

## THE IMPORTANCE OF MEDIATION IN SETTLEMENTS OF DIVORCE CASES IN RELIGIOUS COURTS

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### ABSTRACT

*Mediation is a different kind of dispute resolution used in court or outside of court to reach an agreement with the assistance of a mediator so that parties can accomplish honesty, openness, and the exchange of opinions. This study aims to ascertain the mediation process and success factors at the Banyumas Religious Court. This form of research is a descriptive qualitative field study in which interviews, observation, and documentation are used to collect data. This study used interviews, observation, and documentation as data collection techniques. Using both primary and secondary data, the analysis of data was conducted using an inductive method. The findings of this study indicate that urgency in the Banyumas Religious Court has been deemed successful, but not yet effective, due to the low success rate of mediation, while the inhibiting factors for mediation include the absence of one of the parties, economic factors, an understanding of cheating by the parties, and a continuous stream of disputes.*

**Keywords:** *Mediation; Divorce; Urgence*

### ABSTRAK

Mediasi merupakan salah satu bentuk alternatif penyelesaian sengketa di dalam pengadilan maupun di luar pengadilan untuk mencapai sebuah kesepakatan dibantu oleh mediator agar terlaksananya kejujuran, keterbukaan, dan bertukar pendapat antar pihak agar tercapainya mufakat. Maksud dari penelitian ini yaitu untuk mengetahui proses dan factor keberhasilan mediasi di Pengadilan Agama Banyumas. Jenis penelitian ini merupakan jenis penelitian lapangan dengan pendekatan kualitatif deskriptif sementara Teknik pengumpulan data dilakukan dengan cara wawancara, observasi dan dokumentasi. Teknik pengumpulan data pada penelitian ini menggunakan hasil dari wawancara, observasi dan dokumentasi. Analisis data dilakukan dengan pendekatan induktif menggunakan data primer dan sekunder. Hasil penelitian ini mengemukakan bahwa urgensi di Pengadilan Agama Banyumas telah dianggap berhasil, namun belum efektif dikarenakan tingkat keberhasilan mediasi yang masih rendah, sementara faktor penghambat mediasi salah satunya dengan adanya ketidakhadiran dari salah satu pihak, faktor ekonomi, pemahaman selingkuh oleh para pihak, dan perselisihan terus menerus.

**Kata kunci :** *Mediasi; Perceraian; Urgensi*

## **A. Introduction**

The Islamic religion regards marriage as a noble and holy institution that strives to worship Allah in accordance with the Prophet's teachings and is conducted on the basis of sincerity, responsibility, and observance of applicable legal requirements. In the Republic of Indonesia Law Number 1 of 1974 pertaining to Marriage, Chapter I, Article 1, marriage is defined as a physical and spiritual bond between a man and a woman as husband and wife, with the intention of establishing a joyful and eternal family (household) based on Belief in the One Supreme God. Every marriage will inevitably encounter conflicts, both minor and major issues that family members present. The incapacity of the husband and wife to manage the household results in the annulment of the marriage by court order or at the request of one of the spouses. Every married couple wishes to avoid divorce, as marriage is fundamentally an endeavor by male and female partners to form a harmonious family and strengthen bonds of friendship.

The majority of divorce cases in Indonesia in 2022 will be contested divorces or divorce litigation initiated by the woman and decided by the court. Approximately 388,359 cases or 75.20 percent of the total divorce cases in Indonesia last year fall into this category. On the other hand, 127,986 divorces, or 24.78% of all divorces, were the result of divorces initiated by the husband and decided by the court. Multiple factors contribute to the high number of divorces, including domestic violence, infidelity, and economic difficulties (Rinaldo, Nisa, and Nurmila 2022)

In a divorce continuing, the judge who is the panel's chairman proposes mediation to the plaintiff or applicant and the respondent or defendant who applied for divorce. In reality, the goal of marriage is not to end in divorce, because the beginning of marriage has a purpose for good, such as achieving a tranquil household in accordance with Islamic requirements (*sakinah mawwa'ah wa rahmah*), making it the basis and focal point. The direction of this marriage is supported by a variety of objectives, such as the motivation behind (alternate age), to satisfy lust (sex) desires,

and to safeguard household honor and harmony.

