

Divorce Mediation at Religious Courts in Pasangkayu during the Covid-19 Pandemic: Socio-Juridical Analysis

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¹Divorce Mediation at Religious Courts in
Pasangkayu during the Covid-19 Pandemic:
Socio-Juridical Analysis

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ABSTRACT

¹This article describes the application of divorce mediation and explains the factors that influence mediation practices during the Covid-19 pandemic at the Religious Courts in Pasangkayu. As part of the alternative settlement of disputed cases, mediation has changed its implementation, including in the practice of law in religious courts. This study uses a socio-juridical approach to examine qualitative data obtained from field research through observation, in-depth interviews, and documentation. This study presents three conclusions. First, divorce mediation includes pre-mediation, which is carried out privately, and its implementation is based on the situation. Second, several enabling and inhibiting factors influence the practice of meditation. Third, from a socio-juridical perspective, mediation is a construction guided by the principle of agreement carried out through deliberation and consultation regarding disputes. In addition to adhering to a positive legal system, mediation in religious courts in Indonesia attaches to the Regulation of the Minister of Religious Affairs Number 1 of 2006 and the process of judging (*tahkim*) procedure in Islamic law. The influence of local customs and culture on the implementation of mediation in religious courts is not by the objectives of Islamic law and positive law, which is oriented toward the peaceful settlement of disputes and good faith.

ARTICLE
INFORMATION

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1. Introduction

The divorce rate in Indonesia has shown an increasing trend in recent years. Experts do not consider the Covid-19 pandemic as a factor affecting the choice of two couples to file for divorce. Instead, domestic problems and the inability to manage domestic conflicts encourage couples to resolve their issues through a divorce.¹

The assumption of a couple for the lack of one of them causes the inability to meet household needs, leading to the agreement of husband and wife in the household to separate. If this condition is maintained, household problems will be more complicated to solve. In Islamic doctrine, divorce needs to pay attention to aspects of the common good, especially if the household problems faced by the couple from a marriage do not find common ground and peace.

Divorce statements are commonly submitted by husbands and are called the legal ending of a marriage (*talaq*) statement. However, under the same conditions, the wife has the same right to file a divorce suit against her husband. The legal system in Indonesia regulates divorce settlement through the roles and responsibilities of the Religious Courts as the third party handling divorce cases, whether the husband or vice versa, submits it.²

This provision has been regulated by Article 49 in Law Number 50 of 2009, the second amendment of Law Number 7 of 1989 concerning religious courts, which explains that the Religious Courts have the authority to resolve divorce lawsuits.³

The Office of the Religious Courts in Pasangkayu Regency, West Sulawesi Province, is part of the judicial system in Indonesia under the Supreme Court. According to the office's records, the number of divorce cases in its working area during the 2019 to 2020 period showed an increase. When the Covid-19 pandemic began to spread in 2019, there were 219 divorce cases. This number increased by 225 in 2020 when the spread of Covid-19 has spread evenly to all provinces in Indonesia, West Sulawesi is no exception.

Covid-19 is not the main factor that causes an increase in the number of divorce cases. Instead, the effectiveness of the mediation process is often the main reason behind divorce decisions taken by couples in the household. The mediation process in judicial practice in the Religious Courts is intended to assist litigants in resolving their problems amicably and based on empathy. Thus, the judiciary can suppress the increase in

¹Rais, I. (2014). *Tingginya Angka Cerai Gugat (Khulu') di Indonesia; Analisis Kritis Terhadap Penyebab dan Alternatif Solusi Mengatasinya*. *Al-'Adalah*, 12 (01), 191.

² Abidin, Ismail, and Lukman Thahir, "The Efforts of the Office of the Religious Affairs of

South Palu in Resolving Marriage Conflicts," *International Journal of Contemporary Islamic Law and Society*, 1, No. 1 (2019), 60.

³ R. Rambe and A. M. Agafi, *Implementasi Hukum Islam* (Jakarta: Perca, 2001), 59.

divorce cases.⁴ As a consequence, a mediator appointed by the Religious Courts is required to have criteria such as patience, tenacity, and being able to animate the characters of the two disputing parties.⁵ Furthermore, mediators need to be aware of their impartial position, not taking sides with either of the two conflicting parties and being able to position themselves as their discussion partners.

The implementation of the mediation stages in the trial section is carried out non-litigation to save the household from divorce. Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2016 states that the primary purpose of mediation is to produce good faith as the beginning of avoiding divorce. However, several academic publications indicate that the availability of adequate facilities and the availability of certified mediators are often barriers to the effectiveness of this process.⁶

Based on the description of divorce cases and the significance of the mediation process behind each divorce judgment, this study aims to describe the form of mediation practice held at the

Pasangkayu Religious Court during the Covid-19 pandemic.

2. Literature Review

2.1. Mediation

The position of mediation in judicial practice in Indonesia can be understood based on its literal meaning. According to Abbas, mediation comes from *mediare*, which means middle.⁷ Thus, the mediation process is in the position of a third party or the middle between two disputing parties in court. As a mediator, the mediator is required to not take sides with one of the litigants and be able to gain the trust of both conflicting parties in court. Furthermore, the mediator emphasized finding a way of peace and justice for both parties.

