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# The Impact of Mediation on the Settlement of Divorce Cases in Religious Courts

## Abstract

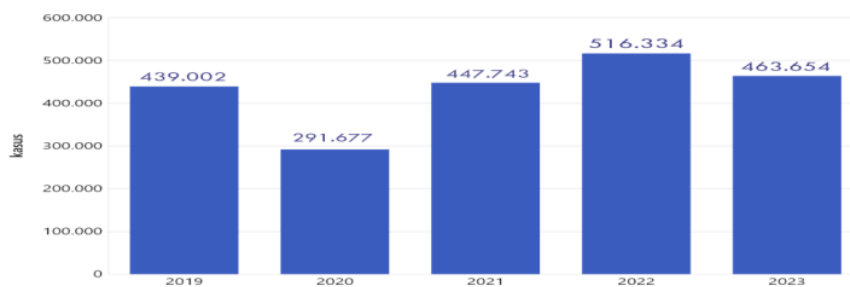
The purpose is to find out the impact of the implementation of mediation and the factors that affect the success of mediation in divorce cases in Religious Courts. Mediation is a form of case settlement through Alternative Dispute Resolution. The urgency of research to resolve disputes the divorce process in Religious Courts and help build better relationships after divorce. Using normative and empirical research types. The results of the study show that the impact of mediation on divorce is to reduce the accumulation of cases in Court, increase the satisfaction of the parties, increase time/cost efficiency, minimize conflicts, maintain privacy, encourage agreements, and build positive relationships after divorce. Factors that affect the success of divorce mediation in the Religious Court are the commitment of both parties, the competence of the mediator, support from the Court, emotional and psychological factors, and the involvement and support of third parties. In conclusion, mediation has a significant positive impact on the settlement of divorce cases in the Religious Court so that mediation is an effective method and its implementation needs to be continuously improved in the Religious Court. The findings show that mediation reduces the divorce rate by increasing communication between husband and wife and resolving problems through dialogue.

**Keywords:** Impact; Mediation; Settlement; Divorce; Religious Court

## 1. INTRODUCTION

In essence, the teachings of Islam have legalized a marriage with the aim of establishing a happy household outwardly and inwardly, and living in harmony. However, in reality, not all families live in a happy and harmonious state.<sup>1</sup> Divorce in marriage occurs when the goals of the household and marriage become inconsistent, making it difficult or even impossible to create happiness.<sup>2</sup>

In fact, many divorces are proposed in religious courts which dominate divorce cases proposed by women. According to the data obtained from one of the websites official, figures Divorce in the last 5 (five) years has experienced dynamics. The data can be seen below:<sup>3</sup>



<sup>1</sup> Oxis Mardi and Fatmariza Fatmariza, "Faktor - Faktor Penyebab Keterabaian - Hak Anak Pascaperceraian," *Jurnal Ius Constituendum* 6, no. 2 (March 5, 2021): 182-99. <https://doi.org/http://dx.doi.org/10.26623/jic.v6i1.3282>.

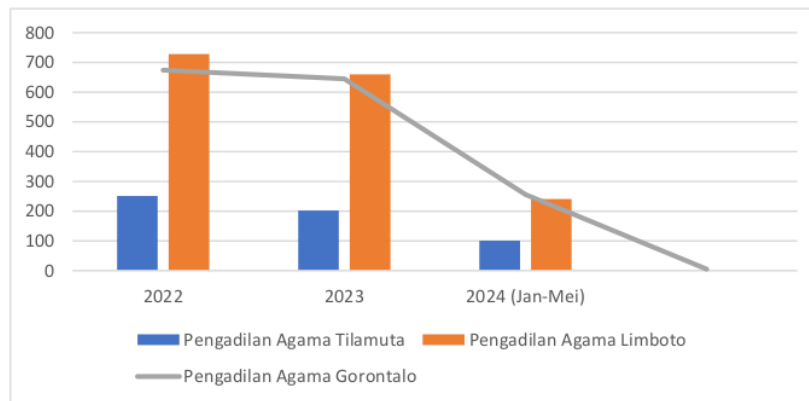
<sup>2</sup> Nibras Syafriani Manna, Shinta Doriza, and Maya Oktaviani, "Cerai Gugat: Telaah Penyebab Perceraian Pada Keluarga Di Indonesia," *Jurnal Al-Azhar Indonesia Seri Humaniora* 6, no. 1 (2021): 11-21. <https://doi.org/10.36722/sh.v%vi%i.443>.

<sup>3</sup> Cindy Mutia Annur, "Kasus Perceraian Di Indonesia Turun Pada 2023, Pertama Sejak Pandemi," *Katadata*, February 29, 2024, <https://databoks.katadata.co.id/demografi/statistik/3b83cbb88dc1e1/kasus-perceraian-di-indonesia-turun-pada-2023-pertama-sejak-pandemi>.

