



**Integration of Islamic Law Principles in Overcoming Failure:
Mediate Family Cases in The North Sulawesi Religious Court**

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Abstract

This study examines the failure of mediation in family cases at the North Sulawesi Religious Court and emphasizes the importance of integrating Islamic legal principles to address these issues. Although many studies have addressed mediation failures, this study offers a more in-depth perspective by highlighting how the dominance of legal formalities often ignores the substance of peaceful dispute resolution. Through a qualitative approach, in-depth interviews are conducted with judges, mediators, and parties involved in the mediation process. Thematic analysis is then used to identify patterns and themes from the collected data. The study results show that one of the leading causes of mediation failure is the lack of application of Islamic legal principles, such as the activeness of mediator judges in promoting peace. In addition, local wisdom (*'urf*) that is supposed to strengthen mediation is often overlooked, which reduces the effectiveness of the mediation process. The success of mediation, if it occurs, is more often determined by external pressures, such as family pressures, than by the mediation itself. Therefore, this study emphasizes the need for stronger integration between Islamic legal principles and mediation approaches in Religious Courts to achieve fairer, more peaceful dispute resolution for all parties.

Keywords: Mediation Failure, Islamic Law, Family, North Sulawesi Religious Courts

Abstrak

Penelitian ini menelaah kegagalan mediasi dalam kasus-kasus keluarga di Pengadilan Agama Sulawesi Utara dan menekankan pentingnya integrasi prinsip-prinsip hukum Islam untuk menangani masalah tersebut. Meskipun banyak penelitian telah membahas kegagalan mediasi, penelitian ini menawarkan perspektif yang lebih mendalam dengan menyoroti bagaimana dominasi formalitas hukum sering mengabaikan substansi penyelesaian sengketa secara damai. Melalui pendekatan kualitatif, wawancara mendalam dilakukan dengan hakim, mediator, dan pihak-pihak yang terlibat dalam proses mediasi. Analisis tematik kemudian digunakan untuk mengidentifikasi pola dan tema dari data yang dikumpulkan. Hasil penelitian menunjukkan bahwa salah satu penyebab utama kegagalan mediasi adalah kurangnya penerapan prinsip-prinsip hukum Islam, seperti keaktifan hakim mediator dalam mendorong perdamaian. Selain itu, kearifan lokal ('urf) yang seharusnya memperkuat mediasi sering diabaikan, sehingga mengurangi efektivitas proses mediasi. Keberhasilan mediasi, jika terjadi, lebih sering ditentukan oleh tekanan eksternal, seperti tekanan keluarga, daripada oleh mediasi itu sendiri. Oleh karena itu, penelitian ini menekankan perlunya integrasi yang lebih kuat antara prinsip-prinsip hukum Islam dan pendekatan mediasi di Pengadilan Agama untuk mencapai penyelesaian sengketa yang lebih adil dan damai bagi semua pihak.

Kata Kunci: *Kegagalan Mediasi, Hukum Islam, Keluarga, Pengadilan Agama, Sulawesi Utara*

Introduction

Mediation constitutes an alternative dispute resolution mechanism aimed at minimizing conflict and fostering peaceful outcomes in family civil disputes. Unlike formal litigation, which typically culminates in judicial decisions that favor one party and often generate dissatisfaction for the other, mediation prioritizes dialogue, negotiation, and consensual agreement.¹ Through mediation, parties are provided with a communicative space to express concerns, appreciate differing perspectives, and collaboratively formulate mutually acceptable solutions. This approach has the potential to prevent the escalation of emotional tension commonly associated with adversarial legal proceedings, while simultaneously enabling more harmonious and mutually beneficial resolutions.² Nevertheless, in practical implementation,

¹Kamaruddin et al., "Justice, Mediation, and Kalosara Custom of the Tolaki Community in Southeast Sulawesi from the Perspective of Islamic Law," *Samarah* 7, no. 2 (2023); Ratno Lukito, "Religious ADR: Mediation in Islamic Family Law Tradition," *Al-Jami'ah: Journal of Islamic Studies* 44, no. 2 (2006); Zulkifli Yus, "Mediasi Dalam Penyelesaian Sengketa Perkawinan Pada Mahkamah Syar'iyah Di Aceh," *El-Usrah: Jurnal Hukum Keluarga* 5, no. 2 (2022), p. 196–223; Ajidar Matsyah et al., "Cultural Continuity and Legal Adaptation: The Evolution of Suluh in Aceh's Conflict Resolution System," *JURIS: Jurnal Ilmiah Syariah* 1, no. 24 (2025), p. 101–10.

²Naila Salsabila and Usep Saepullah, "Peran Mediasi Dalam Upaya Rekonsiliasi Rumah Tangga Pada Pengadilan Agama Cianjur," *El-Usrah: Jurnal Hukum Keluarga* 5, no. 2 (2022), p. 388–97; Yusida Fitriyati et al., "Reconsidering Inheritance Equality: Gender Justice in Religious Court

mediation does not always fulfill its normative aspirations. Power imbalances between disputing parties, varying levels of commitment, and limited negotiation capacity frequently undermine the mediation process. As a result, outcomes may remain asymmetrical or fail to address deeper relational conflicts. Such conditions often give rise to skepticism regarding the actual effectiveness of mediation as a genuinely equitable and sustainable mechanism for resolving family disputes.

