

Divorce Mediation in Makassar: A Real Solution or Mere Formality?

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Abstrak: Penelitian ini bertujuan untuk menganalisis efektivitas peran mediator dalam proses mediasi perkara perceraian di Pengadilan Agama Kelas IA Makassar serta merumuskan upaya strategis untuk memperkuat peran tersebut dalam menekan angka perceraian. Penelitian ini menggunakan metode hukum empiris dengan pendekatan sosiologi hukum, yang memanfaatkan data primer melalui wawancara dengan mediator serta data sekunder berupa dokumen laporan mediasi periode 2021–2024, yang dikumpulkan melalui observasi, wawancara, dan dokumentasi, kemudian dianalisis secara kualitatif. Pembaharuan penelitian ini terletak pada penggabungan analisis efektivitas mediasi dengan pendekatan praktis berbasis dinamika psikologis para pihak dalam perkara perceraian. Hasil penelitian ini menunjukkan bahwa efektivitas mediator dalam mencapai perdamaian utuh masih belum optimal, namun terdapat perkembangan pada keberhasilan mediasi parsial yang berkontribusi dalam mereduksi konflik lanjutan, khususnya terkait hak asuh dan pemenuhan kewajiban pasca perceraian. Di sisi lain, tingkat kegagalan mediasi masih tergolong tinggi akibat kuatnya keinginan para pihak untuk bercerai sejak awal proses. Kesimpulan penelitian ini menegaskan bahwa peran mediator belum sepenuhnya mampu menekan angka perceraian secara signifikan, meskipun telah berfungsi dalam mengelola dampak konflik secara lebih konstruktif. Penelitian ini memberikan rekomendasi berupa peningkatan kapasitas mediator melalui penguatan keterampilan komunikasi, negosiasi, dan pemahaman psikologi keluarga, serta optimalisasi waktu mediasi agar peluang tercapainya perdamaian dapat dimaksimalkan.

Kata Kunci: Mediasi; Mediator; Perceraian; Asas Mempersulit Perceraian; Pengadilan Agama Makassar.

Abstract: This study aims to analyze the effectiveness of the mediator's role in the divorce mediation process at the Class IA Religious Court in Makassar and to formulate strategic efforts to strengthen this role in reducing the divorce rate. This study uses an empirical legal method with a sociological approach to law, utilizing primary data through interviews with mediators and secondary data in the form of mediation report documents for the 2021–2024 period. These data were collected through observation, interviews, and documentation, and then analyzed qualitatively. The innovation of this study lies in combining the analysis of mediation effectiveness with a practical approach based on the psychological dynamics of the parties in divorce cases. The results of this study indicate that the effectiveness of mediators in achieving complete reconciliation is still suboptimal, but there has been progress in the success of partial mediation, which contributes to reducing further conflict, particularly regarding custody and fulfillment of post-divorce obligations. On the other hand, the failure rate of mediation remains

relatively high due to the strong desire of the parties to divorce from the beginning of the process. The conclusion of this study confirms that the role of mediators has not been fully able to significantly reduce the divorce rate, despite its function in managing the impact of conflict more constructively. This study provides recommendations for improving the capacity of mediators by strengthening communication and negotiation skills, and understanding family psychology, as well as optimizing mediation time to maximize the chances of achieving peace.

Keywords: *Mediation; Mediator; Divorce; Principles Complicating Divorce; Makassar Religious Court.*

INTRODUCTION

The rising divorce rates in recent years indicate that domestic conflicts are no longer merely a private matter but have evolved into legal and social issues that require effective and just resolution mechanisms.[1] In this context, mediation, as part of alternative dispute resolution, plays a strategic role in promoting the peaceful settlement of disputes before a case is adjudicated by the court.[2] However, empirical evidence shows that the implementation of mediation in divorce cases often falls short of achieving its primary objective, namely preventing divorce through a comprehensive reconciliation.[3] This situation raises questions about the extent of the mediator's effectiveness in performing this role, particularly at the Class IA Religious Court in Makassar, which operates within a unique social and cultural context.

