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The Urgency of Mediation in Resolving Divorce Disputes at the Religious Court of Purwakarta: Efforts to Increase the Effectiveness of Case Resolution and Minimize Social Impact

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ABSTRAK

Penyelesaian masalah perceraian melalui litigasi di Pengadilan Agama sering kali menimbulkan efek sosial dan psikologis yang berkepanjangan, terutama bagi anak-anak dan anggota keluarga lainnya. Untuk mengurangi dampak negatif tersebut, sistem hukum Indonesia mewajibkan mediasi dalam setiap kasus perdata, termasuk perceraian, sesuai dengan Peraturan Mahkamah Agung (PERMA) No. 1 Tahun 2016. Penelitian ini bertujuan untuk menggali pentingnya mediasi dalam menyelesaikan sengketa perceraian di Pengadilan Agama Purwakarta, mengidentifikasi tantangan yang ada, serta merumuskan strategi untuk meningkatkan efektivitas mediasi. Metode yang digunakan adalah yuridis normatif dengan pendekatan kualitatif, didukung oleh data sekunder seperti peraturan, putusan pengadilan, dan literatur ilmiah. Hasil penelitian menunjukkan bahwa mediasi memiliki peran penting dalam mencapai penyelesaian yang damai dan mengurangi beban perkara di pengadilan. Namun, efektivitas mediasi masih rendah disebabkan oleh kurangnya pemahaman masyarakat, sedikitnya mediator bersertifikat, dan keterbatasan fasilitas pendukung. Oleh karena itu, diperlukan langkah strategis seperti peningkatan kapasitas mediator dan penyediaan fasilitas yang memadai agar mediasi dapat menjadi solusi yang efektif dalam menyelesaikan sengketa perceraian.

Keywords:
Mediation,
Effectiveness,
Divorce,
Religious Court
Perma No. 1 of 2016.

ABSTRACT

Divorce resolution through litigation in the Religious Courts often has long-lasting social and psychological effects, especially for children and other family members. To mitigate these negative impacts, the Indonesian legal system requires mediation in all civil cases, including divorce, by Supreme Court Regulation (PERMA) No. 1 of 2016. This study explores the importance of mediation in resolving divorce disputes in the Purwakarta Religious Court, identifies existing challenges, and formulates strategies to improve mediation's effectiveness. The method used is normative juridical with a qualitative approach, supported by secondary data such as regulations, court decisions, and scientific literature. The results show that mediation plays an important role in achieving amicable settlements and reducing the caseload in court. However, the effectiveness of mediation remains low due to a lack of public understanding, a small number of certified mediators, and limited supporting facilities. Therefore, strategic steps are needed, such as increasing the capacity of mediators and providing adequate facilities, so mediation can be an effective solution in resolving divorce disputes.

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Introduction

Divorce is a social phenomenon that is inevitable in modern society. In Indonesia, particularly for Muslims, the absolute authority to handle divorce cases lies with the Religious Courts, as regulated in Law Number 7 of 1989 concerning Religious Courts, which has been amended by Law Number 3 of 2006 and Law Number 50 of 2009. The divorce process typically begins with attempts at deliberation between husband and wife. If these peaceful efforts do not result in an agreement and the parties feel unable to maintain the integrity of the family, the case is then submitted to the court for legal resolution. In this context, the Religious Court functions not only as an institution that decides cases, but also as a body that encourages reconciliation between the disputing parties (Gussevi, 2023).

The impact of divorce is extensive, both socially and psychologically, and is experienced not only by the divorcing couple but also by their children and the surrounding community. Data from the Directorate General of the Religious Courts indicates a rising trend in divorce cases handled by the Religious Courts each year. Within the jurisdiction of the Religious Court of Purwakarta, there were 1,026 divorce cases recorded in 2023, including both cerai talak (divorce initiated by the husband) and cerai gugat/divorce initiated by the wife (Purwakarta Religious Court, 2023). Resolving divorce cases through litigation in court often results in prolonged adverse effects, particularly for children and other family members.

To minimize these impacts, the Indonesian legal system mandates the implementation of mediation in every civil case, including divorce. Mediation is regulated under Supreme Court Regulation (PERMA) Number 1 of 2016 concerning Mediation Procedures in Court as a peaceful step that must be undertaken before a case is decided through litigation. Mediation aims to provide a faster and more cost-effective solution and preserve social relationships between the disputing parties. As a form of Alternative Dispute Resolution (ADR), mediation is expected to achieve a more humane and restorative settlement (Supreme Court Regulation of the Republic of Indonesia, 2016).

Mediation involves a neutral third party (the mediator) assisting the parties in reaching a voluntary agreement, a neutral third party (the mediator) helping the parties reach a voluntary, peaceful agreement. In divorce cases, mediation serves as a legal dispute resolution mechanism and an effort to reduce social and psychological impacts, particularly on children. Therefore, mediation holds significant humanitarian value and facilitates

realizing restorative justice (Raharjo, 2020). Thus, mediation embodies profound humanitarian values and serves as a forum for realizing restorative justice (Zaitullah, 2016).

However, the implementation of mediation in Religious Courts, including in Purwakarta, remains suboptimal. The success rate of mediation is relatively low; many couples undergo mediation merely to fulfill procedural requirements, without a genuine commitment to achieving reconciliation (Habibunnas, 2020).

Other obstacles encountered include the limited number of certified mediators, inadequate facilities and infrastructure, and the low level of public understanding regarding the functions and benefits of mediation (Dewi, 2020). Based on the 2024 recapitulation, out of 179 cases mediated at the Purwakarta Religious Court, only 33 cases (18.43%) were declared successful, either through settlement agreements, withdrawal of lawsuits, or partial success (Purwakarta Religious Court, 2024). Meanwhile, most cases proceed to litigation as mediation does not result in an agreement.

