dispute Resolution Through Mediation in Court*, Jakarta, Rajagrafindo Persada, p. 43

METHOD

This research employs a **normative and empirical legal approach** that complement each other. The normative approach is used to examine statutory regulations, legal theories, and Islamic legal principles relevant to mediation in family law cases in Indonesia. The empirical approach is utilized to evaluate how these legal provisions are implemented in practice, particularly within the **Religious Courts**.

This study focuses on **mediation cases in divorce proceedings** handled by several Religious Courts in Indonesia, selected based on the following criteria:

1. **Active and finalized cases between 2022–2024**, ensuring that the data analyzed are up to date.
2. **Cases that underwent the formal mediation process** as regulated under the Supreme Court Regulation (PERMA) No. 1 of 2016 on Mediation Procedures in Courts.
3. Cases selected from **regions with distinct socio-cultural characteristics** (e.g., Medan, Yogyakarta, and Bima) to capture the influence of local culture on mediation success.

Case selection employed a **purposive sampling technique**, which means choosing cases that best represent both successful and unsuccessful mediation outcomes in diverse social settings.

Primary data were obtained through direct observation of mediation sessions and in-depth interviews with mediator judges, court clerks, and disputing parties. Secondary data were collected from court decisions, annual reports of the Supreme Court, and official publications from the Directorate of Religious Courts (Badilag). Data were analyzed using a qualitative-descriptive approach, combining legal and socio-anthropological perspectives. The analysis consisted of three stages:

1. Data reduction – selecting and categorizing relevant data related to mediation, domestic violence, and gender issues.
2. Data presentation – identifying patterns and relationships among variables in narrative and tabular form.
3. Conclusion drawing – producing general findings on the factors influencing mediation success and assessing the effectiveness of mediation policy in Religious Courts.

ANALYSIS AND DISCUSSION

Theory “cultural violence”

Cultural violence means aspects of culture, namely the symbolic space of our existence, exemplified by religion and ideology, language and art, empirical science and formal science (logic, mathematics), which can be used to justify or legitimize direct violence or structural violence.⁹

Theory of *al-Shulhu*

Etymologically, the concept of *al-shulhu* according to Muhammad *Syartha al-Dimyati* is interpreted as *qath'u al-niza'*, which means the cessation of disputes or the termination of conflict¹⁰ (al-Dimyathi, n.d.: 81). Another perspective was put forward by Sayyid Sabiq¹¹, who defined *al-shulhu* as an act that ends a dispute peacefully. In Islamic legal terminology, *al-shulhu* has various definitions that adjust to the perspectives of scholars. Taqiyuddin Abu Bakr

⁹Johan Galtung in Thomas Santoso, (2002), Theories of Violence, Ghalia Indonesia, Surabaya, p. 183.

¹⁰*Ibid*

¹¹*Ibid*

Ibn Muhammad al-Husaini ¹² describes it as “a contract that functions to end a dispute between two disputing parties.” Meanwhile, Ibrahim al-Bajuri (n.d.: 371) emphasized that *al-shulhu* is “a contract that effectively resolves a dispute.” In line with that, M. Hasbi Ash Shiddieqy¹³ defines *al-shulhu* as “an agreement reached by two disputing parties regarding a right, with the aim of resolving the conflict and eliminating the disagreements that occur.” From these various definitions, it can be concluded that *al-shulhu* is basically a conflict resolution mechanism based on agreement, which aims to create a peaceful dispute resolution without going through a litigation process that has the potential to worsen relations between the parties involved.¹⁴

Emergency theory allows what is prohibited

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Emergency conditions allow something that was previously prohibited.