In practice, the mediation process has three elements. *First*, the involvement of two individuals or parties in the dispute; *second*, the disputed case can be resolved by parties outside of the two disputing parties;⁸ and *third*, the party appointed to neutralize the disputed issue does not have the authority to make decisions. It should be underlined that the litigating parties are not limited to cases between individuals, but also cases between two parties collectively.⁹ In his capacity as a mediator, the mediator examines the problems disputed by the

⁴ M. Saifullah, "Integrasi Mediasi Kasus Perceraian dalam Beracara di Pengadilan Agama," *Al-Ahkam*, 24, no. 02 (2014), 249.

⁵ Erniyanti, Mukidi, Syahrul Bakti Harahap, Nelvitia Purba, "Divorce Settlement Due to Home Violence During the Pandemic Covid-19 in Medan City," *International Journal Of Social, Policy And Law (IJOSPL)*, 02 no. 3 (2021), 20.

⁶ Marzuki, Abidin, & Hilal Malarangan, "Effectiveness of The Implementation of Supreme Court Regulation Number 1 Year 2016 on Divorce Settlement," *International Journal of Contemporary Islamic Law and Society*, 3 no. 01 (2021), 29.

⁷ G. Sumartono, *Arbitrasi Dan Mediasi di Indonesia* (Jakarta: PT Gramedia Pustaka Utama, 2006), 106.

⁸ S. Abbas, *Mediasi dalam Perspektif Hukum Syariah, Hukum Adat, dan Hukum Nasional* (Jakarta: Kencana Prenada Group, 2009), 94.

⁹ Adiyono, "Mediasi Sebagai Upaya Hakim Menekan Perceraian Di Pengadilan Agama," *Al-Ihkam*, 08, no. 01 (2013), 129.

two parties and provides consideration of alternative solutions.¹⁰

Gary Goodpaster also put forward a similar definition and understanding of mediators. In his view, the mediator has broad authority as a third party over the trust given by the court and the litigants. Thus, the mediator can play an active role in finding alternative dispute resolution peacefully even though the final decision from the court is not part of the mediator's task. The role of an impartial and active mediator ensures the functions and benefits of the mediation process, which aims to provide a sense of justice, win-win solutions, and direct participation of litigants in court.¹¹

The role of an impartial and active mediator ensures the function and benefits of the mediation process, which aims to provide a sense of justice, win-win solutions, and direct participation of the litigants in court. The informal settlement of cases, as in mediation, can also fulfill each participant's emotional and psychological needs. In this way, mediation is not only focused on fulfilling legal rights but also on eliminating conflicts that often accompany every decision handed down

by judges in courts or arbitration institutions.¹²

The Supreme Court of the Republic of Indonesia referenced the definition and concept of mediation. Through its regulations, the judiciary establishes a policy that accommodates the rights of the parties who wish to settle cases through a mediation process with four primary objectives. First, the mediation process is expected to overcome the problem of the accumulation of cases in court. Second, the mediation process is seen as a faster and more efficient way of resolving disputes than litigation. Third, the implementation of mediation is expected to expand access for the parties to obtain a sense of justice. Fourth, institutionalizing the mediation process into the judicial system can strengthen and maximize the judiciary's function in resolving disputes.¹³

2.2. Divorce

Islamic jurisprudence uses the term *thalaq* in a divorce between husband and wife.¹⁴ Given the sacredness of marriage, although it is permissible, divorce is not recommended in Islamic teachings. By fiqh experts, the practice of divorce is

¹⁰ D. Spencer and M. Brogan, *Mediation Law and Practice* (Cambridge: Cambridge University Press, 2006), 87.

¹¹ R. Antasari, "Pelaksanaan Mediasi dalam Sistem Peradilan Agama (Kajian Implementasi Mediasi dalam Penyelesaian Perkara di Pengadilan Agama Kelas I A Palembang)," *Intizar*, 19, no. 1 (2013), 152.

¹² Syafliwari, F. Handayani, "Implementasi Mediasi Dalam Penyelesaian Perkara Perceraian di Pengadilan Agama," *Jurnal Al-Himayah*, 01 no. 02 (2017), 236-237.

¹³ Rifana Tunajah, "Implementasi PERMA Nomor 01 Tahun 2016 Tentang Prosedur Mediasi Di Pengadilan dalam Menyelesaikan Sengketa Perceraian (Studi Kasus Di Pengadilan Agama Serang)." *Syakhsia: Jurnal Hukum Perdata Islam*, 19 no. 02 (2018), 305.

¹⁴ S. Sabiq, *Fikih Sunnah (Jilid 2)*, Muhammad Nasiruddin Al-Albani (ed.) (Jakarta: Cakrawala Press, 2008), 332.

based on the verses of the Qur'an in Surah al-Baqarah (2): 226-227.¹⁵

"Those who swear not to have intercourse with their wives must wait for four months. If they change their mind, then Allah is certainly All-Forgiving, Most Merciful; But if they settle on divorce, then Allah is indeed All-Hearing, All-Knowing."