This condition highlights the need for an in-depth scientific study on the urgency and effectiveness of mediation in resolving divorce disputes at the Purwakarta Religious Court. Such a study is expected to achieve a comprehensive understanding of mediation's strategic role and appropriate policy recommendations to improve its effectiveness so that mediation can truly become an effective and equitable alternative solution in the resolution of divorce cases.

Method

This research is an empirical legal study (Soekanto, 2006), that is, research which views law as a social phenomenon that lives and develops within society. The primary focus of this study is the application of mediation regulations (Supreme Court Regulation No. 1 of 2016) in resolving divorce cases in the Religious Court. This approach is chosen to directly assess the effectiveness of mediation implementation and identify obstacles that arise in practice.

This research employs a qualitative-sociological approach, which positions law as a social behavior that can be observed through interactions between society and legal institutions (Yulianto, 2020). Primary data were obtained through in-depth interviews with judges, mediators, registrars, and parties involved in the mediation process and through direct observation (Nurbani, 2013) regarding the mediation process at the Purwakarta Religious Court. Secondary data were collected from primary legal materials such as Law No. 7 of 1989

and its amendments, Supreme Court Regulation No. 1 of 2016, as well as secondary legal materials including books, scientific journals, articles, court decisions, annual reports, case statistics, and official documentation from the Directorate General of the Religious Courts (Badilag).

Data collection was carried out using several techniques: semi-structured interviews (Moleong, 2019) to obtain direct perspectives on the implementation and obstacles of mediation and participatory observation (Moleong, 2019) to examine various relevant reports and documents. The researcher also utilized data available on the official websites of the Purwakarta Religious Court and the Directorate General of the Religious Courts (Badilag) as additional sources of information.

After collecting the data, the analysis was conducted using a descriptive-qualitative approach (Sugiyono, 2019). The study was carried out in several stages. The first stage was data reduction, which involved sorting, selecting, and simplifying the data to focus on information relevant to the research objectives. Subsequently, the data were presented narratively and thematically to map patterns or specific tendencies from the interviews, observations, and document studies. The researcher then interpreted the data by linking field findings with relevant theories and regulations, thus providing a comprehensive overview of the effectiveness and obstacles in implementing mediation. The final stage was drawing conclusions based on the identified patterns and formulating recommendations as solutions to the issues identified in this study.

Thus, this method is expected to provide a comprehensive understanding of the reality of mediation implementation in resolving divorce cases at the Purwakarta Religious Court, from a normative perspective and the social practices in the field.

Results

The findings of this study provide a comprehensive overview of the urgency of mediation in resolving divorce disputes at Religious Courts, including the Religious Court of Purwakarta. Several key themes emerged through document analysis, literature review, interviews, and examination of secondary data, namely: the fundamental principles of mediation, the urgency of mediation in the resolution of divorce disputes, factors influencing the effectiveness of mediation in divorce dispute resolution, and strategies to enhance the effectiveness of mediation in resolving divorce disputes.

Discussion

Fundamental Principles of Mediation

Society has various means of reaching agreements to resolve cases, disputes, or conflicts. One of the methods employed is mediation. The legal basis for the implementation of out-of-court mediation in Indonesia is regulated by Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution and Government Regulation Number 50 of 2000. Law No. 30 of 1999 stipulates that dispute resolution outside the court can be conducted through arbitration or other alternative methods, such as consultation, negotiation, facilitation, mediation, or expert assessment.

Disputes may involve various aspects, such as financial issues, individual rights, legal status, lifestyle, reputation, and even personal behavior. The complexity of these disputes varies, ranging from simple to complex, depending on the context and the type of issues involved. Society has various ways of resolving such conflicts, including utilizing mediation as an alternative dispute resolution outside the litigation process. These types of conflicts can encompass a wide range of issues, from minor to more complicated matters, for example (Abdurrasyid, 2002):

1. The credibility of the parties involved can cause facts to arise or originate from information provided by third parties, including the elaboration of the data and facts presented.
2. Legal issues typically arise due to incorrect opinions or interpretations by legal experts.
3. The impact of differences in technical aspects, including differing views among technical experts and the level of professionalism of the parties involved.
4. For example, divergent understandings regarding some issues are due to ambiguous language or differing assumptions.
5. There are differences in views related to justice, concepts of justice and morality, and culture, values, and attitudes.

Etymologically, "mediation" is derived from the Latin term mediare, which means “to be in the middle.” This meaning illustrates the role of the mediator as a third party who acts as an intermediary and assists in resolving disputes between the conflicting parties. The term “to be in the middle” also signifies that the mediator must remain neutral and impartial

throughout the conflict resolution process. The mediator fairly safeguards all parties' interests to build trust. This etymological explanation affirms the mediator's role as a bridge connecting the parties to reach an agreement. This distinguishes mediation from other dispute resolution methods such as arbitration, negotiation, or adjudication. The mediator occupies a neutral position amid conflict and strives to find acceptable solutions to all parties involved (Abdurrasyid, 2002).

According to the Great Dictionary of the Indonesian Language (Editorial Team of Language Center, 2008), mediation is defined as a process involving a third party in resolving disputes, with the role of providing advice. This definition encompasses three key elements. First, mediation is a process for resolving conflicts or disputes between two or more parties. Second, the party assisting in the resolution comes from outside the disputing group. Third, the third party serves only as an advisor and does not have decision-making authority.

Gery Goodpaster states: "Mediation is a problem-solving negotiation process in which an impartial and neutral third party works with the disputing parties to help them reach a mutually satisfactory agreement. Unlike a judge or an arbitrator, the mediator does not have the authority to decide the dispute between the parties. However, in this context, the parties empower the mediator to assist them in resolving the issues between them. The underlying assumption is that the third party will be able to change the power dynamics and social relationships of the conflict by influencing the trust and personal behavior of the parties, by providing knowledge or information, or by using a more effective negotiation process, and thereby help the participants to resolve the disputed issues".

