



## **The Role of Judges in Addressing the Failure of Divorce Mediation: Analysis Based on PERMA No. 1 of 2016 at the Ambarawa Religious Court**

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### **Abstract**

Divorce in Islamic law is, in principle, permissible yet strongly discouraged, and is regarded as a last resort when marital life can no longer be sustained. Islam emphasizes that, prior to divorce, both spouses should strive to maintain harmony and peaceful cohabitation, since marriage constitutes one of the most sacred and enduring bonds. The dissolution of marriage may occur either through ṭalāq or through a divorce lawsuit. In Indonesia, divorce may only be finalized before the Religious Court, after the court has attempted reconciliation but failed. This study aims to analyze (1) the factors contributing to the failure of mediation in divorce cases at the Ambarawa Religious Court, and (2) the strategies employed by judges to address and mitigate mediation breakdowns in such cases. This research is a field-based study using an empirical juridical approach, examining how legal norms are applied in practice to individuals, groups, and legal institutions. Primary data were obtained from judges of the Ambarawa Religious Court, while secondary data consisted of interviews with two judges and relevant documentary sources, including Supreme Court Regulation No. 1 of 2016. Data were collected through interviews and document analysis. The findings indicate that mediation failures in divorce cases at the Ambarawa Religious Court are primarily driven by the parties' attitudes and strategic behavior such as unwillingness to communicate openly, a firm decision to divorce, and participation in mediation merely as a procedural formality to "win" the case often reinforced by third-party intervention, especially from parents. Judicial efforts to facilitate settlement are further constrained by heavy caseloads and the parties' strong determination to proceed with divorce. The article recommends enhancing mediation quality at the Ambarawa Religious Court through more intensive training for judges/mediators, early screening of internal and external conflict drivers, and expanded pre- and post-mediation counseling services to increase the prospects of reconciliation and reduce divorce rates.

**Keywords:** Judge's Strategy, Mediation Failure, Divorce, Perma No. 1 of 2016, Ambarawa Religious Court

## **Introduction**

Divorce is the severance of the bond between husband and wife, meaning the termination of the marriage so that the two are no longer husband and wife and no longer live together in one household. Separation and divorce cause problems for the children born of the marriage. Children also experience many changes in their lives after their parents' divorce. Most importantly, they have feelings, and these are rarely noticed by adults. Their parents may be very good parents but are too emotionally exhausted or distraught to be able to understand their children's needs around the time of separation.<sup>1</sup>

Divorce or talaq in Islamic law is, in principle, permitted but disliked by Allah, but it is the last resort when family life cannot be maintained. Islam teaches that before divorce, both parties should strive to live peacefully because the bond of marriage is the most sacred and strongest bond.<sup>2</sup> Divorce is the end of married life. Everyone hopes that their marriage will remain intact throughout their lives, but there are also many difficult marriages that must end in divorce.

In Islamic law, this is discussed in the Qur'an, Surah An-Nisa, Verse 35, which reads:

وَإِنْ خِفْتُمْ شِقَاقَ بَيْنَهُمَا فَابْعَثُوا حَكَمًا مِنْ أَهْلِهِ وَحَكَمًا مِنْ أَهْلِهَا إِنْ يُرِيدَا إِصْلَاحًا يُوْقِنُ اللَّهُ بَيْنَهُمَا

Meaning: "And if you fear a dispute between them, then send an arbitrator from his family and an arbitrator from her family. If the two arbitrators intend to make amends, Allah will grant success to the husband and wife. Verily, Allah is All-Knowing and All-Aware."<sup>3</sup>

The termination of marriage due to divorce can occur through talaq or based on a divorce suit (cerai gugat). Divorce can only be carried out before the Religious Court, after the Religious Court has attempted and failed to reconcile the two parties.<sup>4</sup>

In the Constitutional Court Regulation (PERMA) Number 1 of 2016, article 1 paragraph 2 states that:

"A mediator is a judge or other party who holds a mediator certificate as a neutral party who assists the parties in the negotiation process to find various possibilities for resolving disputes without resorting to decisive or coercive means of resolution."<sup>5</sup>

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<sup>1</sup> Ann Mitchell, 1991, *The Dilemma of Divorce*, Jakarta: Arcan Publishers. P. 71.

<sup>2</sup> Ahmad Rofiq, *Islamic Law in Indonesia*. Jakarta: PT. Raja Grafindo, 1st edition, 1995, p.

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<sup>3</sup> An-Nisa Verse: 35

<sup>4</sup> Mohd. Idris Ramulyo, *Islamic Marriage Law (An Analysis of Law No. 1 of 1974 and the Compilation of Islamic Law)*, (Jakarta Bumi Aksara, 1999), 2nd edition, p. 152

<sup>5</sup> PERMA No. 1 of 2016 Article 1 paragraph 2

A mediator is a third party who helps resolve disputes between parties without interfering in the decision-making process. Mediators also facilitate meetings between parties, conduct negotiations, offer alternative solutions and work with the parties to formulate a settlement agreement. Mediators are required to make a significant contribution so that their role can satisfy each of the disputing parties. The court itself has prepared and provided a space for parties in conflict to resolve their conflict without going through the judicial process, namely mediation. Mediation is an appropriate, effective, and peaceful alternative form of dispute resolution that can open up wider access for the parties to obtain a satisfactory and fair resolution.

One of the principles of the court is to provide a space for peace/reconciliation, so that at each hearing, the plaintiff and defendant are offered or asked by the judge, "*Why not just withdraw the lawsuit?*" This obligation is also regulated in the Religious Court Law, and it is also carried out by other courts, but the Ambarawa Religious Court does not stop there and does not only use this regulation. The Ambarawa Religious Court also accommodates the Badilag regulation on *voluntary mediation*.<sup>6</sup>

In the mediation process, the judge tries to convince and advise the parties to settle the case peacefully without prioritising the sectoral ego of each party. The judge tries to maximise the points of agreement for an amicable settlement for the parties that have been conveyed in the previous mediation.<sup>7</sup>

Research on divorce mediation in Indonesia's Religious Courts typically revolves around two broad concerns: the effectiveness of mediation as a policy instrument to curb divorce rates, and the competence of mediators (judges and non-judges) in managing high-conflict marital disputes. Within this landscape, the article "The Role of Judges in Addressing Failed Divorce Mediation: An Analysis Based on Supreme Court Regulation (PERMA) No. 1 of 2016 at the Ambarawa Religious Court" positions mediation failure as its central analytical entry point. It examines how the procedural mandate of PERMA No. 1/2016 operates in practice and how judges develop adaptive strategies when parties enter mediation with firm divorce intentions, limited openness, and third-party interference.

