

## **The Rights of Mediation in Completing the Religion in the Religion Court**

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**Abstract:** This research conducted with the aim of 1) To study and analyze the nature of mediation in resolving divorce cases in the Religious Courts. 2) To describe and explain conflict resolution that has an impact on divorce in a religious court. 3) To find out, analyze, and find a suitable model of mediation in settlement of litigation cases in ecclesiastical courts. The research method used is normative research and empirical research. Normative research because this research is done by examining library materials or secondary data relating to mediation. However, this study also uses primary data that examines the implementation of mediation in three Religious Courts and the Makassar High Religious Court in the South Sulawesi region so that the research approach also uses empirical research.

**Keywords:** Mediation, Divorce Cases, Religious Court

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### **I. INTRODUCTION**

Mediation is one of the efforts to resolve disputes where the parties in dispute or dispute agree to present an independent third party to act as a mediator (mediator). Mediation as one of the processes for settling disputes outside the court, is currently used by the court as a dispute resolution process. The form of dispute resolution by mediation that is now practiced is integrated with the judicial process.<sup>1</sup>

As a method of peaceful resolution of disputes, mediation has a great opportunity to develop in Indonesia. With eastern traditions that are still rooted, the community prioritizes the continued establishment of friendly relations between families or relationships with business partners rather than momentary profits if a dispute arises. Resolving disputes in court may yield huge profits if you win, but the relationship can also be damaged. Saving face (face saving) or saving the good name of someone is an important thing that is sometimes more important in the process of dispute resolution in Eastern countries,<sup>2</sup> including Indonesia.

As the meaning implies, mediation means mediating. A mediator does not act as a judge who enforces his or her justice mind, nor does he draw binding conclusions, such as an arbitrator but rather empowers the parties to find the solution what they want. The mediator encourages and facilitates dialogue, helps the parties to clarify their needs and desires, prepares guidelines, assists the parties in rectifying differences of views and works for something that is acceptable to the parties in a binding settlement, if there is a match between the parties the disputes are then made a memorandum that makes the agreements that have been reached. This mediation is applied as part of the event in civil cases within the religious court and general representatives. For the religious justice environment itself, the presence of a mediator in a case does not seem to be considered a new thing. Legally formally Law No. 7 of 1989 concerning religious courts that has been amended by law number 3 of 2006 concerning religious courts has established the existence of judges in divorce cases whose existence is the same as mediators. Likewise normatively, mediators or law have been known from the beginning, both in particular divorce cases and civil cases or other forms of cases, have shown a positive

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<sup>1</sup>Mediation in the process of civil procedural law in terms of administration will reduce the pressure of cases in the court so that examination of cases can be done more qualified (because it is not rushed), effective, efficient and easy to control. see the statement of the Chairperson of the Supreme Court of the Republic of Indonesia in the Handover of the Chairperson of the Medan High Religion Court. (August 22, 2003), in Bagir Manan, "Peran Sosok Hakim Agama sebagai Mediator dan Pemutus Perkara serta kekakuan masyarakat terhadap Keberadaan lembaga Peradilan," p. 4.

<sup>2</sup>Syukur, Fatahillah A. *Mediasi Yudisial Di Indonesia: Peluang Dan Tantangan Dalam Memajukan Sistem Peradilan*. Bandung: CV. Mandar Maju, 2012, p. 4.

response from the religious court in implementing PERMA Number 1 of 2016 which was previously PERMA Number 1 of 2008 or the previous regulation, namely PERMA No. 2 of 2003 concerning mediation procedures in court. Implementation of good mediation and can provide peace is certainly very beneficial for the parties to the dispute or dispute, especially in divorce cases, because with the realization of this case the judiciary indirectly also helps in realizing the objectives of a marriage that is sure, *mawaddah*, *warohmah*, and eternal. . But these efforts need to be evaluated and corrected when the reality is that the divorce case in the religious court that is being tried is completed peacefully, in fact it causes prolonged conflict and breaks up with divorce. The phenomenon of divorce cases that always increases every year gives the impression that the peace efforts carried out at the Religious Courts are merely formalities. Because if peace efforts are carried out successfully, then at least reduce the number of divorces and conflicts that occur between the two parties.

## II. STATEMENT OF THE PROBLEM

1. What is the nature of mediation in the resolution of divorce cases in the Religious Courts?
2. How do you revolutionize conflicts that impact divorce in a religious court?
3. What is a good mediation model in divorce cases in religious courts?

## III. THEORETICAL FRAMEWORK

### A. Theoretical Basis

#### 1. Theory of *Islah*

In term, term *islah* can be interpreted as a commendable act in relation to human behavior.<sup>3</sup> Therefore, in Islamic terminology in general, *islah* can be interpreted as an activity that wants to bring a change from a bad state to a good state. In other words, good deeds versus bad deeds. Abd Salam states that the meaning of *shalaha* is to improve all his deeds and all his affairs.<sup>4</sup>

#### 2. Theory of *Maslahat*

In terminology, *maslahat* can be interpreted to take advantage and reject *mudarat* (danger) in order to maintain the aim of *syara'* (Islamic law). The aim of *syara'* 'which must be preserved is to preserve religion, soul, reason, descent and wealth. If someone does an activity that is essentially to maintain the five aspects of the aim of *sharia'* 'above, it is called *maslahat*. Besides that, to refuse all forms of harm (danger) related to the five objectives of the *Syariah*, it is also called *maslahat*.<sup>5</sup>

#### 3. Legal System Theory

When discussing the legal system in it there are always three elements of the legal system according to Lawrence M. Friedman. Before discussing more about the legal system theory according to Lawrence Friedman, it is better to know the opinion of Hans Kelsen about the legal system. Kelsen said that the legal system is a norm system.<sup>6</sup> Then Kelsen stressed that a norm system is said to be valid if it is obtained from a higher norm above it, which subsequently reaches the level where the norm cannot be obtained from another higher norm, this is called the basic norm.<sup>7</sup>

#### 4. Conflict Theory and Conflict Resolution

##### a. Definition of Conflict

According to Webster, the term "conflict" in the original language means a fight, war, or struggle in the form of physical confrontation between several parties. However, then the word conflict experienced an expansion of meaning which was initially limited to physical conditions now also touches the psychological aspects behind the physical confrontations that occur. Webster interpreted conflict as a perception of differences in interests (perceived divergence of interest).<sup>8</sup>

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<sup>3</sup>Donzel, E. van, B. Lewis, Ch. Pellat, and C. E. Bosworth, eds. *The Encyclopedia of Islam* Vol. 4. Leiden: E. J. Brill, 1990, p. 141.