Garry Goodpaster defines mediation as a negotiation process for problem-solving, in which a neutral third party collaborates with the conflicting parties to help them reach a mutually satisfactory agreement. Goodpaster views mediation from a terminological perspective and explains how the mediation process is conducted, the position and role of the third party, and the objectives of mediation itself. According to Goodpaster, as quoted by Syahrizal Abbas (2009), mediation is a negotiation process in which a third party engages in dialogue with the conflicting parties to seek a resolution. The presence of the third party aims to assist all involved parties in finding a solution to reach a mutually satisfactory agreement.

In the mediation process, dispute resolution primarily originates from the will and initiative of the parties involved; thus, the mediator's role is to facilitate the achievement of

a mutual agreement. The mediator must remain neutral and impartial, as this attitude is essential for building the trust that supports the smooth conduct of mediation. If the mediator fails to maintain neutrality, it may not only hinder the mediation process but also risk leading to the failure of dispute resolution.

Mediation involves a third party, either an individual or an independent institution, who acts neutrally and impartially and is known as the mediator. As a neutral party chosen by the disputing parties, the mediator performs their role based on the agreement and will of the parties. Since the mediator is not directly involved in the conflict, they do not have the authority to impose a decision; rather, their task is to bring the parties together to obtain information regarding the core issues in dispute (Abbas, 2009).

Based on the information gathered, the mediator then evaluates the situation, including assessing the strengths and weaknesses of each party, and formulates proposed solutions, which are presented directly to the parties. The mediator must create a comfortable and open atmosphere to achieve a mutually beneficial agreement (win-win solution). Once the parties accept the proposal, either in its entirety or with adjustments, the mediator will draft a written agreement to be signed by the parties. In addition, the mediator is also expected to support the implementation of the agreement as the outcome of the mediation process (Head, 1997). In practice, as part of the mediation process, the mediator conducts private conversations with each party separately(Soemartono, 2006).

Basic Principles of Mediation

Mediation is one form of alternative dispute resolution that prioritizes dialogue and the achievement of mutual agreement between disputing parties. In the literature, several principles form the foundation for implementing mediation. These basic principles serve as the philosophical basis for mediation practice. They constitute a framework that mediators must understand so that the mediation process remains aligned with the underlying philosophical values of the mediation institution (Hoynes, 2004). David Spencer and Michael Brogan refer to Ruth Carlton's perspective on the five basic principles of mediation. These five principles are known as the "five philosophical foundations of mediation." The principles are: the principle of confidentiality, the principle of voluntariness, the principle of empowerment, the principle of neutrality, and the principle of a unique solution (Abbas, 2009).

1. The principle of confidentiality.

   Confidentiality in mediation means that only the disputing parties and the mediator can be present during the sessions. Parties outside the dispute are not allowed to participate in the process. This element of confidentiality and the closed nature of mediation is often considered an advantage, especially for business actors who do not wish their issues to become public or be covered by the media. Unlike litigation proceedings in court, which are open to the public as required by law, mediation offers a higher degree of privacy. All parties involved, including the mediator, must keep everything that occurs during the mediation process confidential. Information disclosed in mediation may not be shared with others without permission. Maintaining this confidentiality is crucial for creating a safe and comfortable atmosphere, allowing the parties to discuss and negotiate openly.
2. The principle of voluntariness.

   Each party involved in a conflict participates in the mediation process based on their willingness and personal awareness, without any pressure or coercion from any party, whether internal or external. Mediation can only take place if all disputing parties agree to participate voluntarily. There is no element of compulsion in this process. The principle of voluntariness is based on the belief that individuals will be more open to cooperation and find solutions to their conflicts if they choose to negotiate freely.
3. The principle of empowerment.

   This principle is based on the view that individuals willing to participate in the mediation process generally possess the capacity to negotiate their issues and reach agreements that align with their respective interests. Ideally, conflict resolution should emerge from the parties' empowerment, as such an approach is more likely to foster a sense of acceptance of the outcome achieved. In mediation, the parties must be free to control the process and determine the desired result. They should be allowed to understand the core issues, select the most appropriate solutions, and formulate agreements that reflect their respective needs and interests. This ability should be respected, so external parties should not impose conflict resolution.
4. The principle of neutrality.

   In mediation, the mediator functions solely as a facilitator who assists in the smooth running of the process. At the same time, the content or substance of the resolution remains entirely in the hands of the disputing parties. The mediator does not have the

authority to determine who is right or wrong, as a judge or jury does, and is not permitted to impose their opinion in resolving the conflict. The mediator's neutrality is crucial; they must not take sides or show favoritism toward any party. The mediator's primary role is to guide and support the parties in independently formulating an agreement. In other words, the mediator only ensures that the process proceeds smoothly and effectively, whereas the decision and outcome are entirely the responsibility of the disputing parties.

5. The principle of a unique solution.

   Mediation solutions do not necessarily have to fully comply with prevailing legal provisions but may originate from the creative ideas of the parties involved. Therefore, mediation outcomes generally better reflect the will and needs of both parties, which aligns with the principle of individual empowerment. Dispute resolution through mediation should ideally result in a unique solution tailored to the parties' circumstances and interests. This solution does not need to be identical to the decisions rendered through formal legal channels such as courts or arbitration.

In addition to the five principles above, there are also several other important principles in mediation:

1. The principle of deliberation to reach consensus.

   Mediation focuses on negotiation and dialogue between parties to achieve mutual consensus. This principle encourages each party to listen to one another and strive to find solutions that are agreed upon together.

2. The principle of freedom.

   Each party can independently determine the timing and manner of dispute resolution. They are not restricted by strict formal rules, allowing them to choose the most appropriate approach and timing according to their needs.