Therefore, the Islamic religion prohibits divorce and recommends marriage, as the decision for divorce contains many negative aspects. If a divorce occurs without cause, it should be a problem that contradicts Islamic religious teachings that the marriage phase has ended. Among the consequences of divorce for the spouse, wife, and their children is the potential for conflict and conflict between families, which is prohibited. Therefore, if there is a dispute, Islam promotes peace through mediation mediated by a mediator, if the appointed mediator from the community is one of the religious leaders, but at the time of resolving the case in the religious court, the mediator will continue to hold the role of intermediary.

Mediation is a procedure for resolving conflicts in which an impartial third party works with disputing parties to help them reach a fair agreement. The mediator does not have the authority to adjudicate disputes between the parties, unlike judges or arbitrators. In this case, however, the parties defer to the mediator for assistance in resolving their differences. According to him, third parties will be able to alter power by influencing the personal characteristics of the parties through more effective knowledge or information transfer.

Thus, the mediator can assist the parties in resolving their differences. Even if a party believes it has the upper hand in a particular case, for the sake of maintaining social harmony and prosperity, that party may be required to renounce its position. In order to uphold the applicable norms and ethics, "the third party serving as the problem's arbitrator must be a well-known and morally upright member of society," This situation is very concerning, as the increase in divorce cases in Banyumas is very high, even though the constructed homes are intended to last forever. In fact, it is still possible to mediate these disputes so that the parties are able to comprehend and absolve each other's actions. Mediation is ideally suited for use in accordance with Indonesian culture, particularly for resolving family disputes while maintaining harmony and confidentiality. As a result of its many benefits, mediation is anticipated

to be an effective dispute resolution option in Indonesia. (Teguh Anindito et al)

In Indonesia, the government has regulated and adapted divorce mediation provisions to the Religious Courts. As stated in Islamic law compilation article 76, paragraph 2, regarding the appointment of a mediator. The extremely low success rate of mediation in the Banyumas Religious Court compels researchers to address the importance of mediation in the Banyumas Religious Court. Settlement of divorce cases should be a matter of urgency; by presuming that mediation is an urgent or essential matter, the urgency of mediation recognizes the significance of maintaining the marriage due to the magnitude of negative influences that ensue after a divorce. In addition to the smooth discussion in divorce cases conducted by religious court judges, one of which is to be reviewed, during the marriage the disputing parties are reconciled and can continue their marriage, mediators must consider acceptance after mediation in order for mediation to be successful.

## **B. Method**

This study employed qualitative research with a type of field research, namely research conducted by actively looking for data in the field. This study employs both primary data and secondary data as the sources of its data. Several data collection techniques, including interviews, observations, and documentation, are employed to collect data in field research, specifically interviews, observations, and documentation. In qualitative research, data analysis generally progresses inductively, i.e., from data/facts to a higher level of abstraction (Ahyar & Juliana Sukmana, 2020).

## **C. Results and Discussion**

Urgency The Big Indonesian Dictionary (KBBI) defines urgency as a requirement need or something of great importance. According to Latin, urgency is the action term "urgent" which means urgent. In the meantime, urgency is derived from the English word "urgent" (descriptor), while in Indonesian it is referred to as "urgency" (object). The definition of urgency refers to something that compels us to

take immediate action. Therefore, it is presumed that there is a problem that requires immediate resolution. (Masdianto, n.d.). Mediation According to Article 1 of PERMA Number 1 of 2016, mediation is a method for resolving cases through a consensus procedure in order to obtain a solution for the parties mediating with the Mediator (Regulation of the Supreme Court of the Republic of Indonesia, n.d.). Dodi Guari Putra (2002) argues that mediation is a method for resolving disputes through a negotiation process in which a mediator assists the parties in reaching an agreement. Mediation can also be referred to as a dispute resolution alternative. In Islam, mediation is known as *Ihlah* (improvement). According to Masdianto (n.d.), *syara* is an agreement which seeks to solve a problem for both parties.