The question of mediation effectiveness becomes particularly salient in North Sulawesi, a region that has recorded a substantial and concerning rate of divorce. Official data indicate 1,818 divorce cases arising from diverse factors, including persistent marital conflict (1,296 cases), spousal abandonment (279 cases), domestic violence (57 cases), economic hardship (76 cases), alcohol abuse (34 cases), religious conversion (61 cases), as well as other contributing issues such as infidelity, gambling, and polygamy. These figures suggest that approximately one out of every three registered marriages ultimately ends in divorce, based on a total of 6,246 marriages recorded during the same period. This statistical pattern provides a clear depiction of the severity of marital instability in North Sulawesi. Such conditions should be interpreted as a critical warning for policymakers and legal institutions to design and implement more responsive regulatory frameworks and dispute resolution mechanisms capable of reducing divorce rates. Accordingly, a comprehensive examination of family dispute patterns and their modes of resolution becomes essential to ensure that mediation, alongside other legal instruments, can operate effectively and meaningfully within the broader system of family justice.

To date, scholarly works addressing family conflict and dispute resolution have largely adopted a normative orientation and tend to concentrate on three dominant strands of analysis. *First*, a body of studies emphasizes formal legal and procedural dimensions of family dispute resolution, including the application of statutory regulations and judicial rulings.³ *Second*, another strand explores the social and cultural dynamics that shape the behavior of parties involved in family conflicts, such as kinship structures, prevailing social norms, and community-based pressures.⁴

Decisions through the Lens of Maqashid Al-Shariah,” *Nurani: Jurnal Kajian Syari’ah Dan Masyarakat* 25, no. 1 (2025), p. 122–40; Shinta Dewi Rismawati et al., “Distorted Meanings, Misplaced Justice: A Socio-Legal Approach of the Delegitimization of Domestic Violence Law in Pekalongan, Indonesia,” *Nurani: Jurnal Kajian Syari’ah Dan Masyarakat* 25, no. 2 (2025), p. 671–89.

³Seno Adhi Wibowo and Massulthan Rafi Wijaya, “Implementation of the Small Claims Court in Dispute Case Settlement in Indonesia,” *Lex Scientia Law Review* 5, no. 1 (May 2021), p. 165–78; Sayuthi M. Amin et al., “Resolving Inheritance Conflicts and Their Legal Repercussions in Aceh: A Sociological and Anthropological Look at Peace Initiatives Using Customary Courts,” *El-Usrah* 8, no. 1 (2025), p. 166–89; Indriati Amarini et al., “Exploring the Effectiveness of Mediation in Resolving Disputes in the Indonesian Administrative Court,” *Journal of Indonesian Legal Studies* 9, no. 1 (May 2024), p. 353–84.

⁴Yuniar Galuh Larasati et al., “Adolescent Forced Marriage and Community Misconduct: Rethinking Islamic Family Law,” *Jurnal Ilmiah Al-Syir’ah* 23, no. 1 (2025), p. 34–49; Muchimah et al., “Legal Culture and the Dynamics of Religious Interaction in Ritual Practices among Interfaith Marriage,” *Al-Manahij: Jurnal Kajian Hukum Islam* 18, no. 2 (2024), p. 333–48; Lina Nur Anisa,

Third, existing literature also examines psychological perspectives and informal mediation practices, including counseling, consultation, and third-party interventions aimed at mitigating interpersonal tensions.⁵ Overall, however, these studies predominantly approach legal, social, and psychological dimensions in isolation. Limited scholarly attention has been devoted to a more integrated examination of mediation as a mechanism capable of addressing family disputes in a manner that is not only effective, but also equitable and sustainable over time.

Beyond addressing the limitations identified in previous studies, this research is undertaken to explore the extent to which mediation can contribute to reducing divorce rates while simultaneously strengthening the application of Islamic legal principles within the Religious Courts of North Sulawesi. The urgency of this study lies in the pressing need to understand why mediation does not consistently function as envisaged by existing legal frameworks and regulatory provisions. The effectiveness of mediation is shaped by multiple interrelated factors, including parties' comprehension of the mediation process, levels of cultural acceptance, and the manner in which legal formalities are implemented. Concerns have emerged that mediation may not yet be fully optimized as a dispute resolution mechanism within the Religious Courts of North Sulawesi. Such conditions risk generating dissatisfaction among disputing parties and, at the same time, placing additional strain on the judicial system, potentially leading to an accumulation of unresolved cases.

Mediation, as an alternative mechanism for conflict resolution and the pursuit of peaceful settlement in family civil cases, represents a critical subject for scholarly examination. Beyond offering a more flexible pathway than formal litigation, mediation is expected to preserve interpersonal relationships and reduce the emotional tensions that frequently arise during court proceedings. To explain this phenomenon, the present study is structured around three central research questions. First, what factors contribute to the failure of mediation in family civil disputes within the Religious Courts of North Sulawesi? Second, how do procedural legal formalities and external influences, such as family pressure, affect the likelihood of successful mediation? This study is grounded in the argument that mediation effectiveness is not shaped by legal design alone, but rather by a complex interaction of legal, social, and cultural dimensions. By examining the practical barriers faced

"The Psychological Well-Being in Building Resilience of Indonesian Muslim Families: A Study of Hussein Muhammad's Thought," *De Jure: Jurnal Hukum Dan Syar'iah* 15, no. 1 (July 2023), p. 163–77; Mursyid Djawas et al., "The Integration Between Syara'and Ade'in Marriage Tradition Bugis Bone, South Sulawesi," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 18, no. 2 (2023).

⁵Muhamad Hasan Sebyar et al., "Divorce Mediation at Panyabungan Religious Court: Transforming the Desire for Divorce into Reconciliation through Cultural Values in Contemporary Islamic Jurisprudence," *Al-Manahij: Jurnal Kajian Hukum Islam* 19, no. 1 (2025), p. 81–100; Any Ismayawati, Aristoni, and Syed Mohammad Chaedar, "Family Conflict Resolution through Mediation in Indonesia and Malaysia: A Sociological Study of Islamic Law," *Jurnal Hukum Islam* 22, no. 2 (December 2024), p. 467–98; Henky Fernando et al., "The Deconstruction of Women's Values in #MeToo on Instagram," *Italian Sociological Review* 15, no. January (2025), p. 27–46.

by parties involved in mediation, this research also provides a critical perspective on the extent to which mediation can function as a fair and substantively effective dispute resolution mechanism within the context of family civil law in North Sulawesi.