<sup>4</sup>*Ibid.*

<sup>5</sup>Al-Ghazali. *Al Mustasfa Min Ilm Al Usul*. Beirut: Darul Kutub Al-Ilmiyah, 1980, p. 286.

<sup>6</sup>Kelsen, Hans. *Teori Umum Tentang Hukum Dan Negara*. Translated by Raisul Muttaqien. Bandung: Nusamedia & Nuansa, 2008, p.159.

<sup>7</sup>*Ibid.*, hlm. 161.

<sup>8</sup>Pruitt, Dean G., and Jeffrey Z. Rubin. *Teori Konflik Sosial*. Translated by Helly P. Soetjipto and Sri Mulyantini Soetjipto. Yogyakarta: Pustaka Pelajar, 2004, pp. 9 – 10.

Conflict is the interaction between parties who are interdependent and feel incompatible with each other. Interdependencies or interdependent circumstances play an important role in conflict, because conflict begins to establish a tendency to compete or cooperate in the pace of conflict interaction.<sup>9</sup>

## **b. The views of the figures about the conflict**

### **1) Lewis Coser's conflict theory**

As a functionalist figure, Lewis A. Coser argues that conflicts that occur in society not only show negative functions, but can also have positive impacts, such as strengthening the integrity of groups and so forth. Therefore, conflict can benefit the system concerned. For Coser, conflict is a form of interaction and does not need to be denied.<sup>10</sup>

### **2) Ralf Dahrendorf's Conflict Theory**

Ralf Dahrendorf uses the Marxian class struggle theory to construct class theory and class conflict in contemporary industrial society. Class does not mean the ownership of the means of production as Marx did but rather the possession of power which includes the legitimate right to control others.<sup>11</sup>

### **3) Karl Marx's Conflict Theory**

Karla Marx has a different view from functionalist figures such as Lewis Coser and Ralf Dahrendorf. According to Karl Marx, conflicts occur due to clashes between classes. Imbalance of classes in an economy based society. Greed and greed for the bourgeoisie who exploited the proletariat or lower middle class.

## **c. Definition of Conflict Resolution**

According to Morton Deutsch, conflict resolution is a collection of theories and investigations that are experimental in understanding the nature of conflict, researching strategies for the occurrence of conflict, then making resolution to conflict.<sup>12</sup>

## **d. Implementation of Conflict Resolution**

In life, conflict is something that cannot be avoided. When someone states their problem and looks for a solution, conflict becomes a valuable resource compared to a problem that must be resolved. As such, conflict resolution is a conceptual method and process used to help resolve conflicts peacefully.<sup>13</sup>

## **e. Conflict Resolution Theories**

### **1) Dialog**

According to William Isaacs (1999), there are four capacities that must be developed as a basis for behavior in a dialogue. First, delivery (voicing) with regard to speaking the truth in accordance with one's authority. The question that must be answered here is: what should be expressed? Second, listening (listening) in the sense here all must listen without rebutting what is said by the other party or interrupt, this reflects the answer to the question what is felt? Third, Respect (respecting) regarding the awareness and recognition of the integrity of the position of others which is very difficult to understand comprehensively, the question here is how can all this fit my point of view? Fourth, Suspending refers to "placing or holding" our assumptions, decisions and determinations. This involves the question: How can all this work.<sup>14</sup>

### **2) Negotiation**

According to Syahrizal Abbas negotiation is one of the dispute resolution strategies where the parties agree to resolve their problems through a process of deliberation and negotiation. In other words, negotiation is a structural process in which the disputing parties talk to one another about the issue being disputed in order to reach mutual agreement or agreement.<sup>15</sup>

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<sup>9</sup>Jamil, M. Mukhsin. *Mengelola Konflik Membangun Damai: Teori, Strategi Dan Implementasi Resolusi Konflik*. Semarang: Walisongo Mediation Center, 2007, p. 6.

<sup>10</sup>Wirawan, I. B. *Teori-Teori Sosial Dalam Tiga Paradigma: Fakta Sosial, Definisi Sosial, & Perilaku Sosial*. Jakarta: Kencana Prenada Media Group, 2012, p 82.

<sup>11</sup>Poloma, Margaret M. *Sosiologi Kontemporer*. Jakarta: PT. Raja Grafindo Persada, 2007, p. 145.

<sup>12</sup>Deutsch, Morton. *The Resolution of Conflict: Constructive and Destructive Processes*. New Haven: Yale University Press, 1977, p. 420.

<sup>13</sup>Forsyth, Donelson R. *An Introduction to Group Dynamics*. California: Brooks/Cole Publishing Company, 1982.

<sup>14</sup>Isaacs, William. *Dialogue and the Art of Thinking Together: A Pioneering Approach to Communicating in Business and in Life*. New York: Knopf Doubleday, 1999.

<sup>15</sup>Abbas, Syahrizal. *Mediasi: Dalam Hukum Syariah, Hukum Adat, Dan Hukum Nasional*. Jakarta: Kencana Prenada Media Group, 2012, pp. 9 – 10.

The purpose of the negotiations is to get a joint problem resolution by compromising the differences so that they get a win-win solution rather than a win-lose solution. Therefore, in the negotiation process both parties to the conflict are expected to be able to compromise well in order to achieve mutually beneficial goals.

### **3) Mediation**

Mediation is a process whereby the parties to the conflict with the assistance of a dispute resolution practitioner. The method of conflict resolution is by mediating between groups involved in conflict through the help of third parties. The mediator who acts as an intermediary is called the mediator who is in charge of explaining the process and helping both parties to resolve the conflict with the mediation stages that have been prepared.

