



Failure of Good Faith in Mediating Divorce Cases in Religious Court

Muhammad Saifullah^{1*}, Khoirul Anwar², Ali Murtadho³, Ferry Khusnul Mubarak⁴, Cecep Sholeh Kurniawan⁵

^{1,2,3,4}Universitas Islam Negeri Walisongo, Indonesia

⁵Universiti Islam Sultan Sharif Ali, Brunei Darussalam

Citation (APA):

Saifullah, M., Anwar, K., Murtadho, A., Mubarak, F. K., Kurniawan, C. S. (2024). Failure of Good Faith in Mediating Divorce Cases in Religious Court. *International Journal Ihya' 'Ulum al-Din*, 26(1), 94-107. <https://doi.org/10.21580/ihya.26.1.20313>

Submitted: 08 Feb 2024

Revised: 23 May 2024

Accepted: 01 Jun 2024

Published: 20 Jun 2024

Copyright: © 2024 by International Journal Ihya' 'Ulum al-Din.

Submitted for possible open access publication under the terms and conditions of the Creative Commons Attribution-ShareAlike 4.0 International License.



Abstract: Divorce mediation carried out outside the court (community) and within court, institutions has yet to be effective even though the government has issued a Supreme Court Regulation regarding mediation in court. The achievement of mediation success, which is still below 5%, has encouraged the Supreme Court to add an article on good faith (article 7, Supreme Court Regulation No. 1 of 2016) as a principle of mediation and the threat of sanctions for parties who do not have good faith. This study aims to reveal how the good faith clause is implemented in resolving divorce conflicts through mediation and sanctions for parties who do not act in good faith at the Pekalongan Religious Court. The data mining method was carried out through interviews with mediators, mediator judges at the Pekalongan Religious Court area, parties to the conflict, and experts in the field of mediation. Data mining was carried out through observational and documentation of domestic conflict studies. The collected data was analyzed through descriptive analysis. This paper concludes that (1) the principles of mediation have not been fully carried out in good faith in resolving divorce conflicts through mediation outside the court, so mediation fails and results in the neglect of protracted conflict issues, (2) mediation in the majority of courts lack of success due to internal and external factors, and (3) the mediator or mediator judge experiences difficulties in implementing sanctions against parties who do not have good intentions in resolving family conflicts. This research recommends that outside of the court mediation be carried out by professional mediators who support the success of the mediation process in the justice system.

Keywords: Divorce Mediation, Failure, Good Faith, Religious Courts

Abstrak: Mediasi perceraian yang dilaksanakan di luar pengadilan (masyarakat) dan di dalam lembaga pengadilan belum efektif meskipun pemerintah telah menerbitkan Peraturan Mahkamah Agung tentang mediasi di pengadilan. Capaian

*Corresponding Author: Muhammad Saifullah (saifullah@walisongo.ac.id), Universitas Islam Negeri Walisongo Indonesia.

keberhasilan mediasi yang masih dibawah 5 % telah mendorong Mahkamah Agung untuk menambahkan pasal tentang iktikad baik (pasal 7, Perma No. 1 tahun 2016) sebagai prinsip mediasi dan ancaman sanksinya bagi pihak yang tidak beriktikad baik di Pengadilan Agama Pekalongan. Studi ini bertujuan untuk mengungkapkan bagaimana implementasi pasal iktikad baik dalam penyelesaian konflik perceraian melalui mediasi dan sanksi bagi para pihak yang tidak beriktikad baik. Metode penggalan data dilakukan melalui interview kepada mediator, hakim mediator di wilayah Pengadilan Agama Pekalongan, para pihak yang konflik, dan pakar dalam bidang mediasi. Selain interview, penggalan data dilakukan melalui observasi dan dokumentasi kajian yang terkait dengan konflik rumah tangga. Data yang terkumpul dianalisis melalui deskriptif analisis. Tulisan ini menyimpulkan bahwa: (1) iktikad baik dalam penyelesaian konflik perceraian melalui mediasi di luar pengadilan belum sepenuhnya dijalankan sesuai prinsip-prinsip mediasi, sehingga mediasi gagal dan menyebabkan pembiaran atas masalah konflik yang berlarut-larut, (2) mediasi di dalam pengadilan mayoritas kurang berhasil yang disebabkan karena factor internal dan eksternal, dan (3) mediator atau hakim mediator mengalami kesulitan dalam implementasi sanksi atas pihak yang tidak beriktikad baik dalam penyelesaian konflik keluarga. Penelitian ini merekomendasikan agar pelaksanaan mediasi di luar pengadilan dilakukan oleh mediator profesional yang mendukung keberhasilan proses mediasi di dalam sistem peradilan.

Kata Kunci: Mediasi Perceraian, Kegagalan, Iktikad Baik, Pengadilan Agama

Introduction

Mediation as an alternative dispute resolution (ADR) is the most popular solution among the public because it is cheap, fast, and effective. Settlement using this method is seen as more humane because it produces a win-win solution compared to settlements that are litigation (win-lose) (Hartarto & Hajar, 2024; Kholidah et al., 2023; Ramírez-Coronel et al., 2023). Therefore, since September 11, 2003, the Supreme Court has issued Supreme Court Regulation Number 2 of 2003 concerning Procedures for Mediation in Court. Furthermore 2008, this regulation was updated through Supreme Court Regulation No. 1 of 2008. This rule was refined for the last time in 2016 through Supreme Court Regulation Number 1 of 2016 concerning the mediation procedure in the court.