3. The principle of sustainability.

   Dispute resolution through mediation aims to build more harmonious relationships between the parties in the future. By reaching a mutual agreement, further disputes are expected to be avoided.

From the previous explanation, it can be concluded that mediation has several distinct characteristics that differentiate it from other forms of dispute resolution. The main features can be described as follows:

1. Every mediation process involves an approach in which the disputing parties, either directly or through representatives, work together with the assistance of a third party as a mediator to engage in dialogue and negotiation to reach a mutual agreement.
2. In general terms, mediation can be defined as a method of decision-making that is assisted or facilitated by a third party (facilitated decision-making or facilitated negotiation).
3. Mediation can also be understood as a mechanism in which the mediator manages the negotiation process. At the same time, the final decision rests entirely with the disputing parties, although this understanding may not fully capture the complexity of the actual mediation process.

The Importance of Principles and Foundations in Mediation

Principles and foundations in mediation ensure that the mediation process is conducted fairly, efficiently, and sustainably. These principles also build trust between the mediator and the disputing parties. By understanding and applying these principles, the mediator can assist the parties in finding satisfactory and sustainable solutions to disputes.

Article 6 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution stipulates the following:

1. The parties may resolve disputes or differences of opinion through alternative dispute resolution based on good faith, by setting aside litigation in the District Court.
2. The settlement of disputes or differences of opinion as referred to in paragraph (1) shall be carried out in direct meetings by the parties within a maximum period of 14 (fourteen) days, and the results shall be outlined in a written agreement.
3. If the dispute or difference of opinion referred to in paragraph (2) cannot be resolved, upon the parties' written agreement, it shall be resolved with the assistance of one or more expert advisors or through a mediator.
4. If, within a maximum period of 14 (fourteen) days, with the assistance of one or more expert advisors or through a mediator, the parties fail to reach an agreement, or if the

mediator fails to bring the parties together, the parties may contact an arbitration institution or alternative dispute resolution institution to appoint a mediator.

5. After appointing a mediator or arbitration institution or alternative dispute resolution institution, mediation efforts must commence within a maximum period of 7 (seven) days.
6. Efforts to resolve the dispute or difference of opinion through mediation as referred to in paragraph (5), while maintaining strict confidentiality, must result in a written agreement signed by all relevant parties within a maximum period of 30 (thirty) days.
7. The written agreement to resolve the dispute or difference of opinion is final and binding on the parties and must be carried out in good faith, as well as registered at the District Court within a maximum period of 30 (thirty) days from the date of signing.
8. The agreement to resolve the dispute or difference of opinion as referred to in paragraph (7) must be fully implemented within a maximum period of 30 (thirty) days from the date of registration.
9. If the efforts for amicable settlement as referred to in paragraphs (1) through (6) cannot be achieved, the parties, by written agreement, may submit their dispute to be resolved through an arbitration institution or ad hoc arbitration.

Supreme Court Regulation (PERMA) Number 1 of 2008 also regulates the relationship between out-of-court mediation and the agreements reached through such processes. Article 23 of PERMA outlines the legal procedures for obtaining a peace deed from the Court of First Instance based on a settlement agreement reached through non-litigation mediation. This process is carried out by filing a lawsuit in court, accompanied by the documents or the settlement agreement that has been prepared by the parties with the assistance of a certified mediator. The settlement document can then serve as the basis for the lawsuit to obtain a peace deed from the competent court. In general, such lawsuits are filed by parties who feel disadvantaged in the dispute (Rahmadi, 2010).

The provision regarding the filing of a lawsuit to obtain a peace deed based on a settlement agreement reached outside the court may seem unusual. This is due to the fact that a dispute which has already been resolved amicably is then followed by one party filing a lawsuit against the other, even though both have reached an agreement. However, from a practical standpoint, this can be understood, as not all parties who have entered into an agreement are genuinely committed to its implementation. Therefore, this regulation remains

relevant as a form of legal protection for the settlement agreement that has been reached. In addition, this lawsuit mechanism is consistent with the Indonesian legal system, which distinguishes between contentious and non-contentious cases, where the resolution of contentious cases can only be pursued through a lawsuit, while non-contentious cases are resolved through a petition. The requirement that the mediator must be certified also aims to ensure the quality of the mediation process. A certified mediator has undergone official training and education, thereby possessing the necessary competence to facilitate mediation professionally without deviating from fundamental principles, such as voluntariness and consensus-based resolution, and without transforming mediation into a decision-making process akin to arbitration (Rahmadi, 2010).

In addition, if the parties resolve their dispute through out-of-court mediation but do not submit the settlement agreement to the competent court to obtain a peace deed, then if one party breaches the agreement in the future, the legal action that can be taken is to file a lawsuit for breach of contract. This is because a settlement agreement that is not ratified in the form of a peace deed by the court only has legal force as an ordinary contract between the parties.

The Urgency of Mediation in the Resolution of Divorce Disputes

Etymologically, the term "mediation" is derived from the Latin word mediare, which means "to be in the middle" (Rosadi, 2018). Thus, mediation involves a third party, namely a mediator, who plays a role in facilitating and assisting the resolution of disputes between the parties. The mediator is required to act fairly and neutrally, and must not take sides with any party during the conflict resolution process.

