

## Mediation of Domestic Conflict in Divorce Cases at Religious Courts in Banten Province

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**Abstract:** In running a household, no one is free from domestic conflicts. These domestic conflicts are caused by various factors, which ultimately lead to the filing of divorce cases in the Religious Court, either through talak or gugat. These cases can be resolved through mediation in various forms. This research aims to analyze the effectiveness of mediation in resolving domestic conflicts in divorce cases at the Religious Court in Banten Province. The research method employed is qualitative research with a juridical approach, utilizing data collection techniques that include observation and document study. The results show that mediation plays a significant role in reducing the divorce rate by providing couples with a space to dialogue and seek reconciliation solutions. However, various obstacles such as the psychological unpreparedness of the couples, family pressure, and a lack of understanding of the mediation concept often hinder the success of mediation. Juridically, mediation has been carried out by the applicable regulations. This is evident from the procedures followed during the mediation process based on the regulations governing it, but mediation conducted in the Religious Court in Banten Province still experiences many failures. Therefore, efforts are needed to improve the quality of mediation through mediator training, socialization regarding the benefits of mediation, and psychological support for couples facing marital conflict.

**Keywords:** Household Conflict; Mediation; Divorce.

### Introduction

Household life in every family will encounter conflicts, or it can be said that there is no household free from conflict. Since the occurrence of a conflict is a normal thing and cannot be avoided in household life, what can be done is to manage the conflict. This is to ensure that the conflict does not have a negative effect or damaging impact on the integrity of the household. Many reasons can lead to conflicts, ranging from differences in mindset, parenting styles, cultures, education patterns, economics, domestic violence, and so on, which ultimately lead to divorce through divorce or divorce litigation.<sup>1</sup> However, effective conflict management will not lead to a separation or divorce; conflict does not necessarily have to create a rift or a significant impact on both partners.

As mentioned, divorce is a social phenomenon that continues to increase in Indonesia, including in Banten Province. Data from the Religious Courts show that the majority of divorce cases are triggered by economic factors, infidelity, domestic violence, and differences in life principles. To reduce the negative impacts of divorce, the religious court system requires a mediation process before the case is decided. Mediation aims to provide an opportunity for couples to reach a peaceful agreement and avoid unnecessary divorce.<sup>2</sup> However, the effectiveness of mediation in this context

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<sup>1</sup>Salman Salman. "Implementation of Mediation and Hakam in Divorce Case in Religious Court." *International Journal of Nusantara Islam* 8.2 (2020).

<sup>2</sup>Haeratun. "Empowerment of Mediation As an Alternative Dispute Resolution for Divorce Cases in the Religious Court of West Nusa Tenggara". *International Journal of Integrative Sciences* 2.5 (2023): 579-92.

is still a matter of debate.<sup>3</sup> Mediation is a method of resolving disputes through a negotiation process to reach an agreement between the parties with the assistance of a Mediator. A Mediator is a judge or another party who has a Mediator Certificate as a neutral party that helps the Parties in the negotiation process to explore various possible resolutions to the dispute without using an adjudicative or coercive approach to impose a resolution.<sup>4</sup>

However, even though mediation has taken place in Religious Courts<sup>5</sup> and High Courts, the fact is that it has not reduced the divorce rate. This is based on data and facts that cases of family conflict lead to domestic violence, commonly referred to as KDRT, divorce, and child custody. These three cases are actually cases that can be mediated. However, the fact is that the incidence of conflicts is still high. Along with this, nationally, data from the Ministry of Women's Empowerment and Child Protection (PPPA) of the Republic of Indonesia recorded that 25,050 women became victims of violence in Indonesia throughout 2022.<sup>6</sup> The number increased by 15.2% from the previous year to 21,753 cases. Similarly, the divorce rate, according to the Statistics Indonesia report, the number of divorce cases in Indonesia reached 516,334 cases in 2022. This figure increased by 15.31% compared to 2021, which reached 447,743 cases.<sup>7</sup> Meanwhile, according to the chairman of KPAI, Asrarun Ni'am, there are 702 reports where 55 percent were made by mothers. These violations include, among others: restrictions on access to meet family, neglect of children's growth and development, committing violence, and economic or sexual exploitation.<sup>8</sup> Although the data obtained is already old, it is highly likely to increase in the coming years.