This regulation regulated the resolution of domestic conflicts which must be resolved through judicial mediation procedures. (Bromfield, 2014; Lucas, 2008; Musawwamah, 2022). Its success until 2022 is still below 5% (Turatmiyah et al., 2022). The level of success of mediation in judicial institutions is influenced by the involvement of litigants, mediation implementers, and community culture in resolving conflicts (Cohen, 2023; Matsukura et al., 2023; Ricker et al., 2023).

In Islamic studies, mediation efforts have existed since the revelation of the surah An Nisa' verse 35 concerning the obligation to send a hakam (peacemaker) in major conflicts (which are called syiqaq) (Rokhmad, 2017). However, its implementation could be more optimal because more than one can carry

out rights and must be carried out by professionals (Artemyeva, 2019; Ismayilova et al., 2023; Koppejan-Luitze et al., 2021) The success of divorce conflict mediation is largely determined by the cultural behavior of the disputing parties, and especially the mediator who has the role of facilitator in the mediation process (Carter, 2016; Hamdanah, 2018; Nashwan & Alzouabi, 2023). According to Friedman (1984), law can run effectively if it has three supports: structure, substance, and legal culture. Soekanto (1977) emphasized that the essence of law enforcement lies in 5 factors that influence it: the legal factors themselves, law enforcement factors, facilities/facilities factors, community factors, and cultural factors.

Divorce mediation issues that are influenced by good faith determine the level of success of mediation. Article 7 concerning good faith, as stated in Supreme Court Regulation No. 1 of 2016, is expected to increase the success rate of mediation in resolving divorce conflicts. Resolving this conflict is not only in court, but also includes mediation carried out by the community or family before the mediation is submitted to court through a lawsuit. For this reason, this article will describe how good faith is implemented in divorce mediation carried out by the community or family, the mediation process in a religious court, and the implementation of sanctions on parties who do not have good faith in the Pekalongan Religious Court.

Previous research has shown that mediation as a method of resolving conflicts in the household is mandatory and should be done immediately (Bouland, 2022; Muhammad et al., 2021; Redding, 2021), with a third party who can achieve a win-win solution and protect the couple's secrets (Chang et al., 2023; Guetto et al., 2022; Mwansisya & Mwampagatwa, 2023). Couples who misidentify conflict can prolong problems, psychologically disturb children, and obscure legal status (Elkhalloufi et al., 2021; Lucas, 2008; Piedalue et al., 2021; Shahin, 2020). Important principles in mediation, such as good faith, neutrality, and confidentiality, largely determine the success of mediation (Kahya, 2022; Lerch et al., 2022; Peixoto et al., 2022). However, regulations such as Supreme Court Regulation No. 1 of 2016 also stipulate sanctions for parties who do not have good faith, for example, by paying mediation fees (Kapelle & Baxter, 2021; Koppejan-Luitze et al., 2021; Lamela & Figueiredo, 2023). The success of mediation depends heavily on communication, negotiation, and the quality of mediators and advocates (Egeh et al., 2019; Sara et al., 2022; Suratman, 2021).

This study occurred at the Pekalongan Religious Court, considered a religious city. Information related to this includes the experience of the litigants at the Pekalongan Religious Court when resolving their household cases through mediation from internal family elements, and continuing with the mediation process at the Religious Court, as well as the mediation process and implementation of sanctions for not acting in good faith. The source of this information is obtained from mediators and mediator judges, litigants, and lawyers (advocates).

Data was collected through interviews, observation, and documentation to describe the implementation of good faith and divorce mediation. Interviews were conducted with four mediators and mediator judges, one young clerk, eight married couples in conflict, and two advocates. Observations were conducted at the Pekalongan Religious Court to observe the mediation facilities and facilities and the litigants before entering and leaving the mediation room. Meanwhile, documentation is carried out to explore data sources from court websites, especially annual reports and other sources of information.

In collecting data through interviews, questions were asked: First, who was chosen to be the peacemaker in resolving the conflict, and how long the domestic conflict was allowed to drag on. Second, the involvement of one or both parties in the mediation process at the Religious Courts, whether the initial intention was to register the lawsuit with the aim of divorce or whether there was still hope for reconciliation in the judiciary. Third, how does the mediator or mediator judge measure whether someone has good intentions, and how sanctions are applied and executed? The data that has been collected is carried out using descriptive analysis to obtain conclusions on the answers to the problem formulation.

This article is based on the argument that mediation is the most effective, simple, and fast way to resolve conflicts compared to resolution through litigation. One of the keys to this mediation's success lies in the parties' good faith attitude to resolve the problem together to achieve a win-win solution. The phrase 'Good faith' is easy to say, but no one can know what's in your heart. Measuring whether someone has good intentions or not can be done through four categories in Confidence-Building Measures (CMBs), which include the willingness to talk to the conflicting parties, the willingness to listen to the other party, the willingness to meet the needs of the other party, and the willingness to improve the relationship. However, the total success of mediation is also measured through the mediator as a third party. Therefore, the success of mediation is greatly influenced by the legal system, namely the rules that regulate it (regulations), the implementers of the rules (the mediator or mediator judge), and the legal culture (the behavior of the husband and wife who are in conflict).

