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**Transformation of Maqāshid Shari‘ah in Divorce Mediation in Religious Courts:  
Revitalization of the Bugis-Mandar Customs, Indonesia**

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Abstract	:	<p>The focus of this study discusses the dynamics of legal product of divorce mediation practices in Religious Courts; the transformation of <i>maqashid shariah</i> in practice of mediation in divorce cases, and revitalization of <i>pangngaderreng</i> culture in practice of divorce mediation in Bugis and Mandar communities. The research methodology is descriptive qualitative field research, holistic, historical, and socio-anthropological approaches, <i>maqashid shariah</i> theory analysis, social and legal change theory, and social institutions theory. The results of this study indicate that divorce case is an extraordinary matter case in Religious Courts, dynamics of mediation practice in Religious Courts have successful mediation for a written peace agreement in peace deed, other mediation products are partially successful mediation and partially unsuccessful mediation, mediation products are not successful is that husband and wife are committed to divorce; <i>Maqashid shariah</i> transformation can be a major consideration by judges in mediation practice to save households on the verge of collapse, so that <i>maqashid shariah</i> is very urgent to place in Perma No.1 of 2016, and revitalization of Bugis-Mandar traditional institutions is an effort to revive the value of life <i>sirondo-rondo</i>, <i>siamasei</i>, <i>sianuang pa'mai</i>, and <i>sibaliparri</i>, also animate <i>shara'</i> which is performed <i>petta kali'</i> or <i>puang kali'</i>.</p>

**Transformation of *Maqashid Shariah* in Divorce Mediation in Religious Courts:  
Revitalization of Bugis-Mandar Traditional Institutions**

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**Abstract**

The focus of this study discusses the dynamics of legal product of divorce mediation practices in Religious Courts; the transformation of *maqashid shariah* in practice of mediation in divorce cases, and revitalization of *pangngaderreng* culture in practice of divorce mediation in Bugis and Mandar communities. The research methodology is descriptive qualitative field research, holistic, historical, and socio-anthropological approaches, *maqashid shariah* theory analysis, social and legal change theory, and social institutions theory. The results of this study indicate that divorce case is an extraordinary matter case in Religious Courts, dynamics of mediation practice in Religious Courts have successful mediation for a written peace agreement in peace deed, other mediation products are partially successful mediation and partially unsuccessful mediation, mediation products are not successful is that husband and wife are committed to divorce; *Maqashid shariah* transformation can be a major consideration by judges in mediation practice to save households on the verge of collapse, so that *maqashid shariah* is very urgent to place in Perma No.1 of 2016, and revitalization of Bugis-Mandar traditional institutions is an effort to revive the value of life *sirondo-rondo*, *siamasei*, *sianuang pa'mai*, and *sibaliparri*, also animate *shara'* which is performed *petta kali'* or *puang kali'*.

**Keywords:** *Maqashid Shariah, divorce mediation, Religious Courts, revitalization of traditional institutions, Bugis-Mandar*

**Transformasi *Maqashid Shariah* dalam Mediasi Perceraian di Pengadilan Agama:  
Revitalisasi Lembaga Adat Bugis-Mandar**

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**Abstrak**

Fokus penelitian ini membahas tentang dinamika produk hukum praktik mediasi perceraian di Pengadilan Agama; transformasi *maqashid syari'ah* dalam praktik mediasi dalam kasus perceraian, dan revitalisasi budaya *pangngaderreng* dalam praktik mediasi perceraian di masyarakat Bugis dan Mandar. Metodologi penelitian yang digunakan adalah penelitian lapangan kualitatif deskriptif, pendekatan holistik, historis, dan sosio-antropologis, analisis

teori *maqashid syari'ah*, teori perubahan sosial dan hukum, dan teori kelembagaan sosial. Hasil penelitian ini menunjukkan bahwa perkara perceraian merupakan perkara luar biasa di Pengadilan Agama, dinamika praktek mediasi di Pengadilan Agama telah berhasil dalam mediasi perjanjian damai tertulis dalam akta damai, produk mediasi lainnya adalah mediasi yang berhasil sebagian dan mediasi yang tidak berhasil sebagian, mediasi tidak berhasil. produk yang tidak berhasil adalah suami dan istri yang berkomitmen untuk bercerai; Transformasi *maqashid syari'ah* dapat menjadi pertimbangan utama hakim dalam praktek mediasi untuk menyelamatkan rumah tangga yang di ambang kehancuran, sehingga *maqashid syari'ah* sangat mendesak untuk ditempatkan dalam Perma No.1 tahun 2016, dan revitalisasi kelembagaan adat Bugis-Mandar merupakan salah satu upaya. menghidupkan kembali nilai-nilai kehidupan *sirondo-rondo*, *siamasei*, *sianuang pa'mai*, dan *sibaliparri*, serta menghidupkan *shara'* yang dilakukan *petta kali'* atau *puang kali'*.

**Keywords:** *Maqashid Syari'ah, mediasi perceraian, Pengadilan Agama, revitalisasi lembaga adat, Bugis-Mandar*

## Introduction

The process of implementing mediation in fortifying family resilience from conflict has long been the subject of discussion as explained by Margulies that mediation is considered an effective effort to resolve husband-wife conflicts that intend to divorce.<sup>1</sup> On the other hand, violence that occurs in the family and also in mediation is still difficult to find theoretical and practical concepts.<sup>2</sup>

The function of the mediator is to reconcile the two sides of the disputing family, helping to carry out active communication. In addition, the mediator also encourages harmony and also emphasizes the parties in conflict to consider the bad consequences of divorce.<sup>3</sup> It is important to strengthen the concept of mediation in resolving family conflicts and childcare.<sup>4</sup> Mediation is conducted by a mediator who acts as a mediator for the disputing parties and plays an active role in resolving the conflict by reaching a peace agreement from the parties.

Mediation is part of the legal system that can resolve family conflicts quickly, easily, and cheaply as long as the parties cooperate.<sup>5</sup> In addition to being able to be carried out by judges, psychologists, and other professionals who have the competence to carry out mediation can understand and address the root causes of problems in family conflicts.<sup>6</sup> According to RA Hahn explained that from several studies of the divorce mediation process carried out there were beneficial and beneficial results for the efficiency and satisfaction of the parties.<sup>7</sup> This opinion is supported by D. Ellis that divorce mediation makes a huge contribution towards the outcome of reconciliation between husband and wife.<sup>8</sup>

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<sup>1</sup> S Margulies, "Litigation, Mediation and the Psychology of Divorce," *Journal of Psychiatry and Law*, 1992.

<sup>2</sup> F Kaganas, "Domestic Violence and Divorce Mediation," *Journal of Social Welfare and Family Law* 16, no. 3 (1994): p. 265–278.

<sup>3</sup> A Shepard, "An Introduction to the Model Standards of Practice for Family and Divorce Mediation," *Family Law Quarterly* 35, no. 1 (2001): p. 2-3.

<sup>4</sup> J Weaver, "Mediation and Moderation of Divorce Effects on Children's Behavior Problems," *Journal of Family Psychology* 29, no. 1 (2015): p. 39–48.

<sup>5</sup> JA Twaite, "Divorce Mediation: Promises, Criticisms, Achievements, and Current Challenges," *Journal of Psychiatry and Law*, 1998.

<sup>6</sup> C Beck, "A Critical Reappraisal of Divorce Mediation Research and Policy," *Psychology, Public Policy, and Law* 6, No. 4 (2000): p. 991.

<sup>7</sup> RA Hahn, "Divorce Mediation: Research and Implications for Family and Couples Counseling," *The Family Journal*, 2000.

<sup>8</sup> D Ellis, "Safety, Equity, and Human Agency; Contributions of Divorce Mediation," *Violence Against Woman* 6, no. 9 (2000): p. 1012–1027.

In line with the study conducted by Taylor R., suggesting that the mediator's demands in carrying out his role as the mediator can help to build confidence in the parties. Mediators are required to designing interpersonal communication between both husband and wife in conflict so that each party can introspect themselves towards better interaction changes.<sup>9</sup> The real emphasis of mediation is on reconciling the husband and wife who insisted on divorce.<sup>10</sup> Legal practitioners and academics have studied a lot about the mediation process that can reduce the soaring divorce rate. Mediation is a reliable means of accelerating the reconciliation of families in conflict.<sup>11</sup> Even C. Beck mentioned that the implementation of the formulation of the concept of mediation is a much more recent effort to create justice for wives who are victims of domestic violence.<sup>12</sup>

However, mediation can speed up the settlement of cases, on the contrary as described by Przybyla Basista stated that the reasons for couples who refuse the mediation process are especially wives who experience feelings of trauma and fear of violence from their ex-husbands. Experience from her domestic life, the wife received painful treatment so that she did not have the time and space to negotiate through mediation with her ex-husband.<sup>13</sup> Sometimes children are also victims of violence, experiencing depression and anxiety which can affect the physical and psychological health consequences of divorcing parents.<sup>14</sup> The research also touches on the legal protection of children through the mediation process. Andrew Schepard's views on custody and subsistence needs can be read.<sup>15</sup>

The opinion of J. D. Bailey provides that the sharpening of the practice of mediation in divorce cases can refer to several assumptions that mediation is a golden opportunity to resolve conflicts and household breakdowns in constructing reconciliation between husband and wife. The practice of mediation involves offering a problem-solving process with a focus on the goal of reconciliation.<sup>16</sup>

Compare this with the thought conveyed by Robert Dingwall that the legal system and family policies of the government related to the practice of mediation carried out in European countries such as England, Wales, Scotland, and Northern Ireland are forced attempts to the husband and wife who are going to divorce under control of the mediator to undergo the mediation process before their case reaches the Court.<sup>17</sup> An interesting thought from [Lori Anne Shaw](#) that the implementation of non-litigation mediation can outperform the judicial process in legally assisting the parties in a case, including from the results of mediation that prioritizes the interests of children.<sup>18</sup> Demands for non-litigation mediation practices are carried out to anticipate more immediate damage and cracks in households.

The theoretical purpose of marriage in Islamic law is to create *sakinah*, *mawaddah*, and *warahmah* families. Sometimes the theoretical goal of marriage is very different in practice from the goal of marriage. Marriage in the view of the Bugis and Mandar people that "*iya tu'u di'o*

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<sup>9</sup> R Taylor, "Use of Change Theory in the Context of the Divorce Mediation Session," *Journal of Divorce and Remarriage* 40, no. 1 (2004): p. 90.

<sup>10</sup> P Huang, "Divorce Law Practices and the Origins, Myths, and Realities of Judicial 'mediation' in China," *Modern China* 31, no. 2 (2005): p. 154.

<sup>11</sup> Robert E Emery, David Sbarra, and Tara Grover, "Divorce Mediation: Research and Reflections," *Family Court Review* 43, no. 1 (2005): p. 22–37.

<sup>12</sup> C Beck, "Defining a Threshold for Client Competence to Participate in Divorce Mediation," *Psychology, Public Policy, and Law*, 2006.

<sup>13</sup> H Przybyla-Basista, "The Influence of Spouses' Resistance on Their Decision to Enter into Divorce Mediation," *Journal of Divorce and Remarriage* 48, no. 3 (2008): p. 31.

<sup>14</sup> A Kraft, "Childhood Parental Divorce and Cortisol in Young Adulthood: Evidence for Mediation by Family Income," *Psychoneuroendocrinology* 34, no. 9 (2009): p. 1363–1369.

<sup>15</sup> Schepard, "An Introduction to the Model Standards of Practice for Family and Divorce Mediation."

<sup>16</sup> JD Bailey, "Assessing Empowerment in Divorce Mediation," *Negotiation Journal* 25, no. 3 (2009): p. 327–336.

<sup>17</sup> R Dingwall, "Divorce Mediation: Should We Change Our Mind?," *Journal of Social Welfare and Family Law* 32, no. 2 (2010): p. 107–17.

<sup>18</sup> L Shaw, "Divorce Mediation Outcome Research: A Meta-Analysis," *Conflict Resolution Quarterly* 27, no. 4 (2010): p. 447–67,

*alikkangan, including mesa pakkasiwiang lao di puang Allah Taala, Jari mua 'alikkangananna macoai, ma mandapai reward, but mua 'andani macoa, napolean sin* ". The meaning of marriage is that marriage is worship, so if the marriage is good you will get a reward, but if it is not good you will get sin.

Therefore, the practice of mediation, whether organized by judges at the Religious Courts or mediators outside the court, is very important to prioritize the content of divorce mediation using the *maqashid shariah* approach. Divorce mediation which contains the *maqashid sharia* paradigm based on *maslahat* as conveyed by Al-Gazaliy is an effort to uphold the objectives of shari'a laws in maintaining religion, soul, mind, descent and property.<sup>19</sup>

Maqashid shariah as formulated by *ushul fiqh* scholars is to have the meaning of all the aims and objectives regulated in religion to bring benefit and eliminate exasperation to its servants. Al-Syatibi further perfected the traditional *ushul fiqh* theories in the *al-Muwafaqat* book by formulating *maqashid shariah* which focused on *al-kulliyah al-khamsah*.<sup>20</sup>

Whereas *maqashid shariah* seen from the order is *maqashid al-dharuriyyah* (primary), *maqashid al-hajiyat* (secondary), and *maqashid al-tahsiniyyat* (complementary).<sup>21</sup> Therefore, based on the *maqashid shariah* that divorce mediation is in the order of *maqashid al-dharuriyyah*, which is obliged to eliminate adultery in marriage, including maintaining the family from conflict, enmity, disharmony, and rifts between husband and wife.

On the other hand, based on the data source of the Directorate General of Religious Courts' annual report, divorce cases are considered an extraordinary matter in Indonesia. Following the report's data, it shows that there were 128,401 divorce cases in 2015. Divorce cases in 2017 included 113,937 divorce talaq, while 301,573 divorce lawsuits were filed. In 2018 the details of the divorce talaq were 118,853. In 2019, there were 124,776 divorce cases, then 355,842 divorce cases.<sup>22</sup>

The discourse on mediation has produced many studies on the roles and responsibilities of academics,<sup>23</sup> such as Mursyid Jawas and Sri Astuti A. Samad explained that reconciliation efforts in resolving family disputes can be successful with a family resilience approach through traditional Acehnese traditional wisdom such as *keuchik, tuha peut, teungku imum, and imum mukim*. The resolution of family conflicts in Acehnese society by means of Islamic law at the Syari'ah Court and also by practicing customary law in *sara opat* institutions, a kind of institution that includes *reje* and *imem* is very accurate, effective, and efficient.<sup>24</sup>

This idea of mediating divorce through customs and social institutions is very suitable to be actualized in the Bugis community in South Sulawesi and the Mandar community in West Sulawesi. Both the Bugis and Mandar Communities are ethnic groups that are very strong and thick in carrying out their customs which are tied to the *pangngaderreng* culture as a culture of conduct.<sup>25</sup> which includes *ade', bicara, rapang, wari', and shara'*. Mandar was found when the *pangngaderreng* became a social patron as the inner power control to accommodate *shara'*.<sup>26</sup>

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<sup>19</sup> Abd al-Rahman Yusuf Abd Qardhawi, *Nazhariyah Maqashid Al-Syari'ah Baina Syekh Al-Islam Ibn Taimiyah Wa Jumhur Ushliyyin Dirasah Muqaranah Min Al-Qarn Al-Khamis Ila Al-Tsamin Al-Hijri* (Cairo: Kulliyah Dar al-Ulum, nd).p. 70.

<sup>20</sup> Abu Ishaq Al-Syatibi, *Al-Muwafaqat Fi Ushul Al-Ahkam, 2nd ed.* (Beirut: al-Maktabah al-Taufiqiyyah, 2004). p. 2.

<sup>21</sup> Izz al-Din Abd Al-Salam, *Qawaid Al-Ahkam Fi Masalih Al-Anam* (Beirut: Dar al-Ma'rifah, nd). p. 11.

<sup>22</sup> Directorate General of the Religious Courts of the Republic of Indonesia, *Annual Report of the Religious Courts* (2020).

<sup>23</sup> E Koopman, "The Present and Future Role of Higher Education in Divorce Mediation: Problems and Promise in Teaching, Research, and Service," *Divorce Mediation: Perspectives on the Field*, 2014.

<sup>24</sup> Mursyid Djawas and Sri Astuti Abdul Samad, "Conflict, Traditional, and Family Resistance: The Pattern of Dispute Resolution in Acehnese Community According to Islamic Law," *Samarah: Journal of Family Law and Islamic Law* 4, no. 1 (2020): p. 69–71.

<sup>25</sup> Said Nurman, *Religion and Cultural Identity Among the Bugis* (Makassari: Faculty of Islamic Theology of the Alauddin State Institute of Islamic Studies at Makassar, Indonesia, 2004).

<sup>26</sup> Abd Yunus, "The Acculturation of Islam and Local Culture in Bugis Wedding Tradition: A Historical Perspective," 2017, 4.



The acceptance of *shara'* in *pangngaderreng* culture is a consequence for society to carry out Islamic law. Along with development and *wari' and shara'*.<sup>27</sup> Acculturation of Islam and the culture of the Bugis community and the progress of human civilization which is increasingly modern, sometimes *siri'* in the *pangngaderreng* culture of the Bugis and Mandar communities has gradually shifted. Whereas in the period of traditional life, the enforcement of *siri'* in the Bugis and Mandar communities is very embarrassed and loses its self-respect if there is a disgrace in the family, including for example a married couple who divorced from that family. The connection with the *pangngaderreng* culture has less than optimal function in the Bugis and Mandar communities, especially before and during the Covid-19 pandemic era, the number of divorce cases increased sharply in Religious Courts.

Exposing this background, this study focuses on the dynamics of the legal product of divorce mediation practices in the Religious Courts which incidentally is an institution that can be trusted to enforce Perma No. 1 of 2016. The transformation of *maqashid syariah* in the practice of mediation in divorce cases in the Religious Courts and outside the courts should prioritize benefit and eliminate adversity to maintain family resilience from various conflicts and disputes. The revitalization of the *pangngaderreng* culture in the practice of divorce mediation in the Religious Courts, which so far is believed to have less than optimal function in the Bugis and Mandar communities.

### **Dynamics of Legal Product of Divorce Mediation in Religious Courts**

Divorce mediation is an effort to mediate resolving disputes so that the mediator must be neutral, bridging, and must not be partial between the conflicting husband and wife in order to reach a peace agreement.<sup>28</sup> Divorce mediation can be designed to be therapeutic, treat, remedy, and counteract the bad effects of divorce.<sup>29</sup>

Divorce mediation is constructed to reflect on the significance of the marriage and address the possibilities that trigger divorce.<sup>30</sup> assisting divorced parties to optimize the effectiveness and efficiency of conflict resolution in the family. One of the material contained in mediation is very interesting is a simulation method of husband-wife couples who are active for high cooperation which can overcome the conflicts they face, on the other hand, if the husband and wife do not cooperate less, they tend to have a selfish character.<sup>31</sup>

The success indicator of mediation if the material content is to collaborate, including eliminating partner violence intimidation and focusing on taking care of children,<sup>32</sup> refreshing and taking advantage of free time for discussion which aims to strengthen active communication in the family.<sup>33</sup> The family mediation construction should be intensified during the marriage period so that the husband and wife can build a household with full responsibility, affection, and love. Therefore, the practice of mediation is not only carried out when there is a conflict that is already overloaded, critical, and is experiencing a transition period for divorce.<sup>34</sup> The implementation of mediation before the family has problems with conflict, has many advantages

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<sup>27</sup> Wahyuddin Halim, "Islamization or Arabization? The Arab Cultural Influence on the South Sulawesi Muslim Community since the Islamization in the 17th Century," *Suvannabhumi* 10, no. 1 (2018): p. 42.

<sup>28</sup> Syahrizal Abbas, *Mediation in the Perspective of Sharia Law, Customary Law and National Law* (Jakarta: Kencana Prenada Media Group, 2009).

<sup>29</sup> DA Sbarra, "In the Presence of Grief: The Role of Cognitive-Emotional Adaptation in Contemporary Divorce Mediation," *Handbook of Divorce and Relationship Dissolution*, 2013.

<sup>30</sup> W Neville, "Reflections on the Growth and Significance of Divorce Mediation," *Divorce Mediation: Perspectives on the Field*, 2014.

<sup>31</sup> S Worley, "The Effect of Cooperation on Egocentrism in Divorce Mediation: A Simulation Study," *Divorce Mediation: Perspectives on the Field*, 2014.

<sup>32</sup> A Holtzworth-Munroe, "Controversies in Divorce Mediation and Intimate Partner Violence: A Focus on the Children," *Aggression and Violent Behavior*, 2011.

<sup>33</sup> E Beck, "Improving Communication in Divorce Mediation," *Divorce Mediation: Perspectives on the Field*, 2014.

<sup>34</sup> S Molgora, "Divorce and Coparenting: A Qualitative Study on Family Mediation in Italy," *Journal of Divorce and Remarriage* 55, no. 4 (2014): p. 300–314.

for strengthening husband-wife relationships, enhancing cooperation, and also supporting joint care of children.<sup>35</sup>

The fact of the soaring divorce case decisions, it is appropriate to question the speed, accuracy, and efficiency of the judge's functioning as a mediator of divorce cases in the Religious Courts spread across several districts and cities in South Sulawesi and West Sulawesi. The data also shows that the Bugis and Mandar people prefer to resolve disputes and family conflicts in the Religious Courts rather than resolve conflicts with a system or kinship approach. Criticism of the Religious Courts in South Sulawesi and West Sulawesi as one of the case resolution institutions has not been able to accommodate the expectations of the community in settling divorce cases through mediation.

However, the public's assumption of judges acting as mediators in the Religious Courts is still considered a failure. Judges as mediators in conducting divorce mediation are still very symbolic, examinations are too formalistic, very technical, high cost, and cases tend to be overloaded.

The various difficulties faced by judges as mediators in the Religious Courts in general led to the Supreme Court of the Republic of Indonesia to apply Perma No. 1 of 2016. The dynamics of implementing Perma No. 1 of 2016 provides an opportunity to internalize the practice of divorce mediation held by certified mediators from career non-judges at the Religious Courts. Mediation supports all parties to resolve conflicts they face with the help of a mediator who is neutral or impartial. A mediator only tries to bridge all parties in a transparent manner, negotiate, and find the best solution.

The legal position of the implementation of mediation in Law no. 30 of 1999 concerning Arbitration and Alternative Settlements, then followed up by Perma No. 1 of 2016 concerning Mediation as an amendment to Perma No. 1 of 2008 concerning Mediation Procedures. Perma No. 1 of 2016 is implemented to carry out divorce mediation practices in the Religious Courts. Indeed, mediation for divorce in the Religious Courts is to avoid the accumulation of family cases. In fact, the judge's decision will be null and void if the judge examining the divorce case at trial does not enforce mediation at the Religious Court.

The progress of divorce cases that have entered both cases for divorce talaq and cases for divorce in the Religious Courts between 2018 and 2020 in the regions of South Sulawesi and West Sulawesi. The Religious Courts located in South Sulawesi are limited to only taking divorce data from the Parepare Religious Court, the Sidenreng Rappang Religious Court, the Pinrang Religious Court, and the Enrekang Religious Court. Meanwhile, the Religious Courts in West Sulawesi are also limited by taking data on divorce cases that are submitted to the Polewali Mandar Religious Court, the Majene Religious Court, and the Mamuju Religious Court.

The success and failure of the product of mediation practice by judges from each of the Religious Courts in South Sulawesi in three years from 2018 to 2020. Since 2018, there have been 12 judges at the Parepare Religious Court who were spread into 6 panels. Types of cases, divorced talaq received 106 cases, ended 103 cases and the percentage of case completion was 81%, claimants received 380 cases, dropped 385 cases and percentage of case completion was 93%. The Parepare Religious Court mediated 13 cases and 3 cases that succeeded in peace. In 2019, the remaining cases for divorce talaq in 2018 were 23 cases, divorce talaq received 103 cases, 120 cases were decided and the percentage of case completion was 95%. For divorce with the remainder of 2018 in 26 cases, received 439, drop out of 440 cases and the percentage of completion of cases is 95%. Mediated a number of 82 cases and 5 cases which succeeded in peace. In 2020, the remaining cases for divorce talaq in 2019 amounted to 6 cases, 80 cases of divorce received and 80 cases of divorce. There are 25 divorce cases left in 2019, 357 cases received, 379 cases ended.<sup>36</sup>

Referring to the state of divorce cases every year there has been an increase in both talaq and legal divorce at the Parepare Religious Court. The reality cannot be denied, divorce cases

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<sup>35</sup> D Pickar, "Intermittent Evaluative Mediation with Enduring, Post-Divorce Conflict," *Journal of Child Custody* 8, no. 3 (2011): p. 144–145.

<sup>36</sup> Chairman of the Parepare Religious Court, "Annual Report of the Parepare Religious Court" (City of Parepare, 2020), <http://pa-parepare.go.id/home/leport-tahunan/>.

are very worrying, because the number of cases for suing for divorce is greater than cases for divorce talaq. In addition, the performance of judges in conducting mediation at the Parepare Religious Court from 2018 to 2020 can be categorized as failing. The failure of judges to mediate at the Parepare Religious Court has not been able to balance the number of divorce cases that were decided and the number of cases that succeeded in mediating to reach a peaceful consensus.

The progress of divorce cases from 2018 to 2020 at the Sidenreng Rappang Religious Court, can be described with data since 2018, the number of divorces talaq 154 cases and 555 divorce cases. Mediating 91 divorce cases, succeeded in reaching a peaceful consensus on 2 cases. In 2019, the number of divorces talaq received was 213 cases, 202 cases were decided, and the percentage of case settlements was 88%. 699 cases of divorce were accepted, 690 cases were decided on 95%. Mediated 89 cases and succeeded in a peaceful consensus on 0 cases. In 2020, the number of divorces talaq received 163 cases, 152 cases broke up and 83% case settlement percentage, 604 divorce cases received, 591 broke up, and 91% case completion percentage. Mediated 69 cases and succeeded in a 2 case peace consensus.<sup>37</sup>

The strength of the judges at the Sidenreng Rappang Religious Court in conducting mediation is still relatively weak and failed, even in the mediation that was carried out in 2019, not a single case was successfully reconciled. Divorce cases that are accepted are generally terminated and only a very few divorce cases have succeeded in peace.

The Pinrang Religious Court is one of the courts which accepts many divorce cases every year. It is known that in 2018, there were 163 divorces and 640 divorcees, 131 cases of mediation, and 2 cases of the peace agreement were reached. In 2019 there were 208 cases of divorce, 820 cases of divorce, 128 mediation cases, and 4 cases of peace. In 2020, there were 199 divorce cases, 798 divorce cases, 140 mediated cases, and 20 peaceful cases.<sup>38</sup>

Compared to the Parepare Religious Court and the Sidenreng Rappang Religious Court, the Pinrang Religious Court judges have made progress in reconciling divorce cases. In 2020, the success of mediation at the Pinrang Religious Court is inseparable from the active role of judges in reconciling a litigious husband and wife. The success of mediating divorce cases is supported by the knowledge and experience of judges who are familiar with the social culture of the Pinrang community.

In 2019 data, there were 338 divorce cases including 66 cases of divorce, 258 divorce cases, and 51 cases of mediation, only 1 case was successful at the Enrekang Religious Court. In 2020 there were 336 divorce cases and among them, 75 cases of divorce, 246 divorce cases, 31 mediation cases, and none of them succeeded in peace. Mediation from 2019 and 2020 amounted to 82 cases, only 1 case succeeded in peace.<sup>39</sup> Mediation is almost completely ineffective and in fact creates new problems, namely the accumulation of cases that should be resolved, but are hampered by the time-consuming mediation process. Mediation also has an impact on costs (court costs) so that the principle of litigating with a simple, fast, and low cost does not materialize.

Furthermore, the development of divorce case mediation in the Religious Courts located in the West Sulawesi region is limited to the Polewali Mandar Religious Courts and the Majene Religious Courts. The source of information found at the Polewali Mandar Religious Court stated that in 2017 talaq's divorce was received by 155 cases, 135 cases were ended. 422 cases of divorce were accepted, 366 cases were ended, related to the mediation report not mentioned in the report on the activities of the Polewali Mandar Religious Court. In 2018 talaq divorce received 175 cases, 160 cases ended. 453 divorce cases were accepted, 427 cases ended and mediation was also not included in the 2018 Polewali Mandar Religious Court activity report. In 2019 talaq divorce received 176 cases, 161 cases ended. 507 cases of divorce were accepted, 473

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<sup>37</sup> Chairman of the Sidenreng Rappang Religious Court, "Annual Report of the Sidenreng Rappang Religious Court" (City of Pangkajene, 2020), <http://pa-sidenrengappang.go.id/>.

<sup>38</sup> Chairman of the Pinrang Religious Court, "Annual Report of the Pinrang Religious Court" (Kota Pinrang, 2020), <http://pa-pinrang.go.id/index.php?limitstart=27>.

<sup>39</sup> Chairman of the Enrekang Religious Court, "Annual Report of the Enrekang Religious Court" (Enrekang City, 2020), <https://www.pa-enrekang.com/index.php/transparant/sekretariat/perplan/lentuk-tahunan>.

cases were ended.<sup>40</sup>In 2019 there has been no progress on case mediation in the activity report. Meanwhile, the 2020 report has not yet published the number of cases for divorce talaq and divorce.

Divorce cases at the Majene Religious Court, in 2017 talaq received 44 cases plus the remaining 2 cases in 2016, 41 cases ended. Divorce accepts 131 cases plus the remaining 5 cases from 2016, 128 cases ended, 30 cases mediated and none of the cases succeeded in peace. In 2018, divorce talaq received 45 cases plus the remaining 5 cases in 2017, 48 cases were broken. The remaining cases in 2017 were 7 cases, in 2018 129 cases were divorced, 137 cases were ended, 32 cases were mediated and none of the cases were successfully reconciled. In 2019 divorce Talaq received 55 cases plus the remaining 2 cases in 2018, 57 cases ended. Divorce accepts 150 cases plus the remaining 6 cases in 2018, 155 cases ended, 40 mediated cases, and 4 peaceful cases.<sup>41</sup> In 2020, the progress of the divorce case has not been published, both from the talaq divorce case and the sue divorce case.

Optimizing efforts to provide legal services to the community in all Religious Courts in South Sulawesi and West Sulawesi in enforcing mediation institutions which are run by mediating judges. The mediating judge carries out legal remedies against the justice-seeking community to reconcile the disputing parties. Mediation in all Religious Courts is regulated in article 130 HIR / article 154 Rbg. jo. Perma No. 1 of 2016 concerning Mediation Procedures in Courts.

The legal product of the mediator reports to the examining panel of judges regarding the results of the mediation process that has been carried out with the case husband and wife. If the mediator succeeds in reconciling, the results of the mediation are written in a peace deed. The panel of judges stated in legal considerations, one of which was based on the peace deed agreed and signed by the parties in the case. In one of the verdicts, the panel of judges "punished the applicant/plaintiff and the respondent/defendant to obey the results of the peace agreement that had been reached." Successful mediation without proof of the peace deed of the party presenting the case will withdraw the case that has been submitted at the next trial. Based on Perma No.<sup>42</sup>

There are several types of mediation products, one of which is a successful mediation product, where both husband and wife achieve reconciliation, agree to resolve the problem peacefully and amicably. The peace agreement actualized the peace deed by Perma No. 1 of 2016 Article 27 paragraph 2 or in a divorce case, the party filing for divorce withdraws the case at the next trial. The mediation has succeeded in reaching an agreement, the parties with the assistance of the mediator are obliged to formulate a written agreement in a peace agreement signed by the parties and the mediator. In helping to formulate a peace agreement, the mediator is obliged to ensure that it does not contain provisions that are contrary to law, public order, and also morals, detrimental to the litigant.

The next possibility, the product of partially successful mediation is when two or more cases are filed but not all of them reach an amicable agreement, for example, divorce cases are accumulated with joint assets, a husband and wife agree to share Gono Gini assets are joint assets obtained during the marriage period. peacefully and kinship, but both of them still want to divorce. Also, the product of mediation does not work, if both parties in a case do not reach a peace agreement and want to continue the case. Another type of mediation product is improper mediation if one of the parties is not present at the mediation without justified reasons, involves the rights of the other party, and there are parties who should be subject to law but are not involved in the case.

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<sup>40</sup> Chairperson of the Poliwali Mandar Religious Court, *"Annual Report of the Poliwali Mandar Religious Court"* (Poliwali City, 2020), <http://pa-polewali.net/index.php/info-peradilan/program-kerja-k-Activity/l-Report-tahunan>.

<sup>41</sup> Chairman of the Majene Religious Court, *"Annual Report of the Majene Religious Court"* (Majene City, 2020), <https://pa-majene.go.id/informasi-umum/leport-tahunan>.

<sup>42</sup> Chairman of the Supreme Court of the Republic of Indonesia., *"Perma RI. No. 1 of 2016 concerning Mediation Procedures in Courts"* (Jakarta, 2016), [https://bawas.mahkamahagung.go.id/bawas\\_doc/doc/perma\\_mediasi\\_pengadilan\\_web.pdf](https://bawas.mahkamahagung.go.id/bawas_doc/doc/perma_mediasi_pengadilan_web.pdf).

### Transformation of Maqasid al-Sharia in Mediation Practices in Divorce Cases

The mediator who carries out the mediation can help the parties of a married couple to have a strong character and personality in facing a case.<sup>43</sup> The mediator strengthens the understanding of a married couple regarding the importance of marriage, the consequences after divorce,<sup>44</sup> and a major consideration of the power of mediation is childcare.<sup>45</sup> The mediator conducts mediation in a measured manner, ensuring the benefit, effectiveness, and satisfaction of the parties related to the success of the mediation in achieving peace.<sup>46</sup>

Measurable mediation can focus on the context of enforcing mediation as regulated in Perma No. 1 of 2016. Other dispute resolution processes are similar to the mediation of divorce cases at the Religious Courts. The very basic similarities are the steps that must be passed by the provisions in Perma No. 1 of 2016.

In general, the mediation stages in divorce cases at the Religious Courts are mapped into three stages, namely the preparation stage, the implementation stage, and also the decision-making stage. The stages of mediation are described systematically and clearly by their respective sequences. In the practice of mediation after registering a divorce case at the Religious Court, the parties of the litigant husband and wife come to court after attending the summons legally and properly by the stipulations of the time and place.

Furthermore, the preparatory stage process in mediation is needed for a mediator to early study and deepen the root of the dispute between husband and wife who are consulted in mediation. The next stage is the implementation stage, the first stage of which is to form a forum. Before starting the mediation, both the mediator and the litigant husband and wife form a forum. In the forum that has been formed, the mediator organizes a joint meeting to deliver the preliminary statements of the husband and wife in the case.

At the time of conducting the mediation, the final stage is the decision-making stage where parties work together with the help of a mediator to evaluate options, get trade-offs and offer packages, minimize debates and find a fair basis for shared allocations. In the end, the parties who agreed were successful in making a joint decision. The stage of determining the mediator's decision can also pressure the parties, find formulas to avoid embarrassment, assist the parties in dealing with the power of attorney (if empowered).

The atmosphere of the location or place of mediation is a comfortable, free and pleasant place.<sup>47</sup> Technical readings and the stages of mediation in the Religious Courts are very important to construct priorities for the application of *maqashid shariah*. The *maqashid shariah* perspective on the mechanism of the stages of mediation is still very technical and the material content of divorce mediation is too formal. The very formalistic technical atmosphere of the implementation has made it more difficult and rigid to find a peace agreement. The consideration of the implementation of *maqashid shariah* in the content of mediation material is to try to strengthen the actualization of benefit, to bury the profundity (damage) in the household of married couples who have problems with conflict.