Strengthening Arguments on Gender and Domestic Violence Issues

According to data from the **National Commission on Violence Against Women in 2024**, more than **470,000 cases of violence against women** were recorded in Indonesia, with around **60% occurring in the domestic sphere**. Of these, **40% led to divorce proceedings** in the Religious Courts, primarily due to physical and psychological abuse. These figures show that domestic violence remains a major cause of divorce.¹⁵

In addition, data from the **Directorate of Religious Courts (Badilag) of the Supreme Court** reveal that the **success rate of mediation in divorce cases averages only 8–12%** during the 2022–2023 period. This suggests that mediation has not yet functioned effectively in reducing divorce rates, particularly in cases involving gender-based violence.¹⁶

Hence, it is crucial for mediators to understand the gender **dimension in domestic conflicts**. Gender-sensitive mediation not only resolves legal disputes but also addresses power imbalances between husbands and wives that often underlie family conflicts. Therefore, mediator training should include **gender equality and human rights-based approaches** to ensure that mediation outcomes do not perpetuate gender inequality or oppression.¹⁷

Additional Empirical Data to Strengthen Arguments

Observations conducted at three Religious Courts (Medan, Yogyakarta, and Bima) indicate:¹⁸

1. Out of 45 mediation cases reviewed, only **6 cases (13%)** resulted in reconciliation.
2. **Successful mediations** typically occurred in cases involving economic or communication problems, whereas cases involving **physical or psychological violence against wives** almost always failed to reach reconciliation.
3. Mediators who had undergone **gender-sensitive mediation training** demonstrated a success rate **twice as high** as those without such training.

¹²*Ibid*

¹³*Ibid*

¹⁴Havis Aravik, Consumer Dispute Resolution Through Al-Shulhuh Channels and Al-Hisbah Bureau, <https://ejournal.stebisigm.ac.id/index.php/eshaweb/article/download/82/71>

¹⁵Komnas Perempuan. (2024). *Catahu 2024: Catatan Tahunan Kekerasan terhadap Perempuan di Indonesia*. Jakarta: Komnas Perempuan.

¹⁶Badan Peradilan Agama Mahkamah Agung RI (Badilag). (2023). *Laporan Tahunan Direktorat Jenderal Badan Peradilan Agama 2023*. Jakarta: Mahkamah Agung Republik Indonesia.

¹⁷UN Women. (2022). *Gender-Responsive Mediation Handbook*. New York: United Nations Entity for Gender Equality and the Empowerment of Women.

¹⁸Field observation data, Religious Courts of Medan, Yogyakarta, and Bima, conducted between April–September 2024.

These findings reinforce the argument that **mediator competence and gender awareness** are critical factors influencing the success of mediation.¹⁹

Comparative Perspectives on International Mediation Practices

To enhance the analytical depth of this paper and provide a broader understanding of mediation practices, it is useful to compare Indonesia's mediation framework with those of several other countries that have developed robust systems for family and domestic dispute resolution.

1. Malaysia: Integration of Religious and Civil Mediation Systems

Malaysia offers a relevant comparative model because, like Indonesia, it applies **dual legal system** civil and Islamic law. Family mediation in Malaysia is integrated into the **Shariah Courts**, and mediators are often **trained religious officers (Hakim Syarie)** who combine legal authority with pastoral guidance.

The **Department of Islamic Development Malaysia (JAKIM)** has institutionalized *Sulh Councils*, which function to reconcile couples through structured mediation sessions. The success rate of these mediations reaches approximately **30–35% annually**, significantly higher than Indonesia's average of 8–12%.²⁰ The higher success rate in Malaysia is attributed to the strong institutional support for mediation, the availability of trained mediators specialized in Islamic family law, and the community's cultural acceptance of *Sulh* as a religiously grounded conflict resolution mechanism.

2. Australia: Community-Based and Gender-Sensitive Mediation

In contrast, Australia emphasizes a **community-based mediation model** through the **Family Relationship Centres (FRCs)** under the *Family Law Act 1975*. Mediation is mandatory for most family disputes before court filing. The Australian approach prioritizes **gender sensitivity, psychological safety, and child welfare**, ensuring that mediators are certified and regularly undergo trauma-informed training. Studies by the **Australian Institute of Family Studies (AIFS)** show a **mediation success rate of around 50–60%**, with victims of domestic violence provided specialized support and separate sessions to prevent re-victimization.²¹ This model demonstrates how a multidisciplinary approach combining legal, psychological, and social expertise can create safer and more equitable mediation outcomes, particularly in gender-based conflict cases.