Based on this verse, Islamic jurists formulated five legal categories based on divorce contexts.¹⁶ *First*, it is mandatory if a partner cannot be achieved by husband and wife. In this section, the judge has the authority to pass a divorce decision in the *ba'in sughra* category. *Second*, it is haram because the reasons proposed are not justified by Islamic law and positive law or are detrimental to both parties. *Third*, it is permissible for reasons that the Shari'ah tolerates. *Fourth*, divorce is *sunnah* when husband and wife neglect their obligations to fulfill God's rights.¹⁷ Finally, it is *makruh* if the husband decides to divorce because he wants to remarry for the sake of having children or is afraid of having sex outside of marriage.¹⁸

In Indonesia, the legal basis for divorce rests on Law Number 16 of 2019, Amendments to Law Number 1 of 1974. In addition to these two regulations, a

judge can determine divorce based on other laws that reflect the substance of the act, resulting in the household is unable to settle maintained.

2.3. Covid-19 Pandemic

The World Health Organization (WHO) defines a pandemic as an unstable condition in the lives of countries in various parts of the world due to a pandemic originating from an outbreak and spreading widely.¹⁹ It is suggested that the epidemic occurred simultaneously and continues to spread. This understanding is no different from the classical definition in health science, which states that the pandemic is a cycle that occurs in most countries in the world to affect the activities of individuals, groups, organizations, and governments.²⁰

Covid-19 is one of the pandemic outbreaks that began to spread massively in early 2019. This variant of the virus not only interferes with human health but also affects interactions in human life, both social and cultural aspects.²¹

To reduce the spread of the virus, governments in various countries have implemented different strategies, ranging from limiting human movement between city and state borders to administering

¹⁵ Wahbah Az-Zuhaili, *Fiqh Islam Wa Adillatuhu*, trans. Abdul Hayyie al-Kattani (Jakarta: Gema Insani, 2011), 41.

¹⁶ Yulia, *Hukum Perdata* (Lhokseumawe: CV. BieNa Edukasi, 2015), 88.

¹⁷ R. Subekti, *Pokok-Pokok Hukum Perdata* (Jakarta: Intermasa, 1985), 75.

¹⁸ A. G. Anshori, *Hukum Perkawinan Islam (Perspektif Fikih Dan Hukum Positif)* (Yogyakarta: UII Press, 2011), 91.

¹⁹ M. M. Sari, N. Ardian, and Erwansyah, "Pengaruh Covid-19 Terhadap Perekonomian Masyarakat di Desa Lantasan Lama Kecamatan Patumbak Kabupaten Deli Serdang Sumatera Utara," *Jurnal Manajemen Tools*, 13 no. 01 (2021), 66.

²⁰ A. Tristanto, "Perceraian di Masa Pandemi Covid-19 dalam Perspektif Ilmu Sosial," *Sosio Informa*, 06 no. 03 (2020), 294.

²¹ J. Ranjabar, *Sistem Sosial Budaya Indonesia: Suatu Pengantar* (Bogor: PT Ghalia Indonesia, 2006), 24.

vaccines to all levels of society. As a result of these restrictions, many individual and group activity agendas were canceled.²²

The Covid-19 pandemic has also impacted judicial practice in court institutions under the coordination of the Supreme Court. Trials previously held offline are now conducted online through the e-litigation trial system. This system is part of the Supreme Court's efforts to provide legal certainty for the community. The trial implementation by e-litigation covers all judicial institutions, including the Religious Courts.²³

2.4. Socio-juridical mediation

Law is often the result of a typical construction formed through interactions between individuals and groups. The results of this construction are internalized into the individual and then socialized into the surrounding environment. This internalization is part of legal institutionalization in everyday life. Like law, mediation also arises from the construction of awareness of noble values guided by society in general, such as harmony and deliberation.²⁴ From the

perspective of Islamic teachings, mediation has similarities with the concept of *ishlah*, which is placed as a process of peaceful conflict resolution under the objectives of *sharia*. The emphasis on the substance of mediation shows the parallels between the practice of Islamic law and positive law.²⁵ The search for a peaceful way in civil cases heard at the District Courts and Religious Courts prove this parallel.

Regulations of the Supreme Court have required peace through mediation up to the main stage of the case. In other words, even though it has entered the trial stage, the judge is obliged to accept an amicable effort as long as both parties to the litigation want it.²⁶ This principle is in line with the moral guidance in establishing laws based on the theory of *tahkim* in Islamic jurisprudence places mediation towards peace as a determining factor in family law cases, as regulated in the Qur'an Surah al-Nisa` (4) verse 35:

"If you anticipate a split between them, appoint a mediator from his family and another from hers. If they desire reconciliation, Allah will restore harmony between them. Surely Allah is All-Knowing, All-Aware."

