

EFFORTS TO PREVENT DIVORCE BY JUDGES AT THE BARRU RELIGIOUS COURT (PERMA ANALYSIS NUMBER 1 OF 2016 CONCERNING MEDIATION PROCEDURES IN COURTS) PERSPECTIVE OF ISLAMIC LAW

Nurul Azizah

Universitas Islam Negeri Alauddin Makassar

Email: cihasyah45@yahoo.com

Lomba Sultan

Universitas Islam Negeri Alauddin Makassar

Email: lombasultan456@gmail.com

Azni Azra

Universitas Islam Negeri Alauddin Makassar

Email: asni.azrai@uin-alauddin.ac.id

Abstract: Overview Divorce cases at the Barru Religious Court have increased significantly from year to year, increasing by around 20% each year, the majority being filed by the wife. The factor that causes the majority is the existence of continuous disputes and quarrels followed by reasons to leave one of the parties, while the other reasons are only a small part. Efforts to prevent divorce by judges at the Barru Religious Court in the form of mediation have been in line with the provisions of Perma No. 1 of 2016 concerning Mediation, at each stage of mediation various efforts have been carried out, including: at the Pre-Mediation stage, Advisory was carried out by the Panel of Judges Examining the Case, at the Mediation stage, efforts were made in the form of: a. Creating a comfortable and conducive atmosphere, sometimes accompanied by jokes, b. Actively listen to the problems expressed by each party, c. Responding and clarifying the intentions of the parties and bridging the differences between the two, d. Conducting Caucus, e. Show appreciation, and at the Final stage of Mediation, the Panel of Judges gives advice again at each trial. Efforts to prevent divorce by judges at the Barru Religious Court in the form of implementing mediation in the perspective of Islamic law have also been in line with the concepts of *Islah* and *Hakam*, and are also in accordance with the *Maqasid Syariah* principle, namely *hifdz al-nasl* (keeping offspring).

Keywords: Mediation, Divorce Prevention Efforts, Islamic Law

BACKGROUND

Marriage is a very strong contract *mitsaqan ghalidzan* to obey Allah's commands and carrying it out is worship.¹ However, failure sometimes occurs but is caused by various aspects, one of which husband and wife sometimes continuously demand their rights to be fulfilled by themselves so that they do not carry out their obligations to divorce.

Divorce according to the Big Indonesian Dictionary is a divorce or separation between husband and wife.² The dissolution of a marriage due to divorce occurs because of *talak* or a divorce lawsuit. The divorce was carried out before the Religious Court after the mediator judge had tried to reconcile the two parties but was unsuccessful.

¹ Zaeni Asyhadie et al, *Introduction to Indonesian Law*, (Jakarta: Rajawali Press, 2016), h. 247.

² KBBi Online, <https://kbbi.lektur.id/percepatan>, accessed March 13, 2022.

Whereas in Islamic law mediation is also called *al-islah* and *hakam*.³ *Al-islah* has the meaning of reconciling, inviting disputants to make peace between one another. And *hakam* is one way to overcome shiqaq. In language "*hakam*" is taken from the word "*at-tahkim*" in Arabic, which means to impose a sentence or a mediator (peacemaker, separator or judge) to reconcile two disputing parties. In the case of shiqaq, the duty of the hakam is to reconcile husband and wife who are litigating.⁴ If the mediation is not successful then it goes to the trial stage. In this case Islam allows divorce as the last step of efforts made to the maximum extent possible in maintaining the integrity of the household, so divorce is the best way. Please note that divorce is a lawful act but is hated by Allah swt.⁵

Divorce cases at the Barru Religious Court in 2020 reached 380 cases, while in 2021 divorce cases reached 457 cases. Divorce cases in the Barru Religious Court increased by 19% from the previous year while the family was the first stepping stone in individuals and behavior in society. A failed marriage will have a big impact on people's lives, therefore a household must be kept intact because divorce is also a lawful matter that is hated by Allah swt. So the judge as a mediator plays an important role in reconciling husband and wife who have litigation in the Religious Courts. This is very interesting to study, what efforts are made by judges in reconciling the litigants, especially in divorce cases at the Barru Religious Court, in order to reduce the divorce rate. Based on the above problems, a journal was created entitled "Efforts to Prevent Divorce by Judges at the Barru Religious Court (Perma Analysis Number 1 of 2016 concerning Mediation Procedures in Courts) Perspective of Islamic Law".

PROBLEM FORMULATION

Based on the explanation on this background, the main problem in this research is "How to Efforts to Prevent Divorce by Judges at the Barru Religious Court (Analysis of Perma Number 1 of 2016 concerning Mediation Procedures in Courts) Perspective of Islamic Law". Related to this, a sub-problem can be raised in this research, namely:

- a. What is the picture of the divorce case at the Barru Religious Court?
- b. How is the effort to prevent divorce by judges at the Barru Religious Court in terms of Perma Number 1 of 2016?
- c. What are the efforts to prevent divorce by judges at the Barru Religious Court from the perspective of Islamic law?

