

# Implementation And Effectiveness Of Divorce Mediation In The Sungguminasa Religious Court Of Gowa Regency

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**Abstract:** Mediation, as a non-litigation dispute resolution mechanism, holds a strategic position in divorce cases in Religious Courts. This study aims to analyze the implementation and effectiveness of mediation in divorce proceedings at the Sungguminasa Religious Court, Gowa Regency. Based on the theoretical frameworks of transformative and evaluative mediation, this article examines both empirical and normative data on the success of mediation in the region. The findings show that while mediation is procedurally implemented according to regulations, its effectiveness remains limited due to the low substantive engagement of the parties and the limited capacity of mediators. Structural reform and a more restorative paradigmatic approach are required to optimize mediation as a means of preventing divorce.

**Keywords:** Mediation; divorce; religious court; restorative justice; effectiveness

## 1. Introduction

Divorce is a social phenomenon that significantly affects family stability and social order. The dissolution of marriage often results in adverse consequences for children, including psychological distress, behavioral problems, juvenile delinquency, substance abuse, and disruptions in education. The increasing divorce rate in Indonesia has become a serious concern for policymakers, legal practitioners, and society at large.<sup>1</sup>

According to data from the Directorate General of Religious Courts of the Supreme Court of Indonesia, divorce cases continue to increase annually, with divorce petitions filed by wives (cerai gugat) dominating the statistics. To address the growing number of divorce cases and minimize their social consequences, the Supreme Court issued Supreme Court Regulation (PERMA) No. 1 of 2016 concerning Mediation Procedures in Courts. This

<sup>1</sup> Fika Burlian, "Eksistensi Perkawinan Dan Perceraian Menurut Hukum Islam Dan Pasca Berlakunya UU NO. 1 Tahun 1974." Mizan: Jurnal Ilmu Hukum, Volume 8 Nomor 2, Desember 2019

regulation establishes mediation as a mandatory stage in civil proceedings, including divorce cases.<sup>2</sup>

Within the context of Indonesian family law, mediation possesses theological, sociological, and juridical dimensions. From an Islamic perspective, reconciliation (*isblah*) between spouses is strongly encouraged, while divorce, although permissible, is regarded as a disliked act. Sociologically, mediation promotes a win-win solution by encouraging dialogue and mutual understanding between disputing parties. Juridically, mediation serves as a compulsory procedural mechanism aimed at preventing unnecessary divorces and fostering peaceful dispute resolution.<sup>3</sup>

This study examines the implementation and effectiveness of divorce mediation at the Sungguminasa Religious Court, one of the busiest Religious Courts in South Sulawesi, Indonesia.<sup>4</sup>

## 2. Method

This research employs an empirical-juridical approach utilizing both statutory and case-study methods. The study investigates the effectiveness of mediation in divorce cases by examining legal regulations and their practical implementation at the Sungguminasa Religious Court.

Primary data were obtained through document analysis of divorce case decisions, annual reports of the Sungguminasa Religious Court from 2022 to 2023, and interviews with mediator judges. Secondary data were collected from scholarly literature and legal regulations, including:

1. HIR / Rbg
2. Law Number 16 of 2019 as the Amendment to Law Number 1 of 1974 concerning Marriage.
3. Law Number 50 of 2009 concerning Religious Courts.
4. Government Regulation Number 9 of 1975 concerning Marriage.
5. The Compilation of Islamic Law (Kompilasi Hukum Islam).
6. Supreme Court Circular Letter (SEMA) Number 1 of 2002 concerning the Empowerment of First-Level Courts in Implementing the Institution of Settlement through Peace (Amicable Settlement).
7. Supreme Court Regulation (PERMA) Number 1 of 2016 concerning Mediation Procedures in Courts.

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<sup>2</sup> <https://badilag.mahkamahagung.go.id/seputar-peradilan-agama/tembus-1-605-perkara-yang-diterima-tahun-2022-cerai-gugat-tetap-mendominasi>.

<sup>3</sup> Fika Burlian, "Eksistensi Perkawinan Dan Perceraian Menurut Hukum Islam Dan Pasca Berlakunya UU NO. 1 Tahun 1974." Mizan: Jurnal Ilmu Hukum, Volume 8 Nomor 2, Desember 2019.