This study adopts the dynamics of mediation failure in family civil disputes as its primary unit of analysis, as mediation is normatively expected to function as an alternative mechanism capable of resolving disputes in a peaceful, equitable, and sustainable manner. In practice, however, mediation frequently falls short of these expectations. By focusing on mediation failure, this research seeks to examine in depth the factors that hinder successful outcomes, including legal, social, and cultural constraints, as well as external pressures that shape the behavior and decision-making of the parties involved. The Religious Courts of North Sulawesi are selected as the research locus due to the region's high divorce rate and the presence of complex patterns of family conflict. This setting provides a relevant empirical context for understanding how mediation operates under real judicial conditions. Furthermore, the existence of several courts within the region, including the Religious Courts of Manado, Bitung, and Kotamobagu, offers rich empirical variation from the perspectives of judges, mediators, and family litigants. This diversity of institutional and experiential viewpoints enables a comprehensive analysis of mediation failure dynamics, as well as the challenges encountered in implementing Islamic legal principles within the resolution of family disputes.

This study employs a descriptive normative approach grounded in a case study design to systematically examine the phenomenon of mediation failure in family civil disputes within the Religious Courts of North Sulawesi. This approach enables the researcher to present a detailed and structured account of mediation practices, the applicable legal framework, and the dynamics that emerge in real adjudicative settings, while simultaneously relating these practices to the principles of Islamic law that underpin the dispute resolution process. The data for this research are derived from multiple sources. Primary data were obtained through in-depth interviews with judges, mediators, and parties involved in mediation proceedings. Secondary data consist of official court documents, divorce case reports, mediation records, and relevant statutory and regulatory materials. The integration of these data sources allows the study to produce a holistic analysis that identifies recurring patterns, institutional and practical barriers, and key factors influencing mediation effectiveness. Through this comprehensive approach, the research offers an inclusive depiction of family dispute resolution practices in North Sulawesi.

Data collection in this study was conducted through a combination of in-depth interviews, observation, and document analysis. In-depth interviews were carried out with judges, mediators, and parties involved in the mediation process in order to obtain detailed insights into their perceptions, experiences, and interpretations of the factors influencing mediation success or failure. Observation was undertaken through both participatory and non-participatory approaches during mediation proceedings at the Religious Courts of North Sulawesi. This method

enabled the researcher to capture actual practices, interaction patterns, and procedural dynamics that emerge during mediation sessions. In addition, document analysis was conducted by examining secondary data sources, including divorce case reports, mediation records, and relevant legal regulations. The integration of these techniques allowed the study to generate layered and comprehensive data drawn from both the subjective perspectives of mediation actors and formal written evidence. As a result, the analysis could be conducted in a rigorous and holistic manner to better understand the factors shaping mediation effectiveness in family civil disputes.

Data analysis in this study was conducted through several systematic stages to ensure an in-depth understanding of mediation dynamics.⁶ The first stage involved data reduction, which consisted of sorting, summarizing, and selecting relevant information derived from interviews, observations, and documentary materials in order to maintain analytical focus on the core research issues. The second stage was data presentation, in which the reduced data were organized in a structured manner, either through descriptive narratives or tabulated formats, to facilitate the identification of recurring patterns and relationships among key factors. The third stage comprised conclusion drawing and verification. At this stage, the researcher interpreted emerging themes and patterns, linked the findings to relevant theoretical perspectives and the context of Islamic law, and examined data consistency and credibility through source triangulation. Subsequently, thematic analysis was applied to identify the principal themes related to factors contributing to mediation failure and the dynamics influencing its effectiveness. This analytical process enabled a holistic understanding of mediation practices within the Religious Courts of North Sulawesi.

Mediation in Positive Law and Islamic Law

Mediation in procedural law in the court is a dispute-resolution method recognized in many legal systems worldwide, including Indonesia. Mediation settlements can be found in multiple countries and legal systems with similar approaches. In the United States, for example, mediation is an integral part of the family justice system and is often used as a first step before a case proceeds to court. Mediation in the United States aims to help a disputing couple reach an agreement regarding child custody, asset division, and other family issues. This approach has proven effective in reducing the number of cases that must be resolved in court and increasing the satisfaction of the parties involved in the dispute resolution process.⁷ Similarly, mediation is an essential part of the justice system in Australia, especially in family and commercial disputes. Mediation programs in Australia are designed to provide quick and efficient solutions, thereby reducing the burden on the courts.

⁶Matthew B. Miles and A. Michael Huberman, *Qualitative Data Analysis: A Methods Sourcebook*, ed. Johnny Saldana, 3rd ed. (United State of America: SAGE Publication, 2014).

⁷Kenneth Kressel and Dean G Pruitt, "Mediation Research: The Process and Effectiveness of Third-Party Intervention," (*No Title*), 1989.