Ibn Kathir interprets the verse as a recommendation to involve a third party representing two disputing parties in the household. These third parties, respectively, represent the husband and

²² H. A. Yanuarita, S. Haryati, "Pengaruh Covid-19 terhadap Kondisi Sosial Budaya di Kota Malang dan Konsep Strategis dalam Penanganannya," *Jurnal Ilmiah Widya Sosiopolitika*, 2 no. 2 (2020), 62.

²³ D. Safitri, B. Waluyo, "Optimalisasi Kebijakan Sistem Peradilan Pidana secara Elektronik di Masa Pandemi Covid-19," *Justitia: Jurnal Ilmu Hukum dan Humaniora*, 08 no. 02 (2021), 282.

²⁴ N. Salam, "Mediasi Lokal sebagai Model Utama Penyelesaian Kasus Perceraian Masyarakat Muslim Kalisat Pasuruan" *ISLAMICA: Jurnal Studi Keislaman*, 12 no. 01 (2017), 143-144.

²⁵ S. Sabiq, *Fikih Sunnah (Jilid 2)*, 330.

²⁶ A. Manan, *Etika Hakim dalam Penyelenggaraan Peradilan, Suatu Kajian dalam Sistem Peradilan Islam* (Jakarta: Kencana, 2007), 88.

wife parties. They consulted to find a peaceful solution between the two warring parties.²⁷

Legal institutionalization that comes from the construction and internalization of societal values is part of the socio-juridical discussion. The structure, substance, and legal culture are three aspects introduced by Lawrence M. Friedman as an approach in socio-juridical studies. However, a legal construction cannot be separated from social agreements in certain areas. In this article, the description of the socio-juridical aspects of divorce mediation at the Religious Courts of Pasangkayu Regency uses Freidman's theory.²⁸

3. Methodology

This is a qualitative study with field research at the Religious Courts of Pasangkayu Regency. Field research aims

circumstances and cycles of individual, collective, and institutional interactions in society. In continuation, this study shows the socio-juridical aspects behind the mediation practice at the court institution.

Field data collection using observation techniques, semi-structured interviews, and documentation matches the results of the two previous techniques. The existing data was then analyzed in three steps, starting with data reduction, presentation, and data verification as part of formulating conclusions and recommendations.

4. Result and Discussion

4.1 Divorce Mediation in the Covid-19 Pandemic Era at the Pasangkayu Religious Court

The implementation of mediation in the Religious Courts is carried out in a

No.	Nama/NIP	Jabatan	Pendidikan
1.	Amar Ma'ruf, S. Ag., M.H. NIP. 197807082007041001	Hakim Madya Muda/ Ketua	S2 Fakultas Hukum
2.	Mazidah, S. Ag., M.H. NIP. 197808132006042002	Hakim Pratama Utama/ Wakil	S2 Fakultas Hukum
3.	Muh. Irfan, S.H. NIP. 199504152017121004	Hakim Pratama Muda	S1 Fakultas Syariah

Attachment to the Decree of the Head of the Religious Court of Pasangkayu Regency
List of Mediators

to comprehensively understand the

secure manner because divorce is a very confidential Islamic civil case. The closed meaning in this sense is that mediation is only attended by a mediator judge, a third party who bridges the litigation parties.²⁹ The presence of both parties,

²⁷ M. N. Rifai, *Ringkasan Tafsir Ibnu Katsir* (Jakarta: Gema Insani, 2008), 239.

²⁸ S. L. Sulistiani, Encep Abdul Rojak, Vera Fadillah Marufin, "Analisis Hukum Tentang Upaya Mediator dalam Meminimalisir Perceraian Di Pengadilan Agama Kelas 1A Kabupaten Indramayu (Studi Kasus Perkara Perceraian Tahun 2016-2018)," *Tahkim*, 02 no. 02 (2019), 72.

²⁹ R. Saragih, "Implementasi Mediasi terhadap Perkara Perceraian di Pengadilan
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both the defendant and the plaintiff, is not required. Therefore, they can be represented by a lawyer or a representative who has obtained permission from the disputing parties.³⁰

The spread of the Covid-19 pandemic to Pasangkayu prompted the local Religious Court to hold mediation flexibly by considering the level of pandemic distribution in each region issued by the Central Government. When offline mediation with strict health protocols cannot be held, virtual mediation is chosen based on legal certainty. The practice of mediation in judicial institutions in Indonesia is divided into two stages: pre-mediation and mediation stages. Due to the pandemic, changes occur at both stages.

4.1.1. Pre-mediation Stage

Pre-mediation is the initial stage. At this stage, the judge is appointed to examine the files of the newly registered divorce suit by preparing the steps before the mediation moves to the next stage. The pre-mediation stage includes seven steps, including:

- a. Judges who are appointed to examine cases registered by both parties in court are ordered to first carry out mediation as an implementation of Article 17 of the Supreme Court Regulation Number 1 of 2016.
- b. The judge appointed as the presiding judge in the trial

requires the adjournment of the trial to make time for each litigating party to carry out mediation.

