

## Divorce Mediation Based on Maqashid Syari'ah

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### ABSTRACT

Divorce has become a significant social and legal issue in Indonesia, affecting not only couples but also children and extended families. This study explores the role of judges in increasing the success rate of divorce mediation at the Temanggung Religious Court in 2022–2023, using the framework of Maqashid Syari'ah as a guiding principle. The research employs a qualitative approach with data collected through interviews, observation, and document analysis. Findings reveal that judges employ strategies that integrate religious, familial, and social considerations, emphasizing sincerity, the caucus method, and recalling positive marital experiences to facilitate reconciliation. While mediation cannot always restore the marital relationship, it effectively protects the five essential objectives of Maqashid Syari'ah: religion, life, intellect, progeny, and wealth, ensuring that the parties separate amicably and without lingering resentment. This study demonstrates that applying Maqashid Syari'ah in divorce mediation contributes to more ethical, fair, and socially responsible outcomes, offering a model for improving dispute resolution in Islamic family law.

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## Introduction

One of the fundamental elements of a perfect society is marriage (Malisi, 2022). Article 1 of Law No. 1 of 1974 on Marriage defines marriage as a physical and spiritual bond between a man and a woman as husband and wife, with the aim of forming a happy and everlasting family based on the belief in the One Almighty God (Hudafi, 2021). The phrase “belief in the One Almighty God” serves as the foundation of marriage and is further emphasized in Article 2, paragraph 1 of the same law, which states that a marriage is valid if conducted according to the respective religious and belief systems of the parties involved. Living as a couple is considered one of Allah’s authentic provisions for all His creations, including all living beings with souls (Atabik & Mudhiah, 2014). Allah SWT selected marriage as a means for humans to continue their lineage and protect their lives. A marriage conducted with proper *ijab-kabul* (marriage contract) and witnessed by others provides a safeguarded way for sexual relations, ensures proper care of offspring, and protects the dignity of women. This is the model of marriage approved by Allah SWT and standardized in Islam, while other forms are abandoned (Sabiq, 1993).

When a couple enters into marriage, they naturally hope for a happy life both in this world and in the hereafter. However, conflicts and challenges are inevitable and may sometimes lead to divorce when the marriage cannot be maintained (M. Akil & Andi Hasriani, 2023). Household problems vary, ranging from financial difficulties, infidelity, poor communication, to family disputes. Challenges in a marital relationship often arise unexpectedly, and while they can be difficult, they may also strengthen the bond between spouses if addressed together.

In Islam, when a marriage is no longer harmonious, and disputes persist despite reconciliation efforts as outlined in Law No. 1 of 1974, divorce becomes the only viable solution. Divorce terminates the relationship between husband and wife due to the failure of either party to fulfill their respective roles (Busyro, 2019). It is legally recognized and marks the end of marital instability (Syaifuddin et al., 2022). Although divorce is not prohibited in Islam, Allah dislikes it. Divorce is regarded as a last resort when a marriage can no longer be sustained.

Islam allows divorce in response to marital problems. According to Fuad Sa'id, divorce occurs when a marital relationship lacks harmony or for reasons such as infertility, after reconciliation efforts involving both families have been attempted (Busyro, 2019). Divorce rates in Indonesia remain relatively high in both large and small cities. The government seeks to reduce these rates through premarital guidance and mandatory mediation before couples can file for divorce. For example, divorce cases in the Religious Courts under the jurisdiction of the Temanggung High Religious Court in 2022–2023 remain high, with 1,096 contested divorces and 391 unilateral divorces recorded.

To implement legal mandates and uphold family harmony (*sakinah, mawaddah, warahmah*), it is essential to consider *Maqashid Shari'ah* as a guiding framework to preserve broader societal interests in accordance with Islamic law. As Agus Hermanto explains in *Maqashid Shari'ah: Methods of Ijtihad and Reform of Islamic Family Law* (2023), *Maqashid Shari'ah*, initially a supplement to *usul fiqh*, has evolved into a central aspect of contemporary jurisprudence. A *mujtahid* must understand the objectives of *Shari'ah* to interpret divine law correctly and apply it to contemporary cases. *Maqashid Shari'ah* aims to safeguard public welfare (*maslahah*) as an essential component of legal objectives. Divorce functions as an emergency measure when a marriage cannot be sustained (Hifni, 2024). Being a last resort, Islam emphasizes reconciliation efforts before divorce, as marriage is considered the most sacred and resilient bond.