These programs often include mediators with specialized expertise in areas relevant to the dispute.⁸

The same is also true in Indonesia's judicial institutions, where mediation has been recognized as an effective alternative to resolving disputes outside of formal litigation. In Indonesia, mediation is used in various types of courts, including religious courts, to reduce court workload and encourage faster, more efficient dispute resolution. The legal principles in Indonesia that promote the peaceful and fair resolution of disputes align with this mediation practice. Mediation in Indonesia is not limited to civil cases but also applies to family disputes, including divorce and child custody, to reach a mutually acceptable agreement among all parties without the need for a lengthy, protracted court process. This approach has proven beneficial in creating more satisfactory solutions for the parties to the dispute and in helping to reduce potentially more severe conflicts in the future.⁹

In Indonesia's positive law, mediation is regulated by various rules and regulations that aim to provide an efficient alternative to dispute resolution. Juridically, mediation in Indonesia's judicial institutions is based on Article 130 of the HIR/Article 154 of the RBg, which recognizes peaceful efforts and alternative dispute resolution. In addition to HIR/RBg, it is also regulated in Law No. 1 of 1974, Article 39; Law No. 3 of 2006, Article 65; KHI Articles 115, 131(2), 143(1-2), 144; and Government Regulation No. 9 of 1975, Article 32. Mediation arrangements are regulated through Perma Number 1 of 2008 concerning Mediation. The completeness of these rules provides a legal basis for implementing mediation and establishes the basic principles that must be followed in the mediation process.¹⁰ In Indonesia's positive law, the overall mediation effort aims to reduce the burden on the courts and to provide a faster, less formal method of dispute resolution than traditional litigation.

The mediation process in Indonesia typically involves a mediator, a neutral and trained third party, who helps the parties to the dispute reach a mutually agreed-upon agreement. The mediator is tasked with facilitating communication, identifying key issues, and helping the parties develop a mutually satisfactory solution. Mediation can be carried out at various levels, ranging from in-court to out-of-court. Courts in Indonesia often encourage mediation as the first step before proceeding to

⁸Rachael Field and Jonathan Crowe, *Mediation Ethics: From Theory to Practice* (Edward Elgar Publishing, 2020).

⁹Qodariah Barkah et al., "The Manipulation of Religion and The Legalization of Underage Marriages in Indonesia," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 1 (2023), p. 1; Soeroso R, *Mediasi: Penyelesaian Sengketa Melalui Pendekatan Musyawarah* (Jakarta: Sinar Grafika., 2011).

¹⁰Mursyid Djawas and Sri Astuti Abdul Samad, "Conflict, Traditional, and Family Resistance: The Pattern of Dispute Resolution in Acehese Community According to Islamic Law," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 4, no. 1 (2020), p. 65–84; Dedy Sumardi, Mansari Mansari, and Maulana Fickry Albaba, "Restoratif Justice, Diversi Dan Peradilan Anak Pasca Putusan Mahkamah Konstitusi Nomor 110/Puu-X/2012," *Legitimasi: Jurnal Hukum Pidana Dan Politik Hukum* 11, no. 2 (2022), p. 248–65.

a more formal litigation process, aiming to resolve the dispute without a court ruling.¹¹

One of the essential features of mediation in Indonesia's positive law is the application of the principle of a "win-win solution" or a mutually beneficial solution for both parties to the dispute.¹² In addition, mediation not only focuses on resolving disputes but also on restoring relations between the parties. This is particularly relevant in family civil cases, where restoring relationships and fulfilling the parties' emotional and psychological needs are often more important than legal settlements. Therefore, mediation in Indonesia is designed to be flexible and oriented towards the needs and interests of all parties.

Currently, the Supreme Court of the Republic of Indonesia, through Supreme Court Regulation (Perma) Number 01 of 2008 concerning Mediation Procedures in Courts, has integrated mediation into judicial proceedings as one of the instruments to address the growing backlog of cases. This mediation has been implemented and is part of the procedure that must be passed in every civil case in the religious and general court environment. Especially for religious courts, mediation in cases is not a new concept. The peaceful settlement of disputes is a recognized principle in Islamic law, emphasizing the resolution of disagreements through peaceful means. Therefore, mediation and conciliation are the ideal way to achieve justice in dispute resolution in line with Islamic teachings, which always encourage conflict resolution through Islam (peace).¹³

Islamic law has placed mediation as an essential and integral method of dispute resolution. The principles of mediation in Islamic law are rooted in the teachings of the Qur'an and Hadith, which encourage dispute resolution through deliberation and peaceful efforts. Mediation in the context of Islamic law is known as "sulh" or "deliberation, which is a dispute resolution process that involves negotiations between the parties to a dispute to reach a fair agreement. The basic principles of mediation in Islamic law are maintaining justice, fostering better relationships, and preventing prolonged conflicts. The entire settlement in the Qur'an, through a non-litigation approach, can be based on the concept of *Al-Sulh* or *ishlah* (peace). These concepts then develop into specific concepts, such as hakam (arbitrator or mediator) in the mechanisms of *Tahkim* and *al-Sulh*, or *Ishlah* (peace), a concept explained in the Qur'an as a means of resolving conflicts outside the court.¹⁴

¹¹Karmawan Karmawan, "Mediation in the Religious Courts of Indonesia," *AHKAM: Jurnal Ilmu Syariah* 20, no. 1 (June 2020), p. 79–96; Ismayawati, Aristoni, and Chaedar, "Family Conflict Resolution through Mediation in Indonesia and Malaysia: A Sociological Study of Islamic Law."

¹²Suteki. and A. A. Galang, *Teori Hukum: Strategi Tertib Hukum Dalam Era Globalisasi* (Yogyakarta: Thafa Media, 2017).

¹³Percy R Luney, "Traditions and Foreign Influences: Systems of Law in China and Japan," *Law and Contemporary Problems* 52, no. 2 (1989), p. 129.

¹⁴Fuad Riyadi and Muhammad Nurul Huda, "Implementation Of Restorative Justice In Criminal Persecution Cases In The Jeparu State Attorney From An Islamic Legal Perspective," *ICCoLaSS* 1, no. 1 (2022), p. 142–56.