According to the database of the High Religious Court of Banten Province, the number of divorce cases in 2023 recorded a total of 21,140 cases, of which 19,031 cases have been decided. The highest number of cases was at the Tigaraksa Tangerang Religious Court, followed by the Serang Religious Court with 5,905 cases, the Tangerang City Religious Court with 3,387 cases, the Pandeglang Religious Court with 1,784 cases, the Rangkasbitung Religious Court with 1,286 cases, and the Cilegon City Religious Court with 973 cases. Also, based on the database of the Islamic High Religious Court, in the Serang Religious Court in 2023, the number of cases mediated was 1,220, with 73 cases successfully mediated, 343 cases unsuccessful, and 12 cases unable to be executed, leaving a total of 792 cases at the end of the year. The data above is also supported by the database of the Islamic High Court, in the Tigaraksa Tangerang Religious Court in 2023, the number of cases mediated was 920, with 459 cases successfully mediated, 435 cases unsuccessful, and 11 cases could not be executed, leaving a balance of 15 cases at the end of the year.<sup>9</sup>

Meanwhile, based on the literature review that has been conducted, several previous research findings are presented regarding the resolution of divorce cases through mediation. For instance, a study conducted by Ahmad Solehudin and Saim Aksinudin discusses the mediation

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<sup>3</sup>Fitriyah Alkaff, A. Husein Ritonga, and A. A. Miftah. "The Effectiveness Of Mediation In Completing Divorce Cases In Jambi Provincial Religious Court". *International Journal of Southeast Asia* 2.1 (2021).

<sup>4</sup>Mardalena Hanifah, and Meidana Pascadinianti. "Function of Non-Judge Mediators in Divorce Settlement Through Religious Courts". *Unnes Law Journal* 9.2 (2023): 377-418.

<sup>5</sup>Hamzah, "Peranan Peradilan Agama Dalam Pertumbuhan Dan Dinamika Hukum Kewarisan Di Indonesia." *Al-Syakhshiyah Jurnal Hukum Keluarga Islam dan Kemanusiaan* 2.2 (2020): 122-139.

<sup>6</sup>Monavia Ayu Rizaty, "Ada 25.050 Kasus Kekerasan Perempuan Di Indonesia Pada 2022", *Data Indonesia.Id*, 2023.

<sup>7</sup>Cindy Mutia Annur, "Kasus Perceraian Di Indonesia Melonjak Lagi Pada 2022, Tertinggi Dalam Enam Tahun Terakhir", *Databoks.Katadata.Co.Id*, 2023.

<sup>8</sup>Calvin Basuki, 'KPAI : 55 Persen Pelanggaran Hak Anak Dilakukan Ibu', *Antaranews.Com*, 2016.

<sup>9</sup>Statistik Pengadilan Agama Provinsi Banten. Laporan Tahunan Perkara Perceraian 2023.

process at the Soreang Religious Court in Bandung Regency as a means of reconciliation in divorce cases based on Supreme Court Regulation Number 1 of 2016.<sup>10</sup> Similarly, Reskia examines the effectiveness of online mediation responses to divorce law in Religious Courts during the Covid-19 pandemic.<sup>11</sup> As for Nasriah and others, they are more interested in mediation guidance in avoiding divorce at the Religious Court of Parepare City from the perspective of Islamic counseling guidance.<sup>12</sup> Meanwhile, Mutholib et al.,<sup>13</sup> and Dharmayani et al.,<sup>14</sup> focusing its study broadly on the mediation of religious justice systems from the perspective of Islamic law. However, several of these studies were conducted in different locations with different findings, which is why this research aims to reinforce previous studies that the mediation process in divorce cases continues to be a problem to this day. Therefore, this research is conducted at the Religious Court of Banten Province by exploring divorce case data and the effectiveness of mediation to contribute to the concept of effective mediation.

Based on the presentation, there arises doubt in the community regarding the effectiveness of the mediation model currently applied, as this mediation model is deemed no longer relevant to the current conditions. Therefore, it is necessary to seek models and alternative mediations that can be implemented in resolving household conflicts, especially those that impact divorce.<sup>15</sup> This research aims to analyze the effectiveness of mediation in resolving domestic conflicts in divorce cases at the Religious Court in Banten Province. Mediation is an alternative dispute resolution process that is required by religious court law in Indonesia before divorce cases are decided. Furthermore, this study discusses two important points as a study that leads to the achievement of the research objectives. The discussions refer to the implementation of mediation at the Religious Court in Banten Province and the factors that contribute to domestic conflicts as well as the failure of mediation at the Religious Court of Banten Province. It is expected that the implementation of mediation at the Religious Court can be more effective with a minimized failure rate in mediation.

## Method

This research is a qualitative study with a descriptive and juridical type of research. Descriptive research means that this study produces data in the form of descriptions related to the implementation of household conflict mediation. Meanwhile, the juridical approach is intended to examine the research problems using legal theories referred to as theories of legal construction. This research is conducted at the Religious Court of Banten Province. The time frame for the research is

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<sup>10</sup>Ahmad Solehudin, and Saim Aksinudin. "The Mediation Process at the Soreang Religious Court Becomes a Means of Reconciliation in Divorce Cases in Soreang, Bandung Regency Based on Supreme Court Regulation Number 1 of 2016". *Journal of Law, Politic and Humanities* 4.3 (2024):149-54.