The opinion of al-Ghazaliy was explained systematically and concretely about Maqashid sharia as the basis of *maslahah*, and also the argument for achieving the goal. Maqashid shariah which is the basis of *maslahat* is trying to uphold the meaning of *syar'i* as the absolute authority of Allah in making laws to maintain religion, soul, mind, descent and property.<sup>48</sup> Thus, everything that can realize the meaning of *syar'i* is called *maslahat*. Al-Ghazaliy reiterated that the *maslahat* in the *maqashid shariah* which is actualized in its implementation in Islamic law is to take

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<sup>43</sup> R Silver, "Practice Note: Divorce Mediation with Challenging Parents," *Conflict Resolution Quarterly*, 2008.

<sup>44</sup> W Donohue, "Interaction Dynamics Predict Successful Negotiation in Divorce Mediation," *Journal of Language and Social Psychology* 35, no. 4 (2016): p. 374–393.

<sup>45</sup> K Bollen, "Money or Children? Power Sources in Divorce Mediation," *Journal of Family Studies* 19, no. 2 (2013): p. 159–173

<sup>46</sup> S Cohen, "Divorce Mediation: An Introduction," *Divorce Therapy*, 2014, <https://doi.org/10.4324/9781315791456>.

<sup>47</sup> AC Garcia, "Locations for Advice-Giving and the Production of Neutrality in Divorce Mediation Sessions," *Conflict Resolution Quarterly*, 2020, <https://doi.org/10.1002/crq.21292>.

<sup>48</sup> Al-Gazaliy, *Al-Mustashfa Fi 'Ilm Al-Ushul*, 1st ed. (Beirut: Dar al-Kutub al-Ilmiyah, 1993).

advantage as a source of goodness, rejecting obedience as a source of damage.<sup>49</sup> Therefore, benefit must be in accordance with *syar'i*, even though it is contrary to human intentions, sometimes human intentions are not based on *syar'i* but may be based on their desires.<sup>50</sup>

The opinion of Yusuf al-Qardhawi in formulating *maqashid shariah* is the transformation of the goals desired by the texts which contain the meaning of orders, prohibitions, and permits at the same time. *Maqasid shariah* means the purpose of Allah SWT. and also His Messenger in transforming Islamic laws. These Islamic laws can be found in the Koran and hadith which lead to the benefit of mankind.<sup>51</sup> Ibn Qayyim's opinion details the purpose of Islamic law is to manifest the benefit of mankind in the world and the hereafter. In totality, Islamic law contains mercy, justice, benefit, and wisdom.<sup>52</sup>

Furthermore, sharia means an ethical system as well as a value in covering all problems of human life which functions as a consistent and comprehensive life guideline that is implemented in Islamic law. The implementation of sharia in Islamic law is an absolute manifestation to uphold justice and benefit, eliminate prejudice, and reduce difficulties in human affairs. The purpose of Islamic law revealed to humans is the same connotation as the meaning of *maqashid shariah* in preserving all human interests.<sup>53</sup>

The realization of the *maqashid shariah* is that Muslims are obliged to maintain their religion, soul, mind, ancestry, and property. As *maqashid shariah* is generally understood to be the purpose of stipulating and lowering Islamic law to bring about goodness, safety, and happiness, on the other hand, avoiding badness, trouble and damage can threaten human life and existence.

The criticism of divorce through *maqashid shariah*, which is the judge's decision at the Religious Court, actually has the potential to cause the household to suffer disarray and damage, it is also focused on taking care of the children of both parents who are no longer maximally which causes neglected children.<sup>54</sup> The practice of mediation in the Religious Courts through the application of *maqashid shariah* is an action to repair and save a household from a husband and wife on the verge of damage and destruction. The perspective of the *maqashid shariah* that divorce in the Religious Court is not the best option or way to resolve conflicts between husband and wife in the household.

Seeing the reality of divorce cases in the Religious Courts today, it seems as if there are almost no more efforts, it is very difficult to stem and contain the rate of divorce that has increased sharply from year to year. The Supreme Court needs to review the effectiveness and efficiency of the implementation of mediation through Perma No. 1 of 2016 at the Religious Court with consideration for the benefit contained in the *maqashid shariah*. The strength of the application of Perma No. 1 of 2016 has not had a major effect on improving the situation of a married couple who filed their case at the Religious Court. The implementation of Perma No. 1 of 2016 does not yet show the balance of the verdict in divorce cases than the success of mediation in the Religious Courts.

The legal construction that is transformed by the Supreme Court in the Religious Courts, *maqashid shariah* can be a major consideration in improving mediation practice. Changes in law enforcement in the practice of mediation in the Religious Courts mean that judges are no longer given additional duties in carrying out mediation. The mediation must optimally be carried out by the mediator freely and independently, without depending on the Religious Courts. The Supreme Court must be more courageous in establishing a mediation institution for divorce cases

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<sup>49</sup> Riza Mulia, "Marital Beslag Outside Divorce Lawsuit in the Maqashid Syari'ah Perspective," Samarah: Journal of Family Law and Islamic Law 4, no. 2 (2020): p. 401.

<sup>50</sup> Said Syarifuddin, "Maslahat as Considerations of Islamic Law in View of Imam Malik," Samarah: Journal of Family Law and Islamic Law 4, no. 1 (2020): 90.

<sup>51</sup> Yusuf Al-Qardhawi, *Dirasah Fiqh Maqashid Al-Shariah; Baina Al-Maqashid Al-Kulliyah Wa Al-Nushus Al-Juziyyah* (Cairo: Dar al-Syuruq, 2006).

<sup>52</sup> Ibn Qayyim, *I'lam Al-Muwaqi'in Rabb Al-Alamin, 3rd ed.* (Beirut: Dar al-Jail, nd).

<sup>53</sup> Asyraf Wajdi Dusuki and Nurdianawati Irwani Abdullah, "Maqasid Al-Shariah, Maslahah, and Corporate Social Responsibility," American Journal of Islamic Social Sciences 24, no. 1 (2007): p. 31.

<sup>54</sup> AR Poladian, "Family Mediation for Divorce and Parental Separation," Foundations for Couples' Therapy: Research for the Real World, 2017, 256–267, <https://doi.org/10.4324/9781315678610-26>.

as a free, independent, and independent institution in preventing the increasing number of divorces.

Regulatory changes in the implementation of the law as an effort to transform *maqashid shariah* in the Religious Courts that every registered case should be that a husband and wife who are about to divorce must have a certificate of unsuccessful mediation from the mediation institution. Thus, the Religious Courts no longer accept divorce cases without a certificate of unsuccessful mediation which serves as a subsidiary condition in registering cases.

This opinion is reinforced by several sources from experience, it can be said that the implementation of mediation should be done before the case is entered or registered at the Religious Court. Experience from several times the mediation of several husband and wife couples who quarreled or conflicts with mediation through non-litigation, before the litigant couple filed a case in the Religious Court and the result succeeded in making a peace agreement. Some married couples who have litigated no longer wish to file divorce cases at the Religious Court have returned to harmony in rebuilding their households. In fact, in several cases, after the mediator reported the results of the mediation being unsuccessful, the case examining judges continued the trial process, starting with a vision or settlement by the panel of judges who managed to reconcile the litigants. The essence is that between mediation and peace efforts carried out by the mediator and the case examining a panel of judges should be the same.

After a husband and wife in a case get advice and advice from the Marriage Advisory, Development and Preservation Agency, it can show an indication that the divorce rate can be slightly suppressed through mediation outside the Court.<sup>55</sup> The experience of mediating divorce cases outside the court can be strengthened when the existence of the Marriage Advisory, Guidance and Preservation Agency while still active, based on data from the Office of Religious Affairs, nearly 50% of married couples who wish to file divorce cases at the Religious Courts can discourage divorce.

### **Revitalization of Bugis and Mandar Customary Institutions in divorce mediation**

The Bugis and Mandar peoples have historically been a family group that cannot be separated emotionally because they are tied to a *pangngaderreng* cultural system in South Sulawesi. The two communities were in the same territorial region before the formation of West Sulawesi as the expansion area of the South Sulawesi region on October 5, 2004, through Law no. 26 of 2004. Although separated from regional ties, emotional ties, both physically and physically, are still harmonious and peaceful.

The association of the two societies is bound in a very monumental cultural system, namely the *pangngaderreng* culture. Also, the Bugis and Mandar communities can also be bonded with marriage. The two societies are united with each other because of the same belief in embracing Islam. Returning to the *pangngaderreng* culture, it has five elements that cannot be separated from one another, namely *ade* ', talk, *rapang*, *wari*, and *shara* '.<sup>56</sup> *Pangngaderrengis* a cultural system and a social system that functions as the customary institution or social institution of the Bugis and Mandar peoples. *Pangngaderreng* culture regulates religious, social, cultural, state, and legal norms. *Ade* 'can be interpreted as custom, speaking means justice, *rapang* is jurisprudence, *wari* means social layering, and *shara* ' means Islamic law.<sup>57</sup>

The Bugis and Mandar people are very loyal and obedient to *ade* ' (Bugis) and *ada* ' (Mandar) means adat. The obedience and loyalty of the Bugis and Mandar people to adat are due to their deep belief in adat which always protects and preserves himself as a human being with *siri* '. *Siri* 'in essence is honor, dignity, dignity for humans. If someone does not have *siri* ' in him,

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<sup>55</sup> M De Jong, "A Pragmatic Look at Mediation as an Alternative to Divorce Litigation," *Tydskrif Vir Die Suid-Afrikaanse Reg*, no. 3 (2010): p.515–531. <https://www.scopus.com/inward/record.uri?partnerID=HzOxMe3b&scp=79959369736&origin=inward>.

<sup>56</sup> Nurnanigsih Nawawi, "Assimilation of Lontara Pangadereng and Islamic Shari'at: Behavioral Patterns of the Bugis-Wajo Society," *Al-Tahrir: Journal of Islamic Thought* 15, no. 1 (2015): p. 25.

<sup>57</sup> Rahmatunnair, "Contextualization of Pangngadereng in the Enforcement of Islamic Shariah in Bugineese Bone Community," *Al-Qalam* 17, no. 1 (2011): p. 94.

he is no longer excited to live, people in Bugis and Mandar societies prefer to die rather than have no *siri'* in him.

*Siri'* in the expression of the Bugis society is "*Siri' emmi ri onroang ri lino, utettong ri ade'e, najagainnami siri'ta, naia siri'e sunge naranreng, na life roughly*";<sup>58</sup> While *siri'* in the Mandar community expression is "what is *siri'* in *tu'u ita di'e rupa or mala tuo dini dilino*, using *de'i is dipiara toi siri'*, *dotai tau mate anna dadzi tia andan dian siri'*" This means that only with *siri'* humans can survive in the world, because by upholding customs, maintaining *siri'*, because with *siri'* death is at stake, and life is the ransom.

The connection with the enforcement of *siri'* in the Bugis and Mandar communities seems to have experienced a shift in values. The shift in the value of *siri'* itself is marked by a very interesting fact about divorce cases in the Bugis and Mandar communities, which is that divorce cases always dominate rather than divorce talaq in all Religious Courts. Acceleration of suicidal divorce cases is very urgent in the Bugis and Mandar communities. Compared to divorce talaq, family resilience began to be very fragile in Bugis and Mandar societies with the dominance of divorce in the Religious Courts. The dominance of a legal divorce which is the triggering factor is domestic violence, economy, and polygamy. Therefore, The Bugis and Mandar people seem to gradually no longer respect *siri'*, because they are not considered a disgrace' if they go to the Religious Court to ask for a divorce. It should be for the Bugis and Mandar people that it is a disgrace with divorce, let alone committing domestic violence, the disgrace of not being able to meet the economic needs of their families, and also a disgrace 'because of polygamy. A person disobeying or disregarding *siri'* is a disgrace'.

The fragility of family resilience in the Bugis and Mandar communities is also a triggering factor, namely the crisis of figures from family members who are charismatic as role models, and the crisis of optimizing the role of traditional institutions that act as mediators. Cultural and social changes in the Bugis and Mandar communities, sometimes on the part of the parents themselves, who usually play a role in separating the marriages of their children. For families who are experiencing conflict, it seems as if the Religious Court is the last place in conflict resolution. The irony is that it turns out that the Religious Courts are not a place that is capable of repairing the rifts in the households of husband and wife who experience conflict. Data from all divorce cases received at the Religious Courts are generally decided by the judge.

The strength in carrying out the value of *ade'* in the Bugis and the Mandar community' is to maintain a lasting and sustainable marriage, the implementation of the value of life *sirondo-rondo* which means cooperation, helping each other in doing a job, both heavy and light. The next value that is related to the sustainability of marriage is *siamasei* and *sianuang pa'mai* that in building a household, the husband and wife must love and love each other. The Bugis and Mandar people in fostering a household are also known as *sibaliparri*, husband and wife must maintain household harmony and have a mutual sense of responsibility towards their families, both when joy and sorrow must be faced together, the same fate and co-existence.

Marriage advice and advice are provisions in living the household dish.<sup>59</sup> The revitalization of customary institutions in the Bugis and Mandar communities such as *sirondo-rondo*, *siamasei* and *sianuang pa'mai*, and *sibaliparri* is the basis for certified judges and mediators to carry out mediation in the Religious Courts and outside the courts. Optimizing customary institutions in the Bugis and Mandar communities can be a very strong defense against the increasing divorce rate in the Religious Courts.

Also, reviving the traditional institutions of the *pangngaderreng* cultural system is *shara'* which is the implementation of Islamic law in the Bugis and Mandar communities. The enforcement of Islamic law in Bugis society is carried out by someone who has the title *petta kali'* and in Mandar society it is known as *puang kali'*. People who are appointed to be *petta kali'* in Bugis society and *puang kali'* in Mandar society are charismatic, scholars who have a deep

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<sup>58</sup> Fikri, Rahmawati, and Zulfah, "Idealism and Realism of Islamic Law in Pangngaderreng Culture of the Modern Bugis Bone," IOP Conference Series: Earth and Environmental Science 175, no. 1 (2018): p. 2, <https://doi.org/10.1088/1755-1315/175/1/012137>.

<sup>59</sup> A Garcia, "Advice-Giving and Disputant Empowerment in Divorce Mediation Sessions," Language and Dialogue 2, no. 3 (2012):p. 398–426, <https://doi.org/10.1075/ld.2.3.05gar>.



knowledge of Islam, master jurisprudence and Islamic law. The function of *petta kali'* or *puang kali'* is to give advice or marriage advice for married couples who are about to divorce.

The revitalization of *petta kali'* and *puang kali'* in Bugis and Mandar communities is that every married couple who is about to divorce, should first ask for advice or marriage advice. Divorce cases are no longer registered with the Religious Courts, before there are marital advice and advice from *petta kali'* and *puang kali'*.

## Conclusion

Referring to the divorce case data, it is an extra ordinal matter case in the Religious Courts throughout South Sulawesi and West Sulawesi. The reality that must be given full attention is that currently, divorce cases from divorce lawsuits are increasing in number compared to talaq divorces in the Religious Courts, so there is a concern about family resilience in the Bugis and Mandar communities. Divorce cases are increasing in number which can affect the mediation products in the Religious Courts, which causes the Supreme Court to apply Perma No. 1 of 2016. The dynamics of some of the products of mediation practices in the Religious Courts are successful mediations carried out by a mediator with a husband and wife couple who are having a case to reach a peace agreement as outlined in a peace deed. Another product of mediation is that mediation is partially successful and mediation is partially unsuccessful if the litigating party of the husband and wife submits two main points of the case so that some have succeeded in reaching a peace agreement and some are not successful in achieving reconciliation. The product of mediation is unsuccessful or fails because the litigant husband and wife have committed to divorce so that the mediator finds it difficult to reconcile to achieve reconciliation of the two litigant parties.

The process of practicing mediation in the Religious Courts is very urgent to implement *maqashid syariah* as the main consideration by judges at the Religious Courts in deciding divorce cases. The main consideration for the application of *maqashid syariah* has the potential to repair and save a household from a husband and wife on the verge of damage and destruction. The strong assumption of the application of *maqashid syariah* is that divorce in the Religious Court is not the best option or way to resolve conflicts between husband and wife in the household. The Supreme Court needs to review the practice of mediation through Perma No. 1 of 2016 by placing the benefits contained in the *maqashid syariah* for the practice of mediation in the Religious Courts.

Revitalizing traditional institutions such as upholding the value of *ade'* in the Bugis and existing in the Mandar community can be a strength in family resilience in maintaining the marriage. Bringing the customs of the Bugis community and society through social culture in the value of life *sirondo-rondo* which means cooperation, *siamasei* and *sianuang pa'mai* in fostering a household, husband and wife must love and love each other, and *sibaliparri* that husband and wife must take care of each other domestic harmony and mutual responsibility towards their families, both when joys and sorrows must be faced together, of the same fate and responsibility. Also, reviving the customary institutions of the *pangngaderreng* cultural system is *shara'* which is interpreted as an institution for implementing Islamic law in the Bugis and Mandar communities. The enforcement of Islamic law in Bugis society is carried out by someone who has the title *petta kali'* and in Mandar society known as *puang kali'* is a charismatic person, a cleric who has a deep knowledge of Islam, masters jurisprudence and Islamic law. The function of *petta kali'* or *puang kali'* is to give advice or marriage advice for husband and wife who want to divorce and their marriage will be long-lasting, lasting, and sustainable.

## References

- Abbas, Syahrizal. *Mediasi Dalam Perspektif Hukum Syari'ah, Hukum Adat Dan Hukum Nasional*. Jakarta: Kencana Prenada Media Group, 2009.
- Al\_Syatibi, Abu Ishaq. *Al-Muwafaqat Fi Ushul Al-Ahkam*. 2nd ed. Beirut: al-Maktabah al-Taufiqiyah, 2004.

- Al-Gazaliy. *Al-Mustashfa Fi' Ilm Al-Ushul*. 1st ed. Beirut: Dar al-Kutub al-Ilmiyah, 1993.
- Al-Qardhawi, Yusuf. *Dirasah Fi Fiqh Maqashid Al-Shariah; Baina Al-Maqashid Al-Kulliyah Wa Al-Nushus Al-Juziyyah*. Kairo: Dar al-Syuruq, 2006.
- Al-Salam, Izz al-Din Abd. *Qawaid Al-Ahkam Fi Masalih Al-Anam*. Beirut: Dar al\_Ma'rifah, n.d.
- Bailey, J.D. "Assessing Empowerment in Divorce Mediation." *Negotiation Journal* 25, no. 3 (2009): 327–36. <https://doi.org/10.1111/j.1571-9979.2009.00229.x>.
- Beck, C. "A Critical Reappraisal of Divorce Mediation Research and Policy." *Psychology, Public Policy, and Law* 6, no. 4 (2000): 989–1056. <https://doi.org/10.1037/1076-8971.6.4.989>.
- . "Defining a Threshold for Client Competence to Participate in Divorce Mediation." *Psychology, Public Policy, and Law*, 2006. <https://doi.org/10.1037/1076-8971.12.1.1>.
- Beck, E. "Improving Communication in Divorce Mediation." *Divorce Mediation: Perspectives on the Field*, 2014. <https://doi.org/10.4324/9781315860077>.
- Bollen, K. "Money or Children? Power Sources in Divorce Mediation." *Journal of Family Studies* 19, no. 2 (2013): 159–73. <https://doi.org/10.5172/jfs.2013.19.2.159>.
- Cohen, S. "Divorce Mediation: An Introduction." *Divorce Therapy*, 2014. <https://doi.org/10.4324/9781315791456>.
- Dingwall, R. "Divorce Mediation: Should We Change Our Mind?" *Journal of Social Welfare and Family Law* 32, no. 2 (2010): 107–17. <https://doi.org/10.1080/09649069.2010.506307>.
- Djawas, Mursyid, and Sri Astuti Abdul Samad. "Conflict, Traditional, and Family Resistance: The Pattern of Dispute Resolution in Acehese Community According to Islamic Law." *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 4, no. 1 (2020): 65–84.
- Donohue, W. "Interaction Dynamics Predict Successful Negotiation in Divorce Mediation." *Journal of Language and Social Psychology* 35, no. 4 (2016): 374–93. <https://doi.org/10.1177/0261927X15603090>.
- Dusuki, Asyraf Wajdi, and Nurdianawati Irwani Abdullah. "Maqasid Al-Shariah, Masalahah, and Corporate Social Responsibility." *American Journal of Islamic Social Sciences* 24, no. 1 (2007): 31.
- Ellis, D. "Safety, Equity, and Human Agency; Contributions of Divorce Mediation." *Violence Against Woman* 6, no. 9 (2000): 1012–27. <https://doi.org/10.1177/10778010022182254>.
- Emery, Robert E, David Sbarra, and Tara Grover. "Divorce Mediation: Research and Reflections." *Family Court Review* 43, no. 1 (2005): 22–37.
- Enrekang, Ketua Pengadilan Agama. "Laporan Tahunan Pengadilan Agama Enrekang." Kota Enrekang, 2020. <https://www.pa-enrekang.com/index.php/transparansi/sekretariat/perencanaan/laporan-tahunan>.
- Fikri, Rahmawati, and Zulfah. "Idealism and Realism of Islamic Law in Panggaderreng Culture of the Modern Bugis Bone." *IOP Conference Series: Earth and Environmental Science* 175, no. 1 (2018): 2. <https://doi.org/10.1088/1755-1315/175/1/012137>.
- Garcia, A. "Advice-Giving and Disputant Empowerment in Divorce Mediation Sessions." *Language and Dialogue* 2, no. 3 (2012): 398–426. <https://doi.org/10.1075/ld.2.3.05gar>.

- Garcia, A C. "Locations for Advice-Giving and the Production of Neutrality in Divorce Mediation Sessions." *Conflict Resolution Quarterly*, 2020. <https://doi.org/10.1002/crq.21292>.
- Hahn, R A. "Divorce Mediation: Research and Implications for Family and Couples Counseling." *The Family Journal*, 2000. <https://doi.org/10.1177/1066480700082009>.
- Halim, Wahyuddin. "Islamization or Arabization? The Arab Cultural Influence on the South Sulawesi Muslim Community since the Islamization in the 17th Century." *Suvannabhumi* 10, no. 1 (2018): 42.
- Holtzworth-Munroe, A. "Controversies in Divorce Mediation and Intimate Partner Violence: A Focus on the Children." *Aggression and Violent Behavior*, 2011. <https://doi.org/10.1016/j.avb.2011.04.009>.
- Huang, P. "Divorce Law Practices and the Origins, Myths, and Realities of Judicial 'mediation' in China." *Modern China* 31, no. 2 (2005): 151–203. <https://doi.org/10.1177/0097700405274585>.
- Indonesia, Direktorat Jenderal Badan Peradilan Agama Republik. Laporan Tahunan Badan Peradilan Agama (2020).
- Jong, M De. "A Pragmatic Look at Mediation as an Alternative to Divorce Litigation." *Tydskrif Vir Die Suid-Afrikaanse Reg*, no. 3 (2010): 515–31. <https://www.scopus.com/inward/record.uri?partnerID=HzOxMe3b&scp=79959369736&origin=inward>.
- Kaganas, F. "Domestic Violence and Divorce Mediation." *Journal of Social Welfare and Family Law* 16, no. 3 (1994): 265–78. <https://doi.org/10.1080/09649069408413612>.
- Ketua Pengadilan Agama Parepare. "Laporan Tahunan Pengadilan Agama Parepare." Kota Parepare, 2020. <http://pa-parepare.go.id/home/laporan-tahunan/>.
- Koopman, E. "The Present and Future Role of Higher Education in Divorce Mediation: Problems and Promise in Teaching, Research, and Service." *Divorce Mediation: Perspectives on the Field*, 2014. <https://doi.org/10.4324/9781315860077>.
- Kraft, A. "Childhood Parental Divorce and Cortisol in Young Adulthood: Evidence for Mediation by Family Income." *Psychoneuroendocrinology* 34, no. 9 (2009): 1363–69. <https://doi.org/10.1016/j.psyneuen.2009.04.008>.
- Majene, Ketua Pengadilan Agama. "Laporan Tahunan Pengadilan Agama Majene." Kota Majene, 2020. <https://pa-majene.go.id/informasi-umum/laporan-tahunan>.
- Mandar, Ketua Pengadilan Agama Poliwali. "Laporan Tahunan Pengadilan Agama Poliwali Mandar." Kota Poliwali, 2020. <http://pa-polewali.net/index.php/info-peradilan/program-kerja-kegiatan/laporan-tahunan>.
- Margulies, S. "Litigation, Mediation and the Psychology of Divorce." *Journal of Psychiatry and Law*, 1992. <https://doi.org/10.1177/009318539202000405>.
- Molgora, S. "Divorce and Coparenting: A Qualitative Study on Family Mediation in Italy." *Journal of Divorce and Remarriage* 55, no. 4 (2014): 300–314. <https://doi.org/10.1080/10502556.2014.901854>.
- Mulia, Riza. "Marital Beslag Outside Divorce Lawsuit in the Maqashid Syari'ah Perspective." *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 4, no. 2 (2020): 401.

- Nawawi, Nurnanigsih. "Asimilasi Lontara Pangadereng Dan Syari'at Islam: Pola Perilaku Masyarakat Bugis-Wajo." *Al-Tahrir: Jurnal Pemikiran Islam* 15, no. 1 (2015): 25.
- Neville, W. "Reflections on the Growth and Significance of Divorce Mediation." *Divorce Mediation: Perspectives on the Field*, 2014. <https://doi.org/10.4324/9781315860077>.
- Nurman, Said. *Religion and Cultural Identity Among the Bugis*. Makassar: Faculty of Islamic Theology of the Alauddin State Institute of Islamic Studies at Makassar, Indonesia, 2004.
- Pickar, D. "Intermittent Evaluative Mediation with Enduring, Post-Divorce Conflict." *Journal of Child Custody* 8, no. 3 (2011): 144–45. <https://doi.org/10.1080/15379418.2011.594722>.
- Pinrang, Ketua Pengadilan Agama. "Laporan Tahunan Pengadilan Agama Pinrang." Kota Pinrang, 2020. <http://pa-pinrang.go.id/index.php?limitstart=27>.
- Poladian, A R. "Family Mediation for Divorce and Parental Separation." *Foundations for Couples' Therapy: Research for the Real World*, 2017, 256–67. <https://doi.org/10.4324/9781315678610-26>.
- Przybyla-Basista, H. "The Influence of Spouses' Resistance on Their Decision to Enter into Divorce Mediation." *Journal of Divorce and Remarriage* 48, no. 3 (2008): 67–89. [https://doi.org/10.1300/J087v48n03\\_05](https://doi.org/10.1300/J087v48n03_05).
- Qardhawiy, Abd al-Rahman Yusuf Abd. *Nazhariyah Maqashid Al-Syari'ah Baina Syekh Al-Islam Ibn Taimiyah Wa Jumhur Ushliyyin Dirasah Muqaranah Min Al-Qarn Al-Khamis Ila Al-Tsamin Al-Hijri*. Kairo: Kulliyah Dar al-Ulum, n.d.
- Qayyim, Ibn. *I'lam Al-Muwaqi'in Rabb Al-Alamin*. 3rd ed. Beirut: Dar al-Jail, n.d.
- Rahmatunnair, Rahmatunnair. "Contextualization of Pangngadereng in the Enforcement of Islamic Shariah in Bugineese Bone Community." *Al-Qalam* 17, no. 1 (2011): 94.
- Rappang, Ketua Pengadilan Agama Sidenreng. "Laporan Tahunan Pengadilan Agama Sidenreng Rappang." Kota Pangkajenne, 2020. <http://pa-sidenrengappang.go.id/>.
- RI., Ketua Mahkamah Agung. "Perma RI. No. 1 Tahun 2016 Tentang Prosedur Mediasi Di Pengadilan." Jakarta, 2016. [https://bawas.mahkamahagung.go.id/bawas\\_doc/doc/perma\\_mediasi\\_pengadilan\\_web.pdf](https://bawas.mahkamahagung.go.id/bawas_doc/doc/perma_mediasi_pengadilan_web.pdf).
- Sbarra, D A. "In the Presence of Grief: The Role of Cognitive-Emotional Adaptation in Contemporary Divorce Mediation." *Handbook of Divorce and Relationship Dissolution*, 2013. <https://doi.org/10.4324/9781315820880-40>.
- Schepard, A. "An Introduction to the Model Standards of Practice for Family and Divorce Mediation." *Family Law Quarterly* 35, no. 1 (2001): 1–24. <https://www.scopus.com/inward/record.uri?partnerID=HzOxMe3b&scp=65449139388&origin=inward>.
- Shaw, L. "Divorce Mediation Outcome Research: A Meta-Analysis." *Conflict Resolution Quarterly* 27, no. 4 (2010): 447–67. <https://doi.org/10.1002/crq.20006>.
- Silver, R. "Practice Note: Divorce Mediation with Challenging Parents." *Conflict Resolution Quarterly*, 2008. <https://doi.org/10.1002/crq.220>.
- Syarifuddin, Said. "Maslahat as Considerations of Islamic Law in View Imam Malik." *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 4, no. 1 (2020): 90.

- Taylor, R. "Use of Change Theory in the Context of the Divorce Mediation Session." *Journal of Divorce and Remarriage* 40, no. 1 (2004): 87–92. [https://doi.org/10.1300/J087v40n01\\_06](https://doi.org/10.1300/J087v40n01_06).
- Twaite, J A. "Divorce Mediation: Promises, Criticisms, Achievements, and Current Challenges." *Journal of Psychiatry and Law*, 1998. <https://doi.org/10.1177/009318539802600304>.
- Weaver, J. "Mediation and Moderation of Divorce Effects on Children's Behavior Problems." *Journal of Family Psychology* 29, no. 1 (2015): 39–48. <https://doi.org/10.1037/fam0000043>.
- Worley, S. "The Effect of Cooperation on Egocentrism in Divorce Mediation: A Simulation Study." *Divorce Mediation: Perspectives on the Field*, 2014. <https://doi.org/10.4324/9781315860077>.
- Yunus, Abd. "The Acculturation of Islam and Local Culture in Bugis Wedding Tradition: A Historical Perspective," 2017, 4.

**2. Bukti konfirmasi review dan hasil review**  
**(25 Maret 2023)**



FIKRI 2010017401 &lt;fikri@iainpare.ac.id&gt;

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**[SJHK] Editor Decision**

7 pesan

**Nadhilah Filzah** <jurnal@ar-raniry.ac.id>

25 Maret 2023 pukul 16.21

Kepada: Salam Fikri Fikri &lt;fikri@iainpare.ac.id&gt;

Cc: Muhammad Ali Rusdi Bedong <alirusdi@iainpare.ac.id>, Salman Abdul Muthalib <salman@ar-raniry.ac.id>,  
Mahdalena Nasrun <mahdalena.nasrun@ar-raniry.ac.id>

Dear

Salam Fikri Fikri &lt;fikri@iainpare.ac.id&gt;

Muhammad Ali Rusdi Bedong &lt;alirusdi@iainpare.ac.id&gt;

Salman Abdul Muthalib &lt;salman@ar-raniry.ac.id&gt;

Mahdalena Nasrun &lt;mahdalena.nasrun@ar-raniry.ac.id&gt;

Assalamu alaikum wr.wb.

We have reached a decision regarding your submission to Samarah: Jurnal Hukum Keluarga dan Hukum Islam, "Transformation of Maqāṣid Shari'āh in Divorce Mediation in Religious Courts: Revitalization of the Bugis-Mandar Customs, Indonesia".

Our decision is to: revision required

Please ensure that your article is corrected according to both of 2 Reviewers

Please make sure that the similarity check of your article is no more than 20%

Please make sure that your article uses a new template of Samarah below:  
<https://drive.google.com/file/d/1kqJbInS7rGOjynFxDtXxSeriek0OVvZ/view>

Please ensure your article is corrected within a week.

Thank you so much for your quick response.

Wassalamu alaikum wr.wb.

Best Regard,

Nadhilah Filzah

Universitas Islam Negeri Ar-Raniry Banda Aceh

[nadilafilzah1@gmail.com](mailto:nadilafilzah1@gmail.com)-----  
Reviewer A:

Title

Title reflects the essence of the content of the article (content, method, novelty)

:

its content, methods and findings are in accordance with the focus of the journal Samarah on family law and Islamic law. the editor suggested the title, "traditional" be replaced with "custom" so that the local values that exist in the Bugis and Mandar ethnicities are more visible.

Abstract

Abstract contains problem of research, method, and result

:

in the abstract of theory and its approach there are too many choose just one or two so that it is more focused and sharper in the analysis.

#### Originality

The originality of the subject matter, and the manuscript would be of interest to the the scholar of Islamic countries in general and specifically in Indonesia

:

Divorce in Indonesia shows a number that continues to increase. This article's offer by revitalizing Customs (adat) in the Bugis and Mandar communities to reduce the divorce rate has become something that has attracted both scholars and researchers in the international and national world.

#### The Depth of Literature

Whether the article draws on an appropriate range and depth of literature (if not please indicate which sources of literature should be included by the author in future)

:

1. literature is good enough,  
2. although articles can still be added to Islamic law journals in Indonesia such as Ahkam (Jakarta), Ihkam (Madura), Ijtihad (Salatiga), Yuris (Batu Sangkar) or Mazahib (Samarinda).

#### Finding Presentation

Whether the findings presented are subjected to suitable analysis and sound conclusions drawn

:

discussion, analysis and research findings are aligned and sufficient enough as an international article.

Implications for understanding the study of Islamic family law and Islamic law in Islamic in Islamic countries in general and specifically in Indonesia

:

This article once again wants to show that there is integration between the three legal systems in Indonesia, namely Islamic law, customary law and national law. in other terms this is a form of legal pluralism in divorce cases or in Islamic family law which shows dynamics and development. so that this integration will realize the objectives of Islamic law (maqashid al-Syariah) as the core of this article.

#### Technical writing

Articles must be in accordance with the surrounding style and journal template

:

1. The footnotes should follow the samarah format (full name of the author, and so on??).  
2. The research method at the end needs to be emphasized  
3. References need to be added to Scopus journals specifically for Islamic law.

Additional comment for the author:

can be recommended for publication in future editions.

Is the article qualified for publication?

Please indicate your suggestion whether this article is qualified for Samarah

:

Minor Revision



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 -----  
 Reviewer B:

#### Title

Title reflects the essence of the content of the article (content, method, novelty)

:  
 the title containing the keywords, maqasid al-Shariah, divorce mediation, religious courts and customary law is a guarantee that this article discusses issues of Islamic family law in Indonesia that in other Islamic world. therefore these keywords are proof that this article is in accordance with the focus of the samarah journal, namely Islamic family law.

#### Abstract

Abstract contains problem of research, method, and result

:  
 on research findings: "sibali parri, siamasei and so on are Mandar traditions, values or customs in Bugis should also be mentioned???"

#### Originality

The originality of the subject matter, and the manuscript would be of interest to the the scholar of Islamic countries in general and specifically in Indonesia

:  
 based on data at the religious court, then customary values in the Bugis and Mandar ethnic groups as the majority of South Sulawesi. and West Sulawesi, besides the Makassar tribe. plus the approach and theory of maqashi al-Shariah are some of the aspects that make this article original, so you find findings that are different from the others.