Results and Discussion

Imperfect family mediation and case abandonment

Domestic conflicts occur from small things called *nusyuz* (minor conflict) in *fiqh* terminology. Resolving a *nusyuz*-type conflict that is not handled properly can become a *syiqaq* (major conflict), namely a complex husband and wife conflict in which each party is looking for justification for their attitude. With each attempt to resolve this conflict, the conflict escalates higher and requires a mediator or peacemaker. In several cases that emerged, the parties felt confident and capable of resolving the conflict, and they needed to be made aware that the conflict was of the *syiqaq* type. With the involvement of a third party, conflict resolution is easier to achieve because of each individual's ego. According to the teachings of the Qur'an, major conflicts *syiqaq* must involve a third party as a peacemaker.

Several cases found by the author of litigants at the Pekalongan Religious Court show that the conflicting parties chose peacemakers from family elements, considering that the problems they faced would not be spread and confidentiality would be maintained. These families are parties who are related by blood. This peacemaker made mediation efforts based on his abilities using traditional mediation methods. In the Javanese tradition, mediation is similar to deliberation and provides advice to parties in conflict so that problems can be resolved peacefully.

In some cases, conflict resolution involves a third party, such as parents, siblings, or friends. Through a third party, it is hoped that they can be a neutral mediator, not taking sides with the husband or wife. However, the involvement of a third party is carried out based on psychological closeness without considering the third party's mediation skills. This factor often causes the resolution of household

conflicts to fail to drag on, and there is no legal certainty. Ignoring this conflict causes the parties to feel bored, and some choose to leave the house. Withdrawing from the location of conflict is seen as a resolution to the conflict that arises, but without realizing that this method will cause problems in the future because the legal status of their marriage is unclear. The divorce rate in the Pekalongan Religious Court is quite high and the main cause is mostly due to continuous conflict and one party leaving the other party.

Table 1. Factors Causing Divorce

Year	Leave either party	Continuous quarrels
2020	107	366
2021	76	318
2022	85	216

Source: Author's Compilation, 2023

The failure of mediation carried out by the family has a lasting impact. Some choose to file a lawsuit with the religious court. However, many cases are stagnant, stopping in the hope that there will be calm first and that each party can self-evaluate (muhasabah). The problems are never resolved without realizing it, and cases are left to drag on. The negative impacts are disharmonious household conditions, where one party leaves the house.

Separation of residence between conflicting husband and wife is considered a solution, even though it leaves problems. The problem lies in whether they will file a lawsuit with the Religious Court, which is seen as having the authority to resolve domestic conflicts. Filing a lawsuit over a domestic conflict of the syiqaq type, each party chooses not to be a plaintiff because in their hearts, getting back together (harmony) is the best choice. Another factor makes the husband or wife reluctant to become a plaintiff, because if the wife files for divorce, her rights will be taken away, such as mut'ah fees. So, the wife chooses and hopes that her husband will take the initiative as the applicant, not the respondent. However, a few conflicting family couples choose to take the initiative to file a lawsuit. The results of interviews with the plaintiffs showed that one or two reasons caused the lawsuit's filing. The first reason is that the plaintiff emphasizes his emotional attitude and extreme disappointment with his partner. What his partner did is difficult to forgive. The second reason is that he can remarry with a lawsuit and the granting of the lawsuit. This reason emerged behind the trial judge's continuous and irreconcilable disappointment. The results of the in-depth investigation conveyed by the judge to the researchers were that there was a strong desire to divorce because he was already in a romantic relationship with another party. Regulations must package the reasons above that a divorce suit can be filed for one of the reasons contained in Article 39 of Law Number 1 of 1974 concerning marriage and Article 116 of Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law in Indonesia. Therefore, most divorce lawsuits in court use the excuse: "Between husband and wife, there are constant marital conflicts and conflicts, and there is no hope of living in harmony in the household again," as explained in Table 1 above.

The author's findings based on interviews and observations show that the cause of the failure of mediation outside court was that the parties needed to be more careful in selecting a peacemaker.

Mediation in a family environment is carried out by parties who need more expertise in mediation, such as choosing a peacemaker or mediator from family or relatives who do not have negotiation and mediation skills. In Islamic studies, a mediator must be a professional and know how to reconcile conflicting parties. Wahbah al Zuhaily requires that a hakam (peacemaker) mentioned in Surah An Nisa' verse 35 is a khobir (professional person) who knows his duties who, among other things, can maintain the confidentiality of the cases experienced by his clients (khifadhan ala asrar al zaijyyah). Therefore, family conflicts only need to be shared with others if they are intended to be resolved. Telling other people about family conflicts spreads disgrace to the parties involved. The parties to the conflict can ask family members deemed to understand the subject matter of marriage law to become peacemakers (hakam). It would be better for this judge to come from professional circles, namely mediators or advocates. A mediator is a third party with a mediator certificate as a neutral party who helps the parties in the negotiation process to find various possibilities for resolving disputes through non-litigation. Through this mediator, family conflicts are resolved immediately, and problems are not left for years.