### **4) Peace Building**

Definition of Peace building according to Johan Galtung is a strategy or effort that tries to restore the destructive state due to violence that occurs in conflict by building bridges of communication between parties involved in the conflict.<sup>16</sup>

## **5. Mediation Concept**

### **a. Definition of Mediation**

Etymologically, the term mediation comes from Latin, mediate which means to be in the middle. This meaning refers to the role shown by the third party as a mediator in carrying out their duties to mediate and resolve disputes between the parties. Being in the 'middle' also means that the mediator must be in a neutral and impartial position in resolving disputes. He must be able to safeguard the interests of the disputing parties fairly and equally, so as to foster trust (Trust) of the disputing parties.<sup>17</sup>

Gary Goodpaster provides a definition of mediation as a problem-solving negotiation process where external parties (impartial) cooperate with the parties to the dispute to help them obtain a satisfactory agreement.<sup>18</sup>

### **b. Objectives and Benefits of Mediation**

The main model of dispute resolution is the desire and good will of the parties in ending their dispute. This good will and good will sometimes require the assistance of a third party in its realization. Mediation is a form of dispute resolution involving a third party. Mediation can provide a number of advantages including:

- 1) Mediation is expected to resolve disputes quickly and relatively cheaply compared to bringing the dispute to court or to an arbitral institution.
- 2) Mediation will focus the parties' attention on their real interests and on their emotional or psychological needs, so that mediation is not only focused on their legal rights.
- 3) Mediation provides the opportunity for parties to participate directly and informally in resolving their disputes.
- 4) Mediation gives parties the ability to control the process and its results.
- 5) Mediation can change results, which in litigation and arbitration are difficult to predict, with certainty through consensus.
- 6) Mediation provides results that stand the test and will be able to create better mutual understanding between the parties to the dispute because they themselves decide.
- 7) Mediation is able to eliminate conflict or hostility that almost always accompanies any forceful decisions handed down by a judge in court or an arbitrator at an arbitral institution.<sup>19</sup>

### **c. Principles and Models of Mediation in Court**

In a variety of literature found a number of mediation principles. The basic principle (basic principle) is the philosophical foundation of the holding of mediation activities. This principle or philosophy is a framework that must be known by the mediator, so that in carrying out mediation does not come out of the philosophy behind the birth of the mediation institution. David Spencer and Michael Brogan refer to Ruth Carl's view of the five principles are the principle of confidentiality, voluntary principle, empowerment principle, neutrality principle, and the principle of a unique solution.<sup>20</sup>

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<sup>16</sup>Jamil, M. Mukhsin. 2007. *Op. Cit.*, p. 72.

<sup>17</sup>Abbas, Syahrizal. 2012. *Op. Cit.*, p. 2.

<sup>18</sup>Goodpaster, Gary. *Negosiasi Dan Mediasi: Sebuah Pedoman Negosiasi Dan Penyelesaian Sengketa Melalui Negosiasi*. Jakarta: ELIPS Project, 1993, p.201.

<sup>19</sup>Abbas, Syahrizal. 2012. *Op. Cit.*, pp. 25 – 26.

<sup>20</sup>*Ibid.*, pp. 29 – 30.

#### d. Mediation Process

The mediation process is divided into three stages, namely the pre-mediation stage, the stage of conducting mediation and the final stage of mediation.

In the pre-mediation stage, the mediator takes several steps including building confidence, contacting parties, exploring and providing initial mediation information, focusing on the future, coordinating the warring parties, being aware of cultural differences, determining who is present, determining the purpose of the meeting, time agreement and place and create a sense of security for both parties to meet and discuss their disputes.<sup>21</sup>

The stage of mediation is the stage where the parties in conflict have faced each other and started the mediation process. In this stage, there are a number of important steps, including introductory remarks by mediators, presentation and presentation of the parties' stories, sorting and clarifying issues, discussing and negotiating agreed issues, creating options, finding points of agreement and formulating decisions, recording and recounting decision and closing mediation.<sup>22</sup>

Final Stage of Mediation Results. This stage is the stage where the parties only carry out the results of the agreement, which they have put together in a written agreement. The parties carry out the agreement based on the commitments they have demonstrated during the mediation process.<sup>23</sup>

### B. Mediation in the Sharia System, Customary Law and National Law

#### 1. Mediation in the Sharia System

Mediation that aims to find a meeting point for peace in Islam is termed "*sulhu*". It can be seen from some of the arguments above about the position of *sulhu* in the matters which surround Muslim life so important. Even the scope of mediation in the above arguments seems broader than that conceived in PERMA No. 1 of 2008. In article 4 PERMA No. 1 of 2008 states that except for cases resolved through commercial court procedures, industrial relations courts, objections to the decisions of the Consumer Dispute Settlement Body, as well as objections to the decisions of the Business Competition Supervisory Commission, all civil disputes submitted to the court of first instance must first be resolved through peace with the assistance mediator.<sup>24</sup>

#### 2. Mediation in Customary Law

Customary law communities prioritize dispute resolution through deliberations, which aim to bring about peace in the community. The deliberation channel is the main route used by the customary law community to resolve disputes, because in the deliberations a peace agreement can be made that benefits both parties. The use of deliberations does not mean denying the dispute resolution process through customary justice. Dispute resolution either through deliberation or customary justice, is still dominated by consultation approach in resolving disputes, because deliberation is one of the philosophies and characteristics of indigenous and tribal peoples.<sup>25</sup>

#### 3. Mediation in National Law

Settlement of conflicts or disputes in society refers to the principle of "freedom" that benefits both parties. The parties can offer options for resolving disputes with intermediaries from community leaders.<sup>26</sup> The parties are not fixated on proving the wrong or right of their dispute, but rather they are considering resolving the problem for the future by accommodating their interests equally. this form of dispute resolution is often referred to as deliberation or consensus.

Deliberation and consensus is the philosophy of Indonesian society in every decision making, including dispute resolution. These deliberations and consensus have been recorded in Indonesian philosophy in the 4th precept, in the 1945 Constitution and other laws and regulations.

Mediation on the basis of deliberations towards a peace agreement, gets its own arrangements in a number of Dutch-Indonesian legal products and in Indonesian legal products now. Alternative arrangements for dispute resolution in the rule of law are very important, because Indonesia is a state of law. Mediation as an institution for dispute resolution can be carried out by a judge in a court or other party outside the court. As a result, mediation requires the rule of law in the existence of mediation.

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<sup>21</sup>*Ibid.*, p. 37, as quoted from Kraybill, Ronald S., Alice Frazer Evans, and Robert A. Evens. *Peace Skills: Panduan Mediator, Terampil Membangun Perdamaian*. Yogyakarta: PT. Kanisius, 2006, pp. 63 – 67.

<sup>22</sup>Abbas, Syahrizal. 2012. *Ibid.*, p. 44.

<sup>23</sup>*Ibid.*, p.54.

<sup>24</sup>Bashori, Imam Ali. "Mediasi Perspektif Hukum Islam (Studi PERMA No. 1 Tahun 2008 Tentang Prosedur Mediasi Di Pengadilan)." *Istinbath: Jurnal Hukum* 12, no. 2 (2015): p. 205.

<sup>25</sup>Abbas, Syahrizal. 2012. *Op. Cit.*, p. 248.

<sup>26</sup>The intended freedom is that the parties are more free to make a number of choices that can be offered in the dispute resolution process.