#### The Depth of Literature

Whether the article draws on an appropriate range and depth of literature (if not please indicate which sources of literature should be included by the author in future)

:  
 reference is good

#### Finding Presentation

Whether the findings presented are subjected to suitable analysis and sound conclusions drawn

:  
 The theory used as an analytical tool successfully displays the research findings in this study. customary values in the Bugis and Mandar ethnic groups as the main argument in achieving maqashid al-shariah, among others, is to reduce the divorce rate in the South and West Sulawesi regions.

Implications for understanding the study of Islamic family law and Islamic law in Islamic in Islamic countries in general and specifically in Indonesia

:  
 This study succeeded in explaining the function of law for society, namely as a tool to create peace and order according to the approach used (sociology and legal anthropology). while the main theory used is maqasid al-shariah which is a major concept in Islamic law. So this study is interesting in combining two schools of law, namely national law and Islamic law, while the object of study is adat in society.

## Technical writing

Articles must be in accordance with the surrounding style and journal template

:

1. at the beginning of the writing format should be adjusted to the samarah format.
2. fix sentences or writings that need to be neutralized (follow the samarah journal template).
3. please correct the language (in Mandar, page 5), in Bugis, (page 18). see article manuscript.
4. conclusion is too long, please shorten.

Additional comment for the author:

can be published, see some notes in the text of the article.

Is the article qualified for publication?

Please indicate your suggestion whether this article is qualified for Samarah

:

Minor Revision

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Samarah: Jurnal Hukum Keluarga dan Hukum Islam  
<http://jurnal.ar-raniry.ac.id/index.php/samarah>

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**FIKRI 2010017401** <fikri@iainpare.ac.id>  
Kepada: FIKRI 2010017401 <fikri@iainpare.ac.id>

25 Maret 2023 pukul 18.03

[Kutipan teks disembunyikan]

---

**FIKRI 2010017401** <fikri@iainpare.ac.id>  
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26 Maret 2023 pukul 06.58

----- Forwarded message -----

Dari: **Nadhilah Filzah** <jurnal@ar-raniry.ac.id>

Date: Sab, 25 Mar 2023 16.21

Subject: [SJHK] Editor Decision

To: Salam Fikri Fikri <fikri@iainpare.ac.id>

Cc: Muhammad Ali Rusdi Bedong <alirusdi@iainpare.ac.id>, Salman Abdul Muthalib <salman@ar-raniry.ac.id>, Mahdalena Nasrun <mahdalena.nasrun@ar-raniry.ac.id>

[Kutipan teks disembunyikan]

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28 Maret 2023 pukul 21.41

[Kutipan teks disembunyikan]

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30 Maret 2023 pukul 09.11

[Kutipan teks disembunyikan]

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30 Maret 2023 pukul 09.14

[Kutipan teks disembunyikan]

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**FIKRI 2010017401** <fikri@iainpare.ac.id>  
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30 Maret 2023 pukul 09.27

----- Forwarded message -----

Dari: **Nadhilah Filzah** <jurnal@ar-raniry.ac.id>

Date: Sab, 25 Mar 2023 16.21

Subject: [SJHK] Editor Decision

To: Salam Fikri Fikri <fikri@iainpare.ac.id>

Cc: Muhammad Ali Rusdi Bedong <alirusdi@iainpare.ac.id>, Salman Abdul Muthalib <salman@ar-raniry.ac.id>, Mahdalena Nasrun <mahdalena.nasrun@ar-raniry.ac.id>

[Kutipan teks disembunyikan]

## **Transformation of *Maqashid Shariah* in Divorce Mediation in Religious Courts: Revitalization of Bugis-Mandar Traditional Institutions**

### **Abstract**

The focus of this study discusses the dynamics of legal product of divorce mediation practices in Religious Courts; the transformation of *maqashid shariah* in practice of mediation in divorce cases, and revitalization of *pangngaderreng* culture in practice of divorce mediation in Bugis and Mandar communities. The research methodology is descriptive qualitative field research, holistic, historical, and socio-anthropological approaches, *maqashid shariah* theory analysis, social and legal change theory, and social institutions theory. The results of this study indicate that divorce case is an extraordinary matter case in Religious Courts, dynamics of mediation practice in Religious Courts have successful mediation for a written peace agreement in peace deed, other mediation products are partially successful mediation and partially unsuccessful mediation, mediation products are not successful is that husband and wife are committed to divorce; *Maqashid shariah* transformation can be a major consideration by judges in mediation practice to save households on the verge of collapse, so that *maqashid shariah* is very urgent to place in Perma No.1 of 2016, and revitalization of Bugis-Mandar traditional institutions is an effort to revive the value of life *sirondo-rondo*, *siamasei*, *sianuang pa'mai*, and *sibaliparri*, also animate *shara'* which is performed *petta kali'* or *puang kali'*.

**Keywords:** *Maqashid Shariah, divorce mediation, Religious Courts, revitalization of traditional institutions, Bugis-Mandar*

## **Transformasi *Maqashid Shariah* dalam Mediasi Perceraian di Pengadilan Agama: Revitalisasi Lembaga Adat Bugis-Mandar**

Fikri

M. Dalip

Muhammad Ali Rusdi Bedong

Muhyiddin Salim

Institut Agama Islam Negeri Parepare

Sekolah Tinggi Agama Islam Negeri Majene

### **Abstrak**

Fokus penelitian ini membahas tentang dinamika produk hukum praktik mediasi perceraian di Pengadilan Agama; transformasi *maqashid syari'ah* dalam praktik mediasi dalam kasus perceraian, dan revitalisasi budaya *panggaderreng* dalam praktik mediasi perceraian di masyarakat Bugis dan Mandar. Metodologi penelitian yang digunakan adalah penelitian lapangan kualitatif deskriptif, pendekatan holistik, historis, dan sosio-antropologis, analisis teori *maqashid syari'ah*, teori perubahan sosial dan hukum, dan teori kelembagaan sosial. Hasil penelitian ini menunjukkan bahwa perkara perceraian merupakan perkara perkara luar biasa di Pengadilan Agama, dinamika praktek mediasi di Pengadilan Agama telah berhasil dalam mediasi perjanjian damai tertulis dalam akta damai, produk mediasi lainnya adalah mediasi yang berhasil sebagian dan mediasi yang tidak berhasil sebagian, mediasi tidak berhasil. produk yang tidak berhasil adalah suami dan istri yang berkomitmen untuk bercerai; Transformasi *maqashid syari'ah* dapat menjadi pertimbangan utama hakim dalam praktek mediasi untuk menyelamatkan rumah tangga yang di ambang kehancuran, sehingga *maqashid syari'ah* sangat mendesak untuk ditempatkan dalam Perma No.1 tahun 2016, dan revitalisasi kelembagaan adat Bugis-Mandar merupakan salah satu upaya. menghidupkan kembali nilai-nilai kehidupan *sirondo-rondo*, *siamasei*, *sianuang pa'mai*, dan *sibaliparri*, serta menghidupkan *shara'* yang dilakukan *petta kali'* atau *puang kali'*.

**Keywords:** *Maqashid Syari'ah, mediasi perceraian, Pengadilan Agama, revitalisasi lembaga adat, Bugis-Mandar*

### **Introduction**

The process of implementing mediation in fortifying family resilience from conflict has long been the subject of discussion as explained by Margulies that mediation is considered an effective effort to resolve husband-wife conflicts that intend to divorce.<sup>1</sup> On the other hand, violence that occurs in the family and also in mediation is still difficult to

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<sup>1</sup> S Margulies, *“Litigation, Mediation and the Psychology of Divorce,”* Journal of Psychiatry and Law, 1992.  
<http://jurnal.arraniry.ac.id/index.php/samarah>

find theoretical and practical concepts.<sup>2</sup>

The function of the mediator is to reconcile the two sides of the disputing family, helping to carry out active communication. In addition, the mediator also encourages harmony and also emphasizes the parties in conflict to consider the bad consequences of divorce.<sup>3</sup> It is important to strengthen the concept of mediation in resolving family conflicts and childcare.<sup>4</sup> Mediation is conducted by a mediator who acts as a mediator for the disputing parties and plays an active role in resolving the conflict by reaching a peace agreement from the parties.

Mediation is part of the legal system that can resolve family conflicts quickly, easily, and cheaply as long as the parties cooperate.<sup>5</sup> In addition to being able to be carried out by judges, psychologists, and other professionals who have the competence to carry out mediation can understand and address the root causes of problems in family conflicts.<sup>6</sup> According to RA Hahn explained that from several studies of the divorce mediation process carried out there were beneficial and beneficial results for the efficiency and satisfaction of the parties.<sup>7</sup> This opinion is supported by D. Ellis that divorce mediation makes a huge contribution towards the outcome of reconciliation between husband and wife.<sup>8</sup>

In line with the study conducted by Taylor R., suggesting that the mediator's demands in carrying out his role as the mediator can help to build confidence in the parties. Mediators are required to designing interpersonal communication between both husband and wife in conflict so that each party can introspect themselves towards better interaction changes.<sup>9</sup> The real emphasis of mediation is on reconciling the husband and wife who insisted on divorce.<sup>10</sup> Legal practitioners and academics

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<sup>2</sup> F Kaganas, "Domestic Violence and Divorce Mediation," *Journal of Social Welfare and Family Law* 16, no. 3 (1994): p. 265–278.

<sup>3</sup> A Shepard, "An Introduction to the Model Standards of Practice for Family and Divorce Mediation," *Family Law Quarterly* 35, no. 1 (2001): p. 2-3.

<sup>4</sup> J Weaver, "Mediation and Moderation of Divorce Effects on Children's Behavior Problems," *Journal of Family Psychology* 29, no. 1 (2015): p. 39–48.

<sup>5</sup> JA Twaite, "Divorce Mediation: Promises, Criticisms, Achievements, and Current Challenges," *Journal of Psychiatry and Law*, 1998.

<sup>6</sup> C Beck, "A Critical Reappraisal of Divorce Mediation Research and Policy," *Psychology, Public Policy, and Law* 6, No. 4 (2000): p. 991.

<sup>7</sup> RA Hahn, "Divorce Mediation: Research and Implications for Family and Couples Counseling," *The Family Journal*, 2000.

<sup>8</sup> D Ellis, "Safety, Equity, and Human Agency; Contributions of Divorce Mediation," *Violence Against Woman* 6, no. 9 (2000): p. 1012–1027.

<sup>9</sup> R Taylor, "Use of Change Theory in the Context of the Divorce Mediation Session," *Journal of Divorce and Remarriage* 40, no. 1 (2004): p. 90.

<sup>10</sup> P Huang, "Divorce Law Practices and the Origins, Myths, and Realities of Judicial 'mediation' in China," *Modern China* 31, no. 2 (2005): p. 154.  
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have studied a lot about the mediation process that can reduce the soaring divorce rate. Mediation is a reliable means of accelerating the reconciliation of families in conflict.<sup>11</sup> Even C. Beck mentioned that the implementation of the formulation of the concept of mediation is a much more recent effort to create justice for wives who are victims of domestic violence.<sup>12</sup>

However, mediation can speed up the settlement of cases, on the contrary as described by Przybyla Basista stated that the reasons for couples who refuse the mediation process are especially wives who experience feelings of trauma and fear of violence from their ex-husbands. Experience from her domestic life, the wife received painful treatment so that she did not have the time and space to negotiate through mediation with her ex-husband.<sup>13</sup> Sometimes children are also victims of violence, experiencing depression and anxiety which can affect the physical and psychological health consequences of divorcing parents.<sup>14</sup> The research also touches on the legal protection of children through the mediation process. Andrew Shepard's views on custody and subsistence needs can be read.<sup>15</sup>

The opinion of J. D. Bailey provides that the sharpening of the practice of mediation in divorce cases can refer to several assumptions that mediation is a golden opportunity to resolve conflicts and household breakdowns in constructing reconciliation between husband and wife. The practice of mediation involves offering a problem-solving process with a focus on the goal of reconciliation.<sup>16</sup>

Compare this with the thought conveyed by Robert Dingwall that the legal system and family policies of the government related to the practice of mediation carried out in European countries such as England, Wales, Scotland, and Northern Ireland are forced attempts to the husband and wife who are going to divorce under control of the mediator to

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<sup>11</sup> Robert E Emery, David Sbarra, and Tara Grover, "*Divorce Mediation: Research and Reflections*," *Family Court Review* 43, no. 1 (2005): p. 22–37.

<sup>12</sup> C Beck, "*Defining a Threshold for Client Competence to Participate in Divorce Mediation*," *Psychology, Public Policy, and Law*, 2006.

<sup>13</sup> H Przybyla-Basista, "*The Influence of Spouses' Resistance on Their Decision to Enter into Divorce Mediation*," *Journal of Divorce and Remarriage* 48, no. 3 (2008): p. 31.

<sup>14</sup> A Kraft, "*Childhood Parental Divorce and Cortisol in Young Adulthood: Evidence for Mediation by Family Income*," *Psychoneuroendocrinology* 34, no. 9 (2009): p. 1363–1369.

<sup>15</sup> Shepard, "*An Introduction to the Model Standards of Practice for Family and Divorce Mediation*."

<sup>16</sup> JD Bailey, "*Assessing Empowerment in Divorce Mediation*," *Negotiation Journal* 25, no. 3 (2009): p. 327–336.

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undergo the mediation process before their case reaches the Court.<sup>17</sup> An interesting thought from Lori Anne Shaw that the implementation of non-litigation mediation can outperform the judicial process in legally assisting the parties in a case, including from the results of mediation that prioritizes the interests of children.<sup>18</sup> Demands for non-litigation mediation practices are carried out to anticipate more immediate damage and cracks in households.

The theoretical purpose of marriage in Islamic law is to create *sakinah, mawaddah, and warahmah* families. Sometimes the theoretical goal of marriage is very different in practice from the goal of marriage. Marriage in the view of the Bugis and Mandar people that “*iya tu’u di’o alikkangan, including mesa pakkasiwang lao di puang Allah Taala, Jari mua ’alikkangananna macoai, ma mandapai* reward, but *mua ’andani macoa, napolean sin* ”. The meaning of marriage is that marriage is worship, so if the marriage is good you will get a reward, but if it is not good you will get sin.

Therefore, the practice of mediation, whether organized by judges at the Religious Courts or mediators outside the court, is very important to prioritize the content of divorce mediation using the *maqashid syariah* approach. Divorce mediation which contains the *maqashid sharia* paradigm based on *maslahat* as conveyed by Al-Gazaliy is an effort to uphold the objectives of shari’a laws in maintaining religion, soul, mind, descent and property.<sup>19</sup>

Maqashid syariah as formulated by *ushul fiqh* scholars is to have the meaning of all the aims and objectives regulated in religion to bring benefit and eliminate exasperation to its servants. Al-Syatibi further perfected the traditional *ushul fiqh* theories in the *al-Muwafaqat* book by formulating *maqashid syariah* which focused on *al-kulliyah al-khamsah*.<sup>20</sup>

Whereas *maqashid syariah* seen from the order is *maqashid al-dharuriyyah* (primary), *maqashid al-hajiyat* (secondary), and *maqashid al-tahsiniyyat* (complementary).<sup>21</sup> Therefore, based on the *maqashid syariah* that divorce mediation is in the order of *maqashid al-*

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<sup>17</sup> R Dingwall, “*Divorce Mediation: Should We Change Our Mind ?*,” *Journal of Social Welfare and Family Law* 32, no. 2 (2010): p. 107–17.

<sup>18</sup> L Shaw, “*Divorce Mediation Outcome Research: A Meta-Analysis*,” *Conflict Resolution Quarterly* 27, no. 4 (2010): p. 447–67,

<sup>19</sup> Abd al-Rahman Yusuf Abd Qardhawiy, *Nazhariyah Maqashid Al-Syari’ah Baina Syekh Al-Islam Ibn Taimiyah Wa Jumhur Ushliyyin Dirasah Muqaranah Min Al-Qarn Al-Khamis Ila Al-Tsamin Al-Hijri* (Cairo: Kulliyah Dar al-Ulum, nd).p. 70.

<sup>20</sup> Abu Ishaq Al-Syatibi, *Al-Muwafaqat Fi Ushul Al-Ahkam, 2nd ed.* (Beirut: al-Maktabah al-Taufiqiyah, 2004). p. 2.

<sup>21</sup> Izz al-Din Abd Al-Salam, *Qawaid Al-Ahkam Fi Masalih Al-Anam* (Beirut: Dar al\_Ma’rifah, nd). p. 11.



*dharuriyyah*, which is obliged to eliminate adultery in marriage, including maintaining the family from conflict, enmity, disharmony, and rifts between husband and wife.

On the other hand, based on the data source of the Directorate General of Religious Courts' annual report, divorce cases are considered an extraordinary matter in Indonesia. Following the report's data, it shows that there were 128,401 divorce cases in 2015. Divorce cases in 2017 included 113,937 divorce talaq, while 301,573 divorce lawsuits were filed. In 2018 the details of the divorce talaq were 118,853. In 2019, there were 124,776 divorce cases, then 355,842 divorce cases.<sup>22</sup>

The discourse on mediation has produced many studies on the roles and responsibilities of academics,<sup>23</sup> such as Mursyid Jawas and Sri Astuti A. Samad explained that reconciliation efforts in resolving family disputes can be successful with a family resilience approach through traditional Acehnese traditional wisdom such as *keuchik*, *tuha peut*, *teungku imum*, and *imum mukim*. The resolution of family conflicts in Acehnese society by means of Islamic law at the Syari'ah Court and also by practicing customary law in *sara opat* institutions, a kind of institution that includes *reje* and *imem* is very accurate, effective, and efficient.<sup>24</sup>

This idea of mediating divorce through customs and social institutions is very suitable to be actualized in the Bugis community in South Sulawesi and the Mandar community in West Sulawesi. Both the Bugis and Mandar Communities are ethnic groups that are very strong and thick in carrying out their customs which are tied to the *pangngaderreng* culture as a culture of conduct.<sup>25</sup> which includes *ade'*, *bicara*, *rapang*, *wari'*, and *shara'*. Mandar was found when the *pangngaderreng* became a social patron as the inner power control to accommodate *shara'*.<sup>26</sup>

The acceptance of *shara'* in *pangngaderreng* culture is a consequence for society to carry out Islamic law. Along with

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<sup>22</sup> Directorate General of the Religious Courts of the Republic of Indonesia, *Annual Report of the Religious Courts* (2020).

<sup>23</sup> E Koopman, "The Present and Future Role of Higher Education in Divorce Mediation: Problems and Promise in Teaching, Research, and Service," *Divorce Mediation: Perspectives on the Field*, 2014.

<sup>24</sup> Mursyid Djawas and Sri Astuti Abdul Samad, "Conflict, Traditional, and Family Resistance: The Pattern of Dispute Resolution in Acehnese Community According to Islamic Law," *Samarah: Journal of Family Law and Islamic Law* 4, no. 1 (2020): p. 69–71.

<sup>25</sup> Said Nurman, *Religion and Cultural Identity Among the Bugis* (Makassari: Faculty of Islamic Theology of the Alauddin State Institute of Islamic Studies at Makassar, Indonesia, 2004).

<sup>26</sup> Abd Yunus, "The Acculturation of Islam and Local Culture in Bugis Wedding Tradition: A Historical Perspective," 2017, 4.  
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development and *wari 'and shara'*.<sup>27</sup> Acculturation of Islam and the culture of the Bugis community and the progress of human civilization which is increasingly modern, sometimes *siri'* in the *pangngaderreng* culture of the Bugis and Mandar communities has gradually shifted. Whereas in the period of traditional life, the enforcement of *siri'* in the Bugis and Mandar communities is very embarrassed and loses its self-respect if there is a disgrace in the family, including for example a married couple who divorced from that family. The connection with the *pangngaderreng* culture has less than optimal function in the Bugis and Mandar communities, especially before and during the Covid-19 pandemic era, the number of divorce cases increased sharply in Religious Courts.

Exposing this background, this study focuses on the dynamics of the legal product of divorce mediation practices in the Religious Courts which incidentally is an institution that can be trusted to enforce Perma No. 1 of 2016. The transformation of *maqashid syariah* in the practice of mediation in divorce cases in the Religious Courts and outside the courts should prioritize benefit and eliminate adversity to maintain family resilience from various conflicts and disputes. The revitalization of the *pangngaderreng* culture in the practice of divorce mediation in the Religious Courts, which so far is believed to have less than optimal function in the Bugis and Mandar communities.

## **Dynamics of Legal Product of Divorce Mediation in Religious Courts**

Divorce mediation is an effort to mediate resolving disputes so that the mediator must be neutral, bridging, and must not be partial between the conflicting husband and wife in order to reach a peace agreement.<sup>28</sup> Divorce mediation can be designed to be therapeutic, treat, remedy, and counteract the bad effects of divorce.<sup>29</sup>

Divorce mediation is constructed to reflect on the significance of the marriage and address the possibilities that trigger divorce.<sup>30</sup> assisting divorced parties to optimize the effectiveness and efficiency of conflict

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<sup>27</sup> Wahyuddin Halim, "Islamization or Arabization? The Arab Cultural Influence on the South Sulawesi Muslim Community since the Islamization in the 17th Century," *Suvannabhumi* 10, no. 1 (2018): p. 42.

<sup>28</sup> Syahrizal Abbas, *Mediation in the Perspective of Sharia Law, Customary Law and National Law* (Jakarta: Kencana Prenada Media Group, 2009).

<sup>29</sup> DA Sbarra, "In the Presence of Grief: The Role of Cognitive-Emotional Adaptation in Contemporary Divorce Mediation," *Handbook of Divorce and Relationship Dissolution*, 2013.

<sup>30</sup> W Neville, "Reflections on the Growth and Significance of Divorce Mediation," *Divorce Mediation: Perspectives on the Field*, 2014.

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resolution in the family. One of the material contained in mediation is very interesting is a simulation method of husband-wife couples who are active for high cooperation which can overcome the conflicts they face, on the other hand, if the husband and wife do not cooperate less, they tend to have a selfish character.<sup>31</sup>

The success indicator of mediation if the material content is to collaborate, including eliminating partner violence intimidation and focusing on taking care of children,<sup>32</sup> refreshing and taking advantage of free time for discussion which aims to strengthen active communication in the family.<sup>33</sup> The family mediation construction should be intensified during the marriage period so that the husband and wife can build a household with full responsibility, affection, and love. Therefore, the practice of mediation is not only carried out when there is a conflict that is already overloaded, critical, and is experiencing a transition period for divorce.<sup>34</sup> The implementation of mediation before the family has problems with conflict, has many advantages for strengthening husband-wife relationships, enhancing cooperation, and also supporting joint care of children.<sup>35</sup>

The fact of the soaring divorce case decisions, it is appropriate to question the speed, accuracy, and efficiency of the judge's functioning as a mediator of divorce cases in the Religious Courts spread across several districts and cities in South Sulawesi and West Sulawesi. The data also shows that the Bugis and Mandar people prefer to resolve disputes and family conflicts in the Religious Courts rather than resolve conflicts with a system or kinship approach. Criticism of the Religious Courts in South Sulawesi and West Sulawesi as one of the case resolution institutions has not been able to accommodate the expectations of the community in settling divorce cases through mediation.

However, the public's assumption of judges acting as mediators in the Religious Courts is still considered a failure. Judges as mediators in conducting divorce mediation are still very symbolic, examinations are

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<sup>31</sup> S Worley, *"The Effect of Cooperation on Egocentrism in Divorce Mediation: A Simulation Study,"* *Divorce Mediation: Perspectives on the Field*, 2014.

<sup>32</sup> A Holtzworth-Munroe, *"Controversies in Divorce Mediation and Intimate Partner Violence: A Focus on the Children,"* *Aggression and Violent Behavior*, 2011.

<sup>33</sup> E Beck, *"Improving Communication in Divorce Mediation,"* *Divorce Mediation: Perspectives on the Field*, 2014.

<sup>34</sup> S Molgora, *"Divorce and Coparenting: A Qualitative Study on Family Mediation in Italy,"* *Journal of Divorce and Remarriage* 55, no. 4 (2014): p. 300–314.

<sup>35</sup> D Pickar, *"Intermittent Evaluative Mediation with Enduring, Post-Divorce Conflict,"* *Journal of Child Custody* 8, no. 3 (2011): p. 144–145.

too formalistic, very technical, high cost, and cases tend to be overloaded.

The various difficulties faced by judges as mediators in the Religious Courts in general led to the Supreme Court of the Republic of Indonesia to apply Perma No. 1 of 2016. The dynamics of implementing Perma No. 1 of 2016 provides an opportunity to internalize the practice of divorce mediation held by certified mediators from career non-judges at the Religious Courts. Mediation supports all parties to resolve conflicts they face with the help of a mediator who is neutral or impartial. A mediator only tries to bridge all parties in a transparent manner, negotiate, and find the best solution.

The legal position of the implementation of mediation in Law no. 30 of 1999 concerning Arbitration and Alternative Settlements, then followed up by Perma No. 1 of 2016 concerning Mediation as an amendment to Perma No. 1 of 2008 concerning Mediation Procedures. Perma No. 1 of 2016 is implemented to carry out divorce mediation practices in the Religious Courts. Indeed, mediation for divorce in the Religious Courts is to avoid the accumulation of family cases. In fact, the judge's decision will be null and void if the judge examining the divorce case at trial does not enforce mediation at the Religious Court.

The progress of divorce cases that have entered both cases for divorce talaq and cases for divorce in the Religious Courts between 2018 and 2020 in the regions of South Sulawesi and West Sulawesi. The Religious Courts located in South Sulawesi are limited to only taking divorce data from the Parepare Religious Court, the Sidenreng Rappang Religious Court, the Pinrang Religious Court, and the Enrekang Religious Court. Meanwhile, the Religious Courts in West Sulawesi are also limited by taking data on divorce cases that are submitted to the Polewali Mandar Religious Court, the Majene Religious Court, and the Mamuju Religious Court.

The success and failure of the product of mediation practice by judges from each of the Religious Courts in South Sulawesi in three years from 2018 to 2020. Since 2018, there have been 12 judges at the Parepare Religious Court who were spread into 6 panels. Types of cases, divorced talaq received 106 cases, ended 103 cases and the percentage of case completion was 81%, claimants received 380 cases, dropped 385 cases and percentage of case completion was 93%. The Parepare Religious Court mediated 13 cases and 3 cases that succeeded in peace. In 2019, the remaining cases for divorce talaq in 2018 were 23 cases, divorce talaq received 103 cases, 120 cases were decided and the percentage of case completion was 95%. For divorce with the remainder of 2018 in 26 cases, received 439, drop out of 440 cases and the percentage of completion of cases is 95%. Mediated a number of 82 cases and 5 cases which succeeded in peace. In 2020, the remaining cases for divorce talaq in 2019 amounted to 6 cases, 80 cases of divorce received and 80 cases of

divorce. There are 25 divorce cases left in 2019, 357 cases received, 379 cases ended.<sup>36</sup>

Referring to the state of divorce cases every year there has been an increase in both talaq and legal divorce at the Parepare Religious Court. The reality cannot be denied, divorce cases are very worrying, because the number of cases for suing for divorce is greater than cases for divorce talaq. In addition, the performance of judges in conducting mediation at the Parepare Religious Court from 2018 to 2020 can be categorized as failing. The failure of judges to mediate at the Parepare Religious Court has not been able to balance the number of divorce cases that were decided and the number of cases that succeeded in mediating to reach a peaceful consensus.

The progress of divorce cases from 2018 to 2020 at the Sidenreng Rappang Religious Court, can be described with data since 2018, the number of divorces talaq 154 cases and 555 divorce cases. Mediating 91 divorce cases, succeeded in reaching a peaceful consensus on 2 cases. In 2019, the number of divorces talaq received was 213 cases, 202 cases were decided, and the percentage of case settlements was 88%. 699 cases of divorce were accepted, 690 cases were decided on 95%. Mediated 89 cases and succeeded in a peaceful consensus on 0 cases. In 2020, the number of divorces talaq received 163 cases, 152 cases broke up and 83% case settlement percentage, 604 divorce cases received, 591 broke up, and 91% case completion percentage. Mediated 69 cases and succeeded in a 2 case peace consensus.<sup>37</sup>

The strength of the judges at the Sidenreng Rappang Religious Court in conducting mediation is still relatively weak and failed, even in the mediation that was carried out in 2019, not a single case was successfully reconciled. Divorce cases that are accepted are generally terminated and only a very few divorce cases have succeeded in peace.

The Pinrang Religious Court is one of the courts which accepts many divorce cases every year. It is known that in 2018, there were 163 divorces and 640 divorcees, 131 cases of mediation, and 2 cases of the peace agreement were reached. In 2019 there were 208 cases of divorce, 820 cases of divorce, 128 mediation cases, and 4 cases of peace. In 2020, there were 199 divorce cases, 798 divorce cases, 140 mediated cases, and

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<sup>36</sup> Chairman of the Parepare Religious Court, "*Annual Report of the Parepare Religious Court*" (City of Parepare, 2020), <http://pa-parepare.go.id/home/leport-tahunan/>.

<sup>37</sup> Chairman of the Sidenreng Rappang Religious Court, "*Annual Report of the Sidenreng Rappang Religious Court*" (City of Pangkajenne, 2020), <http://pa-sidenrengappang.go.id/>.  
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Compared to the Parepare Religious Court and the Sidenreng Rappang Religious Court, the Pinrang Religious Court judges have made progress in reconciling divorce cases. In 2020, the success of mediation at the Pinrang Religious Court is inseparable from the active role of judges in reconciling a litigious husband and wife. The success of mediating divorce cases is supported by the knowledge and experience of judges who are familiar with the social culture of the Pinrang community.

In 2019 data, there were 338 divorce cases including 66 cases of divorce, 258 divorce cases, and 51 cases of mediation, only 1 case was successful at the Enrekang Religious Court. In 2020 there were 336 divorce cases and among them, 75 cases of divorce, 246 divorce cases, 31 mediation cases, and none of them succeeded in peace. Mediation from 2019 and 2020 amounted to 82 cases, only 1 case succeeded in peace.<sup>39</sup> Mediation is almost completely ineffective and in fact creates new problems, namely the accumulation of cases that should be resolved, but are hampered by the time-consuming mediation process. Mediation also has an impact on costs (court costs) so that the principle of litigating with a simple, fast, and low cost does not materialize.

Furthermore, the development of divorce case mediation in the Religious Courts located in the West Sulawesi region is limited to the Polewali Mandar Religious Courts and the Majene Religious Courts. The source of information found at the Polewali Mandar Religious Court stated that in 2017 talaq's divorce was received by 155 cases, 135 cases were ended. 422 cases of divorce were accepted, 366 cases were ended, related to the mediation report not mentioned in the report on the activities of the Polewali Mandar Religious Court. In 2018 talaq divorce received 175 cases, 160 cases ended. 453 divorce cases were accepted, 427 cases ended and mediation was also not included in the 2018 Polewali Mandar Religious Court activity report. In 2019 talaq divorce received 176 cases, 161 cases ended. 507 cases of divorce were accepted, 473 cases were ended.<sup>40</sup> In 2019 there has been no progress on case mediation in the activity report. Meanwhile, the 2020 report has not yet published the number of cases for divorce talaq and divorce.

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<sup>38</sup> Chairman of the Pinrang Religious Court, "Annual Report of the Pinrang Religious Court" (Kota Pinrang, 2020), <http://pa-pinrang.go.id/index.php?limitstart=27>.

<sup>39</sup> Chairman of the Enrekang Religious Court, "Annual Report of the Enrekang Religious Court" (Enrekang City, 2020), <https://www.pa-enrekang.com/index.php/transparant/sekretariat/perplan/lentuk-tahunan>.

<sup>40</sup> Chairperson of the Paliwali Mandar Religious Court, "Annual Report of the Paliwali Mandar Religious Court" (Paliwali City, 2020), <http://pa-paliwali.net/index.php/info-peradilan/program-kerja-k-Activity/l-Report-tahunan>. <http://jurnal.arraniry.ac.id/index.php/samarah>

Divorce cases at the Majene Religious Court, in 2017 talaq received 44 cases plus the remaining 2 cases in 2016, 41 cases ended. Divorce accepts 131 cases plus the remaining 5 cases from 2016, 128 cases ended, 30 cases mediated and none of the cases succeeded in peace. In 2018, divorce talaq received 45 cases plus the remaining 5 cases in 2017, 48 cases were broken. The remaining cases in 2017 were 7 cases, in 2018 129 cases were divorced, 137 cases were ended, 32 cases were mediated and none of the cases were successfully reconciled. In 2019 divorce Talaq received 55 cases plus the remaining 2 cases in 2018, 57 cases ended. Divorce accepts 150 cases plus the remaining 6 cases in 2018, 155 cases ended, 40 mediated cases, and 4 peaceful cases.<sup>41</sup> In 2020, the progress of the divorce case has not been published, both from the talaq divorce case and the sue divorce case.

Optimizing efforts to provide legal services to the community in all Religious Courts in South Sulawesi and West Sulawesi in enforcing mediation institutions which are run by mediating judges. The mediating judge carries out legal remedies against the justice-seeking community to reconcile the disputing parties. Mediation in all Religious Courts is regulated in article 130 HIR / article 154 Rbg. jo. Perma No. 1 of 2016 concerning Mediation Procedures in Courts.

The legal product of the mediator reports to the examining panel of judges regarding the results of the mediation process that has been carried out with the case husband and wife. If the mediator succeeds in reconciling, the results of the mediation are written in a peace deed. The panel of judges stated in legal considerations, one of which was based on the peace deed agreed and signed by the parties in the case. In one of the verdicts, the panel of judges "punished the applicant/plaintiff and the respondent/defendant to obey the results of the peace agreement that had been reached." Successful mediation without proof of the peace deed of the party presenting the case will withdraw the case that has been submitted at the next trial. Based on Perma No.<sup>42</sup>

There are several types of mediation products, one of which is a successful mediation product, where both husband and wife achieve reconciliation, agree to resolve the problem peacefully and amicably. The peace agreement actualized the peace deed by Perma No. 1 of 2016 Article 27 paragraph 2 or in a divorce case, the party filing for divorce

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<sup>41</sup> Chairman of the Majene Religious Court, *"Annual Report of the Majene Religious Court"* (Majene City, 2020), <https://pa-majene.go.id/informasi-umum/leport-tahunan>.

<sup>42</sup> Chairman of the Supreme Court of the Republic of Indonesia., *"Perma RI. No. 1 of 2016 concerning Mediation Procedures in Courts"* (Jakarta, 2016), [https://bawas.mahkamahagung.go.id/bawas\\_doc/doc/perma\\_mediasi\\_pengadilan\\_we b.pdf](https://bawas.mahkamahagung.go.id/bawas_doc/doc/perma_mediasi_pengadilan_we b.pdf).  
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withdraws the case at the next trial. The mediation has succeeded in reaching an agreement, the parties with the assistance of the mediator are obliged to formulate a written agreement in a peace agreement signed by the parties and the mediator. In helping to formulate a peace agreement, the mediator is obliged to ensure that it does not contain provisions that are contrary to law, public order, and also morals, detrimental to the litigant.

The next possibility, the product of partially successful mediation is when two or more cases are filed but not all of them reach an amicable agreement, for example, divorce cases are accumulated with joint assets, a husband and wife agree to share Gono Gini assets are joint assets obtained during the marriage period. peacefully and kinship, but both of them still want to divorce. Also, the product of mediation does not work, if both parties in a case do not reach a peace agreement and want to continue the case. Another type of mediation product is improper mediation if one of the parties is not present at the mediation without justified reasons, involves the rights of the other party, and there are parties who should be subject to law but are not involved in the case.