Leaving family problems for a long time and finally filing a lawsuit with the Religious Court makes it difficult to reach a mutual agreement (win-win solution) because, generally, the problems are chronic. Like a disease, this disease is difficult to cure because it is serious. Filing a lawsuit by one of the husband or wife is the peak of frustration that the conflict cannot be resolved through family relations. Based on the author's interviews with the plaintiffs, the court should immediately decide on divorce by agreeing with the defendant so that the defendant does not attend the trial process in court (verstek decision). In a normal divorce trial, which the plaintiff, defendant, and witnesses attend, the trial process in court takes a long time and takes more than one month. However, the majority of litigants at the Pekalongan Religious Court need to know that cases submitted to the court must first go through mediation by the regulations of the Supreme Court of the Republic of Indonesia. They know there is a problem resolution through mediation, when it is carried out at the first hearing or notified by a lawyer. At this first hearing, the judge spoke about mediation efforts as the first step in resolving family conflicts. The parties' mediation process begins with the parties selecting a mediator or being assisted by a judge in selecting a mediator whom the local religious court has provided.

Mediation Process in Religious Courts

Based on data from interviews and observations at the Pekalongan Religious Courts shows that divorce lawsuits are mostly caused by continuous disputes and leaving one's partner. Unresolved family disputes cause stagnation, lack of legal certainty, and drag on. Furthermore, the registration of a divorce lawsuit filed by one of the married couples is influenced by good faith. Whether filing a case in court is based on good faith or not. Filing a case is based on good faith, which each party realizes, so the parties are present at every hearing in court. The parties' presence helps the judge resolve domestic conflicts through mediation (Bhattarai et al., 2023; Houlston et al., 2019; Luo et al., 2023). At this stage, the parties are given the freedom to choose the mediator desired by the parties.

Table 2. List of Divorce Cases in the Pekalongan Religious Court

Year	Number of cases	Divorce Initiated by Husband	Divorce Initiated by Wife	Other Reasons
2020	708	128	474	106

Failure of Good Faith in Mediating Divorce Cases in Religious Court

2021	642	134	386	122
2022	689	125	432	132
Total	2039	387	1292	360

Source: Author's Compilation, 2023

A mediator is selected by choosing a name on the waiting room or registration room notice board. This list contains the name and background profile of the mediator. However, most parties to the dispute ask the judge to choose a mediator deemed appropriate by the plaintiff and the defendant. In the initial trial process, mediation was carried out as ordered by the first Supreme Court Regulation, namely Supreme Court Regulation No. 2 in 2003, then updated in No. 1 in 2016, and most recently, No. 3 in 2022. This regulation requires the parties to be present at the trial.

However, on the contrary, some parties to the dispute chose not to attend or were advised not to attend. If one party chooses not to attend, they are deemed not to act in good faith. Good faith is one of the main keys to peaceful conflict resolution. Supreme Court Regulation No. 1 of 2016 specifically regulates the importance of good faith in resolving divorce conflicts through mediation and requires the parties to be present. Article 7 states: (1) The parties or their legal representatives must undertake Mediation in good faith. 2) One of the parties or the Parties or their legal representatives may be declared not to be acting in good faith by the Mediator in the case concerned: not being present after being properly summoned twice at the Mediation meeting without a valid reason.

Several parties met by the author stated that some husband and wife couples who litigate in court hope that there will be peace between husband and wife. The parties' good faith is partly realized by peace, namely the union of husband and wife. With husband and wife united, mediation is considered successful. But mediation is deemed to have failed if a husband and wife divorce. In cumulative claims, mediation is considered partially failed and partially successful. The failure of mediation is generally caused by divorce, while the success of mediation is due to reconciliation in other claims, such as child maintenance division of mutually beneficial assets.

Divorce lawsuit, where one party does not act in good faith, the parties want a divorce. So that outside the court there was an agreement between the husband and wife so that the defendant would not attend, and it was suggested that they did not need to attend. The plaintiff conveyed this confirmation even though he had been summoned twice. The defendant's absence from the mediation process will further speed up the divorce process, so whether there is mediation in court does not affect the initial intention of filing the lawsuit, namely the decision to divorce by the judge. This factor causes mediation not to be carried out well or fail) (Marx, 2015; Musawwamah, 2022; Zuhayli, 1997).

A mediator or mediator judge carries out the mediation process in court. They are professionals. Therefore, the parties to the conflict must be sure that deliberation through the mediation process can produce a win-win solution. One of the parties filing a lawsuit or the parties agreeing to settle the case in court must have good faith that the conflict can be resolved peacefully or without divorce. The deliberation or mediation process carried out internally by the family is carried out traditionally, not by the science of mediation. Likewise, bad plans, such as an agreement outside the court session so that the defendant does not come to the mediation process in court, can be canceled. Likewise, the defendant

should also be present so that they understand and comprehend the ongoing mediation process regarding the rights and obligations that must be fulfilled if a win-win solution is reached. The defendant who does not attend the mediation process or trial will harm himself, considering that in a peaceful agreement, the resolution of family conflicts can be achieved through successful mediation, or mediation fails and others succeed.