Prolonged and recurring conflicts and disputes between couples are the two main causes of divorce, but there are also other aspects.<sup>4</sup> The picture above shows that the divorce rate in Indonesia is quite high. In 2019, there were 439,002 cases. In 2020, it decreased by half to 291,677. During the pandemic, the divorce rate increased drastically beyond the previous year, which was 447,743 cases. In 2022, it increased again to 516,334 cases. In 2023, there will be a decrease, although not significant, to 463,654 cases. The number of divorce cases is directly proportional to the number of cases that go through mediation in the Religious Court.

The growing human impulse to resolve conflicts quickly and peacefully for both sides has encouraged the growth and development of mediation. Finding a solution that takes into account the needs and interests of each party is the main goal of mediation.<sup>5</sup>

Gorontalo Province is classified as having a fairly high divorce rate. This study not only describes divorce data in Indonesia but also describes the number of divorce cases in 3 (three) Religious Courts in Gorontalo. The data can be seen in the figure below :



The Tilamuta Religious Court obtained divorce data in 2022 totaling 251<sup>6</sup>, in 2023 there will be 202<sup>7</sup> And in 2024 the January-May period will amount to 101<sup>8</sup>. The second data was obtained directly from the Gorontalo Religious Court, it was found that divorce cases in Gorontalo City were quite high, in 2022 674 divorce data were obtained<sup>9</sup>, di tahun 2023 diperoleh

<sup>4</sup> Siti Mutia Suleman, Nur Mohamad Kasim, and Mohammad Taufik Zulfikar Sarson, "Implikasi Pandemi Covid-19 Terhadap Meningkatnya Angka Perceraian: Studi Kasus Di Kota Gorontalo," *Jurnal Deposisi: Jurnal Publikasi Ilmu Hukum* 1, no. 4 (2023): 126–39, <https://doi.org/10.59581/deposisi.v1i4.1778>.

<sup>5</sup> Achmad Taufik et al., "Pentingnya Mediasi Dalam Penyelesaian Perkara Perceraian Di Pengadilan Agama: Membangun Solusi Yang Berkelanjutan," *Jurnal Kabila: Journal of Social Community* 8, no. 1 (2023): 337–46, <https://doi.org/https://doi.org/10.35127/kbl.v8i1>.

<sup>6</sup> Pengadilan Agama Tilamuta, "Data Perceraian" (Gorontalo, 2022).

<sup>7</sup> Pengadilan Agama Tilamuta, "Data Perceraian" (Gorontalo, 2023).

<sup>8</sup> Pengadilan Agama Tilamuta, "Data Perceraian" (Gorontalo, 2024).

<sup>9</sup> Pengadilan Agama Gorontalo, "Data Perceraian" (Gorontalo, 2022).

data 645<sup>10</sup>, dan tahun 2024 (Januari - Mei) berjumlah 256<sup>11</sup>. The Limboto Religious Court is the Religious Court that handles the highest divorce cases in Gorontalo Province. This is also the reason why the author chose the Limboto Religious Court as one of the research locations, especially in the discussion of mediation in divorce cases. In 2022, the number of divorce cases handled amounted to 728<sup>12</sup>, in 2023 totals 660<sup>13</sup> And in 2024 from January to May there are 241.<sup>14</sup>

From the author's observation, the divorce data obtained in the last 3 (three) years at the Religious Court has decreased every year. This gives a positive value that conflicts that occur in married couples that cause divorce are reduced, although divorce cases in 2024 at the Religious Court may increase.

Kunarto (2024) in his research on the effectiveness of the success rate of mediation in the Purwodadi Religious Court.<sup>15</sup> This study shows that the effectiveness of mediation in divorce cases at the Purwodadi Religious Court is by the Supreme Court Regulation (PERMA) Number 1 of 2016 concerning mediation procedures in court. The mediator has difficulty reconciling the parties due to several factors and considers mediation ineffective. However, this study has a weakness, namely it only focuses on the effectiveness of mediation and only on 1 court location and does not highlight the impact of mediation implementation on divorce cases.

Other research on mediation in divorce by Little (2023) in his research on mediation, in this case, looks at the level of effectiveness of mediation at the East Jakarta Religious Court.<sup>16</sup> The results of the study show that the effectiveness of the mediation process in divorce cases at the East Jakarta Religious Court is still ineffective. From the data obtained, the number of cases that have been successfully mediated in the last 3 years is less than 15%. The weakness of this study is that it only discusses the level of mediation effectiveness without discussing the factors that cause divorce in the East Jakarta Religious Court.