<sup>4</sup> Richard, "Kedudukan Wanita Dalam Hukum Negara Dan Hukum Islam Di Republik Indonesia Ditinjau Dari Hukum Internasional." Laporan Program Pengalaman Lapangan ACICIS Universitas Muhammadiyah Malang, 1999.

### **3. Results and Discussion**

#### **3.1. Implementation of Mediation**

Divorce mediation at the Sungguminasa Religious Court has been implemented in accordance with Supreme Court Regulation (PERMA) Number 1 of 2016. The parties are required to undergo mediation facilitated by a mediator, who in practice is predominantly a judge-mediator from the court itself, although certified external mediators may also be utilized. The presence of a mediator is crucial, as mediators can assist and strive to ensure that the decision-making process is more constructive and results in a final resolution acceptable to the disputing parties.

Nevertheless, decision-making authority remains entirely in the hands of the parties. Although the ultimate decision rests with the parties, the mediator actively engages in dialogue with them and proposes alternative options for resolving the dispute. Therefore, mediators are not merely bound by the positions and interests presented by the disputing parties; they must also possess the skills necessary to identify solutions or alternatives when the parties are unable to reach an agreement on their own.

The primary objective of mediation is to achieve compromise in resolving disputes. More specifically, mediation aims to prevent conflict and facilitate conflict resolution through reconciliation. Accordingly, in carrying out their role at the Sungguminasa Religious Court, mediators must continuously encourage the parties to negotiate a settlement through compromise, narrow their differences, and resolve their conflicts amicably.

The mediator's role is to encourage the parties to reach agreements capable of ending their disputes and disagreements. Mediation is conducted to enable the parties to resolve their disputes peacefully, as emphasized in Article 1 of Supreme Court Regulation Number 1 of 2016, which defines mediation as a method of dispute resolution through a negotiation process aimed at obtaining an agreement between the parties with the assistance of a mediator.

The integration of mediation into the judicial process represents an implementation of the principle of a simple, speedy, and low-cost judiciary through negotiation and deliberation aimed at achieving mutual agreement or settlement between the parties. As stipulated in Supreme Court Regulation Number 1 of 2016, mediation has been strengthened as a mandatory stage in civil litigation proceedings, thereby promoting more efficient, peaceful, and equitable dispute resolution. This regulation is expected to bring reform to the civil justice system by providing legal certainty, improving time and cost efficiency, and preserving harmonious relationships between disputing parties.

Supreme Court Regulation Number 1 of 2016 contains ten regulatory principles governing the use of court-connected mediation. One of these principles concerns mediator certification, which stipulates that, in principle, every individual performing the function of a mediator must possess a mediator certificate obtained after completing training conducted by an institution accredited by the Supreme Court of the Republic of Indonesia. This requirement is intended to promote professional mediation services. However, the limited number of certified non-judge mediators is disproportionate to the number of cases registered at the Sungguminasa Religious Court.

The imbalance between the large number of cases and the limited number of certified non-judge mediators has resulted in judges at the Religious Court performing dual roles as both adjudicators and mediators. The following presents historical data on divorce cases handled by the Sungguminasa Religious Court (Source: Registrar's Office of the Sungguminasa Religious Court, 2025) over several recent periods:

1. Year 2025: A total of 1,212 divorce petitions filed by wives (*cerai gugat*) were recorded.
2. Year 2024: The Sungguminasa Religious Court adjudicated approximately 2,003 cases in total, covering various types of Islamic civil matters.
3. Years 2022–2023: The number of divorce cases ranged between 1,000 and 1,200 cases annually.
4. Year 2021: Of the 1,268 total cases handled up to September, 903 were divorce cases, consisting of 700 divorce petitions filed by wives (*cerai gugat*) and 203 divorce petitions filed by husbands (*cerai talak*).

Several issues have been identified in the mediation process at the Sungguminasa Religious Court, Gowa Regency. One of the primary challenges is the limited funding allocated for mediation proceedings. In addition, the lack of representative mediation rooms equipped with adequate facilities and infrastructure hinders the optimal implementation of the mediation process.