In settlement of domestic conflicts, the Qur'an teaches the importance of mediation as an effort towards peace, either through direct settlement by spouses for minor conflicts (*nusyuz*) or through neutral third parties (*hakam*) for serious conflicts (*shiqaq*) (Bouland, 2022; Muhammad et al., 2021; Redding, 2021). Couple awareness to identify the type of conflict faced is essential to avoid conflicts that drag on and negatively impact children as well as their legal status (Elkhalloufi et al., 2021; Lucas, 2008; Piedalue et al., 2021; Shahin, 2020). Mediation principles such as good faith, confidentiality, and collaborative settlement are essential to achieving a win-win solution supported by appropriate mediators, advocates, and mediation venues (Chang et al., 2023; Guetto et al., 2022; Mwansisya & Mwampagatwa, 2023). Legal regulations such as Supreme Court Regulation No. 1 of 2016 stipulate sanctions for parties who do not have good faith in the mediation process, which can be in the form of payment of mediation fees by the plaintiff (Kapelle & Baxter, 2021; Koppejan-Luitze et al., 2021; Lamela & Figueiredo, 2023). The success of mediation is influenced by the parties' willingness to communicate and negotiate and the quality of the mediators and advocates involved (Kahya, 2022; Lerch et al., 2022; Peixoto et al., 2022).

Implementation of sanctions for Disputes

The author's findings show that mediation failure is caused by the parties not acting in good faith. Forms of one or both parties not acting in good faith include: (1) the plaintiff does not have good faith, (2) the defendant is not present at the mediation process even though he has been summoned twice in a row, (3) the parties are present at the mediation process but are adamant to separate. Plaintiffs and defendants who do not act in good faith in the mediation process can be subject to sanctions by paying mediation fees by the provisions of Article 22 paragraph 2 of Supreme Court Regulation No. 1 of 2016. Determination of mediation fee sanctions is based on the assessment made by the mediator or mediator judge. The application of sanctions in the form of mediation fees is an effort by the Supreme Court to increase the success of mediation in judicial institutions, considering that the percentage of successful mediation is still below 5%. (Kusumaningrum et al., 2017; Litti et al., 2023) The success rate of mediation is above 5% when mediation of divorce cases is linked to other cases, such as settlement of mutually beneficial assets or child maintenance. So the results of the mediation of divorce cases failed, while the mediation of other cases was successful, such as in the Praya Religious Court which reached 15.82% (Jumariah, 2015; Zulfa & Muwaffiqillah, 2023), in the Praya Bone Religious Court which reached 64%, and in the Nunukan Religious Court it reached 100% (Qamariah Lubis et al., 2023). This shows that mediating cases other than divorce are easier to resolve through mediation.

An attitude of not having good faith manifested by one or both parties is easy for the mediator to read. If one of the parties is not present after being summoned twice in a row without a valid reason or is present once at the first meeting, the mediation process cannot continue, or all parties are present. However, one of the parties needs to respond to the case resume or become an obstacle to the mediation

Failure of Good Faith in Mediating Divorce Cases in Religious Court

process. For the mediator, in the absence of one of the parties (defendant) whom judicial provisions have summoned, the resolution of the divorce lawsuit takes place quickly (verstek). Likewise, if one party is present at the first meeting, the mediator cannot carry out the mediation process. While all parties present do not show good faith in their efforts to resolve the matter towards mediation, the mediator can still encourage the parties to mediate. However, if the mediator has concluded that the parties are not acting in good faith, then the mediator can impose sanctions on the parties by Supreme Court regulations.

Table 3. Divorce Mediation Cases in Religious Court

Year	Number of cases	Number of Cases Resolved through Mediation	Mediation Fail	Successful Mediation	Percentage of Successful Mediation
2020	708	121	118	3	0.025
2021	642	109	104	5	0.046
2022	689	124	68	56	0.452
Total	2039	354	290	64	0.522

Source: Author's Compilation, 2023

The sanctions provisions regulated by the Supreme Court regulations are difficult to implement in the Religious Courts due to the absence of one of the parties, and there is an element of intent, so the mediator cannot impose sanctions. The mediator's determination that the party is not in good faith (not present) and charges costs to the person concerned and the party concerned is not present at the next litigation process, the court cannot execute a charge for mediation costs to the party who is not present. However, if they appear at the next litigation hearing, the court can impose sanctions for mediation costs on parties who do not act in good faith.

The mediator determines whether the parties are present and does not support the mediation process; the mediator can impose sanctions. The results of interviews with several parties (plaintiff and defendant) showed that they firmly refused to accept peace in resolving family conflicts. They stated that deliberation or mediation efforts had been carried out among the families of both parties, the husband's and wife's families before they filed a lawsuit in court. So the lawsuit filed in court is only intended to ensure that the lawsuit is accepted and separation (divorce) occurs. Based on Article 22 of Supreme Court Regulation No. 1 of 2016, plaintiffs who do not have good faith can be given sanctions in the form of their lawsuit being declared unacceptable by the judge examining the case (paragraph 1), and the plaintiff is also required to pay mediation costs (paragraph 2). Likewise, if the defendant does not act in good faith in the mediation process, he must pay mediation costs (article 23, paragraph 1).

For the defendant who is not present at the mediation process even though he has been summoned twice and is not present even at the divorce trial, it is difficult to apply sanctions. They need good intentions and also have no interest in their legal status. They are waiting for the court decision results, including a divorce decision.

The results of this study show a unique thing in that the Supreme Court has attempted to change "deciding cases" to "resolving cases" through mediation and has written them down into Supreme Court Regulations. These regulations have been revised several times and have yet to meet expectations. The article on good faith, one of the keys to mediation, has yet to be able to change society's culture in

resolving family conflicts. Likewise, the article regarding the threat of sanctions for parties who need better intentions in resolving family conflicts is also less significant in increasing the success rate of mediation in judicial institutions. Therefore, the success of judicial mediation is not only supported by rules regarding mediation and professional mediation implementers but also requires public awareness about the meaning of peace in life, or to borrow Lawrence M. Friedman's term, legal culture. Legal culture is society's awareness of compliance with legal rules built on understanding the importance of peace.