The reconciliation process has been governed by the legal basis for mediation, namely *Herzien Inlandsch Reglement (HIR)* Article 130 and *Rechtreglement voor de Buitengewesten (RBg)* Article 154. Before conducting an examination, the judge must reconcile the parties to the dispute. Supreme Court Regulation (PERMA) No. 1 of 2016 pertaining to court mediation procedures. (Sunarto, 2019b). PERMA No. 1 of 2016 outlines the principle governing the obligation to conduct integrated mediation in court (court-connected mediation), namely that mediation must be conducted. Before a judge investigates a dispute and renders a decision, the parties must first engage in mediation. Before the judge examines the dispute and renders a decision, the parties must first engage in mediation. Mediation is done to save time. PERMA No. 1 of 2016 governs the mediation period of up to 30 days following the issuance of a mediation order. The mediation process must be open to the public and have a certified moderator in order for the parties to reach the best resolution feasible (Handayani et al., 2017).

The urgency of mediation can be based on the factors that influence the success of mediation, specifically the Mediator Factor. The Mediator is one of the most important factors for the success of mediation, as it does not preclude the possibility of extremely difficult to resolve disputes. A peace agreement can be reached because of the mediator's skill and expertise in guiding the mediation process. Next is the factor

of the community's mentality, the mentality of a society. The higher the intellectual level of a society, the greater the growth of a person's mind. People with a proper religious environment, such as those in the madrasah learning circle, will find it more challenging to mediate using a spiritual-religious approach than those who lack a strong religious knowledge basis. This is since people with in-depth religious knowledge perceive the mediator to be a government party whose role is to aid the administrative process in court. Those with limited religious knowledge, meanwhile, view mediators as clerics whose opinions must be considered (Ritonga et al., 2015).

The mediation procedure is based on PERMA No. 1 of 2016. In the past, a summary of the problem, which was determined by Article 24 paragraph (1), was prepared. Now, within five working days after an agreement is reached regarding the desired mediator, the litigants can provide each other and the mediator with case summaries. Then, continue with the mediation procedure. Article 24 paragraph 2 specifies that the duration of the mediation procedure is thirty days and that it commences upon the issuance of the order to mediate. The duration of the mediation procedure may be extended by 30 days, beginning at the end of the initial period, if all parties agree. If, during the mediation process, the mediator is aware that there are assets or assets or interests in the mediated case that are clearly related to other parties who are not named in the complaint and therefore cannot become parties in the mediation process, the mediator has the authority to determine that the case is ineligible for mediation due to incomplete parties. In addition, the parties may submit a peace agreement to the magistrate for incorporation into the peace deed. If the parties do not concur to the confirmation through a settlement agreement, the peace agreement must contain a claim withdrawal clause and/or a statement that the issue has been resolved. Article 32 stipulates that if no agreement is reached during the mediation process, the mediator must notify the judge in writing and clarify that the mediation process has failed. The judge will resume the examination in accordance with the applicable procedural law after receiving the notification (Sunarto, 2019a).

Talaq" or furqah are other terms for the divorce. Talaq is the establishment of a pledge or the termination of an agreement. While Furqah is now single. talaq and furqah have both general and specialized meanings. In a broad sense, it refers to all types of divorces decreed by a judge and imposed by the spouse. In contrast, in a special sense, it is a divorce imposed solely by the spouse (Ritonga et al., 2020). In religious court, the dissolution of a marriage can be attributed to death, divorce, or a court order. The basis for this is article 38 of Marriage Law No. 1 of 1974. The dissolution of a marriage due to divorce can occur as a result of litigation and settlements. In law) 59 No. 7 of 1989 pertaining to the Religious Courts, the term divorce has been subdivided into two forms: talak divorce and contested divorce. Talak divorce is a type of marriage dissolution initiated by the husband. In contrast, divorce is a form of marriage dissolution initiated by the woman. The law distinguishes between divorce at the wife's request and divorce for other reasons because Islamic law regarding divorce permits it. Therefore, the divorce process at the husband's request differs from the divorce process at the wife's request (Mediasi et al., n.d.).

