

## The Effectiveness of Mediation in the Syar'iyah Court of Idi in Divorce Cases

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**Abstract:** This study discusses the Effectiveness of Mediation Implementation at the Idi Sharia Court in Divorce Cases. Mediation in divorce cases at the Idi Sharia Court ends peacefully very little, so the success rate of mediation is very low. The problem in this study is how effective is the implementation of mediation in divorce cases and what factors support and inhibit the success of mediation in divorce cases at the Idi Sharia Court, the purpose of this study is to analyze the effectiveness of the implementation of mediation in divorce cases and what factors support and inhibit the success of mediation in divorce cases at the Idi Sharia Court. The research method used in this study is empirical juridical with a legal sociology approach. Data collection techniques through observation, interviews, and documentation. The informants in this study were Judge Mediators at the Idi Sharia Court. The results of the study: 1) The implementation of mediation at the Idi Sharia Court has not been effective but the procedure is in accordance with PERMA No. 1 In 2016, Mediation that was successfully reconciled in 2020-2023 from 498 divorce cases, only 2 cases were successfully reconciled in their entirety. 2) Obstacles and Challenges faced by the judge mediator are that there are no Non-Judge Mediator personnel, then the main problem of the case has been left for too long so that it is difficult to reconcile, and there is a lack of public awareness of mediation, both the function and role of the mediator. The conclusion is that mediation at the Idi Sharia Court can be said to be ineffective because the results of Mediation very rarely end in peace, the obstacles and challenges faced by the judge mediator at the Idi Sharia Court One of them is that there are no Non-Judge Mediator personnel and a lack of public awareness of the benefits of mediation.

**Keywords:** Effectiveness; Mediation; Syar'iyah Court.

**Abstract:** Penelitian ini membahas Efektivitas Pelaksanaan Mediasi Pada Mahkamah Syar'iyah Idi Dalam Perkara Perceraian. Mediasi dalam kasus perceraian pada Mahkamah Syar'iyah Idi berakhir damai sangat sedikit, sehingga tingkat keberhasilan mediasi sangat rendah. Permasalahan dalam Penelitian ini yaitu bagaimana efektivitas pelaksanaan mediasi dalam perkara perceraian dan faktor-faktor apa saja yang menjadi pendukung dan penghambat keberhasilan mediasi pada perkara perceraian di Mahkamah Syar'iyah Idi, tujuan penelitian

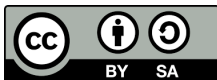
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ini untuk menganalisis efektivitas pelaksanaan mediasi dalam perkara perceraian dan faktor-faktor apa saja yang menjadi pendukung dan penghambat keberhasilan mediasi pada perkara perceraian di Mahkamah Syar'iyah Idi. Metode penelitian yang digunakan dalam penelitian ini adalah yuridis empiris dengan pendekatan kualitatif. Teknik pengumpulan data melalui observasi, wawancara, dan dokumentasi. Informan dalam penelitian ini adalah Mediator Hakim di Mahkamah Syar'iyah Idi. Hasil dari penelitian: 1) Pelaksanaan mediasi di Mahkamah Syar'iyah Idi belum berjalan efektif namun prosedurnya sudah sesuai dengan PERMA No. 1 Tahun 2016, Mediasi yang berhasil didamaikan pada Tahun 2020-2023 dari 498 kasus perceraian hanya 2 kasus yang berhasil didamaikan seluruhnya. 2) Hambatan dan Tantangan yang dihadapi oleh mediator hakim ialah belum terdapat personil Mediator Non Hakim, kemudian permasalahan pokok perkara sudah terlalu lama dibiarkan sehingga susah untuk didamaikan, serta kurangnya kesadaran masyarakat tentang mediasi baik fungsi dan peran mediator. Kesimpulannya ialah mediasi di Mahkamah Syar'iyah Idi dapat dikatakan belum efektif karena hasil Mediasi sangat sedikit berakhir damai, hambatan dan tantangan yang dihadapi oleh mediator hakim di Mahkamah Syar'iyah Idi Salah Satunya ialah belum terdapat personil Mediator Non Hakim dan kurangnya kesadaran masyarakat akan manfaat mediasi.

**Keywords:** Efektivitas; Mediasi; Mahkamah Syar'iyah.



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## Introduction

Mediation has been popularized by practitioners and academics. Scholars have attempted to define mediation in various scientific literatures through academic research.<sup>1</sup> approach is highly significant for higher education institutions, non-governmental organizations (NGOs), and various other organizations. The term "mediation" is broad, making it challenging to define comprehensively. Mediation does not provide a universally applicable model and does not distinctly differentiate the decision-making process from other processes.<sup>2</sup>

Several cases handled through mediation are crucial for resolving disputes, particularly in civil law matters. Mediation allows both parties to engage in deliberation and reach a positive resolution. Successful mediation can prevent the occurrence of divorces, which have become increasingly common. Additionally, mediation provides significant benefits for children affected by their parent's divorce,

<sup>1</sup> Sihabudin Mukhlis, "Peran Mediasi Dalam Rekonsiliasi Rumah Tangga Dari Perspektif Gender," *KRTHA BHAYANGKARA* 14, no. 2 (December 2020), 221–35.