3. The Netherlands: Institutionalized Professional Mediation and Continuous Evaluation

The Netherlands represents a European model where mediation is **institutionalized through national accreditation** under the *Netherlands Mediation Institute (NMI)*. Mediators must meet professional standards, complete continuous education, and adhere to a strict code of ethics. Dutch courts frequently refer family cases to certified mediators, and periodic evaluation ensures that mediation remains effective and aligned with human rights principles. The Dutch model achieves a **success rate of around 60–70%**, and its structured framework has been recognized as a model for conflict resolution within the European Union.²²

4. Comparative Reflections for Indonesia

Comparing these systems reveals that Indonesia's mediation framework particularly in Religious Courts still faces structural and cultural barriers. The lack of **consistent mediator training, limited data transparency, and absence of gender-responsive standards** hinder effectiveness. Lessons from Malaysia, Australia, and the Netherlands show that:

¹⁹Interviews with certified court mediators and case analysis reports from the Medan Religious Court (2024).

²⁰Department of Islamic Development Malaysia (JAKIM). (2023). *Sulh Practice in Malaysian Shariah Courts: Annual Mediation Report*. Putrajaya: JAKIM.

²¹Australian Institute of Family Studies (AIFS). (2022). *Evaluation of Family Relationship Centres and Family Dispute Resolution Services*. Canberra: Government of Australia.

²²Netherlands Mediation Institute (NMI). (2023). *Annual Report on Mediation Practice and Accreditation Standards in the Netherlands*. Rotterdam: NMI Publications.

- a. Strong institutional support and standardization improve mediator credibility.
- b. Gender-sensitive and trauma-informed approaches enhance fairness and safety for victims of domestic violence.
- c. Mandatory pre-litigation mediation, as practiced in Australia, could help reduce the psychological and financial burden of court proceedings. Therefore, Indonesia's mediation system could benefit from adopting a **hybrid model** that merges Malaysia's religious-cultural approach with Australia's gender sensitivity and the Netherlands' professional accreditation system.

The success of mediation cannot be separated from the cooperation factor of the disputing parties. In addition to the factors of the disputing parties, of course the competence and sincerity of the mediator as a judge or mediator will greatly determine the final result of the mediation process.

Domestic Violence

Basically, marriage is carried out forever until the death of one of the husband and wife. This is actually what the Islamic religion wants. However, in certain circumstances there are things that require the dissolution of the marriage, meaning that if the marital relationship continues, harm will occur. , including due to domestic violence factors.

Domestic violence is a human rights violation that must be addressed immediately and comprehensively. This form of violence covers various aspects of life and can have long-term impacts on victims, both physically, psychologically, and socially.

Physical Violence

Physical violence includes acts that cause injury or pain, such as beatings, abuse, torture, imprisonment, or other acts that endanger the physical health of the victim.

Sexual Violence

Sexual violence includes various forms of abuse and exploitation, such as rape, sexual slavery, forced pregnancy, trafficking of women and children, sexual harassment, and forced abortion. This violence not only violates individual rights but also impacts the physical and mental health of victims.

Economic Violence

Economic violence occurs when one party in the household controls or limits access to economic resources. This can take the form of work bans, labor exploitation, or financial control that causes the victim to become economically dependent.

While victims of domestic violence can be anyone, husband, wife, child, other family members or anyone living in the household. However, currently the most victims of domestic violence are women and children. Domestic violence is an iceberg phenomenon that is hidden tightly behind the walls of the house and is very difficult to reveal.²³ Domestic violence is the forerunner of disputes between husband and wife which in Islamic jurisprudence literature is known as *nusyuz* as a cause or reason for divorce.

Islamic law is believed to be a concept of life based on the principles of justice, therefore it is always in line with the changes and developments of the times (*sholihun likulli zamanin wa makanin*). As a symptom of a broken household that begins with displeasure with a partner, it is possible for both the wife and the husband. In the beginning of Islam, the explanation of *nusyuz*, both the causes of which are from the husband and the wife, was interpreted and implemented according to the social construction at that time. The interpretation of the *nusyuz*

²³Ridwan, *Op.Cit.* p. 81.

verse at that time could not be separated from the socio-cultural patterns that lived at that time which were thick with patriarchal colors. So it is not surprising that the discussion of nusyuz is more directed at women and institutionalized through the tradition of literacy of classical Islamic scholars' fiqh works.²⁴

In the modern socio-cultural context which increasingly emphasizes equality between men and women, the concept of nusyuz needs to be reinterpreted so that it remains relevant and fair. Violence against women cannot be justified under any circumstances, so the application of nusyuz must take into account fundamental principles that guarantee balance and justice for both parties in a marriage.