Hamzah, Ekawati, Hasmulyadi, and Amirullah<sup>8</sup> foreground the judge-mediator's role in divorce mediation, emphasizing functions, approaches, and

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<sup>6</sup> Badilag Regulation on Voluntary Mediation PERMA No. 1 of 2016 Article 33

<sup>7</sup> <https://badilag.mahkamahagung.go.id/> accessed on Saturday, 10 September 2022 at 10:35 AM WIB

<sup>8</sup> Hamzah, E., Hasmulyadi, H. and Amirullah, A., 2021. Peran Hakim Mediator Dalam Menangani Mediasi Perceraian Di Pengadilan Agama. *KALOSARA: Family Law Review*, 1(2), pp.277-307.

courtroom practices through which judge mediators facilitate dialogue and encourage settlement. Its contribution lies in clarifying the judge mediator's institutional authority and communication techniques, yet it tends to evaluate mediation primarily through the lens of mediator performance in general. The Ambarawa study complements this by shifting the focus to the moment of breakdown when mediation does not work—thereby assessing not only what mediators do, but also the structural and relational constraints that delimit judicial intervention, including case overload and entrenched party positions.

In contrast, Sunarsi, Yuherman, and Sumiyati <sup>9</sup>(2018) highlight the effectiveness of non-judge mediators in divorce disputes within Class IA Religious Courts on Java, bringing attention to professional expertise, perceived neutrality, and the prospect of improving mediation quality through external mediators. Compared to this institutional design question, the Ambarawa article remains more judge-centered, offering a micro-level account of the practical impediments that undermine settlement efforts in an environment where judges still dominate the mediation process and face systemic pressures that shape outcomes.

Taken together, the Ambarawa article can be read as a bridging contribution between these two strands. It integrates the normative framework of PERMA No. 1/2016 with an empirical diagnosis of why mediation fails and what judges can realistically do in response. While Hamzah et al. emphasize the capacities of judge mediators and Sunarsi et al. evaluate non-judge mediation effectiveness, this article adds a frequently under-specified dimension: the mechanisms of failure and operationally actionable corrective strategies (e.g., early screening of internal/external conflict drivers, strengthening party commitment and candor, and linking parties to pre- and post-mediation counseling). In doing so, it reframes mediation reform as a substantive effort to improve reconciliation prospects rather than a merely procedural compliance exercise.

Court judges have the authority to reconcile parties in a case, as stipulated in Law No. 7 of 1989 or Article 1851 of the Civil Code, which states that reconciliation may be carried out before a court decision is made. This is also applied by the Ambarawa Religious Court and other religious courts.<sup>10</sup> Based on the above background, the author is interested in examining and researching how judges reconcile and conduct additional mediation voluntarily. Therefore, the author conducted this research with the title Based on the background of the problem, two main research questions were formulated : 1) What are the factors causing the failure of mediation in divorce cases at the Ambarawa

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<sup>9</sup> Sunarsi, Dassy, Yuherman, and Sumiyati Sumiyati. "Efektifitas Peran Mediator Non Hakim Dalam Penyelesaian Perkara Perceraian Di Pengadilan Agama Kelas 1a Pulau Jawa." *Jurnal Hukum Media Bhakti* (2018).

<sup>10</sup> Article 1851 of the Civil Code

Religious Court? 2) What are the judges' strategies in finding solutions to the failure of mediation in divorce cases from the perspective of Perma No. 1 of 2016 at the Ambarawa Religious Court?

### **Research Method**

The type of research used in this study is *field research*, or qualitative research, which is a method for obtaining specific information, namely the perceptions, arguments and opinions of the research subjects themselves. In this study, the researcher used an empirical legal approach, which is research that investigates the application of law in reality to individuals, groups, communities and legal institutions in society, focusing on those individuals or groups in relation to the application or enforcement of the law.<sup>11</sup> This research was conducted at the Ambarawa Religious Court because there are many divorce cases in Semarang Regency, so the researcher felt that the Ambarawa Religious Court was the right place to conduct this research. There are two types of data sources in this study, namely primary data and secondary data. Primary data sources are data sources that provide data directly to researchers, either through other people or through documents.<sup>12</sup> Primary data is obtained by: Primary legal materials, which are people or individuals who provide data or information only to the extent of their knowledge, and researchers cannot direct their answers according to what the researchers want. Secondary legal materials, legal materials from books, magazines, journals, websites, and others related to the research problem, such as data needed in this study in accordance with the questions in the problem formulation, which is data on the factors behind the failure of mediation and the judge's strategy in providing solutions to the failure of mediation. The data collection procedure using interviews is a verbal question and answer session between two or more people. In this study, the author conducted interviews with informants, namely the Ambarawa Religious Court Judges. Mrs Siti Juwariyah, S.H.I., M.H. (Judge) Mr. Rashif Imany, S.H.I., M.S.I (Judge) and Mr. Burhannudin Iskak, S.Ag., S.H., M.H. Furthermore, documentation is a data collection technique by collecting documents related to the research problem. The documents used in this research are data from the Ambarawa Religious Court regarding the strategy of judges in finding solutions to failed mediation in divorce cases from the perspective of Perma No. 1 of 2016 (Study at the Ambarawa Religious Court), namely in the form of photographs documenting the success of mediation between the parties and the judge.

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<sup>11</sup> Soejono Soekanto, "Introduction to Legal Research", (Jakarta: University of Indonesia, 1986), p. 50.

<sup>12</sup> Hardani et al., *Qualitative and Quantitative Research Methods*, (Yogyakarta: March 2020), p. 121

## **Definition of Mediation**

Mediation is a process in which a person acts as a mediator to communicate between two parties in dispute so that their different views on the dispute can be understood and possibly reconciled. Mediation to achieve a peaceful agreement is a comprehensive solution, as the final outcome does not involve a win-lose principle. The mediation procedure offers many advantages for the parties involved. The time spent reduces costs, and from an emotional perspective, mediation can provide comfort to the parties as the points of agreement are made by the parties themselves according to their own wishes. Mediation has essentially existed for a long time, as mediation principles are commonly used in community dispute resolution systems. Mediation is a process of resolving disputes between parties with the assistance of a neutral and impartial third party (mediator). As a facilitator, the decision to reach an agreement is still made by the parties themselves.<sup>13</sup> Mediation is a peaceful process. The disputing parties submit the resolution to a mediator who achieves a fair outcome without incurring excessive costs, but one that is still valid and fully accepted. The disputing parties are voluntary.