<sup>11</sup>Reskia Reskia. "Effectiveness of Online Mediation Response to Divorce Law in Religious Courts in The Era of Pandemic Covid-19." *Al-Iftah: Journal of Islamic studies and society* 3.2 (2022).

<sup>12</sup>Nasriah Nasriah, Andi Rio Makkulau and Wirani Aisiyah Anwar. "Mediation Guidance In Avoiding Divorce In Parepare City Religious Courts (Islamic Counseling Guidance Perspectives)." *Jurnal Marital: Kajian Hukum Keluarga Islam* 1.2 (2022).

<sup>13</sup>Mutholib Mutholib, Liky Faizal, and H. Muhammad Zaki. "Analisis Hukum Islam Terhadap Pelaksanaan Mediasi Perkara Perceraian Di Pengadilan Agama Gedong Tataan Dan Pengadilan Agama Pringsewu Lampung". *AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam* 4.1 (2022): 83-92.

<sup>14</sup>Dharmayani Dharmayani, et al. "The Urgency of Mediation of the Religious Courts System on Islamic Law Perspective". *Jurnal Mahkamah : Kajian Ilmu Hukum Dan Hukum Islam* 7.1 (2022):15-30.

<sup>15</sup>Rara Genta Munggaran Basri, et al. "Effectiveness of the Mediation Process in Resolving Divorce Cases at the Depok Religious Court." *Mizan: Journal of Islamic Law* 8.1 (2024).

in 2024. Primary data sources are obtained from field observations and document studies, namely data on household conflict mediation. Meanwhile, secondary sources are obtained from relevant literature and journal articles.

The data analysis technique used in this research is the data analysis technique based on the theory of Miles and Huberman as outlined by Ariesto Hadi Sutopo and Adrianus Arief, which includes three flows: data reduction, data presentation, and verification as well as drawing conclusions. Data reduction involves identifying the essential aspects and focusing the discussion on important matters according to the study's issues. In this study, the focus of the discussion is on mediation in resolving household conflicts in divorce cases in religious courts. Data presentation is the presentation of research data presented in the form of narratives or descriptions that illustrate the research findings in the field. The final step is data verification and drawing conclusions. After the data is selected and grouped, the data presentation is carried out, and the next step is verification, which involves carefully reviewing the presented data to ensure it is accurate and thorough. This is to avoid any errors or discrepancies with the facts found in the field. Then, if the data has been verified completely and comprehensively, only then can conclusions be drawn.

The subsequent research methods are simplified through the presentation of the following table:

*Table 1. Research Methods*

Aspect	The method used
Type of research	Qualitative descriptive
Approach	Juridical
Location	Religious Court of Banten Province
Research time	Year 2024
Primary data	Results of observations and document studies
Secondary data	Relevant literature and journal articles
Data collection	Observation and document study
Data analysis	Data reduction, data presentation, and verification as well as drawing conclusions

## Results and Discussion

### Implementation of Mediation in Religious Courts in Banten Province

Mediation is a dispute resolution process through negotiation or consensus among the parties, assisted by a mediator who does not have the authority to decide or impose a resolution.<sup>16</sup> The main characteristic of the mediation process is negotiation, which is essentially the same as the process of deliberation or consensus. In accordance with the nature of negotiation or deliberation or consensus, there should be no coercion to accept or reject any idea or solution during the mediation process.<sup>17</sup> Everything must receive approval from the parties involved. The legal basis for the implementation of Mediation in Court is the Supreme Court Regulation of the Republic of Indonesia No. 1 of 2008 concerning Mediation Procedures in Court, which is a revision of Supreme Court Regulation No. 2 of 2003 (PERMA No. 2 of 2003), where PERMA No. 2 of 2003 still contains many normative weaknesses that prevent the regulation from achieving the intended maximum goals, as

<sup>16</sup>Siti Nur Aisyah. "Virtual Mediation In Divorce Cases At Ujung Tanjung Religious Court." *At-Thullab : Jurnal Mahasiswa Studi Islam* 5.2 (2023).

<sup>17</sup>Sitti Nurkhaerah and Suhri Hanafi. "Divorce Mediation in Islamic Religious Court in the Era of Covid-19 Pandemic." *Global Journal of Politics and Law Research* 11.4 (2023).

well as various inputs from judges regarding the issues in that regulation.

The background of why the Supreme Court of the Republic of Indonesia (MA-RI) requires the parties to undergo mediation before a case is decided by a judge is outlined below. The policy of MA-RI to incorporate mediation into court proceedings is based on several reasons as follows: First, mediation is expected to address the issue of case backlog. If the parties can resolve their disputes on their own without going to trial, the number of cases to be examined by judges will also decrease. If a dispute can be resolved through reconciliation, the parties will not pursue legal remedies because reconciliation is the result of the mutual agreement of the parties; thus, they will not submit to legal means. Conversely, if the case is decided by a judge, the ruling is based on the judge's perspective and assessment of the facts and legal positions of the parties. The views and assessments of the judges do not necessarily align with the views of the parties, especially the losing party, which is why the losing party always takes legal action for appeal and cassation. In the end, all cases lead to the Supreme Court, resulting in a backlog of cases.