### **Transformation of Maqasid al-Sharia in Mediation Practices in Divorce Cases**

The mediator who carries out the mediation can help the parties of a married couple to have a strong character and personality in facing a case.<sup>43</sup> The mediator strengthens the understanding of a married couple regarding the importance of marriage, the consequences after divorce,<sup>44</sup> and a major consideration of the power of mediation is childcare.<sup>45</sup> The mediator conducts mediation in a measured manner, ensuring the benefit, effectiveness, and satisfaction of the parties related to the success of the mediation in achieving peace.<sup>46</sup>

Measurable mediation can focus on the context of enforcing mediation as regulated in Perma No. 1 of 2016. Other dispute resolution processes are similar to the mediation of divorce cases at the Religious Courts. The very basic similarities are the steps that must be passed by the provisions in Perma No. 1 of 2016.

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<sup>43</sup> R Silver, "*Practice Note: Divorce Mediation with Challenging Parents,*" *Conflict Resolution Quarterly*, 2008.

<sup>44</sup> W Donohue, "*Interaction Dynamics Predict Successful Negotiation in Divorce Mediation,*" *Journal of Language and Social Psychology* 35, no. 4 (2016): p. 374–393.

<sup>45</sup> K Bollen, "*Money or Children? Power Sources in Divorce Mediation,*" *Journal of Family Studies* 19, no. 2 (2013): p. 159–173

<sup>46</sup> S Cohen, "*Divorce Mediation: An Introduction,*" *Divorce Therapy*, 2014, <https://doi.org/10.4324/9781315791456>.  
<http://jurnal.arraniry.ac.id/index.php/samarah>



In general, the mediation stages in divorce cases at the Religious Courts are mapped into three stages, namely the preparation stage, the implementation stage, and also the decision-making stage. The stages of mediation are described systematically and clearly by their respective sequences. In the practice of mediation after registering a divorce case at the Religious Court, the parties of the litigant husband and wife come to court after attending the summons legally and properly by the stipulations of the time and place.

Furthermore, the preparatory stage process in mediation is needed for a mediator to early study and deepen the root of the dispute between husband and wife who are consulted in mediation. The next stage is the implementation stage, the first stage of which is to form a forum. Before starting the mediation, both the mediator and the litigant husband and wife form a forum. In the forum that has been formed, the mediator organizes a joint meeting to deliver the preliminary statements of the husband and wife in the case.

At the time of conducting the mediation, the final stage is the decision-making stage where parties work together with the help of a mediator to evaluate options, get trade-offs and offer packages, minimize debates and find a fair basis for shared allocations. In the end, the parties who agreed were successful in making a joint decision. The stage of determining the mediator's decision can also pressure the parties, find formulas to avoid embarrassment, assist the parties in dealing with the power of attorney (if empowered).

The atmosphere of the location or place of mediation is a comfortable, free and pleasant place.<sup>47</sup> Technical readings and the stages of mediation in the Religious Courts are very important to construct priorities for the application of *maqashid shariah*. The *maqashid shariah* perspective on the mechanism of the stages of mediation is still very technical and the material content of divorce mediation is too formal. The very formalistic technical atmosphere of the implementation has made it more difficult and rigid to find a peace agreement. The consideration of the implementation of *maqashid shariah* in the content of mediation material is to try to strengthen the actualization of benefit, to bury the profundity (damage) in the household of married couples who have problems with conflict.

The opinion of al-Ghazaliy was explained systematically and concretely about Maqashid sharia as the basis of maslahah, and also the argument for achieving the goal. Maqashid shariah which is the basis of maslahat is trying to uphold the meaning of syar'i as the absolute

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<sup>47</sup> AC Garcia, "Locations for Advice-Giving and the Production of Neutrality in Divorce Mediation Sessions," Conflict Resolution Quarterly, 2020, <https://doi.org/10.1002/crq.21292>.  
<http://jurnal.arraniry.ac.id/index.php/samarah>

authority of Allah in making laws to maintain religion, soul, mind, descent and property.<sup>48</sup> Thus, everything that can realize the meaning of syar'i is called *maslahat*. Al-Ghazali reiterated that the *maslahat* in the *maqashid shariah* which is actualized in its implementation in Islamic law is to take advantage as a source of goodness, rejecting obedience as a source of damage.<sup>49</sup> Therefore, benefit must be in accordance with syar'i, even though it is contrary to human intentions, sometimes human intentions are not based on syar'i but may be based on their desires.<sup>50</sup>

The opinion of Yusuf al-Qardhawi in formulating *maqashid shariah* is the transformation of the goals desired by the texts which contain the meaning of orders, prohibitions, and permits at the same time. *Maqasid shariah* means the purpose of Allah SWT. and also His Messenger in transforming Islamic laws. These Islamic laws can be found in the Koran and hadith which lead to the benefit of mankind.<sup>51</sup> Ibn Qayyim's opinion details the purpose of Islamic law is to manifest the benefit of mankind in the world and the hereafter. In totality, Islamic law contains mercy, justice, benefit, and wisdom.<sup>52</sup>

Furthermore, sharia means an ethical system as well as a value in covering all problems of human life which functions as a consistent and comprehensive life guideline that is implemented in Islamic law. The implementation of sharia in Islamic law is an absolute manifestation to uphold justice and benefit, eliminate prejudice, and reduce difficulties in human affairs. The purpose of Islamic law revealed to humans is the same connotation as the meaning of *maqashid shariah* in preserving all human interests.<sup>53</sup>

The realization of the *maqashid shariah* is that Muslims are obliged to maintain their religion, soul, mind, ancestry, and property. As *maqashid shariah* is generally understood to be the purpose of stipulating and lowering Islamic law to bring about goodness, safety, and happiness, on the other hand, avoiding badness, trouble and damage can threaten

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<sup>48</sup> Al-Gazaliy, *Al-Mustashfa Fi 'Ilm Al-Ushul*, 1st ed. (Beirut: Dar al-Kutub al-Ilmiyah, 1993).

<sup>49</sup> Riza Mulia, "Marital Beslag Outside Divorce Lawsuit in the *Maqashid Syari'ah* Perspective," *Samarah: Journal of Family Law and Islamic Law* 4, no. 2 (2020): p. 401.

<sup>50</sup> Said Syarifuddin, "Maslahat as Considerations of Islamic Law in View of Imam Malik," *Samarah: Journal of Family Law and Islamic Law* 4, no. 1 (2020): 90.

<sup>51</sup> Yusuf Al-Qardhawi, *Dirasah Fiqh Maqashid Al-Shariah; Baina Al-Maqashid Al-Kulliyah Wa Al-Nushus Al-Juziyyah* (Cairo: Dar al-Syuruq, 2006).

<sup>52</sup> Ibn Qayyim, *I'lam Al-Muwaqifi'n Rabb Al-Alamin*, 3rd ed. (Beirut: Dar al-Jail, nd).

<sup>53</sup> Asyraf Wajdi Dusuki and Nurdianawati Irwani Abdullah, "Maqasid Al-Shariah, Maslahah, and Corporate Social Responsibility," *American Journal of Islamic Social Sciences* 24, no. 1 (2007): p. 31.

The criticism of divorce through *maqashid syariah*, which is the judge's decision at the Religious Court, actually has the potential to cause the household to suffer disarray and damage, it is also focused on taking care of the children of both parents who are no longer maximally which causes neglected children.<sup>54</sup>The practice of mediation in the Religious Courts through the application of *maqashid syariah* is an action to repair and save a household from a husband and wife on the verge of damage and destruction. The perspective of the *maqashid syariah* that divorce in the Religious Court is not the best option or way to resolve conflicts between husband and wife in the household.

Seeing the reality of divorce cases in the Religious Courts today, it seems as if there are almost no more efforts, it is very difficult to stem and contain the rate of divorce that has increased sharply from year to year. The Supreme Court needs to review the effectiveness and efficiency of the implementation of mediation through Perma No. 1 of 2016 at the Religious Court with consideration for the benefit contained in the *maqashid syariah*. The strength of the application of Perma No. 1 of 2016 has not had a major effect on improving the situation of a married couple who filed their case at the Religious Court. The implementation of Perma No. 1 of 2016 does not yet show the balance of the verdict in divorce cases than the success of mediation in the Religious Courts.

The legal construction that is transformed by the Supreme Court in the Religious Courts, *maqashid syariah* can be a major consideration in improving mediation practice. Changes in law enforcement in the practice of mediation in the Religious Courts mean that judges are no longer given additional duties in carrying out mediation. The mediation must optimally be carried out by the mediator freely and independently, without depending on the Religious Courts. The Supreme Court must be more courageous in establishing a mediation institution for divorce cases as a free, independent, and independent institution in preventing the increasing number of divorces.

Regulatory changes in the implementation of the law as an effort to transform *maqashid syariah* in the Religious Courts that every registered case should be that a husband and wife who are about to divorce must have a certificate of unsuccessful mediation from the mediation institution. Thus, the Religious Courts no longer accept divorce cases without a certificate of unsuccessful mediation which serves as a subsidiary condition in registering cases.

This opinion is reinforced by several sources from experience, it

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<sup>54</sup> AR Poladian, "Family Mediation for Divorce and Parental Separation," Foundations for Couples' Therapy: Research for the Real World, 2017, 256–267, <https://doi.org/10.4324/9781315678610-26>.  
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can be said that the implementation of mediation should be done before the case is entered or registered at the Religious Court. Experience from several times the mediation of several husband and wife couples who quarreled or conflicts with mediation through non-litigation, before the litigant couple filed a case in the Religious Court and the result succeeded in making a peace agreement. Some married couples who have litigated no longer wish to file divorce cases at the Religious Court have returned to harmony in rebuilding their households. In fact, in several cases, after the mediator reported the results of the mediation being unsuccessful, the case examining judges continued the trial process, starting with a vision or settlement by the panel of judges who managed to reconcile the litigants. The essence is that between mediation and peace efforts carried out by the mediator and the case examining a panel of judges should be the same.

After a husband and wife in a case get advice and advice from the Marriage Advisory, Development and Preservation Agency, it can show an indication that the divorce rate can be slightly suppressed through mediation outside the Court.<sup>55</sup> The experience of mediating divorce cases outside the court can be strengthened when the existence of the Marriage Advisory, Guidance and Preservation Agency while still active, based on data from the Office of Religious Affairs, nearly 50% of married couples who wish to file divorce cases at the Religious Courts can discourage divorce.

### **Revitalization of Bugis and Mandar Customary Institutions in divorce mediation**

The Bugis and Mandar peoples have historically been a family group that cannot be separated emotionally because they are tied to a *pangngaderreng* cultural system in South Sulawesi. The two communities were in the same territorial region before the formation of West Sulawesi as the expansion area of the South Sulawesi region on October 5, 2004, through Law no. 26 of 2004. Although separated from regional ties, emotional ties, both physically and physically, are still harmonious and peaceful.

The association of the two societies is bound in a very monumental cultural system, namely the *pangngaderreng* culture. Also, the Bugis and Mandar communities can also be bonded with marriage. The two societies are united with each other because of the same belief in

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<sup>55</sup> M De Jong, “A Pragmatic Look at Mediation as an Alternative to Divorce Litigation,” *Tydskrif Vir Die Suid-Afrikaanse Reg*, no. 3 (2010): p.515–531.  
<https://www.scopus.com/inward/record.uri?partnerID=HzOxMe3b&scp=79959369736&origin=inward>.  
<http://jurnal.arraniry.ac.id/index.php/samarah>

embracing Islam. Returning to the *pangngaderreng* culture, it has five elements that cannot be separated from one another, namely *ade'*, talk, *rapang*, *wari*, and *shara'*.<sup>56</sup> *Pangngaderreng* is a cultural system and a social system that functions as the customary institution or social institution of the Bugis and Mandar peoples. *Pangngaderreng* culture regulates religious, social, cultural, state, and legal norms. *Ade'* can be interpreted as custom, speaking means justice, *rapang* is jurisprudence, *wari* means social layering, and *shara'* means Islamic law.<sup>57</sup>

The Bugis and Mandar people are very loyal and obedient to *ade'* (Bugis) and *ada'* (Mandar) means *adat*. The obedience and loyalty of the Bugis and Mandar people to *adat* are due to their deep belief in *adat* which always protects and preserves himself as a human being with *siri'*. *Siri'* in essence is honor, dignity, dignity for humans. If someone does not have *siri'* in him, he is no longer excited to live, people in Bugis and Mandar societies prefer to die rather than have no *siri'* in him.

*Siri'* in the expression of the Bugis society is “*Siri' emmi ri onroang ri lino, utettong ri ade'e, najagainnami siri'ta, naia siri'e sunge naranreng, na life roughly*”,<sup>58</sup> While *siri'* in the Mandar community expression is “what is *siri'* in *tu'u ita di'e rupa or mala tuo dini dilino*, using *de'i is dipiara toi siri'*, *dotai tau mate anna dadzi tia andan dian siri'*” This means that only with *siri'* humans can survive in the world, because by upholding customs, maintaining *siri'*, because with *siri'* death is at stake, and life is the ransom.

The connection with the enforcement of *siri'* in the Bugis and Mandar communities seems to have experienced a shift in values. The shift in the value of *siri'* itself is marked by a very interesting fact about divorce cases in the Bugis and Mandar communities, which is that divorce cases always dominate rather than divorce *talaq* in all Religious Courts. Acceleration of suicidal divorce cases is very urgent in the Bugis and Mandar communities. Compared to divorce *talaq*, family resilience began to be very fragile in Bugis and Mandar societies with the dominance of divorce in the Religious Courts. The dominance of a legal divorce which is the triggering factor is domestic violence, economy, and polygamy. Therefore, The Bugis and Mandar people seem to gradually no

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<sup>56</sup> Nurnanigsih Nawawi, "Assimilation of Lontara Pangadereng and Islamic Shari'at: Behavioral Patterns of the Bugis-Wajo Society," *Al-Tahrir: Journal of Islamic Thought* 15, no. 1 (2015): p. 25.

<sup>57</sup> Rahmatunnair, "Contextualization of Pangngadereng in the Enforcement of Islamic Shariah in Buginese Bone Community," *Al-Qalam* 17, no. 1 (2011): p. 94.

<sup>58</sup> Fikri, Rahmawati, and Zulfah, "Idealism and Realism of Islamic Law in Pangngaderreng Culture of the Modern Bugis Bone," *IOP Conference Series: Earth and Environmental Science* 175, no. 1 (2018): p. 2, <https://doi.org/10.1088/1755-1315/175/1/012137>.

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longer respect *siri*’, because they are not considered a disgrace’ if they go to the Religious Court to ask for a divorce. It should be for the Bugis and Mandar people that it is a disgrace with divorce, let alone committing domestic violence, the disgrace of not being able to meet the economic needs of their families, and also a disgrace ‘because of polygamy. A person disobeying or disregarding *siri*’ is a disgrace’.

The fragility of family resilience in the Bugis and Mandar communities is also a triggering factor, namely the crisis of figures from family members who are charismatic as role models, and the crisis of optimizing the role of traditional institutions that act as mediators. Cultural and social changes in the Bugis and Mandar communities, sometimes on the part of the parents themselves, who usually play a role in separating the marriages of their children. For families who are experiencing conflict, it seems as if the Religious Court is the last place in conflict resolution. The irony is that it turns out that the Religious Courts are not a place that is capable of repairing the rifts in the households of husband and wife who experience conflict. Data from all divorce cases received at the Religious Courts are generally decided by the judge.

The strength in carrying out the value of *ade* ‘in the Bugis and the Mandar community’ is to maintain a lasting and sustainable marriage, the implementation of the value of life *sirondo-rondo* which means cooperation, helping each other in doing a job, both heavy and light. The next value that is related to the sustainability of marriage is *siamasei* and *sianuang pa'mai* that in building a household, the husband and wife must love and love each other. The Bugis and Mandar people in fostering a household are also known as *sibaliparri*, husband and wife must maintain household harmony and have a mutual sense of responsibility towards their families, both when joy and sorrow must be faced together, the same fate and co-existence.

Marriage advice and advice are provisions in living the household dish.<sup>59</sup>The revitalization of customary institutions in the Bugis and Mandar communities such as *sirondo-rondo*, *siamasei* and *sianuang pa'mai*, and *sibaliparri* is the basis for certified judges and mediators to carry out mediation in the Religious Courts and outside the courts. Optimizing customary institutions in the Bugis and Mandar communities can be a very strong defense against the increasing divorce rate in the Religious Courts.

Also, reviving the traditional institutions of the *pangngaderreng* cultural system is *shara*’ which is the implementation of Islamic law in the Bugis and Mandar communities. The enforcement of Islamic law in

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<sup>59</sup> A Garcia, “Advice-Giving and Disputant Empowerment in Divorce Mediation Sessions,” *Language and Dialogue* 2, no. 3 (2012):p. 398–426, <https://doi.org/10.1075/ld.2.3.05gar>.  
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Bugis society is carried out by someone who has the title *petta kali'* and in Mandar society it is known as *puang kali'*. People who are appointed to be *petta kali'* in Bugis society and *puang kali'* in Mandar society are charismatic, scholars who have a deep knowledge of Islam, master jurisprudence and Islamic law. The function of *petta kali'* or *puang kali'* is to give advice or marriage advice for married couples who are about to divorce.

The revitalization of *petta kali'* and *puang kali'* in Bugis and Mandar communities is that every married couple who is about to divorce, should first ask for advice or marriage advice. Divorce cases are no longer registered with the Religious Courts, before there are marital advice and advice from *petta kali'* and *puang kali'*.

## **Conclusion**

Referring to the divorce case data, it is an extra ordinal matter case in the Religious Courts throughout South Sulawesi and West Sulawesi. The reality that must be given full attention is that currently, divorce cases from divorce lawsuits are increasing in number compared to talaq divorces in the Religious Courts, so there is a concern about family resilience in the Bugis and Mandar communities. Divorce cases are increasing in number which can affect the mediation products in the Religious Courts, which causes the Supreme Court to apply Perma No. 1 of 2016. The dynamics of some of the products of mediation practices in the Religious Courts are successful mediations carried out by a mediator with a husband and wife couple who are having a case to reach a peace agreement as outlined in a peace deed. Another product of mediation is that mediation is partially successful and mediation is partially unsuccessful if the litigating party of the husband and wife submits two main points of the case so that some have succeeded in reaching a peace agreement and some are not successful in achieving reconciliation. The product of mediation is unsuccessful or fails because the litigant husband and wife have committed to divorce so that the mediator finds it difficult to reconcile to achieve reconciliation of the two litigant parties.

The process of practicing mediation in the Religious Courts is very urgent to implement *maqashid syariah* as the main consideration by judges at the Religious Courts in deciding divorce cases. The main consideration for the application of *maqashid syariah* has the potential to repair and save a household from a husband and wife on the verge of damage and destruction. The strong assumption of the application of *maqashid syariah* is that divorce in the Religious Court is not the best option or way to resolve conflicts between husband and wife in the household. The Supreme Court needs to review the practice of mediation through Perma No. 1 of 2016 by placing the benefits contained in the <http://jurnal.arraniry.ac.id/index.php/samarah>

*maqashid syariah* for the practice of mediation in the Religious Courts.

Revitalizing traditional institutions such as upholding the value of *ade* in the Bugis and existing in the Mandar community can be a strength in family resilience in maintaining the marriage. Bringing the customs of the Bugis community and society through social culture in the value of life *sirondo-rondo* which means cooperation, *siamasei* and *sianuang pa'mai* in fostering a household, husband and wife must love and love each other, and *sibaliparri* that husband and wife must take care of each other domestic harmony and mutual responsibility towards their families, both when joys and sorrows must be faced together, of the same fate and responsibility. Also, reviving the customary institutions of the *pangngaderreng* cultural system is *shara'* which is interpreted as an institution for implementing Islamic law in the Bugis and Mandar communities. The enforcement of Islamic law in Bugis society is carried out by someone who has the title *petta kali'* and in Mandar society known as *puang kali'* is a charismatic person, a cleric who has a deep knowledge of Islam, masters jurisprudence and Islamic law. The function of *petta kali'* or *puang kali'* is to give advice or marriage advice for husband and wife who want to divorce and their marriage will be long-lasting, lasting, and sustainable.

## References

- Abbas, Syahrizal. *Mediasi Dalam Perspektif Hukum Syari'ah, Hukum Adat Dan Hukum Nasional*. Jakarta: Kencana Prenada Media Group, 2009.
- Al\_Syatibi, Abu Ishaq. *Al-Muwafaqat Fi Ushul Al-Ahkam*. 2nd ed. Beirut: al-Maktabah al-Taufiqiyyah, 2004.
- Al-Gazaliy. *Al-Mustashfa Fi' Ilm Al-Ushul*. 1st ed. Beirut: Dar al-Kutub al-Ilmiyah, 1993.
- Al-Qardhawi, Yusuf. *Dirasah Fi Fiqh Maqashid Al-Shariah; Baina Al-Maqashid Al-Kulliyah Wa Al-Nushus Al-Juziyyah*. Kairo: Dar al-Syuruq, 2006.
- Al-Salam, Izz al-Din Abd. *Qawaid Al-Ahkam Fi Masalih Al-Anam*. Beirut: Dar al Ma'rifah, n.d.
- Bailey, J D. "Assessing Empowerment in Divorce Mediation." *Negotiation Journal* 25, no. 3 (2009): 327–36. <https://doi.org/10.1111/j.1571-9979.2009.00229.x>.
- Beck, C. "A Critical Reappraisal of Divorce Mediation Research and Policy." *Psychology, Public Policy, and Law* 6, no. 4 (2000): 989–1056. <https://doi.org/10.1037/1076-8971.6.4.989>.
- . "Defining a Threshold for Client Competence to Participate in Divorce Mediation." *Psychology, Public Policy, and Law*, 2006. <https://doi.org/10.1037/1076-8971.12.1.1>.
- Beck, E. "Improving Communication in Divorce Mediation." *Divorce* <http://jurnal.arraniry.ac.id/index.php/samarah>



- Mediation: Perspectives on the Field*, 2014.  
<https://doi.org/10.4324/9781315860077>.
- Bollen, K. “Money or Children? Power Sources in Divorce Mediation.” *Journal of Family Studies* 19, no. 2 (2013): 159–73.  
<https://doi.org/10.5172/jfs.2013.19.2.159>.
- Cohen, S. “Divorce Mediation: An Introduction.” *Divorce Therapy*, 2014.  
<https://doi.org/10.4324/9781315791456>.
- Dingwall, R. “Divorce Mediation: Should We Change Our Mind?” *Journal of Social Welfare and Family Law* 32, no. 2 (2010): 107–17.  
<https://doi.org/10.1080/09649069.2010.506307>.
- Djawas, Mursyid, and Sri Astuti Abdul Samad. “Conflict, Traditional, and Family Resistance: The Pattern of Dispute Resolution in Acehese Community According to Islamic Law.” *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 4, no. 1 (2020): 65–84.
- Donohue, W. “Interaction Dynamics Predict Successful Negotiation in Divorce Mediation.” *Journal of Language and Social Psychology* 35, no. 4 (2016): 374–93. <https://doi.org/10.1177/0261927X15603090>.
- Dusuki, Asyraf Wajdi, and Nurdianawati Irwani Abdullah. “Maqasid Al-Shariah, Maslahah, and Corporate Social Responsibility.” *American Journal of Islamic Social Sciences* 24, no. 1 (2007): 31.
- Ellis, D. “Safety, Equity, and Human Agency; Contributions of Divorce Mediation.” *Violence Against Women* 6, no. 9 (2000): 1012–27.  
<https://doi.org/10.1177/10778010022182254>.
- Emery, Robert E, David Sbarra, and Tara Grover. “Divorce Mediation: Research and Reflections.” *Family Court Review* 43, no. 1 (2005): 22–37.
- Enrekang, Ketua Pengadilan Agama. “Laporan Tahunan Pengadilan Agama Enrekang.” Kota Enrekang, 2020. <https://www.pa-enrekang.com/index.php/transparansi/sekretariat/perencanaan/laporan-tahunan>.
- Fikri, Rahmawati, and Zulfah. “Idealism and Realism of Islamic Law in Pangngadereng Culture of the Modern Bugis Bone.” *IOP Conference Series: Earth and Environmental Science* 175, no. 1 (2018): 2. <https://doi.org/10.1088/1755-1315/175/1/012137>.
- Garcia, A. “Advice-Giving and Disputant Empowerment in Divorce Mediation Sessions.” *Language and Dialogue* 2, no. 3 (2012): 398–426. <https://doi.org/10.1075/ld.2.3.05gar>.
- Garcia, A C. “Locations for Advice-Giving and the Production of Neutrality in Divorce Mediation Sessions.” *Conflict Resolution Quarterly*, 2020. <https://doi.org/10.1002/crq.21292>.
- Hahn, R A. “Divorce Mediation: Research and Implications for Family and Couples Counseling.” *The Family Journal*, 2000.  
<https://doi.org/10.1177/1066480700082009>.
- Halim, Wahyuddin. “Islamization or Arabization? The Arab Cultural  
<http://jurnal.arraniry.ac.id/index.php/samarah>

- Influence on the South Sulawesi Muslim Community since the Islamization in the 17th Century.” *Suvannabhumi* 10, no. 1 (2018): 42.
- Holtzworth-Munroe, A. “Controversies in Divorce Mediation and Intimate Partner Violence: A Focus on the Children.” *Aggression and Violent Behavior*, 2011. <https://doi.org/10.1016/j.avb.2011.04.009>.
- Huang, P. “Divorce Law Practices and the Origins, Myths, and Realities of Judicial ‘mediation’ in China.” *Modern China* 31, no. 2 (2005): 151–203. <https://doi.org/10.1177/0097700405274585>.
- Indonesia, Direktorat Jenderal Badan Peradilan Agama Republik. Laporan Tahunan Badan Peradilan Agama (2020).
- Jong, M De. “A Pragmatic Look at Mediation as an Alternative to Divorce Litigation.” *Tydskrif Vir Die Suid-Afrikaanse Reg*, no. 3 (2010): 515–31. <https://www.scopus.com/inward/record.uri?partnerID=HzOxMe3b&scp=79959369736&origin=inward>.
- Kaganas, F. “Domestic Violence and Divorce Mediation.” *Journal of Social Welfare and Family Law* 16, no. 3 (1994): 265–78. <https://doi.org/10.1080/09649069408413612>.
- Ketua Pengadilan Agama Parepare. “Laporan Tahunan Pengadilan Agama Parepare.” Kota Parepare, 2020. <http://pa-parepare.go.id/home/laporan-tahunan/>.
- Koopman, E. “The Present and Future Role of Higher Education in Divorce Mediation: Problems and Promise in Teaching, Research, and Service.” *Divorce Mediation: Perspectives on the Field*, 2014. <https://doi.org/10.4324/9781315860077>.
- Kraft, A. “Childhood Parental Divorce and Cortisol in Young Adulthood: Evidence for Mediation by Family Income.” *Psychoneuroendocrinology* 34, no. 9 (2009): 1363–69. <https://doi.org/10.1016/j.psyneuen.2009.04.008>.
- Majene, Ketua Pengadilan Agama. “Laporan Tahunan Pengadilan Agama Majene.” Kota Majene, 2020. <https://pa-majene.go.id/informasi-umum/laporan-tahunan>.
- Mandar, Ketua Pengadilan Agama Poliwali. “Laporan Tahunan Pengadilan Agama Poliwali Mandar.” Kota Poliwali, 2020. <http://pa-polewali.net/index.php/info-peradilan/program-kerja-kegiatan/laporan-tahunan>.
- Margulies, S. “Litigation, Mediation and the Psychology of Divorce.” *Journal of Psychiatry and Law*, 1992. <https://doi.org/10.1177/009318539202000405>.
- Molgora, S. “Divorce and Coparenting: A Qualitative Study on Family Mediation in Italy.” *Journal of Divorce and Remarriage* 55, no. 4 (2014): 300–314. <https://doi.org/10.1080/10502556.2014.901854>.
- Mulia, Riza. “Marital Beslag Outside Divorce Lawsuit in the Maqashid Syari’ah Perspective.” *Samarah: Jurnal Hukum Keluarga Dan* <http://jurnal.arraniry.ac.id/index.php/samarah>

- Nawawi, Nurnaningsih. “Asimilasi Lontara Pangadereng Dan Syari’at Islam: Pola Perilaku Masyarakat Bugis-Wajo.” *Al-Tahrir: Jurnal Pemikiran Islam* 15, no. 1 (2015): 25.
- Neville, W. “Reflections on the Growth and Significance of Divorce Mediation.” *Divorce Mediation: Perspectives on the Field*, 2014. <https://doi.org/10.4324/9781315860077>.
- Nurman, Said. *Religion and Cultural Identity Among the Bugis*. Makassar: Faculty of Islamic Theology of the Alauddin State Institute of Islamic Studies at Makassar, Indonesia, 2004.
- Pickar, D. “Intermittent Evaluative Mediation with Enduring, Post-Divorce Conflict.” *Journal of Child Custody* 8, no. 3 (2011): 144–45. <https://doi.org/10.1080/15379418.2011.594722>.
- Pinrang, Ketua Pengadilan Agama. “Laporan Tahunan Pengadilan Agama Pinrang.” Kota Pinrang, 2020. <http://pa-pinrang.go.id/index.php?limitstart=27>.
- Poladian, A R. “Family Mediation for Divorce and Parental Separation.” *Foundations for Couples’ Therapy: Research for the Real World*, 2017, 256–67. <https://doi.org/10.4324/9781315678610-26>.
- Przybyla-Basista, H. “The Influence of Spouses’ Resistance on Their Decision to Enter into Divorce Mediation.” *Journal of Divorce and Remarriage* 48, no. 3 (2008): 67–89. [https://doi.org/10.1300/J087v48n03\\_05](https://doi.org/10.1300/J087v48n03_05).
- Qardhawiy, Abd al-Rahman Yusuf Abd. *Nazhariyah Maqashid Al-Syari’ah Baina Syekh Al-Islam Ibn Taimiyah Wa Jumhur Ushliyyin Dirasah Muqaranah Min Al-Qarn Al-Khamis Ila Al-Tsamin Al-Hijri*. Kairo: Kulliyah Dar al-Ulum, n.d.
- Qayyim, Ibn. *I’lam Al-Muwaqi’in Rabb Al-Alamin*. 3rd ed. Beirut: Dar al-Jail, n.d.
- Rahmatunnair, Rahmatunnair. “Contextualization of Pangadereng in the Enforcement of Islamic Shariah in Buginese Bone Community.” *Al-Qalam* 17, no. 1 (2011): 94.
- Rappang, Ketua Pengadilan Agama Sidenreng. “Laporan Tahunan Pengadilan Agama Sidenreng Rappang.” Kota Pangkajene, 2020. <http://pa-sidenrengappang.go.id/>.
- RI., Ketua Mahkamah Agung. “Perma RI. No. 1 Tahun 2016 Tentang Prosedur Mediasi Di Pengadilan.” Jakarta, 2016. [https://bawas.mahkamahagung.go.id/bawas\\_doc/doc/perma\\_mediasi\\_pengadilan\\_web.pdf](https://bawas.mahkamahagung.go.id/bawas_doc/doc/perma_mediasi_pengadilan_web.pdf).
- Sbarra, D A. “In the Presence of Grief: The Role of Cognitive-Emotional Adaptation in Contemporary Divorce Mediation.” *Handbook of Divorce and Relationship Dissolution*, 2013. <https://doi.org/10.4324/9781315820880-40>.
- Schepard, A. “An Introduction to the Model Standards of Practice for Family <http://jurnal.arraniry.ac.id/index.php/samarah>

- and Divorce Mediation.” *Family Law Quarterly* 35, no. 1 (2001): 1–24.  
<https://www.scopus.com/inward/record.uri?partnerID=HzOxMe3b&scid=65449139388&origin=inward>.
- Shaw, L. “Divorce Mediation Outcome Research: A Meta-Analysis.” *Conflict Resolution Quarterly* 27, no. 4 (2010): 447–67.  
<https://doi.org/10.1002/crq.20006>.
- Silver, R. “Practice Note: Divorce Mediation with Challenging Parents.” *Conflict Resolution Quarterly*, 2008. <https://doi.org/10.1002/crq.220>.
- Syarifuddin, Said. “Maslahat as Considerations of Islamic Law in View Imam Malik.” *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 4, no. 1 (2020): 90.
- Taylor, R. “Use of Change Theory in the Context of the Divorce Mediation Session.” *Journal of Divorce and Remarriage* 40, no. 1 (2004): 87–92. [https://doi.org/10.1300/J087v40n01\\_06](https://doi.org/10.1300/J087v40n01_06).
- Twaite, J A. “Divorce Mediation: Promises, Criticisms, Achievements, and Current Challenges.” *Journal of Psychiatry and Law*, 1998. <https://doi.org/10.1177/009318539802600304>.
- Weaver, J. “Mediation and Moderation of Divorce Effects on Children’s Behavior Problems.” *Journal of Family Psychology* 29, no. 1 (2015): 39–48. <https://doi.org/10.1037/fam0000043>.
- Worley, S. “The Effect of Cooperation on Egocentrism in Divorce Mediation: A Simulation Study.” *Divorce Mediation: Perspectives on the Field*, 2014. <https://doi.org/10.4324/9781315860077>.
- Yunus, Abd. “The Acculturation of Islam and Local Culture in Bugis Wedding Tradition: A Historical Perspective,” 2017, 4.