Mediation is fundamentally a confidential process. Therefore, mediation sessions are closed to the public and may not be covered by the press unless otherwise agreed upon by the parties. Accordingly, only the disputing parties, with or without their legal representatives, and the mediator are permitted to attend and participate in mediation sessions. Other individuals may only attend with the consent of the parties. This confidentiality is intended to protect the privacy of the parties and prevent the public disclosure of their disputes. In this regard, mediators are bound by professional ethical standards.

Mediation is essentially intended to provide an opportunity for disputing parties to communicate directly, listen to one another, and seek the most appropriate solution to their dispute. Consequently, the parties are required to attend mediation meetings in person, either with or without legal counsel.<sup>5</sup>

Furthermore, paragraphs (3) and (4) of the relevant provisions stipulate that a party's absence from a mediation meeting is only permissible for legitimate reasons. However, in practice, parties frequently fail to attend mediation sessions without valid justification. In some cases, one party is represented solely by legal counsel, while in others, both parties are represented exclusively by their attorneys.<sup>6</sup>

One of the significant provisions contained in Supreme Court Regulation (PERMA) Number 1 of 2016 concerning Mediation Procedures in Courts is the establishment of good faith as a determining factor in the success or failure of mediation. This regulation

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<sup>5</sup> Pasal 6 ayat (1) Perma No. 1 Tahun 2016

<sup>6</sup> Alasan sah yang dimaksud; (a) kondisi Kesehatan yang tidak memungkinkan hadir dalam pertemuan mediasi berdasarkan surat keterangan dokter; (b) di bawah pengampunan; (c) mempunyai tempat tinggal, kediaman atau kedudukan di luar negeri; (d) menjalankan tugas negara, tuntutan profesi atau pekerjaan yang tidak dapat ditinggalkan.

seeks to encourage litigants to adopt a more conciliatory mindset in resolving disputes by prioritizing peaceful settlement efforts. The provision appears to be based on the reality that, in many mediated cases, the principal parties themselves never attend the mediation stage and are represented only by their legal counsel. Accordingly, the regulation emphasizes that mediation must be conducted in good faith. As a consequence, if the plaintiff is found to have acted in bad faith, the claim may be declared inadmissible (niet-ontvankelijk verklaard).

However, in certain cases, recommendations concerning a plaintiff's lack of good faith due to absence from mediation sessions have not been taken into consideration by the panel of judges. Such recommendations are often disregarded because the outcome of mediation conducted by a mediator is not binding upon the final judicial decision. Judges adjudicating the case are primarily responsible for examining the substance of the dispute, witness testimonies, and admissible evidence, rather than reassessing the mediator's recommendations. Moreover, statements, documents, or settlement offers made during mediation cannot be used as evidence in court proceedings because mediation is confidential and conducted behind closed doors. As a result, mediation often functions merely as an administrative stage within the litigation process.

### **3.2. Success Rate of Mediation**

Based on data from the Sungguminasa Religious Court, in 2023 there were 950 registered divorce cases. Of this number, only approximately 75 cases ( $\pm 8\%$ ) were successfully resolved through mediation or subsequently withdrawn. This indicates that mediation more frequently functions as an administrative stage rather than as a substantive mechanism for preventing divorce.

Mediation is a process that can be applied to almost all types of disputes whose resolution is oriented toward a "win-win solution." Mediation operates with a future-oriented perspective rather than focusing on past events. It seeks forward-looking solutions through which the parties can adapt and reach mutually acceptable outcomes. Mediation emphasizes fairness for both parties. Through mediation, individuals are empowered to determine their own solutions. Accordingly, the objectives of conflict resolution through mediation are as follows:

1. To produce a future-oriented settlement plan that is acceptable to and can be implemented by the disputing parties.
2. To prepare the disputing parties to accept the consequences of the decisions they make.
3. To reduce anxiety and other negative impacts of conflict by assisting the parties in reaching a consensual settlement.

Therefore, the implementation of mediation for disputing parties will help them to:

1. Mengurangi Reduce communication barriers and difficulties between the parties involved.
2. Maximize the exploration of alternative long-term solutions to problems and conflicts.