DISCUSSION

Description of Research Site

The Barru Religious Court is located at Jalan Sultan Hasanuddin Number 111, Coppo Village, Barru District, Barru Regency, South Sulawesi Province. Has 21 (twenty one) employees with details of 4 (four) Judges consisting of the Chairman, Deputy Chair, and 2 (two) judges at the primary level, secretaries, clerks, 3 (three) junior clerks, 3 (three) people head of sub-section, 4 (four) substitute clerks, 2 bailiffs, 1 (one) substitute bailiff, 6 (six) CPNS, and 6 (six) PPNPN personnel.

The legal area of the Barru Religious Court is in Barru Regency, has an area of 1,174.71 km² which includes 7 (seven) sub-districts, namely Barru, Balusu, Mallusetasi, Pujananting,

³ Nuraningsih, *Alternative Mediation for Settlement of Civil Disputes in Court*, (Cet. 1, Jakarta: Raja Grafindo Persada, 2011), h. 119.

⁴ Rizem Aizid, *Complete Family Fiqh*, (Cet. I, South Jakarta: Like Books, 2018), h. 261.

⁵ Soemiyati, *Islamic Marriage Law and Marriage Law Number 1 of 1974 concerning Marriage*, (Yogyakarta: Liberty, 2007), h. 105.

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Soppeng Riaja, Tanete Riaja, Tanete Rilau Districts, which consists of 14 (fourteen) kelurahan, and 41 (forty one) villages.⁶ According to preliminary statistics for 2022, the population of Barru Regency has a population of 185,525 people with the proportion of 91,303 males and 94,222 females.⁷ The competence of the Barru Religious Court itself includes civil cases, each of which is divided into 2 (two) types of cases, namely civil lawsuits (*Contentiosa*), and civil petition cases (*Voluntair*).⁸

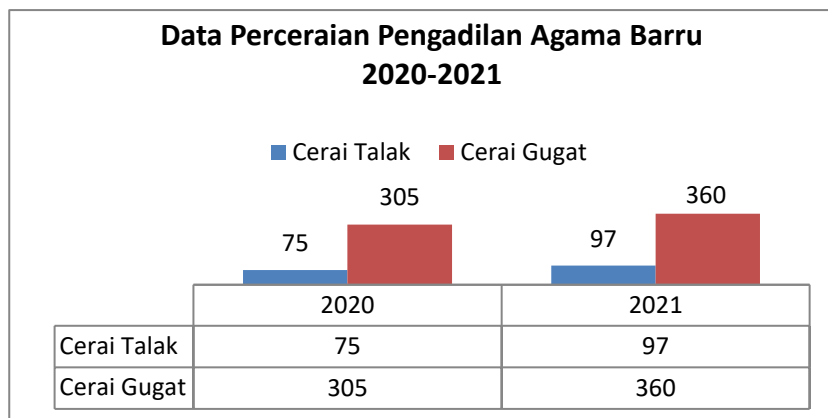
The Barru Religious Court, like other Religious Courts, has the duty and authority to examine, decide, and settle cases at the first level between people who are Muslim in the fields of: (a) Marriage, (b) Inheritance, (c) Wills, (d) Grants, (e) Waqf, (f) Zakat, (g) Infaq, (h) Sadaqah, and (i) Sharia Economics.

Thus, several cases that must be handled by Religious Courts throughout Indonesia, including in this case the Barru Religious Court, are expected to be resolved through mediation.

a. Overview of the Divorce Case at the Barru Religious Court

Divorce cases in the scope of the Religious Courts in Indonesia from year to year have experienced a significant increase, this has also occurred in the Barru Religious Courts, as can be seen in the following table:

Table 1.1. New Religious Court Divorce Data 2020-2021



Data source: Barru Religious Court, Year 2020-2021.

From the table above, it is known that the divorce rate at the Barru Religious Court in 2020 was recorded at 380 cases, consisting of 75 divorce cases and 305 divorce cases, while in 2021 divorce cases were recorded at 457 cases consisting of 97 divorce cases and 360 divorce cases. This shows that divorce cases in the Barru Religious Court have increased by 19% from the previous year. Of the hundreds of divorce cases, the majority of divorce cases are sued, meaning that most divorce cases are filed by the wife. The high divorce rate that is increasing from year to year also seems to apply in 2022, where until August 2022 divorce cases at the Barru Religious Court have reached 284 registered cases, this number will certainly continue to increase until the end of the year.