<sup>2</sup> Syahrial Abbas, *Mediasi Dalam Perspektif Hukum Syariah Hukum Adat Dan Nasional* (Jakarta: Kencana Pranada Media Group, 2009), 1.

such as reducing the risks of school dropouts, drug addiction, and involvement in negative social behaviors.<sup>3</sup>

Mediation is a highly effective method for resolving divorce cases. This approach ensures that the resolution is not perceived as unjust, as the decision is mutually agreed upon by both parties. Mediation is conducted in religious courts to reduce divorce rates and enhance efforts to reconcile the disputing parties. Without mediation, court proceedings may result in outcomes deemed unjust or considered void by law.<sup>4</sup>

Pursuing mediation offers numerous advantages, including ensuring that conflicts are resolved in a manner beneficial to both parties, reducing the time spent, minimizing costs, and preserving the relationship between the parties while avoiding unnecessary publicity. In addition to assisting disputing parties, mediation also benefits the judicial system. By resolving many cases through mediation, the number of cases filed in court is significantly reduced, thereby alleviating the burden on the judiciary.<sup>5</sup>

The mediation process heavily relies on the interaction between the disputing parties and the mediator who facilitates the resolution. Mediation is an integral part of court proceedings, where every civil dispute case must first undergo the mediation procedure. The legal system mandates the parties to attempt reconciliation by bringing them together for deliberation, assisted by a mediator. In the initial hearing, the judge attempts to reconcile the parties in accordance with Article 130 of the *Herziene Indonesisch Reglement* (HIR) or Article 154 of the *Rechtsreglement voor de Buitengewesten* (RBg). Typically, the parties delegate the selection of a mediator to the court, often due to a lack of intention to reconcile. Provisions regarding reconciliation efforts, as outlined in both the HIR and Supreme Court Regulation (PERMA) No. 1 of 2008 up to PERMA No. 1 of 2016, require judges to encourage peaceful dispute resolution. During mediation, the mediator organizes meetings between the parties to discuss matters related to the lawsuit. The

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<sup>3</sup> Devanry Tamalawe, "Efektivitas Mediasi Sebagai Bagian Dari Bentuk Pencegahan Perceraian Menurut Hukum Acara Perdata," *Lex Crimen* 5, no. 3 (2016), 22.

<sup>4</sup> Tb Ahmad Ulfi, "Efektivitas Mediasi Dalam Mencegah Perceraian Dan Kaitannya Dengan Peraturan Mahkamah Agung Nomor 1 Tahun 2008: Studi Di Pengadilan Agama Serang," *Bil Dalil: Jurnal Hukum Keluarga Islam* 1, no. 02 (2016), 121–46.

<sup>5</sup> Arum Kusumaningrum and Benny Riyanto Yunanto, "Efektivitas Mediasi Dalam Perkara Perceraian Di Pengadilan Negeri Semarang," *Diponegoro Law Journal* 6, no. 1 (2017), 1–10

mediation process must be completed within 40 days, and the outcome must be reported to the mediator before the deadline.<sup>6</sup>

It is hoped that the objectives and processes of mediation will be effectively implemented so as not to influence the judge's decision. Preliminary research indicates that the success rate of mediation is only 1%. According to data collected from the mediation outcome reports of the Syar'iyah Court of Idi, no cases ended in reconciliation out of 102 divorce cases in 2020. In 2021, only 1 out of 138 divorce cases ended peacefully. Similarly, in 2022, none of the 147 divorce cases reached a reconciliation, while in 2023, only 1 out of 113 divorce cases was successfully resolved through mediation.<sup>7</sup>

The data above indicates that the mediation process conducted at the Syar'iyah Court of Idi, with its significant caseload, is inversely related to the success rate of mediation. Therefore, mediation at the Syar'iyah Court of Idi has not yet been able to achieve a satisfactory success rate in resolving divorce cases. The Syar'iyah Court of Idi, as part of the Islamic judicial system in Indonesia, plays a crucial role in handling marital and divorce cases. As an institution that enforces Islamic law, the court also facilitates mediation as part of the divorce dispute resolution process. However, the effectiveness of mediation in divorce cases at the Syar'iyah Court of Idi still requires further investigation. Previous studies have also highlighted the low success rate of mediation, with few cases reaching a satisfactory resolution.

First, a study by Lolini Alsyaba revealed that the mediation process at the Syar'iyah Court of Kuala Simpang Class II has been ineffective. Out of 569 cases submitted for mediation, only 2 cases were successfully mediated, despite the high number of divorce requests. One of the factors influencing the effectiveness of mediation is the lack of qualified mediators who have not yet obtained mediator certification.<sup>8</sup>

Second, a study by Wirda Hairani identified several issues in the implementation of mediation, including: 1) The quality of judges appointed as

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<sup>6</sup> V Harlen Sinaga, *Hukum Acara Perdata Dengan Pemahaman Hukum Materiil* (Jakarta: Erlangga, 2015), 11.

<sup>7</sup> Report on Mediation Results at the Idi Syar'iyah Court in 2020-2023.