Research by Surasa (2022) Regarding Mediation is one of the alternative settlements that are considered more efficient in minimizing the negative impact that arises after conflict, including divorce.<sup>17</sup> The result of the research is that the mediation process is urgency as a spearhead in dealing with divorce cases. This study has a weakness in terms of

<sup>10</sup> Pengadilan Agama Gorontalo, "Data Perceraian" (Gorontalo, 2023).

<sup>11</sup> Pengadilan Agama Gorontalo, "Data Perceraian" (Gorontalo, 2024).

<sup>12</sup> Pengadilan Agama Limboto, "Data Perceraian" (Gorontalo, 2022).

<sup>13</sup> Pengadilan Agama Limboto, "Data Perceraian" (Gorontalo, 2023).

<sup>14</sup> Pengadilan Agama Limboto, "Data Perceraian" (Gorontalo, 2024).

<sup>15</sup> Kunarto, Budi Prasetyo, and Della A. Tsafitri, "Efektivitas Mediasi Dalam Penyelesaian Perkara Perceraian Di Pengadilan Agama Purwodadi," *Magistra Law Review* 5, no. 2 (2024): 71–79, <https://doi.org/10.56444/malrev>.

<sup>16</sup> Nur Lina Afifah Litti et al., "Efektivitas Proses Mediasi Dalam Perkara Perceraian Di Pengadilan Agama Jakarta Timur," *Misykat Al-Anwar Jurnal Kajian Islam Dan Masyarakat* 6, no. 2 (2023): 227–46, <https://doi.org/https://doi.org/10.24853/ma.6.2.227-246>.

<sup>17</sup> Ais Surasa, Enung Herningsih, and Novia Laela, "Penyelesaian Sengketa Perkawinan Melalui Mediasi Sebagai Pencegahan Terjadinya Perceraian," *Jurnal Khazanah Multidisiplin* 3, no. 2 (2022): 165–74, <https://doi.org/https://doi.org/10.15575/kl.v3i2.18628>.

discussion that only focuses on mediation as an alternative and the urgency of mediators in divorce using mediation without discussing the impact of mediation on divorce cases and mediation success factors.

The difference between this study and the previous research above is that this study focuses on Mediation as the right way to solve problems through a win-win solution that occurs for the parties in the Court. According to PERMA Number 1 of 2016 concerning Mediation Procedures in Court, mediation is a form of case resolution through *Alternative Dispute Resolution* (ADR). The purpose of this study is to find out how the impact of the implementation of mediation and the factors that affect the success of mediation in divorce cases in the Religious Court. Previous research has not explored a significant and more in-depth impact on the factors that influence the success of mediation in divorce cases in various religious courts, so that this research prioritizes and discusses more deeply about this matter.

This study seeks to fill some of the gaps left by previous research. Thus, the development of mediation procedures in Religious Courts and the improvement of the family justice system as a whole can benefit more from this study.

## **2. METHOD**

This research uses *mixed methods*, meaning using 2 (Two) types of research at once, namely normative and empirical juridical legal research. From the normative legal side, it examines the literature related to the problem in the research, and on the empirical side, it is supported by data obtained from the research location. So that these two types of research are considered by the author to be able to solve problems so that the goals of this research are achieved and produce a novelty.

The author uses two approaches in this study, namely the Statute Approach and the Case Approach). The approach of the Law itself is PERMA Number 1 of 2016 about Mediation Procedures in Court, Law Number 16 of 2019 concerning Marriage and other rules related to this research. Meanwhile, the case approach, is carried out by examining and dissecting cases related to the issue of divorce cases.

This study uses 3 (three) locations of Religious Courts in Gorontalo Province, namely: Tilamuta Religious Court, Gorontalo Religious Court, and Limboto Religious Court. The data source was obtained from the location of this study.

The sources of legal materials used in this study are: a. Primary legal materials, namely legal materials consisting of legislation, official records or minutes in making legislation and judges' decisions. b. Secondary Legal Materials are materials that provide explanations of primary legal materials which include: the work of legal experts related to the title of the research, official websites from the internet, reading books related to the research, and other literature relevant to the problem being researched. c. Tertiary legal materials are materials that provide explanations of primary and secondary law which include: the Indonesian Dictionary, and Legal Dictionary.



The legal materials and data that the authors have successfully collected, both primary and secondary legal data/materials, will then be reviewed descriptively. In analyzing the data, the author uses legal interpretation techniques. It is hoped that the use of this analysis technique can solve the problem to be researched and conclusions can be drawn from this research.