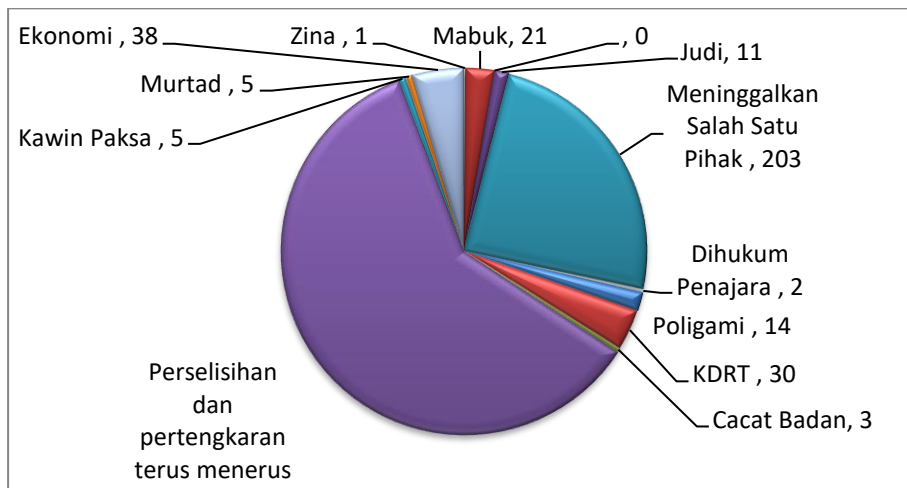
⁶Wikipedia, Districts and Villages in Barru Regency, https://id.wikipedia.org/wiki/Daftarkecamatan_kelurahan_di_Kabupaten_Barru, accessed on 03 August 2022.

⁷Wikipedia, <https://barrukab.bps.go.id/indicator/12/29/1/sum-penresiden-menurut-gender-gender.html>, accessed on 12 August 2022.

⁸Wikipedia, <https://barrukab.bps.go.id/indicator/12/29/1/sum-penresiden-menurut-gender-gender.html>, accessed 19 September 2022.

From 2020 to 2021, 749 married couples have been legally divorced by the Barru Religious Court, this data does not include cases that have been revoked, rejected or dismissed. The statistical data regarding divorce factors at the Barru Religious Court in 2020-2021 are as follows:

Diagram 1.1. Divorce Factors in the New Religious Courts 2020-2021



Data source: Barru Religious Court, Barru Regency, 2020-2021.

From the diagram above, it is known that during the 2020-2021 period, the factors causing divorce cases to be filed at the Barru Religious Court, the majority of which are the reasons for continuous disputes and quarrels, followed by reasons for leaving one of the parties, then a small number of cases are caused by economic factors, domestic violence (KDRT), drunkenness, polygamy, gambling, forced marriage, apostasy, disability, sentenced to prison, and adultery.

b. Prevention Efforts by Judges at the Barru Religious Court in view of Perma Number 1 of 2016

Marriage is an inner and outer bond between a man and a woman as husband and wife to form a happy and eternal family (household) based on the One Godhead, as stipulated in Article 1 of Law Number 1 of 1974 concerning Marriage. The mandate of the law means that marriage is a bond that has no time limit, so that all forms of separation (divorce) must be kept away or even complicated.

To complicate the occurrence of divorce, especially when the case has been submitted to the Religious Courts, the judge makes efforts to prevent divorce, the effort referred to is mediation. Mediation is part of the civil procedural law in court which can strengthen the function of the judiciary as a forum in seeking a sense of justice for the disputing parties.⁹

PERMA Number 1 of 2016 is the legalization of the implementation of mediation which makes mediation a legal rule that must be carried out by the parties before entering the adjudication process.

The urgency of mediation in the Court is intended to provide an opportunity for the parties to resolve the case through a peace agreement, so that there is no need for an appeal and cassation lawsuit because it has provided a sense of substantive justice for the litigants. The stages of Mediation according to PERMA Number 1 of 2016 are the pre-mediation stage, the mediation process stage and the final stage of mediation.

⁹ Wirawan, Conflict and Conflict Management Theory, Application and Research (Jakarta: Salemba Humanika, 2009), h. 201-202.

1. Pre-Mediation Stage

The presence of the parties at the first hearing before to the reading of the lawsuit, will determine whether or not the mediation effort will be implemented. If only one of the parties is present, then the mediation effort cannot be carried out as stated in Article 4 paragraph (2) of Perma Number 1 of 2016. If both parties attend the first trial, the Panel of Judges first advises both parties to cancel their intention to divorce. If the amicable effort made by the panel of judges fails, then the panel of judges explains to the parties how to resolve the case through mediation in court, the panel of judges also offers a mediator from the court environment.

