



Critical Discourse Analysis on Reconstruction of the Mediation Process of Judges Based on Maslahat at the Palopo Religious Court

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Abstract

This study examines the reconstruction of judicial mediation processes through the lens of critical discourse analysis, focusing on the implementation of maslahat principles at the Palopo Religious Court. The research investigates how Islamic jurisprudential concepts of maslahat (public interest/benefit) can be integrated into contemporary judicial mediation practices to enhance conflict resolution effectiveness within the Indonesian religious court system. Using critical discourse analysis methodology, this study analyzes the linguistic patterns, power dynamics, and ideological frameworks embedded in judicial mediation discourse at the Palopo Religious Court. The research explores how judges construct meaning through language while incorporating maslahat-based approaches in their mediation processes, examining both explicit and implicit discursive strategies that shape dispute resolution outcomes. The findings reveal significant opportunities for reconstructing mediation processes by systematically integrating maslahat principles into judicial discourse. The analysis demonstrates how judges can employ maslahat-oriented language and reasoning to facilitate more culturally relevant and ethically grounded mediation sessions. The study identifies key discursive patterns that either support or hinder the effective application of maslahat in judicial mediation contexts. The research contributes to understanding how Islamic legal principles can be meaningfully incorporated into modern judicial practices through careful attention to discursive construction. The reconstruction model proposed emphasizes the importance of aligning judicial language with maslahat values to achieve more equitable and contextually appropriate dispute resolution outcomes. This study provides practical insights for religious court judges seeking to enhance their mediation practices through maslahat-based approaches while maintaining procedural integrity within the Indonesian legal system. The findings suggest that critical discourse analysis offers valuable tools for

understanding and improving the integration of Islamic jurisprudential principles in contemporary judicial mediation processes.

Keywords: *Critical Discourse Analysis, Judicial Mediation, Maslahat, Religious Court, Islamic Jurisprudence, Dispute Resolution, Legal Discourse, Indonesia*

Introduction

Marriage or marriage is a sunatullah that applies to all creatures of Allah SWT, including humans. In the teachings of Islam, marriage is one of the sunnahs of the Prophet PBUH, which we must carry out as one of the biological needs of humans to live together, love each other, love each other and love each other. The Prophet PBUH firmly stated that those who do not want to get married, even though they are able according to Islamic law to carry out marriage, then they are not among the people of the Prophet Muhammad PBUH.

Referring to Law Number I of 1974 Article 1 states that Marriage is an innate bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family or household based on the One Godhead. This Marriage Law gives us the understanding that a family (Household) must be formed from sincere intentions bound by a holy covenant (*Miitsaaqan Ghalidzan*) so that the ideal of realizing a prosperous and happy family will be achieved. This is the essential and noble purpose of a marriage and a family, as stated in the Compilation of Islamic Law in Indonesia, which emphasizes that marriage aims to realize a domestic life that is *Sakinah, Mawaddah* and *Rahmah* (Quraish Shihab, *Bride in the Qur'an*. (Jakarta: Lentera Hati, 2015), p.17.)

No one wants a holy marriage to be threatened by problems and conflicts, let alone to the point of causing extraordinary quarrels. Absolutely no one wants a solid marriage (*Miitsaaqan Galizha*) to fall apart so that children can no longer be with their father because of divorce. No one at all longs for a holy marriage to be dark because there is no place to unite anymore. But the wind doesn't always blow in the direction we want. The calm sea is also sometimes rough with waves, so the ship has to be blown away and the boat can capsize. If it is not a tough sailor, the overturned boat cannot reach the place where it is anchored. In living married life, sometimes you have to face hard clashes.

Sometimes the hard clash is called a situation, for example a squeezing economic difficulty. Sometimes the violent clash is called social pressure, for example, the desire of close or distant relatives to determine the color of our marriage according to what they consider good and not according to sharia. Sometimes the hard clash is called slander which has various sources of prejudice that are followed, difficult circumstances are inevitable such as the incident that happened to Ummul Mukminin Aisyah (*may Allah be pleased with him*) in the event of the *hadith ifk*, or even from our liking to open up our own badness.

The hard clash also comes from our demands on our mates. This is for example in the case of the Prophet's wife's demand that the Prophet (*peace and blessings of Allaah be upon him*) give additional money for shopping. They are finally given the

choice of eternal afterlife or divorce. *This domestic violence is really beyond reasonable. Sometimes the husband becomes his wife and in-law because his income is small.*

Imagine if the life of a couple who are always happy, have no problems, are far from disputes, have no quarrels, and never hurt each other. Maybe such a life can be realized in heaven where there is only love that never withers and intimacy that never wears out. As for household bids in the world, don't imagine that there will be no storm of problems. Problems in the household are inevitable. A family counselor, explained that when a storm shakes the household, husband and wife must rush closer to Allah SWT by increasing their worship and praying to Allah until the veil is lifted and the reason why the problem occurs is clear. After that, we express the obstacles we feel to our partner and hope that they can change.