Several previous studies generally regard mediation as an effective procedural instrument for reducing the court's caseload, while also emphasizing the importance of mediator neutrality and strict adherence to the stages of the mediation process.[4] However, these studies tend to focus primarily on normative and administrative aspects, leaving non-legal factors—such as the psychological condition of the parties, their level of good faith, and the influence of local cultural values on mediation outcomes—largely unexplored. On the other hand, there is a tendency for mediation in practice to be reduced to mere procedural formality, particularly when the parties have already decided to divorce before the mediation process begins. This gap between the normative framework and empirical reality represents a critical point that requires deeper analysis.[5]

Based on the background described above, the research questions of this study are: (1) How effective is the role of mediators in facilitating divorce mediation at the Class IA Religious Court of Makassar; and (2) What strategies can be implemented to enhance the mediator's role in reducing the divorce rate through mediation.

The novelty of this study lies in its approach, which not only evaluates the effectiveness of mediation based on the final outcomes but also examines the dynamics of the mediation process by integrating legal, psychological, and sociological perspectives, including the influence of cultural values such as *Siri* in shaping the parties' attitudes. Therefore, this research is expected to provide a conceptual contribution to the development of more substantive mediation practices and serve as a basis for strengthening the role of mediators as actors who not only perform legal functions but are also capable of bridging the complexities of social realities in divorce cases.

RESEARCH METHOD

This study employs an empirical legal research method, emphasizing a field-based approach to directly observe and gain an in-depth understanding of the role of mediator judges in divorce mediation at the Class IA Religious Court of Makassar. The research location was purposively selected because this institution holds authority over divorce cases while also implementing mediation, making it highly relevant to the research focus.

The study population includes mediator judges as well as court staff or clerks involved in the execution and administration of mediation, with a selective sampling approach targeting individuals who possess sufficient experience and knowledge to provide comprehensive information. The data used consist of primary data obtained through direct interviews with relevant respondents, as well as secondary data sourced from literature studies, official documents, and various legal references pertinent to the research topic.

Data collection techniques were carried out through structured interviews and document analysis. The collected data were then analyzed qualitatively by categorizing, interpreting, and connecting the information, allowing the researchers to develop a comprehensive understanding of the issues studied and to draw conclusions that align with the objectives of the research.

RESULT AND DISCUSSION

1. Effectiveness of the Mediator's Role in Divorce Mediation at the Class IA Religious Court of Makassar

The effectiveness of the mediator's role in divorce cases cannot be separated from the legal framework that governs it as well as the surrounding social realities. From a juridical perspective, the existence of mediation in civil cases, including divorce, represents an implementation of alternative dispute resolution, which has been formally integrated into the judicial system through the Supreme Court Regulation Number 1 of 2016.[6] This provision

emphasizes that mediation is not merely an option, but a procedural obligation that must be undertaken before the main examination of the case, serving as a manifestation of the principles of a simple, fast, and cost-effective judicial process.[7]

Furthermore, the effectiveness of mediation in divorce cases is also grounded in the principle of making divorce difficult, which normatively originates from Law Number 1 of 1974 concerning Marriage. This principle emphasizes that divorce should not be taken lightly and that all possible efforts, including mediation, must be made to preserve the marital relationship before resorting to legal dissolution.[8] This principle positions divorce as an *ultimum remedium*, or a last resort, to be pursued only after all efforts at reconciliation have failed. Consequently, the mediator occupies a strategic role as a primary instrument in ensuring that every marital dispute is first guided toward *ishlah* (reconciliation) or peaceful settlement before culminating in a divorce decree. The mediator's intervention is therefore pivotal in upholding the normative goal of preserving the family unit while balancing the parties' legal rights.[9]

From a theoretical perspective, the effectiveness of a mediator's role can be analyzed using Soerjono Soekanto's Legal Effectiveness Theory, which emphasizes five interrelated factors: the law itself, law enforcers, supporting facilities, society, and culture. This framework suggests that a mediator's success in guiding divorce parties toward reconciliation depends not only on formal legal provisions but also on the competence and commitment of the mediator, the availability of procedural and institutional support, the awareness and receptiveness of the parties involved, and the influence of prevailing cultural norms that shape behavior and decision-making within the community.[10] Based on the research findings, the legal framework and supporting facilities at the Makassar Religious Court have functioned optimally, as evidenced by the systematic implementation of mediation procedures and the availability of adequate mediation infrastructure. Mediators, acting as law enforcers, have actively performed their roles as neutral facilitators, employing various negotiation techniques—such as caucusing—to explore the parties' interests and identify mutually acceptable solutions for dispute resolution.