Dispute resolution outside the court follows the win-win principle. It is very different from the settlement of disputes in the court that adheres to the principle of win-lose. Thus, Law No.30 of 1999 has given impetus to the disputing parties to have good intentions in resolving the dispute.

The legal basis for holding mediation outside the court is regulated in Law No.30 of 1999 and Government Regulation No.54 of 2000. This law emphasizes the resolution of disputes outside the court by means of arbitration or alternative dispute resolution and regulates the extent of the institutions providing dispute settlement services. environment outside the court.

The process of conducting mediation outside the court in Law No. 30 of 1999 regulated in articles 20 to 24. While the process of conducting mediation in the provisions of article 20 of PP 54 of 2000 begins with the selection or appointment of mediators by the parties in the service provider institutions. On the basis of the appointment, the mediator can mediate as soon as possible to resolve the dispute peacefully.

The legal basis for implementing mediation in Indonesia includes:

- 1) Pancasila as the basic ideology of the Republic of Indonesia which has one of the deliberations to reach consensus
- 2) The 1945 Constitution is the constitution of the Indonesian State where the principle of deliberation to reach agreement on Articles in it
- 3) 3. HIR Article 130 and Rgg 154 have regulated the institution of peace. The judge must first reconcile the parties to the case before the case is examined
- 4) SEMA (Supreme Court circular) No.1 of 2002 concerning the empowerment of peace institutions in article 130 HIR / 154
- 5) PERMA (Supreme Court Regulation) No. 2 of 2003 concerning mediation procedures in court
- 6) PERMA (Supreme Court Regulation) No.1 of 2008.
- 7) PERMA (Supreme Court Regulation) No. 1 of 2016.

## **C. Principles of Marriage and Marriage Disconnect**

### **1. Principles of Marriage and Divorce**

In Article 1 of the Marriage Law of 1974 concerning Marriage the definition of Marriage which contained the objectives and basis of marriage contained in the formulation:

“Marriage is a spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on God Almighty. “

If we pay attention to the first part of the article, marriage is a physical bond between a man and a woman as husband and wife. But conflict between husband and wife can lead to divorce if it cannot be resolved properly.

The marriage law in article 38 and KHI in article 113 state that divorce is one of the reasons for marriage termination. Meanwhile, according to religious terms, divorce from the word “*ithlaq*”, meaning “let go or leave”. Divorce means breaking the bonds of marriage or dissolving marital relations.

Divorce can only take place if it is done in front of the court, either the husband because the husband has dropped the divorce (*thalaq*), or because the wife is suing for divorce or invoking divorce rights because *sighat taklik talak*. Even though in the teachings of Islam, divorce is considered valid if it is spoken immediately by the husband, but it must still be done before the court. The aim is to protect all rights and obligations arising as a result of the legal consequences of the divorce.<sup>27</sup> So Divorce is the breaking of the marriage ties between husband and wife with the court’s decision and there are enough reasons that between husband and wife will not be able to live in harmony again as husband and wife.<sup>28</sup>

### **2. Marriage Termination According to Marriage Law**

Effective implementation of the Marriage Law, i.e.

UU no. 1 of 1974 and PP No. 9 of 1975 dated October 1, 1975 means that the law of each religion and belief is valid as a positive law for marriage along with everything related to marriage, including divorce or termination of marriage. Therefore, “for Muslims there is no possibility of marriage by violating the laws of their own religion. Likewise for Christians, Hindus and Buddhists “.<sup>29</sup>

Specifically regarding marriage termination, Article 38 of Law No. 1 of 1974 states that “Marriage can be broken because: a. Death, b. Divorce, and c. By Court Decision. While Article 39 states that: “1. Divorce can only be done in front of a court session after the court concerned is trying and unsuccessful to reconcile the two

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<sup>27</sup>Susilo, Budi. *Prosedur Gugatan Cerai*. Yogyakarta: Pustaka Yustisia, 2007, p. 17.

<sup>28</sup>Soemiyati. *Hukum Perkawinan Islam Dan Undang-Undang Perkawinan (Undang-Undang No. 1 Tahun 1974 Tentang Perkawinan)*. Yogyakarta Liberty, 1982, p. 12.

<sup>29</sup>Dahlan, Dasrizal. *Putusnya Perkawinan Menurut Uu No. 1 Tahun 1974 Dan Hukum Perdata Barat (Bw): Tinjauan Hukum Islam*. Jakarta: Kartika Intan Lestari, 2003, p. 131.

parties. 2. To divorce there must be enough reasons. That between husband and wife cannot live in harmony as husband and wife. 3. Divorce procedures before the Court Hearing are regulated in the legislation itself.

Furthermore, to differentiate divorce listed in letter b article 38 of Law no. 1 of 1974 with divorce on the court's decision, explained by Government Regulation No. 9 of 1975, which is as follows:

"This Government Regulation uses the term" Divorce "to distinguish the definition of divorce meant by article 38 letter b from the meaning of divorce over the court's decision referred to in the article c. For the latter, the term "divorce suit",<sup>30</sup> with the explanation of this Government Regulation it is understandable that the divorce mentioned in letter b article 38 of the Marriage Law is "Divorce", ie divorce committed at the will of the husband to his wife. To obtain authentic proof of divorce, the *thalaq* needs to be submitted to the Court as well as to find out the possible reasons for it. Whereas divorce on the Court's decision as referred to in letter c article 38 means that the divorce is a lawsuit, that is the court decides the divorce decision against a husband and wife who have carried out his marriage on or based on the claim of one of the parties (husband and wife).<sup>31</sup>

### 3. Forms of Marriage Breakup

#### a. Death divorce

The definition of divorce and divorce can be found in the definition given by the Central Statistics Agency in the statistical term that is divorce can be interpreted as a break up of marriage because one party (husband or wife) dies leaving his partner. While divorced life can be interpreted as a break up of marriage in a state of husband and wife still alive for a reason.

#### b. Divorced

##### 1) *Thalaq*

*Thalaq* is a common form of divorce in Indonesia. As a result, as if the words of divorce have been considered the whole cause of divorce in Indonesia. According to article 117 KHI, divorce is a husband's pledge in front of the Religious Court which is the cause of marriage breaking up by saying the divorce pledge.