Divorce that occurs in today's life has become part of the public news. Both those reported in newspapers, television, the internet and those that are not detected by the media and the public's interest in reading the news is very popular, especially related to Mustaming's infotainment, *Al-Isqaq in the Marriage Decision at the Tanah Luwu Religious Court*. (Yogyakarta: Deepublish, 2015), p.1. Divorce occurs due to several factors. Among them are economic factors, domestic violence (KDRT), there are also other factors such as wives not respecting their husbands, not serving their husbands well, and vice versa husbands do not provide for their wives, these factors trigger the destruction of the household, the most ironic is infidelity through social media or social media and even CLBK after Reunion Left spouse, Domestic Violence (KDRT), excessive use of mobile phones.

Based on the report of the Palopo City Religious Court in 2020, the total number of widows and widowers amounted to 374 people. The details are that there are 273 divorce cases or divorce applications submitted by women who are now widows, while 101 cases of divorce or divorce applications submitted by men are widower (1 <https://disdukcapil.palopokota.go.id/blog/page/aktaperceraian>. Retrieved January 07, 2023. Bastian (Registrar of the Palopo Religious Court), Interview on February 22, 2024.

Indonesia is ranked the highest in having the highest number of divorces every year, compared to other Islamic countries in the world. This was revealed by the Director General of Islamic Guidance of the Ministry of Religion in the Opening Ceremony of the Sakinah Family Election and the Election of the Head of the Exemplary KUA at the National Level 2016. According to him, the turmoil that threatens the life of the family structure has increased in number in the last three years. He added that every year there are 2 million marriages, but the heartbreaking number of divorces has doubled, for every 100 people who get married, 10 couples get divorced, and generally those who are newly married.

At first glance, if in 2013 BKKBN stated that the divorce rate in Indonesia had ranked highest in Asia Pacific, it turned out that in the following years the number of divorces continued to increase. Looking at the data on marriage and divorce in

Indonesia released by the Indonesian Ministry of Religious Affairs, it appears that marriage remains relatively at two million two hundred thousand every year, while divorce always increases to above three hundred thousand incidents every year.

Palopo Religious Court Handles 594 Divorce Disputes in 2023, Divorce applications at the Palopo Religious Court (PA), from January to November 2023, have reached 594 cases. When compared to last year in the same period, the number of divorce cases this year has decreased slightly Bastian (Registrar of the Palopo Religious Court), Interview on February 22, 2024.

The number of divorces in January-November 2023 was 594 cases, but only 266 cases were granted. Meanwhile, in 2022 in the same period, the number of divorces reached 637 cases with the number granted as many as 298 cases Bastian (Registrar of the Palopo Religious Court), Interview on February 22, 2024. The divorce rate in Palopo City, if described, has indeed increased sharply. Therefore, the position of the Religious Court as an actor of judicial power who has the competence to receive, examine, and adjudicate and resolve every Islamic sharia case submitted to it. The scope of this competency includes marriage, inheritance, wills, grants, waqf, zakat, infaq, shadaqah, and sharia economic disputes. Of this type of case, marriage cases occupy the highest number compared to other cases, especially divorce cases or *marital divorce*.

Ironically, the divorce lawsuit was initiated by the wife. This is different from the past where divorce was mostly carried out by the husband through a talaq lawsuit, now on the contrary, the initiation of divorce is actually from the wife's side through a divorce lawsuit. The data above shows that from year to year, the number of cases registered in the three Religious Courts is increasing. This divorce case must be resolved through mediation as a mandate of PerMA Number 1 of 2008. This study examines the construction of the mediation process of judges based on benefits in resolving divorce cases at the Palopo Religious Court. This study focuses on the implementation of mediation in the Palopo Religious Court, as well as the standard measure of mediation success and the legal culture of the litigant community in responding to mediation in the Religious Court.

The integration of the mediation process into the judicial system is expected to strengthen and maximize the function of the Religious Court institution in dispute resolution, as well as to provide a sense of justice for the disputing parties, as well as to overcome the accumulation of divorce cases in religious courts. In order to realize the goal of maximizing the function of religious court institutions in resolving divorce cases, namely helping to reduce the burden of religious courts in resolving divorce cases.

Peace is inevitable, in the midst of complicated problems, it is possible to reach an agreement to solve the problem properly outside the decision of the Panel of Judges. This is the essence of a judicial institution, fostering a sense of justice, equality and providing the best solutions in facing and serving the community. The Palopo Religious Court is not only obliged to examine and decide the case, but more than that, presenting a solution to the problem is concrete evidence needed by the

wider community. The success of this mediation should be appreciated, because mediation is a performance achievement by the Judge as a mediator for resolving problems without having to issue a verdict in the trial.

