

# **The Role of Mediators In Divorce Mediation Efforts at The Religious Court of Jambi City From an Islamic Law Perspective**

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## **ABSTRACT**

This study aims to find out the mediation process, the role of mediators, and the obstacles to the mediation process in divorce cases at the Jambi City Religious Court. The research method used is qualitative research with a descriptive analytical approach. The type of research used in this study is field research, which is data collected or collected to obtain information and valid data to answer problems in this study obtained from the results of field studies which are then combined with data obtained from literature studies, so that accurate data is obtained. Data was obtained through direct observation, interviews with mediators in order to find out the role of mediators in efforts to mediate divorce cases at the Jambi City Religious Court, as well as analysis of related documents. The results of the study show that the mediation process at the Jambi City Religious Court occurs in 5 stages, namely: The first stage, the existence of a case The fourth stage is to make an agreement by holding a joint meeting. The fifth stage is the implementation of the agreement by implementing the content of the agreement with the parties. If the mediation is successful, the mediator makes a peaceful decision (in divorce cases, the panel makes a decision to revoke it). Furthermore, if mediation fails, the panel can continue to examine the case and make a litigation decision.

**Keywords:** maturidiyah, shafii, predestination, sunni, comperative theology

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## **INTRODUCTION**

Divorce is an event that is sometimes unavoidable for married couples. Divorce is one of the reasons for the breakup of the marriage bond outside of other causes, namely death or on a court decision as contained in Article 38 of the Marriage Law. Marriage in Islamic law is something very sacred and sacred. Islam provides legality of relationships between two people of different sexes through a marriage contract process called ijab qabul. Marriage to form a happy family is inseparable from environmental and cultural conditions in fostering and maintaining relationships between husband and wife families. Without this unity of purpose, it results in obstacles in family life, which can eventually lead to disputes and domestic rifts that ultimately result in divorce (Fatmawati, 2022).

Islam expects marriages whose contracts have sacred value to be maintained forever by husband and wife. However, Islam also understands the reality of married life in a household that sometimes experiences prolonged disputes and quarrels. Disputes between husband and wife that escalate can make the household disharmonious, so it will bring harm. Therefore, Islam paves the way in the form of divorce. Divorce is the last path that a husband and wife can take, if their household can no longer be maintained. Divorce can be passed through a predetermined procedure. Husband and wife disputes are not necessarily the reason for breaking off marital relations but contain a process of mediation and reconciliation, so that their household can be maintained (Wulandari, Erfandi, & Billah, 2024).

Mediation in Islamic law is also one of the solutions to solve problems or conflicts and a way to become a fair mediator. A justice is a necessity in doing everything, whether social,

social, agreement, and others to achieve comfort and prosperity until the goal is conveyed rather than fraternal values (Indrawati & Amelia, 2023). Islamic law upholds values rather than brotherhood so that everything related to humanity is a very sensitive matter as one of the words of the Prophet (saw) on the emphasis on brotherhood is self-reflection. Mediation is also allowed in any rule that does not contradict. An expression in Islamic law that peace is a goal to be prioritized in order to determine a common benefit in making decisions so as to look at factors, causes, effects, and impacts. Islamic law also has limitations in a relationship so that it is considered no longer harmonious in running a household (Hanifah, 2020).

Justice is one of the needs in human life that is generally recognized in all parts of the world. If justice is then confirmed into an institution called law, then the law must be able to be a channel so that justice can be carefully administered in society. The mediation according to Islamic law as explained about reconciling the two parties is regulated in QS. Al-Hujurat / 18:9 :

It translates: "If there are two groups of believers at war, make peace between them. If one of them persecutes the other, fight the persecutor, so that the group returns to Allah's command. If the group has returned (to Allah's command), reconcile the two fairly. Be fair! Indeed, Allah loves those who are just."

The explanation of the above verse illustrates in Islam a settlement of disputes between the two parties. Looking at the verse above, it also reflects that mediation in Islamic law is commonly called tahkim which is a form of peace through deliberation mediated by a hakim. This proves the suitability of Islamic law in upholding the values of brotherhood and togetherness which are manifested in legal awareness to ensure justice and ensure its existence, which requires clear regulations on tahkim as a mediation institution in the legal system (Sulistiawati, 2025).