### 3. RESULTS AND DISCUSSION

#### 3.1 The Impact of the Implementation of Mediation on the Divorce Case Settlement Process in Religious Courts

The divorce must have legally supported reasons; and cannot be given arbitrarily. This is very basic, especially for courts that have the authority to make judgments. The reasons for filing for divorce have a significant impact on whether or not a divorce lawsuit is allowed, as well as the outcome of the divorce.<sup>18</sup> It's important to realize that every couple has different reasons for divorce, and often, a variety of circumstances influence the choice to file for divorce.<sup>19</sup>

It is very important to prevent divorce because it can cause several problems, one of which is that it can affect the love felt by the child of the marriage. In addition, divorce is accepted in the Islamic faith but hated by Allah SWT.<sup>20</sup> The main task of the judge in the trial of a divorce case is to mediate the settlement between husband and wife by using a mediator or mediator judge.<sup>21</sup> Most couples who choose to divorce register their case with the Religious Court (specifically for Islam). The first process that was passed was Mediation whose goal was that the couple could still consider their decisions for a better home life.

Basically, the ideology of Pancasila, the basis of the Indonesian state, which states that the basis of dispute settlement is deliberation for consensus, has included mediation, which aspires to promote peace. The 1945 Constitution and other laws and regulations also explain this.<sup>22</sup> Mediation as a method of peaceful dispute resolution, has a great opportunity to develop in Indonesia. With the eastern custom that is still in Indonesia, mediation as a technique for peaceful dispute resolution still has a lot of room to develop. Because of the deeply ingrained oriental norms, individuals are more concerned with

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<sup>18</sup> Mutia Suleman, Mohamad Kasim, and Taufik Zulfikar Sarson, "Implikasi Pandemi Covid-19 Terhadap Meningkatnya Angka Perceraian: Studi Kasus Di Kota Gorontalo."

<sup>19</sup> Nia Januari, "Menggali Akar Masalah: Analisis Kasus Perceraian Di Indonesia," *Jurnal Mahasiswa Humanis* 3, no. 3 (2023): 120–30, <https://doi.org/https://doi.org/10.37481/jmh.v3i3.613>.

<sup>20</sup> Arif, Baso Madiong, and Waspada, "Efektivitas Peran Mediator Dalam Memediasi Perkara Perceraian," *Indonesian Journal of Legality of Law* 6, no. 1 (December 5, 2023): 91–96, <https://doi.org/10.35965/ijlf.v6i1.3815>.

<sup>21</sup> Ibrahimi, M Akil, and Andi Hasriani, "Strategi Mediator Pada Tingkat Keberhasilan Mediasi Dalam Perkara Perceraian," *Qanun: Journal of Islamic Laws and Studies* 2, no. 1 (2023): 45–49, <https://doi.org/https://doi.org/10.58738/qanun.v2i1.286>.

<sup>22</sup> Ni Made Trisna Dewi, "Penyelesaian Sengketa Non Litigasi Dalam Penyelesaian Sengketa Perdata," *Jurnal Analisis Hukum* 5, no. 1 (April 25, 2022): 81–89, <https://doi.org/10.38043/jah.v5i1.3223>.

maintaining family relationships or commercial partnerships than with short-term financial gains in the event of a dispute.<sup>23</sup>

The court mediation method is often considered in civil procedure law as the main initiative to improve and optimize the function of the judicial institution in conflict resolution.<sup>24</sup> As stated in the Supreme Court Regulation (PERMA) Number 1 of 2016 concerning Mediation Procedures in Court. Mediation is a form of case resolution through *Alternative Dispute Resolution* (ADR). Mediation is one of the ways that is considered appropriate to resolve problems through *a win-win solution* that occurs for the parties in the Court, so this has been integrated into the process of examining cases in the Court which has been regulated by the Regulation of the Supreme Court of the Republic of Indonesia concerning Mediation Procedures in Court.

Based on the Annual Report of the High Court of Religion in 2022, the number of divorces decided by the first-level Religious Court, both divorce lawsuits and talaq divorces, amounted to 2,468 divorce cases. Meanwhile, in 2023 there are 2,154 cases. It is possible that in 2024 the number of divorces can increase or decrease. Judging from the facts that exist from 2022 to 2023, divorce cases only decreased by 314 cases. On average, divorce cases that enter the Religious Court reach the final verdict, which means that the mediation process fails to be carried out and the case continues until the trial.