2. Stages of Mediation Process by Judge Mediator

At the Barru Religious Court, the available mediators come from 4 mediator judges, all of whom have been certified mediators and have been registered with the court.¹⁰

The mediator as mediator first introduces himself and explains the urgency of mediation in resolving a case, including the legal basis, the definition of mediation, the benefits and objectives, the role and function of the mediator, the procedures for implementing mediation, the obligation of good faith during the mediation process and the sanctions, the stages of mediation, implementation time, negotiations, the existence of a caucus, as well as a peace agreement.

At this stage the Mediator plays an active role in carrying out the following efforts:

a) Creating a comfortable and conducive atmosphere, sometimes even accompanied by jokes

First, the mediator judge must be good at seeing the psychology of the litigants and lighten the atmosphere with a few jokes so that the parties can freely tell their problems.¹¹

b) Actively listen to the problems expressed by each party

The parties are given the same opportunity to present problems and hope for the resolution of disputes between the two. At that time, the mediator shows an attitude of listening and understanding the feelings and desires of the parties to identify the problem including the emotions contained in it.¹²

c) Responding and clarifying the intentions of the parties and bridging the differences between the two

After each party has explained their problems and expectations, the mediator actively responds and clarifies the parties' intentions. The mediator as a mediator must also be able to bridge the differences between the two parties, as follows:¹³

- 1) Increase the understanding of yourself and the parties.
- 2) Summarizing (taking the essence) the words of the parties.
- 3) Asking questions to get the additional information and clarify what the other party has said.
- 4) Paraphrasing the words of the parties. Paraphrasing is the act of repeating what the parties have said in their language style. This technique is known as Resting.

¹⁰ Observation of the List of Mediators at the Barru Religious Court, Barru Regency, August 08, 2022.

¹¹ Interview with Muhammad Rijal Manggaukang, S.H.I., M.H.I., Judge of the Barru Religious Court, Barru Regency. July 8, 2022.

¹² Interview with Salmirati, S.H., M.H., Head of the Barru Religious Court, Barru Regency. August 10, 2022.

¹³ Judge, Tips in the Mediation Process, (Jakarta: Kencana, 2018), h. 46.

5) Reframing (reframing), which reflects (reflects or reflects) the words of the parties to give a certain impression and influence.¹⁴

d) Conducting Caucus

When the parties are deemed not to have found a common ground, the mediator may hold a meeting with one of the parties first and then the other party, with the agreement of both parties. This caucus is intended so that things that are considered confidential by one party can be conveyed clearly to the mediator.¹⁵

e) Show appreciation

The mediator needs to show recognition and respect for the parties by showing an attitude that they are important and being listened to by the mediator carefully.

3. Final Stages of Mediation

After the parties have gone through the mediation process, there are several possible outcomes of the mediation process, namely:

a) Successful Mediation

There are 2 (two) types of a successful mediation, namely:

- 1) The mediation was completely successful, and all litigants reached a written peace agreement. The Plaintiff/Applicant and the Defendant/Respondent can live in harmony again;¹⁶
- 2) Mediation is partially successful, meaning that in mediating divorce cases it does not only focus on preventing divorce, but mediation has a broad discussion such as iddah, mut'ah, madhiyah, etc. If an agreement is reached, then the Plaintiff withdraws his lawsuit in part, then submits further examination of the case to the Panel of Judges;

b) Mediation Can't Be Implemented

As for the Divorce Cases that cannot be carried out, namely: 1) Mediation of the parties involving the assets, assets or interests of other parties; 2) Mediation involving the authority of ministries, institutions, agencies, BUMN and BUMD; 3) The parties who go through the mediation process are required to have good faith in its implementation.¹⁷

c) Failed/Unsuccessful Mediation

If the parties do not reach a peace agreement in the negotiation process, then the mediation carried out will fail or be unsuccessful.¹⁸

After the mediation is declared complete, the mediator reports the results of the mediation to the Panel of Judges who examine the case with a statement from the parties regarding the results of the mediation. For partially successful mediation, then the agreed matters will be included in the court's decision, while the things that cannot reach peace or mediation that fails to reach a peace agreement, then proceed to the examination process through litigation. At this stage, the Panel of Judges examining the case must continue to provide advice to the parties in each trial so that they think again about divorce by withdrawing the case and maintaining their household.

¹⁴ Judge, Tips in Mediation Process, h. 46.

¹⁵ Interview with Muhammad Rijal Manggaukang, S.H.I., M.H.I.

¹⁶ Interview with Salmirati, S.H., M.H.

¹⁷ Interview with Salmirati, S.H., M.H.

¹⁸ Interview with Salmirati, S.H., M.H.