Seeing all aspects between the law of application in religious courts in mediation and Islamic law that regulates peace becomes complementary rather than achieving perfection, preventing misunderstandings and losing the direction of the purpose of marriage so that many small mistakes arise that become big due to the ego and emotional obstruction of the parties to realize the actions and considerations in the decisions they take. Starting from uncontrollable high ego and emotions, loss of affection in building a household, and great consequences from damage and loss of hope to establish family togetherness. A foundation that is poorly understood is where the loss of strength lies in remembering what has been built since the past (Nur & Wijaya, 2020).

In Islamic law, in terminology, peace is called the term *islah* (as-sulh) which according to the language is to decide a dispute between two parties. And according to *shari'a* is an agreement with the intention of ending a dispute between two parties who are in dispute with each other (Pranawati, 2017). Allah encourages humans to be able to resolve disputes through deliberation. This is in line with the nature of mediation where the dispute resolution is consensus (agreement) by way of negotiation. So that it can be resolved without going through the litigation process. As for the divorce case due to adultery, physical disability, or mental illness which results in not being able to carry out its obligations, then peace efforts by the panel of judges must still be carried out because it is an obligation but not demanded optimally, what is done is only a moral obligation, not as a legal obligation (Nabila & Lubis, 2024).

The mediator is a third party that assists in the resolution of the parties' disputes, for which he does not intervene in decision-making. The mediator bridges the meeting of the parties, resolving the dispute. Although the mediator is involved in offering solutions and formulating agreements, it does not mean that he or she determines the outcome of the agreement. The final decision remains in the hands of the parties to the dispute. Mediators are only helping to find a solution, so that the parties are willing to sit together to resolve the disputes they are experiencing (Abbas, 2017).

Mediation is interpreted as a settlement by peaceful means, with the role of a third party called the term hakam. Disputes that occur between husband and wife in Islam are called syiqaq. Syiqaq is a dispute, quarrel, hostility or quarrel that occurs between husband and wife who are still together. In married life, disputes must exist, because differences and conflicts are natural law. In Islam, mediation is very important (Lc et al., 2021). Peace in Islam is called *islah-sulh*. The existence of sulh as a peaceful effort in dispute settlement has been explained in the Qur'an and the Hadith of the Prophet PBUH:

"There is no good in most of their whispers, except the whispers of those who tell them to give alms, or to do makruf, or to make peace among people. And whoever does this because he seeks the pleasure of Allah, We will give him a great reward" (QS. An Nisa': 114)"

The same thing was also explained by the Prophet Muhammad: Sulh is something that must exist among Muslims, except for a peace that legalizes the haram or prohibits the halal, and the Muslims are bound by their promises, except for the promise that prohibits the halal and the haram (at-Tirmidhi).

Mediation is a dispute resolution process through a negotiation process or consensus of the parties assisted by a mediator who does not have the authority to decide or impose a settlement. The main feature of the mediation process is negotiation whose essence is the same as the deliberation or consensus process. In accordance with the nature of negotiation or deliberation or consensus, there should be no coercion to accept or reject an idea or solution during the mediation process. Everything must be approved by the parties (Muhammad & Sanjaya, 2022).

Court mediation is regulated in the Criminal Code with the term peace. Court mediation is a concept developed by the Netherlands that is still used in the settlement of civil disputes in Indonesian courts (Marsitningsih, Ningrom, & Saefudin, 2023). One of the staff of the Jambi City religious court, Mr. Husein, said that the divorce rate in PA Jambi continues to increase all the time, even in 2020 the divorce rate reached 943 divorce cases and there were some 5 successful mediations and 938 unsuccessful mediations, while in 2021 the divorce rate reached 1,033 divorce cases and there were some 9 successful mediations and 1,024 unsuccessful mediations in 2022 The divorce rate reached 1,100 divorce cases and there were some 10 successful mediations and 1,090 unsuccessful mediations, while in 2023 the divorce rate reached approximately 1000 divorce cases.