Second, the mediation process is seen as a faster and cheaper way of resolving disputes compared to litigation. In Indonesia, there has not been any research to prove the assumption that mediation is a quicker and cheaper process compared to litigation. However, based on the logic outlined in the first reason that if a case is decided, the losing party often appeals, whether by filing for a legal remedy, an appeal, or cassation, resolving the case potentially takes years, from the initial trial in the first instance to the cassation level.

Thirdly, the implementation of mediation is expected to expand access for the parties to obtain a sense of justice. A sense of justice can be obtained not only through the litigation process but also through a deliberative process among the parties. With the implementation of mediation into the formal judicial system, the community seeking justice in general and the disputing parties in particular can first seek to resolve their disputes through a consensus-building approach assisted by a neutral party known as a mediator.

Fourth, institutionalizing the mediation process into the judicial system can strengthen and maximize the role of judicial institutions in dispute resolution. In the past, the more prominent function of judicial institutions was to make decisions; with the enactment of the Supreme Court Regulation (PERMA) on Mediation, it is hoped that the function of reconciliation or mediation can run in parallel and be balanced with the decision-making function. The PERMA on Mediation is expected to encourage a change in perspective among the actors in the civil justice process, namely judges and lawyers, that judicial institutions do not only make decisions but also reconcile. The PERMA on Mediation provides guidelines for achieving peace.

In PERMA, parties are allowed to use the services of more than one mediator consisting of judges and other professions deemed to understand the underlying issues of the dispute. This concept is similar to the Chotei concept in the Japanese legal system. If in PERMA No. 2 of 2003, the examining judge is not allowed to be the mediator of the case they are examining, conversely, in PERMA No. 1 of 2008, the examining judge is not allowed to be the mediator of the case they are examining if requested by the parties or based on the provisions of Article 12 paragraph (6). The stages of the mediation concept in Indonesia adopt the Japanese legal system concept known as *Sokketsu Wakai*, which means that out-of-court reconciliation can be submitted for validation to the

court.<sup>18</sup> The Sokketsu Wakai concept inspires the Working Group to adopt it into the PERMA as formulated in Article 24.

The Pre-Mediation Stage is (1) On the First Hearing Day, attended by both parties, the Judge requires the parties to pursue mediation. (2) The Judge postpones the trial process of the case to provide an opportunity for the mediation process lasting a maximum of 40 Working Days. (3) The Judge explains the mediation procedure to the disputing parties. The parties select a Mediator from a list of available names, on the First Hearing Day or no later than 2 working days thereafter. (4) If within the time frame in point 4 the parties cannot agree on the desired Mediator, the Chief Justice will promptly appoint a Judge who is not the presiding judge of the main case to carry out the role of the Mediator.

The Mediation Process Stage includes (1) Within a maximum of 5 working days after the parties appoint the agreed Mediator or after being appointed by the Chief Judge, each party may submit a case resume to the appointed Mediator Judge. (2) The Mediation process lasts a maximum of 40 working days from the time the Mediator is chosen by the parties or appointed by the Judge's Assembly. (3) The Mediator is required to prepare a schedule for Mediation meetings to be agreed upon by the parties. (4) If deemed necessary, the Mediator may conduct a 'Caucus'. (5) The Mediator is obligated to declare that mediation has Failed if one party or the parties or their Attorney has consecutively failed to attend the mediation meetings according to the agreed schedule without reasonable cause after being duly summoned.

The provisions of mediation to reach an agreement are as follows: (1) If mediation results in a peace agreement, it must be formulated in writing and signed by both parties and the Mediator. (2) If mediation is represented by legal counsel for the parties, they must declare in writing the agreement or consensus reached. (3) The parties must return to the Judge on the specified hearing date to inform them of the peace agreement. (4) The parties may submit the peace agreement to the Judge to be ratified in the form of a 'Peace Deed'. (5) If the parties do not wish for the peace agreement to be ratified in the form of a Peace Deed, it must include a clause for the withdrawal of the lawsuit and/or a clause stating that the matter has been resolved.

Meanwhile, mediation does not reach an agreement, namely: (1) If mediation does not result in an agreement, the mediator is obliged to state in writing that the mediation process has failed and to inform the judge of this failure. (2) At each stage of the case examination, the presiding judge still has the authority to seek reconciliation until before the verdict is pronounced. (3) If mediation fails, the statements and acknowledgments of the parties during the mediation process cannot be used as evidence in the trial process.