The mediation process in Islamic law involves a mediator, usually called a "hakam" or "referee," who facilitates negotiations between the parties to the dispute. Mediators in Islamic law are expected to act with integrity and discretion, ensuring that the mediation process is conducted in accordance with the principles of justice and equality. As mediators, they also serve as advisors, providing guidance based on Sharia principles and assisting the parties in reaching an agreement that fulfills their legal rights while adhering to Islamic moral and ethical values. Juridically, formally, Law No. 7 of 1989, amended by Law No. 3 of 2006, Article 76, has accommodated and stipulated the existence of Hakam in divorce cases, whose existence is the same as that of a mediator. Historically and normatively, mediators, or Hakam, have been known since the inception of Islamic law for resolving disputes, including divorce cases, civil cases, and other matters.¹⁵ In addition, Islamic law emphasizes that mediation not only resolves legal problems but also restores social and emotional relations between the parties to the dispute. This highlights the importance of maintaining community harmony and well-being in both social and spiritual contexts. Mediation in Islamic law typically involves counseling and advice to help parties understand each other's perspectives and reach a mutually satisfactory solution.¹⁶

A comparison between mediation in Indonesia's positive law and Islamic law reveals fundamental similarities in their basic objectives and principles, though there are differences in their implementation. Both positive law in Indonesia and Islamic Law emphasize the importance of peaceful and fair dispute resolution, with mediation as the primary method of reaching a resolution that benefits all parties. Suppose there is a difference between the two. In that case, it lies in the approach and legal framework that govern the mediation process, as well as in the values and principles that guide mediators in carrying out their duties.

It is essential to note that, despite differences in approaches and implementations, both legal systems share the same goal: to provide a more effective method of dispute resolution than formal litigation and promote fair and peaceful settlement of disputes. By understanding these similarities and differences, we can better appreciate how mediation can function effectively in different legal contexts and how mediation practices can continue to evolve to meet the needs of society. In conclusion, mediation plays a crucial role in the legal system, both within the context of Indonesia's positive law and Islamic law. Both offer different but complementary approaches to resolving disputes peacefully and fairly. By integrating the principles of these two legal systems, it is hoped that the mediation process can continue to be refined to achieve better, more satisfactory results for all parties involved.

¹⁵Fikri Fikri et al., "Transformation of Maqāṣid Shari'ah in Divorce Mediation in Religious Courts: Revitalization of the Bugis-Mandar Customs, Indonesia," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 1 (2023), p. 431–54.

¹⁶Abdullahi Ahmed An-Na'im, *Islam and the Secular State: Negotiating the Future of Shari'ah* (Cambridge: Harvard University Press, 2008).

Mediation of Civil Cases at Religious Justice Institutions in North Sulawesi

The primary purpose of the law is to protect the rights and interests of the community and to ensure the guarantees of security and justice for all individuals within a country.¹⁷ The judiciary is an institution that plays a crucial role in achieving the law's primary objective. The judiciary is technically viewed as a process carried out in the court, involving the examination, decision-making, and adjudication of cases. Meanwhile, the court is an official body or agency that implements the judicial system by reviewing, adjudicating, and deciding cases. The Religious Court in the North Sulawesi region is currently fully responsible for the Manado High Court of Religion. Initially, before the establishment of the Manado Religious High Court, the jurisdiction of the Religious Court in North Sulawesi Province fell under the Religious High Court/Sharia Court of South Sulawesi Province, which is domiciled in Makassar. However, after issuing the Decree of the Minister of Religion of the Republic of Indonesia No. 95 of 1982 concerning the establishment of 5 (five) PTA Branches, including the Manado Branch of the High Court of Religion, it was inaugurated on February 1, 1984. Since then, the Manado Religious High Court has been independent, and its jurisdiction extends to the North Sulawesi and Central Sulawesi Provinces. With the formation of the Palu High Court of Religion based on Law number 3 of 1995 concerning the establishment of the High Court of Religion of Bengkulu, Palu, Kendari, and Kupang, the area of the Manado High Court of Religion was excluded from the jurisdiction of the Manado High Court of Religion and then in 2006 precisely on April 15, 2006 the Gorontalo High Court of Religion was also inaugurated as stipulated in Law number 6 of 2005 concerning the Establishment of High Court of Religion Gorontalo.¹⁸

As for the current jurisdiction under the Manado High Court of Religion, it is only 10 (ten) Religious Courts, namely (1) Manado Religious Court Class I.A; (2) Kotamobagu Religious Court Class I.B; (3) Tahuna Religious Court Class II; (4) Tondano Religious Court Class II; (5) Bitung Religious Court Class II; (6) Amurang Class II Religious Court; (7) Lolak Religious Court Class II; (8) Boroko Religious Court Class II; (9) Bolaang Uki Religious Court Class II; (10) Tutuyan Religious Court Class II.

Religious Justice Institutions in North Sulawesi play a crucial role in resolving various disputes related to family law, inheritance, and other issues governed by Islamic law. This court comprises several Religious Courts located in multiple cities and districts of North Sulawesi, including the Manado Religious Court, the Kotamobagu Religious Court, and the Bitung Religious Court. Each of these Religious Courts has jurisdiction over a specific administrative area and serves Muslims by resolving legal disputes in accordance with Sharia provisions. The duties of the Religious Court in North Sulawesi extend beyond divorce cases to include

¹⁷Jasser Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach* (London: IIIT, 2008).

¹⁸Super, "Sejarah Pengadilan," Pengadilan Tinggi Agama Manado, 2017.

several other matters related to marriage, child custody, maintenance, and joint property. They also deal with more complex issues, such as inheritance and testamentary disputes. Additionally, the Religious Court is tasked with mediation as part of efforts to resolve conflicts peacefully before proceeding to the formal trial stage. In terms of structure, each Religious Court in North Sulawesi is led by a Chief Court, who is assisted by the Vice President, judges, and administrative staff who handle various aspects of case management and general administration. These courts operate under the Supreme Court of the Republic of Indonesia and exercise their judicial functions in accordance with the principles of Islamic law applicable in Indonesia.