Legal culture arises based on a person's awareness and willingness to fulfill the provisions of the rules. Mediation as an Alternative Dispute Resolution can be the community's choice for resolving disputes. However, this choice is completely the right of the parties. For this reason, mediation can be carried out voluntarily for all parties to the dispute. Suppose one of them wants to avoid resolving the dispute through mediation. In that case, mediation cannot be carried out, even though the Supreme Court regulations state that mediation is mandatory.

Conclusion

The assumption that selecting a peacemaker from within the family (from the husband or wife's side) is seen as quicker and maintaining confidentiality only partially works as expected. The parties' good intentions must be accompanied by paying attention to the peacemaker's abilities in the science of mediation, whether he is seen as a third party capable of resolving domestic problems. For the people litigating at the Pekalongan Religious Court, most of the selection of peacemakers from internal family elements has yet to produce a peace agreement between husband and wife. However, cases are not resolved immediately, and most are left behind, so family problems drag on. This conclusion shows that litigants should look for a professional peacemaker with a background in marriage law so that a peace agreement can be realized, or if mediation fails, it can be followed up with another legal settlement. Apart from that, having a mediator can provide suggestions, legal insight, and steps to be taken in the future so that the resolution of household cases is completed quickly and has permanent legal certainty.

The method used in this study has revealed at least three things: First, people who litigate at the Pekalongan Religious Court must understand that peaceful efforts must always be pursued continuously in good faith to achieve a win-win solution. Second, being absent or not attending the mediation process causes the person concerned not to understand the urgency of peace, the mediation process, and the legal consequences of the court's decision. Third, the legal consequences in the form of sanctions for parties who do not act in good faith as stipulated in the Supreme Court Regulations are deemed less effective because there is no legal awareness of the parties involved. Settlement of cases through mediation can work well when the three elements of the legal system can work together: clear regulations, firm implementers, and a community legal culture that supports the rules and implementers.

This study is limited to the scope of the research, namely, people who litigate at the Pekalongan Religious Court who are deemed to have a good level of religiosity. This needs to be studied and compared with Religious Courts whose communities are religious. Respondents in this study were limited to litigants, not including peacemakers who came from the husband's or wife's family. Likewise, observation limitations, especially how the mediation process is carried out, are normative in that mediation is closed and confidential, so researchers cannot see directly how the mediation process and stages are carried out. Therefore, further research is needed with a wider coverage area, interviews with

more varied respondents and directly related to the mediation process, both mediation carried out outside the court and carried out in court.

References

- Artemyeva, Y. A. (2019). Legal control of duty support for minor children in Russia and the USA. *International Journal of Innovation, Creativity, and Change*, 7(12), 187 – 152.
- Bhattarai, A., Dimitropoulos, G., Bulloch, A. G. M., Tough, S. C., & Patten, S. B. (2023). Childhood adversities and rate of adulthood all-cause hospitalization in the general population: A retrospective cohort study. *PLoS ONE*, 18(June 6). <https://doi.org/10.1371/journal.pone.0287015>
- Bouland, A. (2022). Family law in Senegal: opposition and pragmatic pluralism. *Canadian Journal of African Studies*, 56(1), 161 – 180. <https://doi.org/10.1080/00083968.2020.1848599>
- Bromfield, N. (2014). Interviews with divorced women from the United Arab Emirates: A rare glimpse into lived experiences. *Families, Relationships and Societies*, 3(3), 339 – 354. <https://doi.org/10.1332/204674313X13842674567773>
- Carter, Z. A. (2016). Married and Previously Married Men and Women's Perceptions of Communication on Facebook with the Opposite Sex: How Communicating Through Facebook Can Damage Marriages. *Journal of Divorce and Remarriage*, 57(1), 36 – 55. <https://doi.org/10.1080/10502556.2015.1113816>
- Chang, Y.-H., Lin, C.-Y., Liao, S.-C., Chen, Y.-Y., Shaw, F. F.-T., Hsu, C.-Y., Gunnell, D., & Chang, S.-S. (2023). Societal factors and psychological distress indicators associated with the recent rise in youth suicide in Taiwan: A time trend analysis. *Australian and New Zealand Journal of Psychiatry*, 57(4), 537 – 549. <https://doi.org/10.1177/00048674221108640>
- Cohen, R. (2023). 'I was utterly at my husband's mercy': voices from the Women's Co-operative Guild, 1910–1914. *Women's History Review*. <https://doi.org/10.1080/09612025.2023.2267248>
- Egeh, A.-A., Dugsieh, O., Erlandsson, K., & Osman, F. (2019). The views of Somali religious leaders on birth spacing – A qualitative study. *Sexual and Reproductive Healthcare*, 20, 27 – 31. <https://doi.org/10.1016/j.srhc.2019.02.003>
- Elkhalloufi, F., Boutayeb, S., Mamouch, F., Rakibi, L., Elazzouzi, S., & Errihani, H. (2021). The evolution of the socio-cultural and religious characteristics of cancer patients in Morocco: the National Institute of Oncology Rabat case. *BMC Cancer*, 21(1). <https://doi.org/10.1186/s12885-021-08175-y>
- Friedman, L. M. (1984). *American Law*. W.W. Norton and Company.
- Guetto, R., Zanasi, F., & Carella, M. (2022). Non-intact Families and Children's Educational Outcomes: Comparing Native and Migrant Pupils. *European Journal of Population*, 38(5), 1065 – 1094. <https://doi.org/10.1007/s10680-022-09638-z>
- Hamdanah. (2018). Psychological impacts on interfaith families in Palangkaraya in educating their children. *Open Psychology Journal*, 11(1), 279 – 291. <https://doi.org/10.2174/1874350101811010279>
- Hartarto, R. B., & Hajar, I. (2024). Television Viewing and Divorce in Indonesia: Evidence from Macro Data. *Journal of Population and Social Studies*, 32, 1 – 13. <https://doi.org/10.25133/JPSsv322024.001>