Historically, conflict resolution through mediation has long been recognized in Islamic tradition. Although the term "mediation" is modern, a similar concept in Islam is known as tahkim. The method of dispute resolution through tahkim is even mentioned in the Qur'an, specifically in Surah An-Nisa' verse 35, which states:

وَاِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَابْعَثُوْا حَكَمًا مِّنْ اَهْلِهٖ وَحَكَمًا مِّنْ اَهْلِهَا ۚاِنْ يُّرِيْدَآ اِصْلَاحًا يُّوَفِّقِ اللّٰهُ بَيْنَهُمَا ۗاِنَّ اللّٰهَ كَانَ عَلِيْمًا خَبِيْرًا

> The meaning is: "*And if you fear dissension between the two, appoint an arbitrator from his family and an arbitrator from her family. If they both desire reconciliation, Allah will cause it between them. Indeed, Allah is All-Knowing and All-Aware*". (Ministry of Religious Affairs, 2019)

Based on the verse, it can be understood that if the guardians find a conflict within the household that may potentially lead to divorce, they are advised to appoint a just arbiter from the husband's side and a just arbiter from the wife's side. The duty of these arbiters is to identify the root causes of the problem and strive to reconcile both parties in a wise manner, so that a solution pleasing to Allah may be achieved. In this context, the arbiters act as third parties who intervene in the conflict between husband and wife, serving as mediators to help resolve the disputes that arise.

The definition of a "hakam" is explained in Article 76 paragraph (2) of Law Number 3 of 2006, as amended by Law Number 50 of 2009 concerning Religious Courts. According to this provision, a hakam is defined as a person appointed by the court, who may be drawn from the husband's family, the wife's family, or other parties, with the purpose of assisting in resolving conflicts or disputes referred to as syiqaq. From this explanation, it can be concluded that the role of the hakam is limited to helping find solutions to the problems, and not to making legal decisions or issuing judgments.

In the history of Islamic civilization, the concept of peace is known as sulh, which refers to the resolution or settlement of a dispute. The term sulh is frequently found in fiqh literature discussing various areas, including transactions, marriage, warfare, and rebellion (Vahlevi, 2021). Sulh is defined as an agreement aimed at resolving conflicts or disputes. In addition to sulh, the concept of mediation in Islamic literature is also closely related to tahkim. In fiqh terminology, tahkim refers to the process in which two or more parties appoint a third party to resolve their dispute based on sharia law.

Based on the above definition, it can be concluded that mediation shares similarities with the concept of sulh, which refers to the peaceful resolution of disputes. The practice of sulh has been implemented since the time of Prophet Muhammad (peace be upon him) in various situations, such as reconciling disputing spouses, resolving conflicts between Muslims and non-Muslims, and mediating disputes between individuals. Sulh serves as a means of achieving peace through mutual agreement and the willingness of all parties, without the need for court proceedings before a judge. The main objective of sulh is to

provide a fair and satisfactory solution for the parties involved, so that conflicts can be resolved peacefully. In the Qur'an, sulh is mentioned in Surah An-Nisa, verse 128:

وَاِنِ امْرَاَةٌ خَافَتْ مِنْۢ بَعْلِهَا نُشُوْزًا اَوْ اِعْرَاضًا فَلَا جُنَاحَ عَلَيْهِمَآ اَنْ يُّصْلِحَا بَيْنَهُمَا صُلْحًاۗ وَالصُّلْحُ خَيْرٌۗ وَاُحْضِرَتِ الْاَنْفُسُ الشُّحَّۗ وَاِنْ تُحْسِنُوْا وَتَتَّقُوْا فَاِنَّ اللّٰهَ كَانَ بِمَا تَعْمَلُوْنَ خَبِيْرًا

The meaning is: "And if a woman fears discord or neglect from her husband, then there is no harm for the two of them to make a genuine reconciliation between themselves; and reconciliation is better (for them), even though human beings are prone to selfishness. But if you do good and guard yourselves (against discord and neglect), surely Allah is ever aware of what you do". (Ministry of Religious Affairs, 2019).

Surah An-Nisa verse 128 in the Qur'an affirms that reconciliation is the best course of action. This verse permits a husband and wife who are concerned about discord, such as nusyuz or the husband's indifference, to reach a fair and just agreement for reconciliation. Although human beings are naturally inclined to selfishness, reconciliation remains the best option for both parties. Furthermore, if a husband treats his wife well and maintains the relationship free from nusyuz attitudes, Allah is All-Knowing of the actions of His servants. Thus, if a wife feels anxious or suspects that her husband is displaying arrogance, neglecting her rights, or showing indifference, such as being unfriendly in communication or disrupting the previously harmonious marital relationship, and such conditions are feared to lead to divorce, it is permissible for them to resolve the matter through genuine peaceful means.

Regarding the definition of mediation, Supreme Court Regulation Number 1 of 2008 on court mediation procedures states that mediation is a method of dispute resolution through negotiation with the aim of reaching an agreement between the parties, facilitated by a mediator. This definition is also clearly articulated in Article 1 paragraph (1) of Supreme Court Regulation Number 1 of 2016 on Court Mediation Procedures, which affirms that mediation is a way of resolving disputes through negotiation to achieve an agreement between the parties, assisted by a mediator. The mediator is a neutral party who facilitates the negotiation process but does not have the authority to make or impose a decision. This view is in line with the opinion of Prof. Takdir Rahmadi, who explains that mediation is a process of resolving conflicts between two or more parties through negotiation and mutual agreement, with the assistance of a neutral third party who does not have the authority to make decisions (Rahmadi, 2010).

In summary, a mediator functions as a party who provides legal assistance, both in procedural and substantive aspects. According to Abdul Kadir Muhammad, the role of a mediator is also based on legal foundations that serve as guidelines for carrying out their duties in the Religious Court, including the following:

1. Article 130 of the HIR and Article 154 of the Rbg regulate the institution of reconciliation, stipulating that judges are required to first attempt to reconcile the parties before examining the case;
2. Supreme Court Circular (SEMA) Number 1 of 2002 concerning the empowerment of the reconciliation institution as stipulated in Article 130 HIR/154 Rbg;
3. Supreme Court Regulation (PERMA) Number 2 of 2003 on mediation procedures in court;
4. Supreme Court Regulation (PERMA) Number 1 of 2008 on mediation procedures in court;
5. Supreme Court Regulation (PERMA) Number 1 of 2016 on mediation procedures in court;
6. Mediation or Alternative Dispute Resolution (ADR) outside the court is regulated in Article 6 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, and Article 3 paragraph (1) of Law Number 4 of 2004 concerning Judicial Power (Hanifiyah, 2017).