In addition to its judicial role, the Religious Court in North Sulawesi is also involved in legal education and community counseling. Through various programs and activities, the Religious Courts strive to improve the public's understanding of their rights and obligations under Islamic law. This includes explaining the mediation process, emphasizing the importance of resolving disputes amicably, and outlining other relevant legal procedures. Overall, the Religious Court in North Sulawesi is a vital institution that regulates and enforces Islamic law in the region, fostering harmony and justice in society through mediation and dispute resolution. Although the challenges faced are significant, especially in understanding local culture and the rise in cases, this institution continues to play a vital role in upholding the integrity of Islamic law in North Sulawesi.

Mediation as an alternative method of dispute resolution is increasingly gaining attention in North Sulawesi. In contrast to the formal litigation process, which often requires significant time and resources, mediation in theory, offers a peaceful solution for the parties by involving a neutral mediator to assist them. This approach aims to reduce conflict through open dialogue and negotiation, enabling the parties involved to reach mutually beneficial agreements without resorting to a court ruling that may not be acceptable to either party. Thus, mediation in the Religious Court is the judge's and the court's entire effort to reconcile the parties so that the divorce process or other cases do not continue at the next hearing.¹⁹

The mediation process in North Sulawesi has been conducted in accordance with applicable legal provisions and established guidelines. Mediation steps, ranging from the appointment of mediators and initial meetings to joint meetings, are carried out in compliance with the rules stipulated in Law Number 30 of 1999 and other mediation guidelines. Mediators in North Sulawesi are trained to facilitate dialogue between the parties to the dispute, ensuring that each party has an equal opportunity to express their views and seek a fair and peaceful solution.

¹⁹Fikri et al., "Transformation of Maqāshid Shari'ah in Divorce Mediation in Religious Courts: Revitalization of the Bugis-Mandar Customs, Indonesia."; Ermi Suhasti Syafei and Siti Djazimah, "Mediation In Settlement of Joint Marital Property Disputes: Study At Tanjung Karang Religious Court, Lampung," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 5, no. 2 (December 2021), p. 867–91.

Likewise, mediation in the Religious Court of North Sulawesi has been conducted in several stages in accordance with the established rules. The process begins with an initial meeting, where the mediator introduces the procedure and establishes the ground rules. Next, the mediator meets with each party separately to understand their views and find areas of agreement. After that, the mediator arranges a joint meeting where all parties can discuss the matter directly. The purpose of this meeting is to reach a mutually agreed agreement. If an agreement is reached, the mediator will draft a mediation agreement that can be legally binding.

Although procedural mediation in religious justice institutions in North Sulawesi has been well implemented, the results are often unsatisfactory. The low mediation success rate, as reflected in the mediation case data, indicates significant challenges in achieving effective resolutions. Mediation failure can result from various factors, including parties' lack of understanding of mediation's benefits, negative attitudes towards the process, or the mediator's inability to address complex conflict dynamics. This suggests the need for further evaluation of the factors influencing mediation outcomes and for efforts to enhance the effectiveness of the mediation process in the region.

Table 1
Mediation Case in Three North Sulawesi Judicial Institutions

No	Religious Court	Mediation Cases in 2022			Mediation Cases in 2023		
		Sum	Succeed	Fail	Sum	Succeed	Fail
1	Manado Religious Court	76	6	70	80	16	64
2	Kotamobagu Religious Court	35	4	31	35	14	21
3	Bitung Religious Court	50	5	45	20	4	16
		164	15	146	135	34	101

The table above shows that in 2022, the Manado Religious Court (PA) handled 76 mediation cases, of which only 6 cases were successfully resolved, while 70 failed. The number of mediation cases in PA Manado increased in 2023 to 80, but the success rate improved only slightly, with 16 cases resulting in success and 64 failing. This data shows quite complex dynamics in mediation in PA Manado. In PA Kotamobagu in 2022, there were 35 mediation cases, of which 4 resulted in successful outcomes and 31 in unsuccessful outcomes. In 2023, the number of mediation cases remained unchanged, while the success rate improved to 14 successes and 21 failures. PA Bitung has seen a decrease in mediation cases from 50 in 2022 to 20 in 2023, with four successful and 16 unsuccessful cases. This decline may reflect changes in dispute-resolution patterns or regional policy.

Upon analysis, the number of cases mediated in 2022 totaled 164; 15 were successful (9%), and 149 were unsuccessful. In 2023, there was a notable increase in success: the number of successful mediations rose from 135 to 34, a 74% increase, while the number of failed mediations decreased from 101 to 34, a 66% decrease. This figure has not achieved a 50% success rate, and the failure rate remains higher than the success rate. The mediation failure rate is still high, intersecting. The same as the results of research in three Religious Courts in the West Java Region, namely the Depok Religious Court, the Bandung Religious Court, and the Ciamis Religious Court, with the number of cases mediated in the three religious courts used in this study is 1480 cases with a success rate of 179 cases or equivalent to 12.0% while the cases that failed to be mediated were 1301 cases or equivalent to 88.0%. This data shows that mediation in the three religious courts has not achieved a significant success rate, nor has it reached half of the cases mediated.²⁰

In practice, mediation in Indonesia often involves several stages. The process begins with an initial meeting, where the mediator introduces the procedure and establishes the ground rules. Next, the mediator meets with each party separately to understand their views and find areas of agreement. After that, the mediator arranges a joint meeting where all parties can discuss the matter directly. The purpose of this meeting is to reach a mutually agreed agreement. If an agreement is reached, the mediator will draft a legally binding mediation agreement.