- c. Examination of files by the mediator and signing of the mediation explanation form by both parties to the case.
- d. Before the mediation is carried out, the parties are given the authority to choose one or more than one appointed mediator who has been registered with the court.
- e. If the parties cannot determine a mediator within two days, then they are required to submit this to the Chair of the Panel of Judges.
- f. The chairman of the panel of judges who examined the case files determines the mediator from the judge. The panel of judges continues the determination of the mediator to the Chief Justice of the Court in order to provide a Decision Letter on the appointment of a mediator from the judge in court. In connection with the last point is the Decree of the Head of the Religious Court of Pasangkayu Regency regarding the appointment of a divorce case mediator with the number W20-A26/114/HK.05?SK/IX/2021.
- g. The authority is given to the mediator judge to determine the schedule for the implementation of the mediation. The litigant parties must carry out the mediation process in good faith. If one of the parties shows otherwise, the other party has the

Agama Kabupaten Simalungun," *Jurnal Maksimum*, 01 no. 01 (2020), 14.

³⁰ D. Safitri, B. Waluyo, "Optimalisasi Kebijakan Sistem Peradilan Pidana secara Elektronik di Masa Pandemi Covid-19."

right to withdraw from the mediation.³¹

4.1.2. Mediation Stage

When the litigants reach an agreement, the judge decides on the mediation process with the following stages:

- a. The parties are allowed to introduce themselves, and the mediator judge has the right to introduce himself to the litigants.
- b. The mediator explains to both parties the position and authority of the mediator judge.
- c. The mediator can schedule mediation according to suggestions from the litigants.
- d. The mediator judge gives the two parties involved in the divorce case the opportunity to present their reasons and, in turn, propose amicable settlements.³² At this stage, the mediator informs that the mediation process can be effective if the parties propose or consider all settlement solutions.³³
- e. The mediator can find a path to a peaceful settlement with an appeal for the two litigants to stop their respective ambitions and be open to reaching a mutual agreement. In this opportunity, the mediator can explain the advantages and disadvantages of making peaceful decisions, especially if both parties

to the litigation show reluctance to take this route. The mediation process that results in an agreement is recorded in the peace deed. In contrast, mediation that did not result in an agreement was written in the mediation result report.

Mediation practices at the Religious Courts in Pasangkayu Regency experienced dynamics during the Covid-19 pandemic. The Policy for Restricting Community Activities set by the Government of the Republic of Indonesia often changes as the number of people exposed to the virus forces the Religious Courts to adjust their judicial system. As a form of adjustment to changing conditions, the trial is conducted online. From a sociological perspective, the use of digital technology is a necessity as well as the beginning of the transformation of online courts in Indonesia. As for the mediation context, the Religious Courts maximize the caucus mechanism. This maximization can be seen from the statement of one of the mediator judges, Ms. Mazidah.

"The implementation of mediation during a pandemic allows the litigants to be more open in conveying their problems to the mediator, such as feelings of hurt, etc. We also hope that the caucus will become a space that provides proposals to generate goodwill, common ground, and amicable solutions between the two disputing parties."

Implementing the caucus in the Religious Courts refers to the provisions stipulated in the Regulation of the

³¹ Pengadilan Agama Pasangkayu, 2020.

³² Tim Permata Press, *Kompilasi Hukum Islam (KHI)* (Jakarta: Permata Press, 2005), 38.

³³ A. Kusumaningrum, Yunanto, B. Riyanto, "Efektivitas Mediasi Dalam Perkara Perceraian di Pengadilan Negeri Semarang," *Diponegoro Law Journal*, 06 no. 01 (2017), 7.

Supreme Court. As a follow-up, the Religious Courts Agency (Badilag) mentioned eight mediation conditions that require a caucus. Although not new, the Religious Courts in Pasangkayu Regency use caucuses to solve the limitations of mediation during the Covid-19 pandemic. For example, if one of the parties cannot convey their secret to the mediator due to the presence of the other party involved in the case, the caucus can be utilized by one of them.

The caucus at the Religious Courts in Pasangkayu Regency was carried out based on orders from the Head of the institution, as stated by Amar Ma'ruf.

"The head of the court only ordered the mediator to apply the health protocol in conducting mediation by prioritizing the implementation of the caucus method in the mediation process."

Divorce mediation at the Religious Courts in Pasangkayu Regency is carried out online to avoid spreading virus exposure. The entire procedure uses a video conferencing application as a mediation room which both litigants and the mediator judge attend. Online divorce mediation during the pandemic, from a socio-juridical perspective, is the result of reconciliation by considering the movement of society with the principle of justice in legal practice.³⁴

The resolution of household conflicts is also discussed in Islamic law through the *tahkim*. However, the concept of legality in Islamic

jurisprudence tends to be different from the legality of mediation in positive law. This difference lies in the appointment of a mediator. The fiqh experts from the schools of Hanafi, Shafi'i, and Hanbali adhere to the suggestion of the 25th verse that peacemakers are chosen by the husband's or wife's family and not by husband and wife directly. In contrast to the opinions of the three schools of law, Wahbah Zuhaili and Sayyid Sabiq assume that the mediator can be chosen by the parties who have the approval of both of them.³⁵

Opinions similar to the practice of mediation in religious courts in Indonesia can be seen in the views of Al-Sya'bi and Ibn 'Abbas. Both think the mediator in the *shiqaq* is chosen by the judge or the government. The opinions of these two scholars also stated that the selection of mediators must be in accordance with the provisions of the verses of the Qur'an, hadith, and the consensus of the generations of the Prophet's companions. Regardless of the differences of opinion, most scholars from each legal school agree on the concept of *tahkim* in settlement of household cases. *Tahkim* is the agreement of all disputing parties to submit their case decisions to third parties.³⁶

³⁴ M. Syaifuddin and A. Y. Sri Turatmiyah, *Pluralitas Hukum Perceraian* (Malang: Tunggal Mandiri Publishing, 2012), 81.