A mediator is not a judge who adjudicates one of the disputing parties. A neutral mediator does not act as a judge; they do not have the authority to render a decision. Instead, the mediator conducts a face-to-face examination with the disputing parties and uses special skills in listening to the issues of the parties, questioning, negotiating, and making choices, helping the parties determine their own solutions to their disputes. In fact, the mediator acts as a catalyst for change, applying their special skills to assist the disputing parties in resolving their conflict.

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<sup>18</sup>Nirwan Junus, et al. "Integration of Mediation in Divorce Cases Reviewed from Supreme Court Regulation on Court Mediation Procedures." *Jambura Law Review* (2024).

The role of the mediator is only to assist the parties by not imposing or forcing their views or assessments on the issues during the mediation process to the parties.<sup>19</sup>

In addition to having a mediating role, it also has the duties of a mediator, including the following: (1) The mediator is required to prepare a proposed schedule for the mediation meeting for the parties to discuss and agree upon. (2) The mediator must encourage the parties to actively participate in the mediation process. (3) If deemed necessary, the mediator may conduct caucuses or separate meetings during the mediation process. (4) The mediator is obligated to encourage the parties to explore and delve into their interests and to seek various options for resolution that are best for the parties.

Mediation in Religious Courts is a process of reconciliation efforts between a husband and wife who have filed for divorce, where this mediation is facilitated by a judge appointed in the Religious Court.<sup>20</sup> In practice, this mediation process is carried out if one of the married partners does not agree to the divorce. So, if the one filing for divorce is the wife, but the husband states that he does not want a divorce during the first hearing, then the mediation session is held.<sup>21</sup>

In detail, mediation can be described as follows. At the first hearing, the panel of judges will complete the necessary documents for the trial, such as the completeness of the lawsuit letter, power of attorney, and summons for the parties. The judge will then explain that according to the procedure, before the divorce process is carried out, the parties are required to conduct mediation. The judge will then ask if the parties have a mediator; if not, the judge will appoint a mediator to lead the mediation of the parties. The panel of judges will then appoint another judge to be the mediator for the mediation process. Mediation takes place in a special room in the religious court. Generally, mediation is conducted a maximum of two times. If no reconciliation is reached during mediation, only then can the divorce proceedings take place.<sup>22</sup>

Regarding the effectiveness of mediation implementation at the Religious Court of Banten Province, there are several options that a person can take when facing a dispute, one of which is mediation. The reason for choosing mediation is usually to maintain a good relationship with the disputing parties after a disagreement; however, not all mediation processes go smoothly. There are times when both parties struggle to find a solution and most end in a 'deadlock.' In practice, every mediator certainly strives to ensure that the issues brought to them for resolution are thoroughly addressed. In fact, methods and strategies that are typically employed include cooling down the atmosphere, improving communication flow, helping to create and develop options, anticipating deadlocks, creating doubt, and lowering excessively high expectations are all attempted to be applied. However, going back to the principle of mediation where everything is handed over to the parties for an agreement. Mediators are also ethically prohibited from interfering too deeply, especially to the extent of pressuring the parties. It must be noted that the core role of the mediator

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<sup>19</sup>Wahda Hilwani Damanik, Muthia Erina Nasution and F. Lubis. "Peran Mediator Dalam Mengurangi Tingkat Perceraian di Pengadilan Agama Medan." *As-Syar'i: Jurnal Bimbingan & Konseling Keluarga* (2023).

<sup>20</sup>Suriani Suriani, et al. "The Effectiveness Of Electronic Mediation As A Resolution Of Divorce Cases In The Tanjungbalai Religious Courts." *Jurnal Ilmiah Advokasi* 12.2 (2024).

<sup>21</sup>Muhammad Amin Syarifudin, Herwastoeti Herwastoeti, and Dwi Ratna Indri Hapsari. "The Effectiveness of Application Mediation in Reducing Divorce Cases at Jombang Religious Court". *Indonesia Law Reform Journal* 2.3 (2022): 352-66.

<sup>22</sup>Zavira Aulia and Mia Mia. "Implications Of Implementing Mediation As A Means Of Divorce Case Settlement." *Jurnal Ilmiah Advokasi* 12.1 (2024).

is to help the parties develop empathy, create a conducive atmosphere for negotiation with the expectation of reaching an agreement.