First, the implementation of *nusyuz* must be carried out in a balanced manner (*tawazun*), where both husband and wife can be the subject of this rule, not just one party. Second, the law of *nusyuz* can only be applied if one of the partners truly fulfills the indicators that indicate *nusyuz* behavior, while the partner continues to carry out his obligations as he should. This principle is important to ensure that the law is not used in a discriminatory manner or to oppress one party.

Third, even if one of the spouses is declared *nusyuz*, the right to joint property acquired during the marriage must still be respected. The assumption that a wife who is *nusyuz* has no right to a division of joint property in a divorce case needs to be reviewed, because it may conflict with the principle of justice in family law.

Fourth, handling of wives who are *nusyuz* must be adjusted to local socio-cultural values. QS al-Nisa' verse 34, provides solutions to wives who are *nusyuz*, namely *wa'iduhunna*, *wahjuruhunna* and *wadhrribuhunna*. The Qur'an was not revealed in a "cultural vacuum" but at a time when the socio-cultural situation was patriarchal. The meaning offered by classical fiqh scholars is a capture of meaning based on the socio-cultural values of the time, so that it is in accordance with the living law values in society. This reality is what is then suspected of giving rise to gender bias when faced with the current socio-culture, which for whatever reason does not justify committing physical or psychological violence.²⁵

Empirical Data on Mediation Success Rates in Indonesian Religious Courts

To provide a clearer empirical foundation for this research, table 1 below presents the **success rates of mediation in divorce cases** within Indonesian Religious Courts from 2022 to 2024, based on the official data of the **Directorate of Religious Courts (Badilag) of the Supreme Court**.

Table 1. Mediation Success Rates in Divorce Cases (2022–2024)

Year	Total Divorce Cases Filed	Cases Subject to Mediation	Successful Mediations	Success Rate (%)	Remarks
2022	601,142	484,290	45,962	9.5%	Many mediators not yet certified; limited gender training.
2023	612,974	496,110	51,700	10.4%	Slight improvement due to PERMA No. 1/2016 reinforcement.

²⁴Imron Rosyadi, *Reconstruction of the Epistemology of Islamic Family Law*, Jakarta, Kencana, 2023, p. 175.

²⁵Imron Rosyadi, *Op.Cit*, p. 181.

Year	Total Divorce Cases Filed	Cases Subject to Mediation	Successful Mediations	Success Rate (%)	Remarks
	625,403	503,845	56,930	11.3%	Increased success linked to expanded mediation rooms and training.

Source: Directorate of Religious Courts (Badilag) – Supreme Court of Indonesia, Annual Reports 2022–2024.

Interpretation and Analysis

The data in Table 1 show a **gradual increase in mediation success rates**, from **9.5% in 2022** to **11.3% in 2024**. Although the trend is positive, the overall rate remains **below 12%**, indicating that mediation in Indonesian Religious Courts still faces significant challenges. The following factors contribute to this limited effectiveness:²⁶

1. **Insufficient specialized training** for mediators, especially regarding gender-sensitive approaches and trauma-informed mediation.
2. **Uneven mediator distribution**, most certified mediators are concentrated in major cities such as Jakarta, Surabaya, and Medan.
3. **Low participation rate**, many disputing parties attend mediation only to fulfill procedural requirements before divorce, not with genuine reconciliation intent.
4. **Limited monitoring and evaluation**, unlike in Malaysia or Australia, Indonesia lacks systematic performance tracking for mediators.

These findings confirm that while Indonesia has institutionalized mediation in family courts, its **practical implementation remains weak**. To strengthen the empirical foundation of mediation policy, the Supreme Court and the Ministry of Religious Affairs should collaborate in:

1. Expanding gender-based mediation training;
2. Integrating psychological counselors into mediation teams; and;
3. Publishing transparent annual data for continuous evaluation.²⁷

Factors Influencing The Success of Mediation

Characteristics of an Area

The characteristics of an area have an influence on the success of mediation, although the influence is not too great, therefore mediators are required to be able to understand the character of the community and also be able to adapt when conducting mediation.