Rising divorce rates in Indonesia have normalized divorce in society. Initially regarded as socially taboo, divorce is now increasingly common. Economic factors remain the primary cause, but social and cultural issues also contribute. *Maqashid Shari'ah* guides humans toward achieving an ideal and proper order based on the Qur'an and Hadith. In classical times, the study of *Maqashid Shari'ah* was largely confined to *usul fiqh*, but contemporary scholars have developed a more complete understanding (Helim, 2019). To achieve societal welfare, essential needs (*al-daruriyah*) must be met; failure to meet them leads to harm (*mafsadah*), threatening human existence. The five essential components, known as *ushul al-khamsah*, include the protection of religion (*din*), life (*nafs*), intellect (*'aql*), progeny (*nasl*), and wealth (*mal*) (Sumarjoko, 2017).

## **Method**

This study employs a qualitative approach with a case study design to examine judges' strategies in facilitating successful divorce mediation at the Temanggung Religious Court during 2022–2023. Data were collected through in-depth interviews with judges, court mediators, and family law experts, as well as document analysis of divorce case files and mediation reports. Purposive sampling was used to select key informants directly involved in mediation cases. Data were analyzed thematically to identify strategies, challenges, and the application of Maqashid Shari'ah principles—such as justice, welfare, and family harmony—in mediation practices. Triangulation of interviews, documents, and observations was conducted to ensure validity and reliability.

## Results

### **Mediator Approaches in Divorce Mediation at the Temanggung Religious Court**

Mediation at the Temanggung Religious Court is conducted in accordance with PERMA No. 1 of 2016, beginning from the appointment of a mediator at the first hearing, scheduling mediation sessions, and continuing through to the divorce decision. Judges act as mediators, as permitted by the regulation, and there are currently no non-judge mediators available. Successful mediation relies on several key strategies. First, the sincerity of the mediator is essential. Mediators thoroughly review case files and engage with the parties from the heart, ensuring that their guidance is genuine and empathetic. This sincerity helps build trust and facilitates open dialogue between the spouses. Second, the caucus method is often employed, where the mediator meets the husband and wife separately. This approach prevents conflicts during discussions, provides each party with a safe space to express their concerns, and allows the mediator to explore the root causes of the dispute. It also helps to gauge the willingness of each spouse to reconcile, fostering a constructive negotiation process. Third, mediators tailor their approach based on the backgrounds of the parties involved. For parties with strong educational or legal knowledge, explanations focus on legal principles and intellectual reasoning. For laypersons, the mediator emphasizes religious guidance and social norms to ensure the advice is accessible and persuasive.

Finally, mediators often encourage couples to recall positive or romantic moments from their shared past, such as the early stages of their marriage. Reminding spouses of these meaningful experiences can help reduce ego-driven conflicts and motivate them to consider reconciliation. By combining these strategies, mediators at the Temanggung Religious Court have successfully facilitated many reconciliations, improving the overall effectiveness of divorce mediation. Nevertheless, challenges remain when parties are unwilling to compromise or perceive mediation as a mere formality, limiting the mediator's ability to guide them toward resolution.

### **Judges' Strategies for Successful Mediation**

Judges play a crucial role in ensuring the success of divorce mediation, not only serving as neutral facilitators but also helping parties reach peaceful agreements. Several effective strategies are commonly employed by judges during the mediation process. First, building trust is essential. Judges must create a neutral and safe environment where both parties feel comfortable and open to discussion. This includes maintaining impartiality, actively listening, and demonstrating empathy. Judges also identify and clarify the core issues of the dispute, going beyond surface-level problems to understand the underlying concerns. Second, the sincerity of the mediator is vital. At the Temanggung Religious Court, mediators carefully review case files and conduct mediation with a heartfelt commitment. Success in mediation relies on the genuine willingness of judges to guide parties toward resolution, emphasizing empathy and dedication throughout the process.