Mandatory divorce mediation at the Banyumas Religious Court The categories of cases received between 2020 and 2022 are dominated by divorce cases, according to the findings of this study. In the period from 2020 to 2022, approximately 7,090 cases will be filed with the Banyumas Religious Court, and approximately 5,938 cases will be filed, indicating that approximately 83.77 percent of the cases at the Banyumas Religious Court are divorce cases. There were 4,502 contested divorces and 1,436 talak divorces before the Banyumas Religious Court. The remaining 1,152 cases included marriage dispensation, marriage certificates, and other non-divorce matters. Every divorce case settlement in a religious court must involve mediation because mediation is a tool for addressing cases in the Banyumas Religious Court and must be followed by parties filing a contested or uncontested divorce case. This is due to the fact that mediation is an imperative or significant matter that must be present in the trial of divorce issues before the Religious Courts, including the Banyumas Religious Court.

Mediation is urgent, and it can be said that mediation is urgent because the Mediation Procedure administered in court is a part of civil procedural law, which mandates that every civil case must undergo mediation prior to its settlement. Article 130 of the extant civil procedural law decisions makes this clear. The updated Indonesian regulation *Het Herziene Inlandsch Reglement*, *Staatsblad 1941:44* in civil procedural law encourages parties to engage in a peace process that can be carried out through mediation by incorporating it into the court's procedure section. The legal basis for mediation is governed by the Supreme Court of the Republic of Indonesia Regulation No. 1 of 2016 regarding mediation procedures in court.

Nor Solichin's interview in this study revealed that mediation activities are factors that must be considered to determine the urgency of mediation in a religious court, such as the Banyumas Religious Court. These factors include the success factors of mediation, the inhibiting factors for mediation success, and the judge's view of the urgency of mediation in court religion. Based on interviews conducted for this study, the success factors of mediation at the Banyumas Religious Court suggest that factors from the parties are required to support the success of mediation at the Banyumas Religious Court. The source stated that in addition to good faith, other factors could also play a role in the success of mediation at the Banyumas Religious Court, one of which was when both the complainant and the reported confessed to each other's mistakes, and had the intention to improve themselves and attempt to fix the problems that caused the disputes or misunderstandings.

According to an interview with N regarding the phases of mediation at the Banyumas Religious Court, at the first trial mediation was mandatory. When mediation was not conducted, it was invalid. The peace process through mediation at the Banyumas religious court is the same as mediation in other religious courts, in which, at the stage of the mediation process, the parties are given the option of appointing a mediator from a judge or a mediator other than a judge; if the mediator is chosen from outside the judge, the parties will be charged an additional fee of 100,000 rupiah.



The mediator at the Banyumas Religious Court must schedule time to conduct discussions prior to carrying out mediation activities. If the mediation reaches an agreement and brings peace, a written summary must be drafted and signed by all parties and the mediator. The accord or agreement reached during mediation with legal counsel present must be memorialized in writing. The parties are required to disclose the results of the peace agreement to the judge at the appointed session time. The parties may present the results of the peace agreement to the judge in the form of a "Deed of Peace" to be formalized.

To determine the level of urgency of mediation in a high court, the success factor of mediation is used to determine the level of urgency. Based on interviews conducted for this study, the success factor of mediation at the Banyumas Religious Court suggests that a competent mediator factor also influences the success of mediation. This is due to the fact that a competent mediator will seek the parties to reach the best deal and find a solution to the problem. Moreover, the success of mediation at the Banyumas Religious Court is contingent upon the parties' positive intentions and efforts. In addition to good faith, the source stated that other factors can contribute to the success of mediation at the Banyumas Religious Court. One of these factors is when both parties admit each other's mistakes, have the intention to improve themselves, and attempt to resolve the issues that have led to disagreements or misunderstandings. In his household, leading to one of the parties applying for divorce.

Divorce cases at the Banyumas Religious Court are typically decided *Verstek*. A case is decided *verstek* when one of the defendants (the accused party) is not present or represented during the trial procedure. In this instance, the absent party is considered to have neglected or not responded to the other party's lawsuit or demands. Mr. Nur Solichin, a judge at the Banyumas Religious Court, stated that approximately 1,800 divorce cases were submitted, of which approximately 1,500 were decided via *verstek* and the remaining 300 were cases that could be resolved through mediation.