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The progress of mediation for divorce cases at the Barru Religious Court, from 2020 to 2022, can be seen in the following table:¹⁹

Table 1.2. Divorce Cases at the Barru Religious Court

Tahun 2020		Tahun 2021		Tahun 2022	
Perkara diterima	Mediasi	Perkara diterima	Mediasi	Perkara diterima	Mediasi
380	40	457	48	284	29

Data source: Barru Religious Court, The Year 2020-2022.

Divorce cases that were successfully mediated by the mediator judge at the Barru Religious Court were relatively low, from 1,121 divorce cases only 10.43% of cases were successfully mediated. The final results of the mediation of divorce cases at the Barru Religious Court which have been carried out based on PERMA Number 1 of 2016 can be seen in the following table:²⁰

Table 1.3. Mediation Results of Divorce Cases at the Barru Religious Court

Tahun 2020				Tahun 2021				Tahun 2022			
Berhasil	Berhasil Sebagian	Gagal	Tidak dapat dilaksanakan	Berhasil	Berhasil Sebagian	Gagal	Tidak dapat dilaksanakan	Berhasil	Berhasil Sebagian	Gagal	Tidak dapat dilaksanakan
2	4	34	340	3	5	40	409	3	1	25	255

Data source: Barru Religious Court, Year 2020-2022

Based on the results of tracing the case history, the success of divorce mediation in the span of 2020 to 2022 at the Barru Religious Court, it was recorded that in 2020 out of 40 cases that were mediated, only 2 cases were successful, 4 cases were partially successful and 34 cases failed to mediate temporarily against 340 cases. other cases mediation cannot be carried out. In 2021, out of 40 cases that were mediated, only 3 cases were successful, 5 cases were partially successful, and 40 cases failed to mediate, while for the other 409 cases mediation could not be carried out. Meanwhile, in 2022 out of 29 cases that were mediated, only 3 cases were successful, 1 case was partially successful and 25 cases failed to mediate, while for the other 255 cases mediation could not be carried out. In particular, cases in 2022 are the results of a survey from January to August, of course, cases entering this year will continue to increase in number until the end of December. It can be concluded that divorce cases that have been successfully mediated from year to year have increased by 20% from the number of previously mediated cases.

If you look at the mediation report for 2020-2022 at the Barru Religious Court, the percentage of cases that can be mediated is very small, from 1,121 cases, only 117 cases that can be mediated or only 10.43%, the success rate is also relatively low, from 117 divorce cases. There

¹⁹ Barru Religious Court Annual Report 2020-2022.

²⁰ Observation of Divorce Case History through the Case Tracing Information System.

were only 18 cases that were successful in mediation, either wholly or partially successful, or if presented, the success rate of mediation at the Barru Religious Court was only 15%, or in other words, the failure rate of mediation over the last two years was accumulated at 85%. However, of the 18 cases that were successfully mediated in the 2020-2022 period, only 8 cases were successfully prevented from divorce by the mediator judge, so it can be concluded that the percentage of successful efforts to prevent divorce through the mediation process at the Barru Religious Court is only 0.7 percent or can be It is said that mediation is still not optimal to reduce the divorce rate.

The cause of the low success rate of divorce mediation at the Barru Religious Court, especially after the issuance of PERMA Number 1 of 2016, is influenced by internal and external factors, as follows:

1. Internal Factors

a) Domicile far apart

In divorce cases, generally, each party has separated residence, where the domicile is sometimes far from each other. For litigants who are outside the jurisdiction of the Barru Religious Court, it takes time, effort and money to be able to attend the trial.²¹

b) The parties have a strong determination to divorce

Parties who register divorce cases usually have a strong decision to divorce because they have often been disappointed by their husband/wife.²²

c) The siri culture is thick in society

Siri is a culture that is firmly adhered to by the community, especially the Bugis community, meaning that those who register their cases with the Barru Religious Court are not willing to back down from their cases so it is difficult to accept mediation by mediators.²³

d) Communication style

Effective communication during mediation greatly enhances the possibility of achieving peace.²⁴ The panel of judges' active communication affects the understanding of the parties.²⁵ The mediator must be able to dig up information and build communication based on the communication style of the local community.

e) Understanding of the rights and obligations of husband and wife

The litigants generally do not understand their rights and obligations comprehensively, thus triggering conflicts. This lack of understanding is due to the lack of education level and the narrow insight of the parties.²⁶

²¹ Interview with Salmirati, S.H.I., M.H.

²² Interview with Syahrudin, S.H.I., M.H.

²³ Interview with Syahrudin, S.H.I., M.H.

²⁴ Interview with Husaima, S.H.I., M.H., View from A. Maradona, "Effectiveness of Mediation in Inheritance Cases at the Barru Religious Court Class II", Thesis (Makassar: Faculty of Law Postgraduate, Indonesian Muslim University, 2021), h.76.