³⁵ N. Salam, "Mediasi Lokal sebagai Model Utama Penyelesaian Kasus Perceraian Masyarakat Muslim Kalisat Pasuruan."

³⁶ S. Nasution, *Arbitrase: Menjadi Penyebab Timbulnya Sekte-Sekte dalam Islam* (Riau: Yayasan Pusaka Riau, 2011), 78.

Apart from the differences between the provisions of mediation in positive law and Islamic law, both legal systems

4.2 Factors influencing divorce mediation during the Covid-19 pandemic

Month	Number of Cases	Cases cannot be mediated	Cases can be mediated	Mediation settlement report			In the mediation process	Remaining cases
				Unsuccessful	Success	Fail		
December (2019)	43	42	1	2	0	0	0	6
January	35	35	0	1	0	0	0	17
February	46	43	3	1	0	0	0	24
March	31	30	1	1	1	0	0	4
April	7	7	0	1	0	0	0	1
May	3	3	0	0	0	0	0	2
June	33	32	1	0	1	0	0	13
July	43	42	1	1	0	0	0	17
August	30	30	0	0	0	0	0	9
September	37	32	5	1	0	0	0	16
October	40	38	2	5	0	0	0	21
November	42	39	3	3	0	0	0	21
December	26	26	0	0	0	0	0	3
Total	416	399	17	16	1	0	0	154
(%)	100%	95%	4,08%	3,84%	0,24%	0%	0%	37,01%

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place mediation as a process of resolving household disputes in court by involving third parties. Moreover, the positive legal system and Islamic law have been integrated into judicial practice in religious courts in Indonesia. Thus, as stated by Lawrence M. Friedman, the presence of a global law can solve problems that occur in society. Likewise, other legal system functions are expected to play a role in carrying out the control function for creating social justice.

During the Covid-19 pandemic, especially from the end of 2019 to the end of 2020, there were 416 divorce cases mediated by judges at the Religious Courts in Pasangkayu Regency. However, Three hundred ninety-nine cannot be mediated because the litigants still want their divorce to be decided directly through the panel of judges' decision. The remaining 17 cases could be mediated, but only one resulted in a peace agreement between the two parties.

Unlike the previous period, the mediation report in 2021 shows an improvement in the performance of mediators at the Religious Courts in the Pasangkayu Regency. During this period, cases that could be mediated increased from 93 percent in the previous period to 83 percent. On the other hand, the cases that could not be mediated were only 0.77 percent. Likewise, cases that were mediated and could produce an agreement increased by 1.54 percent.

supporting factors. Two mediator judges, Mazidah and Muh. Irfan thinks that the improvement in mediation performance above cannot be separated from the capacity and qualifications of the mediator. In addition, negotiations between the litigants, the awareness of their respective religions, the interests of the children, and the existence of good faith from both parties are other factors that contribute to the success of mediation.

Month	Number of Cases	Cases cannot be mediated	Cases can be mediated	Mediation settlement report			In the mediation process	Remaining cases
				Unsuccessful	Success	Fail		
Januar	15	14	1	0	0	0	1	0
February	27	24	3	0	0	0	3	0
March	27	20	7	0	0	0	5	0
April	24	16	8	0	0	0	3	0
May	15	12	3	0	0	0	1	0
June	21	19	2	0	0	0	2	0
July	12	9	3	1	1	0	1	0
August	20	19	1	0	0	0	1	0
September	35	29	6	1	2	0	1	0
October	28	25	3	0	0	0	2	0
November	25	19	6	0	1	0	1	0
December	10	9	1	0	0	0	1	0
Total	259	215	44	2	4	0	22	0
(%)	100%	83%	16%	0,77%	1,54%	0%	8,49%	0%

Divorce Mediation Report Pasangkayu Religious Court
Period 2021

The increase in the number of divorce cases that can be mediated and lead to peace agreements at the Religious Courts in Pasangkayu Regency cannot be separated from

Although the number of successful mediation has increased, this fact does not yet fulfill the idealization of the function of divorce mediation as formulated in the Supreme Court

Regulation. Mediation at the Religious Courts in Pasangkayu Regency has not been able to reduce the buildup of divorce cases. Several inhibiting factors appear in the implementation of mediation, causing the accumulation of cases. These factors include, among others, prolonged conflicts between litigants, mediation facilities that have not been maximized, the absence of professional mediators, and minimal awareness of the parties who mediate.