Mediation In Supreme Court Regulation Number 1 of 2016, the definition of mediation, etymologically (linguistically), mediation comes from the Latin word "*mediare*", which means middle or centre, because the person mediating (mediator) must mediate between people in conflict. According to the Big Indonesian Dictionary, "mediation" means involving a third party as a consultant in the dispute resolution process.<sup>14</sup>

The legal basis for mediation is that peace in Islamic law is highly recommended. This is because, through peace, divisions that destroy friendship (family love) can be avoided, and hostility between the two parties in dispute can be ended. The legal basis for the affirmation of peace can be found in the Qur'an, Surah An-Nisa, Verse 35, which reads:

وَإِنْ خَفْتُمْ شِقَاقَ بَيْنَهُمَا فَأُنْبَثُوا حَكَمًا مِنْ أَهْلِهِ وَحَكَمًا مِنْ أَهْلِهِ إِنْ يُرِيدَا إِصْلَاحًا يُوَقِّقُ اللَّهُ بَيْنَهُمَا

Meaning: "And if you fear a dispute between them, then send an arbitrator from his family and an arbitrator from her family. If the two arbitrators intend to make amends, Allah will grant success to the husband and wife. Verily, Allah is All-Knowing and All-Aware."<sup>15</sup>

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<sup>13</sup> I Made Widnyana, Alternative Dispute Resolution (ADR), PT. Fikahati Aneska in collaboration with BANI (Indonesian National Arbitration Board), Jakarta, 2009, p. 111

<sup>14</sup> Compilation Team of the Centre for Language Development and Promotion, *Great Dictionary of the Indonesian Language*, (Jakarta: Balai Pustaka, 2000), p. 640.

<sup>15</sup> An-Nisa Verse 35

## **The Role of Mediation**

The success or failure of mediation also depends heavily on the role played by the mediator. Mediators play an active role, facilitating various meetings between the parties, leading and controlling the meetings, maintaining the continuity of the mediation process, and requiring the parties to reach an agreement. A mediator is a neutral third party who serves the interests of the disputing parties. Mediators must establish active interaction and communication so that they can explore the interests of the parties and try to offer alternatives to achieve them. In the process of guiding communication, mediators also guide both parties to discuss step by step the measures that can be taken by both parties to end the dispute. During the mediation process, mediators often find themselves playing multiple roles. These roles include:<sup>16</sup>

1. Fostering and maintaining trust between the parties.
2. Explaining the process and educating the parties on communication and strengthening a positive atmosphere.
3. Helping the parties involved to face the situation or reality.
4. Teaching the parties about the process and negotiation skills.
5. Assisting the parties in gathering important information and making choices to facilitate problem solving.

The role of mediator can be realised if the mediator has many skills. These skills are acquired through education, training, and extensive experience in conflict or dispute resolution. Mediators, as neutral parties, can play a role according to their abilities. Mediators can perform their roles from the weakest to the strongest. Some mediator roles fall under the weakest and strongest categories. These roles indicate that the mediator possesses a high level of competence and specialised knowledge (skills). The mediator has the weakest role in the mediation process, performing only the following tasks:<sup>17</sup>

1. Organising meetings.
2. Leading discussions.
3. Maintaining rules to ensure the negotiation process runs smoothly.
4. Controlling the emotions of the parties.
5. Encouraging parties who are less able or reluctant to express their views.

Although the mediator has played a strong role, during the mediation process, they may also do the following:<sup>18</sup>

1. Preparing and taking meeting minutes.
2. Developing common ground or agreements for both parties.

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<sup>16</sup> Syahrizal Abbas, *Mediation in the Perspective of Sharia Law*, p. 79

<sup>17</sup> *Ibid*, p. 83.

<sup>18</sup> *Ibid*, p. 86.

3. Helping the parties realise that a dispute is not a battle to be won, but a dispute to be resolved.
4. Developing and proposing alternative solutions to the problem.
5. Assist the parties in analysing alternative solutions to the problem.
6. Persuading the parties to accept certain recommendations in order to resolve the dispute.

The above roles must be well understood by those who will become mediators and judges who will become Inquisition mediators to resolve disputes. Mediators must do their best to ensure that the mediation process runs as smoothly as possible so that the parties are satisfied with the decisions they have made with the help of the mediator.

### **Functions of Mediation**

As an intermediary in the mediation process, mediators have their own specific functions. These functions are as follows:

- a. Improving communication weaknesses that often cause obstacles and psychological barriers between parties.
- b. Fostering an atmosphere conducive to fair negotiation.
- c. Indirectly educating the parties or providing insight into the process and substance of the ongoing negotiations.
- d. Identifying substantive issues and the interests of the parties.<sup>19</sup>

### **Purpose and Benefits of Mediation**

The purpose of mediation is to resolve disputes between parties. The parties involve a neutral and impartial third party. Mediation can lead the parties to reach a permanent and sustainable peaceful agreement, because dispute resolution through mediation places both parties in an equal position, with no winner or loser (mutually beneficial).<sup>20</sup> In mediation, the disputing parties are proactive and have full decision-making power. There is no intermediary with full decision-making power; rather, the mediator only helps the parties to maintain the mediation process in order to reach a peaceful agreement that is mutually beneficial to both sides.

Resolving disputes through mediation is considered to be very beneficial, because the parties have reached an agreement to end the dispute peacefully, fairly and mutually beneficially. Even if mediation fails, it is still beneficial because the parties are willing to meet during the mediation process, and at

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<sup>19</sup> D. Y. Witanto, *Mediation Procedure Law, In Civil Cases in the General Court and Religious Court According to Perma No.1 of 2008, Regarding Mediation Procedures* (Bandung: CV Alfabeta, 2011), p. 101

<sup>20</sup> Syahrizal Abbas, *Mediation in the Perspective of Sharia Law, Customary Law and National Law*, 1st edition (Jakarta: Kencana, 2009) p. 24.

least the source of the dispute has been identified and the dispute between them has been narrowed down. This shows that the parties want to resolve the dispute, but they have not found the right format that can be agreed upon by both sides.<sup>21</sup> Mediation is actually difficult to carry out, but that does not mean it is impossible, especially when it comes to internal conflicts. Siti Juwariyah, S.H.I., M.H., a judge at the Ambarawa Religious Court, implemented Voluntary Mediation at the Ambarawa Religious Court to reconcile the parties involved in the case. Voluntary Mediation was first implemented at the Ambarawa Religious Court in 2022, with the aim of reducing divorce rates by applying voluntary mediation within the court environment. This has yielded fairly good results compared to previous efforts.

### **Voluntary Mediation**

Voluntary Mediation is regulated in PERMA No. 1 of 2016 Article 33, which states that *voluntary mediation* is an ongoing process. Voluntary mediation can basically be carried out at all levels of the appeal and cassation processes (before the court decision). At the case examination stage, the examining judge continues to encourage voluntary mediation ( ) or seek reconciliation until the verdict is pronounced. Voluntary Mediation<sup>(22)</sup> Voluntary mediation has been carried out at the Ambarawa Religious Court in 2022 with the issuance of PERMA No. 1 of 2016 Article 33. The mediation that was carried out resulted in a settlement agreement, although it was not significant compared to the number of cases that failed in mediation, but the results of mediation cannot be said to be effective at the Ambarawa Religious Court. The principle that judges have an obligation to mediate between disputing parties is very much in line with the demands and requirements of Islamic moral teachings. Islam always commands that every dispute be resolved peacefully.