Apart from that, the practice of mediation in Indonesia can be said to be quite unique. Because mediation, which is an alternative dispute resolution process outside of court, has recently been 'adopted' as an integral part of the litigation process. Although it has been formally institutionalized within the judicial system for certain civil cases, mediation still appears to be less popular than dispute resolution both in court and out of court, such as arbitration.<sup>23</sup>

Mediation in divorce cases is also based on the Supreme Court Regulation (Perma) No. 1 of 2016 concerning Mediation Procedures in Court.<sup>24</sup> The implementation of mediation as stated in PERMA No. 1 of 2016 does not set a limitation that the success of mediation can be seen from civil cases that are reconciled through the mediation process in the Court, but the author assumes that every mediation process must be assessed based on the success rate of the mediator judges in reconciling the disputing parties. Since mediation is a path that must be taken by the parties involved in a case before the trial process, at the very least, the mediation process can contribute to the process that has been carried out. If the mediation process is merely a requirement that must be passed before the trial, then mediation will not be effectively applied in the Religious Courts of Banten Province.

In addition, there are several obstacles faced in the implementation of mediation in the Religious Court, particularly in the Religious Court of Banten Province in the mediation of civil cases. Meanwhile, according to the provisions contained in the Supreme Court of the Republic of Indonesia Decision Number: KMA/059/SK/XII/2003, which has been in effect since December 30, 2003, and effectively since September 18-November 2004, several District Courts have been designated for special guidance and observation in the application of the Supreme Court Regulation (PERMA) Number 2 of 2003, namely the Central Jakarta District Court, the Surabaya District Court, the Bengkalis District Court, and the Batusangkar District Court. After the guidance period by the District Court has concluded, it turns out there are still some obstacles encountered in the implementation of mediation based on PERMA No. 2 of 2003. Consequently, PERMA No. 1 of 2008 was introduced, which is expected to address the shortcomings of PERMA No. 2 of 2003.<sup>25</sup>

However, even though the regulations have been amended to prevent existing obstacles, new obstacles still arise in the implementation of PERMA No. 1 of 2008. The obstacles are as follows: (1) The absence of a mechanism that can compel one party or parties that do not attend the mediation meeting. (2) Limited number of mediators and judges; (3) Good faith is very important to achieve success; (4) Support from judges; (5) The absence of dedicated mediation rooms; (6) Support from lawyers in the mediation process.

The mediation process in court is a form of law enforcement, namely the application of PERMA Number 1 of 2008 concerning Mediation Procedures. Thus, the mediation process at the

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<sup>23</sup>Dodi Muhammad, and Umar Haris Sanjaya. "The Role of Mediation Agreement of Divorce Which Ended Amicably (Case at Yogyakarta Religious Court)". *Justitia Jurnal Hukum* 6.2 (2023).

<sup>24</sup>Ahmad Solehudin, and Saim Aksinudin. "The Mediation Process at the Soreang Religious Court Becomes a Means of Reconciliation in Divorce Cases in Soreang, Bandung Regency Based on Supreme Court Regulation Number 1 of 2016". *Journal of Law, Politic and Humanities* 4.3 (2024):149-54.

<sup>25</sup>Nuraningsih Amriani, *Mediasi Alternatif Penyelesaian Sengketa Perdata di Pengadilan Agama*, (Jakarta: Raja Grafindo Persada, 2011), p. 154

Religious Court of Banten Province can be analyzed through several factors. These factors can support the success of the mediation process and even lead to its lack of success.

### **Factors Leading to Household Conflict and Mediation Failure in the Religious Court of Banten Province**

Based on research results related to the factors causing domestic conflicts in the Religious Court, it is broadly caused by economic factors, the husband not working/unemployed, the husband feeling that his self-esteem has fallen/not being respected, which leads the husband to take shortcuts to earn income through online gambling, illegal loans, and other unlawful means, which then leads to divorce.<sup>26</sup> Likewise, infidelity generally occurs a lot among family members who lack a solid religious foundation, weak love, selfish attitudes from each individual, poor and disharmonious communication, unstable emotions, and inability to adapt.

The factors causing household conflicts that lead to divorce, domestic violence, and child custody disputes are:

- a. Economic factors, for example when a husband is unemployed, can cause him to feel a loss of self-esteem, leading him to take shortcuts to earn money through online gambling, loan sharks, and other illegal methods, which then leads to conflicts in the household resulting in domestic violence, and ultimately ending in divorce.
- b. Factors of infidelity committed by either the husband or wife. Economic difficulties in household life can lead to a loss of trust from the wife towards her husband. This usually results in infidelity being committed by either the husband or the wife; the party who is harmed or hurt due to the infidelity feels angry, disappointed, heartbroken, experiences social disturbances, or psychological disturbances, as well as a lack of trust between each other, which can lead to quarrels, disputes, and arguments in their household, making reconciliation difficult.
- c. The difference in principles between husband and wife in running a household, where both uphold their respective sectoral egos. The egocentrism within the family becomes a cause of the emergence of domestic conflicts and ongoing quarrels.
- d. The factor of lack of understanding of religious knowledge. All the bad behaviors of humans are partly caused by their distance from religion. This is because Islam encourages its followers to always act kindly and avoid wicked and immoral deeds.