- Houlston, C., Millings, A., Mansfield, P., & Hirst, S. L. (2019). Development and Practical use of an Emotional Readiness Assessment for Support in Family Justice Processes. *Family Court Review*, 57(3), 332 – 341. <https://doi.org/10.1111/fcre.12426>
- Ismayilova, L., Claypool, E., & Heidorn, E. (2023). Trauma of separation: the social and emotional impact of institutionalization on children in a post-soviet country. *BMC Public Health*, 23(1). <https://doi.org/10.1186/s12889-023-15275-w>
- Jumadiyah, J. (2015). Proses Penyelesaian Perkara Perceraian Melalui Mediasi di Mahkamah Syar'iyah Lhokseumawe. *FIAT JUSTISIA: Jurnal Ilmu Hukum*, 6(2), 1–12. <https://doi.org/10.25041/fiatjustisia.v6no2.328>
- Kahya, H. K. (2022). In Search of a Remedy in Another Madhab: Marriage of an Absent Husband in Ottoman Family Law; [Çareyi Başka Mezhepte Aramak: Osmanlı Aile Hukukunda Mefkûd/Gâib Kocanın Evliliği Problemi*]. *Islam Tetkikleri Dergisi*, 12(2), 697 – 716. <https://doi.org/10.26650/iuitd.2022.1123353>
- Kapelle, N., & Baxter, J. (2021). Marital Dissolution and Personal Wealth: Examining Gendered Trends across the Dissolution Process. *Journal of Marriage and Family*, 83(1), 243 – 259. <https://doi.org/10.1111/jomf.12707>
- Kholidah, Ridho, M., Sobhan, & Ritonga, M. (2023). Violation Of Women's Rights on Divorce: Study on Religious Court Decision; [Violação Dos Direitos Das Mulheres Em Matéria De Divórcio: Estudo Sobre A Decisão Do Tribunal Religioso]. *Journal of Law and Sustainable Development*, 11(6). <https://doi.org/10.55908/sdgs.v11i6.1230>
- Koppejan-Luitze, H. S., van der Wal, R. C., Kluwer, E. S., Visser, M. M., & Finkenauer, C. (2021). Are intense negative emotions a risk for complex divorces? An examination of the role of emotions in divorced parents and co-parenting concerns. *Journal of Social and Personal Relationships*, 38(2), 765 – 782. <https://doi.org/10.1177/0265407520972189>
- Kusumaningrum, A., Riyanto, B., Studi, P., Ilmu, S., Hukum, F., & Diponegoro, U. (2017). Efektivitas Mediasi dalam Perkara Perceraian di Pengadilan Negeri Semarang. *Diponegoro Law Journal*, 6(1), 1–10.
- Lamela, D., & Figueiredo, B. (2023). Determinants of personal growth and life satisfaction in divorced adults. *Clinical Psychology and Psychotherapy*, 30(1), 213 – 224. <https://doi.org/10.1002/cpp.2770>
- Lerch, B. A., Price, T. D., & Servedio, M. R. (2022). Better to Divorce than Be Widowed: The Role of Mortality and Environmental Heterogeneity in the Evolution of Divorce. *American Naturalist*, 200(4), 518 – 531. <https://doi.org/10.1086/720622>
- Litti, N. L. A., Sina Gula, R. N. F., Ray, M. H., Fahrurazi, F., Bariyah, O. N., & Rohmah, S. (2023). Efektivitas Proses Mediasi dalam Perkara Perceraian di Pengadilan Agama Jakarta Timur. *Misykat Al-Anwar Jurnal Kajian Islam Dan Masyarakat*, 6(2), 227. <https://doi.org/10.24853/ma.6.2.227-246>
- Lucas, S. C. (2008). Where are the legal hadīth? A study of the Musannaf of Ibn Abī Shayba. *Islamic Law and Society*, 15(3), 283 – 314. <https://doi.org/10.1163/156851908X299232>
- Luo, S., Chen, D., Li, C., Lin, L., Chen, W., Ren, Y., Zhang, Y., Xing, F., & Guo, V. Y. (2023). Maternal adverse childhood experiences and behavioral problems in preschool offspring: the mediation role of parenting styles. *Child and Adolescent Psychiatry and Mental Health*, 17(1). <https://doi.org/10.1186/s13034-023-00646-3>