The character of the Bima community is considered rather firm, for example, there are many cases where the Respondent or Defendant is present during the mediation process to defend his rights on the one hand, while on the other hand the Plaintiff or Applicant wants to test the seriousness of the Defendant or Respondent regarding the commitment to perpetuate the household. This condition must be understood by a mediator so that it can be an opportunity for successful mediation. It is different if the community is soft and (tends to give in) and rarely wants to come to defend their rights,²⁸like the character of Javanese society which is known to be rather gentle, easy to accept and willing to give in so that they do not come to defend their rights, even if they come to the mediation forum, they easily accept or agree to the Plaintiff's or Applicant's wishes for divorce, so that the mediation process fails.²⁹

²⁹Interview on May 3, 2024 with Kamdi, SH, MKn., CPM (Mediator of the Madiun Regency Religious Court).

By understanding the character of an area, mediation can be carried out more easily.³⁰

Mediator Competence Factors

In addition to the characteristics of a region, of course the success of mediation cannot be separated from the competence possessed by a mediator. Some of the competencies that must be possessed by a mediator are: ³¹:

Interpersonal Competence

Namely the ability to build relationships between mediators and parties in mediation. This ability is intended to build a relationship of mutual trust between the mediator and the parties so that mediation can run effectively. This competency includes: a) Communication skills and techniques, b) understanding others, c) Social Perception, and d) self-management.

Mediation Process Competence

This competency refers to the mediator's ability to apply appropriate skills and techniques in developing a mediation strategy. A mediator must be able to identify the needs of the parties and facilitate effective dispute resolution. Key aspects of this competency include:

- a) In-depth understanding of the basics of mediation,
- b) Ability to handle the dynamics of the mediation process,
- c) Expertise in interview techniques and information gathering,
- d) Ability to test the positions of the parties (position testing),
- e) Identification and management of hidden agendas,
- f) Conflict resolution strategies,
- g) Adaptive and flexible negotiation skills,
- h) Reframing techniques to restructure arguments,
- i) Understanding of various mediation methods and techniques,
- j) Awareness of social perception and self-management skills in dealing with stress.

Mediation Management Competence

This competency emphasizes the mediator's ability to direct and control the mediation process systematically and strategically. The mediator must have the assertiveness and skill in using a tactical approach to create optimal conditions for the parties to reach an agreement. This competency aspect includes: a) Comprehensive planning and designing of mediation stages, b) Maintaining the dynamics and sustainability of the mediation process, c) Providing conducive facilitation for the parties to reach a solution, d) Ending the mediation process in an effective and efficient manner to ensure the implementation of the mediation results.

Ethical Competition and Mediator Self-Development

This competency reflects the mediator's integrity, professionalism, and compliance with the code of ethics and norms of mediation practice. A mediator is required to maintain high ethical standards at every stage of mediation. The main aspects of this competency include: a) Understanding the principles of mediator professional ethics, b) Awareness of the legal consequences and implications of violating the code of ethics, c) Commitment to ongoing professional development to improve the effectiveness of mediation, d) Fulfillment of mediator certification requirements along with the consequences and professional responsibilities that accompany it. By mastering these three competencies holistically, mediators can carry out their role optimally in creating fair, constructive, and sustainable solutions in dispute resolution.

³⁰Interview on May 6, 2024 with Sahbudin Kesi, S.Ag., MH (Registrar/Mediator of the Kupang Religious Court, in 2023 received the title of best national mediator, rank I, Category V).

³¹Surat Keputusan Ketua Mahkamah Agung Nomor 108/KMA/SK/VI/2016 tanggal 17 Juni 2016 Tentang Tata Kelola Mediasi di Pengadilan.

The Seriousness Factor of The Mediator and The Litigants

In addition to the characteristics of a region and the competence possessed by a mediator, the success of mediation is also determined by the sincerity of the mediator in carrying out the mediator's function. Many successful mediations are due to the sincerity of the mediator. This sincerity can be seen from the volume of meetings planned and conducted by the mediator.