Second, the economic factors of the parties, the results of this study revealed that

economic factors dominated the majority of the reasons presented by the parties in divorce cases at the Banyumas Religious Court. Economic factors such as unemployment, financial hardship, and economic instability can exacerbate marital conflict and ultimately lead to a rise in divorce rates. The issue that is frequently cited by the party filing for divorce is that the husband's income is insufficient to support the couple's married existence. This is typically stated by the woman filing for divorce. Not only is a spouse required to provide his wife with a means of subsistence, but he must also meet the wife's desires for a means of subsistence. Needs are limited, such as daily food needs and children's needs, such as education costs, which must be met by the spouse, whereas wants are unlimited, such as non-essential needs, such as vacations, purchasing cosmetics, and so on. Living in meeting needs is the responsibility of the husband, whereas desires are not something that must be fulfilled by the husband. The wife who considers needs and desires to be the same thing and to be fulfilled by the husband becomes the primary source of conflict in the home, which ultimately leads to the husband's involvement. The basis for the wife's divorce petition was the husband's inability to pay maintenance.

The community's comprehension of providing a living is also a factor impeding the success of mediation. The wife believes that a living need and a living want are the same thing, despite her ignorance of Banyumas's economic status. Banyumas is a region with a minimum income or the lowest Regional Minimum Wage (UMR) in Indonesia, so the husband's income is insufficient to cover their daily requirements. Understanding and acceptance from the community regarding UMR must be balanced with managing daily requirements so that there are no marital issues that result in divorce due to the husband's inability to provide. This condition must not only be comprehended by the community, but the government may also increase the UMR for the Banyumas community in order to prevent an increase in divorces before the Banyumas Religious Court.

Third, persistent disputes. This study found that the recurrence of disputes

between the parties as a result of their divergent views on the management of the household impeded the success of mediation and contributed to divorce. For instance, religious philosophies or schools of thought may differ. Mediation seeks harmony between the parties and does not favor one side, so that neither side feels intimidated or intervened upon unilaterally. Examples of religious disagreements, or different schools of thought, include husbands requiring their wives to don the niqab and wives being forbidden from meeting with individuals whose rules are not in accordance with the wife's beliefs and understanding. Divorce is easily precipitated by differences of opinion within the context of a marriage, which hinders the success of mediation in the Banyumas religious court.

Fourth, the comprehension of the affair by one of the parties was found to be a factor in divorce cases in the Banyumas religious court, as one of the parties was aware of the affair. Infidelity in the home can affect the stability and harmony of marital relationships and, in some instances, can be the primary reason a couple files for divorce. Mr. nor solichin cited a case in which the wife received a gift that turned out to be an online order from the wife sent by courier. The husband then accused the wife of using online motorcycle transportation services to travel with another man, who turned out to be the wife. Without comprehending the definition of infidelity and the actions involved, these factors become the basis for the parties' conclusion that an affair is occurring in their household.

Mediation conducted on parties where one of them is accused or accuses their partner of having an affair will undoubtedly leave the parties with wounded feelings; the mediator is hindered in reconciling the parties; and mediation can be deemed a failure. In conclusion, prior to filing a divorce suit in a religious court, the obstacles to the successful mediation of public comprehension of the definition of infidelity must be considered and explained. Based on the findings of this study's interviews. According to researchers, the failure of mediation in the Banyumas Religious Court is caused by factors intrinsic to the parties, which are typically economic in nature. Most

failed mediations in the Banyumas religious court are a result of the economy, particularly the wife's demands for a living from her husband, as well as the low UMR rate in Banyumas, which causes people's income to be insufficient to meet their daily requirements.

#### D. Conclusion

Urgency Mediation at the Banyumas Religious Court was successful, but not yet effective, due to the fact that the success rate of mediation there was still delayed by individuals who lacked an understanding of the issues involved in the filed cases. Factors impeding the success of divorce mediation at the Banyumas religious court include verstek decisions (absence of one party), economic factors of the parties, the parties' comprehension of the situation, and ongoing disputes.

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