The judge as a mediator succeeded in facilitating the parties to find the best way to settle the dispute, so that the parties succeeded in reaching a peace agreement. Appreciation should be given to the Mediator Judge who has carried out his duties very well so that the mediation is successful and provides a sense of justice for both parties. Last Monday, July 18, 2022, there was an emotional atmosphere enveloping the mediation room of the Palopo Religious Court. In this mediation place, for the umpteenth time, couples who want to divorce have been successfully reconciled.

Skillfully, the mediator gave views and advice to the parties to cancel their intention to divorce, as well as rebuild their household properly and harmoniously, finally the judge succeeded in reconciling the Divorce Lawsuit case with Case Number 1867/Pdt.G/2022 until the mediation was successful, and with emotion the Plaintiff stated that he would withdraw the case. Then the Plaintiff and the Defendant are committed to rebuilding their household in harmony and harmony. In this regard, there is a legal entity formed by the Ministry of Religious Affairs that is trusted to handle this.

The Marriage Advisory and Marriage Settlement Agency is a body established by the Ministry of Religious Affairs, to reconcile or mediate Muslim parties who wish to divorce. In accordance with the Regulation of the Minister of Religion No. 3 of 1975 Article 28 paragraph (3) states that: *"The Religious Court in trying to reconcile the two parties can ask for assistance from the Advisory Board for Marriage, Disputes, and Divorce (BP4) to advise the two husbands and wives to live prosperously again in the household"*.

As a method of resolving disputes peacefully, mediation has a great opportunity to develop in Indonesia. With eastern customs that are still entrenched, people prioritize the establishment of relationships between families or relationships with business partners rather than momentary profits when disputes arise. Resolving disputes in Court may result in huge profits if you win, but the relationship also becomes damaged. Face *saving* or one's good name is an important thing that is sometimes more important in the dispute resolution process in Eastern cultured countries, including Indonesia (Fatahillah A. Syukur, 2009).

Mediation is an alternative dispute resolution or commonly known as *"alternative dispute resolution"* which grew for the first time in the United States. This mediation was born motivated by the slow process of resolving disputes in Court. Therefore, this mediation emerged as an answer to the growing dissatisfaction with the judicial system which boils down to problems of time, cost and its ability to handle complex cases. In fact, in the archipelago, dispute resolution through deliberation has long been practiced. A special term in court is called mediation.

This is because mediation does not provide a single model that can be elaborated in detail and differentiated from other decision-making processes. Mediation is highly dependent on the play played by the parties involved in solving the problem. The parties involved are the mediators and the parties involved in the Mediation dispute are very difficult to understand. The dimensions are very plural and infinite. So many people say that mediation is not easy to be defined. *Mediation is not easy to definite*, in Supreme Court Regulation No. 1 of 2008, the definition of mediation is stated in Article 1 point 6, namely: "Mediation is the resolution of disputes through the negotiation process of the parties with the assistance of a mediator".

Here it is mentioned the word mediator, who must look for "various possibilities for dispute resolution" accepted by the parties. The definition of mediator, mentioned in Article 1 point 5, namely: A mediator is a neutral and impartial party, whose function is to assist the parties in seeking various possibilities for dispute resolution. The parties will make their own decisions on the basis of negotiations with the other party. The mediator is appointed by the parties (directly or through a mediation institution), and is obliged to carry out his duties and functions based on the will and will of the parties.

This mediation is one of the non-litigation efforts carried out by the Palopo Agam Court as mandated by Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Court. The description of the implementation of mediation in the Perma, each mediator makes maximum efforts so that the parties can resolve their disputes peacefully, so that they can bring benefits to both parties, because in fact peace is the highest law, and this is the essence of a judicial institution in providing the best solution to meet the sense of justice of the community. This success is an effort that should be appreciated for mediators who have carried out their duties well.

This problem, when viewed from the perspective of Islamic law, has several aspects of *maslahah*.¹ *Maslahah Mursalah* is anything that is beneficial to humans, either in the sense of attracting or producing profits or pleasures, or in the sense of rejecting and avoiding such as rejecting harm or damage, so anything that contains benefits should be called *maslahah*, thus *maslahah* contains two sides, namely attracting or bringing benefits and rejecting damage or harm. According to the rules of *fiqh*, it is emphasized that if at the same time you are faced with the choice of rejecting *the affirmation* or achieving benefits, then the first thing that must be done is to reject *the affirmation*, because by rejecting the affirmation means also achieving the benefit. Meanwhile, the purpose of Islamic law, in the end, is to achieve the benefits of the world and the hereafter

Method

This study employs a qualitative research approach utilizing Critical Discourse Analysis (CDA) as the primary analytical framework to examine the reconstruction of judicial mediation processes based on maslahat principles at the Palopo Religious Court. The CDA approach is particularly suitable for this research as it allows for the systematic examination of how language, power relations, and ideological structures shape the mediation discourse within the Islamic legal framework. The study is grounded in Fairclough's three-dimensional model of Critical Discourse Analysis, which encompasses: (1) Textual Analysis: Examining the linguistic features, vocabulary choices, and rhetorical strategies employed in mediation proceedings (2) Discursive Practice: Analyzing the production, distribution, and consumption of mediation discourse (3) Social Practice: Understanding the broader socio-cultural and legal contexts that influence mediation processes. The analysis is further informed by the concept of maslahat (public interest) as articulated in Islamic jurisprudence, particularly drawing from the works of classical and contemporary Islamic scholars on maqasid al-shariah (objectives of Islamic law).