5. Conclusions

Divorce mediation carried out by the Religious Courts in Pasangkayu Regency has changed according to local social conditions. During the Covid-19 pandemic, mediation practices were adjusted by utilizing virtual meeting rooms and the caucus method. However, mediation in religious courts in Indonesia is a form of integration between the positive legal system and Islamic law. The success of mediation shown by divorce statistics in the 2019-2021 period does not automatically mean that the practice does not have obstacles from internal and external factors. The Supreme Court's seriousness in designing mediation methods and practices is needed to maximize the mediation function to reduce the divorce rate in the community.

REFERENCES

- Abbas, S. (2009). *Mediasi : dalam Perspektif Hukum Syariah, Hukum Adat, dan Hukum Nasional*. Jakarta: Kencana Prenada Group.
- Abror, Khoirul. (2020). *Hukum Perkawinan Dan Perceraian* (Cet. ke-2). Yogyakarta: Ladang Kata.
- Adiyono. (2013). "Mediasi Sebagai Upaya Hakim Menekan Perceraian Di Pengadilan Agama." *Al-Ihkam*, 08 (01), 129.
- Anshori, A. G. (2011). *Hukum Perkawinan Islam (Perspektif Fikih Dan Hukum Positif)*. Yogyakarta: UII Press.
- Antasari, R. (2013). "Pelaksanaan Mediasi dalam Sistem Peradilan Agama (Kajian Implementasi Mediasi dalam Penyelesaian Perkara di Pengadilan Agama Kelas I A Palembang)." *Intizar*, 19 (01), 152.
- Az-Zuhaili, W. (2011). *Fiqh Islam Wa Adillatuhu* (Vol. 9) trans. Abdul Hayyie al-Kattani. Jakarta: Gema Insani.
- Erniyanti, Mukidi, Syahrul Bakti Harahap, Nelvitia Purba. (2021). *Divorce Settlement Due to Home Violence During the Pandemic Covid-19 in Medan City. International Journal Of Social, Policy And Law (IJOSPL)*, 02 (03).
- Ismail, Abidin, & Lukman Tahir. (2019). *The Efforts of the Office of the Religious Affairs of South Palu in Resolving Marriage Conflicts. International Journal of Contemporary Islamic Law and Society*, 01 (01), 60.
- Kusumaningrum, A., Yunanto, & Riyanto, B. (2017). "Efektivitas Mediasi Dalam Perkara Perceraian Di Pengadilan Negeri Semarang." *Diponegoro Law Journal*, 06 (01), 7.
- Friedman, L. M. (2009). *The Legal System: A Social Science Perspective* (Terj. M. Khozim "Sistem Hukum: Perspektif Ilmu Sosial" (ed.); Cet II). Bandung: Penerbit Nusa Media.
- Marzuki, Abidin, & Hilal Malarangan. (2021). *Effectiveness of The Implementation of Supreme Court Regulation Number 1 Year 2016 on Divorce Settlement. International*
e-ISSN: 2715-4580
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- Journal of Contemporary Islamic Law and Society*, 03 (01), 29.
- Manan, A. (2007). *Etika Hakim dalam Penyelenggaraan Peradilan, Suatu Kajian dalam Sistem Peradilan Islam* (Cet. I). Jakarta: Kencana.
- Mubarak, Faisal bin Abdul Aziz Alu. (2019). *Mukhtasharul Kalam Ala Bulughl Maram* (Terj. Imam Fauzi Dan Ikhwanuddin Abdillah (ed.); Cet. VII). Jakarta: Ummul Qura'.
- Muhammad, A. B. (1995). *Terjemah Subulussalam* (Cet. I). Surabaya: Al-Ikhlash.
- Muzammil, I. (2019). *Fiqh Munakahat (Hukum Pernikahan Dalam Islam)* (Cet. I). Tangerang: Tira Smart.
- Pengadilan Agama Pasangkayu. (2020). *Pelaksanaan Mediasi pada Pengadilan Agama Pasangkayu Tahun Pelaksana 2020*. Pasangkayu: Tim Penerbit Pengadilan Agama Pasangkayu.
- — —. (2020). *Laporan Pelaksanaan Kegiatan Pengadilan Agama Pasangkayu Tahun 2020*. Pasangkayu: Tim Penerbit Pengadilan Agama Pasangkayu
- — —. (2021). *Laporan Mediasi Perceraian Pengadilan Agama Pasangkayu Periode 2021*. Pasangkayu: Tim Penerbit Pengadilan Agama Pasangkayu.
- Rais, I. (2014). "Tingginya Angka Cerai Gugat (Khulu') di Indonesia; Analisis Kritis Terhadap Penyebab Dan Alternatif Solusi Mengatasinya." *Al-'Adalah*, 12 (01), 191.