The advantage of settlement in court is that the parties to the dispute are more proactive in resolving the issue and have a greater scope to review it.<sup>25</sup> The rise in divorce filings in religious courts is inseparable from several significant problems facing families and society, ranging from domestic problems to financial difficulties.<sup>26</sup>

A mediator consisting of judges and non-judges oversees the court's mediation procedures. A mediator must have credentials obtained through the Mediator Professional Special Education (PKPM) from an institution accredited by the Supreme Court. However, if no judge has permission in the area, the mediation process in court is supervised by a mediator consisting of a judge and a non-judge. A mediator must have a certificate from an institution accredited by the Supreme Court through the Mediator Professional Special Education (PKPM). Nonetheless, the judge can act as a mediator if no other judge is authorized to be in the courtroom.<sup>27</sup> Since family issues are sensitive

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<sup>23</sup> Heri Pumomo and Agnes Maria Janni W, "Penyelesaian Perkara Perdata Melalui Proses Mediasi," *Jurnal Juristic* 3, no. 2 (2022): 142–49, <https://doi.org/http://dx.doi.org/10.35973/jrs.v3i02.3238>.

<sup>24</sup> Dinda Nur Azra et al., "Perkembangan Dan Pembaharuan Terhadap Hukum Perdata Di Indonesia Beserta Permasalahan Eksekusi Dan Mediasi," *Jurnal Al-Zayn* 2, no. 1 (2024): 65–69, <https://doi.org/https://doi.org/10.61104/alz.v2i1.204>.

<sup>25</sup> Eka Nurhalisa, "Pelaksanaan Mediasi Perkara Perdata Dalam Perspektif Maqashid Syariah Menurut Al-Syatibi," *Jurnal Intizar* 26, no. 2 (January 1, 2020): 95–106, <https://doi.org/10.19109/intizar.v26i2.7260>.

<sup>26</sup> Khoiril Anam, "Strategi Hakim Mediator Dalam Mencegah Terjadinya Perceraian," *Jurnal Hukum-Yustitiabelen* 7, no. 1 (2021): 115–27, <https://doi.org/https://doi.org/10.36563/yustitiabelen.v7i1.323>.

<sup>27</sup> "Pasal 5 Ayat 2 PERMA No. 1 Tahun 2008," n.d.

and demand the full attention of the mediator, the mediator's activities must be very careful to repair the broken emotional bonds.<sup>28</sup>

Methods based on religious and spiritual principles are used by certain mediators. The litigants can gain confidence and warm their hearts by using this strategy. Divorce mediation is a method of resolving disputes between couples who are about to divorce with the help of a mediator, who is an impartial third party. The goal is to reach a mutually agreed and fair agreement without resorting to protracted and costly legal action.

Religious courts are institutions that are in charge of receiving, settling, and carrying out court cases under their authority.<sup>29</sup> The first step that a judge should take when considering a case brought to him is mediation for the parties involved in a divorce dispute.<sup>30</sup>

<sup>11</sup> The divorce mediation process in the Religious Court can be defined as follows: 1. Pre-Mediation Stage: On the first day of the hearing attended by both parties, the judge orders the parties (husband and wife) to attend mediation. The judge postponed the case hearing for up to 30 working days to allow the mediation procedure to be carried out. The Judge explained the mediation process to the parties. The parties select the Mediator from the list of names available on the day of the First Hearing or within two business days. If the parties cannot reach an agreement regarding the chosen Mediator within the period specified in number 4. The Chairman of the Panel of Judges immediately selects a Judge who is not the main examiner of the case to carry out the role of mediator. 2. Stages of the Mediation Process The Mediation Process: This stage lasts no later than 30 working days after the parties elect a Mediator or Panel of Judges who appoints them. The mediator should design a mediation meeting schedule that can be agreed upon by the parties. The parties are obliged to attend the Mediation meeting in person, with or without the presence of a legal representative, unless there is a valid reason, such as a health condition that does not allow attendance based on a doctor's certificate; under protection; have a place of residence, residence, or position abroad; or are carrying out State duties, professional demands, or jobs that cannot be abandoned.<sup>31</sup>

<sup>2</sup> The Mediator Judge may not hold mediation outside the courtroom. There is no cost to mediate in the Religious Court. If the Mediation succeeds in reaching an agreement, the

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<sup>28</sup> Hardiyanti Alimuddin, Rezki Amaliah, and Sitti Mutmainnah Syam, "Kewenangan Mediator Dalam Penyelesaian Perkara Perceraian; Studi Kasus Pengadilan Agama Majene," *Jurnal Shautuna* 4, no. 3 (2023): 1003–20, <https://doi.org/10.24252/shautuna.v4i3.43346>.

<sup>29</sup> Rego Gusriyanda et al., "Keberhasilan Mediator Perceraian Menuju Perdamaian (Tingkat Perdamaian Perceraian Di Ruang Mediasi Pengadilan Agama Jambi Kelas IA)," *JIGC-Journal of Islamic Guidance and Counsel* 10, no. 1 (2024): 1–24, <https://doi.org/https://doi.org/10.30631/jigc.v8i1.86>.