²⁵ Interview with Al Gazali Mus, S.H.I., M.H. See in A. Maradona, Effectiveness of Mediation in Inheritance Cases at the Barru Religious Court Class II, h. 50.

²⁶ Interview with Husaima, S.H.I. See in A. Maradona, Effectiveness of Mediation in Inheritance Cases at the Barru Religious Court Class II, h.77.

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f) The intention of the parties

The intentions and enthusiasm of the parties will determine the final outcome of the mediation adopted.²⁷ The attitude of the parties who are concerned with personal gain affects the agreement process. This tends to lead to unsuccessful mediation.²⁸

g) Different perspectives

The filing of divorce cases is influenced by conflicting perspectives and repeated negative behavior. Awareness of the rights and obligations of husband and wife will certainly create a good and harmonious family relationship.²⁹

h) Mediator ability

Mediators need good skills in building interpersonal communication, managing time for mediation, how to respond to the character of the parties, digging up information, identifying problems, and giving directions for divorce settlement when there is a deadlock. Under certain conditions, the mediator must be good at seeing the conditions and making decisions when mediation is continued, conducts caucuses or ends the mediation process.³⁰

2. External Factors

a) Mediation law rules

PERMA Number 1 of 2016 does not regulate incentives or rewards for judge mediators when they have succeeded in reconciling a dispute.³¹ The reward is intended to motivate the mediator judge to carry out his additional duties with full sincerity.

In addition, the implementation of mediation at the Barru Religious Court is also influenced by regulations as stipulated in Article 6 Paragraph (4) PERMA Number 1 of 2016 which allows parties not to participate in the mediation process when conditions do not allow attending meetings so that mediation is very difficult to optimize. Although Article 5 Paragraph 3 states that mediation can be done through audio-visual media, this often cannot be carried out for several reasons, such as the parties being old and not technologically literate.

b) The level of complexity of the case

If the divorce case involved involves a third person, the family often interferes, and is driven by high individual interests, it will be difficult to carry out voluntary mediation.³²

c) The role of attorney

Advocates when carrying out their duties, explanations and information given to their clients are often used as considerations of advantages and disadvantages in making decisions or seeking reconciliation formulations that do not harm the personal interests of the parties.

d) Psychological Judge mediator

Sometimes mediation clashes with the number of cases that must be resolved by the judge, of course affecting the performance of the judge when conducting mediation.

²⁷ Interview with Andi Muhammad Muhammad Rijal Manggaukang, S.H.I., M.H.I.

²⁸ Interview with Salmirati, S.H., M.H.

²⁹ Interview with Syahrudin, S.H.I., M.H.

³⁰ Interview with Salmirati, S.H., M.H.

³¹ Interview with Husima, S.H.I. See in A. Maradona, Effectiveness of Mediation in Inheritance Cases at the Barru Religious Court Class II, h.79.

³² Interview with Syahrudin, S.H.I., M.H.

e) Limited mediation facilities and infrastructure in court

Referring to the provisions in KMA No. 108/VI/2016, facilities and infrastructure at the Barru Religious Court are not complete and limited either due to the narrow land and prototype court building, the absence of a caucus room, a lack of budget funds to complete mediation facilities, or the completeness of mediation administration.³³

f) Socio-cultural conditions of the community

Community culture, regarding the resolution of conflicts in the household, usually a solution has been given, but sometimes the two sides of the family interfere which makes each party not accept or are determined to separate.³⁴ The culture of shame can also influence the way conflicts are resolved.

Effective mediation relies on the experience and professionalism of the mediator to analyze and assess critical situations and design effective interventions and prevention to respond to the sources of conflict.

c. Efforts to Prevent Divorce by Judges at the Barru Religious Court from the Perspective of Islamic Law

The Religious Courts have the authority to resolve divorce disputes filed by husband or wife. Before starting the trial process, the litigating parties are required to resolve the dispute through mediation.³⁵

Mediation efforts in Islamic law are in line with the concept of *işlah* / *Al-ishlâh* and *Hakam*.³⁶ *Al-ishlâh* has the meaning of reconciling, repairing and inviting people who are in dispute to make peace between one another, carry out good deeds and behave as saints.³⁷ Peace in Islamic law is highly recommended so that the relationship between the parties can be maintained.