Mediation is a peaceful, appropriate and effective means of dispute resolution, and can open up broader channels for the parties to obtain a satisfactory and fair settlement. Through peace, the parties to the case can seek mutually beneficial solutions. This is because peace emphasises not only the legal aspects, but also how both parties can still obtain the maximum benefit from the options they agree upon. It is also evident here that peace and settlement actually place greater emphasis on humanity and the desire to help and share. There are no losers or winners, only those who win together. As stated in Article 1851 of the Civil Code, peace is an agreement whereby both parties surrender, promise or withhold an item, end a pending case or prevent a case from arising.<sup>23</sup>

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<sup>21</sup> *Ibid.* 25.

<sup>22</sup> PERMA No. 1 of 2016

<sup>23</sup> Article 1851 of the Civil Code

Before the judge conducts the trial, the judge needs to know how to seek peace between the disputing parties. Peace here means peace, in civil procedural law practice, namely an agreement recognised by both parties. The disputing parties end the case being resolved in court. Peace is achieved in accordance with Article 130 HIR/Article 154 RBg and Article 1851 of the Civil Code. In these articles, the judge has an obligation to reconcile the parties involved in the case in court before the judge examines the case. Article 1851 of the Civil Code explains that: Peace is an agreement whereby both parties surrender, promise or withhold an item, end a pending case or prevent a case from arising.<sup>24</sup> Then, in Article 130 HIR / Article 154 Rgb<sup>25</sup>

- a. If on the scheduled day both parties are present in court, the court, through the presiding judge, shall endeavour to reconcile the disputing parties.
- b. If reconciliation is achieved during the hearing, a reconciliation deed shall be drawn up, whereby both parties are obliged to implement the reconciliation agreement. This reconciliation deed is binding on the parties who draw it up and is enforced as a normal decision.

The Supreme Court of the Republic of Indonesia has also issued Supreme Court Regulation (Perma) Number 1 of 2014 concerning guidelines for the provision of legal services to underprivileged members of the public in court free of charge (pro bono). This Regulation of the Supreme Court of the Republic of Indonesia (Perma) is a follow-up to the provisions of Government Regulation of the Republic of Indonesia Number 42 of 2013 concerning the requirements and procedures for providing legal aid and distributing legal aid and the decree of the Minister of Law and Human Rights of the Republic of Indonesia Number: M.HH-03.HN.03.03 of 2013 concerning the Amount of Litigation and Non-Litigation Legal Aid Costs.<sup>26</sup>

### **Factors Causing the Failure of Mediation in Divorce Cases at the Ambarawa Religious Court**

The Ambarawa Religious Court has prepared and provided a space for parties in conflict to resolve their cases without going through the judicial process, namely through mediation. Essentially, a mediator is someone who has been trained and obtained a mediator certificate from an institution recognised by the Supreme Court. Thus, a mediator's competence can be demonstrated by the existence of a certificate. However, given that the

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<sup>24</sup> Article 1851 of the Civil Code

<sup>25</sup> Article 130 HIR / Article 154 Rgb

<sup>26</sup> Nurrun Jamaludin: *Legal Aid Institution Strategies*, *Al-Istinbath: Journal of Islamic Law*, Vol. 4, No. 1, 2019. P. 17.

number of accredited mediators is still far from what is expected, PERMA No. 1 of 2008 provides immunity based on Articles 9 (3) and 11 (6) If there are no judges who are not case examiners with certificates in the same court, then the examining judge in the case, with or without a certificate of appointment by the chief judge, must perform the function of mediator. Thus, all judges in the court can be assigned as court mediators<sup>27</sup> .

After the author interviewed the Judge of the Ambarawa Religious Court, Siti Juwariyah, S.H.I., M.H., it was found that there were two factors behind the failure of mediation. The first was an internal factor, namely the parties' failure to fully disclose the issues they were experiencing and their reluctance to explain their problems. This made it difficult for the judge to carry out the mediation process. In addition, there were time constraints on the day of the mediation, so it was necessary to conduct the mediation on a day when there were time constraints. The mediation process also took place at the Ambarawa Religious Court because there were many mediation cases still waiting in line. The mediation process is not particularly short because the prologue or discussion takes a long time, and both parties are given time to explain their problems during the mediation process<sup>28</sup> .

After both parties have expressed their problems to the judge, the judge then provides a solution, usually within 1-2 hours, as the function of the judge is to act as a neutral party with a certificate to assist the parties in the negotiation process in order to find various possibilities for resolving disputes without using decisive or coercive means. As much as possible, the mediator must be able to successfully complete the mediation. If the first stage of mediation fails, the next stage of mediation can be carried out again. On average, successful mediations (where the parties reach an agreement) involve several stages of mediation, not just one.

The second factor is external: the parties have agreed to divorce, but despite this, the mediator continues to encourage the parties to reconcile and withdraw their lawsuit. According to Rashif Imany, S.H.I., M.S.I., Judge at the Ambarawa Religious Court, the parties only carry out mediation as a formality, merely to seek victory rather than to resolve the case. Meanwhile, judges/mediators have a different mindset from the parties; judges remain neutral in assisting the negotiation process.<sup>29</sup>

The following is the data from the Recapitulation of Mediation for the period January-September 2022 at the Ambarawa Religious Court Class 1.B from several sources at the Ambarawa Religious Court, when the author

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<sup>27</sup> PERMA No. 1 of 2008

<sup>28</sup> Interview with Judge of the Ambarawa Religious Court, Siti Juwariyah, S.H.I., M.H. on 7 October 2022

<sup>29</sup> Interview with Judge of the Ambarawa Religious Court, Rashif Imany, S.H.I., M.S.I., on 7 October 2022

conducted field research. From this data, it can be seen that the number of cases that were successfully mediated and the number that failed to be mediated by the Ambarawa Religious Court. Of the 235 cases that underwent mediation, the success rate was very low, with only 45 cases successfully mediated by the Ambarawa Religious Court. The rest decided to divorce.