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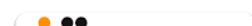
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## **Transformation of *Maqāṣid Shari'āh* in Divorce Mediation in Religious Courts: Revitalization of the Bugis-Mandar Customs, Indonesia**

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**Abstract:** The focus of this research discusses the transformation of *maqāṣid shari'āh* in mediation practices in divorce cases, and the revitalization of *adat* in mediation practices in Bugis and Mandar communities. This study is a field legal research using historical and socio-anthropological approaches, while the data is analyzed using *maqāṣid shari'āh* theory and social change theory. Data collection techniques are based on literature studies on legal sources related to the discussion. This study concludes that divorce is an extraordinary case in the religious courts, dynamics of mediation practice in Religious Courts have successful mediation for a written peace agreement in peace deed, other mediation products are partially successful mediation and partially unsuccessful mediation, mediation products are not successful is that husband and wife are committed to divorce; *maqāṣid shari'āh* transformation can be a major consideration by judges in mediation practice to save households on the verge of collapse, so that *maqāṣid shari'āh* is very urgent to place in Perma No.1 of 2016, and revitalization of Bugis-Mandar customary is an effort to revive the value of life *sirondo-rondo*, *siamasei*, *sianuang pa'mai*, and *sibaliparri*, also animate *shara'* which is performed *petta kalie* (Bugis) or *puang kali'* (Mandar).  
**Keywords:** *Maqāṣid shari'āh*, divorce mediation, religious courts, customary revitalization, bugis-mandar, Islamic family law

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**Abstrak:** Fokus penelitian ini membahas tentang transformasi *maqāṣid syari'āh* dalam praktik mediasi dalam kasus perceraian, dan revitalisasi adat dalam praktik mediasi dalam masyarakat Bugis dan Mandar. Kajian tersebut merupakan penelitian hukum lapangan dengan menggunakan pendekatan historis, dan sosio-antropologis sedangkan data dianalisis dengan memakai teori *maqāṣid syari'ah* dan teori perubahan sosial. Teknik pengumpulan data berdasarkan pada studi literatur pada sumber-sumber hukum yang terkait dengan pembahasan. Penelitian ini menyimpulkan bahwa perceraian merupakan perkara luar biasa di Pengadilan Agama, dinamika praktik mediasi di Pengadilan Agama telah berhasil dalam mediasi perjanjian damai tertulis dalam akta damai, produk mediasi lainnya adalah mediasi yang berhasil sebagian dan mediasi yang tidak berhasil sebagian, mediasi tidak berhasil. produk yang tidak berhasil adalah suami dan istri yang berkomitmen untuk bercerai; Transformasi *maqāṣid syari'āh* dapat menjadi pertimbangan utama hakim dalam praktik mediasi untuk menyelamatkan rumah tangga yang di ambang kehancuran, sehingga *maqāṣid syari'āh* sangat mendesak untuk ditempatkan dalam Perma No.1 Tahun 2016, dan revitalisasi kelembagaan adat Bugis-Mandar merupakan salah satu upaya. menghidupkan kembali nilai-nilai kehidupan *sirondo-rondoi*, *siamasei*, *sianuang pa'mai*, dan *sibaliparri*, serta menghidupkan *shara'* yang dilakukan *petta kalie* (Bugis) *puang kali'* (Mandar).  
**Keywords:** *Maqāṣid shari'āh*, mediasi perceraian, Pengadilan Agama, revitalisasi adat, Bugis-Mandar

## Introduction

The process of implementing mediation in fortifying family resilience from conflict has long been the subject of discussion as explained by Margulies that mediation is considered an effective effort to resolve husband-wife conflicts that intend to divorce.<sup>1</sup> On the other hand, violence that occurs in the family and also in mediation is still difficult to find theoretical and practical concepts.<sup>2</sup>

The function of the mediator is to reconcile the two sides of the disputing family, helping to carry out active communication. In addition, the mediator also encourages harmony and also emphasizes the parties in conflict to consider the bad consequences of divorce.<sup>3</sup> It is important to strengthen the concept of mediation in resolving family conflicts and childcare.<sup>4</sup> Mediation is conducted by a mediator who acts as a mediator for the disputing parties and plays an

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<sup>1</sup> Sam Margulies and Anya Luchow, "Litigation, Mediation and the Psychology of Divorce," *Journal of Psychiatry and Law* 20, No. 4 (1992).

<sup>2</sup> Felicity Kaganas and Christine Piper, "Domestic Violence and Divorce Mediation," *Journal of Social Welfare and Family Law* 16, No. 3 (1994), p. 265–278.

<sup>3</sup> Andrew Shepard, "An Introduction to the Model Standards of Practice for Family and Divorce Mediation," *Family Law Quarterly* 35, No. 1 (2001), p. 2-3.

<sup>4</sup> Jennifer M. Weaver and Thomas J. Schofield, "Mediation and Moderation of Divorce Effects on Children's Behavior Problems," *Journal of Family Psychology* 29, No. 1 (2015), p. 39–48.

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active role in resolving the conflict by reaching a peace agreement from the parties.

Mediation is part of the legal system that can resolve family conflicts quickly, easily, and cheaply as long as the parties cooperate.<sup>5</sup> In addition to being able to be carried out by judges, psychologists, and other professionals who have the competence to carry out mediation can understand and address the root causes of problems in family conflicts.<sup>6</sup> According to RA Hahn explained that from several studies of the divorce mediation process carried out there were beneficial and beneficial results for the efficiency and satisfaction of the parties.<sup>7</sup> This opinion is supported by Ellis that divorce mediation makes a huge contribution towards the outcome of reconciliation between husband and wife.<sup>8</sup>

In line with the study conducted by Taylor suggesting that the mediator's demands in carrying out his role as the mediator can help to build confidence in the parties. Mediators are required to designing interpersonal communication between both husband and wife in conflict so that each party can introspect themselves towards better interaction changes.<sup>9</sup> The real emphasis of mediation is on reconciling the husband and wife who insisted on divorce.<sup>10</sup> Legal practitioners and academics have studied a lot about the mediation process that can reduce the soaring divorce rate. Mediation is a reliable means of accelerating the reconciliation of families in conflict.<sup>11</sup> Even C. Beck mentioned that the implementation of the formulation of the concept of mediation is a much more recent effort to create justice for wives who are victims of domestic violence.<sup>12</sup>

However, mediation can speed up the settlement of cases, on the contrary as described by Przybyla Basista stated that the reasons for couples who refuse the mediation process are especially wives who experience feelings of trauma and fear of violence from their ex-husbands. Experience from her domestic life, the wife received painful treatment so that she did not have the time and space to

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<sup>5</sup> James A Twaite, et.al., "Divorce Mediation: Promises, Criticisms, Achievements, and Current Challenges," *Journal of Psychiatry and Law* 26, No. 3 (1998).

<sup>6</sup> Connie J.A. Beck and Bruce Sales, "A Critical Reappraisal of Divorce Mediation Research and Policy," *Psychology, Public Policy, and Law* 6, No. 4 (2000), p. 989-1056.

<sup>7</sup> R. Hahn and David M. Kleist, "Divorce Mediation: Research and Implications for Family and Couples Counseling," *The Family Journal*, (2000).

<sup>8</sup> Desmond Ellis, "Safety, Equity, and Human Agency; Contributions of Divorce Mediation," *Violence Against Woman* 6, No. 9 (2000), p. 1012-1027.

<sup>9</sup> Raymond J. Taylor, "Use of Change Theory in the Context of the Divorce Mediation Session," *Journal of Divorce and Remarriage* 40, No. 1 (2004), p. 90.

<sup>10</sup> Philip C.C. Huang, "Divorce Law Practices and the Origins, Myths, and Realities of Judicial 'mediation' in China," *Modern China* 31, No. 2 (2005), p. 154.

<sup>11</sup> Robert E. Emery, et.al., "Divorce Mediation: Research and Reflections," *Family Court Review* 43, No. 1 (2005), p. 22-37.

<sup>12</sup> Connie J.A. Beck and Lynda E. Frost, "Defining a Threshold for Client Competence to Participate in Divorce Mediation," *Psychology, Public Policy, and Law* 12, No. 1 (2006), p. 1-13.

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negotiate through mediation with her ex-husband.<sup>13</sup> Sometimes children are also victims of violence, experiencing depression and anxiety which can affect the physical and psychological health consequences of divorcing parents.<sup>14</sup> The research also touches on the legal protection of children through the mediation process. Andrew Schepard's views on custody and subsistence needs can be read.<sup>15</sup>

The opinion of Bailey provides that the sharpening of the practice of mediation in divorce cases can refer to several assumptions that mediation is a golden opportunity to resolve conflicts and household breakdowns in constructing reconciliation between husband and wife. The practice of mediation involves offering a problem-solving process with a focus on the goal of reconciliation.<sup>16</sup>

Compare this with the thought conveyed by Robert Dingwall that the legal system and family policies of the government related to the practice of mediation carried out in European countries such as England, Wales, Scotland, and Northern Ireland are forced attempts to the husband and wife who are going to divorce under control of the mediator to undergo the mediation process before their case reaches the Court.<sup>17</sup> An interesting thought from Lori Anne Shaw that the implementation of non-litigation mediation can outperform the judicial process in legally assisting the parties in a case, including from the results of mediation that prioritizes the interests of children.<sup>18</sup> Demands for non-litigation mediation practices are carried out to anticipate more immediate damage and cracks in households.

The theoretical purpose of marriage in Islamic law is to create *sakinah*, *mawaddah*, and *warahmah* families. Sometimes the theoretical goal of marriage is very different in practice from the goal of marriage. Marriage in the view of the Bugis and Mandar people that “*iya tu'u di'o alikkangan, including mesa pakkasiwiang lao di puang Allah Taala, Jari mua 'alikkangananna macoai, ma mandapai* reward, but *mua 'andani macoa, napolean sin*”. The meaning of marriage is that marriage is worship, so if the marriage is good you will get a reward, but if it is not good you will get sin.

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<sup>13</sup> Hanna Przybyla-Basista, “The Influence of Spouses' Resistance on Their Decision to Enter into Divorce Mediation,” *Journal of Divorce and Remarriage* 48, No. 3 (2008), p. 31.

<sup>14</sup> Amy J. Kraft and Lynda Leucken, “Childhood Parental Divorce and Cortisol in Young Adulthood: Evidence for Mediation by Family Income,” *Psychoneuroendocrinology* 34, No. 9 (2009), p. 1363–1369.

<sup>15</sup> Andrew Schepard, *An Introduction to the Model Standards...*, p. 2-3.

<sup>16</sup> Jo Daugherty Bailey and Dawn Mccarty, “Assessing Empowerment in Divorce Mediation,” *Negotiation Journal* 25, No. 3 (2009), p. 327–336.

<sup>17</sup> Robert Dingwall, “Divorce Mediation: Should We Change Our Mind ?,” *Journal of Social Welfare and Family Law* 32, No. 2 (2010), p. 107–117.

<sup>18</sup> Lori Anne Shaw, “Divorce Mediation Outcome Research: A Meta-Analysis,” *Conflict Resolution Quarterly* 27, No. 4 (2010), p. 447–67.

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Therefore, the practice of mediation, whether organized by judges at the Religious Courts or mediators outside the court, is very important to prioritize the content of divorce mediation using the *maqāṣid shari'āh* approach. Divorce mediation which contains the *maqāṣid shari'āh* paradigm based on *maslahat* as conveyed by Al-Gazaliy is an effort to uphold the objectives of shari'a laws in maintaining religion, soul, mind, descent and property.<sup>19</sup>

*Maqāṣid shari'āh* as formulated by *ushul fiqh* scholars is to have the meaning of all the aims and objectives regulated in religion to bring benefit and eliminate exasperation to its servants. Al-Syatibi further perfected the traditional *ushul fiqh* theories in the *al-Muwafaqat* book by formulating *maqāṣid shari'āh* which focused on *al-kulliyah al-khamsah*.<sup>20</sup>

Whereas *maqāṣid shari'āh* seen from the order is *maqāṣid al-dharuriyyah* (primary), *maqāṣid al-hajiyyat* (secondary), and *maqāṣid al-tahsiniyyat* (complementary).<sup>21</sup> Therefore, based on the *maqāṣid shari'āh* that divorce mediation is in the order of *maqāṣid al-dharuriyyah*, which is obliged to eliminate adultery in marriage, including maintaining the family from conflict, enmity, disharmony, and rifts between husband and wife.

On the other hand, based on the data source of the Directorate General of Religious Courts' annual report, divorce cases are considered an extraordinary matter in Indonesia. Following the report's data, it shows that there were 128,401 divorce cases in 2015. Divorce cases in 2017 included 113,937 divorce *talaq*, while 301,573 divorce lawsuits were filed. In 2018 the details of the divorce *talaq* were 118,853. In 2019, there were 124,776 divorce cases, then 355,842 divorce cases.<sup>22</sup>

The discourse on mediation has produced many studies on the roles and responsibilities of academics,<sup>23</sup> such as Mursyid Djawas and Sri Astuti A. Samad explained that reconciliation efforts in resolving family disputes can be successful with a family resilience approach through traditional Acehese traditional wisdom such as *Keuchik*, *Tuha Peut*, *Teungku Imum*, and *Imum Mukim*. The resolution of family conflicts in Acehese society by means of Islamic law at the Syari'ah Court and also by practicing customary law in *sara*

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<sup>19</sup> Abd al-Rahman Yusuf Abd Qardhawi, *Nazhariyah Maqashid Al-Syari'ah Baina Syekh Al-Islam Ibn Taimiyah Wa Jumhur Ushliyyin Dirasah Muqaranah Min Al-Qarn Al-Khamis Ila Al-Tsamin Al-Hijri* (Cairo: Kulliyah Dar al-Ulum, nd). p. 70.

<sup>20</sup> Abu Ishaq Al-Syatibi, *Al-Muwafaqat Fi Ushul Al-Ahkam*, 2nd ed. (Beirut: al-Maktabah al-Taufiqiyyah, 2004). p. 2.

<sup>21</sup> Izz al-Din Abd Al-Salam, *Qawaid Al-Ahkam Fi Masalih Al-Anam* (Beirut: Dar al-Ma'rifah, nd). p. 11.

<sup>22</sup> Directorate General of the Religious Courts of the Republic of Indonesia, *Annual Report of the Religious Courts* (2020).

<sup>23</sup> Elizabeth J. Koopman, "The Present and Future Role of Higher Education in Divorce Mediation: Problems and Promise in Teaching, Research, and Service," *Divorce Mediation: Perspectives on the Field*, 2014.

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*opat* institutions, a kind of institution that includes *reje* and *imem* is very accurate, effective, and efficient.<sup>24</sup>

This idea of mediating divorce through customs and social institutions is very suitable to be actualized in the Bugis community in South Sulawesi and the Mandar community in West Sulawesi. Both the Bugis and Mandar Communities are ethnic groups that are very strong and thick in carrying out their customs which are tied to the *pangngaderreng* culture as a culture of conduct.<sup>25</sup> Which includes *ade'*, *bicara*, *rapang*, *wari'*, and *syara'*. Mandar was found when the *pangngaderreng* became a social patron as the inner power control to accommodate *syara'*.<sup>26</sup>

The acceptance of *syara'* in *pangngaderreng* culture is a consequence for society to carry out Islamic law. Along with development and *wari' and syara'*.<sup>27</sup> Acculturation of Islam and the culture of the Bugis community and the progress of human civilization which is increasingly modern, sometimes *siri'* in the *pangngaderreng* culture of the Bugis and Mandar communities has gradually shifted. Whereas in the period of traditional life, the enforcement of *siri'* in the Bugis and Mandar communities is very embarrassed and loses its self-respect if there is a disgrace in the family, including for example a married couple who divorced from that family. The connection with the *pangngaderreng* culture has less than optimal function in the Bugis and Mandar communities, especially before and during the Covid-19 pandemic era, the number of divorce cases increased sharply in Religious Courts.

Exposing this background, this study focuses on the dynamics of the legal product of divorce mediation practices in the Religious Courts which incidentally is an institution that can be trusted to enforce Perma No. 1 of 2016. The transformation of *maqāsid shari'āh* in the practice of mediation in divorce cases in the Religious Courts and outside the courts should prioritize benefit and eliminate adversity to maintain family resilience from various conflicts and disputes. The revitalization of the *pangngaderreng* culture in the practice of divorce mediation in the Religious Courts, which so far is believed to have less than optimal function in the Bugis and Mandar communities.

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<sup>24</sup> Mursyid Djawas and Sri Astuti A. Samad, "Conflict, Traditional, and Family Resistance: The Pattern of Dispute Resolution in Acehese Community According to Islamic Law," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 4, No. 1 (2020), p. 69–71.

<sup>25</sup> Said Nurman, *Religion and Cultural Identity Among the Bugis* (Makassari: Faculty of Islamic Theology of the Alauddin State Institute of Islamic Studies at Makassar, Indonesia, 2004).

<sup>26</sup> Abd Rahim Yunus, "The Acculturation of Islam and Local Culture in Bugis Wedding Tradition: A Historical Perspective," *International Conference on Global Education V*, Padang, 2017, p. 4.

<sup>27</sup> Wahyuddin Halim, "Islamization or Arabization? The Arab Cultural Influence on the South Sulawesi Muslim Community since the Islamization in the 17th Century," *Suvannabhumi* 10, No. 1 (2018), p. 42.

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This study is a field legal research using historical and socio-anthropological approaches, while the data is analyzed using *maqāṣid shari'ah* theory and social change theory.<sup>28</sup> Data collection techniques are based on literature studies on legal sources related to the discussion.

### Dynamics of Legal Product of Divorce Mediation in Religious Courts

Divorce mediation is an effort to mediate resolving disputes so that the mediator must be neutral, bridging, and must not be partial between the conflicting husband and wife in order to reach a peace agreement.<sup>29</sup> Divorce mediation can be designed to be therapeutic, treat, remedy, and counteract the bad effects of divorce.<sup>30</sup>

Divorce mediation is constructed to reflect on the significance of the marriage and address the possibilities that trigger divorce.<sup>31</sup> Assisting divorced parties to optimize the effectiveness and efficiency of conflict resolution in the family. One of the material contained in mediation is very interesting is a simulation method of husband-wife couples who are active for high cooperation which can overcome the conflicts they face, on the other hand, if the husband and wife do not cooperate less, they tend to have a selfish character.<sup>32</sup>

The success indicator of mediation if the material content is to collaborate, including eliminating partner violence intimidation and focusing on taking care of children,<sup>33</sup> refreshing and taking advantage of free time for discussion which aims to strengthen active communication in the family.<sup>34</sup> The family mediation construction should be intensified during the marriage period so that the husband and wife can build a household with full responsibility, affection, and love. Therefore, the practice of mediation is not only carried out when there is a conflict that is already overloaded, critical, and is experiencing a

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<sup>28</sup> Faisar Ananda and Watni Marpauang, *Metodologi Hukum Islam* (Jakarta: Kencana, 2016). Achmad Ali and Wiwie Heryani, *Sosiologi Hukum: Kajian Empiris terhadap Pengadilan* (Jakarta: Kencana, 2014).

<sup>29</sup> Syahrizal Abbas, *Mediasi dalam Perspektif Hukum Islam, Hukum Adat dan Hukum Nasional* (Jakarta: Kencana Prenada Media Group, 2009).

<sup>30</sup> David A. Sbarra and Robert E. Emery, "In the Presence of Grief: The Role of Cognitive-Emotional Adaptation in Contemporary Divorce Mediation," *Handbook of Divorce and Relationship Dissolution*, Taylor and Francis, 2013.

<sup>31</sup> W Neville, "Reflections on the Growth and Significance of Divorce Mediation," *Divorce Mediation: Perspectives on the Field*, 2014.

<sup>32</sup> Susan M. Worley, "The Effect of Cooperation on Egocentrism in Divorce Mediation: A Simulation Study," *Journal of Divorce*, (2008).

<sup>33</sup> Amy Holtzworth-Munroe, "Controversies in Divorce Mediation and Intimate Partner Violence: A Focus on the Children," *Aggression and Violent Behavior* 16, No. 4 (2011), p. 319-324.

<sup>34</sup> E Beck, "Improving Communication in Divorce Mediation," *Divorce Mediation: Perspectives on the Field*, 2014.

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transition period for divorce.<sup>35</sup> The implementation of mediation before the family has problems with conflict, has many advantages for strengthening husband-wife relationships, enhancing cooperation, and also supporting joint care of children.<sup>36</sup>

The fact of the soaring divorce case decisions, it is appropriate to question the speed, accuracy, and efficiency of the judge's functioning as a mediator of divorce cases in the Religious Courts spread across several districts and cities in South Sulawesi and West Sulawesi. The data also shows that the Bugis and Mandar people prefer to resolve disputes and family conflicts in the Religious Courts rather than resolve conflicts with a system or kinship approach. Criticism of the Religious Courts in South Sulawesi and West Sulawesi as one of the case resolution institutions has not been able to accommodate the expectations of the community in settling divorce cases through mediation.

However, the public's assumption of judges acting as mediators in the Religious Courts is still considered a failure. Judges as mediators in conducting divorce mediation are still very symbolic, examinations are too formalistic, very technical, high cost, and cases tend to be overloaded.

The various difficulties faced by judges as mediators in the Religious Courts in general led to the Supreme Court of the Republic of Indonesia to apply Perma No. 1 of 2016. The dynamics of implementing Perma No. 1 of 2016 provides an opportunity to internalize the practice of divorce mediation held by certified mediators from career non-judges at the Religious Courts. Mediation supports all parties to resolve conflicts they face with the help of a mediator who is neutral or impartial. A mediator only tries to bridge all parties in a transparent manner, negotiate, and find the best solution.

The legal position of the implementation of mediation in Law No. 30 of 1999 concerning Arbitration and Alternative Settlements, then followed up by Perma No. 1 of 2016 concerning Mediation as an amendment to Perma No. 1 of 2008 concerning Mediation Procedures. Perma No. 1 of 2016 is implemented to carry out divorce mediation practices in the Religious Courts. Indeed, mediation for divorce in the Religious Courts is to avoid the accumulation of family cases. In fact, the judge's decision will be null and void if the judge examining the divorce case at trial does not enforce mediation at the Religious Court.

The progress of divorce cases that have entered both cases for divorce talaq and cases for divorce in the Religious Courts between 2018 and 2020 in the regions of South Sulawesi and West Sulawesi. The Religious Courts located in South Sulawesi are limited to only taking divorce data from the Parepare Religious Court, the Sidenreng Rappang Religious Court, the Pinrang Religious

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<sup>35</sup> Sara Molgora, et.al., "Divorce and Coparenting: A Qualitative Study on Family Mediation in Italy," *Journal of Divorce and Remarriage* 55, No. 4 (2014), p. 300–314.

<sup>36</sup> Daniel B. Pickar, "Intermittent Evaluative Mediation with Enduring, Post-Divorce Conflict," *Journal of Child Custody* 8, No. 3 (2011), p. 143–145.



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Court, and the Enrekang Religious Court. Meanwhile, the Religious Courts in West Sulawesi are also limited by taking data on divorce cases that are submitted to the Polewali Mandar Religious Court, the Majene Religious Court, and the Mamuju Religious Court.

The success and failure of the product of mediation practice by judges from each of the Religious Courts in South Sulawesi in three years from 2018 to 2020. Since 2018, there have been 12 judges at the Parepare Religious Court who were spread into 6 panels. Types of cases, divorced *talaq* received 106 cases, ended 103 cases and the percentage of case completion was 81%, claimants received 380 cases, dropped 385 cases and percentage of case completion was 93%. The Parepare Religious Court mediated 13 cases and 3 cases that succeeded in peace. In 2019, the remaining cases for divorce *talaq* in 2018 were 23 cases, divorce *talaq* received 103 cases, 120 cases were decided and the percentage of case completion was 95%. For divorce with the remainder of 2018 in 26 cases, received 439, drop out of 440 cases and the percentage of completion of cases is 95%. Mediated a number of 82 cases and 5 cases which succeeded in peace. In 2020, the remaining cases for divorce *talaq* in 2019 amounted to 6 cases, 80 cases of divorce received and 80 cases of divorce. There are 25 divorce cases left in 2019, 357 cases received, 379 cases ended.<sup>37</sup>

Referring to the state of divorce cases every year there has been an increase in both *talaq* and legal divorce at the Parepare Religious Court. The reality cannot be denied, divorce cases are very worrying, because the number of cases for suing for divorce is greater than cases for divorce *talaq*. In addition, the performance of judges in conducting mediation at the Parepare Religious Court from 2018 to 2020 can be categorized as failing. The failure of judges to mediate at the Parepare Religious Court has not been able to balance the number of divorce cases that were decided and the number of cases that succeeded in mediating to reach a peaceful consensus.

The progress of divorce cases from 2018 to 2020 at the Sidenreng Rappang Religious Court, can be described with data since 2018, the number of divorces *talaq* 154 cases and 555 divorce cases. Mediating 91 divorce cases, succeeded in reaching a peaceful consensus on 2 cases. In 2019, the number of divorces *talaq* received was 213 cases, 202 cases were decided, and the percentage of case settlements was 88%. 699 cases of divorce were accepted, 690 cases were decided on 95%. Mediated 89 cases and succeeded in a peaceful consensus on 0 cases. In 2020, the number of divorces *talaq* received 163 cases, 152 cases broke up and 83% case settlement percentage, 604 divorce cases received, 591 broke up, and 91% case completion percentage. Mediated 69 cases

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<sup>37</sup> Chairman of the Parepare Religious Court, "Annual Report of the Parepare Religious Court" (Parepare City, 2020), <http://pa-parepare.go.id/home/leport-tahunan/>.  
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and succeeded in a 2 case peace consensus.<sup>38</sup>

The strength of the judges at the Sidenreng Rappang Religious Court in conducting mediation is still relatively weak and failed, even in the mediation that was carried out in 2019, not a single case was successfully reconciled. Divorce cases that are accepted are generally terminated and only a very few divorce cases have succeeded in peace.

The Pinrang Religious Court is one of the courts which accepts many divorce cases every year. It is known that in 2018, there were 163 divorces and 640 divorcees, 131 cases of mediation, and 2 cases of the peace agreement were reached. In 2019 there were 208 cases of divorce, 820 cases of divorce, 128 mediation cases, and 4 cases of peace. In 2020, there were 199 divorce cases, 798 divorce cases, 140 mediated cases, and 20 peaceful cases.<sup>39</sup>

Compared to the Parepare Religious Court and the Sidenreng Rappang Religious Court, the Pinrang Religious Court judges have made progress in reconciling divorce cases. In 2020, the success of mediation at the Pinrang Religious Court is inseparable from the active role of judges in reconciling a litigious husband and wife. The success of mediating divorce cases is supported by the knowledge and experience of judges who are familiar with the social culture of the Pinrang community.

In 2019 data, there were 338 divorce cases including 66 cases of divorce, 258 divorce cases, and 51 cases of mediation, only 1 case was successful at the Enrekang Religious Court. In 2020 there were 336 divorce cases and among them, 75 cases of divorce, 246 divorce cases, 31 mediation cases, and none of them succeeded in peace. Mediation from 2019 and 2020 amounted to 82 cases, only 1 case succeeded in peace.<sup>40</sup> Mediation is almost completely ineffective and in fact creates new problems, namely the accumulation of cases that should be resolved, but are hampered by the time-consuming mediation process. Mediation also has an impact on costs (court costs) so that the principle of litigating with a simple, fast, and low cost does not materialize.

Furthermore, the development of divorce case mediation in the Religious Courts located in the West Sulawesi region is limited to the Polewali Mandar Religious Courts and the Majene Religious Courts. The source of information found at the Polewali Mandar Religious Court stated that in 2017 talaq's divorce was received by 155 cases, 135 cases were ended. 422 cases of divorce were accepted, 366 cases were ended, related to the mediation report not mentioned in

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<sup>38</sup> Chairman of the Sidenreng Rappang Religious Court, "Annual Report of the Sidenreng Rappang Religious Court" (Pangkajene City, 2020), <http://pa-sidenrenggrappang.go.id/>.

<sup>39</sup> Chairman of the Pinrang Religious Court, "Annual Report of the Pinrang Religious Court" (Pinrang City, 2020), <http://pa-pinrang.go.id/index.php?limitstart=27>.

<sup>40</sup> Chairman of the Enrekang Religious Court, "Annual Report of the Enrekang Religious Court" (Enrekang City, 2020), <https://www.pa-enrekang.com/index.php/transparant/sekretariat/perplan/lentuk-tahunan>.  
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the report on the activities of the Polewali Mandar Religious Court. In 2018 *talaq* divorce received 175 cases, 160 cases ended. 453 divorce cases were accepted, 427 cases ended and mediation was also not included in the 2018 Polewali Mandar Religious Court activity report. In 2019 *talaq* divorce received 176 cases, 161 cases ended. 507 cases of divorce were accepted, 473 cases were ended.<sup>41</sup> In 2019 there has been no progress on case mediation in the activity report. Meanwhile, the 2020 report has not yet published the number of cases for divorce *talaq* and divorce.

Divorce cases at the Majene Religious Court, in 2017 *talaq* received 44 cases plus the remaining 2 cases in 2016, 41 cases ended. Divorce accepts 131 cases plus the remaining 5 cases from 2016, 128 cases ended, 30 cases mediated and none of the cases succeeded in peace. In 2018, divorce *talaq* received 45 cases plus the remaining 5 cases in 2017, 48 cases were broken. The remaining cases in 2017 were 7 cases, in 2018 129 cases were divorced, 137 cases were ended, 32 cases were mediated and none of the cases were successfully reconciled. In 2019 divorce *Talaq* received 55 cases plus the remaining 2 cases in 2018, 57 cases ended. Divorce accepts 150 cases plus the remaining 6 cases in 2018, 155 cases ended, 40 mediated cases, and 4 peaceful cases.<sup>42</sup> In 2020, the progress of the divorce case has not been published, both from the *talaq* divorce case and the sue divorce case.

Optimizing efforts to provide legal services to the community in all Religious Courts in South Sulawesi and West Sulawesi in enforcing mediation institutions which are run by mediating judges. The mediating judge carries out legal remedies against the justice-seeking community to reconcile the disputing parties. Mediation in all Religious Courts is regulated in article 130 HIR / article 154 Rbg. jo. Perma No. 1 of 2016 concerning Mediation Procedures in Courts.

The legal product of the mediator reports to the examining panel of judges regarding the results of the mediation process that has been carried out with the case husband and wife. If the mediator succeeds in reconciling, the results of the mediation are written in a peace deed. The panel of judges stated in legal considerations, one of which was based on the peace deed agreed and signed by the parties in the case. In one of the verdicts, the panel of judges "punished the applicant/plaintiff and the respondent/defendant to obey the results of the peace agreement that had been reached." Successful mediation without proof of the peace deed of the party presenting the case will withdraw the case

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<sup>41</sup> Chairperson of the Polewali Mandar Religious Court, "*Annual Report of the Paliwali Mandar Religious Court*" (Polewali City, 2020), <http://pa-polewali.net/index.php/info-peradilan/program-kerja-k-Activity/1-Report-tahunan>.

<sup>42</sup> Chairman of the Majene Religious Court, "*Annual Report of the Majene Religious Court*" (Majene City, 2020), <https://pa-majene.go.id/informasi-umum/leport-tahunan>.  
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that has been submitted at the next trial. Based on Perma No.<sup>43</sup>

There are several types of mediation products, one of which is a successful mediation product, where both husband and wife achieve reconciliation, agree to resolve the problem peacefully and amicably. The peace agreement actualized the peace deed by Perma No. 1 of 2016 Article 27 paragraph 2 or in a divorce case, the party filing for divorce withdraws the case at the next trial. The mediation has succeeded in reaching an agreement, the parties with the assistance of the mediator are obliged to formulate a written agreement in a peace agreement signed by the parties and the mediator. In helping to formulate a peace agreement, the mediator is obliged to ensure that it does not contain provisions that are contrary to law, public order, and also morals, detrimental to the litigant.

The next possibility, the product of partially successful mediation is when two or more cases are filed but not all of them reach an amicable agreement, for example, divorce cases are accumulated with joint assets, a husband and wife agree to share Gono Gini assets are joint assets obtained during the marriage period. peacefully and kinship, but both of them still want to divorce. Also, the product of mediation does not work, if both parties in a case do not reach a peace agreement and want to continue the case. Another type of mediation product is improper mediation if one of the parties is not present at the mediation without justified reasons, involves the rights of the other party, and there are parties who should be subject to law but are not involved in the case.

## **Transformation of *Maqāṣid Shari'āh* in Mediation Practices in Divorce Cases**

The mediator who carries out the mediation can help the parties of a married couple to have a strong character and personality in facing a case.<sup>44</sup> The mediator strengthens the understanding of a married couple regarding the importance of marriage, the consequences after divorce,<sup>45</sup> and a major consideration of the power of mediation is childcare.<sup>46</sup> The mediator conducts mediation in a measured manner, ensuring the benefit, effectiveness, and satisfaction of the parties related to the success of the mediation in achieving

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<sup>43</sup> Chairman of the Supreme Court of the Republic of Indonesia., "Perma RI. No. 1 of 2016 concerning Mediation Procedures in Courts "(Jakarta, 2016), [https://bawas.mahkamahagung.go.id/bawas\\_doc/doc/perma\\_mediasi\\_pengadilan\\_web.pdf](https://bawas.mahkamahagung.go.id/bawas_doc/doc/perma_mediasi_pengadilan_web.pdf).

<sup>44</sup> Robert B. Silver and Deborah C. Silver, "Practice Note: Divorce Mediation with Challenging Parents," *Conflict Resolution Quarterly* 25, (2008).

<sup>45</sup> William A Donohue, et.al., "Interaction Dynamics Predict Successful Negotiation in Divorce Mediation," *Journal of Language and Social Psychology* 35, No. 4 (2015), p. 374–393.

<sup>46</sup> K. Bollen, et.al., "Money or Children? Power Sources in Divorce Mediation," *Journal of Family Studies* 19, No. 2 (2013), p. 159–173

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peace.<sup>47</sup>

Measurable mediation can focus on the context of enforcing mediation as regulated in Perma No. 1 of 2016. Other dispute resolution processes are similar to the mediation of divorce cases at the Religious Courts. The very basic similarities are the steps that must be passed by the provisions in Perma No. 1 of 2016.

In general, the mediation stages in divorce cases at the Religious Courts are mapped into three stages, namely the preparation stage, the implementation stage, and also the decision-making stage. The stages of mediation are described systematically and clearly by their respective sequences. In the practice of mediation after registering a divorce case at the Religious Court, the parties of the litigant husband and wife come to court after attending the summons legally and properly by the stipulations of the time and place.

Furthermore, the preparatory stage process in mediation is needed for a mediator to early study and deepen the root of the dispute between husband and wife who are consulted in mediation. The next stage is the implementation stage, the first stage of which is to form a forum. Before starting the mediation, both the mediator and the litigant husband and wife form a forum. In the forum that has been formed, the mediator organizes a joint meeting to deliver the preliminary statements of the husband and wife in the case.

At the time of conducting the mediation, the final stage is the decision-making stage where parties work together with the help of a mediator to evaluate options, get trade-offs and offer packages, minimize debates and find a fair basis for shared allocations. In the end, the parties who agreed were successful in making a joint decision. The stage of determining the mediator's decision can also pressure the parties, find formulas to avoid embarrassment, assist the parties in dealing with the power of attorney (if empowered).

The atmosphere of the location or place of mediation is a comfortable, free and pleasant place.<sup>48</sup> Technical readings and the stages of mediation in the Religious Courts are very important to construct priorities for the application of *maqāṣid shari'āh*. The *maqāṣid shari'āh* perspective on the mechanism of the stages of mediation is still very technical and the material content of divorce mediation is too formal. The very formalistic technical atmosphere of the implementation has made it more difficult and rigid to find a peace agreement. The consideration of the implementation of *maqāṣid shari'āh* in the content of mediation material is to try to strengthen the actualization of benefit, to bury the profundity (damage) in the household of married couples who have problems with conflict.

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<sup>47</sup> Stanley N. Cohen, "Divorce Mediation: An Introduction," *Journal of Psychotherapy & Family, Divorce Therapy* 1, (2014).

<sup>48</sup> Angela Corla Garcia, "Locations for Advice-Giving and the Production of Neutrality in Divorce Mediation Sessions," *Conflict Resolution Quarterly* 38, No. 3 (2020).

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The opinion of al-Ghazaliy was explained systematically and concretely about Maqashid sharia as the basis of maslahah, and also the argument for achieving the goal. Maqashid shariah which is the basis of maslahat is trying to uphold the meaning of syar'i as the absolute authority of Allah in making laws to maintain religion, soul, mind, descent and property.<sup>49</sup> Thus, everything that can realize the meaning of syar'i is called maslahat.