<sup>8</sup> Lolini Alsyaba, "Efektivitas Mediasi Dalam Mempertahan Pernikahan Terhadap Kasus Perceraian Di Mahkamah Syari'ah Kuala Simpang Kelas II" (Skripsi, IAIN Langsa, 2019).

mediators is inadequate, and there is a lack of professional mediators who have more time to dedicate to the process compared to the judges acting as mediators, 2) The mediation time is not fully utilized, 3) The very low compliance of the parties is a significant factor that makes it difficult for the Syar'iyah Court of Langsa to properly apply the Supreme Court Regulation (PERMA), especially regarding good faith and the high costs that make the public reluctant to comply with the regulations issued by the Supreme Court, and 4) The public's indifference to mediation, as they view it merely as a formality in resolving disputes at the Syar'iyah Court of Langsa.<sup>9</sup>

Third, a study by Abdul Hakim indicated that the implementation of mediation in divorce cases has generally followed the guidelines set forth in Supreme Court Regulation (PERMA) No. 1 of 2016 regarding Mediation Procedures. However, mediation often fails due to the parties' lack of commitment and a weak desire to restore their relationship. The mediator has made every effort to conduct the mediation by providing suggestions and enhancing the parties' understanding of the importance of reconciliation.<sup>10</sup>

Fourth, a study by Sri Hariyani found that mediation is still considered ineffective in resolving divorce issues. The main factors contributing to this include a lack of awareness, egoism, and a lack of willingness to reach an agreement. The dual role of the mediator as both a judge and a mediator also affects the effectiveness of the mediation process. To improve the success of mediation, there is a need for non-judge mediators or certified mediators with more experience.<sup>11</sup>

In conclusion, based on the findings of the four studies, it can be summarized that mediation at both the Religious Courts and Syar'iyah Courts often fails to achieve reconciliation due to several key issues. First, the lack of non-judge mediators is a significant problem. Second, the parties being mediated are often unaware of the benefits of mediation. Third, the parties who

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<sup>9</sup> Wirda Hairani, "Problematisasi Mediasi Dalam Kasus Perceraian Di Mahkamah Syar'iyah Langsa," *Al-Qadha: Jurnal Hukum Islam Dan Perundang-Undangan* 5, no. 1 (2018), 38–47

<sup>10</sup> Abdul Hakim, "Mediasi Dalam Perkara Perceraian Di Mahkamah Syar'iyah Kuala Simpang" (Skripsi, IAIN Langsa, 2020).

<sup>11</sup> Sri Hariyani, "Efektivitas Mediasi Dalam Penyelesaian Perkara Perceraian Di Pengadilan Agama Pasuruan" (Tesis, UNISMA, 2020).

attend court sessions may not have good faith, which hinders the mediation process from progressing effectively.

Based on the background and research gaps mentioned above, the issues addressed in this study are: 1. How effective is the implementation of mediation in divorce cases at the Syar'iyah Court of Idi? 2. What are the supporting and inhibiting factors that affect the success of mediation in divorce cases at the Syar'iyah Court of Idi?

The method used in this study is a juridical-empirical approach with a qualitative analysis. Data collection techniques include observation, interviews, and documentation. The informants in this study are judge-mediators at the Syar'iyah Court of Idi. The research is conducted at the Syar'iyah Court of Idi, located at Banda Aceh-Medan KM. 381, Paya Gajah, Peureulak Barat District, East Aceh Regency.

### **The Concept of Mediation**

In the Kamus Besar Bahasa Indonesia (Indonesian Dictionary), mediation is described as a process in which a third party participates in resolving a conflict as an advisor. The definition of mediation in the Kamus Besar Bahasa Indonesia contains three main aspects. First, mediation is a method for resolving conflicts between two or more parties. Second, the parties involved in mediation come from outside the conflicting parties. Third, the parties involved in mediation act as advisors without having the authority to make decisions.<sup>12</sup>

The etymological interpretation of mediation emphasizes the role of a third party that connects the disputing parties to achieve a resolution. This explanation is crucial to distinguish mediation from other methods of conflict resolution such as arbitration, negotiation, adjudication, and others. The mediator holds a neutral position between the conflicting parties and strives to reach an agreement that is satisfactory to all involved. However, this interpretation remains general and does not comprehensively cover the essence and practice of mediation. Therefore, a definition of mediation from the terminological perspective provided by conflict resolution experts is necessary.

Mediation is an effective method for resolving disputes outside of court without involving litigation, offering various benefits and advantages. Some of the benefits and advantages of using mediation include the ability to achieve a win-win

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<sup>12</sup> Abbas, *Mediasi Dalam Perspektif Hukum Syariah Hukum Adat Dan Nasional*.

solution, saving time, reducing costs, preserving relationships between the disputing parties, and preventing their issues from excessive publicity.<sup>13</sup>

Mediation not only benefits the parties involved in a dispute but also provides several advantages for the judicial system. First, mediation helps reduce the likelihood of a backlog of cases in court. As more disputes are resolved through mediation, the number of cases that the court needs to handle decreases. Second, a lower number of cases filed in court makes it easier to monitor potential delays or efforts to intentionally slow down the court process for inappropriate purposes. Third, with fewer cases in court, the examination process can proceed more swiftly.