### **Recap of Mediation Results for the Period January-September 2022 Ambarawa Religious Court Class 1.B**

Previously, the case had undergone mediation by a judge at the Ambarawa Religious Court. The data shows that the failure rate of mediation increased every month. This was due to factors underlying the failure of mediation at the Ambarawa Religious Court, namely internal and external factors. Of course, one of the principles of the judge in attempting mediation is to reconcile the parties and lead them to a peaceful resolution before the case proceeds to trial. In the trial process, it is common for the judge to impose a default judgment against a party who fails to appear at the first hearing after being duly summoned, which will defeat the party who is absent during the trial process. If one of the parties does not attend the mediation process, it means that the party does not want to reconcile, as stated by the Judge of the Ambarawa Religious Court, Rashif Imany, S.H.I., M.S.I.<sup>30</sup> That the parties have agreed to divorce and cannot be reconciled by the judge. This is the reason why the parties insist on divorce and do not want to reconcile, thus hindering the efforts of the Ambarawa Religious Court judge to reconcile the two parties. If the judge encounters obstacles during the mediation process, such as one of the parties not attending the mediation, the Ambarawa Religious Court will usually summon the absent party again. If that party is still absent during the mediation process, then the mediation cannot be carried out and continued by the Religious Court judge, as in the case of a missing person. In addition to this, there are many obstacles encountered by the Ambarawa Religious Court judge when carrying out the mediation process. In fact, many divorce cases cannot be resolved through mediation because the mediation process in divorce cases seems forced, as the mediator must strongly unite people who want to divorce and prevent them from divorcing. The mediator's task is to restore them to their original state, as it involves feelings that make it difficult to return to the marriage relationship. It is difficult for the parties to engage in mediation because both parties have agreed to divorce and cannot be reconciled, as they believe divorce is the last resort to resolve their problems. However, mediators do not have the power to make decisions, and all decisions are in the hands of the parties, so the success or failure of mediation depends on the parties. In the mediation process, many

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<sup>30</sup> Interview with Judge Rashif Imany, S.H.I., M.S.I., of the Ambarawa Religious Court on 7 October 2022

No	Month	Successful	Unsuccessful	In Process	Number of Cases Mediated
1	January	7 Cases	21 Cases	4 Cases	32 Cases
2	February	5 Cases	17 Cases	5 Cases	27 Cases
3	March	11 Cases	26 Cases	4 Cases	41 Cases
4	April	-1	16 Cases	2 cases	18 Cases
5	May	3 Cases	6 Cases	1 case	10 Cases
6	June	4 Cases	17 Cases	6 Cases	27 Cases
7	July	6 Cases	16 Cases	10 cases	32 Cases
8	August	5 Cases	13 Cases	5 Cases	23 Cases
9	September	3 Cases	16 Cases	6 Cases	25 Cases
	Total	45 Cases	148 Cases		

parties do not comply with mediation rules, and often the parties do not follow the mediation process. The parties' reluctance to attend and meet with the other party results in the mediation process being unsuccessful. If the parties do not attend the mediation process twice in a row and are summoned properly, the mediation is declared unsuccessful. Both parties prioritise their personal interests over common interests, and it is difficult for both parties to reconcile due to their high pride.

### **Judges' Strategies in Finding Solutions to Mediation Failures in Divorce Cases: Perspectives from Perma No. 1 of 2016 at the Ambarawa Religious Court**

The judge of the Ambarawa Religious Court has a strategy for finding solutions to failed mediation in divorce cases from the perspective of Perma No. 1 of 2016, which was implemented in 2022. In order to promote peace between the parties and prevent the number of divorces from continuing to increase each month, the examining judge at the Ambarawa Religious Court requires the parties to undergo/carry out the mediation process in accordance with PERMA No. 1 of 2016. Mediation is a means of dispute resolution through a negotiation process with the assistance of a mediator/judge to bring the parties to an agreement. The judge examining the case then explains the mediation procedure to the parties involved in the case at the Ambarawa Religious Court.

The case review judge submitted a form regarding the mediation process to the parties involved in the case, which was then signed and included in the minutes of the trial. This was done so that they would understand the purpose of mediation at the Religious Court. During the first mediation process, the

judge hoped that the parties would be present and play an active role in the mediation. The parties must be open in expressing their problems so that the mediation process can run smoothly. This is so that the judge/mediator does not encounter difficulties during the mediation. Usually, the parties bring legal counsel to help them play an active role/encourage them to be open in front of the judge/mediator when explaining their cases/problems. According to a statement by the judge of the Ambarawa Religious Court, Siti Juwariyah, S.H.I., M.H., the judge's strategy in finding a solution to mediation failure is that mediators must be aware of themselves when conducting the mediation process. Not all mediators possess this awareness. If they are impatient in waiting for the parties to disclose their case or issue, the mediation process will fail (be unsuccessful). <sup>31</sup>

This awareness must be instilled in the soul of a mediator/judge to reconcile/reconcile the parties being mediated, so that the parties can reconcile and withdraw the lawsuit. Even though mediators are experienced and equipped with a great deal of knowledge in the mediation process, in reality, many mediators still fail to reconcile the parties in the mediation process. In addition to this awareness, mediators must continue to encourage and strive for the mediation to succeed peacefully.<sup>32</sup>

Furthermore, according to a statement by Religious Court Judge Rashif Imany, S.H.I., M.S.I., the mediation process certainly takes a very long time, but if during the mediation process the parties still want to end their marriage (divorce), the mediator continues to encourage the parties to reconcile<sup>33</sup>. According to a statement by the Ambarawa Religious Court Judge, Burhannudin Iskak, S.Ag., S.H., M.H., the judge, as a mediator/third party, always reminds the parties that the consequences of divorce will have a lasting impact, especially on the children. Furthermore, the parties are encouraged to reconsider their decision to divorce and try to analyse the consequences of the divorce and the need to find a new partner if they wish to remarry in the future.

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<sup>31</sup> Interview with Judge of the Ambarawa Religious Court, Siti Juwariyah, S.H.I., M.H. on 7 October 2022

<sup>32</sup> Interview with Judge of the Ambarawa Religious Court, Siti Juwariyah, S.H.I., M.H.

<sup>33</sup> Interview with Judge Rashif Imany, S.H.I., M.S.I., of the Ambarawa Religious Court, on 7 October 2022

(Documentation of Successful Mediation with the Parties with Case Number 1173/Pdt.G/2021/Pa.Amb. Mediator, Siti Juwariyah, S.H.I., M.H)



### **Analysis of Factors Causing the Failure of Mediation in Divorce Cases at the Ambarawa Religious Court**

Supreme Court Regulation No. 1 of 2016 concerning the procedures for mediation in court is an improvement on Supreme Court Regulation No. 2 of 2003 concerning mediation procedures in court. This improvement was made by the Supreme Court because PERMA No. 2 of 2003 encountered several problems, rendering its application in court ineffective. The Supreme Court issued PERMA No. 1 of 2016 with the aim of accelerating, reducing and facilitating the settlement of disputes and increasing opportunities for those seeking justice. Mediation is an effective means of resolving backlogs in the courts while maximising the dispute resolution function of the court, in addition to the trial process.<sup>34</sup>

PERMA No. 1 of 2016 was issued to provide certainty, order and smooth coordination between parties in resolving civil disputes. This can be achieved

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<sup>34</sup> PERMA No. 1 of 2008 on Mediation Procedures in Court

by improving the mediation process and incorporating it into the court process. Mediation features prominently in PERMA No. 1 of 2016 because the mediation process is an integral part of the court proceedings. Based on the author's research at the Ambarawa Religious Court, the factors behind the failure of mediation in divorce cases at the Ambarawa Religious Court are due to two main factors, namely internal and external factors. The judges' failure to fully disclose the cases of the parties concerned has created obstacles for the judges in carrying out the mediation process. In addition, time constraints also affect the mediation process carried out at the Ambarawa Religious Court, as there are many divorce/divorce by repudiation cases still waiting to undergo the mediation process. Another problem in the mediation process is that the parties have already agreed to divorce and cannot be reconciled. The parties' decision to divorce is final, while the judges continue to try to reconcile them. Although the parties themselves are the main obstacle to successful mediation, they are not open in communicating their problems to the judges. From the above statement, it can be said that cases that are successfully resolved through mediation are very rare, especially divorce cases, cases that involve emotional (non-material) issues and are difficult to reconcile, which are different from other material issues. In addition, judges must be adept at understanding the characters of the parties, but if the mediator does not have the patience to carry out mediation, it could lead to the failure of mediation, which would certainly increase the number of divorces.