The Primary Data Sources are: (1) Court Proceedings Documentation, it consists of (a) Verbatim transcripts of mediation sessions conducted at Palopo Religious Court (b) Official court records and case files related to mediation processes (c) Judicial decisions and recommendations issued during mediation proceedings. In-depth Interviews consists of (a) Semi-structured interviews with judges specializing in mediation at Palopo Religious Court (b) Interviews with court mediators and administrative staff (c) Interviews with legal practitioners who regularly participate in mediation proceedings (d) Interviews with parties who have undergone mediation processes. Participant Observation consists of (a) Direct observation of mediation sessions (with appropriate permissions and ethical considerations) (b) Observation of pre-mediation consultations and post-mediation follow-ups (c) Documentation of non-verbal communication and contextual factors during proceedings.

Secondary Data Sources are: (a) Legal regulations and guidelines governing mediation in Indonesian Religious Courts (b) Islamic legal texts (Qur'an, Hadith, fiqh literature) relevant to mediation and conflict resolution (c) Previous court decisions and jurisprudential precedents (d) Academic literature on Islamic mediation and maslahat principles (e) Policy documents and administrative guidelines from the Supreme Court of Indonesia. The study employs purposive sampling techniques to select cases and participants that provide rich insights into the mediation process reconstruction:

Case Selection Criteria: (a) Mediation cases handled at Palopo Religious Court between 2022-2024 (b) Cases representing diverse legal issues (marriage disputes, inheritance conflicts, economic disputes) (c) Cases that demonstrate explicit or implicit application of maslahat principles (d) Cases with varying outcomes (successful mediation, failed mediation, partial resolution)

Participant Selection: (a) Judges with minimum 5 years of experience in mediation (b) Mediators certified by the Indonesian Supreme Court (c) Legal practitioners with extensive experience in Religious Court proceedings (d) Parties representing different socio-economic backgrounds and legal issues

Data Analysis Procedures

Phase 1: Textual Analysis

Linguistic Analysis. It consists of (a) Identification of key vocabulary and terminology used in mediation discourse (b) Analysis of modal verbs, hedging devices, and certainty markers (c) Examination of pronouns usage and participant positioning (d) Study of metaphorical language and cultural references Rhetorical Analysis consists of (a) Analysis of argumentation strategies employed by judges and mediators (b) Identification of persuasive techniques and their effectiveness (c) Examination of religious and cultural references in discourse (d) Study of power dynamics through language choices

Phase 2: Discursive Practice Analysis

Discourse Production. It consists of (a) Analysis of how mediation discourse is constructed during proceedings (b) Examination of interactive patterns between judges, mediators, and parties (c) Study of discourse modification and adaptation strategies (d) Analysis of intertextuality and reference to Islamic legal sources Discourse Consumption (a) Analysis of how parties interpret and respond to mediation discourse (b) Study of comprehension levels and communication barriers (c) Examination of cultural and linguistic factors affecting discourse reception

Phase 3: Social Practice Analysis

Institutional Context Analysis (a) Examination of Religious Court institutional culture and practices (b) Analysis of legal framework governing mediation procedures (c) Study of administrative and bureaucratic influences on discourse Socio-Cultural Context Analysis (a) Analysis of local cultural values and their influence on mediation (b) Study of Islamic legal traditions and their contemporary application (c) Examination of power relations and social hierarchies in mediation context

Maslahat-Based Analysis Framework

The study develops a specific analytical framework to examine how maslahat principles are integrated into mediation discourse: Maslahat Identification Criteria (a) Preservation of Religion (Hifz al-Din): Discourse promoting religious values and Islamic principles (b) Preservation of Life (Hifz al-Nafs): Language emphasizing human dignity and welfare (c) Preservation of Intellect (Hifz al-Aql): Discourse encouraging rational decision-making (d) Preservation of Progeny (Hifz al-Nasl): Language protecting family interests and children's welfare (e) Preservation of

Property (Hifz al-Mal): Discourse ensuring fair economic outcomes

Discourse Reconstruction Analysis (a) Identification of traditional mediation discourse patterns (b) Analysis of maslahat-based modifications and adaptations (c) Examination of resistance and acceptance of reconstructed discourse (d) Study of effectiveness and outcomes of maslahat-integrated mediation

This methodology is designed to produce comprehensive insights into: (a) The current state of mediation discourse at Palopo Religious Court (b) Specific ways maslahat principles can be integrated into mediation processes (c) Practical recommendations for discourse reconstruction (d) Theoretical contributions to Islamic legal mediation studies (e) Policy implications for Indonesian Religious Court system. The methodology ensures rigorous analysis while maintaining sensitivity to the Islamic legal context and local cultural considerations, ultimately contributing to the enhancement of mediation effectiveness through maslahat-based discourse reconstruction.