The opinion of Yusuf al-Qardhawi in formulating *maqāṣid shari'āh* is the transformation of the goals desired by the texts which contain the meaning of orders, prohibitions, and permits at the same time. *Maqāṣid shari'āh* means the purpose of Allah SWT. and also His Messenger in transforming Islamic laws. These Islamic laws can be found in the qur'an and hadith which lead to the benefit of mankind.<sup>50</sup> Ibn Qayyim's opinion details the purpose of Islamic law is to manifest the benefit of mankind in the world and the hereafter. In totality, Islamic law contains mercy, justice, benefit, and wisdom.<sup>51</sup>

Furthermore, sharia means an ethical system as well as a value in covering all problems of human life which functions as a consistent and comprehensive life guideline that is implemented in Islamic law. The implementation of sharia in Islamic law is an absolute manifestation to uphold justice and benefit, eliminate prejudice, and reduce difficulties in human affairs. The purpose of Islamic law revealed to humans is the same connotation as the meaning of *maqāṣid shari'āh* in preserving all human interests.<sup>52</sup>

The realization of the *maqāṣid shari'āh* is that Muslims are obliged to maintain their religion, soul, mind, ancestry, and property. As *maqāṣid shari'āh* is generally understood to be the purpose of stipulating and lowering Islamic law to bring about goodness, safety, and happiness, on the other hand, avoiding badness, trouble and damage can threaten human life and existence.

The criticism of divorce through *maqāṣid shari'āh*, which is the judge's decision at the Religious Court, actually has the potential to cause the household to suffer disarray and damage, it is also focused on taking care of the children of both parents who are no longer maximally which causes neglected children.<sup>53</sup> The practice of mediation in the Religious Courts through the application of *maqāṣid shari'āh* is an action to repair and save a household from a husband and wife on the verge of damage and destruction. The perspective of the *maqāṣid*

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<sup>49</sup> Al-Gazaliy, *Al-Mustashfa Fi 'Ilm Al-Ushul*, 1st ed. (Beirut: Dar al-Kutub al-Ilmiyah, 1993).

<sup>50</sup> Yusuf Al-Qardhawi, *Dirasah Fiqh Maqashid Al-Shariah; Baina Al-Maqashid Al-Kulliyah Wa Al-Nushus Al-Juziyyah* (Cairo: Dar al-Syuruq, 2006).

<sup>51</sup> Ibn Qayyim, *I'lam Al-Muwaq'ifin Rabb Al-Alamin*, 3rd ed. (Beirut: Dar al-Jail, nd).

<sup>52</sup> Asyraf Wajdi Dusuki and Nurdianawati Irwani Abdullah, "Maqasid Al-Shariah, Maslahah, and Corporate Social Responsibility," *American Journal of Islamic Social Sciences* 24, No. 1 (2007), p. 31.

<sup>53</sup> Ani R. Poladian, et.al., "Family Mediation for Divorce and Parental Separation," *Foundations for Couples' Therapy: Research for the Real World*, (2017), p. 256–267.

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*shari'āh* that divorce in the Religious Court is not the best option or way to resolve conflicts between husband and wife in the household.

Seeing the reality of divorce cases in the Religious Courts today, it seems as if there are almost no more efforts, it is very difficult to stem and contain the rate of divorce that has increased sharply from year to year. The Supreme Court needs to review the effectiveness and efficiency of the implementation of mediation through Perma No. 1 of 2016 at the Religious Court with consideration for the benefit contained in the *maqāṣid shari'āh*. The strength of the application of Perma No. 1 of 2016 has not had a major effect on improving the situation of a married couple who filed their case at the Religious Court. The implementation of Perma No. 1 of 2016 does not yet show the balance of the verdict in divorce cases than the success of mediation in the Religious Courts.

The legal construction that is transformed by the Supreme Court in the Religious Courts, *maqāṣid shari'āh* can be a major consideration in improving mediation practice. Changes in law enforcement in the practice of mediation in the Religious Courts mean that judges are no longer given additional duties in carrying out mediation. The mediation must optimally be carried out by the mediator freely and independently, without depending on the Religious Courts. The Supreme Court must be more courageous in establishing a mediation institution for divorce cases as a free, independent, and independent institution in preventing the increasing number of divorces.

Regulatory changes in the implementation of the law as an effort to transform *maqāṣid shari'āh* in the Religious Courts that every registered case should be that a husband and wife who are about to divorce must have a certificate of unsuccessful mediation from the mediation institution. Thus, the Religious Courts no longer accept divorce cases without a certificate of unsuccessful mediation which serves as a subsidiary condition in registering cases.

This opinion is reinforced by several sources from experience, it can be said that the implementation of mediation should be done before the case is entered or registered at the Religious Court. Experience from several times the mediation of several husband and wife couples who quarreled or conflicts with mediation through non-litigation, before the litigant couple filed a case in the Religious Court and the result succeeded in making a peace agreement. Some married couples who have litigated no longer wish to file divorce cases at the Religious Court have returned to harmony in rebuilding their households. In fact, in several cases, after the mediator reported the results of the mediation being unsuccessful, the case examining judges continued the trial process, starting with a vision or settlement by the panel of judges who managed to reconcile the litigants. The essence is that between mediation and peace efforts carried out by the mediator and the case examining a panel of judges should be the same.

After a husband and wife in a case get advice and advice from the

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Marriage Advisory, Development and Preservation Agency, it can show an indication that the divorce rate can be slightly suppressed through mediation outside the Court.<sup>54</sup> The experience of mediating divorce cases outside the court can be strengthened when the existence of the Marriage Advisory, Guidance and Preservation Agency while still active, based on data from the Office of Religious Affairs, nearly 50% of married couples who wish to file divorce cases at the Religious Courts can discourage divorce.

## **Revitalization of Bugis and Mandar Customary in Divorce Mediation**

The Bugis and Mandar peoples have historically been a family group that cannot be separated emotionally because they are tied to a *pangngaderreng* cultural system in South Sulawesi. The two communities were in the same territorial region before the formation of West Sulawesi as the expansion area of the South Sulawesi region on October 5, 2004, through Law No. 26 of 2004. Although separated from regional ties, emotional ties, both physically and physically, are still harmonious and peaceful.

The association of the two societies is bound in a very monumental cultural system, namely the *pangngaderreng* culture. Also, the Bugis and Mandar communities can also be bonded with marriage. The two societies are united with each other because of the same belief in embracing Islam. Returning to the *pangngaderreng* culture, it has five elements that cannot be separated from one another, namely *ade'*, *bicara*, *rapang*, *wari*, and *syara'*.<sup>55</sup> *Pangngaderreng* is a cultural system and a social system that functions as the customary institution or social institution of the Bugis and Mandar peoples. *Pangngaderreng* culture regulates religious, social, cultural, state, and legal norms. *Ade'* can be interpreted as custom, speaking means justice, *rapang* is jurisprudence, *wari* means social layering, and *syara'* means Islamic law.<sup>56</sup>

The Bugis and Mandar people are very loyal and obedient to *ade'* (Bugis) and *ada'* (Mandar) means adat. The obedience and loyalty of the Bugis and Mandar people to adat are due to their deep belief in adat which always protects and preserves himself as a human being with *siri'*. *Siri'* in essence is honor, dignity, dignity for humans. If someone does not have *siri'* in him, he is no longer excited to live, people in Bugis and Mandar societies prefer to die rather than have no *siri'* in him.

*Siri'* in the expression of the Bugis society is "*Siri' emmi ri onroang ri lino, utettong ri ade'e, najagainnami siri'ta, naia siri'e sunge naranreng, na life*

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<sup>54</sup> Madelene De Jong, "A Pragmatic Look at Mediation as an Alternative to Divorce Litigation," *Tydskrif Vir Die Suid-Afrikaanse Reg*, No. 3 (2010), p.515–531.

<sup>55</sup> Nurnanigsih Nawawi, "Asimilasi Lontara Pangadereng Dan Syari'at Islam: Pola Perilaku Masyarakat Bugis-Wajo." *Al-Tahrir: Jurnal Pemikiran Islam* 5, No. 1 (2015), p. 25.

<sup>56</sup> Rahmatunnair, "Contextualization of Pangngadereng in the Enforcement of Islamic Shariah in Bugineese Bone Community," *Al-Qalam* 17, No. 1 (2011), p. 94.



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*roughly*”,<sup>57</sup> While *siri'* in the Mandar community expression is “what is *siri'* in *tu'u ita di'e rupa or mala tuo dini dilino*, using *de'i is dipiara toi siri'*, *dotai tau mate anna dadzi tia andan dian siri'*” This means that only with *siri'* humans can survive in the world, because by upholding customs, maintaining *siri'*, because with *siri'* death is at stake, and life is the ransom.

The connection with the enforcement of *siri'* in the Bugis and Mandar communities seems to have experienced a shift in values. The shift in the value of *siri'* itself is marked by a very interesting fact about divorce cases in the Bugis and Mandar communities, which is that divorce cases always dominate rather than divorce talaq in all Religious Courts. Acceleration of suicidal divorce cases is very urgent in the Bugis and Mandar communities. Compared to divorce talaq, family resilience began to be very fragile in Bugis and Mandar societies with the dominance of divorce in the Religious Courts. The dominance of a legal divorce which is the triggering factor is domestic violence, economy, and polygamy. Therefore, The Bugis and Mandar people seem to gradually no longer respect *siri'*, because they are not considered a disgrace' if they go to the Religious Court to ask for a divorce. It should be for the Bugis and Mandar people that it is a disgrace with divorce, let alone committing domestic violence, the disgrace of not being able to meet the economic needs of their families, and also a disgrace 'because of polygamy. A person disobeying or disregarding *siri'* is a disgrace'.

The fragility of family resilience in the Bugis and Mandar communities is also a triggering factor, namely the crisis of figures from family members who are charismatic as role models, and the crisis of optimizing the role of traditional institutions that act as mediators. Cultural and social changes in the Bugis and Mandar communities, sometimes on the part of the parents themselves, who usually play a role in separating the marriages of their children. For families who are experiencing conflict, it seems as if the Religious Court is the last place in conflict resolution. The irony is that it turns out that the Religious Courts are not a place that is capable of repairing the rifts in the households of husband and wife who experience conflict. Data from all divorce cases received at the Religious Courts are generally decided by the judge.

The strength in carrying out the value of *ade* 'in the Bugis and the Mandar community' is to maintain a lasting and sustainable marriage, the implementation of the value of life *sirondo-rondo* which means cooperation, helping each other in doing a job, both heavy and light. The next value that is related to the sustainability of marriage is *siamasei* and *sianuang pa'mai* that in building a household, the husband and wife must love and love each other. The

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<sup>57</sup> Fikri, et.al., "Idealism and Realism of Islamic Law in Pangngaderreng Culture of the Modern Bugis Bone," *IOP Conference Series: Earth and Environmental Science* 175, No. 1 (2018), p. 2.

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Bugis and Mandar people in fostering a household are also known as *sibaliparri*, husband and wife must maintain household harmony and have a mutual sense of responsibility towards their families, both when joy and sorrow must be faced together, the same fate and co-existence.

Marriage advice and advice are provisions in living the household dish.<sup>58</sup> The revitalization of customary institutions in the Bugis and Mandar communities such as *sirondo-rondo*, *siamasei* and *sianuang pa'mai*, and *sibaliparri* is the basis for certified judges and mediators to carry out mediation in the Religious Courts and outside the courts. Optimizing customary institutions in the Bugis and Mandar communities can be a very strong defense against the increasing divorce rate in the Religious Courts.

Also, reviving the traditional institutions of the *pangngaderreng* cultural system is *syara'* which is the implementation of Islamic law in the Bugis and Mandar communities. The enforcement of Islamic law in Bugis society is carried out by someone who has the title *petta kalie* and in Mandar society it is known as *puang kali*. People who are appointed to be *petta kalie* in Bugis society and *puang kali* in Mandar society are charismatic, scholars who have a deep knowledge of Islam, master jurisprudence and Islamic law.<sup>59</sup> The function of *petta kalie* or *puang kali* is to give advice or marriage advice for married couples who are about to divorce.

The revitalization of *petta kalie* and *puang kali* in Bugis and Mandar communities is that every married couple who is about to divorce, should first ask for advice or marriage advice. Divorce cases are no longer registered with the Religious Courts, before there are marital advice and advice from *petta kalie* and *puang kali*.

## Conclusion

Referring to the divorce case data, it is an extra ordinal matter case in the Religious Courts throughout South Sulawesi and West Sulawesi. The reality that must be given full attention is that currently, divorce cases from divorce lawsuits are increasing in number compared to talaq divorces in the Religious Courts, so there is a concern about family resilience in the Bugis and Mandar communities. Divorce cases are increasing in number which can affect the mediation products in the Religious Courts, which causes the Supreme Court to apply Perma No. 1 of 2016. The dynamics of some of the products of mediation practices in the Religious Courts are successful mediations carried out by a mediator with a husband and wife couple who are having a case to reach a peace agreement as

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<sup>58</sup> Angela Garcia, "Advice-Giving and Disputant Empowerment in Divorce Mediation Sessions," *Language and Dialogue* 2, No. 3 (2012), p. 398–426,

<sup>59</sup> Ridhwan, et.al., "Masjid Sebagai Pusat Pendidikan Islam pada Masa Kerajaan Sampai Masa Orde Lam di Bone Sulawesi Selatan," *Jurnal Ilmiah Didaktika* 20, No. 1 (2019), p. 83-98.

## Transformation of *Maqāṣid Shari'āh* in Divorce Mediation

Fikri Fikri, et.al.,

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outlined in a peace deed. Another product of mediation is that mediation is partially successful and mediation is partially unsuccessful if the litigating party of the husband and wife submits two main points of the case so that some have succeeded in reaching a peace agreement and some are not successful in achieving reconciliation. The product of mediation is unsuccessful or fails because the litigant husband and wife have committed to divorce so that the mediator finds it difficult to reconcile to achieve reconciliation of the two litigant parties.

The process of practicing mediation in the Religious Courts is very urgent to implement *maqāṣid shari'āh* as the main consideration by judges at the Religious Courts in deciding divorce cases. The main consideration for the application of *maqāṣid shari'āh* has the potential to repair and save a household from a husband and wife on the verge of damage and destruction. The strong assumption of the application of *maqāṣid shari'āh* is that divorce in the Religious Court is not the best option or way to resolve conflicts between husband and wife in the household. The Supreme Court needs to review the practice of mediation through Perma No. 1 of 2016 by placing the benefits contained in the *maqāṣid shari'āh* for the practice of mediation in the Religious Courts.

Revitalizing traditional institutions such as upholding the value of *ade* 'in the Bugis and existing in the Mandar community can be a strength in family resilience in maintaining the marriage. Bringing the customs of the Bugis community and society through social culture in the value of life *sirondo-rondo* which means cooperation, *siamasei* and *sianuang pa'mai* in fostering a household, husband and wife must love and love each other, and *sibaliparri* that husband and wife must take care of each other domestic harmony and mutual responsibility towards their families, both when joys and sorrows must be faced together, of the same fate and responsibility. Also, reviving the customary institutions of the *pangngaderreng* cultural system is *syara'* which is interpreted as an institution for implementing Islamic law in the Bugis and Mandar communities. The enforcement of Islamic law in Bugis society is carried out by someone who has the title *petta kali'* and in Mandar society known as *puang kali'* is a charismatic person, a cleric who has a deep knowledge of Islam, masters jurisprudence and Islamic law. The function of *petta kali'* or *puang kali'* is to give advice or marriage advice for husband and wife who want to divorce and their marriage will be long-lasting, lasting, and sustainable.

## References

### Journals and Books

Abbas, Syahrizal. *Mediasi Dalam Perspektif Hukum Syari'ah, Hukum Adat Dan Hukum Nasional*. Jakarta: Kencana Prenada Media Group, 2009.

<http://jurnal.ar-raniry.ac.id/index.php/samarah>

## Transformation of *Maqāshid Shari'āh* in Divorce Mediation

Fikri Fikri, et.al.,

DOI:

- Al-Syatibi, Abu Ishaq. *Al-Muwafaqat Fi Ushul Al-Ahkam*. 2nd ed. Beirut: al-Maktabah al-Taufiqiyyah, 2004.
- Al-Gazaliy. *Al-Mustashfa Fi' Ilm Al-Ushul*. 1st ed. Beirut: Dar al-Kutub al-Ilmiyah, 1993.
- Al-Qardhawi, Yusuf. *Dirasah Fi Fiqh Maqashid Al-Shariah; Baina Al-Maqashid Al-Kulliyah Wa Al-Nushus Al-Juziyyah*. Kairo: Dar al-Syuruq, 2006.
- Al-Salam, Izz al-Din Abd. *Qawaid Al-Ahkam Fi Masalih Al-Anam*. Beirut: Dar al Ma'rifah, n.d.
- Ali, Achmad and Wiwie Heryani, *Sosiologi Hukum: Kajian Empiris terhadap Pengadilan*, Jakarta: Kencana, 2014.
- Arfa, Faisar Ananda and Watni Marpauang, *Metodologi Hukum Islam*, Jakarta: Kencana, 2016.
- Bailey, Jo Daugherty and Dawn Maccarty, "Assessing Empowerment in Divorce Mediation." *Negotiation Journal* 25, No. 3 (2009). <https://doi.org/10.1111/j.1571-9979.2009.00229.x>.
- Beck, Connie J.A. and Bruce Sales, "A Critical Reappraisal of Divorce Mediation Research and Policy." *Psychology, Public Policy, and Law* 6, no. 4 (2000). <https://doi.org/10.1037/1076-8971.6.4.989>.
- Beck, Connie J.A. and Lynda E. Frost, "Defining a Threshold for Client Competence to Participate in Divorce Mediation." *Psychology, Public Policy, and Law* 12, No. 1 (2006). <https://doi.org/10.1037/1076-8971.12.1.1>.
- Beck, E. "Improving Communication in Divorce Mediation." *Divorce Mediation: Perspectives on the Field*, 2014. <https://doi.org/10.4324/9781315860077>.
- Bollen, K. "Money or Children? Power Sources in Divorce Mediation." *Journal of Family Studies* 19, No. 2 (2013). <https://doi.org/10.5172/jfs.2013.19.2.159>.
- Cohen, Stanley N. "Divorce Mediation: An Introduction." *Journal of Psychotherapy & Family, Divorce Therapy* 1, 2014. <https://doi.org/10.4324/9781315791456>.
- Dingwall, Robert. "Divorce Mediation: Should We Change Our Mind?" *Journal of Social Welfare and Family Law* 32, No. 2 (2010). <https://doi.org/10.1080/09649069.2010.506307>.
- Djawas, Mursyid, and Sri Astuti A. Samad. "Conflict, Traditional, and Family Resistance: The Pattern of Dispute Resolution in Acehese Community According to Islamic Law." *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 4, No. 1 (2020). DOI: <http://dx.doi.org/10.22373/sjhh.v4i1.5271>.

## Transformation of *Maqāṣid Shari'āh* in Divorce Mediation

Fikri Fikri, et.al.,

DOI:

- Donohue, William A, "Interaction Dynamics Predict Successful Negotiation in Divorce Mediation." *Journal of Language and Social Psychology* 35, No. 4 (2015). <https://doi.org/10.1177/0261927X15603090>.
- Dusuki, Asyraf Wajdi, and Nurdianawati Irwani Abdullah. "Maqasid Al-Shariah, Maslahah, and Corporate Social Responsibility." *American Journal of Islamic Social Sciences* 24, No. 1 (2007).
- Ellis, Desmond. "Safety, Equity, and Human Agency; Contributions of Divorce Mediation." *Violence Against Woman* 6, No. 9 (2000). <https://doi.org/10.1177/10778010022182254>.
- Emery, Robert E, David Sbarra, and Tara Grover. "Divorce Mediation: Research and Reflections." *Family Court Review* 43, No. 1 (2005).
- Enrekang, Ketua Pengadilan Agama. "Laporan Tahunan Pengadilan Agama Enrekang." Kota Enrekang, 2020. <https://www.pa-enrekang.com/index.php/transparansi/sekretariat/perencanaan/laporan-tahunan>.
- Fikri, Rahmawati, and Zulfah. "Idealism and Realism of Islamic Law in Pangngaderreng Culture of the Modern Bugis Bone." *IOP Conference Series: Earth and Environmental Science* 175, No. 1 (2018). <https://doi.org/10.1088/1755-1315/175/1/012137>.
- Garcia, Angela. "Advice-Giving and Disputant Empowerment in Divorce Mediation Sessions." *Language and Dialogue* 2, No. 3 (2012). <https://doi.org/10.1075/ld.2.3.05gar>.
- Garcia, Angela Corla. "Locations for Advice-Giving and the Production of Neutrality in Divorce Mediation Sessions." *Conflict Resolution Quarterly* 38, No. 3 (2020). <https://doi.org/10.1002/crq.21292>.
- Hahn, R. and David M. Kleist, "Divorce Mediation: Research and Implications for Family and Couples Counseling." *The Family Journal*, 2000. <https://doi.org/10.1177/1066480700082009>.
- Halim, Wahyuddin. "Islamization or Arabization? The Arab Cultural Influence on the South Sulawesi Muslim Community since the Islamization in the 17th Century." *Suvannabhumi* 10, No. 1 (2018).
- Holtzworth-Munroe, Amy. "Controversies in Divorce Mediation and Intimate Partner Violence: A Focus on the Children." *Aggression and Violent Behavior* 16, No. 4 (2011). <https://doi.org/10.1016/j.avb.2011.04.009>.
- Huang, Philip C.C., "Divorce Law Practices and the Origins, Myths, and Realities of Judicial 'mediation' in China." *Modern China* 31, No. 2 (2005). <https://doi.org/10.1177/0097700405274585>.
- Indonesia, Direktorat Jenderal Badan Peradilan Agama Republik. Laporan Tahunan Badan Peradilan Agama (2020).
- Jong, Madelene De. "A Pragmatic Look at Mediation as an Alternative to Divorce Litigation." *Tydskrif Vir Die Suid-Afrikaanse Reg*, No. 3 (2010).

## Transformation of *Maqāṣid Shari'āh* in Divorce Mediation

Fikri Fikri, et.al.,

DOI:

- Kaganas, Felicity and Christine Piper, "Domestic Violence and Divorce Mediation." *Journal of Social Welfare and Family Law* 16, No. 3 (1994). <https://doi.org/10.1080/09649069408413612>.
- Koopman, Elizabeth J., "The Present and Future Role of Higher Education in Divorce Mediation: Problems and Promise in Teaching, Research, and Service." *Divorce Mediation: Perspectives on the Field*, 2014. <https://doi.org/10.4324/9781315860077>.
- Kraft, Amy J. and Lynda Leucken, "Childhood Parental Divorce and Cortisol in Young Adulthood: Evidence for Mediation by Family Income." *Psychoneuroendocrinology* 34, No. 9 (2009). <https://doi.org/10.1016/j.psyneuen.2009.04.008>.
- Margulies, S and Anya Luchow, "Litigation, Mediation and the Psychology of Divorce." *Journal of Psychiatry and Law* 20, No. 4 (1992). <https://doi.org/10.1177/009318539202000405>.
- Molgora, Sara, "Divorce and Coparenting: A Qualitative Study on Family Mediation in Italy." *Journal of Divorce and Remarriage* 55, No. 4 (2014). <https://doi.org/10.1080/10502556.2014.901854>.
- Nawawi, Nurnanigsih. "Asimilasi Lontara Pangadereng Dan Syari'at Islam: Pola Perilaku Masyarakat Bugis-Wajo." *Al-Tahrir: Jurnal Pemikiran Islam* 15, No. 1 (2015).
- Neville, W. "Reflections on the Growth and Significance of Divorce Mediation." *Divorce Mediation: Perspectives on the Field*, 2014. <https://doi.org/10.4324/9781315860077>.
- Nurman, Said. *Religion and Cultural Identity Among the Bugis*. Makassar: Faculty of Islamic Theology of the Alauddin State Institute of Islamic Studies at Makassar, Indonesia, 2004.
- Pickar, Daniel, "Intermittent Evaluative Mediation with Enduring, Post-Divorce Conflict." *Journal of Child Custody* 8, No. 3 (2011). <https://doi.org/10.1080/15379418.2011.594722>.
- Pinrang, Ketua Pengadilan Agama. "Laporan Tahunan Pengadilan Agama Pinrang." Kota Pinrang, 2020. <http://pa-pinrang.go.id/index.php?limitstart=27>.
- Poladian, Ani R., "Family Mediation for Divorce and Parental Separation." *Foundations for Couples' Therapy: Research for the Real World*, 2017. <https://doi.org/10.4324/9781315678610-26>.
- Przybyla-Basista, Hanna, "The Influence of Spouses' Resistance on Their Decision to Enter into Divorce Mediation." *Journal of Divorce and Remarriage* 48, No. 3 (2008). [https://doi.org/10.1300/J087v48n03\\_05](https://doi.org/10.1300/J087v48n03_05).
- Qardhawi, Abd al-Rahman Yusuf Abd. *Nazhariyah Maqashid Al-Syari'ah Baina Syekh Al-Islam Ibn Taimiyah Wa Jumhur Ushliyyin Dirasah Muqaranah Min Al-Qarn Al-Khamis Ila Al-Tsamin Al-Hijri*. Kairo: Kulliyah Dar al-Ulum, n.d.

## Transformation of *Maqāṣid Shari'āh* in Divorce Mediation

Fikri Fikri, et.al.,

DOI:

- Qayyim, Ibn. *I'lam Al-Muwaqī'in Rabb Al-Alamin*. 3rd ed. Beirut: Dar al-Jail, n.d.
- Rahmatunnair, "Contextualization of Pangngadereng in the Enforcement of Islamic Shariah in Bugineese Bone Community." *Al-Qalam* 17, No. 1 (2011). DOI: <http://dx.doi.org/10.31969/alq.v17i1.101>.
- Rappang, Ketua Pengadilan Agama Sidenreng. "Laporan Tahunan Pengadilan Agama Sidenreng Rappang." Kota Pangkajenne, 2020. <http://pasidenrengrappang.go.id/>.
- Ridhwan, et.al., "Masjid Sebagai Pusat Pendidikan Islam pada Masa Kerajaan Sampai Masa Orde Lam di Bone Sulawesi Selatan," *Jurnal Ilmiah Didaktika* 20, No. 1 (2019). DOI: <http://dx.doi.org/10.22373/jid.v20i1.4648>.
- RI., Ketua Mahkamah Agung. "Perma RI. No. 1 Tahun 2016 Tentang Prosedur Mediasi Di Pengadilan." Jakarta, 2016. [https://bawas.mahkamahagung.go.id/bawas\\_doc/doc/perma\\_mediasi\\_pengadilan\\_web.pdf](https://bawas.mahkamahagung.go.id/bawas_doc/doc/perma_mediasi_pengadilan_web.pdf).
- Sbarra, David A. and Robert E. Emery, "In the Presence of Grief: The Role of Cognitive-Emotional Adaptation in Contemporary Divorce Mediation." *Handbook of Divorce and Relationship Dissolution*, Taylor and Francis, 2013. <https://doi.org/10.4324/9781315820880-40>.
- Schepard, Andrew, "An Introduction to the Model Standards of Practice for Family and Divorce Mediation." *Family Law Quarterly* 35, No. 1 (2001).
- Shaw, Lori Anne, "Divorce Mediation Outcome Research: A Meta-Analysis." *Conflict Resolution Quarterly* 27, No. 4 (2010). <https://doi.org/10.1002/crq.20006>.
- Silver, Robert B. and Deborah C. Silver, "Practice Note: Divorce Mediation with Challenging Parents," *Conflict Resolution Quarterly* 25, (2008). <https://doi.org/10.1002/crq.220>.
- Taylor, Raymond J., "Use of Change Theory in the Context of the Divorce Mediation Session." *Journal of Divorce and Remarriage* 40, no. 1 (2004). [https://doi.org/10.1300/J087v40n01\\_06](https://doi.org/10.1300/J087v40n01_06).
- Twaite, James A. "Divorce Mediation: Promises, Criticisms, Achievements, and Current Challenges." *Journal of Psychiatry and Law* 26, No. 3 (1998). <https://doi.org/10.1177/009318539802600304>.
- Weaver, Jennifer M. and Thomas J. Schofield, "Mediation and Moderation of Divorce Effects on Children's Behavior Problems." *Journal of Family Psychology* 29, No. 1 (2015). <https://doi.org/10.1037/fam0000043>.
- Worley, Susan, "The Effect of Cooperation on Egocentrism in Divorce Mediation: A Simulation Study." *Journal of Divorce* (2008). <https://doi.org/10.4324/9781315860077>.

## **Transformation of *Maqāṣid Shari'āh* in Divorce Mediation**

Fikri Fikri, et.al.,

DOI:

Yunus, Abd Rahim, "The Acculturation of Islam and Local Culture in Bugis Wedding Tradition: A Historical Perspective," International Conference on Global Education V, Padang, 2017.

### **Internet Data**

Chairman of the Parepare Religious Court, "*Annual Report of the Parepare Religious Court*" (Parepare City, 2020), <http://pa-parepare.go.id/home/leport-tahunan/>.

Chairman of the Sidenreng Rappang Religious Court, "*Annual Report of the Sidenreng Rappang Religious Court*" (Pangkajenne City, 2020), <http://pa-sidenrengrappang.go.id/>.

Chairman of the Pinrang Religious Court, "*Annual Report of the Pinrang Religious Court*" (Pinrang City, 2020), <http://pa-pinrang.go.id/index.php?limitstart=27>.

Chairman of the Enrekang Religious Court, "*Annual Report of the Enrekang Religious Court*" (Enrekang City, 2020), <https://www.pa-enrekang.com/index.php/transpuarant/sekretariat/perplan/lentuk-tahunan>.

Chairperson of the Polewali Mandar Religious Court, "*Annual Report of the Poliwali Mandar Religious Court*" (Polewali City, 2020), <http://pa-polewali.net/index.php/info-peradilan/program-kerja-k-Activity/l-Report-tahunan>.

Chairman of the Majene Religious Court, "*Annual Report of the Majene Religious Court*" (Majene City, 2020), <https://pa-majene.go.id/informasi-umum/leport-tahunan>.

Chairman of the Supreme Court of the Republic of Indonesia., "*Perma RI. No. 1 of 2016 concerning Mediation Procedures in Courts*" (Jakarta, 2016), [https://bawas.mahkamahagung.go.id/bawas\\_doc/doc/perma\\_mediasi\\_pengadilan\\_web.pdf](https://bawas.mahkamahagung.go.id/bawas_doc/doc/perma_mediasi_pengadilan_web.pdf).



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Dear

Fikri Fikri &lt;fikri@iainpare.ac.id&gt;

Muhammad Ali Rusdi Bedong &lt;alirusdi@iainpare.ac.id&gt;

Salman Abdul Muthalib &lt;salman@ar-raniry.ac.id&gt;

Mahdalena Nasrun &lt;mahdalena.nasrun@ar-raniry.ac.id&gt;

Assalamu alaikum warahmatullah wabarakatuh

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**Title** Transformation of Maqāshid Shari'ah in Divorce Mediation in Religious Courts: Revitalization of the Bugis-mandar Customs, Indonesia

**Section** Articles

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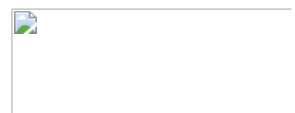
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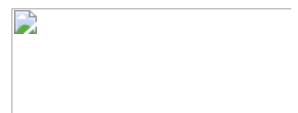
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## **Transformation of *Maqāṣid Shari'āh* in Divorce Mediation in Religious Courts: Revitalization of the Bugis-Mandar Customs, Indonesia**

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**Abstract:** The focus of this research discusses the transformation of *maqāṣid shari'āh* in mediation practices in divorce cases, and the revitalization of *adat* in mediation practices in Bugis and Mandar communities. This study is a field legal research using historical and socio-anthropological approaches, while the data is analyzed using *maqāṣid shari'āh* theory and social change theory. Data collection techniques are based on literature studies on legal sources related to the discussion. This study concludes that divorce is an extraordinary case in the religious courts, dynamics of mediation practice in Religious Courts have successful mediation for a written peace agreement in peace deed, other mediation products are partially successful mediation and partially unsuccessful mediation, mediation products are not successful is that husband and wife are committed to divorce; *maqāṣid shari'āh* transformation can be a major consideration by judges in mediation practice to save households on the verge of collapse, so that *maqāṣid shari'āh* is very urgent to place in Perma No.1 of 2016, and revitalization of Bugis-Mandar customary is an effort to revive the value of life *sirondo-rondo*, *siamasei*, *sianuang pa'mai*, and *sibaliparri*, also animate *shara'* which is performed *petta kalie* (Bugis) or *puang kali'* (Mandar).

**Keywords:** *Maqāṣid shari'āh*, divorce mediation, religious courts, bugis-mandar customs, Islamic family law

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**Abstrak:** Fokus penelitian ini membahas tentang transformasi *maqāṣid syari'āh* dalam praktik mediasi dalam kasus perceraian, dan revitalisasi adat dalam praktik mediasi dalam masyarakat Bugis dan Mandar. Kajian tersebut merupakan penelitian hukum lapangan dengan menggunakan pendekatan historis, dan sosio-antropologis sedangkan data dianalisis dengan memakai teori *maqāṣid syari'ah* dan teori perubahan sosial. Teknik pengumpulan data berdasarkan pada studi literatur pada sumber-sumber hukum yang terkait dengan pembahasan. Penelitian ini menyimpulkan bahwa perceraian merupakan perkara luar biasa di Pengadilan Agama, dinamika praktik mediasi di Pengadilan Agama telah berhasil dalam mediasi perjanjian damai tertulis dalam akta damai, produk mediasi lainnya adalah mediasi yang berhasil sebagian dan mediasi yang tidak berhasil sebagian, mediasi tidak berhasil. produk yang tidak berhasil adalah suami dan istri yang berkomitmen untuk bercerai; Transformasi *maqāṣid syari'āh* dapat menjadi pertimbangan utama hakim dalam praktik mediasi untuk menyelamatkan rumah tangga yang di ambang kehancuran, sehingga *maqāṣid syari'āh* sangat mendesak untuk ditempatkan dalam Perma No.1 Tahun 2016, dan revitalisasi kelembagaan adat Bugis-Mandar merupakan salah satu upaya. menghidupkan kembali nilai-nilai kehidupan *sirondo-rondo*, *siamasei*, *sianuang pa'mai*, dan *sibaliparri*, serta menghidupkan *shara'* yang dilakukan *petta kalie* (Bugis) *puang kali'* (Mandar).

**Keywords:** *Maqāṣid shari'āh*, mediasi perceraian, pengadilan agama, adat Bugis-Mandar, hukum keluarga Islam

## Introduction

The process of implementing mediation in fortifying family resilience from conflict has long been the subject of discussion as explained by Margulies that mediation is considered an effective effort to resolve husband-wife conflicts that intend to divorce.<sup>1</sup> On the other hand, violence that occurs in the family and also in mediation is still difficult to find theoretical and practical concepts.<sup>2</sup>

The function of the mediator is to reconcile the two sides of the disputing family, helping to carry out active communication. In addition, the mediator also encourages harmony and also emphasizes the parties in conflict to consider the bad consequences of divorce.<sup>3</sup> It is important to strengthen the concept of mediation in resolving family conflicts and childcare.<sup>4</sup> Mediation is conducted by

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<sup>1</sup> Sam Margulies and Anya Luchow, "Litigation, Mediation and the Psychology of Divorce," *Journal of Psychiatry and Law* 20, No. 4 (1992).

<sup>2</sup> Felicity Kaganas and Christine Piper, "Domestic Violence and Divorce Mediation," *Journal of Social Welfare and Family Law* 16, No. 3 (1994), p. 265–278.