PERMA No. 1 of 2016, Article 4: Types of Cases that Must Undergo Mediation:<sup>14</sup>

- 1) All civil disputes submitted to the court, including objections (*verzet*) to default judgments and objections from the parties involved (*partij verzet*) as well as third parties (*derden verzet*) against the enforcement of a final and binding decision, must first attempt to be resolved through mediation unless otherwise specified by this Supreme Court Regulation.
- 2) Disputes that are exempted from the obligation to be resolved through mediation as referred to in paragraph (1) include: a) Disputes for which the examination in court is subject to a specified time frame for resolution, including but not limited to: b) Disputes resolved through the procedure of the Commercial Court; c) Disputes resolved through the procedure of the Industrial Relations Court; d) Objections to decisions made by the Business Competition Supervisory Commission; e) Objections to decisions made by the Consumer Dispute Settlement Body; f) Applications for the annulment of arbitration awards; g) Objections to decisions made by the Information Commission; h) The resolution of political party disputes; disputes resolved through the simplified lawsuit procedure; and i) Other disputes for which the

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<sup>13</sup> Sri Hariyani, Tesis: "*Efektivitas Mediasi Dalam Penyelesaian Pekara Perceraian di Pengadilan agama Pasuruan*" (Malang: UNISMA 2020), h. 1.

<sup>14</sup> PERMA No. 1 of 2016 Article 4 Types of Cases Required to Go Through Mediation.

examination in court is subject to a specified time frame for resolution as stipulated by laws and regulations. sengketa yang pemeriksaannya dilakukan tanpa hadirnya penggugat atau tergugat yang telah dipanggil secara patut;

- 3) counterclaim (reconciliation) and the entry of a third party in a case (intervention);
- 4) disputes regarding the prevention, rejection, annulment and legalization of marriages;
- 5) disputes submitted to the Court after an out-of-Court settlement has been sought through Mediation with the help of a certified Mediator registered in the local Court but is declared unsuccessful based on a statement signed by the Parties and a certified Mediator.
- 6) The statement of unsuccessful Mediation as referred to in paragraph (2) e and a valid copy of the Mediator Certificate are attached to the lawsuit letter.
- 7) Based on the agreement of the Parties, disputes that are exempt from the obligation of Mediation as referred to in paragraph (2) a, c, and e can still be resolved through voluntary Mediation at the stage of case examination and the level of legal remedies.

### **The Effectiveness of Mediation Implementation at the Mahkamah Syar'iyah Idi in Divorce Cases**

The Mahkamah Syar'iyah Idi is located at Jalan Banda Aceh-Medan KM. 381, Paya Gajah, Peureulak Barat District, East Aceh Regency. The Mahkamah Syar'iyah Idi was inaugurated on January 31, 2017, and signed by the Chief Justice of the Supreme Court of Indonesia, Prof. Dr. H. M. Hatta Ali, S.H., M.H. The building of the Mahkamah Syar'iyah is in accordance with the prototype set by the Supreme Court of Indonesia.<sup>15</sup>

The Idi Syar'iyah Court performs several functions which include:<sup>16</sup> a) Judicial Function: The Idi Shari'iyah Court is responsible for receiving, examining, and resolving all cases brought before it within its jurisdiction,

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<sup>15</sup> <https://ms-idi.go.id/new/link/202108021151571383689750610779edd842b.html>, accessed on July 17, 2024.

<sup>16</sup> <https://ms-idi.go.id/new/link/201704170937451206258f470c9a9fd9.html>, accessed on July 17, 2024



ensuring the application of Islamic law; b) Administrative Function: The Idi Syar'iyah Court is responsible for managing its internal affairs and ensuring administrative order, including matters related to cases and general administration; c) Counseling and Guidance Function: The Idi Syar'iyah Court provides advice and guidance on Islamic law to government agencies in its jurisdiction upon request, and provides testimony of the rukyatu hilal in determining the Hijri year; d) Supervisory Function: The Idi Sharia Court is in charge of supervising and guiding the behavior of its officials.

The vision of the Idi Syar'iyah Court, namely: **"The Realization of the Great Idi Syar'iyah Court"**.

To achieve this vision, several missions have been set as follows:<sup>17</sup>

1. Maintaining the independence of the judiciary.
2. Providing fair legal services to justice seekers.
3. Improving the quality of leadership of the judiciary.
4. Increasing the credibility and transparency of the judiciary.

The Langsa Syar'iyah Court is presided over by a presiding judge, namely Mr. Zikri, S.H.I., M.H., and the vice chairman, Mrs. Wafa', S.H.I., M.H., The following is the organizational structure of the Idi Syar'iyah Court:



**Figure 1.** Organizational Structure of the Idi Class II Syar'iyah Court

<sup>17</sup> Annual Report of the Idi Sharia Court in 2023, 7.

According to the observations made by the author, divorce cases remain the highest type of case at the Mahkamah Syar'iyah Idi. Based on data from the Mahkamah Syar'iyah Idi, the number of divorce cases resolved through mediation from 2020 to 2023 amounted to 498 cases.<sup>18</sup>

The mediation procedure at the Mahkamah Syar'iyah Idi, based on the author's observation, is in accordance with PERMA Number 1 of 2016. The issuance of PERMA Number 1 of 2016 reflects the integration of mediation into the court proceedings, with the aim of preventing a backlog of cases that increases each month. All civil cases registered for resolution in court are required to undergo the mediation process first.<sup>19</sup> This is outlined in Article 3, paragraph (1) of PERMA Number 1 of 2016, which states: "Every judge, mediator, and party/legal representative is required to follow the dispute resolution procedure through mediation."<sup>20</sup>