Research Results

The steps of the divorce mediation process by the judge against the parties to the dispute at the Palopo Religious Court are:

1. The first step is called Pre-Mediation

Pre-mediation is a stage where the parties get an offer from the judge to use the mediation route and the parties appoint a mediator as a third party who will help resolve their dispute. At this stage, the mediator performs several steps, including:

Building confidence, contacting the parties, digging up and providing initial information of mediation, focusing on the future coordinating the warring parties, being aware of differences of opinion, determining who is present, determining the purpose of the meeting, agreeing on the time and place and creating a sense of security for both parties to meet and discuss their disputes.

Conduct an interview separately after the parties are brought together in the mediation forum, the judge will advise the defendant to remain in the mediation forum and the plaintiff is expected to wait outside. After the defendant is in the mediation forum, the judge will ask the defendant what problems are in the household and what desires the defendant wants to achieve.²

Conducting an open discussion of each other's wishes, the Judge in the mediation forum already knows clearly the problems and desires of both parties, then both parties have concluded the problems and desires to be achieved in the mediation forum in writing, then the judge will bring³ the two parties back together in the mediation forum and discuss the problems and desires that both parties want to achieve.

²Mariani (Deputy Legal Clerk of the Palopo Religious Court), Interview at the Palopo Religious Court, April 30, 2023.

³Mariani (Deputy Legal Clerk of the Palopo Religious Court), Interview at the Palopo Religious Court, April 30, 2024.

The mediator judge concludes as a result of mediation After the mediation has been completed and has gone through several stages in mediation such as gathering the opinions of both parties as a basis for getting a solution, conducting separate interviews, providing opportunities for both parties to express their respective desires in writing, conducting an open discussion of each other's wishes, then the mediator judge can conclude that the process of the implementation of mediation whether it is successful or not.

2. The second step is the Implementation of Mediation

The mediation implementation stage is where the warring parties have faced each other and started the mediation process. In this stage, there are important steps taken by the mediator judge of the Palopo Religious Court, including:

The mediator's introductory remarks as well as giving advice to the parties to the dispute, Percentage and presentation of the parties' stories, Sorting and clarifying problems, Discussing and negotiating agreed issues, Finding points of agreement and formulating decisions, Preparing a conducive and cool mediation room, If in the implementation of the mediation there is a possibility of peace between the parties, then it will be mediated again.

3. Step three Separate Meeting

A separate meeting is where the mediator judge separates the parties to the dispute to interrogate and advise on the consequences and consequences of the divorce. The following is explained by Hj. Nurbaya, S.H. This stage is carried out to:

"Exploring problems that have not been revealed and are considered important in order to reach an agreement. Provide a dynamic atmosphere in the negotiation process if encountering a dead end. Avoid the tendency to maintain the opinions of the parties in the join sessions. Reminding of the things that have been achieved in this process and considering the consequences if an agreement is not reached."

4. Final Stage Steps

The following is the explanation of the legal clerk of Mrs. Mariani, S.H. based on the results of the interview:

"The final stage is the stage where the parties to the dispute only carry out the results of the agreement that they have poured together in a written agreement. Although this stage is actually the final stage, sometimes the mediator judge still gathers the parties together to hold negotiations and give final advice before the case is heard."

Mediators are always trying to find a way out, in order to reduce the high number of divorces. Divorce petitioners in filing a divorce lawsuit have many reasons put forward, however, what is acceptable and processed is the one that meets the requirements of the divorce itself.

Divorce can be carried out if it meets the reasons as stipulated in article 39 of

the Law Number 1 of 1974 Jo Article 19 of Government Regulation Number 9 of 1975 Jo Article 116 of the Compilation of Islamic Law which reads that one of the parties commits adultery or becomes a drunkard, a gambler and so on which is difficult to cure.

The success of mediation is certainly based on the establishment of good communication between parties and the availability to open each other's hearts and minds. An important step that mediators can take is to make mediation a space for reflection to build suggestions for both couples to communicate well. Mediation is actually a peace effort that is carried out that avoids divorce.

The average couple holds their ego more without giving in. Meanwhile, the Chief Registrar said that the couples who filed lawsuits and talaq were around 81 percent with the majority under 30 years old. But thank God, in this month of Shawwal, we managed to mediate in 7 lawsuits and talaq, so that they canceled their intention to divorce, married couples must realize the importance of fostering a family and life well without prioritizing ego, so that it will not sacrifice many parties, especially children.