Positive law also recognizes the existence of dispute resolution mechanisms outside the court, which are regulated in several provisions. First, the Elucidation of Article 3 paragraph (1) of Law Number 14 of 1970 states that all courts in Indonesia are part of the State Judiciary regulated by law. Second, Article 1851 of the Indonesian Civil Code (KUH Perdata) defines reconciliation as an agreement in which both parties agree to end an ongoing case or to prevent future disputes by giving, promising, or withholding an object. A reconciliation agreement is only considered valid if it is made in writing. Furthermore, Article 1855 of the Civil Code stipulates that reconciliation only applies to disputes expressly mentioned in the agreement, whether specifically stated or clearly inferred from the contents of the agreement. Meanwhile, Article 1858 of the Civil Code affirms that a reconciliation agreement has the same legal force as a final and binding court decision, and therefore cannot be annulled simply because one of the parties feels aggrieved (Abdul Kadir, 2014).

Mediation plays an important role in the Indonesian legal system as a form of Alternative Dispute Resolution (ADR), which aims to resolve disputes in a peaceful, efficient, and fair manner. Particularly in divorce cases, mediation is expected to serve as a more humane method of settlement compared to litigation, which often exacerbates conflicts between the parties involved, especially with regard to children and the division of marital property.

The urgency of mediation in divorce cases can be examined from the following aspects:

1) Reduction of psychological and emotional conflict.

   Divorce is not merely about ending a legal relationship, but also has profound psychological impacts. Through mediation, both parties are able to express their needs and expectations in a calmer and more harmonious setting. This process encourages open and constructive communication, while also reducing the likelihood of further conflict between husband and wife as well as between parents and children (Raharjo, 2020).

2) Acceleration and efficiency of the legal process.

   Mediation has the potential to significantly expedite the resolution of cases if the parties are able to reach an agreement. In accordance with Supreme Court Regulation (PERMA) No. 1 of 2016, if mediation is successful, the case can be resolved through a deed of settlement, which is final and binding, without the need to go through the time-consuming evidentiary process (Supreme Court Regulation, 2016).

3) Reducing the burden on the courts.

   The Supreme Court has noted that the implementation of mediation contributes to improving the efficiency of case handling in religious courts. Although its success rate still varies, each case resolved through mediation means that one case does not need to proceed to the final judgment stage, thereby reducing the workload of the judges (Directorate General of Religious Courts, 2023).

4) Creating more sustainable solutions.

   The outcomes of mediation are generally more readily accepted by both parties because they result from mutual agreement, rather than being imposed by a third party. Mediation offers more flexible solutions that can be tailored to the interests of the parties involved. In many situations, particularly those related to child custody, mediation often produces more stable and sustainable long-term resolutions (Zaitullah, 2020).

Factors Influencing the Effectiveness of Mediation in Resolving Divorce Disputes at the Religious Court of Purwakarta

Mediation in divorce cases at the Religious Court is an important instrument in the modern legal system that prioritizes peaceful conflict resolution. Its main objectives are to reduce tensions between husband and wife, to seek the prevention of divorce, and to provide both parties with the opportunity to find the best solution for their mutual interests, particularly when children are involved who may be affected by the outcome.

There are several factors underlying the occurrence of divorce (Yuliasih, 2025), among others:

1. Economic factors.

   One of the main factors that triggers conflict within a household is economic issues, particularly when the husband is unable or unwilling to provide adequate financial support to the wife. This unmet need often leads to ongoing tension, which in turn triggers continual arguments and ultimately compels one of the spouses to file for divorce.

2. The involvement of a third party.

   Conflicts within a household are often triggered by the involvement of a third party, whether in the form of another woman or another man. Such acts of infidelity undermine trust in the marital relationship and are often difficult to repair. In addition, a third party does not always originate from extramarital affairs. However, it can also come from parents or extended family members who interfere and influence the couple's decisions, especially when there is disapproval toward the son- or daughter-in-law.

3. Domestic violence.

   Domestic violence is often a primary reason for many couples to end their marriage. This form of violence may include physical abuse, such as assault, as well as verbal abuse in the form of insults or emotionally damaging remarks. The husband and wife can potentially become either the perpetrator or the victim. The impact is not only physical but also affects the mental and emotional well-being of the spouses. In some cases, such violence occurs repeatedly to the extent that divorce becomes the only viable option.

These grounds for divorce are also stipulated in Article 116 of the Compilation of Islamic Law (KHI).

In this case, the mediation process was carried out earnestly and to the fullest extent possible, even being conducted twice. However, in divorce cases, the success of mediation does not depend solely on formal procedures but is also greatly influenced by each party's emotional readiness. When love and affection no longer exist between both parties, restoring a relationship that has already been fractured becomes extremely difficult.

The obstacles encountered in the mediation process are important to examine to achieve the intended goals of mediation effectively. Regulations regarding the implementation of mediation in court have undergone several revisions and improvements. However, in practice, mediation often concludes without achieving the desired outcomes. This indicates a gap between expectations and reality in the field, which is generally caused by various obstacles that hinder the success of the mediation process (Kusna, 2025). These obstacles are as follows:

1. A strong desire of the parties to divorce.

   In a significant number of mediation cases, one or even both parties have usually already made a firm decision to divorce. They generally file their case with the Religious Court after various reconciliation efforts by their families have failed. This situation makes the role of the mediator particularly challenging, as the parties have already lost the desire to maintain their marriage.
2. The presence of a third party.