The mediator's efforts in resolving peace in the divorce mediation process in the Jambi City Religious Court reached a success rate of 50% or 50:50 (fifty-fifty) compared to the failure rate. However, the data is still fairly general and has not been confirmed to the concrete, because the researcher must conduct in-depth interviews and identification with judge mediators and non-judge mediators at the Jambi City Religious Court to ask directly regarding the success of the mediator in peace efforts during the divorce mediation process (Syarifudin, Herwastoeti, & Hapsari, 2022).

The Jambi City Religious Court is one of the Religious Courts in the Jambi City area that also prioritizes the resolution of cases through mediation. In addition, the Jambi City Religious Court also provides breadth to the parties to determine the Mediator. The Jambi City Religious Court has listed the names of the Mediators along with their photos and ranks. If the parties choose their own mediator, then the minutes of the hearing will be written by the Judge of the Assembly. However, when the parties convey the mediator's decision to the trial judge, the presiding judge issues an appointment to the mediator with a decision letter (Turatmiyah, Emirzon, & Annalisa, 2022).

Several studies have addressed the role of mediators in resolving divorce cases, emphasizing the importance of mediation in Islamic law. For example, Wulandari, Erfandi, and Billah (2024) highlighted the mediator's role in facilitating reconciliation and achieving

amicable solutions in religious court divorce cases. Similarly, Fatmawati (2022) examined the effectiveness of mediation in reducing divorce rates in Islamic courts, finding that mediation plays a critical role in preserving family unity. These studies underscore the importance of mediators in providing a peaceful resolution to marital disputes, particularly in the context of divorce.

The urgency of this research lies in the increasing number of divorce cases in the Jambi City Religious Court, with statistics showing a high rate of failed mediation attempts. Despite the legal framework encouraging mediation, the high failure rate points to significant challenges in mediation practices. Understanding the role of mediators and identifying the obstacles they face in divorce mediation is crucial to improving the process. This research aims to enhance the effectiveness of mediation in divorce cases, thereby contributing to the preservation of families and reducing the caseload of the court system.

While previous studies have discussed mediation in divorce cases in Islamic law, there is a gap in research focusing specifically on the Jambi City Religious Court and the unique challenges faced by mediators in this context. Most existing studies do not examine the dynamics of mediator roles in light of local cultural and emotional factors, which significantly influence the mediation process. This study fills that gap by exploring how mediators navigate these challenges and their strategies for success in divorce cases in this particular religious court.

This study offers a novel perspective by focusing on the role of mediators at the Jambi City Religious Court, a setting that has not been extensively studied in existing literature. It emphasizes the integration of Islamic law with practical mediation strategies, particularly in handling emotionally charged divorce cases. Additionally, the study examines the obstacles mediators face, such as lack of cooperation from parties and external influences, providing insights into how these challenges can be addressed to improve mediation outcomes.

The role of mediators in peace efforts against divorce cases is an interesting theme to be researched because it is a process of ratifying mediation carried out to achieve peace in divorce cases that were previously submitted to religious courts. Based on the above phenomenon, the researcher is interested in compiling a thesis entitled "The Role of Mediators in Mediation Efforts in Divorce Cases in the Jambi City Religious Court"

The purpose of this study is to explore the mediation process, the role of mediators, and the obstacles to effective mediation in divorce cases at the Jambi City Religious Court. The benefits of this research include improving the mediation process by offering recommendations to enhance mediator training, increasing public awareness about the importance of mediation, and providing insights into how mediators can overcome common barriers. Ultimately, the study aims to improve the effectiveness of mediation in divorce cases, ensuring more peaceful and fair resolutions for all parties involved.

## **METHOD**

The type of research used in this study is field research, which is data collected or collected to obtain information and valid data to answer problems in this study obtained from the results of field studies which are then combined with data obtained from literature studies, so that accurate data is obtained. This study analyzes the problem of the role of mediators in mediation efforts in the determination case file. Primary data sources are data that are directly obtained by researchers going to the field and conducting interviews and observations to relevant subjects in order to find out the role of mediators in efforts to mediate divorce cases at the Jambi City Religious Court. In this study, the author conducted interviews with three mediators at the Jambi City Religious Court. In the interview process, the researcher asked the resource person about information about the research title. Meanwhile, secondary data is one

of the primary data supporting data and can be collected through the help of others without the researcher's own efforts to collect it. Secondary data sometimes comes from the second, third, and so on, meaning it passes through one or more parties who are not the researcher himself. In this regard, the secondary data used in this study are in the form of books, magazines, journals, archival data, reports and so on related to this research.