##### 2) *Taklik Talak*

*Talak taklik* means divorce which depends on certain events in accordance with the agreement. If a woman (woman) is worried that there will be a *nusyuz* on the part of her husband or an attitude of indifference or neglect of her obligations, then it is okay for both to enter into a true peace agreement (Al-quran 'surah IV verse 128).<sup>32</sup>

The requirements for the breaking up of the marriage relationship with divorce *taklik* are:

- a) Something happened that was promised, for example leaving his wife continuously for 6 months without giving news and not sending a living or physical maintenance.
- b) The wife is not happy (not willing) for the incident or events.
- c) The wife comes to the official or caretaker of the mosque.
- d) The wife pays *iwadh* as an affirmation of her displeasure with her husband's attitude towards the event.

##### 3) *Syiqaq*

According to the term *fiqh syiqaq*, it means a husband-wife dispute that is settled by two judges, one from the husband's side and one from the wife's side. The Word of God in verse An-Nisa verse 35 reads: "And if you are worried that there is a dispute between the two, then send a judge from a male family and a judge from a female family. If the two judges intend to make improvements, surely Allah gave *taufik* to the husband and wife. Verily, Allah is All-Knowing, All-Knowing."<sup>33</sup> "Divorce is a special cause, *syiqaq* is *ba'in*, meaning that between husband and wife can only return as husband and wife with a new marriage contract.

##### 4) *Fasakh*

*Fasakh* is the termination of the marriage relationship (at the request of one of the parties) because it met with a defect in the other party or felt cheated on things that were not known before the marriage took place. The existing marriage is legal with all its consequences and with the conviction of the Religious Court Judge the marriage relationship is dissolved. This means that the breaking up of the marriage relationship in the event that the other party feels cheated in the marriage advances the request to the Religious Court Judge.

<sup>30</sup>*Ibid.*, p. 133.

<sup>31</sup>The difference between divorce and divorce claims can be seen in Government Regulation No. 9 of 1975 concerning the Application of Law No. 1 of 1974 concerning Marriage in Article 14 to Article 36. Article 14 to Article 18 regulates divorce, while articles 20 to article 36 are related to divorce claims. (This can be understood by considering the explanation of Government Regulation No. 9 of 1975).

<sup>32</sup>"Al-Qur'an Dan Terjemahan." edited by Departemen Agama R. I. Jakarta: PT. Bumi Restu, 1975, p. 143.

<sup>33</sup>Soemiyati. 1982. *Op. Cit.*, p. 111 – 112.

**5) Khuluk**

*Khuluk* is also called a redemption divorce because of the ransom (iwadh money) by the wife of the husband as the redeemer / return of the dowry that the wife once received. According to Muhammad Talib, if a wife hates her husband because of her physicality, morality, religion, old age, weakness or something like that, and he is afraid of not exercising God's right to obey her husband, then he may do khulu against him by giving compensation to redeem himself.<sup>34</sup>

**6) Mubara'ah**

*Mubara'ah* means both husband and wife are free themselves, namely the husband frees himself from power as a husband while his wife frees herself also as a wife.

**7) Illa'**

*Illa'* is a husband who swears not to interfere in his wife within a certain period according to the husband's wishes.

**8) Zhihar**

*Zhihar* is a husband's oath that his wife is the same as his mother's back. *Zhihar* is as an institution that can be used as an excuse to break marital relations regulated in the Qur'an, *al-Mujaddalah*, which means women who sue.

**9) Li'an**

*Li'an* occurs when a husband accuses his wife of adultery even though he does not have enough witnesses except himself. *Li'an* is listed in Article 126 KHI.

**10) Fahisyah**

*Fahisah* according to *Al-qu'an* Surah An-Nisa (4): 15 is a woman who commits a heinous or bad act that embarrasses the family, such as a pervert, homosexual, lesbian, and the like. If such an event occurs, the husband can act to bring 4 (four) fair male witnesses who testify about the act, if proven correct, then lock the woman in the house until she dies.<sup>35</sup>

**11) Murtad**

*Murtad* means to leave Islam. If between husband or wife out of religion then their marriage relationship is terminated. The legal basis is taken from the Qur'an from the Surah Al-Baqarah verse 221 which prohibits marrying both men and women and vice versa women with men of different religions. In addition, in Surah Al Baqarah verse 229 can also be used, because one party cannot carry out the laws of God, namely Al Quranul Karim. However, sometimes this institution of apostasy is often misused, because it wants to facilitate the divorce of one of the parties declaring himself an apostate.<sup>36</sup>

**12) Mafqud**

*Mafqud* means a husband who leaves the family residence without a valid reason and is not known to exist whether he is still alive or has died. The period of time a wife waits for her husband is 4 years. If it has been 4 years and there has been no news from her husband then he can ask the judge to give *Fasakh*.

**D. The Authority of the Judiciary in the Marriage Disconnect**

Religious Courts, as one of the Special Judiciary institutions, are institutions that have duties and functions in resolving disputes that arise among people who are Muslim. In article 49 of Law No. 7 of 1989 jo. UU no. 3 of 2006 jo. UU no. 50 of 2009 concerning Religious Courts explained that the Religious Courts have authority over issues relating to marriage, inheritance, waqf, shadaqah, wills, grants, and disputes in the field of Sharia Economics.

The powers of the Court are regulated in Chapter III articles 49 to article 53 of Law no. 7 of 1989, and in the provisions of article 49 stated:

1. The Religious Courts have the duty and authority to examine, decide upon and settle cases at the first level among people who are Muslim in the fields of: a. Marriage; b. Inheritance, wills, and grants, which are carried out based on Islamic law; c. Waqf and Sadaqah.
2. Field of marriage as referred to in paragraph (1) letter a are matters regulated in or under the law concerning marriage in force.
3. The field of inheritance as referred to in paragraph (1) letter b is the determination of the inheritance, the determination of the portion of each heir, and carrying out the distribution of the inheritance.

<sup>34</sup>Thalib, Muhammad. *Manajemen Keluarga Sakinah*. Yogyakarta: Pro-U Media, 2007, p. 261.

<sup>35</sup>Ramulyo, Mohd. Idris. *Hukum Perkawinan Islam: Suatu Analisis Dari Undang-Undang No. 1 Tahun 1974 Dan Kompilasi Hukum Islam*. Jakarta: Bumi Aksara, 1996, p. 140.

<sup>36</sup>*Ibid.*, p. 147.



#### IV. DISCUSSION

##### A. The Nature of Mediation in Settling Divorce Cases

###### 1. Justice

Mediated dispute resolution aims to bring about justice, not only for the parties but for the entire community. In the settlement of family disputes or divorce cases, the husband and wife first make peace in mediation.

In PERMA No.1 of 2016 it is said that mediation is an instrument to increase public access to justice that is fast, simple and inexpensive. Mediation is one of the peaceful settlement of disputes in obtaining justice.