Dispute resolution can be carried out through two processes, namely the litigation process in court and the dispute resolution process through cooperation (cooperative) outside of court. The process of resolving disputes outside of court results in an agreement that is satisfactory to both parties (win-win solution), guarantees confidentiality, avoids slow administrative procedures, comprehensively addresses issues in togetherness, and maintains good relationships. This out-of-court dispute resolution is called Alternative Dispute Resolution (ADR), which in Indonesian is referred to as Pilihan Penyelesaian Sengketa (PPS) or Mekanisme Alternatif Penyelesaian Sengketa (MAPS) through means such as consultation, negotiation, mediation, arbitration, and various other

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<sup>26</sup>Rosdalina Bukido, et al. "Settlement Of Marital Disputes Efficacy Through Mediation In The Manado Religious Court". *Jurnal IUS Kajian Hukum Dan Keadilan* 7.3 (2019): 374-83.

models.<sup>27</sup>

In its implementation, mediation in court often experiences failure or does not result in a peace agreement between the parties involved in the case. According to the database of the Banten Province Religious High Court, there were 21,140 divorce cases recorded in 2023, of which 19,031 cases have been decided. The highest number of cases was in the Tigaraksa Tangerang Religious Court, followed by the Serang Religious Court with 5,905 cases, the Tangerang City Religious Court with 3,387 cases, the Pandeglang Religious Court with 1,784 cases, the Rangkasbitung Religious Court with 1,286 cases, and the Cilegon City Religious Court with 973 cases. Also, based on the database of the Islamic High Court in 2022, in the Serang Religious Court, a total of 250 cases were mediated, of which 15 cases were successful, and 238 cases were unsuccessful, while none were unimplemented, leaving an end-of-year balance of 0 cases. In the year 2023, the number of cases mediated was 1220, with 73 cases successfully mediated, 343 cases unsuccessful, and 12 cases that could not be implemented, leaving a total of 792 cases by the end of the year.<sup>28</sup>

The data above is also reinforced by the data from the Islamic High Religious Court in 2022, at the Tigaraksa Tangerang Religious Court, a total of 953 cases were mediated, with 141 cases successful, 780 cases unsuccessful, and 11 cases that could not be executed, leaving a final residue of 21 cases. In 2023, there were 920 cases mediated, with 459 cases successfully mediated, 435 cases unsuccessful, and 11 cases that could not be executed, leaving a final residue of 15 cases. Furthermore, according to the Islamic High Religious Court database in 2022, at the Cilegon City Religious Court, a total of 265 cases were mediated, with 142 cases successful, 85 cases unsuccessful, and 5 cases that could not be executed, leaving a final residue of 53 cases, and a final residue of 68 cases. In 2023, there were 196 cases mediated, with 100 cases successfully mediated, 28 unsuccessful cases, and 0 cases that could not be implemented, leaving a total of 68 cases at the end of the year.<sup>29</sup>

From several cases dominated by matters that failed to be mediated, it shows that the implementation of the Supreme Court Regulation can be said to be less than optimal; thus, what was hoped for has not yet been achieved. The products generated by the judiciary in resolving cases brought before it are dominated by conventional rulings characterized by win-or-lose outcomes. It is rarely found that settlements are based on the win-win solution concept.<sup>30</sup>

The issues or obstacles faced by the judges all stem from the individuals involved. A mediating judge must be able to address all factors that hinder peace between the two parties and must respond to the problems faced by both sides.<sup>31</sup> There are several factors that cause mediation to fail, namely: (1) One party is absent from the mediation process; (2) The parties are in conflict that cannot be reconciled with one another; (3) A strong desire to divorce; (4) Long-standing conflict has occurred; (5) Psychological or mental factors; (6) The good faith of the parties, good faith to resolve the dispute through mediation and the parties have the awareness to make peace and recognize their mistakes.

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<sup>27</sup>Rachmadi Usman, *Pilihan Penyelesaian Sengketa Di Luar Pengadilan*, (Bandung: PT. Citra Aditya Bakti, 2003), p. 3.

<sup>28</sup>Statistik Pengadilan Agama Provinsi Banten. Laporan Tahunan Perkara Perceraian 2023.

<sup>29</sup>Statistik Pengadilan Agama Provinsi Banten. Laporan Tahunan Perkara Perceraian 2023.

<sup>30</sup>Ahmad Faisal, "The Failure of Mediation in Divorce Cases Handling at Gorontalo Religious Court". *Al-Mizan* 18.2 (2022): 337-56.

<sup>31</sup>Septi Indrawati and Riska Amelia. "Mediation Efficacy in Resolving Divorce Cases: A Case Study of the Purworejo Religious Court." *Journal of Judicial Review* 25.2 (2023).