C. Supporting Factors for Mediation of Divorce Settlement in PA Palopo

Based on the results of the author's research at the Palopo Religious Court, there are several ways carried out by mediator judges in seeking mediation between husband and wife who want to divorce at the Palopo Religious Court. The mediation efforts made by the mediator judge against the divorce case at the Palopo Religious Court are:

1. Providing an explanation to the parties who want to divorce about the benefits and virtues of mediation.

At the first trial, the panel of judges examining the case is obliged to give an explanation to the parties regarding the implementation of PERMA Number 1 of 2008, where the panel of judges emphasizes the need for the parties to undergo mediation first in resolving their cases before proceeding to trial. In accordance with the provisions of Article 7 of PERMA Number 1 of 2008, that on the day of the predetermined hearing attended by both parties, the judge requires the parties to go through mediation. Judges through legal representatives or directly to the parties, encourage the parties to play a direct or active role in the mediation process.

The judge is obliged to explain the mediation procedure according to PERMA Number 1 of 2008 to the parties to the case. Furthermore, the judge requires the parties on the same day or at the latest 2 (two) working days to negotiate to choose a mediator, including the costs that may arise due to the choice of using a non-judge mediator. If after the maximum period of 2 (two) days, the parties cannot agree to choose the desired mediator, then the parties are obliged to convey their failure to choose a mediator to the chairman of the panel of judges. Upon receipt of the parties' notice of failure to select a mediator, the chairman

of the panel of judges shall immediately appoint a judge other than a certified principal matter examiner at the same Court to perform the function of a mediator.

2. Issuing a Decree on the list of names of mediator judges that can be chosen by parties who want to divorce in resolving cases through mediation, in accordance with the provisions of PERMA Number 1 of 2008.

This aims to help make it easier for the parties to make their choice to one of the parties and be able to resolve their disputes without having to go through a trial. The following is that the cost of using the services of a mediator judge provided by the court is not allowed.

3. Providing a mediation space for parties who want to divorce by arranging it as best as possible. The court hopes that the arrangement is as much as possible, the parties to the dispute will find a more comfortable and less rigid atmosphere so that they can resolve their cases through mediation.
4. Opening the horizons of parties who want to divorce, also by instilling awareness that marriage is a strong, holy bond, and contains worship values, while divorce is an act that is hated by Allah SWT.

Based on the description above, and the results of the research conducted, the author concludes that the problem of mediator judges in mediating divorce at the Palopo City Religious Court can be clarified into two, namely:

1. Technical Problems

The constraint on the number of judges who are certified as mediators does not yet exist. Judges who have received mediator training, at least they have the ability to match the functions and roles of the mediator so that they will be able to organize the mediation process properly. Increasing the skills of judges in conducting mediation will have programmed techniques. Because the duties of the mediator are different from the judge during the trial. If in court the judge is very authoritative in the Court when in front of the parties, while when being a mediator, they must be more communicative and not rigid, because they function as a mediator of conflicts between the parties. Thus, mediation can run effectively and produce peace.

Facilities and Facilities The mediation room at the Palopo Religious Court has only 1 (one) room measuring about 4 meters x 3 meters, in which there is only 1 (one) long table and 3 (three) chairs. In the room, 3 (three) mediation processes can be carried out at once. Likewise, there are less supporting facilities such as projectors, the availability of drinking water, and Air Conditioners (AC) that can make the mediation room feel cool. So that with all the shortcomings above, it makes the parties and mediators uncomfortable during the mediation process.

2. Problem Non Teknis

- a. Both parties have unanimously wanted to divorce. Before the parties enter the examination of the case at the trial, they often have agreed to decide on the marriage. So that when mediation is carried out, it is very difficult and even fails to be reconciled. Because no matter how much effort the mediator judge

makes to reconcile the parties, if the parties remain firm in their stance for divorce, then the mediator judge's efforts will still not be able to prevent the divorce from occurring.

- b. Third-party involvement or third-party interference that may hinder peace efforts. Such as the involvement of two families who expect couples to stay divorced, because according to them there is no compatibility between the two. Sometimes during the mediation process, the mediator judge begins to find a bright spot towards peace, but the presence of the family tries to influence the parties to stay divorced, so that the mediator judge finds it difficult to seek peace between them, and as a result, the parties will still go through a divorce.

Of these 8 (eight) judges, they are not only in the courtroom but one of them must be a mediator at the mediator hearing, so that the judges have very little time spent on carrying out the mediation process, the judges must complete the cases that are heard every day, even though ideally the mediator judge must have enough time to prepare what is needed to reconcile the parties through mediation.