<sup>30</sup> Irpan Manik Pujiana and M Yazid Fathoni, "Peran Hakim Mediator Dalam Proses Mediasi Pada Kasus Perceraian (Studi Kasus Di Pengadilan Agama Praya Lombok Tengah)," *Jurnal Private Law* 1 (2021): 433–38, <https://doi.org/https://doi.org/10.29303/prlw.v1i3.417>.

<sup>31</sup> Gede Agus Krisna Mahendra, I Nyoman Putu Budiarta, and Ni Made Puspatari Ujianti, "Hukum Analisis Hukum Mediasi Perceraian Di Pengadilan Agama," *Jurnal Analogi Hukum* 5, no. 2 (2023): 150–55, <https://doi.org/https://doi.org/10.22225/ah.5.2.2023.150-155>.



Parties with the help of the Mediator are obliged to make a draft of a formal agreement in the form of a Peace Agreement signed by both parties and the Mediator. The mediator must ensure that the Peace Agreement does not contain provisions that violate the law, public order, or morals, are detrimental to third parties, or are impossible to enforce.

If the Mediation is unsuccessful, the Mediator must notify the Examining Judge in writing if the parties do not reach an agreement within a maximum time limit of 30 days, including an extension as intended in Article 24 paragraph (2) and paragraph (3), or if the Parties do not act in good faith as intended.

The mediator judge of the Religious Court uses two ways in mediating the parties involved in the divorce, which can be summarized as follows: 1. Judge's Advice; Judge's advice is a reconciliation effort made by the mediator judge when mediating the parties in a divorce case by providing convincing advice, tools, and ideas to the couple who want to divorce. The Religious Court judge asked the couple to attend the trial alone and advised them to reconsider their divorce plans. This advice was given to rationalize the thoughts of the mediation participants regarding their respective irrational thoughts. After the mediator understands the problem that triggers the desire to divorce, the role of the mediator is to explain and rationalize the thoughts of both parties, showing that not everything that happens in his household is a mistake. Sue. 2. Hakamain; In the divorce process, the court may use Hakamain, which is a mediation process that involves bringing in other family members or individuals to help reunite the couple. Usually, there are parents from both parties who do not want the peace to be fulfilled because the conflict that arises between husband and wife also brings problems in the family environment of both parties.

One of the civil cases handled by the Mediation Religious Court offers many advantages in resolving divorce cases in the Religious Court, especially in Gorontalo Province. However, its efficiency fully depends on the willingness and collaboration of both parties in achieving a joint solution, namely the litigants, in this case, the married couple and the mediator judge himself.

The mediator in divorce mediation must be impartial, competent, and empathetic. The main benefit of mediation is to find a solution that is tailored to the individual needs of the couple. However, there are obstacles in mediation, such as the desire of both parties to cooperate and compromise, as well as the possibility of power imbalances that can make mediation unfair.

The main goal of divorce mediation is to eliminate disputes, save time and money, and maintain a positive relationship between ex-spouses, especially if it involves children. The mediation process usually consists of several steps, starting with the initiation of the mediation, an initial meeting to explain the rules and processes, identification of problems, discussion, and negotiation, and finally the drafting and ratification of the

agreement. A mediation agreement is usually more in line with the needs and desires of both parties than a court decision, which may be more inflexible.

Mediation in the divorce process at the Religious Court is a conflict resolution approach in which the divorced couple works with a mediator to realize peace. Mediation has an extraordinary impact on the process of resolving divorce cases, both in terms of time efficiency, cost, and quality of results.

The impact of the implementation of the mediation on the process of resolving divorce cases in the Religious Court, especially the Religious Court in Gorontalo (PA Gorontalo, PA Tilamuta, PA Limboto):

- Reduce the burden of cases piling up in the Court; Mediation can reduce the number of cases that must proceed to the peace stage. With so many cases that can be resolved through mediation, the workload of judges and court staff can be reduced, so they can focus on things that require court intervention.
- Increase the satisfaction of the parties. Mediation allows the parties to participate directly in the resolution of their disputes. This usually increases satisfaction for both parties because they feel more heard and have control over the outcome, compared to a one-sided decision of the judge.
- Increased time and cost efficiency; Mediation procedures are typically faster and less expensive than the conference process, which is time-consuming and costly. This is very advantageous for those who have low financial resources.
- Minimize conflict; Mediation reduces the likelihood of future conflicts. This technique allows the participants to communicate and find solutions peacefully and together, potentially reducing tension and strife between them.
- Privacy is maintained; Mediation is carried out behind closed doors and is confidential, in contrast to trials that are usually open to the public. This provides comfort for the parties so that their intimate problems are not revealed to the public.
- Encourage more sustainable agreements; Because mediation results in mutually agreed solutions, the parties tend to accept and obey it. This is different from a court decision that may be considered unfair by one party.
- building positive relationships after divorce; Mediation can help ex-couples improve communication and collaboration, which is especially important when they have children. Mediation can help build a stronger co-parenting plan and reduce the negative impact of divorce on children.