Another problem judges face when conducting mediation is that the parties themselves only participate in mediation as a formality to seek victory, rather than to resolve the case. However, judges continue to negotiate (seek common ground) so that the parties can remain peaceful and harmonious. Both parties who are determined to divorce believe that litigation is the last resort for legal protection. Negotiations or deliberations that take place before filing a lawsuit in the Religious Court are considered to have failed to achieve the sense of justice desired by the parties. These factors contributing to the failure of mediation are often encountered by judges when conducting the mediation process in the Religious Court. Therefore, in divorce cases, the mediation process is said to be ineffective, because of the many divorce cases that come before the Ambarawa Religious Court, very few divorce cases are successfully mediated through the voluntary mediation process. As mentioned above, most of the factors that hinder the mediation process in divorce cases originate from the parties themselves, because according to them, divorce is the best option, making it difficult to reach a settlement through the mediation process.

In terms of mediation, the Ambarawa Religious Court has carried out mediation procedures in accordance with PERMA No. 1 of 2016. However, the success rate is still very low, as seen from the recapitulation of mediations

from January to September 2022, in which the Ambarawa Religious Court mediated 235 cases, successfully reconciling 45 cases and failing to mediate 148 cases. The success rate of divorce cases that have undergone mediation by the Ambarawa Religious Court is very low compared to divorce cases registered in court. Most divorce cases fail mediation or fail to reach a settlement agreement because the parties want to divorce and cannot reconcile, considering divorce to be the best option. If this continues, not only will the problem remain unsolved, but the number of cases awaiting resolution will increase, which will take a long time and incur high costs. Therefore, there are many obstacles in the mediation process, especially in divorce cases. Most of these factors originate from the parties themselves, one of which is that divorce is closely related to feelings and cannot be forced. The parties do not have the good faith to engage in mediation without being present during the mediation process, so they feel determined to divorce and cannot get back together. They trust and agree.

### **Analysis of the Strategy of the Ambarawa Religious Court Judge in Finding Solutions to Mediation Failures in Divorce Cases**

The Ambarawa Religious Court has accommodated the Badilag regulations on *voluntary mediation* as stipulated in PERMA No. 1 of 2016 Article 33 concerning Voluntary Settlement<sup>35</sup>. Voluntary mediation began to be implemented at the Ambarawa Religious Court in 2022. Of course, voluntary mediation differs from the previous form of mediation, which was mandatory mediation. The difference is that mandatory mediation is carried out (before the examination of the main case) and the mandatory mediation process must be carried out within 40 working days. The difference with voluntary mediation is that it is carried out at the stage of (examination of the main case) when the parties submit their replies/duplicates, or it can also be carried out during the evidence stage. The voluntary mediation process only takes two working weeks. Voluntary mediation is an ongoing process that can essentially be carried out at all levels of appeal and cassation (before the court decision). In addition, the Ambarawa Religious Court judges refer to PERMA No. 1 of 2016 Article 33 in the voluntary mediation process. In seeking peace between the conflicting parties, the Ambarawa Religious Court judge uses a new strategy to reduce the number of divorces that occur each year, namely through the voluntary mediation process. The previous strategy used by judges before implementing the new strategy to seek peace was *mandatory mediation*, which has been applied at the Ambarawa Religious Court since the enactment of PERMA No. 1 of 2016 to find a point of agreement for peace. The new strategy currently

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<sup>35</sup> PERMA No. 1 of 2016 Article 33 Voluntary Settlement

implemented at the Ambarawa Religious Court is the enforcement of voluntary mediation, whereby judges seek to find common ground between the parties so that both sides are more open in expressing their problems to the judge and apply a caucus system (i.e. meeting with one party without the other party being present). The judge uses caucuses if the parties are mediating in unfavourable/unconducive circumstances, in which case the judge separates the parties and holds meetings with them without the other party being present or on different days to bring them together. By holding caucuses, the parties are more willing to be open and are not embarrassed when discussing their cases, which makes it easier for the judge to process the settlement between the parties. In accordance with Article 14 letter e of PERMA No. 1 of 2016, concerning the procedures for mediation in Religious Courts. This *caucus* explains that the judge may hold a meeting with one party without the presence of the other party (*caucus*).<sup>36</sup> With the steps taken by the judge in conducting the caucus, the parties are often more willing to be open and disclose their case to the judge. Therefore, judges should strive to successfully resolve mediation cases. On average, successful mediation cases are those where the parties are given time to undergo multiple stages of mediation, not just a single session. According to Siti Juwariyah, S.H.I., M.H.I., the success rate of voluntary mediation at the Ambarawa Religious Court in 2022 was 20-25 cases that could be settled by the Ambarawa Religious Court. Voluntary mediation is a request by the parties/one of the parties to ask the judge for reconciliation/an offer by the judge to the parties to reconcile, after the parties' had previously attempted reconciliation through mandatory mediation but failed to reach a settlement. The judge accepted the parties' request to be reconciled through the voluntary mediation process implemented at the Ambarawa Religious Court in 2022. The average success rate of mandatory mediation from 2019 to 2022 was 40-60 cases successfully reconciled by the judge out of the total number of cases that underwent mandatory mediation, with the rest deciding to divorce. The success rate of mediation at the Ambarawa Religious Court can be compared to other Religious Courts, in that the Ambarawa Religious Court has been more successful than other Religious Courts in reconciling conflicting parties.