## **RESULTS AND DISCUSSION**

Mediation is a way of resolving disputes outside the court by involving a third party who is neutral, impartial and accepted by the parties to the dispute. The third party is called a mediator. The mediator serves only as a facilitator, namely helping the parties to the dispute in 72 resolve the authority to make a decision. This means that decision-making remains in the hands of the parties, not in the hands of the mediator (Saifudin, 2019).

The character of mediation that gives wide space to the parties to the dispute also allows the parties to get justice or dispute resolution in a more satisfactory way. Mediation in court is basically an effort to intensify the peace process (130 HIR/154 RBg) in order to further encourage the parties to seek peace in disputes that occur between them.

The striking difference between out-of-court mediation and in-court mediation is that out-of-court mediation is selective in nature, that is, the parties have the right to choose which dispute resolution institution is trusted to be used as a dispute resolution institution. Mediation in court is mandatory to be carried out for all civil cases submitted to the court of first instance (Article 2 paragraph 3 of PERMA Number 1 of 2008). After the issuance of PERMA Number 1 of 2016 regarding the obligation to implement mediation for disputes that are submitted to be resolved in court, it can be seen in Article 3 paragraph 1 of PERMA Number 1 of 2016, namely "every judge, mediator, parties and legal representatives are obliged to follow the dispute resolution procedure through mediation"

So with the enactment of PERMA Number 1 of 2016 concerning Mediation Procedures in Court, the development that occurred in the concept of mediation in Indonesia is the existence of an out-of-court mediation institution (Article 1 paragraph 10 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution) and mediation in (in) the court PERMA Number 1 of 2016 (Hidayat. 2016).

This is also in line with what was conveyed by the mediator of the Jambi City Religious Court: Then this was also conveyed by Muhammad Zhofir Rifqi as the mediator of the Jambi City Religious Court, in the mediation process I as a mediator based on PERMA Number 1 of 2016 the plaintiff and the defendant conveyed to the panel of judges that the form of the panel of judges provided options for mediation for an agreement in order for the mediation to reach an agreement in such an emotional approach.

The mediation process in handling divorce in the Religious Court can be described as follows:

1. The pre-mediation stage on the first day of the trial attended by both parties The judge requires the parties (husband and wife) to go through mediation. The judge postponed the trial process of the case to provide an opportunity for the mediation process to last 30 working days. The judge explained the mediation procedure to the parties. The parties select the Mediator from the list of names that have been available, on the day of the First Session or at the latest
2. The next business day. If within the period of time in point 4 the parties cannot agree to choose the desired Mediator. The Chairman of the Panel of Judges immediately appoints a Judge who is not the examiner of the case to carry out the function of Mediator. 2. The mediation process stage lasts no later than 30 working days from the time the Mediator is selected by the parties or appointed by the Panel of Judges. The mediator is obliged to prepare a mediation meeting schedule for the parties to be agreed. There is an

obligation for the parties (inpersoon) to attend the Mediation meeting in person with or without being accompanied by a legal representative, unless there is a valid reason such as a health condition that does not allow them to attend the Mediation meeting based on a doctor's certificate; under the command; have a place of residence, residence or position abroad; or carrying out State duties, professional demands or jobs that cannot be abandoned (Putra, 2023).

Raiffa (1982) sees the role of the mediator as a continuum or line of ranges. Namely from the weakest role to the strongest role. The weakest side of the role is if the mediator only carries out his role as follows. 1 Organizing meetings. 2 Leaders of meeting discussions. 3 Maintainers or guardians of negotiation rules so that the negotiation process takes place in a civilized manner. 4 Control the emotions of the parties. 5 Motivators or negotiators who are unable or reluctant to express their views. Meanwhile, the strong role side is shown by the mediator, if the mediator acts or pursues matters in the negotiation process, as follows: 1. Preparing and making meeting minutes. 2. Formulate a common point or agreement from the parties. 3. Helping the parties to realize that disputes are not a fight to be won, but to be resolved. 4. Develop and propose alternative problem solving. 5. Helping the parties analyze alternative problem solving.