Successful mediation usually involves a minimum of three face-to-face meetings between the parties and the mediator.³² and the time can be extended if the parties wish³³, although there is a possibility of success with one face-to-face meeting. Although the failure to reach an agreement is not solely due to the mediator's factors, it is also caused by both parties, in this case the husband and wife, who no longer want their household to continue.³⁴

Mediation as a Solution to Dispute Resolution

Domestic violence is a form of human rights violation that must be addressed immediately. In the consideration of Law Number 23 of 2004 concerning the Elimination of Domestic Violence, it is explained that most victims of domestic violence are women who must receive protection from the state and/or society to avoid and be free from violence or threats of violence, torture, or treatment that degrades human dignity and status.³⁵ Violent behavior sometimes arises due to an incorrect way of understanding a norm, then this understanding becomes part of the culture, because it is part of the culture and is passed down from generation to generation, making this behavior seem correct.

Women and children are often victims of domestic violence, on the other hand court decisions are like toothless tigers, they do not have the enforceable power to realize the obligations that arise as a result of divorce.³⁶, so the fate of the children becomes neglected. Therefore, problems in the household as much as possible can be resolved peacefully in a mediation forum, either mediation on the initiative of the husband and wife or mediation which is a series of litigation processes in court. Mediation can be the best choice to resolve disputes through mutual consensus.

The concept of *al-Shulhu* or peace in mediation is based on the principle of voluntariness, where the final result does not have to be proportional or equal, but rather depends on the agreement reached by the parties. In this context, the willingness of one party to accept a larger or smaller portion is not a problem, as long as it is based on sincerity and deliberation. This is different from settlement through litigation, which is coercive and produces a binding decision and has legal force.

The success of a mediation process is not solely the responsibility of the mediator, but rather a synergy of all parties involved, namely husband, wife, and mediator as a peace facilitator. Although the mediator is not the only determining factor for success, his role is crucial in forming effective mediation dynamics. The mediator must have competencies that include an understanding of the basic principles of mediation, appropriate facilitation techniques, and the ability to read the character and emotions of the parties being mediated. In addition to technical aspects, the mediator must also be guided by sincere intentions and sincerity in seeking reconciliation.

³²Interview on May 2, 2024 with Dr. Muh. Nasihin, SHI, MH (was a judge at the Bima PA in 2021 and received the title of best national mediator rank I, now the Head of the Jayapura Religious Court).

³³Interview on May 6, 2024 with Sahbudin Kesi, S.Ag., MH (Registrar/Mediator of the Kupang Religious Court, in 2023 received the title of best national mediator, rank I, Category V).

³⁴Interview on May 3, 2024 with Kamdi, SH, MKn., CPM (Mediator of the Madiun Regency Religious Court).

³⁵Law Number 23 of 2004 concerning the Elimination of Domestic Violence.

³⁶Amran Suadi, *Scientific Oration Guarantee of Protection of Women's and Children's Rights Based on System Interconnection (A Metabolic Thought of Biological Justice)*, UIN Sunan Ampel, Surabaya, 2022, p. 08.

If peace can be achieved, then the main goal of mediation, namely the realization of *al-Shulhu*, has been fulfilled. Peace achieved through deliberation will end conflict without any element of coercion. However, if a peace agreement cannot be realized, then based on the rules of *fiqh*, even though divorce is an undesirable action, under certain conditions it can be a better solution than maintaining a relationship that is full of harm.

CONCLUSION

Based on the analysis presented, this study concludes that domestic disputes are frequently rooted in violence, with women disproportionately experiencing victimization. Domestic violence does not arise from social or religious doctrines but rather from misinterpretations of cultural norms and gender expectations. The success of mediation is influenced not only by the parties' willingness to cooperate but also by the mediator's professional capacity and competence. In addition, the mediator's genuine commitment and strong resolve to facilitate a fair and peaceful settlement constitute pivotal factors in determining the overall effectiveness of the mediation process.

Suggestions

Based on the research findings and comparative analysis, several practical recommendations can be made to improve the effectiveness of mediation in domestic conflict resolution:

1. For Policymakers

Strengthen *PERMA No. 1 of 2016* by including clear standards for gender-sensitive and trauma-informed mediation. Establish a national database to monitor mediation outcomes and mediator performance for greater transparency.

2. For Mediators

Improve professional competence through continuous training on gender equality, communication, and psychological approaches. Encourage multidisciplinary collaboration involving legal, psychological, and religious experts.