However, this effectiveness is not fully reflected in the final outcome of achieving complete reconciliation (*rujuk*). Empirical data indicate that mediation success more frequently occurs in the form of partial settlements, such as agreements on child custody and post-divorce maintenance, rather than in the full withdrawal or complete reconciliation of the case.[11] For example, in 2024, there were 31 contested divorce cases (*cerai gugat*) and 78 unilateral divorce cases (*cerai talak*) that reached partial agreements. This indicates that mediators still

play a role in reducing conflict, even though they do not always succeed in preventing divorce entirely.

On the other hand, the relatively high failure rate of mediation indicates a gap between the *das sollen* (what ought to be) and *das sein* (what is) in the implementation of mediation. One of the main factors contributing to this condition is the low level of good faith among the parties, who often have already made a firm decision to divorce even before entering the mediation process.[12] In this context, mediation tends to be reduced in meaning to merely an administrative formality, rather than serving as a substantive space for dialogue aimed at reconciliation.[13]

In addition to that factor, sociological and cultural dimensions also significantly influence the effectiveness of mediation. In Makassar society, the cultural value of *Siri'* (honor and sense of shame) plays a major role in shaping the parties' attitudes toward domestic conflicts. When a conflict becomes known within the social environment, this cultural pressure often hinders reconciliation efforts due to concerns about social stigma, making it difficult for mediators to intervene effectively through legal approaches alone.[14]

Thus, the effectiveness of the mediator's role at the Class IA Religious Court in Makassar can be considered partial. On one hand, the mediator has successfully performed both procedural and substantive functions in managing conflicts and mitigating the negative impacts of divorce.[15] On the other hand, the effectiveness in reducing overall divorce rates remains suboptimal due to the dominance of psychological, social, and cultural factors that lie beyond the reach of formal legal intervention. Therefore, the mediator's role is not only demanded as a legal facilitator but also as a social actor capable of bridging legal principles with the realities of community life in a more holistic manner.[16]

2. Efforts to Strengthen the Role of Mediators in Reducing Divorce Rates Through Mediation

Efforts to enhance the effectiveness of mediators in divorce cases cannot be separated from the need to integrate a normative approach with practical strategies that are adaptive to the dynamics of family conflict. This integration requires mediators not only to apply procedural and legal rules but also to respond sensitively to the emotional, psychological, and social dimensions of the parties involved. By doing so, mediation can move beyond mere procedural formalities and become a meaningful process that encourages reconciliation, minimizes the adverse impacts of divorce, and strengthens the overall goal of restorative justice within the family context.[17] Within the framework of alternative dispute resolution,

the mediator functions not merely as a procedural facilitator but also as a strategic actor responsible for fostering communication, reducing conflict, and creating space for substantive reconciliation. Therefore, concrete measures are needed to strengthen the mediator's capacity across multiple dimensions—technical, psychological, and sociological—so that they can effectively navigate the complexities of family disputes and guide parties toward meaningful resolution.[18]

a. Optimizing the Caucus Technique as an Instrument to Break Deadlocks

The caucus technique is a highly crucial method in the mediation process, especially when the parties face a deadlock due to entrenched conflicts. Through separate meetings, the mediator can explore underlying interests, identify the root causes of the conflict, and gain a deeper understanding of each party's emotional position.[19] From the perspective of modern negotiation theory, this approach aligns with interest-based negotiation, which emphasizes finding solutions grounded in the parties' underlying needs rather than merely defending formal positions.[20]

Optimizing the caucus technique also enables the mediator to adopt a more personal and persuasive approach, providing space for the parties to express their emotions freely without pressure.[21] Thus, the mediator can formulate more realistic and mutually acceptable settlement options. In practice, the effective use of caucus sessions has the potential to transform defensive attitudes into a more open mindset, thereby increasing the likelihood of reaching an agreement, whether partial or comprehensive.