At the time of the Prophet Muhammad, *Islah* or *Sulhu* was widely practiced to reconcile disputes between Muslims and infidels, disputes among Muslims, including to reconcile husbands and wives who were fighting.³⁸

In the case of divorce, the Qur'an explains about Islam in QS An-Nisa '2:35 as follows:

وَأِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَأَبْعَثُوا حَكَمًا مِّنْ أَهْلِهِ وَحَكَمًا مِّنْ أَهْلِهَا إِنْ يُرِيدَا إِصْلَاحًا يُوَفِّقِ اللَّهُ بَيْنَهُمَا إِنَّ اللَّهَ كَانَ عَلِيمًا حَكِيمًا

The translation:

*“And if you fear that there will be a dispute between the two, then send a hakam from a male family and a hakam from a female family. if the two hakam intend to make repairs, surely Allah will give taufik to the husband and wife. Verily, Allah is All-Knowing, All-Knowing.”*³⁹

³³ Observation of Mediation Facilities and Infrastructure at the Barru Religious Court Class II, from 07 August 2022 to 10 August 2022.

³⁴ Interview with Syahrudin, S.H.I., M.H.I.

³⁵ R. Usman, *Mediation in Courts in Theory and Practice*, (Jakarta: Sinar Graphic: 2012), h. 65.

³⁶ Nuraningsih, *Alternative Mediation for Settlement of Civil Disputes in Court*, (Cet. I, Jakarta: Raja Grafindo Persada, 2011), h. 119.

³⁷ Drafting Team, *Encyclopedia of Islamic Law*, (Cet. 1, Jakarta: PT. Intermansa, 2007), h. 47.

³⁸ Ibn Qudamah, *Al-Mugni Juz V*, (Beirut: Darul Fikr, 1984), h. 3.

³⁹ Ministry of Religion of the Republic of Indonesia, *Al-Quran and its Translation*, h. 32.

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The Qur'an surah al-Nisa verse 35 above gives orders to mankind that if in the future there is a dispute, especially a dispute between husband and wife, the Qur'an orders to send a hakam (mediator) as a mediator, either *Hakam* from the family of the male side and *hakam* from the family of the female side. *Hakam* in the Islamic judiciary itself has a role and function as a peacemaker. The peacemaker in this case is a person who is trusted and sent by both parties experiencing a dispute, without knowing who is right and who is wrong in the family dispute.⁴⁰

Jumhur Ulama agree on the issue of sending peacekeepers if there has been a quarrel between husband and wife. The majority of scholars agree that peacemakers are none other than members of the husband and wife's family, namely from the wife and from the husband, unless there is no one from both parties, then someone other than them is sent. Then allowed to become *hakamayn* (two peacemakers) from close neighbors. This is an understandable goal.

Every person who is given a certain mandate must carry out the duties and authority to complete a mandate. Likewise with a peacemaker who is given the task of reconciling the two disputing parties. He has the duty to make decisions without the need for the willingness of the convicted party. The task of this peacemaker is to examine the problems experienced by husband and wife that cause family conflicts to arise.³⁰² So that peacemakers can provide conclusions on the problems being faced and provide suggestions and input as an effort to reconcile the two parties in conflict.

In the perspective of Islamic law, mediation as an effort to prevent divorce must also be reviewed from the side of *Maqashid Syariah* which functions as the foundation of Islamic law.

Etymologically, *Maqashid Syari'ah* is composed of two syllables, namely *maqashid* and *sharia*. *Maqashid* means intentional or purposeful, i.e. every goal that *Syari'* (Allah) hopes for His creatures. While *shari'ah* in language means the way, *syariah* comes from *syara'*, namely all the rules compiled by *Syari'* (Allah) to guarantee the benefit of the life of creatures.

Maqashid Shari'ah according to al-Ghazali is maintaining five things (*ushul al-khamsah*), namely religion (*al-diin*), soul (*al-nafs*), reason (*al-aql*), offspring (*al-nasl*), and property. (*al-mall*). These five basics (*ushul al-khamsah*) must be realized, either at the level of benefit that is *daruriyyah*, *hajjiyyah*, *tahsniyyah*, or at the hierarchical perfection.⁴¹

In relation to mediation which has been mandated through Perma Number 1 of 2016 concerning Mediation, which is a form of regulation that wants to reduce the number of civil cases, especially divorce cases in the Religious Courts, there are so many. It can be interpreted that this goal is a manifestation of one of the *maqashid sharia*, namely *hifd al-nasl* (keeping offspring). Because when the divorce occurs, of course there are many consequences that arise from the case, such as disputes between the two parties, fighting over joint property, determining child care, and so on.

The occurrence of divorce has a very bad effect on the growth and development of children who are victims of their parents' divorce, many cases occur when their parents separate, their children are not taken care of properly because their parents do not want to take care of them, especially when both are married to a new partner. Most of these children are left in the homes of their grandparents, so they lack the love and attention of their parents.

Therefore, preventing divorce through mediation is in accordance with the principle of *hifd al-nasl* (keeping offspring) in *maqashid Sharia*.

⁴⁰ Siska Lis Sulistiani, *Islamic Courts*, (Jakarta: Sinar Graphic, 2020), h. 41.