- Ramadhani, S. R., & Nurwati, N. (2021). "Dampak Pandemi Covid-19 Terhadap Angka Perceraian." *Jurnal Pengabdian Dan Penelitian Kepada Masyarakat (JPPM)*, 02 (01), 91.
- Rambe, R., & Agafi, A. M. (2001). *Implementasi Hukum Islam*. Jakarta: Perca.
- Ranjabar, J. (2006). *Sistem Sosial Budaya Indonesia: Suatu Pengantar*. Bogor: PT Ghalia Indonesia.
- Rifai, M. N. (2008). *Ringkasan Tafsir Ibnu Katsir*. Jakarta: Gema Insani.
- Rifana Tunajah. (2018). "Implementasi PERMA Nomor 01 Tahun 2016 Tentang Prosedur Mediasi di Pengadilan dalam Menyelesaikan Sengketa Perceraian (Studi Kasus di Pengadilan Agama Serang)." *Syakhshia: Jurnal Hukum Perdata Islam*, 19 (02), 305.
- Riyanti, A. Z. (2019). "Impelentasi Kaukus Dalam Upaya Maksimalkan Hasil Mediasi Menurut Mediator Pengadilan Agama Kabupaten Malang." *SAKINA: Journal of Family Studies*, 03 (04), 4-5.
- Sabiq, S. (2008). *Fikih Sunnah (Jilid 2)* (Tahkik dan Takhrij: Muhammad Nasiruddin Al-Albani). Jakarta: Cakrawala Press.
- Safitri, D., & Waluyo, B. (2021). "Optimalisasi Kebijakan Sistem Peradilan Pidana Secara Elektronik di Masa Pandemi Covid-19." *Justitia: Jurnal Ilmu Hukum Dan Humaniora*, 08 (02), 282.
- Saifullah, M. (2014). "Integrasi Mediasi Kasus Perceraian dalam Beracara di Pengadilan Agama." *Al-Ahkam*, 24 (02), 249.
- Salam, N. (2017). "Mediasi Lokal Sebagai Model Utama Penyelesaian Kasus Perceraian Masyarakat Muslim Kalisat Pasuruan." *ISLAMICA: Jurnal Studi Keislaman*, 12 (01), 143-144.
- Saragih, R. (2020). "Implementasi Mediasi terhadap Perkara Perceraian di Pengadilan Agama Kabupaten Simalungun." *Jurnal Maksimum*, 01 (01), 14.
- Sari, L. (2011). "Faktor-Faktor Penyebab Terjadinya Perceraian Studi Kasus Pada Pengadilan Agama Makassar." *Legal Pluarism: Journals of Law*, 01 (01), 52.
- Sari, M. M., Ardian, N., & Erwansyah. (2021). Pengaruh Covid-19 Terhadap
e-ISSN: 2715-4580
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- Perekonomian Masyarakat di Desa Lantasan Lama Kecamatan Patumbak Kabupaten Deli Serdang Sumatera Utara. *Jurnal Manajemen Tools*, 13 (01), 66.
- Spencer, D., & Brogan, M. (2006). *Mediation Law and Practice*. Cambridge: Cambridge University Press.
- Subekti, R. (1985). *Pokok-Pokok Hukum Perdata*. Jakarta: Intermasa.
- Sulistiani, S. L., & Encep Abdul Rojak, Vera Fadillah Marufin. (2019). "Analisis Hukum Tentang Upaya Mediator dalam Meminimalisir Perceraian Di Pengadilan Agama Kelas 1A Kabupaten Indramayu (Studi Kasus Perkara Perceraian Tahun 2016-2018)." *Tahkim*, 02 (02), 72.
- Sumartono, G. (2006). *Arbitrasi Dan Mediasi Di Indonesia*. Jakarta: PT Gramedia Pustaka Utama.
- Syafliwar, & Handayani, F. (2017). "Implementasi Mediasi Dalam Penyelesaian Perkara Perceraian di Pengadilan Agama." *Al-Himayah*, 01 (02), 236-237.
- Syaifuddin, M., & Sri Turatmiyah, A. Y. (2012). *Pluralitas Hukum Perceraian* (I. Basuki (ed.); Cet. I). Malang: Tunggal Mandiri Publishing.
- Syarifuddin, M. (2020). *Transformasi Digital Persidangan di Era New Normal (Melayani Pencari Keadilan di Masa Pandemi Covid-19)* (Cet. I). Jakarta: PT. Imaji Cipta Karya
- Tim Permata Press. (2005). *Kompilasi Hukum Islam (KHI)* (Ed.Terbaru). Permata Press.
- Tristanto, A. (2020)." Perceraian Di Masa Pandemi Covid-19 dalam Perspektif Ilmu Sosial." *Sosio Informa*, 06 (03), 294.
- Yahanan, A., & Muhammad Syaifuddin, S. T. (2013). *Hukum Perceraian*. Jakarta: Sinar Grafika.
- Yulia. (2015). *Hukum Perdata*. Lhokseumawe: CV. BieNa Edukasi.
- Yanuarita, H. A., & Haryati, S. (2021). Pengaruh Covid-19 Terhadap Kondisi Sosial Budaya di Kota Malang dan Konsep Strategis dalam Penanganannya. *Jurnal Ilmiah Widya Sosiopolitika*, 62.

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