If there is no peace in mediation and feel the verdicts produced in the first instance court are not yet fair, both divorce and general civil cases, the case review process will proceed to the appeal level. In divorce cases where the parties are sometimes determined not to take the path of mediation. The disputing parties prefer to remain divorced, and there are also those who take the path of mediation but do not accept the judge's decision so that it continues to the Appeal level, because they feel dissatisfied with the decision of the judge at the first level, while the divorce divorce case report and divorce proceeding to the next level appeal in Makassar High Court of Religion in 2018.

**Table 1:** Number of Divorce cases in the 2018 High Religious Court appeal

No	Religious Court	Divorce	Divorced	Total
1	Makassar	15	5	20
2	Maros	1	-	1
3	Pangkep	2	-	2
4	Barru	2	1	3
5	Sungguminasa	2	3	5
6	Takalar	-	-	-
7	Jeneponto	1	-	1
8	Bantaeng	-	2	2
9	Bulukumba	1	3	4
10	Selayar	-	-	-
11	Sinjai	1	2	3
12	Watampone	1	2	3
13	Pare-Pare	1	1	2
14	Watangsoppeng	-	-	-
15	Sidrap	1	2	3
16	Pindrang	-	3	3
17	Sengkang	1	5	6
18	Polewali	-	1	1
19	Majene	-	-	-
20	Mamuju	1	1	1
21	Enrekang	1	2	3
22	Palopo	3	1	4
23	Makale	-	-	-
24	Masamba	-	2	2
	<b>Total</b>	<b>33</b>	<b>36</b>	<b>69</b>

Data Source: processed from primary data 2018

From the table above illustrates the settlement of divorce cases in the Makassar High Court of Religion in 2008 in various regions of South Sulawesi, the highest appeal was the Makassar Religious Court for 20 divorce cases, then followed from the Sengkang religious court 6 divorce cases then Sungguminasa Religious Court 5 divorce cases. Amir Rasak, the High Judge of the Makassar High Court of Religion (interview, 26 February 2019) that the average divorce case continued to appeal was divorce case followed by sharing of shared assets and childcare. Basically they continued to the level of appeal because they felt the decision in the first instance court was unfair according to one party. In order to get justice, the parties proceed to the level of appeal.

As for the divorce case which continues to the level of appeal every year in the Makassar High Court of Religion.

**Table 2:** Divorce Case Continues to Appeal in 2016-2018 in Makassar High Court of Religion

No	Years	Divorce	Divorced	Total
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1	2016	43	49	92
2	2017	34	41	75
3	2018	34	38	72

Data Source: processed from primary data 2018

Seeing divorce cases received at the appellate level has decreased each year, even though the decline is only a few percent. In 2016, divorce to the appeal level of 43 cases and divorce with 49 cases. In 2017 divorce at the appeal level decreased to 34 cases while divorce was 41 cases. In 2018 Divorce to the level of appeal 34 cases and divorce 38 cases. The authors conclude that the mediation efforts carried out in the first level of religious courts as much as possible to provide the best solution for the realization of justice for the severe parties.

## 2. Peace

The number of divorces received, terminated and successfully mediated in three religious courts in South Sulawesi in the last three years, namely: Watampone Religious Court, Palopo Religious Court and Makassar Religious Court as follows:

Table 3: Number of divorce cases received by the Religious Courts and successfully mediated in 2016-2018

No	City	Years	Divorce cases received by the Religious Court	Divorce case decided by the Religious Court	Successfully mediated
1	Watampone Religious Court	2016	1273	1136	2
		2017	1227	1133	1
		2018	1394	1255	4
2	Palopo Religious Court	2015	648	582	-
		2016	695	543	1
		2017	683	657	1
3	Makassar Religious Court	2016	2423	1928	20
		2017	2357	2007	3
		2018	2708	2137	17

Data Source: processed from primary data 2018

The table above illustrates that divorce cases dropped by the religious court in the last three years have increased from the previous year but only a small portion of them have been mediated. This is not due to the lack of maximizing the mediation procedure in accordance with the Indonesian Supreme Court Regulation on Mediation Procedures, but the factor that most influences the success of mediation in the Court is the peaceful engagement of the parties themselves. These are the things that cause the mediation process to be said to succeed / fail to resolve the case through the peaceful path with the mediation process.

For the judges of the Religious Courts it is appropriate to realize and carry out the reconciling function. Because after all the fairness of the decision, but it will be better and more just the result of peace, because in a decision there must be a party that is defeated and won. It is not possible for both parties to be either won or equally defeated, because the litigation characteristic is winning or losing. Because the results of a sincere peace based on mutual awareness of the parties to the dispute, free from the qualifications of win and lose, they both win and win together (win-win solution),<sup>37</sup> so that the two sides recovered in an atmosphere of brotherhood, not burdened by a prolonged grudge.

## 3. Coalesce

In a husband and wife relationship can not be separated from conflict that can have an impact on divorce. if the conflict continues and does not find a solution that ultimately hurts each other, then decides to divorce. In terms of divorce, there are two kinds of divorce, namely (a) divorce by husband to wife and (b) divorce by wife to husband.

Judging from the intensity of the tendency of men and women to be involved in a circle of household conflict, women are more vulnerable to conflict. According to Eva and Basti (2008), this is because women when they are married are able to surrender totally to their partners. This is what drives them to orient all their

<sup>37</sup>Harahap, M. Yahya. *Kedudukan Kewenangan Dan Hukum Acara Peradilan Agama*. Jakarta: PT. Garuda Metropolitan Press, 1993, p. 65.

attention in maintaining and sustaining household life. The impact of women is more easily dominated by prejudices and feelings of suspicion and in the end triggers conflict with the husband.<sup>38</sup>

Gunarsa and Gunarsastate that a woman's personality is an integrated whole between aspects of emotionality, ratio and mood. The integrated unity has strong ties so that sometimes it masters aspects of women's thinking. This resulted in women as if thinking by including their feelings and moods. Or in other words thoughts, feelings and abilities that are closely related to each other, causing women to quickly take action on the basis of their emotions.<sup>39</sup> This is one of the reasons there are more divorces than divorce divorces. The following are the number of divorce divorce and divorce claims in religious courts in the last three years in three cities in South Sulawesi as follows:

**Table 4:** Number of divorce and divorced claims in the Palopo Religious Court, Watampone Religious Court, and Makassar Religious Service 2016-2018

No	City	Years	Number of divorce in the Religious Court	Number of divorced in the Religious Court
1	Watampone Religious Court	2016	309	964
		2017	349	878
		2018	285	1109
2	Palopo Religious Court	2015	183	465
		2016	225	470
		2017	199	484
3	Makassar Religious Court	2016	623	1800
		2017	628	1729
		2018	716	1992

Data Source: processed from primary data 2018

Based on the table above, illustrating the huge number of divorce cases in several religious courts in South Sulawesi every year, most of the reasons the wife filed for divorce because many experienced disharmony in domestic life. Whereas divorce divorce cases submitted by the husband are fewer than divorce claims.