Based on the observations above, and to further strengthen the findings, the researcher conducted an interview with the Mediator Judge, Mrs. Wafa', S.H.I, M.H., who stated: *"The mediation procedure at the Mahkamah Syar'iyah Idi is in accordance with PERMA No. 1 of 2016, both in terms of practice and the appointment of mediators. Mediators can be either Judge Mediators or Non-Judge Mediators, depending on the request of the defendant and the plaintiff. However, at Mahkamah Syar'iyah Idi, there are currently no Non-Judge Mediators available due to a lack of human resources, so mediation will be conducted by the Judge Mediator at the Mahkamah Syar'iyah Idi."*<sup>21</sup>

The effectiveness of mediation at the Mahkamah Syar'iyah Idi has not been optimal, as the success rate of mediation frequently does not result in a peaceful resolution. However, mediation at the Mahkamah Syar'iyah Idi does not solely focus on resolving divorce cases; it also addresses issues beyond the main subject matter of the dispute. The author recognizes that mediators, in reconciling the defendant and the plaintiff, must do more than merely follow mediation procedures. Becoming a mediator requires extensive learning and a

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<sup>18</sup> Mediation Report of the Idi Syar'iyah Court starting from 2020 to 2023.

<sup>19</sup> Observation results on July 1, 2024.

<sup>20</sup> PERMA No. 1 of 2016. Article 3 paragraph (1).

<sup>21</sup> Wafa', Mediator of the Judge of the Syar'iyah Court Idi, personal interview, Idi, July 08, 2024.

deeper understanding of the profession, including mastering psychological knowledge. With the integration of psychological principles, the author believes that the success rate of mediation at the Mahkamah Syar'iyah Idi could significantly improve.<sup>22</sup>

Based on the observations above, and to further strengthen the findings, the researcher conducted an interview with Judge Mediator, Mrs. Wafa', S.H.I, M.H., who stated: "From my work experience, mediation at the Mahkamah Syar'iyah Idi is not effective because the parties involved in the case believe that they come to the Mahkamah Syar'iyah Idi only to obtain a divorce certificate. This creates a new understanding that once a divorce has been granted in the local village, it is considered final. This is where mediation at Mahkamah Syar'iyah Idi encounters challenges, especially in divorce cases. For example, during my mediation sessions, whether for divorce initiated by the plaintiff (cerai gugat) or by the husband (cerai talak), the parties involved, whether plaintiff or defendant, often say: 'We can't reconcile anymore because we've already been divorced in the village, so we can't live together again according to the imam or the village head. It's pointless for you to advise us, because the divorce is already finalized in the village, and we can't be together again.' Thus, mediation at the Mahkamah Syar'iyah Idi is ineffective in increasing the success rate of mediation unless there is a uniform understanding between the court and the community leaders outside of the court. Furthermore, at Mahkamah Syar'iyah Idi, if the mediator cannot reconcile the parties, they can emphasize to the parties that coming to the court is not only about resolving divorce cases but also includes the possibility of reaching partial agreements outside the main issue of the divorce, such as the rights of women after being divorced, child custody, alimony, shared property, and other related matters. If a partial settlement is reached outside of the main divorce issue, it will no longer be addressed in litigation during the court hearings, and the agreement will be included in the judge's decision. Moreover, another aspect of effectiveness is the mutual agreement (win-win solution) between both parties, where neither party feels defeated or victorious. However, for the mediator, reconciling both parties presents its own challenges, especially when trying to convince the

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<sup>22</sup> Observation results on July 1, 2024.

defendant to reconsider the possibility of reconciliation. This is because divorce mediation deals with emotional issues. I strongly agree that mediators should not only master the procedures of the mediation process but also be equipped with psychological knowledge. With the addition of psychological knowledge, mediators may become more effective and significantly improve the success rate of mediation at the Mahkamah Syar'iyah Idi".<sup>23</sup>

The following is data on divorce cases and talaq in 2020-2023 received by the Idi Sharia Court as well as mediation reports in 2020-2023 according to success and unsuccessful numbers:

Table 1. Divorce Data at the Idi Syar'iyah Court 2020-2023

| No. | Types of Divorce | 2020 | 2021 | 2022 | 2023 |
|-----|------------------|------|------|------|------|
| 1.  | Talak Divorce    | 97   | 105  | 121  | 104  |
| 2.  | Divorce Lawsuit  | 361  | 387  | 428  | 386  |
| Sum |                  | 458  | 492  | 549  | 490  |