There are two views that occur regarding the absence of the parties or one of the parties in the first hearing when mediation will be held. That marriage disputes (divorce) submitted to the Court are not uncommon when the trial day that has been determined is only attended by one party, namely the plaintiff/Applicant or the Defendant/Respondent whose exact address is unknown. This is where the question will arise, whether the trial is postponed to summon the Defendant/Respondent or the party who is not present as per Article 127 HIR/151 Rbg, or postponed for mediation in accordance with Supreme Court Regulation Number 1 of 2008.

Reviewing the news issued by the Palopo Religious Court, there is a fact that, there are two views that have temporarily emerged against *ghoib* cases or cases in which one of the parties is not present at the hearing, namely, first; if one of the parties is not present at the first hearing, then the trial is postponed to recall the absent party as stipulated in Article 127 HIR/151 Rbg and if it is still absent, So the mediation process is not carried out, as well as in the case of *ghoib* cases. Second; The hearing was adjourned for mediation, regardless of whether both parties were present at the first time or only one of the parties was present. The view of this second group is based on Article 2 Paragraph (3) and (4) of the Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2008.

Examining further the views of the judges at the Palopo Religious Court based on the results of research and interviews related to this issue, the mediator judges tend to lean towards the opinion of the first group, namely if one of them is not present, the trial is postponed to recall the absent party and if he is still absent after the summons, the mediation process is not carried out as well as the *ghoib* case. Then in the verdict, it was stated that mediation was not feasible.

During the mediation process, the mediator judge is given the freedom to

create a number of opportunities that allow the parties to find an agreement that can end their dispute. The mediator must seriously encourage the parties to think about a number of possibilities that can be discussed to end their dispute. The seriousness of the mediator judges at the Palopo Religious Court can be seen from the efforts and steps taken in overcoming some of the divorce mediation problems above.

The efforts and steps of the mediator judge are as follows:

1. Reminding the parties of the purpose of marriage that Allah SWT proclaimed the shari'a of marriage in Islam in addition to having a noble purpose and purpose, there are also lessons or wisdom that we can learn because Allah never made or created something without meaning. The purpose of Islam is to make marriage closely related to the Islamic religion concerning instincts, sexuality, very honestly and therefore the suppression of sexual instincts has never been found in Islamic law. However, the sexual instinct must be channeled in the right and ethical ways, namely through the marriage bond. The purpose of marriage is not only limited to sexual relations, but far from that marriage is a strong, holy bond, and contains the value of worship on the side of Allah SWT also includes the guidance of family life that is sacred, mawaddah, and warohmah, so that humans can live peacefully, both in the family and in society. In addition, through marriage, offspring are preserved, so that it will give birth to legitimate descendants, which will give birth to the offspring of a healthy and moral society, and through marriage will encourage each husband and wife to be aware of their obligations and responsibilities in the family.
2. Providing advice for the parties not to divorce. Islamic law stipulates the dissolution of marriage through divorce, but it does not mean that Islam likes the occurrence of divorce from a marriage. And divorce should not be carried out at any time desired. So that only in unavoidable circumstances is divorce allowed in the Shari'ah.
Thus, even though a divorce is allowed, Islam still views divorce as something that is contrary to the principles of Islamic law. Divorce is hated by Allah very much, and when the divorce occurs, the family will no longer get along, not to mention if they already have children, then the child can no longer get full affection from both parents.
3. Remind the parties of the consequences that arise after a divorce. If divorce occurs, the husband and wife can no longer protect each other, can no longer share affection with each other, the household building is no longer sturdy and automatically happiness will disappear, besides the child is not well taken care of because the parents cannot educate together. This can happen because husband and wife can no longer cooperate due to divorce between the two.
4. If a divorce occurs, the parties can no longer reunite with the child, are not free to meet the child, and the child vice versa.

Here's how to resolve conflicts in the household according to the mediator, there are several things we need to pay attention to, namely:

Both partners must have patience, that is, when conflicts break out, what is needed is patience. Patience includes the willingness to accept, resilience and the ability to refrain from doing something that he is capable of doing, but if done does not bring much benefit. More *harm* than *good*. If you are patient from the tyranny of others, it does not mean that you are incapable of retaliation. But you do not want to do it because you are still waiting for him to become good and be able to become a brother in the auspices of Islam. If you are patient in advising someone who is stubborn, it doesn't mean that you can't yell at him and say it very loudly. But you hope for pleasure from Allah.

Patience is not the same as helplessness, as some people understand it. Patience is also not a joke, so we just stay silent and do nothing. But patience is more inclined to the ability to control oneself not to take action before the right time. But patience is more inclined to efforts to maintain clarity of mind and cleanliness of heart so as not to take action in a hurry. Then what exactly is the meaning of patience.

Patience also contains the resilience to wait for a good moment because with difficulties there is ease, and to keep hope in Allah because indeed Allah's help is near. At a certain point, patience in marriage can also mean sincerity to divorce in a good way and in order to achieve the highest good. Just as Allah does not like violence and persecution, but in the time of war is the most valuable form of patience so that death in war in His way means the guarantee of heaven without hisab.