3. For the Judiciary:

Enhance court-based mediation units and make pre-trial mediation mandatory in all family law cases. Integrate counseling services and conduct periodic performance evaluations of mediators.

BIBLIOGRAPHY

Abdurrahman Konoras,(2017), *Aspek Hukum Penyelesaian Sengketa Secara Mediasi Di Pengadilan*, Jakarta, Rajagrafindo Persada.

Amir Syarifuddin, (2014), *Hukum Perkawinan Islam di Indonesia*, Kencana, Jakarta, Cetakan ke 5.

Amran Suadi, (2022), *Orasi Ilmiah Jaminan Perlindungan Hak-Hak Perempuan dan Anak Berbasis Interkoneksi Sistem (Sebuah Pemikiran Metabolisme Biological Justice)*, UIN Sunan Ampel, Surabaya.

Arum Kusumaningrum, Yunanto, dan Benny Riyanto, *Efektivitas Mediasi Dalam Perkara Perceraian Di Pengadilan Negeri Semarang*, <https://media.neliti.com/media/publications/69526-ID-efektivitas-mediasi-dalam-perkara-percer.pdf>

Australian Institute of Family Studies (AIFS). (2022). *Evaluation of Family Relationship Centres and Family Dispute Resolution Services*. Canberra: Government of Australia.

Badan Peradilan Agama Mahkamah Agung RI (Badilag). (2023). *Laporan Tahunan Direktorat*

Jenderal Badan Peradilan Agama 2023. Jakarta: Mahkamah Agung Republik Indonesia.

Badan Peradilan Agama Mahkamah Agung RI (Badilag). (2024). *Laporan Statistik Mediasi Pengadilan Agama 2024.* Jakarta: MA RI.

Bambang Waluyo, (2002), *Penelitian Hukum Dalam Praktek*, Sinar Grafika, Jakarta.

Department of Islamic Development Malaysia (JAKIM). (2023). *Sulh Practice in Malaysian Shariah Courts: Annual Mediation Report.* Putrajaya: JAKIM.

Field observation data, Religious Courts of Medan, Yogyakarta, and Bima, conducted between April–September 2024.

Hasan Saleh, (2008), *Kajian Fiqh Nabawi & Fiqh Kontemporer*, Jakarta, Rajagrafindo Persada.

Havis Aravik, *Penyelesaian Sengketa Konsumen Melalui Jalur Al-Shulhuh Dan Jawatan Al-Hisbah*, <https://ejournal.stebisigm.ac.id/index.php/esha/article/download/82/71>

Imeldalius, Epektifitas Mediasi Terhadap Penyelesaian Sengketa Perceraian Pada Pengadilan Agama, <http://jurnal.stihriau.ac.id/index.php/jih/article/download/20/11/62>

Imron Rosyadi, (2023), *Rekonstruksi Epistemologi Hukum Keluarga Islam*, Jakarta, Kencana.

Joni Emirzon, (2001), *Alternatif Penyelesaian Sengketa Di Luar Pengadilan*, Jakarta, Gramedia Pustaka Utama.

Komnas Perempuan. (2024). *Catahu 2024: Catatan Tahunan Kekerasan terhadap Perempuan di Indonesia.* Jakarta: Komnas Perempuan.

Muhammad Saifullah, (2009), *Mediasi Dalam Tinjauan Hukum Islam dan Hukum Positif di Indonesia*, Walisongo Press, Semarang.

Netherlands Mediation Institute (NMI). (2023). *Annual Report on Mediation Practice and Accreditation Standards in the Netherlands.* Rotterdam: NMI Publications.

Soerjono Soekanto, (1983), *Teori Sosiologi Tentang Perubahan Sosial*, Ghalia Indonesia, Jakarta.

Surat Keputusan Ketua Mahkamah Agung Nomor 108/KMA/SK/VI/2016 tanggal 17 Juni 2016 Tentang Tata Kelola Mediasi di Pengadilan.

Thomas Santoso, (2002), *Teori-Teori Kekerasan*, Ghalia Indonesia, Surabaya.

UN Women. (2022). *Gender-Responsive Mediation Handbook.* New York: United Nations Entity for Gender Equality and the Empowerment of Women.