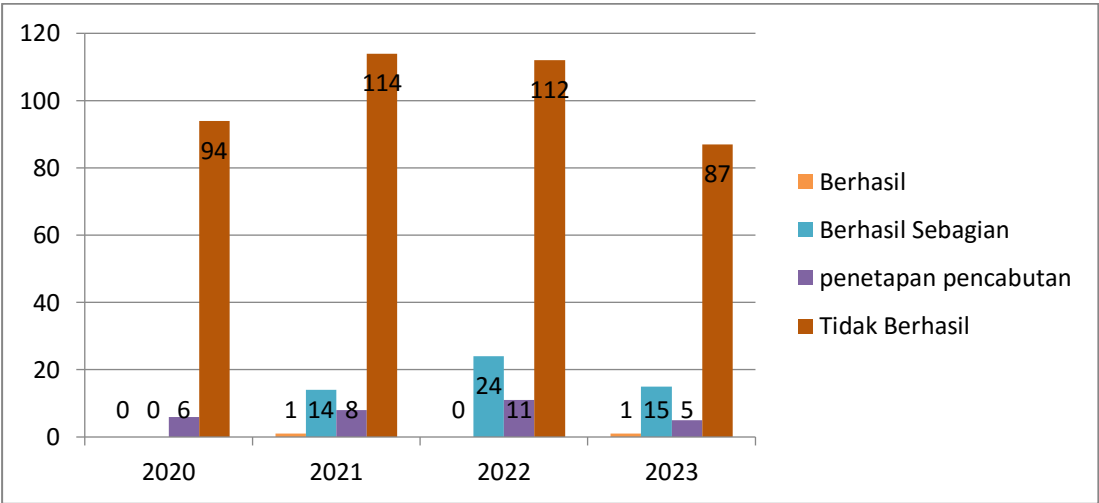


Figure 2. Mediation Results at the Idi Syar'iyah Court 2020-2023

<sup>23</sup> Wafa', Mediator of the Judge of the Syar'iyah Court Idi, personal interview, Idi, July 08, 2024.

Increasing the effectiveness of Mediation in the Idi Syar'iyah Court can be done in several ways based on the expression of Mrs. Wafa', S.H.I, M.H. that is:<sup>24</sup>

1. The knowledge of the parties regarding the purpose and objectives of mediation at the Mahkamah Syar'iyah is crucial, as it prevents the emergence of misunderstandings that could hinder the mediation process. For example, a common misconception within the community, often seen in Mahkamah Syar'iyah, is that the court is solely for granting divorces or issuing divorce certificates. Such misconceptions can impede the progress of mediation.
2. Mediation should ideally begin outside the court, starting at the family or village level, as this is where improvements should be made. The family or the local community has a better understanding of the plaintiff and defendant, including the root causes of the conflict from the beginning. While this may already be practiced in some villages, it needs to be further enhanced to effectively reduce the divorce rate in Langsa.
3. Here is the data on divorce cases (cerai gugat and cerai talak) from 2020 to 2023 received by the Mahkamah Syar'iyah Idi, along with the mediation reports for the same period, broken down by successful and unsuccessful outcomes:
4. The Mahkamah Syar'iyah has continuously made efforts to reconcile the parties involved in the dispute to prevent divorce. The Mahkamah Syar'iyah will also provide feedback to the mediators to further improve the effectiveness of mediation, with the aim of increasing the success rate of the mediation process.

### **Obstacles and Challenges in the Implementation of Mediation at the Idi Syar'iyah Court in Divorce Cases**

List of Judge Mediators Affiliated with the Idi Syar'iyah Court, Including:

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<sup>24</sup> Wafa', Mediator of the Judge of the Syar'iyah Court Idi, personal interview, Idi, July 08, 2024.

Table 2. List of Judge Mediators at the Idi Syar'iyah Court

| No | Mediator Name          | Position      |
|----|------------------------|---------------|
| 1. | Zikri, S.H.I., M.H.    | Head          |
| 2. | Wafa', S.H.I., M.H.    | Vice Chairman |
| 3. | Islahul Umam, S.Sy.    | Judge         |
| 4. | Anase Syukriza, S.H.I. | Judge         |

Mediators in facilitating reconciliation between parties at the Syar'iyah Court face numerous obstacles and challenges, one of which is the lack of awareness among the parties regarding the benefits of mediation. Therefore, the author emphasizes the critical importance of fostering this awareness to help the parties understand the concept and purpose of mediation, making the reconciliation process smoother. Additionally, the parties must not only recognize the benefits of judge mediators but also appreciate the value of certified non-judge mediators, whether within or outside the court system.<sup>25</sup>

Obstacles and challenges are frequently encountered by judge mediators at the Idi Syar'iyah Court, as expressed by Ms. Wafa', S.H.I., M.H.

*"Mediators face significant obstacles during the mediation process when community leaders in villages legitimize divorce, leading the parties to perceive the Syar'iyah Court merely as a means to formalize their separation and obtain a divorce certificate. This perception represents one of the greatest challenges at the Syar'iyah Court. Additional barriers include the absence of any genuine intent to reconcile, either from one or both parties and the parties' failure to comply with court instructions, such as not attending scheduled mediation sessions."*<sup>26</sup>

Several other factors that often pose obstacles and challenges for mediators in reconciling plaintiffs and defendants in divorce cases include:

1. Lack of openness of the parties

Mediators often encounter difficulties in obtaining accurate and honest information from the disputing parties. The lack of transparency from the parties can hinder the mediator's ability to identify appropriate solutions. This observation aligns with the statement given during an interview with Ms. Wafa', S.H.I., M.H.

<sup>25</sup> Observation results on July 1, 2024.

<sup>26</sup> Wafa', Mediator of the Judge of the Syar'iyah Court Idi, personal interview, Idi, July 08, 2024.