Patience also means that you are willing to have your right leg amputated when there is no better option than amputating the leg, when retaining the leg will actually damage the more important parts of the body and endanger your soul. If you used to give up your legs hurt, including patience; So now giving up a sore leg without allowing it to be cut may be out of the limit of patience. You may have already persecuted yourself. You are tyrizing yourself.

I need to present these descriptions of patience here in order to stimulate you to understand patience better. I myself am still trying to understand patience more precisely. This is because we often talk about patience without explanation, so we seem to have understood all that patience means. Again, a further understanding is not part of this book to discuss. I think, that's all we discussed first.

Husband and wife dialogue is intended to erode psychological barriers. Sometimes problems arise not because there is no compatibility on both sides, but because there is a lack of opportunities for the two to talk to each other from heart to heart. Perhaps, with just dialogue or just a small chatter, conflicts that seem difficult to solve can melt on their own. Dialogue is also intended for *tabayyun* or mutual clarity.

Tabayyun is carried out to straighten out the information we receive or to straighten our perception of the information we hear. Sometimes we are upset, upset, and angry at someone when we hear information about him. Even though after doing tabayyun, we cry because the perception is completely reversed.

Through tabayyun we improve relationships. We rebuild the cracked parts, forgive our spouse's mistakes and give him or her a chance to improve, accept that it takes process and time to make improvements, and never get tired of reminding. Through tabayyun (asking for explanations) we do islah (improvement to reconcile). As long as the heart can still be opened and no wound is too severe to heal.

If the conflict cannot be resolved by dialogue, perhaps because the two parties are no longer able to dialogue even though they feel that they are having dialogue while the situation is getting more critical and the quarrel is getting more pointed, then the presence of a fair mediator is necessary. We take mediation from our families.

Next, each takes an acceptable mediator, a fair mediator who understands both and stands in the middle. This means that he is neutral and does not tend to defend one of the parties, even though he does not know the problems between the two.

The final solution that can still be taken is to bring in both parents. This is because they are the ones who know the case and can find a way to resolve it by sending a judge (mediator) from the husband's family and a judge from the wife's family so that they can study the conflict that occurred, then reconcile the situation, if possible, for both.

So, the duty of brothers and parents of husbands and wives is not to support the attitude of their brothers or children, let alone to give bad report cards to their brother-in-law or son-in-law. Their duty is to be a pacifier, a person who understands, and thankfully can be a just judge and understand what is best for the higher good of the household of the brother and sister-in-law.

If the brother-in-law or in-laws give more red report cards than advise with love and tenderness, then the conflict will heat up even more. This conflict can develop into a "conflict of feelings" between two extended families, namely the husband's extended family and his relatives and the wife's extended family and his relatives. Perhaps, in the end, it is not just a "feeling gap" between them. And what I think is very ironic is that the attitude of my brother-in-law and in-laws is precisely what causes the conflict.

This does not mean that you should not judge his brother-in-law and that parents should not correct his child's wife. Not so. Especially when it comes to things that are very principled and non-negotiable according to sharia. But their job is to limit negative comments to things that are not so important, especially to things that are not the duty of the brother-in-law.

Conclusion

The efforts of the mediator judge in reconciling the husband and wife are very important to be carried out at the Palopo City Religious Court, in order to prevent divorce, based on PERMA Number 1 of 2008, basically emphasizing that the mediator judge in an effort to make peace with the parties to the dispute, in the mediation session is not just a formality, but must be reconciled through mediation

with its own methods, namely; Remind the parties of the purpose of marriage, give advice for the parties not to divorce, remind the consequences that arise after the divorce, and if a divorce occurs, the parties cannot reunite with the child, are not free to meet the child, and the child vice versa.

The problems faced by the mediator judge in reconciling a couple who are going to divorce can be broadly clarified into two, namely: a. Technical Problems, including; Mediator judges have not participated in mediator training or no one has been certified as a mediator and the constraints of mediation facilities and means are not yet conducive. b. Non-Technical Problems, including; Both parties have unanimously decided to divorce, the involvement of the family who expects the couple to remain divorced, the limited time of the mediator judges due to concurrent positions (there is no special mediator), and both parties (who want to divorce) do not attend the mediation hearing.

The mashlahah-based mediation was carried out to reconcile quarrels between husband and wife, reconcile between Muslims and infidels, and reconcile between one party or group and another party or group that was experiencing disputes, and various problems at that time. Ishlah or alsuhl is one of the methods taken as an effort to reconcile the parties who disagree with the willingness of each party without going through the judicial process before the judge. The goal is for the parties to the dispute to be able to find an agreement as a solution to the dispute that occurs, because the principle in implementing it is the willingness of all parties to the dispute.

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