Then this was also conveyed by Iliy Yanti as the mediator of the Jambi City Religious Court. The principle of the mediator helps the Judges, so it must be reconciled because the purpose of this mediator must offer reconciliation in the view of the character side, the family side or the life side, from the side to the test of God from theoretical, practical, innovative efforts and from the side of the marriage philosophy is lifelong worship, so we say lifelong worship, making and sacrificing must fulfill the pillars of marriage. It must be in harmony from the side of the philosophy.

Efforts to optimize the role of religious court mediators through a humanistic approach. The humanistic school arose out of dissatisfaction with the theory of behaviorism that viewed humans mechanically. Humans are not the same as animals or natural objects because humans have various advantages compared to other creatures. Humans have different emotions, interests, self-esteem, thinking skills, perceptions, motivations, and personalities. There are several experts who have developed humanistic theories, namely the theories of Abraham Maslow, Arthur Comb and Carl Rogers (Maslow, 2015). Develop a theory known as needs theory or motivation theory. Human behavior, according to Maslow, is based on various needs. From the most basic to the highest level, human needs are grouped into: physiological needs, security needs, social needs, self-esteem needs and finally self-actualization needs. Because these various needs are the basis of human behavior.

Then this was also conveyed by Tere as a mediator of the Jambi City Religious Court, I as a mediator always want to achieve successful agreements, the point is that I as a mediator for mediation of people so that they do not get divorced, divorce is very hated by Allah, We are here as mediators besides that we can also Implement the knowledge that we can apply rewards, Because we achieve peace, it can be of high spiritual value, especially if there is an extraordinary spiritual value towards the mediation of the person.

The role and contribution of mediators in resolving divorce disputes in the Sigli Syar'iyyah Court is one of the important keys to the success of mediation because it does not rule out the possibility of a dispute that is very difficult to reconcile thanks to the ability and skill of a mediator in guiding the mediation of a peaceful agreement can be achieved. A mediator, in addition to having qualified scientific insight, must also have an optimistic attitude in leading mediation. The mediator must have the belief that in a mediation there is always a possibility of peace that can be achieved. While the mediator has instilled this thought, the mediator has been one step closer to finding a peaceful solution.

In addition to having an optimistic attitude, mediators must also have some skills in leading mediation. These abilities include skills in building good communication and listening skills to the parties. The majority of the parties who came to bring their case to the Sigli Syar'iyah Court were people who were firm with their choice to continue their case to the green table. This is where mediators play a role in opening forums and providing a forum for parties to communicate with each other openly express their complaints and desires in responding to the disputes they face. Mediators must be able to listen to the problems of the parties by showing an enthusiastic attitude, showing concern for the problem (Hanafiah & Iqbal, 2023).

In my opinion, the role of the mediator in the divorce case in the Jambi City Religious Court is highly dependent on the approach used. Mediators not only serve as facilitators, but must also be active in exploring the root of the problem and finding the best solution for both parties. A humanistic approach that understands the emotional and social needs of the parties is essential in the mediation process. Additionally, the philosophical and religious aspects that emphasize marriage as a lifelong worship can help couples reconsider their decisions. However, the biggest challenge is when one or both parties are already convinced to divorce. In this situation, the mediator must have good communication skills, be neutral, and be able to build awareness that mediation is not only about avoiding divorce, but also finding the best solution for all parties, including children. With the right approach and good skills, mediation can be an effective solution in resolving domestic disputes peacefully and fairly.

According to Fitriyah Alkaff, a mediator at the Jambi City Religious Court, one of the main obstacles in mediation is the lack of good faith from the parties. Some parties are reluctant to attend mediation, unwilling to meet, or childish in resolving their problems. The lack of understanding of mediation is also a factor that hinders its success.