- Marx, J. A. (2015). The Role of Western Religious Values in Peacemaking for Divorcing Families. *Family Court Review*, 53(3), 388 – 397. <https://doi.org/10.1111/fcre.12160>
- Matsukura, H., Yamaoka, Y., Matsuyama, Y., Kondo, K., & Fujiwara, T. (2023). Association between adverse childhood experiences and marital status among Japanese older adults. *Child Abuse and Neglect*, 144. <https://doi.org/10.1016/j.chiabu.2023.106340>
- Muhammad, I., Ariani, S., & Yusuf, M. (2021). Balinese Muslim Minority Rights in Education and Islamic Family Law. *Samarah*, 5(2), 804 – 824. <https://doi.org/10.22373/sjkh.v5i2.9108>
- Musawwamah, S. (2022). Divorcing Husbands as a Solution to Protect Women’s Dignity: A Case Study of Domestic Violence at Madura Religious Court. *Samarah*, 6(2), 997 – 1021. <https://doi.org/10.22373/sjkh.v6i2.14929>
- Mwansisya, T. E., & Mwampagatwa, I. H. (2023). Consensus on Constraints in Marital Satisfaction Among Married People in African Context. *Journal of Family Issues*, 44(5), 1237 – 1253. <https://doi.org/10.1177/0192513X211056939>
- Nashwan, A. J., & Alzouabi, L. (2023). The aftermath of the Syrian crisis: a glimpse of the challenging life of widowed and divorced refugee women in Jordan. *Mental Health and Social Inclusion*. <https://doi.org/10.1108/MHSI-01-2023-0007>
- Peixoto, J. M. A., Gonçalves, M. A. V., Gaspar, M. F., & Matos, M. A. V. (2022). Developing a Valid and Reliable Cross-cultural Measure of Coparenting Conflict between Divorced Parents: The Portuguese Version of the Acrimony Scale. *Journal of Child and Family Studies*, 31(6), 1664 – 1682. <https://doi.org/10.1007/s10826-022-02233-0>
- Piedalue, A., Gilbertson, A., & Raturi, M. (2021). A Majoritarian View of ‘Gender Justice’ in Contemporary India: Examining Media Coverage of ‘Triple Talaq’ and ‘Love Jihad.’ *South Asia: Journal of South Asia Studies*, 44(4), 739 – 755. <https://doi.org/10.1080/00856401.2021.1951477>
- Qamariah Lubis, A., Lubis, F., & Harahap, M. Y. (2023). Mediasi Berhasil Sebagian dalam Perkara Cerai Talak Kumulasi Hak Isteri, Hak Anak Serta Pengasuhan Anak di Pengadilan Agama Binjai. *Rayah Al-Islam*, 7(2), 573–587. <https://doi.org/10.37274/rais.v7i2.749>
- Ramírez-Coronel, A. A., Mahdavi, A., Abdu, W. J., Azis, R., Al-Salami, A. A. A., Margiana, R., Al-Khafaji, F. A. H., & Beheshtizadeh, N. (2023). Religious beliefs, addiction tendency, sexual dysfunction and intention to divorce among Muslim couples. *HTS Teologiese Studies / Theological Studies*, 79(1). <https://doi.org/10.4102/hts.v79i1.8400>
- Redding, J. A. (2021). A Secular Failure: Sectarianism and Communalism in Shayara Bano v. Union of India. *Asian Journal of Law and Society*, 8(1), 56 – 71. <https://doi.org/10.1017/als.2020.47>
- Ricker, C. L., Earn, S., Das, M., & Greene, M. E. (2023). The Right to Leave: Dissolution of Child, Early, and Forced Marriages and Unions. *Adolescents*, 3(3), 490 – 507. <https://doi.org/10.3390/adolescents3030035>
- Rokhmad, A. (2017). Paradigma Hukum Islam dalam Penyelesaian Sengketa. *International Journal Ihya’ ‘Ulum Al-Din*, 18(1), 49. <https://doi.org/10.21580/ihya.17.1.1731>
- Sara, B. A., Rubin, S. E., Haile, Z. T., Alemu, D. G., & Azulay Chertok, I. R. (2022). Factors associated with men’s opinion about female genital mutilation in Ethiopia. *Sexual and Reproductive Healthcare*, 32. <https://doi.org/10.1016/j.srhc.2022.100721>
- Shahin, F. (2020). Islamic Feminism and Hegemonic Discourses on Faith and Gender in Islam. *International Journal of Islam in Asia*, 1(1), 27 – 48. <https://doi.org/10.1163/25899996-01010003>

- Soekanto, S. (1977). Kesadaran Hukum dan Kepatuhan Hukum. *Jurnal Hukum & Pembangunan*, 7(6), 462. <https://doi.org/10.21143/jhp.vol7.no6.742>
- Suratman, S. (2021). Skills for “marriage of a lifetime”: An examination of muslim marriage preparation handbooks in Singapore, 1974 to 2018. *Religions*, 12(7). <https://doi.org/10.3390/rel12070473>
- Turatmiah, S., Yahanan, A., & Novera, A. (2022). Sertifikat Pra Nikah Sebagai Upaya Menekan Tingginya Perceraian di Indonesia. *Simbur Cahaya*, 29(1), 141–154.
- Zuhayli, W. (1997). *al-Fiqh al-Islami wa Adillatuhu*. In Damascus: Dar Al-Fikr.
- Zulfa, I., & Muwaffiqillah, M. (2023). Mediasi yang Berhasil dalam Perspektif Yuridis Normatif dan Sosiologis. : *Journal of Islamic Family Law*, 150–151.