<sup>3</sup> Andrew Schepard, "An Introduction to the Model Standards of Practice for Family and Divorce Mediation," *Family Law Quarterly* 35, No. 1 (2001), p. 2-3.

<sup>4</sup> Jennifer M. Weaver and Thomas J. Schofield, "Mediation and Moderation of Divorce Effects on Children's Behavior Problems," *Journal of Family Psychology* 29, No. 1 (2015), p. 39–48.

a mediator who acts as a mediator for the disputing parties and plays an active role in resolving the conflict by reaching a peace agreement from the parties.

Mediation is part of the legal system that can resolve family conflicts quickly, easily, and cheaply as long as the parties cooperate.<sup>5</sup> In addition to being able to be carried out by judges, psychologists, and other professionals who have the competence to carry out mediation can understand and address the root causes of problems in family conflicts.<sup>6</sup> According to RA Hahn explained that from several studies of the divorce mediation process carried out there were beneficial and beneficial results for the efficiency and satisfaction of the parties.<sup>7</sup> This opinion is supported by Ellis that divorce mediation makes a huge contribution towards the outcome of reconciliation between husband and wife.<sup>8</sup>

In line with the study conducted by Taylor suggesting that the mediator's demands in carrying out his role as the mediator can help to build confidence in the parties. Mediators are required to designing interpersonal communication between both husband and wife in conflict so that each party can introspect themselves towards better interaction changes.<sup>9</sup> The real emphasis of mediation is on reconciling the husband and wife who insisted on divorce.<sup>10</sup> Legal practitioners and academics have studied a lot about the mediation process that can reduce the soaring divorce rate. Mediation is a reliable means of accelerating the reconciliation of families in conflict.<sup>11</sup> Even C. Beck mentioned that the implementation of the formulation of the concept of mediation is a much more recent effort to create justice for wives who are victims of domestic violence.<sup>12</sup>

However, mediation can speed up the settlement of cases, on the contrary as described by Przybyla Basista stated that the reasons for couples who refuse the mediation process are especially wives who experience feelings of trauma and fear of violence from their ex-husbands. Experience from her domestic life, the wife received painful treatment so that she did not have the time and space to

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<sup>5</sup> James A Twaite, et.al., "Divorce Mediation: Promises, Criticisms, Achievements, and Current Challenges," *Journal of Psychiatry and Law* 26, No. 3 (1998).

<sup>6</sup> Connie J.A. Beck and Bruce Sales, "A Critical Reappraisal of Divorce Mediation Research and Policy," *Psychology, Public Policy, and Law* 6, No. 4 (2000), p. 989-1056.

<sup>7</sup> R. Hahn and David M. Kleist, "Divorce Mediation: Research and Implications for Family and Couples Counseling," *The Family Journal*, (2000).

<sup>8</sup> Desmond Ellis, "Safety, Equity, and Human Agency; Contributions of Divorce Mediation," *Violence Against Woman* 6, No. 9 (2000), p. 1012-1027.

<sup>9</sup> Raymond J. Taylor, "Use of Change Theory in the Context of the Divorce Mediation Session," *Journal of Divorce and Remarriage* 40, No. 1 (2004), p. 90.

<sup>10</sup> Philip C.C. Huang, "Divorce Law Practices and the Origins, Myths, and Realities of Judicial 'mediation' in China," *Modern China* 31, No. 2 (2005), p. 154.

<sup>11</sup> Robert E. Emery, et.al., "Divorce Mediation: Research and Reflections," *Family Court Review* 43, No. 1 (2005), p. 22-37.

<sup>12</sup> Connie J.A. Beck and Lynda E. Frost, "Defining a Threshold for Client Competence to Participate in Divorce Mediation," *Psychology, Public Policy, and Law* 12, No. 1 (2006), p. 1-13.

negotiate through mediation with her ex-husband.<sup>13</sup> Sometimes children are also victims of violence, experiencing depression and anxiety which can affect the physical and psychological health consequences of divorcing parents.<sup>14</sup> The research also touches on the legal protection of children through the mediation process. Andrew Shepard's views on custody and subsistence needs can be read.<sup>15</sup>

The opinion of Bailey provides that the sharpening of the practice of mediation in divorce cases can refer to several assumptions that mediation is a golden opportunity to resolve conflicts and household breakdowns in constructing reconciliation between husband and wife. The practice of mediation involves offering a problem-solving process with a focus on the goal of reconciliation.<sup>16</sup>

Compare this with the thought conveyed by Robert Dingwall that the legal system and family policies of the government related to the practice of mediation carried out in European countries such as England, Wales, Scotland, and Northern Ireland are forced attempts to the husband and wife who are going to divorce under control of the mediator to undergo the mediation process before their case reaches the Court.<sup>17</sup> An interesting thought from Lori Anne Shaw that the implementation of non-litigation mediation can outperform the judicial process in legally assisting the parties in a case, including from the results of mediation that prioritizes the interests of children.<sup>18</sup> Demands for non-litigation mediation practices are carried out to anticipate more immediate damage and cracks in households.

The theoretical purpose of marriage in Islamic law is to create *sakinah*, *mawaddah*, and *warahmah* families. Sometimes the theoretical goal of marriage is very different in practice from the goal of marriage. Marriage in the view of the Bugis and Mandar communities that “*iya tu’u di’o alikkangan, iyamo dzi’o mesa pakkasiwang lao di puang Allah Taala, jari mua ‘alikkangananna macoai, ma mandapai ammase, mua ‘andani macoa, napolean dosa*”, the meaning is that marriage is worship, so if the marriage is good you will get a reward, but if it is not good you will get sin.

Therefore, the practice of mediation, whether organized by judges at the

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<sup>13</sup> Hanna Przybyla-Basista, “The Influence of Spouses' Resistance on Their Decision to Enter into Divorce Mediation,” *Journal of Divorce and Remarriage* 48, No. 3 (2008), p. 31.

<sup>14</sup> Amy J. Kraft and Lynda Leucken, “Childhood Parental Divorce and Cortisol in Young Adulthood: Evidence for Mediation by Family Income,” *Psychoneuroendocrinology* 34, No. 9 (2009), p. 1363–1369.

<sup>15</sup> Andrew Shepard, *An Introduction to the Model Standards...*, p. 2-3.

<sup>16</sup> Jo Daugherty Bailey and Dawn Mccarty, “Assessing Empowerment in Divorce Mediation,” *Negotiation Journal* 25, No. 3 (2009), p. 327–336.

<sup>17</sup> Robert Dingwall, “Divorce Mediation: Should We Change Our Mind ?,” *Journal of Social Welfare and Family Law* 32, No. 2 (2010), p. 107–117.

<sup>18</sup> Lori Anne Shaw, “Divorce Mediation Outcome Research: A Meta-Analysis,” *Conflict Resolution Quarterly* 27, No. 4 (2010), p. 447–67.

Religious Courts or mediators outside the court, is very important to prioritize the content of divorce mediation using the *maqāṣid shari'āh* approach. Divorce mediation which contains the *maqāṣid shari'āh* paradigm based on *maslahat* as conveyed by Al-Gazaliy is an effort to uphold the objectives of shari'a laws in maintaining religion, soul, mind, descent and property.<sup>19</sup>

*Maqāṣid shari'āh* as formulated by *ushul fiqh* scholars is to have the meaning of all the aims and objectives regulated in religion to bring benefit and eliminate exasperation to its servants. Al-Syatibi further perfected the traditional *ushul fiqh* theories in the *al-Muwafaqat* book by formulating *maqāṣid shari'āh* which focused on *al-kulliyah al-khamsah*.<sup>20</sup>

Whereas *maqāṣid shari'āh* seen from the order is *maqāṣid al-dharuriyyah* (primary), *maqāṣid al-hajjiyyat* (secondary), and *maqāṣid al-tahsiniyyat* (complementary).<sup>21</sup> Therefore, based on the *maqāṣid shari'āh* that divorce mediation is in the order of *maqāṣid al-dharuriyyah*, which is obliged to eliminate adultery in marriage, including maintaining the family from conflict, enmity, disharmony, and rifts between husband and wife.

On the other hand, based on the data source of the Directorate General of Religious Courts' annual report, divorce cases are considered an extraordinary matter in Indonesia. Following the report's data, it shows that there were 128,401 divorce cases in 2015. Divorce cases in 2017 included 113,937 divorce *talaq*, while 301,573 divorce lawsuits were filed. In 2018 the details of the divorce *talaq* were 118,853. In 2019, there were 124,776 divorce cases, then 355,842 divorce cases.<sup>22</sup>

The discourse on mediation has produced many studies on the roles and responsibilities of academics,<sup>23</sup> such as Mursyid Djawas and Sri Astuti A. Samad explained that reconciliation efforts in resolving family disputes can be successful with a family resilience approach through traditional Acehese traditional wisdom such as *Keuchik*, *Tuha Peut*, *Teungku Imum*, and *Imum Mukim*. The resolution of

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<sup>19</sup> Abd al-Rahman Yusuf Abd Qardhawi, *Nazhariyah Maqashid Al-Syari'ah Baina Syekh Al-Islam Ibn Taimiyah Wa Jumhur Ushliyyin Dirasah Muqaranah Min Al-Qarn Al-Khamis Ila Al-Tsamin Al-Hijri* (Cairo: Kulliyah Dar al-Ulum, nd). p. 70.

<sup>20</sup> Abu Ishaq Al-Syatibi, *Al-Muwafaqat Fi Ushul Al-Ahkam*, 2nd ed. (Beirut: al-Maktabah al-Taufiqiyyah, 2004). p. 2.

<sup>21</sup> Izz al-Din Abd Al-Salam, *Qawaid Al-Ahkam Fi Masalih Al-Anam* (Beirut: Dar al-Ma'rifah, nd). p. 11.

<sup>22</sup> Directorate General of the Religious Courts of the Republic of Indonesia, *Annual Report of the Religious Courts* (2020). Mursyid Djawas, et.al., "The Government's Role in Decreasing Divorce Rates in Indonesia: The Case of Aceh and South Sulawesi" *Ahkam: Jurnal Ilmu Syariah* 21, No. 1 (2021).

<sup>23</sup> Elizabeth J. Koopman, "The Present and Future Role of Higher Education in Divorce Mediation: Problems and Promise in Teaching, Research, and Service," *Divorce Mediation: Perspectives on the Field*, 2014.

family conflicts in Acehnese society by means of Islamic law at the Syari'ah Court and also by practicing customary law in *sara opat* institutions, a kind of institution that includes *reje* and *imem* is very accurate, effective, and efficient.<sup>24</sup>

This idea of mediating divorce through customs and social institutions is very suitable to be actualized in the Bugis community in South Sulawesi and the Mandar community in West Sulawesi. Both the Bugis and Mandar Communities are ethnic groups that are very strong and thick in carrying out their customs which are tied to the *pangngaderreng* culture as a culture of conduct.<sup>25</sup> Which includes *ade'*, *bicara*, *rapang*, *wari'*, and *syara'*. Mandar was found when the *pangngaderreng* became a social patron as the inner power control to accommodate *syara'*.<sup>26</sup>

The acceptance of *syara'* in *pangngaderreng* culture is a consequence for society to carry out Islamic law. Along with development and *wari' and syara'*.<sup>27</sup> Acculturation of Islam and the culture of the Bugis community and the progress of human civilization which is increasingly modern, sometimes *siri'* in the *pangngaderreng* culture of the Bugis and Mandar communities has gradually shifted. Whereas in the period of traditional life, the enforcement of *siri'* in the Bugis and Mandar communities is very embarrassed and loses its self-respect if there is a disgrace in the family, including for example a married couple who divorced from that family. The connection with the *pangngaderreng* culture has less than optimal function in the Bugis and Mandar communities, especially before and during the Covid-19 pandemic era, the number of divorce cases increased sharply in Religious Courts.

Exposing this background, this study focuses on the dynamics of the legal product of divorce mediation practices in the Religious Courts which incidentally is an institution that can be trusted to enforce Perma No. 1 of 2016. The transformation of *maqāṣid shari'āh* in the practice of mediation in divorce cases in the Religious Courts and outside the courts should prioritize benefit and eliminate adversity to maintain family resilience from various conflicts and disputes. The revitalization of the *pangngaderreng* culture in the practice of divorce mediation in the Religious Courts, which so far is believed to have less

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<sup>24</sup> Mursyid Djawas and Sri Astuti A. Samad, "Conflict, Traditional, and Family Resistance: The Pattern of Dispute Resolution in Acehnese Community According to Islamic Law," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 4, No. 1 (2020), p. 69–71.

<sup>25</sup> Said Nurman, *Religion and Cultural Identity Among the Bugis* (Makassari: Faculty of Islamic Theology of the Alauddin State Institute of Islamic Studies at Makassar, Indonesia, 2004).

<sup>26</sup> Abd Rahim Yunus, "The Acculturation of Islam and Local Culture in Bugis Wedding Tradition: A Historical Perspective," International Conference on Global Education V, Padang, 2017, p. 4.

<sup>27</sup> Wahyuddin Halim, "Islamization or Arabization? The Arab Cultural Influence on the South Sulawesi Muslim Community since the Islamization in the 17th Century," *Suvannabhumi* 10, No. 1 (2018), p. 42.

than optimal function in the Bugis and Mandar communities.

This study is a field legal research using historical and socio-anthropological approaches, while the data is analyzed using *maqāṣid shari'ah* theory and social change theory.<sup>28</sup> Data collection techniques are based on literature studies on legal sources related to the discussion.

### **Dynamics of Legal Product of Divorce Mediation in Religious Courts**

Divorce mediation is an effort to mediate resolving disputes so that the mediator must be neutral, bridging, and must not be partial between the conflicting husband and wife in order to reach a peace agreement.<sup>29</sup> Divorce mediation can be designed to be therapeutic, treat, remedy, and counteract the bad effects of divorce.<sup>30</sup>

Divorce mediation is constructed to reflect on the significance of the marriage and address the possibilities that trigger divorce.<sup>31</sup> Assisting divorced parties to optimize the effectiveness and efficiency of conflict resolution in the family. One of the material contained in mediation is very interesting is a simulation method of husband-wife couples who are active for high cooperation which can overcome the conflicts they face, on the other hand, if the husband and wife do not cooperate less, they tend to have a selfish character.<sup>32</sup>

The success indicator of mediation if the material content is to collaborate, including eliminating partner violence intimidation and focusing on taking care of children,<sup>33</sup> refreshing and taking advantage of free time for discussion which aims to strengthen active communication in the family.<sup>34</sup> The family mediation construction should be intensified during the marriage period so that the husband and wife can build a household with full responsibility, affection, and love. Therefore, the practice of mediation is not only carried out when there is a conflict

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<sup>28</sup> Faisar Ananda and Watni Marpauang, *Metodologi Hukum Islam* (Jakarta: Kencana, 2016). Achmad Ali and Wiwie Heryani, *Sosiologi Hukum: Kajian Empiris terhadap Pengadilan* (Jakarta: Kencana, 2014).

<sup>29</sup> Syahrizal Abbas, *Mediasi dalam Perspektif Hukum Islam, Hukum Adat dan Hukum Nasional* (Jakarta: Kencana Prenada Media Group, 2009).

<sup>30</sup> David A. Sbarra and Robert E. Emery, "In the Presence of Grief: The Role of Cognitive-Emotional Adaptation in Contemporary Divorce Mediation," *Handbook of Divorce and Relationship Dissolution*, Taylor and Francis, 2013.

<sup>31</sup> W Neville, "Reflections on the Growth and Significance of Divorce Mediation," *Divorce Mediation: Perspectives on the Field*, 2014.

<sup>32</sup> Susan M. Worley, "The Effect of Cooperation on Egocentrism in Divorce Mediation: A Simulation Study," *Journal of Divorce*, (2008).

<sup>33</sup> Amy Holtzworth-Munroe, "Controversies in Divorce Mediation and Intimate Partner Violence: A Focus on the Children," *Aggression and Violent Behavior* 16, No. 4 (2011), p. 319-324.

<sup>34</sup> E Beck, "Improving Communication in Divorce Mediation," *Divorce Mediation: Perspectives on the Field*, 2014.

that is already overloaded, critical, and is experiencing a transition period for divorce.<sup>35</sup> The implementation of mediation before the family has problems with conflict, has many advantages for strengthening husband-wife relationships, enhancing cooperation, and also supporting joint care of children.<sup>36</sup>

The fact of the soaring divorce case decisions, it is appropriate to question the speed, accuracy, and efficiency of the judge's functioning as a mediator of divorce cases in the Religious Courts spread across several districts and cities in South Sulawesi and West Sulawesi. The data also shows that the Bugis and Mandar people prefer to resolve disputes and family conflicts in the Religious Courts rather than resolve conflicts with a system or kinship approach. Criticism of the Religious Courts in South Sulawesi and West Sulawesi as one of the case resolution institutions has not been able to accommodate the expectations of the community in settling divorce cases through mediation.

However, the public's assumption of judges acting as mediators in the Religious Courts is still considered a failure. Judges as mediators in conducting divorce mediation are still very symbolic, examinations are too formalistic, very technical, high cost, and cases tend to be overloaded.

The various difficulties faced by judges as mediators in the Religious Courts in general led to the Supreme Court of the Republic of Indonesia to apply Perma No. 1 of 2016. The dynamics of implementing Perma No. 1 of 2016 provides an opportunity to internalize the practice of divorce mediation held by certified mediators from career non-judges at the Religious Courts. Mediation supports all parties to resolve conflicts they face with the help of a mediator who is neutral or impartial. A mediator only tries to bridge all parties in a transparent manner, negotiate, and find the best solution.

The legal position of the implementation of mediation in Law No. 30 of 1999 concerning Arbitration and Alternative Settlements, then followed up by Perma No. 1 of 2016 concerning Mediation as an amendment to Perma No. 1 of 2008 concerning Mediation Procedures. Perma No. 1 of 2016 is implemented to carry out divorce mediation practices in the Religious Courts. Indeed, mediation for divorce in the Religious Courts is to avoid the accumulation of family cases. In fact, the judge's decision will be null and void if the judge examining the divorce case at trial does not enforce mediation at the Religious Court.

The progress of divorce cases that have entered both cases for divorce talaq and cases for divorce in the Religious Courts between 2018 and 2020 in the regions of South Sulawesi and West Sulawesi. The Religious Courts located in South Sulawesi are limited to only taking divorce data from the Parepare Religious

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<sup>35</sup> Sara Molgora, et.al., "Divorce and Coparenting: A Qualitative Study on Family Mediation in Italy," *Journal of Divorce and Remarriage* 55, No. 4 (2014), p. 300–314.

<sup>36</sup> Daniel B. Pickar, "Intermittent Evaluative Mediation with Enduring, Post-Divorce Conflict," *Journal of Child Custody* 8, No. 3 (2011), p. 143–145.

Court, the Sidenreng Rappang Religious Court, the Pinrang Religious Court, and the Enrekang Religious Court. Meanwhile, the Religious Courts in West Sulawesi are also limited by taking data on divorce cases that are submitted to the Polewali Mandar Religious Court, the Majene Religious Court, and the Mamuju Religious Court.

The success and failure of the product of mediation practice by judges from each of the Religious Courts in South Sulawesi in three years from 2018 to 2020. Since 2018, there have been 12 judges at the Parepare Religious Court who were spread into 6 panels. Types of cases, divorced talaq received 106 cases, ended 103 cases and the percentage of case completion was 81%, claimants received 380 cases, dropped 385 cases and percentage of case completion was 93%. The Parepare Religious Court mediated 13 cases and 3 cases that succeeded in peace. In 2019, the remaining cases for divorce talaq in 2018 were 23 cases, divorce talaq received 103 cases, 120 cases were decided and the percentage of case completion was 95%. For divorce with the remainder of 2018 in 26 cases, received 439, drop out of 440 cases and the percentage of completion of cases is 95%. Mediated a number of 82 cases and 5 cases which succeeded in peace. In 2020, the remaining cases for divorce *talaq* in 2019 amounted to 6 cases, 80 cases of divorce received and 80 cases of divorce. There are 25 divorce cases left in 2019, 357 cases received, 379 cases ended.<sup>37</sup>

Referring to the state of divorce cases every year there has been an increase in both talaq and legal divorce at the Parepare Religious Court. The reality cannot be denied, divorce cases are very worrying, because the number of cases for suing for divorce is greater than cases for divorce talaq. In addition, the performance of judges in conducting mediation at the Parepare Religious Court from 2018 to 2020 can be categorized as failing. The failure of judges to mediate at the Parepare Religious Court has not been able to balance the number of divorce cases that were decided and the number of cases that succeeded in mediating to reach a peaceful consensus.

The progress of divorce cases from 2018 to 2020 at the Sidenreng Rappang Religious Court, can be described with data since 2018, the number of divorces *talaq* 154 cases and 555 divorce cases. Mediating 91 divorce cases, succeeded in reaching a peaceful consensus on 2 cases. In 2019, the number of divorces *talaq* received was 213 cases, 202 cases were decided, and the percentage of case settlements was 88%. 699 cases of divorce were accepted, 690 cases were decided on 95%. Mediated 89 cases and succeeded in a peaceful consensus on 0 cases. In 2020, the number of divorces *talaq* received 163 cases, 152 cases broke up and 83% case settlement percentage, 604 divorce cases received, 591 broke up, and

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<sup>37</sup> Chairman of the Parepare Religious Court, "Annual Report of the Parepare Religious Court" (Parepare City, 2020), <http://pa-parepare.go.id/home/leport-tahunan/>.



91% case completion percentage. Mediated 69 cases and succeeded in a 2 case peace consensus.<sup>38</sup>

The strength of the judges at the Sidenreng Rappang Religious Court in conducting mediation is still relatively weak and failed, even in the mediation that was carried out in 2019, not a single case was successfully reconciled. Divorce cases that are accepted are generally terminated and only a very few divorce cases have succeeded in peace.

The Pinrang Religious Court is one of the courts which accepts many divorce cases every year. It is known that in 2018, there were 163 divorces and 640 divorcees, 131 cases of mediation, and 2 cases of the peace agreement were reached. In 2019 there were 208 cases of divorce, 820 cases of divorce, 128 mediation cases, and 4 cases of peace. In 2020, there were 199 divorce cases, 798 divorce cases, 140 mediated cases, and 20 peaceful cases.<sup>39</sup>

Compared to the Parepare Religious Court and the Sidenreng Rappang Religious Court, the Pinrang Religious Court judges have made progress in reconciling divorce cases. In 2020, the success of mediation at the Pinrang Religious Court is inseparable from the active role of judges in reconciling a litigious husband and wife. The success of mediating divorce cases is supported by the knowledge and experience of judges who are familiar with the social culture of the Pinrang community.

In 2019 data, there were 338 divorce cases including 66 cases of divorce, 258 divorce cases, and 51 cases of mediation, only 1 case was successful at the Enrekang Religious Court. In 2020 there were 336 divorce cases and among them, 75 cases of divorce, 246 divorce cases, 31 mediation cases, and none of them succeeded in peace. Mediation from 2019 and 2020 amounted to 82 cases, only 1 case succeeded in peace.<sup>40</sup> Mediation is almost completely ineffective and in fact creates new problems, namely the accumulation of cases that should be resolved, but are hampered by the time-consuming mediation process. Mediation also has an impact on costs (court costs) so that the principle of litigating with a simple, fast, and low cost does not materialize.

Furthermore, the development of divorce case mediation in the Religious Courts located in the West Sulawesi region is limited to the Polewali Mandar Religious Courts and the Majene Religious Courts. The source of information found at the Polewali Mandar Religious Court stated that in 2017 talaq's divorce

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<sup>38</sup> Chairman of the Sidenreng Rappang Religious Court, "Annual Report of the Sidenreng Rappang Religious Court" (Pangkajenne City, 2020), <http://pa-sidenrenggrappang.go.id/>.

<sup>39</sup> Chairman of the Pinrang Religious Court, "Annual Report of the Pinrang Religious Court" (Pinrang City, 2020), <http://pa-pinrang.go.id/index.php?limitstart=27>.

<sup>40</sup> Chairman of the Enrekang Religious Court, "Annual Report of the Enrekang Religious Court" (Enrekang City, 2020), <https://www.pa-enrekang.com/index.php/transpuarant/sekretariat/perplan/lentuk-tahunan>.

was received by 155 cases, 135 cases were ended. 422 cases of divorce were accepted, 366 cases were ended, related to the mediation report not mentioned in the report on the activities of the Polewali Mandar Religious Court. In 2018 talaq divorce received 175 cases, 160 cases ended. 453 divorce cases were accepted, 427 cases ended and mediation was also not included in the 2018 Polewali Mandar Religious Court activity report. In 2019 *talaq* divorce received 176 cases, 161 cases ended. 507 cases of divorce were accepted, 473 cases were ended.<sup>41</sup> In 2019 there has been no progress on case mediation in the activity report. Meanwhile, the 2020 report has not yet published the number of cases for divorce *talaq* and divorce.

Divorce cases at the Majene Religious Court, in 2017 *talaq* received 44 cases plus the remaining 2 cases in 2016, 41 cases ended. Divorce accepts 131 cases plus the remaining 5 cases from 2016, 128 cases ended, 30 cases mediated and none of the cases succeeded in peace. In 2018, divorce *talaq* received 45 cases plus the remaining 5 cases in 2017, 48 cases were broken. The remaining cases in 2017 were 7 cases, in 2018 129 cases were divorced, 137 cases were ended, 32 cases were mediated and none of the cases were successfully reconciled. In 2019 divorce *Talaq* received 55 cases plus the remaining 2 cases in 2018, 57 cases ended. Divorce accepts 150 cases plus the remaining 6 cases in 2018, 155 cases ended, 40 mediated cases, and 4 peaceful cases.<sup>42</sup> In 2020, the progress of the divorce case has not been published, both from the *talaq* divorce case and the sue divorce case.

Optimizing efforts to provide legal services to the community in all Religious Courts in South Sulawesi and West Sulawesi in enforcing mediation institutions which are run by mediating judges. The mediating judge carries out legal remedies against the justice-seeking community to reconcile the disputing parties. Mediation in all Religious Courts is regulated in article 130 HIR / article 154 Rbg. jo. Perma No. 1 of 2016 concerning Mediation Procedures in Courts.

The legal product of the mediator reports to the examining panel of judges regarding the results of the mediation process that has been carried out with the case husband and wife. If the mediator succeeds in reconciling, the results of the mediation are written in a peace deed. The panel of judges stated in legal considerations, one of which was based on the peace deed agreed and signed by the parties in the case. In one of the verdicts, the panel of judges "punished the applicant/plaintiff and the respondent/defendant to obey the results of the peace agreement that had been reached." Successful mediation without proof of the

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<sup>41</sup> Chairperson of the Polewali Mandar Religious Court, "Annual Report of the Paliwali Mandar Religious Court" (Polewali City, 2020), <http://pa-polewali.net/index.php/info-peradilan/program-kerja-k-Activity/1-Report-tahunan>.

<sup>42</sup> Chairman of the Majene Religious Court, "Annual Report of the Majene Religious Court" (Majene City, 2020), <https://pa-majene.go.id/informasi-umum/leport-tahunan>.

peace deed of the party presenting the case will withdraw the case that has been submitted at the next trial. Based on Perma No.<sup>43</sup>

There are several types of mediation products, one of which is a successful mediation product, where both husband and wife achieve reconciliation, agree to resolve the problem peacefully and amicably. The peace agreement actualized the peace deed by Perma No. 1 of 2016 Article 27 paragraph 2 or in a divorce case, the party filing for divorce withdraws the case at the next trial. The mediation has succeeded in reaching an agreement, the parties with the assistance of the mediator are obliged to formulate a written agreement in a peace agreement signed by the parties and the mediator. In helping to formulate a peace agreement, the mediator is obliged to ensure that it does not contain provisions that are contrary to law, public order, and also morals, detrimental to the litigant.

The next possibility, the product of partially successful mediation is when two or more cases are filed but not all of them reach an amicable agreement, for example, divorce cases are accumulated with joint assets, a husband and wife agree to share Gono Gini assets are joint assets obtained during the marriage period. peacefully and kinship, but both of them still want to divorce. Also, the product of mediation does not work, if both parties in a case do not reach a peace agreement and want to continue the case. Another type of mediation product is improper mediation if one of the parties is not present at the mediation without justified reasons, involves the rights of the other party, and there are parties who should be subject to law but are not involved in the case.

### **Transformation of *Maqāṣid Shari'ah* in Mediation Practices in Divorce Cases**

The mediator who carries out the mediation can help the parties of a married couple to have a strong character and personality in facing a case.<sup>44</sup> The mediator strengthens the understanding of a married couple regarding the importance of marriage, the consequences after divorce,<sup>45</sup> and a major consideration of the power of mediation is childcare.<sup>46</sup> The mediator conducts mediation in a measured manner, ensuring the benefit, effectiveness, and satisfaction of the parties related to the success of the mediation in achieving

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<sup>43</sup> Chairman of the Supreme Court of the Republic of Indonesia., "Perma RI. No. 1 of 2016 concerning Mediation Procedures in Courts "(Jakarta, 2016), [https://bawas.mahkamahagung.go.id/bawas\\_doc/doc/perma\\_mediasi\\_pengadilan\\_web.pdf](https://bawas.mahkamahagung.go.id/bawas_doc/doc/perma_mediasi_pengadilan_web.pdf).

<sup>44</sup> Robert B. Silver and Deborah C. Silver, "Practice Note: Divorce Mediation with Challenging Parents," *Conflict Resolution Quarterly* 25, (2008).

<sup>45</sup> William A Donohue, et.al., "Interaction Dynamics Predict Successful Negotiation in Divorce Mediation," *Journal of Language and Social Psychology* 35, No. 4 (2015), p. 374–393.

<sup>46</sup> K. Bollen, et.al., "Money or Children? Power Sources in Divorce Mediation," *Journal of Family Studies* 19, No. 2 (2013), p. 159–173

peace.<sup>47</sup>

Measurable mediation can focus on the context of enforcing mediation as regulated in Perma No. 1 of 2016. Other dispute resolution processes are similar to the mediation of divorce cases at the Religious Courts. The very basic similarities are the steps that must be passed by the provisions in Perma No. 1 of 2016.

In general, the mediation stages in divorce cases at the Religious Courts are mapped into three stages, namely the preparation stage, the implementation stage, and also the decision-making stage. The stages of mediation are described systematically and clearly by their respective sequences. In the practice of mediation after registering a divorce case at the Religious Court, the parties of the litigant husband and wife come to court after attending the summons legally and properly by the stipulations of the time and place.

Furthermore, the preparatory stage process in mediation is needed for a mediator to early study and deepen the root of the dispute between husband and wife who are consulted in mediation. The next stage is the implementation stage, the first stage of which is to form a forum. Before starting the mediation, both the mediator and the litigant husband and wife form a forum. In the forum that has been formed, the mediator organizes a joint meeting to deliver the preliminary statements of the husband and wife in the case.

At the time of conducting the mediation, the final stage is the decision-making stage where parties work together with the help of a mediator to evaluate options, get trade-offs and offer packages, minimize debates and find a fair basis for shared allocations. In the end, the parties who agreed were successful in making a joint decision. The stage of determining the mediator's decision can also pressure the parties, find formulas to avoid embarrassment, assist the parties in dealing with the power of attorney (if empowered).

The atmosphere of the location or place of mediation is a comfortable, free and pleasant place.<sup>48</sup> Technical readings and the stages of mediation in the Religious Courts are very important to construct priorities for the application of *maqāṣid shari'āh*. The *maqāṣid shari'āh* perspective on the mechanism of the stages of mediation is still very technical and the material content of divorce mediation is too formal. The very formalistic technical atmosphere of the implementation has made it more difficult and rigid to find a peace agreement. The consideration of the implementation of *maqāṣid shari'āh* in the content of mediation material is to try to strengthen the actualization of benefit, to bury the profundity (damage) in the household of married couples who have problems with

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<sup>47</sup> Stanley N. Cohen, "Divorce Mediation: An Introduction," *Journal of Psychotherapy & Family, Divorce Therapy* 1, (2014).

<sup>48</sup> Angela Corla Garcia, "Locations for Advice-Giving and the Production of Neutrality in Divorce Mediation Sessions," *Conflict Resolution Quarterly* 38, No. 3 (2020).

conflict.

The opinion of al-Ghazaliy was explained systematically and concretely about Maqashid sharia as the basis of maslahah, and also the argument for achieving the goal. Maqashid shariah which is the basis of maslahat is trying to uphold the meaning of syar'i as the absolute authority of Allah in making laws to maintain religion, soul, mind, descent and property.<sup>49</sup> Thus, everything that can realize the meaning of syar'i is called maslahat.

The opinion of Yusuf al-Qardhawi in formulating *maqāshid shari'āh* is the transformation of the goals desired by the texts which contain the meaning of orders, prohibitions, and permits at the same time. *Maqāshid shari'āh* means the purpose of Allah SWT. and also His Messenger in transforming Islamic laws. These Islamic laws can be found in the qur'an and hadith which lead to the benefit of mankind.<sup>50</sup> Ibn Qayyim's opinion details the purpose of Islamic law is to manifest the benefit of mankind in the world and the hereafter. In totality, Islamic law contains mercy, justice, benefit, and wisdom.<sup>51</sup>

Furthermore, sharia means an ethical system as well as a value in covering all problems of human life which functions as a consistent and comprehensive life guideline that is implemented in Islamic law. The implementation of sharia in Islamic law is an absolute manifestation to uphold justice and benefit, eliminate prejudice, and reduce difficulties in human affairs. The purpose of Islamic law revealed to humans is the same connotation as the meaning of *maqāshid shari'āh* in preserving all human interests.<sup>52</sup>

The realization of the *maqāshid shari'āh* is that Muslims are obliged to maintain their religion, soul, mind, ancestry, and property. As *maqāshid shari'āh* is generally understood to be the purpose of stipulating and lowering Islamic law to bring about goodness, safety, and happiness, on the other hand, avoiding badness, trouble and damage can threaten human life and existence.

The criticism of divorce through *maqāshid shari'āh*, which is the judge's decision at the Religious Court, actually has the potential to cause the household to suffer disarray and damage, it is also focused on taking care of the children of both parents who are no longer maximally which causes neglected children.<sup>53</sup> The practice of mediation in the Religious Courts through the application of *maqāshid*

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<sup>49</sup> Al-Gazaliy, *Al-Mustashfa Fi 'Ilm Al-Ushul*, 1st ed. (Beirut: Dar al-Kutub al-Ilmiyah, 1993).

<sup>50</sup> Yusuf Al-Qardhawi, *Dirasah Fiqh Maqashid Al-Shariah; Baina Al-Maqashid Al-Kulliyah Wa Al-Nushus Al-Juziyyah* (Cairo: Dar al-Syuruq, 2006).

<sup>51</sup> Ibn Qayyim, *I'lam Al-Muwaqi'in Rabb Al-Alamin*, 3rd ed. (Beirut: Dar al-Jail, nd).

<sup>52</sup> Asyraf Wajdi Dusuki and Nurdianawati Irwani Abdullah, "Maqasid Al-Shariah, Maslahah, and Corporate Social Responsibility," *American Journal of Islamic Social Sciences* 24, No. 1 (2007), p. 31.

<sup>53</sup> Ani R. Poladian, et.al., "Family Mediation for Divorce and Parental Separation," *Foundations for Couples' Therapy: Research for the Real World*, (2017), p. 256–267.

*shari'āh* is an action to repair and save a household from a husband and wife on the verge of damage and destruction. The perspective of the *maqāṣid shari'āh* that divorce in the Religious Court is not the best option or way to resolve conflicts between husband and wife in the household.