In divorce cases such as divorced and divorce, the judge is obliged to reconcile the two parties to the litigation at each trial (Article 56 paragraph 2, 65, 82, 83 of Law No. 7 of 1989. With regard to the implementation of PERMA number 1 of 2016, the parties litigating, both in the case of divorce and divorce divorce, in the first trial, the judge tried to make a peaceful effort and obliged the parties to carry out a mediation process, because if they did not undergo the mediation procedure, then based on this regulation, it was a violation of the provisions of Article 130 HIR and / or Article 154 Rbg which results in a null and void verdict (article 2) paragraph 3. And further if both parties present at the hearing are continued with the mediation of Perma N.1.1 2016.

## B. Conflict Resolution in Divorce Cases

### 1. Conflict Resolution Through Mediation

The implementation of marital conflict resolution through mediation in divorce cases in the Religious Courts is based on existing legal norms namely the Republic of Indonesia Supreme Court Regulation Number 1 Year 2008 and has been revised with Perma Number 1 Year 2016. Since the issuance of the Supreme Court Regulation Number 2 Year 2003 until Perma Number 1 Year 2008 and Perma Number 1 of 2016 concerning Mediation Procedures in the Religious Courts have implications for the composition of the proceedings in the Religious Court. There was the addition of a section called mediation, where this addition occurred after the opening of the first trial. This change applies to all authorities held by religious courts, including divorce cases.

Broadly speaking, there are two types of mediators namely mediators from within the court and mediators from outside the court. The mediator from the court other than the mediator judge who can be the mediator in article 1 paragraph 13 Perma No.1 of 2016, namely: Registrar, secretary, substitute registrar, bailiff, substitute bailiff, prospective judge and other employees. While mediators from outside the court are certified mediators from the non-judiciary and not from among court officials. In Perma No.1 Tahun 2016 one of the articles that contains mediators from outside the court is article 8 paragraph 2, namely "the service costs of non-judicial mediators and not court employees are jointly borne or based on the agreement of the parties".

Non-judicial mediators are almost not used in the religious court where the author examines because the mediator is preferably from within the religious court itself, which is not charged with the mediator's service

<sup>38</sup>Puspita, Eva Meizara, and Basti. "Konflik Perkawinan Dan Model Penyelesaian Konflik Pada Pasangan Suami Istri." *Jurnal Ilmiah Psikologi Gunadarma* 2, no. 1 (2008): p. 44.

<sup>39</sup>Gunarsa, Y. Singgih D., and Singgih D. Gunarsa. *Psikologi Untuk Muda-Mudi*. Jakarta: BPK Gunung Mulia, 1988.

costs different from mediators from outside the court being charged with the mediator's service fees. The number of judge mediators from various scope of the Religious Courts in South Sulawesi, namely Palopo Religious Court, Watampone Religious Court, and Makassar Religious Court as follows:

**Table 5:** Number of mediating judges at the Palopo Religious Court, Watampone Religious Court, Makassar Religious Court

No	Regency/ city	Number of judge mediators
1	Palopo	4 people
2	Watampone	22 people
3	Makassar	8 people

**Data Source:** processed from primary data 2018

The table above illustrates that the number of mediator judges is still very low when compared to cases received by the Religious Courts so that the success rate in conducting mediation as illustrated in table 1 is still very small. To maximize success, according to the author, it is necessary to add mediators who have the skills in completing cases according to their fields. Shafar Arfah Young Registrar of the Makassar Religious Court (interview, 24 January 2019). Said that one of the causes that influenced the level of mediation success was very minimal, namely the limited mediator in mediating. For example, the Makassar Religious Court has 8 mediator judges who mediate and also conduct trials. According to him, using an outside mediator who has expertise in his field can help the judiciary in increasing the success of mediation.

## 2. Conflict Resolution through the Local Wisdom Approach

Local wisdom can be understood as a human effort that uses its logic in acting and behaving towards something, object, or event that occurs in a particular space. Local wisdom is explicit knowledge that arises from a long period that has evolved together with the community and its environment in a local system that has been experienced together (Tiezzi, 2011).<sup>40</sup> Whereas S. Swarsi Geriya said that conceptually local wisdom and local excellence were human wisdom that relied on philosophical values, ethics, ways and traditionally institutionalized behavior.<sup>41</sup> Local wisdom is formed as a cultural superiority of the local community and geographical conditions in a broad sense, as a cultural product of the past that should be used as a hold on life continuously. Substantially, local wisdom is the values that apply in a society. Values that are believed to be true and become a reference in the daily behavior of the local community. This means that local wisdom contains elements of creative intelligence and local knowledge of the individuals who are in it.

## 3. Conflict Resolution through the Islamic Religious Approach

Resolving conflict can be done with an Islamic approach known as *ishlah*. The word *ishlah* has now become a standard term in Indonesian, namely *ishlah* which means peace or resolution of a dispute.<sup>42</sup>

The *ishlah* application can be used as a conflict resolution transition both outside the court and in the court. In Indonesian justice, especially general justice and religious justice, *ishlah* has been used by using the concept of mediation as a dispute resolution that in principle contains similarities to *ishlah*, whose implementation is integrated with the court proceedings.<sup>43</sup>

Thus, considering the criteria of *mushlih* and *Islah* techniques is the most likely basis for achieving the word peace in the process of resolving conflicts that occur in society, especially family or husband and wife conflicts.

## C. Mediation Models in Divorce Cases

### 1. Settlement Mediation

<sup>40</sup>Tiezzi, E., N. Marchettini, and M. Rosini. "Extending the Environmental Wisdom Beyond the Local Scenario: Eco-Dynamic Analysis and the Learning Community." *Ecosystems and Sustainable Development IV* 1 (2003): 349 – 356.

<sup>41</sup>"Menggali Kearifan Lokal untuk Ajeg Bali." 2003. www.balipos.co.id, accessed on September 23, 2018.

<sup>42</sup>"Kamus Besar Bahasa Indonesia: Pusat Bahasa." edited by Departemen Pendidikan Nasional. Jakarta: PT. Gramedia Pustaka Utama, 2008, p.565.