The positive impact of mediation on the divorce process is very large. Mediation can speed up the divorce process, minimize disputes and stress between couples, and increase the happiness of both parties. Couples will be more satisfied with the outcome of the mediation because they actively participate in it, compared to the court's decision. Additionally, mediation allows couples to talk productively, which is especially important if they have children together.

### **3.2 Factors Affecting the Success of Mediation in Divorce Cases in Religious Courts**

The family has an important role in the development and growth of each member. Family psychology offers assistance in the development of family members, the formation of more effective communication, the protection of family members from adverse social

and cultural differences, conflict resolution with an open and broad mind, and the formation of positive personal traits.<sup>32</sup> The idea is that mediation is highly recommended to resolve divorce issues within the family, based on the positive law and logic mentioned above. However, non-litigation mediation can be an alternative to resolving divorce conflicts because litigation mediation has a low success rate for several reasons.<sup>33</sup>

Given the importance of mediation outside the court can be realized immediately to reduce divorce dispute cases in the Court, there needs to be a strategic step from given the importance of out-of-court mediation being implemented immediately to reduce the number of divorce cases ending in court, both parties must take calculated measures so that divorce can be predicted earlier.<sup>34</sup> Mediation will be carried out when the defendant submits an application to the court, and that is how this process is carried out.<sup>35</sup>

The failure of mediation in court occurs if the first trial agenda of the defendant/respondent is not present. As a result, the mediation agenda could not be carried out. The second trial is likely to be included in the plaintiff's proof agenda which does not rule out the possibility of carrying out the agenda of reading the verdict. This is one of the causes of the failure of mediation in court. If the divorce case is presented in court within 1 year that is successfully mediated is not more than 1%. Some people in divorce cases sometimes settle cases outside the court by way of negotiation or mediation considering the simple process due to the decision on mutual consensus deliberation.

This study shows that the success of mediation is the result of the synergy of these various factors, and with the right support, mediation can be an effective method to resolve divorce disputes peacefully and efficiently. Mediation in divorce disputes in Religious Courts is an important step to achieve a peaceful and fair outcome for both parties. The success of this mediation depends on various elements that affect the process and outcomes.

If mediator judges have a variety of abilities, their functions will be fulfilled. This knowledge is gained from various courses, training, and conflict resolution experiences.<sup>36</sup> All civil cases are required to seek dispute resolution through mediation by Article 4 paragraph (1) of PERMA No. 1 of 2016, which includes mediation in the

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<sup>32</sup> Maudy Fathia, M. Ibrahim Aziz, and Ais Surasa, "Konflik Dalam Keluarga Modern Dan Akar Permasalahannya," *NALAR FIQH: Jurnal Hukum Islam* 14, no. 1 (June 30, 2023): 13–20, <https://doi.org/10.30631/nf.v14i1.1339>.

<sup>33</sup> Eva Nur Hopipah et al., "Efektivitas Mediasi Non Litigasi Dengan Menggunakan Metode Couple Therapy Sebagai Cara Penyelesaian Sengketa Perceraian," *JURNAL SYNTAX IMPERATIF: Jurnal Ilmu Sosial Dan Pendidikan* 4, no. 3 (July 20, 2023): 226–40, <https://doi.org/10.36418/syntax-imperatif.v4i3.245>.

<sup>34</sup> Ahmad Bastomi and Pinastika Prajna Paramita, "Penyelesaian Sengketa Perceraian Melalui Mediasi Program Pusaka Sakinah," *Jurnal Hukum Dan Kenotariatan* 5, no. 3 (2021): 490–500, <https://doi.org/https://doi.org/10.33474/hukeno.v5i3.13037>.

<sup>35</sup> Ekawati Hamzah, Hasmulyadi, and Amirullah, "Peran Hakim Mediator Dalam Menangani Mediasi Perceraian Di Pengadilan Agama," *Jurnal Kalosara* 1, no. 2 (2021): 277–307, <https://doi.org/http://dx.doi.org/10.31332/v1i2.3283>.