In North Sulawesi, data show variations in mediation success rates across courts. Despite the successes, the failure rate of mediation remains high in all courts analyzed. This suggests the need for a more comprehensive evaluation of the mediation process, encompassing its procedures and approaches. Assessment and improvement of mediation implementation, along with a deeper understanding of the local context, can enhance its effectiveness in North Sulawesi. Overall, mediation in North Sulawesi reflects the challenges and potential in dispute resolution. Mediation can achieve peaceful, fair resolutions by adhering to established legal frameworks and considering local contexts and cultural nuances. Efforts to improve mediator training, refine procedures, and understand local factors are crucial steps in enhancing mediation outcomes and ensuring that this process delivers maximum benefits to the parties involved.

Mediation Failure from the Perspective of Islamic Law

Mediation, as an alternative dispute resolution method, plays a significant role in the Islamic legal system, particularly in family and civil cases. As part of efforts to reach a peaceful resolution, mediation is expected to resolve conflicts in a manner consistent with the principles of justice and balance in Islamic law. However, an analysis of mediation failures in the context of Islamic law in North Sulawesi

²⁰Oksana Melenko, "Mediation as an Alternative Form of Dispute Resolution: Comparative-Legal Analysis," *European Journal of Law and Public Administration* 7, no. 2 (2021), p. 46–63, ; Sheetal Ranjan, "Domestic Violence Legislation in Greece: Analysis of Penal Mediation," *Women and Criminal Justice* 30, no. 1 (2020).

reveals that various factors can affect its effectiveness, including judges' attitudes, which tend to be passive and lack understanding of local wisdom, as well as the characteristics of the parties involved.

One of the primary factors contributing to mediation failure in North Sulawesi is the judges' tendency to be passive. In mediation, dispute resolution often arises from the parties' own wishes and initiatives, so mediators play a crucial role in helping them reach a mutually agreeable agreement.²¹ Because it is only understood as assisting the parties, judges often rely solely on the information and facts presented in the trial without conducting additional data searches or further verification, including field data, to supplement the overall information received. In fact, by understanding all the factors behind the dispute and the consequences of the conflict, it will be easier for the mediator judge to unravel the problems of those in dispute and generate a common desire to resolve their issues by the purpose of mediation, which is to unite the parties, continue business and social communication after the resolution of the dispute.²² According to Islamic law, dispute resolution through mediation can be achieved in two ways: proving legal facts (adjudication) and settling disputes through peace (Islam). In Islamic law, the settlement process is based on the principles of peace (Islam). In other words, in the case of a third party, the mediator-judge is crucial in bridging the parties to the dispute toward peace and benefits, as they must be active rather than passive.²³

Furthermore, ongoing mediation is based on incomplete and inaccurate information, hindering a deep understanding of the parties' conflict. In Islamic law, the mediation process should be based on certainty about events and clear facts, rather than mere conjecture (*dzan*). Given the dispute's chronology, the mediator will make a decision and provide input based on their beliefs. Doubt and conjecture are not laws because they are at the maximum position in the middle of a law, between truth and error. The provision that a mediator judge must have confidence is clearly illustrated in the *fiqh* rule in principle *Al-yaqinu la yazulu bi al-shak*, which means certainty cannot be changed by doubt, indicating that mediation must be conducted on the basis of convincing, accurate information to reach a fair solution.²⁴

Additionally, during the mediation process, the judge should be able to put the litigants on an equal footing and give equal attention to each party's position and interests.²⁵ Explicitly, no partiality is found in one of the parties involved in the case at the time of mediation. Still, with the absence of one of the parties, for example, in mediation, it is always indicated that they have no desire to resolve the case or participate in mediation. So that the parties present always benefit from the

²¹Stitt Allan, *Mediation A Practical Guide* (New York: Canvendish Routledge, 2004).

²²Melenko, "Mediation as an Alternative Form of Dispute Resolution: Comparative-Legal Analysis."

²³Amarini et al., "Exploring the Effectiveness of Mediation in Resolving Disputes in the Indonesian Administrative Court."

²⁴Tāj al-Dīn Al-Subky, *Al-Asybah Wa Al-Nazāir* (Bayrūt: Dār al-Kutub al-'Ilmiyyah, 1991).

²⁵Allan, *Mediation A Practical Guide*.

mediation. This is where the point of failure in conciliation lies; therefore, in the absence of one of the parties in mediation, the decision-making process, such as a divorce, will proceed without them. This is where judges' decisions are sometimes formally seen as providing justice to litigants, but never achieving substantial justice.²⁶ In fact, when considering Islamic law, if a dispute arises and needs to be reconciled, a mediator must treat the two parties in a balanced manner. If the truth and error are known, it can give the right its due and punish the wrong. In Islamic law, the Qur'an states the relevant principle: "*And if two quarrel, then make peace between them. If one of the two goes beyond the limit against the other, then fight the one who goes beyond that limit until he returns to the command of Allah*" (QS. Al-Hujurat: 9).

Additionally, many judges in North Sulawesi lack a profound understanding of local wisdom, despite its significant importance in the mediation process. Local wisdom encompasses the values, customs, and cultural norms that prevail within a specific community. Without a good understanding of local wisdom, judges may struggle to grasp the specific context of the dispute and whether the proposed solution is acceptable to all parties. In Islamic law, the principle of *urf* (customs) is fundamental because it recognizes that local norms and community customs can influence and shape fair dispute resolution. This principle emphasizes the importance of considering the cultural context in any mediation process. A lack of understanding of local wisdom can hinder the mediation process and reduce its effectiveness, as the proposed solution may not align with the local community's cultural values and expectations.²⁷ Therefore, judges must develop a deep understanding of local wisdom to make mediation more effective and relevant in the existing cultural context. The use of local wisdom in several studies has been able to reaffirm that the artistic approach has proven to be successful with some advantages compared to other methods because this approach is seen as cheap, fast, flexible, and most importantly, preserves brotherhood compared to when the issue is resolved in a court that is expensive, long-winded, rigid, and corrupts the brotherhood.²⁸

Additionally, using judges as mediators who speak the same language as the litigants is also crucial. Judges who understand the parties' language and culture can communicate more effectively and grasp nuances that may not be apparent in translation. This can help mediators bridge differences and find more acceptable

²⁶Nasruddin Yusuf, Nur Azizah, and Faradila Hasan, "Feminism Analysis of Judges' Considerations for Post-Divorce Domestic Violence Victims in Medan and Banda Aceh Religious Courts," *Al-Adalah* 20, no. 2 (2023), p. 283–308.