PERMA No. 1 of 2016 was issued to provide certainty, order and smoothness in the settlement process for all parties to resolve civil disputes through mediation. This can be achieved by improving the mediation process in Religious Courts. Mediation is very prominent in PERMA No. 1 of 2016, because the mediation process is an integral part of the court process. In PERMA No. 1 of 2016, Article 33 on Voluntary Settlement states the following:

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<sup>36</sup> PERMA No. 1 of 2016 Article 14 Letter E

- 1) At every stage of the case examination, the case review judge must continue his efforts to encourage or seek reconciliation until the time of the decision.
- 2) The parties, based on an agreement, may submit a request to the case review judge to conduct a settlement at the case examination stage.
- 3) After receiving the parties' request for settlement as referred to in paragraph (2), the presiding judge of the case examination panel shall immediately appoint one of the case examination judges to perform the function of mediator, giving priority to certified judges.
- 4) The case examining judge shall postpone the hearing for 14 (fourteen) days after the provisions referred to in paragraph (3).

Based on the provisions of Article 130 HIR/154 RBg jo.<sup>37</sup> Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Court, in the event that the parties are present on the appointed day of the hearing, the Case Examination Panel shall require the parties to seek reconciliation through voluntary mediation. In an effort to reconcile the parties, the Panel explains that the parties may select a Mediator registered in the list of mediators at Religious Court. Therefore, it is necessary to issue a decree ordering the parties to undergo voluntary mediation and appoint a Mediator as stated in the decree. And taking into account the provisions of Article 20 paragraph (5) of Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Court and other relevant regulations<sup>38</sup> .

The parties must submit a case summary to the mediator. Within a maximum of five working days after the parties have appointed an agreed mediator, each party may submit a case summary to the other party and the mediator. Within five working days after the parties have appointed an agreed mediator, each party may submit a case summary to the mediator and the appointed judge. The mediation process lasts for a maximum of 40 (forty) working days after the parties select a mediator or chief judge. In accordance with the agreement between the parties, the mediation period may be extended for a maximum of 14 (fourteen) working days after the 40 (forty) day period has ended<sup>39</sup> .

After the examining judge appoints another judge to be the mediator, the parties are then asked to go to the Religious Court's mediation room. This is to carry out the mediation process with the mediator appointed by the examining judge. The mediation period does not include the case review period. If necessary, with the consent of the parties, mediation can be

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<sup>37</sup> Article HIR/154 RGB

<sup>38</sup> PERMA No. 1 of 2016 Article 20 paragraph (5)

<sup>39</sup> <https://v2.pa-ambarawa.go.id/mediasi/> accessed on Tuesday, 25 October 2022 at 14:55 WIB

conducted remotely using communication tools. If the mediation results in a settlement agreement, the parties must, with the assistance of the mediator, make a written agreement that is signed by the parties and the mediator. Then, during the mediation process, if the parties are represented by lawyers, the parties must state their agreement in writing with the agreement reached. Before the parties sign the agreement, the mediator will review the terms of the settlement agreement to avoid agreements that are invalid, unenforceable or dangerous.

Both parties are required to appear before the judge on the day of the hearing when the decision to announce the settlement agreement begins. The parties may propose to the judge that a settlement agreement be strengthened in the form of a peace pact. If the parties do not want the settlement agreement to be strengthened in the form of a peace pact, then the settlement agreement must contain a cancellation clause and/or a *clause* stating that the case has been settled ( ).<sup>40</sup>

Conversely, the mediator also has the authority to declare the mediation unsuccessful for certain reasons. If one of the parties to the mediator or the parties or their legally appointed representatives fail to attend the mediation meeting at the agreed time for two consecutive mediation meetings or fail to attend two consecutive mediation meetings, the mediator is obliged to declare that the mediation has failed. The reason for this is after being summoned correctly.

If, after the mediation procedure has been carried out, the mediator understands that the dispute being mediated involves assets or interests that are not mentioned in the litigation and have a clear connection with another party, so that the other interested party cannot be one of the interested parties in the mediation. During mediation, the mediator may inform the parties and the examining judge that the case is not suitable for mediation on the grounds that the parties are incomplete.

The parties who agree to settle at the appeal/cassation/review level must submit this in writing to the head of the religious court hearing the case.<sup>41</sup> The head of the Religious Court shall immediately notify the head of the High Court (appeal cases) or the head of the Supreme Court (cassation and review cases) of the parties' desire to seek reconciliation. The appeal/cassation/review judge is obliged to postpone the review of the case within 14 working days after notification.

The parties may submit a written settlement agreement to the appeal/cassation/review panel through the Chief Justice of the Religious

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<sup>40</sup> <https://v2.pa-ambarawa.go.id/mediasi/> accessed on Tuesday, 25 October 2022 at 14:55 WIB

<sup>41</sup> PERMA No. 1 of 2016 Article 34 on Settlement at the Appeal, Cassation, and Review Levels

Court to be confirmed in a Settlement Agreement. The Settlement Deed shall be signed by the Panel of Appeal/Appeal/Review Judges no later than 30 working days after it is recorded in the Main Case Register. The second part of Article 34 of PERMA No. 1 of 2016, which contains provisions on the Settlement of Religious Court Cases <sup>(42)</sup> :

- 1) As long as the case has not been decided at the appeal, cassation, or review level, the parties may seek a settlement based on agreement.
- 2) If desired, the parties, through the Chief Justice, may submit a written settlement agreement to the judge reviewing the case at the appeal, cassation, or review level to be decided as a settlement agreement ( ) with a settlement deed, provided that it meets the provisions of Article 27(2).
- 3) The settlement agreement referred to in paragraph (2) must contain provisions that supersede any existing decisions.
- 4) The settlement deed shall be signed by the judge examining the case at the appeal, cassation, or review level within a maximum period of 30 (thirty) days from the receipt of the settlement agreement.
- 5) If the appeal, cassation, or review case files are not processed, the case files and settlement agreement shall be sent to the High Court or the Supreme Court.

The Ambarawa Religious Court judge continues to strive to provide the best possible outcome in reconciling the parties through a voluntary mediation process before the Religious Court decides the case in court. Various strategies are used by judges in conducting the mediation process, whether it be a divorce by repudiation or a divorce by lawsuit. The voluntary mediation stage is part of the process of adjudicating divorce cases in the Ambarawa Religious Court and other Religious Courts. Mediators must be neutral in assisting the parties to find the best agreement so that the parties are satisfied and benefit from the agreement. A win-win solution is a mindset that always strives to be mutually beneficial in every interaction between people. A win-win solution refers to a solution that benefits all parties and satisfies all parties. With a win-win solution, all parties are satisfied with the decision. The Religious Court is a court of first instance whose mandate and authority is to examine, adjudicate and settle cases of first instance between Muslims in the areas of marriage, inheritance, wills and gifts under Sharia law, as well as waqf and shadaqah, as stipulated in Article 49 of Law No. 50 of 2009 concerning Religious Courts<sup>43</sup> .

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<sup>42</sup> PERMA No. 1 of 2016 Article 34 on *Voluntary Settlement at the Appeal, Cassation, or Review Levels*.

<sup>43</sup> Article 49 of Law No. 50 of 2009 on Religious Courts.