⁴¹ Muhammad Zainuddin Sunarto, "Mediation in the Perspective of Maqashid Syariah: The Study of Divorce in the Religious Courts" *At-Turās: Journal of Islamic Studies*, Volume 6, No.1, June (2019), h. 46.

Maqashid sharia is a guide to *ijtihad* which is the basis for producing sharia that can adapt to the conditions of this modern society. So that the determination of each sharia must be in accordance with the *maqashid sharia* which will be the main entry point in achieving a common view for every *mujtahid*.⁴²

The appropriate method used in determining the existence of *maqashid sharia* in the necessity of implementing mediation in court, can be by several methods, one of which is;

1. Carry out research on a new event, both in terms of known *illat* (reasons) and have similarities with other *illat*, whether it is under one of the *maqashid sharia* or not.

Mediation is one way to solve a problem. Mediation is highly echoed by the Supreme Court, because it has a big goal, which is to reduce the number of civil cases which is increasing in number. The Supreme Court issued an SEMA on mediation, intending that the marital relationship be maintained, to produce offspring. *Hifd al-nasl* (maintaining offspring) is one of the *maqashid sharia*, namely the purpose of marriage is to produce offspring, when divorce occurs, the purpose of the marriage will not be achieved. With the obligation to carry out mediation, every person who files a lawsuit for divorce or divorce can change his mind to cancel his intention to divorce.

2. Using *qath'i* textual arguments and clear *dalalah*.

The practice of mediation can be appropriate as a mandate that has been contained in the Qur'an, namely the *islah-sulh* (peace) process, as an effort to resolve divorce issues, through non-litigation channels. This is because, a peaceful settlement, is highly recommended, according to the word of God in QS. Al-Nisa/4: 128.

وَأِنْ امْرَأَةٌ خَافَتْ مِنْ بَعْلِهَا نُشُوزًا أَوْ إِعْرَاضًا فَلَا جُنَاحَ عَلَيْهِمَا أَنْ يُصْلِحَا بَيْنَهُمَا صُلْحًا وَالصُّلْحُ خَيْرٌ وَأُحْضِرَتِ الْأَنْفُسُ الشُّحَّ وَإِنْ تُحْسِنُوا وَتَتَّقُوا فَإِنَّ اللَّهَ كَانَ بِمَا تَعْمَلُونَ خَبِيرًا

The translation:

“And if a woman is worried about *nusyuz* or the indifference of her husband, then there is nothing wrong with both of them making real peace, and peace is better (for them) even though humans are by nature stingy, And if you associate with your wives good and take care of yourselves (from *nusyuz* and indifference), then verily Allah is Knowing of what you do.”⁴³

So, any problems that arise in marriage, it is not recommended to always be resolved in the realm of trial. Both divorce and *nusyuz* are like the verse above.

From the descriptions above, it can be concluded that efforts to prevent divorce through mediation are in line with Islamic law, namely the concept of *Islah* and *Hakam*, and also following the *Maqasid Sharia* principle, namely *hifdz al-nasl* (keeping offspring).

CONCLUSION

- a. Overview Divorce cases in the Barru Religious Court from year to year have increased significantly, increasing by about 20% every year. Of the hundreds of cases submitted, dominated by divorce cases, namely divorce cases filed by the wife. The factors that cause the majority are continuous disputes and quarrels followed by reasons to leave one of the parties, then a small number of cases are caused by economic factors, domestic violence

⁴² Busyro, *Maqâshid al-syarîah: Fundamental Knowledge of Understanding Maslahah*, (East Jakarta: Kencana, 2019), h. 24.

⁴³ Ministry of Religion of the Republic of Indonesia, *Al-Quran and its Translation*, h. 32.

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(KDRT), drunkenness, polygamy, gambling, forced marriage, apostasy, disability, body, sentenced to imprisonment, and adultery.

- b. Efforts to prevent divorce by judges at the Barru Religious Court in the form of mediation have been in line with the provisions of Perma No. 1 of 2016 concerning Mediation, at each stage of mediation various efforts have been carried out including: at the Pre-Mediation stage, Advisory was carried out by the Court Examining Judge, at the Mediation stage, efforts were made in the form of: a. Creating a comfortable and conducive atmosphere, sometimes accompanied by jokes, b. Actively listen to the problems expressed by each party, c. Responding and clarifying the intentions of the parties and bridging the differences between the two, d. Conducting Caucus, e. Show appreciation, and at the Final stage of Mediation, the Panel of Judges gives advice again at each trial.
- c. Efforts to prevent divorce by judges at the Barru Religious Court in the form of implementing mediation in the perspective of Islamic law are in line with the concepts of *Islah* and *Hakam*, and are also in accordance with the *Maqasid Syariah* principle, namely *hifdz al-nasl* (keeping offspring).

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Interview

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