*“One of the greatest challenges I frequently encounter is obtaining inaccurate and dishonest information from the disputing parties. Many parties are reluctant to disclose all the facts or only provide information that favors their own position. Several key reasons underlie this lack of transparency. First, there is often a sense of distrust, either between the parties themselves or toward the mediator. They may fear that the information they share could be used against them. Second, ego and shame also play a significant role. Parties may feel embarrassed to admit their mistakes or fear losing face. Additionally, strategic considerations come into play, as some parties believe that withholding certain information could give them a better bargaining position”.*

## 2. Lack of Good Faith of the Parties

Mediators often face challenges in securing good faith from the disputing parties. The lack of good faith can make it difficult for mediators to identify appropriate solutions. This observation is consistent with the findings from an interview with Ms. Wafa', S.H.I, M.H. “

*Many parties approach the mediation table with uncooperative attitudes and a lack of genuine intent to resolve the dispute fairly. They are often more focused on winning or defeating the other party rather than seeking a mutually beneficial solution. Several key reasons underlie this lack of good faith. First, there is a deep sense of distrust between the parties. They may believe that the other party will not act in good faith, and therefore, they see no reason to do so themselves. Second, feelings of resentment or a desire to punish the other party often arise, especially in emotionally charged disputes. Third, there are strategic factors at play, where parties may attempt to manipulate the mediation process for their own advantage, without any true intention of reaching an agreement”.*<sup>27</sup>

## 5. Lack of Knowledge from the Parties

The lack of knowledge among the parties regarding the mediation process and the importance of preserving the marriage can also pose a significant barrier. Parties who do not understand the value of mediation are more likely to be unwilling to participate. This observation is reinforced by Ms. Wafa', S.H.I., M.H. She said:

*“One of the main challenges I frequently face is the lack of knowledge from the parties regarding the mediation process and its benefits. Many parties come to mediation at the Idi Syar'iyah Court without understanding the process or the*

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<sup>27</sup> Wafa', Mediator of the Judge of the Syar'iyah Court Idi, personal interview, Idi, July 08, 2024.

importance of mediation itself. This often makes them hesitant to fully engage in the process. Several key reasons underlie this lack of knowledge. First, there is a lack of education and information available about mediation and how the process can help resolve disputes. Second, many parties have never been involved in mediation before, so they lack adequate experience or understanding. Additionally, in the context of marriage, many couples do not realize the importance of preserving their marriage and how mediation can help them achieve better solutions than prolonged conflict or divorce.”<sup>28</sup>

#### 6. Lack of Socialization to the Community

The lack of socialization in the community regarding the importance of preserving a marriage is a key factor in the failure of mediation. The parties often come to the Religious Court with the intention of getting a divorce, rather than seeking a solution to resolve the marital dispute. This aligns with the findings from an interview with Ms. Wafa', S.H.I., M.H.

*“The parties involved in the case often believe that they come to the Idi Syar'iyah Court solely to obtain a divorce certificate. This has led to a new understanding in the community that once a divorce has occurred locally, the matter is considered settled. This perception creates a conflict with the mediation process at the Idi Syar'iyah Court in divorce cases. For example, during my mediation efforts, whether for a divorce petition or a talaq divorce, the parties involved, both plaintiffs and defendants, often say: “We can no longer be together because we are already divorced in the local village, so it is not allowed for us to live in the same house by the imam or the village head. It’s pointless for you to advise us because we are already divorced in the village, and we cannot live together anymore.”*<sup>29</sup>

#### 7. Lack of Human Resources

The lack of human resources, specifically mediators at the Religious Court, can pose a significant obstacle. As the number of divorce cases increases, there is a growing need for additional mediators. This is in line with the statement from Ms. Wafa', S.H.I., M.H., in an interview, where she mentioned:

*“Another obstacle and challenge is the lack of certified non-judge mediators at the Idi Syar'iyah Court, which causes judge mediators to become somewhat overwhelmed when dealing with the parties due to the limited human resources at the court.*

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<sup>28</sup> Wafa', Mediator of the Judge of the Syar'iyah Court Idi, personal interview, Idi, 08 July 2024.

<sup>29</sup> Wafa', Mediator of the Judge of the Syar'iyah Court Idi, personal interview, Idi, 08 July 2024



*Perhaps in the future, efforts will be made to open vacancies for non-judge mediators at the Idi Syar'iyah Court".<sup>30</sup>*

#### 8. The Dispute Has Been Allowed to Persist for Too Long

This obstacle is also one of the most difficult to address, as the parties have been allowed to dispute for too long. This is supported by Ms. Wafa', S.H.I., M.H., who stated:

*"The plaintiff and defendant, when mediated in a dispute that has been allowed to persist for too long, often cannot be reconciled anymore. The plaintiff has become comfortable and feels no lack, even after living without a husband for 2 or 3 years. Similarly, the defendant has grown accustomed to life without a wife for 2 or 3 years. Cases like this are very difficult to mediate, unlike newer cases, where a 1-2 month gap still offers a chance for reconciliation, as long as the plaintiff and defendant have not yet been living separately. Once they have started living separately, the mediator finds it challenging to reconcile the parties, as they have become comfortable with their individual lives. Reconciliation also depends on the willingness of both the plaintiff and defendant to make peace. If there is even a small willingness to reconcile, it becomes easier for the mediator to facilitate an agreement." .<sup>31</sup>*

Several ways that mediators address difficulties in reconciling the parties in divorce cases, based on the statement from Ms. Wafa', S.H.I., M.H., include:<sup>32</sup>

1. *Identifying the Factors Affecting the Dispute: The mediator must identify the factors influencing the dispute, such as differences in opinions, emotions, and conflicting interests. By doing so, the judge mediator can develop appropriate strategies to address the dispute effectively.*
2. *Developing Effective Communication: The mediator must develop effective communication with the disputing parties. Effective communication helps the mediator understand the interests and emotions of the parties involved, facilitating a more productive mediation process.* Mengembangkan Strategi yang Tepat, Mediator harus mengembangkan strategi yang tepat untuk mengatasi sengketa.