The inhibiting factors in the mediation process undertaken by the judge in overcoming obstacles in the mediation process have not been able to create effective mediation, this is due to the factors of the parties themselves who do not want reconciliation.<sup>32</sup>

The results of this study also indicate that mediation in the Religious Court of Banten Province has varying levels of success, depending on several key factors:

1. The readiness of partners in undergoing the mediation process is a determining factor for its success. Partners who still have good communication and are able to interact calmly are more likely to reach a peaceful agreement compared to partners who have experienced emotional disconnection.
2. If partners no longer have an emotional attachment and communication is colored by anger or hatred, mediation often fails because each party focuses more on personal interests rather than seeking a mutual solution.
3. Some couples enter the mediation room with unresolved anger, making it more difficult to reach a fair and peaceful resolution. In some cases, couples who have experienced prolonged conflicts, such as infidelity or domestic violence, often cannot find common ground due to deep emotional wounds. Therefore, the psychological readiness of the couples is also an important aspect in mediation.
4. Mediators play an important role in guiding conflicting couples to find the best solutions for both parties. The success rate of mediation largely depends on the mediator's communication skills and understanding of the couple's psychology. Good communication skills are essential, and the mediator must be able to explain various resolution options clearly and impartially.
5. Support or pressure from family often becomes a determining factor in a couple's decision to reconcile or continue with the divorce. In many cases, family has a significant influence on the couple's decisions, especially in the context of Indonesian culture, where extended families often interfere in household matters.
6. Low legal awareness is one of the factors that often hinders the success of mediation. Many couples who come to the Religious Court do not have sufficient understanding of their rights and obligations under marriage law, thus failing to optimize mediation.

Some couples view mediation merely as a formality before divorce is finalized, without understanding that mediation can be a solution for resolving household conflicts. Many couples are unaware of their rights under Islamic law and state law, such as rights to maintenance, child custody, and division of shared property. As a result, they tend to be less active in negotiations during the mediation process.<sup>33</sup> Partners who lack understanding of their rights often become more defensive or hand over all decisions to the court, thereby reducing the effectiveness of mediation as a peaceful solution.<sup>34</sup> In this study, it was found that couples with higher education levels tend to be more active in the mediation process because they have a better understanding of the law. Conversely, couples with low education levels often do not understand the benefits of mediation and are quicker to give up on the decision to divorce. The lack of legal understanding prevents many couples from

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<sup>32</sup>Haeratul Haeratul, and Fatahullah Fatahullah. "Efektivitas Mediasi Sebagai Alternatif Penyelesaian Perkara Perceraian Di Pengadilan Agama." *Batulis Civil Law Review* 3.1 (2022): 29-59.

<sup>33</sup>Syaikh, Sabarudin Ahmad, and Muhammad Luthfi Setiarno Putra. "Judicial Mediation: Is Reconciliation Impossible in Divorce Cases?". *Al-Manhaj: Journal of Indonesian Islamic Family Law* 5.2 (2023): 120-47.

<sup>34</sup>Muhammad Saifullah, et al. "Failure of Good Faith in Mediating Divorce Cases in Religious Court". *International Journal Ihyat' Ulum Al-Din* 26.1 (2024): 94-107.

optimally utilizing mediation, thereby increasing the risk of divorce. Similarly, family support or pressure has a significant influence on the couple's decision to stay together or divorce.

## Conclusion

From the results of this research, it can be concluded that the success rate of mediation in divorce cases at the Religious Court of Banten Province varies greatly, depending on the readiness of the couple, the skills of the mediator, family support, and the legal awareness of the couple. Couples who still have good communication find it easier to reach a peaceful agreement, while couples who have experienced emotional disconnection tend to find reconciliation difficult. Competent mediators who understand the psychology of the couple are more effective in assisting reconciliation compared to mediators who only perform administrative tasks. Given the complexity and complications of household issues, which are more predominantly related to psychological problems, mediators must be equipped with psychological materials, and if necessary, the mediator should also have a background in psychology. In order to minimize household conflicts and resolve them well peacefully and restore the households of the parties involved, the number of non-judicial mediators should ideally be balanced with judicial mediators. To the government, local governments, the Ministry of Religious Affairs, and higher education institutions, collaboration and cooperation are needed to create policies and conduct training and socialization on how to realize a family that is *sakinah, mawaddah, and warahmah*, happy and prosperous both physically and spiritually, as is the goal of marriage.

Based on this finding, it is necessary to improve the quality of mediation through mediator training, education for couples about their legal rights and obligations, and enhancing the role of family in providing positive support during the mediation process. Thus, the divorce rate in Banten Province can be reduced more effectively. Mediation in divorce cases at the Religious Court of Banten Province plays a crucial role in lowering the divorce rate. However, its success is greatly influenced by the psychological readiness of the couples, the skills of the mediator, and the support from family and society. Therefore, efforts to improve the quality of mediation are needed through mediator training, socialization regarding the benefits of mediation, and psychological support for couples facing marital conflicts.

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