   Another factor that often hinders the mediation process is the involvement of a third party, whether a woman or a man. When one spouse feels betrayed, losing trust is extremely difficult to restore. In addition, interference from family members, particularly parents, can also act as a trigger, especially when they advise or support their child's decision to proceed with the divorce.
3. The determination of a wife to file for divorce.

   A wife who files for divorce generally does so after careful consideration, for example, due to not receiving financial support or being abandoned by her husband for an extended period. Such individuals usually understand the consequences and implications of divorce, yet still regard it as the best option. This contrasts with cases of cerai talak initiated by the husband, in which the mediator may still have an opportunity to provide

counsel encouraging the husband to reconsider his decision, for instance, by advising that a new partner may not necessarily be better than his current wife.

4. The conflict between the parties has been ongoing for a long time and is highly complex. In the mediation process, the parties' emotions are often heightened and difficult to control, making it challenging for them to accept or reconcile with each other. In addition, there are often elements of bad faith on the part of each party. Mediation involves individuals with diverse personalities, and it is not uncommon for some participants to engage in the process merely because it is a prerequisite before the case proceeds to court. Those who feel compelled to participate tend to view their counterpart not as a partner for dialogue, but rather as an adversary to be confronted or opposed.
5. The existence of bad faith on the part of the parties.

   Mediation involves individuals with diverse personalities, and it is not uncommon for some parties to participate in the process out of obligation, given that every case submitted to the court must first undergo mediation. Those who feel compelled to participate may not openly display animosity toward the opposing party, but their attitude often reflects an inability to understand the other party's position. The petitioner or plaintiff frequently feels unable to forgive the respondent or defendant, making it extremely difficult to restore a harmonious relationship. They may even state their unwillingness to reconcile because the conflict persisted for too long and became too deeply rooted.
6. The absence of one of the parties.

   The presence of both parties in the mediation process plays a crucial role in achieving a peaceful agreement. However, in practice, it is not uncommon for one party to remain absent despite having been officially and repeatedly summoned. Such absence constitutes a significant obstacle that hinders the progress of the mediation process.
7. Psychological or emotional factors.

   A profound disappointment toward one's spouse often makes an individual feel hopeless about the marriage. In such situations, divorce is seen as the only solution. The same sentiment is also expressed by those who feel hurt by betrayal or have experienced domestic violence.
8. A sense of shame in conceding.

A sense of pride or shame in conceding often becomes an obstacle to achieving reconciliation during mediation. Many disputing parties are reluctant to open themselves to reconciliation out of fear of being perceived as the losing side. Such attitudes make resolving the conflict more difficult for the mediator judge. Some parties have stated that the sense of shame in conceding is the main reason for the failure of the mediation process.

Thus, although mediation has been formally regulated under Supreme Court Regulation (PERMA) No. 1 of 2016, its implementation in practice still faces various obstacles, resulting in a relatively low success rate. Several key factors influencing the effectiveness of mediation in divorce cases include the following:

1) Lack of awareness and good faith on the part of the parties.

   One of the main obstacles to the success of mediation is when the parties come to court with a strong determination to divorce. The lack of intent to reconcile and high ego levels often hinder mediation. Parties frequently participate in mediation merely as a procedural requirement, rather than out of a genuine desire to resolve the conflict peacefully. As a result, mediation is often regarded as a mere formality and is not conducted earnestly. According to research by Habibunnas, more than 70% of couples participating in mediation at the Religious Court are only seeking to expedite the divorce process, rather than to achieve reconciliation (Habibunnas, 2020).

2) The quality and availability of mediators.

   The success of mediation is highly dependent on the competence of the mediator. The limited number of certified mediators and a lack of experience can affect the quality of the mediation process. In Religious Courts, the number of certified mediators is still very low. As a result, some mediation processes are still conducted by judges who serve as mediators. Mediators who lack good communication skills and effective negotiation techniques will have difficulty creating an effective and neutral mediation environment. According to the 2023 annual report of Badilag, only about 30% of Religious Courts have certified mediators who are actively carrying out their duties (Directorate General of Religious Courts, 2023).

3) Lack of supporting facilities and infrastructure.

Adequate physical facilities, such as a private, comfortable, and pressure-free mediation room, are important factors for the success of mediation. Insufficient mediation space and a lack of other supporting facilities can decrease the parties' comfort during the process. At the Religious Court of Purwakarta, the mediation room often has to be used alternately, with limited space, which does not entirely create a conducive atmosphere. This situation causes the mediation process to feel rigid and rushed. The comfort of the room and a neutral atmosphere greatly influence the success of resolving interpersonal conflicts (Raharjo, 2020).

4) Limited dissemination of information regarding the benefits of mediation.
   Many parties involved in divorce still do not understand the purpose and benefits of mediation. The lack of public understanding regarding mediation's advantages contributes to the low level of participation in the process. The absence of legal education provided by the courts or relevant institutions results in the public not viewing mediation as an effective conflict resolution. Limited legal outreach and public information are among the main reasons for the low active involvement in mediation (Dewi, 2016).

Strategies to Enhance the Effectiveness of Mediation in Resolving Divorce Disputes at the Religious Court of Purwakarta

Mediation is an alternative method for resolving disputes peacefully through mutual agreement. In the Religious Court, mediation aims not only to reduce the caseload but also to protect the dignity and honor of the parties involved, particularly in divorce cases. Nevertheless, the effectiveness of mediation often faces various obstacles, including technical issues, human resources, and society's legal culture. Therefore, appropriate strategies are needed to ensure that mediation can proceed optimally.