<sup>36</sup> Mahrus Syahrul and Afdolul Anam, "Peran Hakim Mediator Dalam Mencegah Perkara Perceraian (Studi Kasus Di Pengadilan Agama Sampang Tahun 2017-2022)," *Jurnal Iqtisodina* 5, no. 2 (2022): 43–50.

formal judicial process.<sup>37</sup> The success of the implementation of mediation at the Religious Court in Gorontalo (PA Tilamuta, PA Gorontalo, PA Limboto) is a form of law enforcement against the PERMA. The factors that affect the success of the implementation of Mediation in Divorce Cases in Religious Courts are: 1. The willingness and commitment of both parties; The success of mediation is highly dependent on the desire and commitment of both parties to actively participate and collaborate in the mediation process. Couples who have a strong drive to resolve issues peacefully and are willing to compromise are more likely to succeed in mediation. This commitment includes a willingness to attend each mediation session, listen attentively, and find mutually acceptable solutions. 2. Mediator Skills and Competencies; The success of mediation is highly dependent on competent and experienced mediators. A mediator with a deep understanding of family law and the dynamics of divorce, as well as strong communication skills, can assist couples in resolving their disputes. The mediator's capacity to remain objective and impartial is crucial in building the couple's trust in the mediation process. 3. Support from the Court; Court support has an important role in the effectiveness of mediation. Courts that provide adequate facilities and resources, such as comfortable mediation rooms and access to legal materials, can help the mediation process run more effectively. In addition, court regulations that support and encourage the use of mediation, such as mediator training and certification, are essential to maintain their quality. 4. Emotional and psychological factors; The emotional and psychological state of the couple has a significant impact on the mediation results. Couples who can manage their emotions during mediation are more likely to reach an agreement. Emotional support, such as counseling, can help couples cope with emotional discomfort while remaining focused on resolving the issue. Trust and security are also important in the mediation process; Couples should feel free to discuss their thoughts and feelings. 5. Third-party involvement and support; Third parties, such as lawyers and consultants, can enhance mediation by supporting the process and providing helpful advice. An attorney who understands and supports mediation can assist couples in making more informed decisions. In addition, help from family and friends who advocate for peace can help couples reach an agreement.

Once the mediator is selected by the parties or appointed by the chairman of the panel of judges, the mediation process can last up to 30 working days.<sup>38</sup> A settlement agreement is a document signed by the parties and a mediator and contains a dispute resolution procedure. This agreement is the result of mediation.<sup>39</sup>

In the factors that affect success, there needs to be a Solution to Overcome the obstacles encountered. To increase the success of mediation, several steps that can be taken

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<sup>37</sup> Syelin Gety, "Kehadiran Pihak Dalam Proses Mediasi Pada Perkara Perdata," *Syntax Idea* 6, no. 1 (January 29, 2024): 334–53, <https://doi.org/10.46799/syntax-idea.v6i1.2873>.

<sup>38</sup> Kadek Prediandrika Adnantara, "Mediasi Yudisial Ke Dalam Sistem Peradilan Perdata Di Indonesia," *Raad Kertha* 7, no. 2 (2024): 65–76, <https://doi.org/https://doi.org/10.47532/jirk.v7i2.1171>.

<sup>39</sup> H.M Umar, "Hukum Islam; Telaah Perkara Perceraian Melalui Proses Mediasi," *Jurnal Literasiologi* 4, no. 2 (2020): 175–86, <https://doi.org/https://doi.org/10.47783/literasiologi.v4i2.152>.



include: 1. Providing special training for judges as mediators, especially in terms of communication and conflict management. 2. Increase education and socialization to the public about the importance of mediation. 3. Improving supporting facilities, such as comfortable mediation rooms and additional access to consultations. 4. Strengthening approaches based on local cultural values and sharia in the mediation process.

By overcoming these obstacles, mediation can be a more effective, efficient, and humane means of resolving disputes in Religious Courts.

#### 4. CONCLUSION

Mediation has a significant positive impact on the process of resolving divorce cases in the Religious Court. Mediation not only reduces the burden of the court but also increases the satisfaction of the parties, time and cost efficiency, and reduces conflict. In addition, mediation maintains privacy, encourages more sustainable agreements, strengthens post-divorce relationships, and improves the parties' dispute resolution competence. Therefore, mediation is an effective method and needs to be continuously improved in its implementation in the Religious Court. The success of the implementation of mediation in divorce cases in the Religious Court is influenced by various interrelated factors. The couple's willingness and commitment, the mediator's competence, court support, the couple's emotional state, the involvement of third parties, and legal and regulatory aspects all play an important role in determining the outcome of mediation. By understanding and optimizing these factors, mediation can be an effective method to resolve divorce disputes peacefully and efficiently, reduce the burden on the court, and provide a more satisfactory solution for both parties. Based on the findings, it is necessary to have policies or practical steps that can be taken by the court or mediator to increase the effectiveness of mediation

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