b. Strengthening Psychological Approaches and Persuasive Communication

Divorce cases carry a highly intense emotional dimension, meaning that a purely legal approach is often insufficient to resolve conflicts comprehensively. Therefore, mediators need to develop skills in psychological approaches, such as active listening, empathy, and persuasive communication, which can reduce tension and foster trust-building. This approach is crucial for identifying the psychological state of the parties involved—such as feelings of hurt, disappointment, or trauma—which often serve as major obstacles to achieving reconciliation.[22]

From a legal sociology perspective, the effectiveness of mediation is largely determined by the mediator's ability to understand the subjective realities of the parties involved. With an appropriate approach, the mediator can shift the parties' orientation from a desire to "win at all costs" (win-lose) toward achieving a mutually satisfactory resolution (win-win solution).[23] In addition, consistent persuasive communication can help the

mediator reinforce the values of family unity, thereby creating opportunities for reconciliation to occur.

c. Professionalism in Procedure and Time Management

Mediator professionalism is a crucial factor in determining the quality of the mediation process. This encompasses the ability to manage mediation stages systematically, maintain neutrality, and utilize time efficiently.[24] In practice, it is often observed that mediation sessions are conducted hastily, reducing opportunities for the parties to engage in deep reflection. In fact, according to the concept of the cooling-down period, time plays a strategic role in calming emotions and creating space for more rational and thoughtful decision-making.

Therefore, mediators need to optimize time management by focusing not only on reaching a quick resolution but also on the quality of dialogue that occurs throughout the mediation process. This professionalism also includes the mediator's ability to guide discussions so that they remain focused on the substantive issues and avoid destructive arguments. With proper time management, mediation can proceed more effectively and yield higher-quality outcomes.[25]

d. Control of External Interventions and Purification of Communication

In divorce cases, conflicts are often exacerbated by the intervention of external parties, such as extended family or members of the social environment who have particular interests. These interventions frequently affect the objectivity of the parties and reinforce individual egos, thereby hindering the reconciliation process. Therefore, mediators need to carry out communication purification, ensuring that the dialogue occurs directly, honestly, and free from external pressures.[26]

This step is crucial to maintain the independence of the mediation process and to ensure that every decision made genuinely reflects the will of the parties involved. Additionally, the mediator needs to educate the parties on the importance of preserving privacy and focusing on the primary interest, which is the peaceful resolution of the conflict. In this way, mediation can take place in a conducive and constructive atmosphere.[27]

e. Pre-Litigation Mediation Innovation as a Self-Service Instrument

As a form of developing a more progressive dispute resolution system, pre-litigation mediation can serve as a strategic alternative to reduce divorce rates. Mediation conducted before a case is formally filed in court has a higher likelihood of success, as

the conflict has not yet escalated to a critical level. At this stage, the parties still have greater space to engage in open dialogue without the pressures associated with the litigation process.[28]

From the perspective of progressive law, this innovation reflects a paradigm shift from a litigation-oriented approach to a problem-solving-oriented approach. Pre-litigation mediation can also serve as a form of legal education for the public, demonstrating that dispute resolution does not always have to go through the courts. With this service, the community is encouraged to resolve conflicts independently and participatively, thereby reducing the court's caseload while improving the quality of dispute resolution.[29]

CONCLUSION

Based on the research findings, it can be concluded that the effectiveness of the mediator's role in divorce mediation at the Class IA Religious Court of Makassar remains partial. While mediators have successfully carried out both procedural and substantive functions by facilitating dialogue and reducing conflict, they have not fully succeeded in lowering divorce rates due to the dominance of psychological, social, and cultural factors—particularly the low goodwill of the parties involved and the strong influence of the Siri' values in society. This condition highlights a gap between the normative objectives of mediation as a tool for reconciliation and the empirical reality of its implementation, which tends to be reduced to mere procedural formality.

Therefore, efforts to enhance mediator effectiveness should focus on optimizing caucus techniques as a means to break deadlocks, strengthening psychological approaches and persuasive communication to build trust, ensuring professionalism in procedural and time management to make the cooling-down period effective, controlling external interventions through communication purification, and developing pre-litigation mediation as a preventive measure responsive to the dynamics of family conflicts. By implementing these strategies, mediation is expected not only to function as an administrative stage but also to become a substantive instrument capable of achieving more effective, equitable dispute resolution that promotes sustainable social relationships.

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