The low success rate of mediation in divorce cases at Religious Courts, including the Religious Court of Purwakarta, necessitates concrete measures to improve the quality and effectiveness of its implementation. Based on the literature review and empirical data, several strategies can be applied:

1. Improving the competence and increasing the number of certified mediators.
   The success of mediation is highly dependent on the competence and professionalism of the mediator. Therefore, the Religious Court should collaborate with accredited training institutions to provide ongoing education and certification programs for

mediators. Well-trained mediators can handle conflicts neutrally and foster effective communication between the parties (Marzuki, 2020). As stated by Zaitullah, mediators who possess good communication skills and an understanding of the psychological aspects of the couple tend to have a greater likelihood of achieving successful mediation outcomes (Zaitullah, 2020). There is a need to enhance specialized training that includes skills in mediation techniques, empathetic communication, and approaches based on cultural and religious values. Mediation is a method of conflict resolution between two or more parties through negotiation or mutual agreement, assisted by a neutral third party who does not have the authority to determine the outcome. This underscores the crucial role of the mediator in fostering positive and constructive dialogue.

2. Provision of adequate and emotionally supportive mediation facilities.

   Adequate physical facilities, such as comfortable and private mediation rooms separate from the formal courtroom atmosphere, can help create a calmer and safer psychological environment for disputing parties. Therefore, strengthening regulations and providing administrative support are of great importance. This includes providing appropriate mediation rooms, sufficient allocation of time, and a transparent and accountable system for reporting mediation outcomes. Currently, at the Religious Court of Purwakarta, the availability of mediation rooms remains limited and often does not support a conducive atmosphere (Purwakarta Religious Court, 2023). Investment in these supporting facilities represents a commitment to the principles of restorative justice.

3. Socialization and legal education for the community.

   Many parties still do not understand the role and benefits of mediation, and thus tend to be reluctant or less severe in participating. Most still believe dispute resolution can only be achieved through formal litigation. Therefore, the courts and related institutions must intensify education about mediation as a peaceful, more cost-effective, and relationship-preserving alternative to dispute resolution. Socialization efforts can be conducted through social media, the distribution of informational brochures, and legal education programs at the sub-district or village level. Ideally, the Religious Court should carry out these activities regularly, involving the Office of Religious Affairs (KUA), community organizations, and local law faculties (Dewi, 2016).

4. Mechanisms for monitoring and evaluating the mediation process.

The Religious Court needs to implement a regular mediation evaluation system that encompasses administrative aspects, outcomes achieved, and the quality of the process. This evaluation can be carried out by mediators preparing regular reports, quarterly analysis of mediation success rates, and supervision by a Mediation Supervisory Judge (HPM) specifically appointed to fulfill this function (Directorate General of Religious Courts, 2023).

5. Strengthening the implementation of Supreme Court Regulation (PERMA) No. 1 of 2016.

   Although Supreme Court Regulation (PERMA) No. 1 of 2016 is legally binding, its implementation has not yet been optimal. Therefore, it is necessary to strengthen internal regulations, such as imposing administrative sanctions for parties who do not act in good faith during the mediation process. This measure will encourage greater seriousness on both parties and the mediator in fulfilling their obligations (Supreme Court Regulation of the Republic of Indonesia, 2016). Supreme Court Regulation (PERMA) No. 1 of 2016 stipulates that mediation must be conducted in the court's mediation room or in another location agreed upon by both parties, with a maximum duration of 30 days, which may be extended for an additional 30 days upon mutual consent. Although some court mediation rooms have been updated with more modern and comfortable designs, their location within the judicial environment often creates a rigid and tense atmosphere for some individuals. This condition can hinder the creation of open and honest communication during the mediation process. Therefore, although physical facilities have been improved, it is important to provide flexibility in determining the location of mediation and to adjust its duration as needed to create an environment that is more conducive to achieving a peaceful settlement between the parties.

By implementing these strategies, it is expected that the effectiveness of mediation in the Religious Court can be significantly enhanced, thereby realizing a more dignified form of justice. Improving the quality of mediators through competency-based training, the application of technology in online mediation, and regular evaluation of mediator performance can strengthen the role of mediation as an effective and efficient alternative dispute resolution mechanism. In addition, collaboration among mediators, judges, and other

relevant parties is key to creating a conducive environment for the peaceful and fair resolution of disputes.

Conclusion

Based on the research findings and analysis of the implementation of mediation in divorce cases at the Religious Court, it can be concluded that: *First,* Mediation is a negotiation process involving a neutral third party, the mediator, and is founded on five basic philosophical principles: confidentiality, voluntariness, empowerment, neutrality, and the creation of a unique solution. *Second,* Mediation plays an important role in the resolution of divorce disputes, which are often characterized by emotional conflict and have significant impacts on children and families. Although mediation has been normatively regulated under Supreme Court Regulation No. 1 of 2016, its effectiveness at the Purwakarta Religious Court remains suboptimal.

Third, the main factors hindering mediation's success include the parties' low awareness and good faith, the limited number of certified mediators, and inadequate supporting facilities. In addition, public understanding of the objectives and benefits of mediation remains limited. *Fourth,* to enhance the effectiveness of mediation, the Religious Court needs to implement concrete strategies such as regular mediator training, comfortable mediation facilities, and extensive legal outreach to the community. Periodic monitoring and evaluation of the implementation of Supreme Court Regulation No. 1 of 2016 should also be strengthened, so that mediation can truly function as an effective alternative solution rather than merely a procedural formality.

Future research is expected to broaden its scope by analyzing the influence of the parties' socio-cultural backgrounds on the effectiveness of mediation and exploring innovative and adaptive mediation models that meet the needs of local communities. In practical terms, the findings of this study can serve as a reference for courts and stakeholders in designing policies and mediator training programs, improving mediation facilities, and enhancing public legal literacy regarding peaceful dispute resolution. Thus, mediation can become a key pillar in building a more responsive, just, and family- and child-oriented judicial system.

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