The supporting factor is that both parties to the lawsuit are cooperative when directed towards the path of peace. Dispute resolution can be carried out through two processes, namely the litigation process in court and the dispute resolution process through cooperation (Cooperative) outside the Court. This is very helpful in the mediation process if there is a general overview of the case from outside the court, namely the existence of an agreement that satisfies both parties (win-win solution). Its confidentiality is guaranteed, avoiding the slow administrative procedures. Meanwhile, the inhibiting factor is if one of the parties is willing to win on its own and temperamental, thus hindering the course of mediation. So it can be concluded that the case can be reconciled if both parties are aware of the impact caused by the divorce.

The success of Mediation is greatly influenced by supporting and inhibiting factors in its implementation. The following are the supporting and inhibiting factors for the success of mediation: 1) the ability of the mediator, 2) the good faith of the parties, 3) the place of mediation, 4) the unanimous determination of the parties to divorce, 5) the education of the parties, 6) the involvement of third parties, 7) the type of divorce case (Wibowo, 2024).

In my opinion, the main obstacle in mediation at the Jambi City Religious Court is more related to non-technical factors than facilities. Even though the mediation room is comfortable and complete, there are still obstacles that make it difficult for mediation to succeed.

First, low public awareness and understanding of the benefits of mediation. Many parties come to court with a firm determination to divorce, so the mediation process is often only considered a formality. This has led to low motivation to reach a peace agreement, even though mediators have tried to provide a fair solution for both sides

Second, the lack of good faith from the parties to the dispute. In some cases, there are parties who are reluctant to attend mediation or are uncooperative. In fact, it is not uncommon for one of the parties to be emotional and does not want to discuss openly. This attitude can

hinder the course of mediation, because the success of mediation is highly dependent on the readiness and willingness of both parties to reach a mutual solution.

Third, psychological and emotional factors are also a big challenge. Long-standing domestic conflicts often make it difficult for one or both parties to reconcile. If in a divorce dispute there are heavy factors such as infidelity, domestic violence, or a fight for child custody, then the desire to reconcile will be lower. In this condition, even though the mediator has made maximum efforts, the results of mediation are still difficult to achieve.

Fourth, the involvement of third parties such as extended family or legal representatives can be an obstacle if they do not support peace efforts. There are cases where families or advocates actually encourage settlement through litigation, so that the mediation process does not run optimally. This often happens when the parties to the dispute listen more to input from outside parties than to try to find a solution directly in mediation.

Taking these factors into account, in my opinion, the success of mediation at the Jambi City Religious Court depends not only on the quality of the facilities, but also on the mental readiness and openness of the parties to the dispute. Therefore, education about the importance of mediation and a stronger psychological approach in the mediation process is something that needs to be developed so that more and more cases can be resolved without having to proceed to the divorce stage

## **CONCLUSION**

The mediation process at the Jambi City Religious Court occurs in several stages, namely: The first stage, there is an agreement to go through the mediation process by making a written agreement and appointing a mediator. The second stage is information collection by holding separate meetings. The third stage, problem identification, formulating problem-solving activities, clarifying problems, making problem-solving options and helping the parties assess, assess and make priorities of the interests of the parties. The fourth stage is to make an agreement by holding a joint meeting. The fifth stage is the implementation of the agreement by implementing the content of the agreement with the parties. If the mediation is successful, the mediator makes a peaceful decision (in divorce cases, the panel makes a decision to revoke it). Furthermore, if mediation fails, the panel can continue to examine the case and make a litigation decision.

The role of mediators in mediation efforts in divorce cases at the Jambi City Religious Court is a) Helping the parties resolve disputes peacefully, b) Maintaining balance and neutrality, c) Providing explanations about the legal process, d) Encouraging effective communication, e) Suggesting sustainable solutions, f) Drafting settlement agreements.

The obstacles to mediation in divorce cases at the Jambi City Religious Court can be summarized as follows: a) Lack of good faith from various parties, b) Low awareness and understanding of the public regarding the benefits of mediation, c) Unstable psychological and emotional factors, d) The involvement of third parties in the mediation process.

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