<sup>43</sup>Based on some of the results of existing research, the level of success of the court as a mediating space to resolve conflicts and household disputes is still minimal. The success rate of District Courts in mediation reached 3% during the 2003-2007 period. While the success rate of the Religious Courts in mediation reached 12% during the 2008-2010 period, especially in the Religious Courts in the West Java region. Look at Salamah, Yayah Yarotul. "Mediasi Dalam Proses Beracara Di Pengadilan: Studi Mengenai Mediasi Di Pengadilan Negeri Proyek Percontohan Mahkamah Agung RI." Disertasi, Universitas Indonesia, 2009, pp. 31 – 32.

Settlement mediation known as compromise mediation is mediation whose main purpose is to encourage the realization of compromise from the demands of both parties who are in conflict. In mediating this model the desired type of mediator is the high status, even though they are not very skilled in mediation processes and techniques. The role played by the mediator is to determine the “bottom lines” of the disputant and persuasively encourage the two warring parties to jointly lower their positions to the point of compromise.

This mediation model is used when the parties’ conflict is difficult to find a common ground because no one wants to budge so that the mediator determines the bottom lines of disputant. In the case of husband and wife conflicts the mediator judge can bring community leaders or traditional leaders or religious leaders who have an important role in regulating community life, which is heard and respected by both parties in resolving disputes that occur between the husband and wife.

## 2. Facilitative Mediation

Facilitative mediation, also referred to as interest-based mediation and problem solving that aims to prevent disputing parties from their positions and negotiate the needs and interests of the parties from their legal rights in a rigid manner. In this model the mediator must be an expert in the mediation process and master the mediation techniques, even though mastery of the material about the issues in dispute is not very important. The mediator must be able to lead the mediation process and seek constructive dialogue between the parties to the dispute, as well as step up negotiation and agreement efforts.

## 3. Evaluative Mediation

Evaluative mediation, known as normative mediation. It is a mediation model that aims to seek agreement based on the legal rights of the parties to the dispute in the area anticipated by the court. The role that can be carried out by the mediator in this case is to provide information and advice as well as persuasion to the disputants and provide predictions about the results to be obtained.

## 4. Transformative Mediation

Transformative mediation, known as therapeutic mediation and reconciliation. This mediation model emphasizes finding the underlying causes of problems among the parties to the dispute, with consideration to improve the relationship between them through recognition and empowerment as a basis for conflict resolution of existing disputes.

After several years of entry into force PERMA No.1 of 2016 concerning the Judicial Mediation Process, the success rate of mediation especially in the scope of Religious Inquiry in South Sulawesi is still very low. We can see this in the settlement of the case shown in the table that was successfully mediated in the Makassar Religious Court for the past three years as follows:

**Table 6:** Number of divorce cases successfully mediated in the Makassar Religious Court

No	Year	Mediated case	Successfully mediated	Percentage of success (%)
1	2016	744	20	2,6
2	2017	481	3	0,6
3	2018	532	17	3,1

**Data Source:** processed from primary data 2018

The table illustrates that cases which were successfully mediated at the Makassar Religious Court were still lacking. Researchers took the Makassar Religious Court sample because it was the highest number of mediation successes among the Religious Courts in South Sulawesi. In 2016, only 2.6% of 744 cases were mediated, in 2017 only 0.6% of mediated cases were successful in 481 cases and in 2018 cases mediated by 3.1% of the 532 mediated cases. This means that most cases that enter the Religious Court cannot be reconciled at the mediation level because there are more unsuccessful mediations than those successfully mediated.

From the results of research in several religious Courts represented by each of the five respondents, found that divorce cases are more influenced by emotional and psychological factors of the parties to the litigation as illustrated in the following table:

**Table 7:** Are emotional and psychology influential in divorce cases

No	Region	Take Effect	No Effect
1	Palopo Religious Court	5	-
2	Watampone Religious Court	5	-
3	Makassar Religious Court	5	-
4	Makassar High Court of Religion	5	-

In the table above it is illustrated that the parties who divorced in the Religious Court were influenced by the emotional and psychological aspects of the parties. This shows that divorce cases between husband and wife are cases that are very closely related to psychological aspects. Divorce suits are generally based on mismatches between husband and wife. Mismatch between husband and wife can occur due to economic factors, attitudes and behavioral factors of one or both husband and wife, trust factors, and ineffective communication factors. The last three factors are factors related to psychological aspects that generally dominate the causes of divorce that occur, both in the district court and in the religious court.

Psychological techniques such as empathy, proactivity, forgiveness, etc., will play a role in resolving conflicts between husband and wife who want to divorce. The role of the psychology of peace must be elaborated in accordance with the socio-cultural context of the Indonesian nation in seeking and resolving conflicts (conflict resolution). The approach taken will be adapted to the character of the Indonesian nation, namely by consensus agreement, so that the solution will be oriented to the psychological of the Indonesian nation (Indigenous psychology oriented).

## V. CONCLUSION

1. The nature of mediation in divorce cases, namely: 1) Fair, Settlement of mediated disputes aims to bring about justice, not only for the parties but for the whole community. 2) Peace, Peace in divorce disputes has its own noble value. With the achievement of peace between husband and wife in divorce disputes, not only the integrity of the household can be saved but also the continuation of child care can be carried out as it should; 3) United, the mediation function in divorce cases can be carried out effectively by the judge effectively and optimally, if possible the judge find the background of the disputes that occur and strive for divorce to not occur and re-unite; 4) Harmonious, family that is sure, *mawaddah* and *rahmah* will be realized when husband and wife always get along well if conflict can be resolved, and fulfill obligations and rights well, because the husband understands the nature of marriage so it is not easy to divorce and always live in harmony.
2. Revolutionizing conflicts in divorce cases is carried out through mediation both outside the court and inside the court, through an Islamic approach known as *islah* (peace) and through the approach of local wisdom in the Sulawesi community known as the culture of *siri'na pacce*.
3. A good mediation model used in resolving family matters (divorce) is a peace psychology approach used in an effort to reconcile a husband and wife who are threatened with divorce. The psychological approach is then further maximized in the caucus stage in order to dig deeper into the root psychological problems experienced by the parties. Through the method of dialogue, the parties present can explain frankly to the mediating judge about his case, his feelings and his complaints as well as his hopes. This mediating transformative model can diagnose the cause of the conflict and handle it based on psychological and emotional aspects, so that the disputing parties can improve and enhance their relationship between husband and wife.

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