Peace is a mutually beneficial problem-solving system for both parties. No one will feel defeated or lost because peace prioritises the principle of brotherhood, where selfishness or coercion will be lessened and thus benefit both parties. Feelings of mutual defeat, victory, and control over a contested project do not result in or return to a peaceful outcome based on the principle of brotherhood. The purpose of mediation is not only to end disputes, but also to foster sincerity and willingness among the parties and not to allow any party to feel frustrated. Therefore, the skills and expertise of mediators are very important in resolving disputes between parties. Therefore, if the mediation process is based on a peaceful agreement, it is seen as a faster and easier method of dispute resolution than litigation. If a case has been decided, the losing party will usually take legal action, appeal or set aside, so it can take years to resolve the case from review by the court of first instance to review by the High Court or Supreme Court. Conversely, if the case can be resolved through deliberation, then both parties will automatically accept the final outcome, as it is the result of their agreement and reflects the mutual wishes of both parties.

When a case is settled in a religious court, peaceful means must be pursued before going to trial. This is done to resolve the issue quickly and without delay. The principle that judges are obliged to mediate between the parties is very much in line with the demands and requirements of Islamic moral teachings. Islam always commands that every dispute and disagreement be resolved through reconciliation. Therefore, it is appropriate for Inquisition judges to carry out and perform the function of reconciliation. No matter how fair the punishment, it will be a better and fairer peaceful outcome. No matter how fair the punishment, it will be a better and fairer peaceful outcome.

For the losing party, it is impossible for both parties to win or lose, because litigation is characterised by winning and losing. Even if the judge's decision is fair, the losing party will still consider it unfair. However, the verdict will be considered fair by the winning party. In contrast, peace is the result of sincere reconciliation based on mutual recognition between the disputing parties, without the notion of winning or losing.

According to the author's research observations, disputes and arguments between parties are only due to minor issues. However, because husbands and wives do not resolve them immediately and do not seek rational solutions, they turn into arguments and disputes that continue and reach their peak. Therefore, if the mediator judge can determine the actual context of the dispute, it will be easier for the mediator to persuade and guide the parties to reconcile. The mediator tries to make both parties aware of the importance of peace and how difficult it is to divorce. The mediator also reminds them of their children and builds romantic nostalgia between

the parties. In this case, a peaceful agreement can be reached at the second or third mediator meeting after the caucus (a separate meeting not attended by the other party). After the parties agree to a peace agreement containing documents with the terms agreed upon by the parties to end the dispute, the peace efforts can be concluded with or without the assistance of one or more PERMA-based mediators.

Based on the description in the previous chapters, it can be understood that mediation can generally be defined as the resolution of disputes between parties through joint deliberation with a mediator. The mediator is neutral and does not make decisions or conclusions for the parties but supports the disputing parties. The mediator engages in dialogue with all parties in an atmosphere of openness, honesty and exchange of views to reach consensus. As for disputes between people, Allah's words explain peace, namely in Surah An-Nisa verse 35, which means:

Meaning: "And if you fear a dispute between them, then send an arbitrator from the man's family and an arbitrator from the woman's family. If the two arbitrators intend to bring about reconciliation, Allah will grant success to the husband and wife. Indeed, Allah is All-Knowing and All-Aware."<sup>44</sup>

This verse emphasises that whenever a dispute arises, we are commanded to send a third party (hakam) from the husband or wife to reconcile. In this case, the fiqh scholars agree that if the hakam (husband or wife mediator) does not agree, their decision cannot be enforced, and if the hakam decide to reconcile the couple again, the decision must be made without demanding anything in return. Behaviour of power. They. It should also be noted that mediation is very beneficial, especially when the legal aspects of the dispute are unclear, both parties to the dispute want to maintain good relations with each other, both parties wish to end the dispute, and of course there is good faith between the parties. However, mediation also tends to be difficult, especially if neither party is willing.

## **Conclusion**

From the results of the research conducted by the author entitled "Judges' Strategies in Finding Solutions to Mediation Failures in Divorce Cases from the Perspective of Perma No. 1 of 2016 (A Study at the Ambarawa Religious Court)," the author draws the following conclusions:

1. After the author conducted interviews with judges at the Ambarawa Religious Court. In order to obtain the information needed as the main data for this thesis, it can be seen that the

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<sup>44</sup> An-Nisa: 35

factors causing mediation failure at the Ambarawa Religious Court are due to two main factors, namely internal and external factors. Therefore, there has been an increase in divorce cases at the Ambarawa Religious Court that have failed to be mediated by mediators. This has led to an increase in the number of divorces compared to cases that have been successfully reconciled by the Ambarawa Religious Court judges. The parties themselves are not very open in revealing their problems to the mediator, making it difficult for the mediator to carry out the mediation process. In addition, the parties have already agreed to divorce, which means that they can no longer be reconciled. The time limit for the mediation process is also very short, and there are still many cases waiting to be mediated. Another problem is that the parties have different views on not participating in the mediation. Both the defendant and the plaintiff do not participate in the mediation, so the mediation is postponed and held again after the parties are summoned back to carry out the mediation process at the Religious Court. The parties only formally participated in the mediation process, seeking to win, and did not have the objective of resolving the case so that they could reconcile. However, both the defendant and the plaintiff remained determined to divorce. The involvement of a third party also greatly influenced the mediation process carried out by the mediator. The third party was usually the parents of the parties. They influenced the parties to continue with the divorce because there was no longer any compatibility between them.

2. Various strategies have been implemented by the Ambarawa Religious Court Judge in seeking a solution to the failure of mediation in divorce cases, one of which is through voluntary mediation, in accordance with PERMA No. 1 of 2016 Article 33 concerning Voluntary Peace. This means that the examining judge continues to encourage or attempt reconciliation until the Religious Court pronounces its verdict. The parties, based on an agreement, can submit a request to the case examining judge to conduct reconciliation at the case examination stage. The reference for the Ambarawa Religious Court judge in the process of conducting voluntary mediation is PERMA No. 1 of 2016 Article 33, which states that *voluntary mediation* is an ongoing process. 's voluntary mediation can basically be carried out at all levels of the appeal and cassation processes (before the court decision). According to the author, the mediation process is still ineffective because of the many divorce cases filed with the Ambarawa

Religious Court, very few divorce cases have been successfully mediated through the voluntary mediation process. As mentioned above, most of the factors that hinder the mediation process in divorce cases originate from the parties themselves, because according to them, divorce is the best option, making it difficult to reach a settlement through the mediation process.

The article recommends that the Ambarawa Religious Court strengthen divorce mediation by implementing early screening of parties' "readiness for mediation" and a structured case-triage and handling mechanism (including measures to manage third-party intervention), equipping judges/mediators with advanced training in communication and high-conflict mediation, and providing integrated counseling and referral services before and after mediation—alongside improved caseload management—so that parties' openness and incentives to reconcile increase and mediation is not treated merely as a procedural formality.

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