<sup>30</sup> Wafa', Mediator of the Judge of the Syar'iyah Court Idi, personal interview, Idi, 08 July 2024

<sup>31</sup> Wafa'. Mediator of the Judge of the Syar'iyah Court Idi, personal interview, Idi, July 08, 2024.

<sup>32</sup> Wafa', Mediator of the Judge of the Syar'iyah Court Idi, personal interview, Idi, July 08, 2024.

Strategi yang tepat dapat membantu mediator untuk mengembangkan kesepakatan yang memuaskan para pihak.

3. *Developing Satisfactory Agreements:* A satisfactory agreement can help the parties resolve the dispute in a safe and effective manner. By ensuring that the agreement meets the needs and expectations of both parties, the mediator facilitates a lasting resolution that promotes mutual understanding and cooperation..
4. *Developing High Awareness:* The mediator must cultivate a high level of awareness regarding the interests and emotions of the parties involved. This heightened awareness enables the mediator to develop appropriate strategies to address the dispute effectively, fostering a deeper understanding of the underlying issues and facilitating a resolution..
5. *Developing Sustainable Agreements:* Sustainable agreements can help the parties resolve the dispute in a safe and effective manner. By focusing on long-term solutions that address the core issues, the mediator ensures that the resolution remains viable and beneficial for both parties, preventing future conflicts and promoting lasting harmony..
6. *Developing High Awareness of the Law:* The mediator must develop a deep understanding of the applicable laws. A high level of legal awareness enables non-judge mediators to formulate appropriate strategies for addressing the dispute, ensuring that the solutions proposed are legally valid and in compliance with the relevant legal framework. This awareness helps the mediator guide the parties toward a resolution that is both fair and legally sound.
7. *Developing Strong Emotional Handling Skills:* The mediator must develop the ability to effectively manage the emotions that arise between the parties. Strong emotional handling skills enable non-judge mediators to maintain a calm and neutral environment, helping the parties express their concerns constructively. This capability supports the mediator in facilitating a satisfying agreement that addresses both the emotional and practical needs of the parties involved..
8. *Developing Sustainable Agreements:* Sustainable agreements help the parties resolve the dispute in a safe and effective manner. By focusing on long-term solutions that address the underlying issues, such agreements provide a framework that prevents future conflicts and ensures a lasting resolution, promoting ongoing cooperation and stability between the parties involved.

Some factors that can affect the success of mediation for mediators are internal and external factors:

1. *Internal Factors:* The mediator must remain calm. Before initiating the mediation process, the mediator should first identify the underlying issues.

Only after understanding the problem should the mediator gather input from the parties involved before reaching a final conclusion..

2. External Factors: The mediator must provide appropriate facilities and a comfortable environment for the parties, ensuring they feel at ease and are willing to be heard. In this setting, the mediator should also offer moral messages about the consequences of divorce, highlighting both its causes and effects..

Several other factors that can affect the success of mediation at the Idi Sharia Court as stated by Mrs. Wafa', S.H.I, M.H. that is:<sup>33</sup> 1) *The intention of the parties will be peaceful or not in the mediation process*; 2) *The intention of the mediator in reconciling the parties*.

## Conclusion

Mediation at the Idi Syar'iyah Court has not yet been fully effective, although it adheres to the mediation procedures outlined in PERMA No. 1 of 2016. Most divorce cases resolved through mediation do not achieve a complete settlement. Many divorce cases at the Idi Syar'iyah Court are only partially resolved, such as issues concerning women's rights during the iddah period, child custody, and others. This indicates that divorce cases at the Idi Syar'iyah Court have not been fully resolved.

Obstacles and challenges frequently faced by mediators at the Idi Syar'iyah Court during mediation include the lack of public awareness about the function of mediation and the fact that the core issues in the case are allowed to persist for too long, leading the plaintiff and defendant to become unwilling to reconcile. In such situations, a middle ground in mediation may be found by reconciling only certain aspects, such as the division of joint property (if applicable), child custody, and other related issues.

The Idi Syar'iyah Court is expected to promptly include non-judge mediators so that mediation at the court can be more effectively addressed. Additionally, it is important to further develop strategies and broaden the knowledge for reconciling the parties, such as studying psychology, including

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<sup>33</sup> Wafa', Mediator of the Judge of the Idi Syar'iyah Court, personal interview, Idi, 08 July 2024.

both female and male psychology. With a deeper understanding of psychology, mediators may be better equipped to address divorce cases and resolve conflicts more effectively.

The community, especially East Aceh Regency, is expected to be able to understand the concept of mediation, both the role and function of mediators, the community must also understand that this mediation does not only reconcile the main cases but there are cases such as women's rights during iddah, child custody and so on.

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