Third, the caucus method is frequently employed. This approach involves separating the husband and wife for private discussions, preventing direct conflict while allowing each party to express themselves freely. The mediator can explore the root causes of the dispute more thoroughly and assess the willingness of each spouse to reconcile. This method is particularly effective in cases triggered by specific issues and encourages open communication, helping mediators understand the parties' fundamental interests and facilitate negotiation toward a mutual agreement.

Finally, judges align their mediation practices with the principles of Maqashid Shari'ah, which aim to achieve overall welfare and prevent harm. While reconciliation may not always be possible, mediation guided by Maqashid Shari'ah ensures that essential objectives—protection of religion, life, intellect, lineage, and wealth—are respected. Even when divorce is inevitable, mediation helps parties separate amicably, avoid lingering resentment, and maintain dignity.

Data from the Temanggung Religious Court shows that divorce cases remained high between 2022 and 2023, with 391 unilateral divorces and 1,096 contested divorces in 2022, and 342 unilateral and 1,052 contested divorces in 2023. Although there was a slight decrease, the numbers indicate that some parties choose divorce despite mediation efforts. Nonetheless, by incorporating Maqashid Shari'ah principles, judges ensure that mediation addresses key aspects of welfare, facilitating fair and constructive outcomes even when reconciliation is not achieved. In summary, judges' strategies—including trust-building, sincere engagement, the caucus method, and adherence to Maqashid Shari'ah—contribute significantly to the effectiveness of divorce mediation. While not all cases result in reconciliation, these strategies ensure that the process respects Islamic legal objectives and promotes amicable resolutions.

## Discussion

Based on the analysis of the study titled “A Maqashid Shari'ah Perspective on Judges' Strategies to Enhance the Success of Divorce Mediation at the Temanggung Religious Court (2022–2023)”, several key findings emerge regarding the strategies employed by judges and the role of Maqashid Shari'ah in mediation outcomes. Firstly, religiously oriented approaches play a significant role in the mediation process. Judges often encourage couples to recall the early stages of their relationship, reminding them of the mutual care, love, and commitment that initially motivated their marriage. This strategy aligns with the principles of Maqashid Shari'ah, emphasizing the protection of emotional well-being and fostering reconciliation as a means to preserve family harmony. (Hermanto, 2023). By invoking shared memories and values, mediators can reduce egos, promote understanding, and facilitate a more cooperative environment for negotiation. Secondly,

family-oriented approaches are crucial. Mediation does not solely concern the couple but also their broader familial networks. Judges consider the welfare of children and extended family members, recognizing that divorce can disrupt the family structure, reduce parental attention, and negatively impact children's development in the long term. (Busyro, A. (2019)) These considerations resonate with the Maqashid Shari'ah principles of protecting lineage (nasl) and ensuring social welfare, highlighting that successful mediation should aim not only to resolve immediate conflicts but also to safeguard the broader interests of the family unit. Furthermore, the practical strategies discussed earlier—such as building trust, demonstrating sincerity, employing the caucus method, and tailoring approaches based on the parties' backgrounds—intersect with the objectives of Maqashid Shari'ah. Even when reconciliation is not possible, these methods ensure that mediation addresses essential concerns, including religious obligations, emotional well-being, and material security, thereby enabling amicable separation and minimizing residual harm. (Hasanah, 2024)

In conclusion, the integration of Maqashid Shari'ah with judges' strategic approaches enhances the effectiveness of divorce mediation. By combining religious, familial, and procedural strategies, mediators not only increase the likelihood of reconciliation but also uphold the ethical and legal objectives of Islamic law, ensuring that all parties, particularly children, are considered in the resolution process.

## **Conclusion**

Based on the Maqashid Shari'ah perspective on enhancing the success of divorce mediation at the Temanggung Religious Court, it can be concluded that judges have implemented the principles of Maqashid Shari'ah as a reference in conducting mediation. The application of these principles allows mediation to be effective, although it has not been fully successful in reconciling couples seeking divorce. Nevertheless, through mediation, the essential aspects of Maqashid Shari'ah namely the protection of religion (din), life (nafs), intellect ('aql), lineage (nasl), and property (mal) can still be safeguarded and resolved fairly. Therefore, mediation functions not only as a means for reconciliation but also to ensure the welfare and protection of all parties involved, including children and family members.

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