²⁷John R. Bowen, *Muslims through Discourse: Religion and Ritual in Gayo Society* (Princeton: Princeton University Press, 1993).

²⁸Arbanur Rasyid et al., "Local Wisdom Recognition in Inter-Ethnic Religious Conflict Resolution in Indonesia from Islah Perspective," *JURIS (Jurnal Ilmiah Syariah)* 22, no. 1 (June 2023), p. 13–26.

solutions for all parties.²⁹ In many cases, if the judge or mediator does not speak the same language or understand the local culture, the mediation process can become less effective, and it is more difficult to reach a satisfactory agreement. Therefore, judges need to develop a deep understanding of local wisdom and the litigants' language and culture to ensure mediation runs more effectively and is relevant in the existing cultural context.

The inability of judges to seek additional data and to understand local wisdom, as well as the characteristics of the litigants, indicates a need for reform in the mediation process. To enhance the effectiveness of mediation in Islamic law, judges should be trained to be more proactive in conducting investigations and understanding the broader context of each case. This includes learning local wisdom, understanding the individuals' characteristics, and ensuring effective communication in the same language. Implementing these reforms could involve providing judges and mediators with increased training on the importance of active involvement in the mediation process and a deeper understanding of local wisdom and culture. Additionally, incorporating measures to ensure that the mediator speaks the same language as the parties involved can help enhance the mediation process and improve outcomes. By implementing these changes, mediation in Islamic law in North Sulawesi can become more effective in resolving disputes and achieving fair, mutually beneficial outcomes for all parties.

Overall, the analysis of mediation failures from an Islamic law perspective reveals that judges' passive attitude, a lack of understanding of local wisdom, and an inability to comprehend the parties' characteristics are the primary factors hindering mediation's effectiveness. To address these issues, it is essential to increase judges' training and awareness of the importance of active engagement, cultural context, and effective communication. With these steps, it is hoped that the mediation process will run more effectively and produce a fairer, more beneficial decision based on Islamic law principles.

Conclusion

Mediation constitutes an alternative dispute resolution mechanism designed to facilitate the achievement of peaceful agreements between disputing parties, particularly in family-related cases. Within the context of the Religious Courts, mediation plays a crucial role as it may prevent prolonged conflict and reduce adverse consequences for all parties involved, including children. Ideally, mediation functions as a process that promotes reconciliation and strengthens family relationships, with judges acting as facilitators who seek to guide the parties toward mutual settlement. In practice, however, mediation within the Religious Courts of North Sulawesi frequently fails to realize these objectives. Such failure is commonly

²⁹Nurlaila Harun, "Proses Peradilan Dan Arti Sebuah Keyakinan Hakim Dalam Memutus Suatu Perkara Di Pengadilan Agama Manado," *Jurnal Ilmiah Al-Syir'ah* 15, no. 2 (December 2017), p. 167-92.

associated with an excessive emphasis on procedural legal formalities, which often overshadows the substantive purpose of mediation as a peaceful means of dispute resolution. Judges may become constrained by rigid procedural requirements and consequently devote limited attention to the underlying relational issues that should constitute the primary focus of mediation. In addition, judge mediators are not always sufficiently proactive in encouraging reconciliation, despite the fact that this principle represents a fundamental value within Islamic law. The findings of this study indicate that, in addition to the dominance of legal formalities, a limited understanding of the benefits of mediation constitutes a significant factor contributing to its failure. Many parties involved in mediation do not fully recognize the potential of mediation to produce mutually beneficial outcomes. Furthermore, *urf* or local wisdom, which in principle could strengthen the mediation process, is frequently overlooked, thereby diminishing the relevance of mediation within the local cultural context. As a result, the ideal practice of mediation, which is intended to promote reconciliation and reinforce relationships between disputing parties, is often not achieved due to insufficient awareness of its objectives and procedural mechanisms. Notably, when mediation does result in reconciliation, such outcomes are commonly driven not by the intrinsic effectiveness of the mediation process itself, but rather by external pressures, particularly encouragement from family members that compel the parties toward settlement. These findings suggest that mediation success is not determined solely by formal procedures or the role of the mediator. Instead, it is strongly shaped by the parties' level of understanding and the broader socio-cultural context in which mediation takes place. This study highlights the importance of strengthening the integration of Islamic legal principles with the application of *urf* (local wisdom) in mediation processes within the Religious Courts. Such integration is essential to ensure that mediation does not operate merely as a formal procedural requirement, but functions effectively as a meaningful pathway toward genuine reconciliation in accordance with both Islamic teachings and local normative values. By combining formal legal provisions, Islamic principles, and local cultural wisdom, mediation can place greater emphasis on the substance of reconciliation rather than on the mere fulfillment of administrative procedures. This integrated approach also enables mediators and disputing parties to develop a clearer understanding of the objectives and benefits of mediation, thereby fostering a more constructive and effective process. Through this framework, mediation may perform its intended role as a mechanism that supports justice while simultaneously promoting peace in the resolution of family disputes. In doing so, it contributes to the strengthening of interpersonal relationships and preserves the cultural relevance and Islamic values embedded within the practice of the Religious Courts.

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