3. Focus on the needs and interests of all parties.
4. Develop sustainable models for long-term conflict resolution.

The advantages that may be obtained through mediation as a dispute resolution method include:

1. Outcomes that satisfy all parties. Disputing parties generally feel more satisfied with solutions that they have mutually agreed upon.
2. Comprehensive and customized agreements. Mediation can resolve not only legal issues but also matters beyond the scope of formal legal remedies.
3. Opportunities to practice and learn creative problem-solving procedures.
4. Greater control and more predictable outcomes. Parties who negotiate their own settlements exercise greater control over the final outcome of the dispute.
5. Individual empowerment. Individuals who negotiate their own disputes often feel more empowered than those who rely solely on representation through agents such as attorneys.
6. Preservation of existing relationships or the termination of relationships in a more amicable manner.
7. Decisions that are more likely to be implemented and complied with.
8. Agreements that are superior to merely accepting compromise outcomes or win-lose judgments.
9. Decisions whose benefits and effectiveness can endure over time.

Based on the foregoing discussion, the author's observation is that there is a misconception among mediators and court officials who assess and evaluate mediators solely on the basis of their success in reconciling the disputing parties or preventing divorce proceedings from continuing. Such evaluations should also take into account the efforts made by mediators during the mediation sessions, as well as the level of complexity and difficulty of the cases being handled.

### 3.3. Inhibiting Factors

Several factors that hinder the effectiveness of mediation can be identified as follows:

#### a. Emotional Unpreparedness of the Parties

Many parties who come before the court have already made a firm decision to separate. Based on several divorce cases handled through mediation at the Sungguminasa Religious Court, the circumstances are often highly problematic. In some cases, the husband exhibits emotional, selfish, and miserly behavior. Likewise, although the wife may still love her husband, she may have experienced traumatic incidents, such as an occasion when her husband nearly killed her with a machete during a domestic dispute. In other cases, one or both parties may be involved in extramarital affairs. Family members, including parents and relatives, may also actively support the divorce. Furthermore, it is not uncommon for one or both parties to have sworn to proceed with the divorce. Last but not least, a limited understanding of religious values and factors related to age often contribute to a lack of maturity and wisdom in fulfilling their roles as husband and wife and in building a harmonious family characterized by *sakinah*, *mawaddah*, and *rahmah*.

b. Limited Quality of Mediation

Not all mediators possess adequate interpersonal skills to perform their role effectively. This includes not only general knowledge but also an understanding of human psychology and behavior. Mediators should have specialized skills in listening to the parties' concerns, asking appropriate questions, negotiating, generating options, and assisting the parties in identifying their own solutions to the dispute.

c. Legal Culture of Society

There remains a limited public understanding of the importance of mediation as a means of restoring family relationships. Direct mediation involving the principal parties is generally more effective and offers a greater possibility of achieving reconciliation. Mediation can encourage disputing parties to change their mindset toward resolving conflicts through peaceful means. However, in practice, the principal parties often fail to attend mediation sessions despite having been formally summoned by the mediator.

d. The Role of Legal Counsel

The Legal Aid Post (*Pos Bantuan Hukum* or *Posbakum*) established within courts plays an important role in assisting litigants, including by providing access to legal counsel and advocates. Nevertheless, in some cases, advocates may inadvertently encourage parties to proceed with divorce proceedings, thereby prolonging legal disputes and maintaining their involvement as legal representatives in resolving the issues that arise.

#### 4. Conclusion

The implementation of mediation at the Sungguminasa Religious Court has been carried out in accordance with the applicable normative procedures. However, its substantive effectiveness remains relatively low. A more restorative approach is therefore required in the implementation of mediation, including increasing the capacity and number of professional non-judge mediators, integrating mediation services with family counseling and premarital education programs, and strengthening public legal literacy regarding the benefits of mediation.

In divorce cases, mediation should be understood not merely as a formal procedural requirement within judicial proceedings, but as an instrument of reconciliation, recovery, and prevention aimed at preserving family relationships and minimizing the adverse consequences of marital disputes.

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