Seeing the reality of divorce cases in the Religious Courts today, it seems as if there are almost no more efforts, it is very difficult to stem and contain the rate of divorce that has increased sharply from year to year. The Supreme Court needs to review the effectiveness and efficiency of the implementation of mediation through Perma No. 1 of 2016 at the Religious Court with consideration for the benefit contained in the *maqāṣid shari'āh*. The strength of the application of Perma No. 1 of 2016 has not had a major effect on improving the situation of a married couple who filed their case at the Religious Court. The implementation of Perma No. 1 of 2016 does not yet show the balance of the verdict in divorce cases than the success of mediation in the Religious Courts.

The legal construction that is transformed by the Supreme Court in the Religious Courts, *maqāṣid shari'āh* can be a major consideration in improving mediation practice. Changes in law enforcement in the practice of mediation in the Religious Courts mean that judges are no longer given additional duties in carrying out mediation. The mediation must optimally be carried out by the mediator freely and independently, without depending on the Religious Courts. The Supreme Court must be more courageous in establishing a mediation institution for divorce cases as a free, independent, and independent institution in preventing the increasing number of divorces.

Regulatory changes in the implementation of the law as an effort to transform *maqāṣid shari'āh* in the Religious Courts that every registered case should be that a husband and wife who are about to divorce must have a certificate of unsuccessful mediation from the mediation institution. Thus, the Religious Courts no longer accept divorce cases without a certificate of unsuccessful mediation which serves as a subsidiary condition in registering cases.

This opinion is reinforced by several sources from experience, it can be said that the implementation of mediation should be done before the case is entered or registered at the Religious Court. Experience from several times the mediation of several husband and wife couples who quarreled or conflicts with mediation through non-litigation, before the litigant couple filed a case in the Religious Court and the result succeeded in making a peace agreement. Some married couples who have litigated no longer wish to file divorce cases at the Religious Court have returned to harmony in rebuilding their households. In fact, in several cases, after the mediator reported the results of the mediation being unsuccessful, the case examining judges continued the trial process, starting with a vision or settlement by the panel of judges who managed to reconcile the litigants. The essence is that between mediation and peace efforts carried out by

the mediator and the case examining a panel of judges should be the same.

After a husband and wife in a case get advice and advice from the Marriage Advisory, Development and Preservation Agency, it can show an indication that the divorce rate can be slightly suppressed through mediation outside the Court.<sup>54</sup> The experience of mediating divorce cases outside the court can be strengthened when the existence of the Marriage Advisory, Guidance and Preservation Agency while still active, based on data from the Office of Religious Affairs, nearly 50% of married couples who wish to file divorce cases at the Religious Courts can discourage divorce.

### Revitalization of Bugis and Mandar Customary in Divorce Mediation

The Bugis and Mandar peoples have historically been a family group that cannot be separated emotionally because they are tied to a *pangngaderreng* cultural system in South Sulawesi. The two communities were in the same territorial region before the formation of West Sulawesi as the expansion area of the South Sulawesi region on October 5, 2004, through Law No. 26 of 2004. Although separated from regional ties, emotional ties, both physically and physically, are still harmonious and peaceful.

The association of the two societies is bound in a very monumental cultural system, namely the *pangngaderreng* culture. Also, the Bugis and Mandar communities can also be bonded with marriage. The two societies are united with each other because of the same belief in embracing Islam. Returning to the *pangngaderreng* culture, it has five elements that cannot be separated from one another, namely *ade'*, *bicara*, *rapang*, *wari*, and *syara'*.<sup>55</sup> *Pangngaderreng* is a cultural system and a social system that functions as the customary institution or social institution of the Bugis and Mandar peoples. *Pangngaderreng* culture regulates religious, social, cultural, state, and legal norms. *Ade'* can be interpreted as custom, speaking means justice, *rapang* is jurisprudence, *wari* means social layering, and *syara'* means Islamic law.<sup>56</sup>

The Bugis and Mandar people are very loyal and obedient to *ade'* (Bugis) and *ada'* (Mandar) means adat. The obedience and loyalty of the Bugis and Mandar people to adat are due to their deep belief in adat which always protects and preserves himself as a human being with *siri'*. *Siri'* in essence is honor, dignity, dignity for humans. If someone does not have *siri'* in him, he is no longer excited to live, people in Bugis and Mandar societies prefer to die rather than have

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<sup>54</sup> Madelene De Jong, "A Pragmatic Look at Mediation as an Alternative to Divorce Litigation," *Tydskrif Vir Die Suid-Afrikaanse Reg*, No. 3 (2010), p.515–531.

<sup>55</sup> Nurnanigsih Nawawi, "Asimilasi Lontara Pangadereng Dan Syari'at Islam: Pola Perilaku Masyarakat Bugis-Wajo." *Al-Tahrir: Jurnal Pemikiran Islam* 5, No. 1 (2015), p. 25.

<sup>56</sup> Rahmatunnair, "Contextualization of Pangngadereng in the Enforcement of Islamic Shariah in Bugineese Bone Community," *Al-Qalam* 17, No. 1 (2011), p. 94.

no *siri'* in him.

*Siri'* in the expression of the Bugis community is "*Siri' 'emmi ri onroang ri lino, utettong ri ade'e, najagainnami siri'ta, naia siri'e sunge naranreng, nyawa na kira-kira*",<sup>57</sup> the meaning is only based on *siri'* we live in the world, I am loyal to *ade'*, take care of our *siri'*, while *siri'* is the soul of the reward, the life is at stake. While *siri'* in the Mandar community expression is "*apa' siri' di tu' u ita' di'e rupatau mala tuo dini dilino, dipake' de'i ada' dipiara toi siri', dotai tau mate anna dadzi tia andan dian siri'*", the meaning is that only with *siri'* can humans survive in the world, because by upholding customs, maintaining *siri'*, because with *siri'* is death at stake, and life is the ransom. Therefore, *siri'* is the most fundamental value system, there is nothing more valuable than *siri'*, absolute self-esteem exists in every individual in Bugis and Mandar communities, *siri'* is no exception when building marriages

The connection with the enforcement of *siri'* in the Bugis and Mandar communities seems to have experienced a shift in values. The shift in the value of *siri'* itself is marked by a very interesting fact about divorce cases in the Bugis and Mandar communities, which is that divorce cases always dominate rather than divorce talaq in all Religious Courts. Acceleration of suicidal divorce cases is very urgent in the Bugis and Mandar communities. Compared to divorce talaq, family resilience began to be very fragile in Bugis and Mandar societies with the dominance of divorce in the Religious Courts. The dominance of a legal divorce which is the triggering factor is domestic violence, economy, and polygamy. Therefore, The Bugis and Mandar people seem to gradually no longer respect *siri'*, because they are not considered a disgrace' if they go to the Religious Court to ask for a divorce. It should be for the Bugis and Mandar people that it is a disgrace with divorce, let alone committing domestic violence, the disgrace of not being able to meet the economic needs of their families, and also a disgrace 'because of polygamy. A person disobeying or disregarding *siri'* is a disgrace'.

The fragility of family resilience in the Bugis and Mandar communities is also a triggering factor, namely the crisis of figures from family members who are charismatic as role models, and the crisis of optimizing the role of traditional institutions that act as mediators. Cultural and social changes in the Bugis and Mandar communities, sometimes on the part of the parents themselves, who usually play a role in separating the marriages of their children. For families who are experiencing conflict, it seems as if the Religious Court is the last place in conflict resolution. The irony is that it turns out that the Religious Courts are not a place that is capable of repairing the rifts in the households of husband and wife who experience conflict. Data from all divorce cases received at the Religious

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<sup>57</sup> Fikri, et.al., "Idealism and Realism of Islamic Law in Pangngaderreng Culture of the Modern Bugis Bone," *IOP Conference Series: Earth and Environmental Science* 175, No. 1 (2018), p. 2.



Courts are generally decided by the judge.

The strength in carrying out the value of *ade'* in the Bugis and the Mandar community' is to maintain a lasting and sustainable marriage, the implementation of the value of life *sirondo-rondo* which means cooperation, helping each other in doing a job, both heavy and light. The next value that is related to the sustainability of marriage is *siamasei* and *sianuang pa'mai* that in building a household, the husband and wife must love and love each other. The Bugis and Mandar people in fostering a household are also known as *sibaliparri*, husband and wife must maintain household harmony and have a mutual sense of responsibility towards their families, both when joy and sorrow must be faced together, the same fate and co-existence.

Marriage advice and advice are provisions in living the household dish.<sup>58</sup> The revitalization of customary institutions in the Bugis and Mandar communities such as *sirondo-rondo*, *siamasei* and *sianuang pa'mai*, and *sibaliparri* is the basis for certified judges and mediators to carry out mediation in the Religious Courts and outside the courts. Optimizing customary institutions in the Bugis and Mandar communities can be a very strong defense against the increasing divorce rate in the Religious Courts.

Also, reviving the traditional institutions of the *pangngaderreng* cultural system is *syara'* which is the implementation of Islamic law in the Bugis and Mandar communities. The enforcement of Islamic law in Bugis society is carried out by someone who has the title *petta kalie* and in Mandar society it is known as *puang kali*. People who are appointed to be *petta kalie* in Bugis society and *puang kali* in Mandar society are charismatic, scholars who have a deep knowledge of Islam, master jurisprudence and Islamic law.<sup>59</sup> The function of *petta kalie* or *puang kali* is to give advice or marriage advice for married couples who are about to divorce.

The revitalization of *petta kalie* and *puang kali* in Bugis and Mandar communities is that every married couple who is about to divorce, should first ask for advice or marriage advice. Divorce cases are no longer registered with the Religious Courts, before there are marital advice and advice from *petta kalie* and *puang kali*.

## Conclusion

The process of practicing mediation in the Religious Courts is very urgent to implement *maqāṣid shari'āh* as the main consideration by judges at the

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<sup>58</sup> Angela Garcia, "Advice-Giving and Disputant Empowerment in Divorce Mediation Sessions," *Language and Dialogue* 2, No. 3 (2012), p. 398–426,

<sup>59</sup> Ridhwan, et.al., "Masjid Sebagai Pusat Pendidikan Islam pada Masa Kerajaan Sampai Masa Orde Lam di Bone Sulawesi Selatan," *Jurnal Ilmiah Didaktika* 20, No. 1 (2019), p. 83-98.

Religious Courts in deciding divorce cases. The main consideration for the application of *maqāṣid shari'āh* has the potential to repair and save a household from a husband and wife on the verge of damage and destruction. The strong assumption of the application of *maqāṣid shari'āh* is that divorce in the Religious Court is not the best option or way to resolve conflicts between husband and wife in the household. The Supreme Court needs to review the practice of mediation through Perma No. 1 of 2016 by placing the benefits contained in the *maqāṣid shari'āh* for the practice of mediation in the Religious Courts. Revitalizing traditional institutions such as upholding the value of *ade* 'in the Bugis and existing in the Mandar community can be a strength in family resilience in maintaining the marriage. Bringing the customs of the Bugis community and society through social culture in the value of life *sirondo-rondo* which means cooperation, *siamasei* and *sianuang pa'mai* in fostering a household, husband and wife must love and love each other, and *sibaliparri* that husband and wife must take care of each other domestic harmony and mutual responsibility towards their families, both when joys and sorrows must be faced together, of the same fate and responsibility. Also, reviving the customary institutions of the *pangngaderreng* cultural system is *syara* ' which is interpreted as an institution for implementing Islamic law in the Bugis and Mandar communities. The enforcement of Islamic law in Bugis society is carried out by someone who has the title *petta kali* ' and in Mandar society known as *puang kali* ' is a charismatic person, a cleric who has a deep knowledge of Islam, masters jurisprudence and Islamic law. The function of *petta kali* ' or *puang kali* ' is to give advice or marriage advice for husband and wife who want to divorce and their marriage will be long-lasting, lasting, and sustainable.

## References

### Journals and Books

- Abbas, Syahrizal. *Mediasi Dalam Perspektif Hukum Syari'ah, Hukum Adat Dan Hukum Nasional*. Jakarta: Kencana Prenada Media Group, 2009.
- Al-Syatibi, Abu Ishaq. *Al-Muwafaqat Fi Ushul Al-Ahkam*. 2nd ed. Beirut: al-Maktabah al-Taufiqiyah, 2004.
- Al-Gazaliy. *Al-Mustashfa Fi' Ilm Al-Ushul*. 1st ed. Beirut: Dar al-Kutub al-Ilmiyah, 1993.
- Al-Qardhawi, Yusuf. *Dirasah Fi Fiqh Maqashid Al-Shariah; Baina Al-Maqashid Al-Kulliyah Wa Al-Nushus Al-Juziyyah*. Kairo: Dar al-Syuruq, 2006.
- Al-Salam, Izz al-Din Abd., *Qawaid Al-Ahkam Fi Masalih Al-Anam*. Beirut: Dar al\_Ma'rifah, n.d.

- Ali, Achmad and Wiwie Heryani, *Sosiologi Hukum: Kajian Empiris terhadap Pengadilan*, Jakarta: Kencana, 2014.
- Arfa, Faisar Ananda and Watni Marpauang, *Metodologi Hukum Islam*, Jakarta: Kencana, 2016.
- Bailey, Jo Daugherty and Dawn Maccarty, "Assessing Empowerment in Divorce Mediation." *Negotiation Journal* 25, No. 3 (2009). <https://doi.org/10.1111/j.1571-9979.2009.00229.x>.
- Beck, Connie J.A. and Bruce Sales, "A Critical Reappraisal of Divorce Mediation Research and Policy." *Psychology, Public Policy, and Law* 6, no. 4 (2000). <https://doi.org/10.1037/1076-8971.6.4.989>.
- Beck, Connie J.A. and Lynda E. Frost, "Defining a Threshold for Client Competence to Participate in Divorce Mediation." *Psychology, Public Policy, and Law* 12, No. 1 (2006). <https://doi.org/10.1037/1076-8971.12.1.1>.
- Beck, E. "Improving Communication in Divorce Mediation." *Divorce Mediation: Perspectives on the Field*, 2014. <https://doi.org/10.4324/9781315860077>.
- Bollen, K. "Money or Children? Power Sources in Divorce Mediation." *Journal of Family Studies* 19, No. 2 (2013). <https://doi.org/10.5172/jfs.2013.19.2.159>.
- Cohen, Stanley N. "Divorce Mediation: An Introduction." *Journal of Psychotherapy & Family, Divorce Therapy* 1, 2014. <https://doi.org/10.4324/9781315791456>.
- Dingwall, Robert. "Divorce Mediation: Should We Change Our Mind?" *Journal of Social Welfare and Family Law* 32, No. 2 (2010). <https://doi.org/10.1080/09649069.2010.506307>.
- Djawas, Mursyid, and Sri Astuti A. Samad. "Conflict, Traditional, and Family Resistance: The Pattern of Dispute Resolution in Acehese Community According to Islamic Law." *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 4, No. 1 (2020). DOI: <http://dx.doi.org/10.22373/sjhc.v4i1.5271>.
- Djawas, Mursyid, et.al., "The Government's Role in Decreasing Divorce Rates in Indonesia: The Case of Aceh and South Sulawesi" *Ahkam: Jurnal Ilmu Syariah* 21, No. 1 (2021). DOI: 10.15408/ajis.v21i1.20870.
- Donohue, William A, "Interaction Dynamics Predict Successful Negotiation in Divorce Mediation." *Journal of Language and Social Psychology* 35, No. 4 (2015). <https://doi.org/10.1177/0261927X15603090>.
- Dusuki, Asyraf Wajdi, and Nurdianawati Irwani Abdullah. "Maqasid Al-Shariah, Maslahah, and Corporate Social Responsibility." *American Journal of Islamic Social Sciences* 24, No. 1 (2007).

- Ellis, Desmond. "Safety, Equity, and Human Agency; Contributions of Divorce Mediation." *Violence Against Women* 6, No. 9 (2000). <https://doi.org/10.1177/10778010022182254>.
- Emery, Robert E, David Sbarra, and Tara Grover. "Divorce Mediation: Research and Reflections." *Family Court Review* 43, No. 1 (2005).
- Enrekang, Ketua Pengadilan Agama. "Laporan Tahunan Pengadilan Agama Enrekang." Kota Enrekang, 2020. <https://www.pa-enrekang.com/index.php/transparansi/sekretariat/perencanaan/laporan-tahunan>.
- Fikri, Rahmawati, and Zulfah. "Idealism and Realism of Islamic Law in Pangngaderreng Culture of the Modern Bugis Bone." *IOP Conference Series: Earth and Environmental Science* 175, No. 1 (2018). <https://doi.org/10.1088/1755-1315/175/1/012137>.
- Garcia, Angela. "Advice-Giving and Disputant Empowerment in Divorce Mediation Sessions." *Language and Dialogue* 2, No. 3 (2012). <https://doi.org/10.1075/ld.2.3.05gar>.
- Garcia, Angela Corla. "Locations for Advice-Giving and the Production of Neutrality in Divorce Mediation Sessions." *Conflict Resolution Quarterly* 38, No. 3 (2020). <https://doi.org/10.1002/crq.21292>.
- Hahn, R. and David M. Kleist, "Divorce Mediation: Research and Implications for Family and Couples Counseling." *The Family Journal*, 2000. <https://doi.org/10.1177/1066480700082009>.
- Halim, Wahyuddin. "Islamization or Arabization? The Arab Cultural Influence on the South Sulawesi Muslim Community since the Islamization in the 17th Century." *Suvannabhumi* 10, No. 1 (2018).
- Holtzworth-Munroe, Amy. "Controversies in Divorce Mediation and Intimate Partner Violence: A Focus on the Children." *Aggression and Violent Behavior* 16, No. 4 (2011). <https://doi.org/10.1016/j.avb.2011.04.009>.
- Huang, Philip C.C., "Divorce Law Practices and the Origins, Myths, and Realities of Judicial 'mediation' in China." *Modern China* 31, No. 2 (2005). <https://doi.org/10.1177/0097700405274585>.
- Indonesia, Direktorat Jenderal Badan Peradilan Agama Republik. Laporan Tahunan Badan Peradilan Agama (2020).
- Jong, Madelene De. "A Pragmatic Look at Mediation as an Alternative to Divorce Litigation." *Tydskrif Vir Die Suid-Afrikaanse Reg*, No. 3 (2010).
- Kaganas, Felicity and Christine Piper, "Domestic Violence and Divorce Mediation." *Journal of Social Welfare and Family Law* 16, No. 3 (1994). <https://doi.org/10.1080/09649069408413612>.
- Koopman, Elizabeth J., "The Present and Future Role of Higher Education in Divorce Mediation: Problems and Promise in Teaching, Research, and

- Service.” *Divorce Mediation: Perspectives on the Field*, 2014. <https://doi.org/10.4324/9781315860077>.
- Kraft, Amy J. and Lynda Leucken, “Childhood Parental Divorce and Cortisol in Young Adulthood: Evidence for Mediation by Family Income.” *Psychoneuroendocrinology* 34, No. 9 (2009). <https://doi.org/10.1016/j.psyneuen.2009.04.008>.
- Margulies, S and Anya Luchow, “Litigation, Mediation and the Psychology of Divorce.” *Journal of Psychiatry and Law* 20, No. 4 (1992). <https://doi.org/10.1177/009318539202000405>.
- Molgora, Sara, “Divorce and Coparenting: A Qualitative Study on Family Mediation in Italy.” *Journal of Divorce and Remarriage* 55, No. 4 (2014). <https://doi.org/10.1080/10502556.2014.901854>.
- Nawawi, Nurnanigsih. “Asimilasi Lontara Pangadereng Dan Syari’at Islam: Pola Perilaku Masyarakat Bugis-Wajo.” *Al-Tahrir: Jurnal Pemikiran Islam* 15, No. 1 (2015).
- Neville, W. “Reflections on the Growth and Significance of Divorce Mediation.” *Divorce Mediation: Perspectives on the Field*, 2014. <https://doi.org/10.4324/9781315860077>.
- Nurman, Said. *Religion and Cultural Identity Among the Bugis*. Makassar: Faculty of Islamic Theology of the Alauddin State Institute of Islamic Studies at Makassar, Indonesia, 2004.
- Pickar, Daniel, “Intermittent Evaluative Mediation with Enduring, Post-Divorce Conflict.” *Journal of Child Custody* 8, No. 3 (2011). <https://doi.org/10.1080/15379418.2011.594722>.
- Pinrang, Ketua Pengadilan Agama. “Laporan Tahunan Pengadilan Agama Pinrang.” Kota Pinrang, 2020. <http://pa-pinrang.go.id/index.php?limitstart=27>.
- Poladian, Ani R., “Family Mediation for Divorce and Parental Separation.” *Foundations for Couples’ Therapy: Research for the Real World*, 2017. <https://doi.org/10.4324/9781315678610-26>.
- Przybyla-Basista, Hanna, “The Influence of Spouses’ Resistance on Their Decision to Enter into Divorce Mediation.” *Journal of Divorce and Remarriage* 48, No. 3 (2008). [https://doi.org/10.1300/J087v48n03\\_05](https://doi.org/10.1300/J087v48n03_05).
- Qardhawi, Abd al-Rahman Yusuf Abd. *Nazhariyah Maqashid Al-Syari’ah Baina Syekh Al-Islam Ibn Taimiyah Wa Jumhur Ushliyyin Dirasah Muqaranah Min Al-Qarn Al-Khamis Ila Al-Tsamin Al-Hijri*. Kairo: Kulliyah Dar al-Ulum, n.d.
- Qayyim, Ibn. *I’lam Al-Muwaqi’in Rabb Al-Alamin*. 3rd ed. Beirut: Dar al-Jail, n.d.

- Rahmatunnair, "Contextualization of Pangngadereng in the Enforcement of Islamic Shariah in Bugineese Bone Community." *Al-Qalam* 17, No. 1 (2011). DOI: <http://dx.doi.org/10.31969/alq.v17i1.101>.
- Rappang, Ketua Pengadilan Agama Sidenreng. "Laporan Tahunan Pengadilan Agama Sidenreng Rappang." Kota Pangkajenne, 2020. <http://pa-sidenrengrappang.go.id/>.
- Ridhwan, et.al., "Masjid Sebagai Pusat Pendidikan Islam pada Masa Kerajaan Sampai Masa Orde Lam di Bone Sulawesi Selatan," *Jurnal Ilmiah Didaktika* 20, No. 1 (2019). DOI: <http://dx.doi.org/10.22373/jid.v20i1.4648>.
- RI., Ketua Mahkamah Agung. "Perma RI. No. 1 Tahun 2016 Tentang Prosedur Mediasi Di Pengadilan." Jakarta, 2016. [https://bawas.mahkamahagung.go.id/bawas\\_doc/doc/perma\\_mediasi\\_pengadilan\\_web.pdf](https://bawas.mahkamahagung.go.id/bawas_doc/doc/perma_mediasi_pengadilan_web.pdf).
- Sbarra, David A. and Robert E. Emery, "In the Presence of Grief: The Role of Cognitive-Emotional Adaptation in Contemporary Divorce Mediation." *Handbook of Divorce and Relationship Dissolution*, Taylor and Francis, 2013. <https://doi.org/10.4324/9781315820880-40>.
- Schepard, Andrew, "An Introduction to the Model Standards of Practice for Family and Divorce Mediation." *Family Law Quarterly* 35, No. 1 (2001).
- Shaw, Lori Anne, "Divorce Mediation Outcome Research: A Meta-Analysis." *Conflict Resolution Quarterly* 27, No. 4 (2010). <https://doi.org/10.1002/crq.20006>.
- Silver, Robert B. and Deborah C. Silver, "Practice Note: Divorce Mediation with Challenging Parents," *Conflict Resolution Quarterly* 25, (2008). <https://doi.org/10.1002/crq.220>.
- Taylor, Raymond J., "Use of Change Theory in the Context of the Divorce Mediation Session." *Journal of Divorce and Remarriage* 40, no. 1 (2004). [https://doi.org/10.1300/J087v40n01\\_06](https://doi.org/10.1300/J087v40n01_06).
- Twaite, James A. "Divorce Mediation: Promises, Criticisms, Achievements, and Current Challenges." *Journal of Psychiatry and Law* 26, No. 3 (1998). <https://doi.org/10.1177/009318539802600304>.
- Weaver, Jennifer M. and Thomas J. Schofield, "Mediation and Moderation of Divorce Effects on Children's Behavior Problems." *Journal of Family Psychology* 29, No. 1 (2015). <https://doi.org/10.1037/fam0000043>.
- Worley, Susan, "The Effect of Cooperation on Egocentrism in Divorce Mediation: A Simulation Study." *Journal of Divorce* (2008). <https://doi.org/10.4324/9781315860077>.
- Yunus, Abd Rahim, "The Acculturation of Islam and Local Culture in Bugis Wedding Tradition: A Historical Perspective," International Conference on Global Education V, Padang, 2017.

### Internet Data

Chairman of the Parepare Religious Court, "*Annual Report of the Parepare Religious Court*" (Parepare City, 2020), <http://pa-parepare.go.id/home/leport-tahunan/>.

Chairman of the Sidenreng Rappang Religious Court, "*Annual Report of the Sidenreng Rappang Religious Court*" (Pangkajenne City, 2020), <http://pa-sidenrengrappang.go.id/>.

Chairman of the Pinrang Religious Court, "*Annual Report of the Pinrang Religious Court*" (Pinrang City, 2020), <http://pa-pinrang.go.id/index.php?limitstart=27>.

Chairman of the Enrekang Religious Court, "*Annual Report of the Enrekang Religious Court*" (Enrekang City, 2020), <https://www.pa-enrekang.com/index.php/transparant/sekretariat/perplan/lentuk-tahunan>.

Chairperson of the Polewali Mandar Religious Court, "*Annual Report of the Polewali Mandar Religious Court*" (Polewali City, 2020), <http://pa-polewali.net/index.php/info-peradilan/program-kerja-k-Activity/l-Report-tahunan>.

Chairman of the Majene Religious Court, "*Annual Report of the Majene Religious Court*" (Majene City, 2020), <https://pa-majene.go.id/informasi-umum/leport-tahunan>.

Chairman of the Supreme Court of the Republic of Indonesia., "*Perma RI. No. 1 of 2016 concerning Mediation Procedures in Courts*" (Jakarta, 2016), [https://bawas.mahkamahagung.go.id/bawas\\_doc/doc/perma\\_mediasi\\_pengadilan\\_web.pdf](https://bawas.mahkamahagung.go.id/bawas_doc/doc/perma_mediasi_pengadilan_web.pdf).

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## **Transformation of *Maqāṣid Shari'āh* in Divorce Mediation in Religious Courts: Revitalization of the Bugis-Mandar Customs, Indonesia**

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**Abstract:** The focus of this research discusses the transformation of *maqāṣid shari'āh* in mediation practices in divorce cases, and the revitalization of *adat* in mediation practices in Bugis and Mandar communities. This study is a field legal research using historical and socio-anthropological approaches, while the data is analyzed using *maqāṣid shari'āh* theory and social change theory. Data collection techniques are based on literature studies on legal sources related to the discussion. This study concludes that divorce is an extraordinary case in the religious courts, dynamics of mediation practice in Religious Courts have successful mediation for a written peace agreement in peace deed, other mediation products are partially successful mediation and partially unsuccessful mediation, mediation products are not successful is that husband and wife are committed to divorce; *maqāṣid shari'āh* transformation can be a major consideration by judges in mediation practice to save households on the verge of collapse, so that *maqāṣid shari'āh* is very urgent to place in Perma No.1 of 2016, and revitalization of Bugis-Mandar customary is an effort to revive the value of life *sirondo-rondo*, *siamasei*, *sianuang pa'mai*, and *sibaliparri*, also animate *shara'* which is performed *petta kalie* (Bugis) or *puang kali'* (Mandar).

**Keywords:** *Maqāṣid shari'āh*, divorce mediation, religious courts, bugis-mandar customs, Islamic family law

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**Abstrak:** Fokus penelitian ini membahas tentang transformasi *maqāṣid syari'āh* dalam praktik mediasi dalam kasus perceraian, dan revitalisasi adat dalam praktik mediasi dalam masyarakat Bugis dan Mandar. Kajian tersebut merupakan penelitian hukum lapangan dengan menggunakan pendekatan historis, dan sosio-antropologis sedangkan data dianalisis dengan memakai teori *maqāṣid syari'ah* dan teori perubahan sosial. Teknik pengumpulan data berdasarkan pada studi literatur pada sumber-sumber hukum yang terkait dengan pembahasan. Penelitian ini menyimpulkan bahwa perceraian merupakan perkara luar biasa di Pengadilan Agama, dinamika praktik mediasi di Pengadilan Agama telah berhasil dalam mediasi perjanjian damai tertulis dalam akta damai, produk mediasi lainnya adalah mediasi yang berhasil sebagian dan mediasi yang tidak berhasil sebagian, mediasi tidak berhasil. produk yang tidak berhasil adalah suami dan istri yang berkomitmen untuk bercerai; Transformasi *maqāṣid syari'āh* dapat menjadi pertimbangan utama hakim dalam praktik mediasi untuk menyelamatkan rumah tangga yang di ambang kehancuran, sehingga *maqāṣid syari'āh* sangat mendesak untuk ditempatkan dalam Perma No.1 Tahun 2016, dan revitalisasi kelembagaan adat Bugis-Mandar merupakan salah satu upaya. menghidupkan kembali nilai-nilai kehidupan *sirondo-rondo*, *siamasei*, *sianuang pa'mai*, dan *sibaliparri*, serta menghidupkan *shara'* yang dilakukan *petta kalie* (Bugis) *puang kali'* (Mandar).

**Keywords:** *Maqāṣid shari'āh*, mediasi perceraian, pengadilan agama, adat Bugis-Mandar, hukum keluarga Islam

## Introduction

The process of implementing mediation in fortifying family resilience from conflict has long been the subject of discussion as explained by Margulies that mediation is considered an effective effort to resolve husband-wife conflicts that intend to divorce.<sup>1</sup> On the other hand, violence that occurs in the family and also in mediation is still difficult to find theoretical and practical concepts.<sup>2</sup>

The function of the mediator is to reconcile the two sides of the disputing family, helping to carry out active communication. In addition, the mediator also encourages harmony and also emphasizes the parties in conflict to consider the bad consequences of divorce.<sup>3</sup> It is important to strengthen the concept of mediation in resolving family conflicts and childcare.<sup>4</sup> Mediation is conducted by

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<sup>1</sup> Sam Margulies and Anya Luchow, "Litigation, Mediation and the Psychology of Divorce," *Journal of Psychiatry and Law* 20, No. 4 (1992).

<sup>2</sup> Felicity Kaganas and Christine Piper, "Domestic Violence and Divorce Mediation," *Journal of Social Welfare and Family Law* 16, No. 3 (1994), p. 265–278.

<sup>3</sup> Andrew Schepard, "An Introduction to the Model Standards of Practice for Family and Divorce Mediation," *Family Law Quarterly* 35, No. 1 (2001), p. 2-3.

<sup>4</sup> Jennifer M. Weaver and Thomas J. Schofield, "Mediation and Moderation of Divorce Effects on Children's Behavior Problems," *Journal of Family Psychology* 29, No. 1 (2015), p. 39–48.

a mediator who acts as a mediator for the disputing parties and plays an active role in resolving the conflict by reaching a peace agreement from the parties.

Mediation is part of the legal system that can resolve family conflicts quickly, easily, and cheaply as long as the parties cooperate.<sup>5</sup> In addition to being able to be carried out by judges, psychologists, and other professionals who have the competence to carry out mediation can understand and address the root causes of problems in family conflicts.<sup>6</sup> According to RA Hahn explained that from several studies of the divorce mediation process carried out there were beneficial and beneficial results for the efficiency and satisfaction of the parties.<sup>7</sup> This opinion is supported by Ellis that divorce mediation makes a huge contribution towards the outcome of reconciliation between husband and wife.<sup>8</sup>

In line with the study conducted by Taylor suggesting that the mediator's demands in carrying out his role as the mediator can help to build confidence in the parties. Mediators are required to designing interpersonal communication between both husband and wife in conflict so that each party can introspect themselves towards better interaction changes.<sup>9</sup> The real emphasis of mediation is on reconciling the husband and wife who insisted on divorce.<sup>10</sup> Legal practitioners and academics have studied a lot about the mediation process that can reduce the soaring divorce rate. Mediation is a reliable means of accelerating the reconciliation of families in conflict.<sup>11</sup> Even C. Beck mentioned that the implementation of the formulation of the concept of mediation is a much more recent effort to create justice for wives who are victims of domestic violence.<sup>12</sup>

However, mediation can speed up the settlement of cases, on the contrary as described by Przybyla Basista stated that the reasons for couples who refuse the mediation process are especially wives who experience feelings of trauma and fear of violence from their ex-husbands. Experience from her domestic life, the wife received painful treatment so that she did not have the time and space to

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<sup>5</sup> James A Twaite, et.al., "Divorce Mediation: Promises, Criticisms, Achievements, and Current Challenges," *Journal of Psychiatry and Law* 26, No. 3 (1998).

<sup>6</sup> Connie J.A. Beck and Bruce Sales, "A Critical Reappraisal of Divorce Mediation Research and Policy," *Psychology, Public Policy, and Law* 6, No. 4 (2000), p. 989-1056.

<sup>7</sup> R. Hahn and David M. Kleist, "Divorce Mediation: Research and Implications for Family and Couples Counseling," *The Family Journal*, (2000).

<sup>8</sup> Desmond Ellis, "Safety, Equity, and Human Agency; Contributions of Divorce Mediation," *Violence Against Woman* 6, No. 9 (2000), p. 1012-1027.

<sup>9</sup> Raymond J. Taylor, "Use of Change Theory in the Context of the Divorce Mediation Session," *Journal of Divorce and Remarriage* 40, No. 1 (2004), p. 90.

<sup>10</sup> Philip C.C. Huang, "Divorce Law Practices and the Origins, Myths, and Realities of Judicial 'mediation' in China," *Modern China* 31, No. 2 (2005), p. 154.

<sup>11</sup> Robert E. Emery, et.al., "Divorce Mediation: Research and Reflections," *Family Court Review* 43, No. 1 (2005), p. 22-37.

<sup>12</sup> Connie J.A. Beck and Lynda E. Frost, "Defining a Threshold for Client Competence to Participate in Divorce Mediation," *Psychology, Public Policy, and Law* 12, No. 1 (2006), p. 1-13.

negotiate through mediation with her ex-husband.<sup>13</sup> Sometimes children are also victims of violence, experiencing depression and anxiety which can affect the physical and psychological health consequences of divorcing parents.<sup>14</sup> The research also touches on the legal protection of children through the mediation process. Andrew Shepard's views on custody and subsistence needs can be read.<sup>15</sup>

The opinion of Bailey provides that the sharpening of the practice of mediation in divorce cases can refer to several assumptions that mediation is a golden opportunity to resolve conflicts and household breakdowns in constructing reconciliation between husband and wife. The practice of mediation involves offering a problem-solving process with a focus on the goal of reconciliation.<sup>16</sup>

Compare this with the thought conveyed by Robert Dingwall that the legal system and family policies of the government related to the practice of mediation carried out in European countries such as England, Wales, Scotland, and Northern Ireland are forced attempts to the husband and wife who are going to divorce under control of the mediator to undergo the mediation process before their case reaches the Court.<sup>17</sup> An interesting thought from Lori Anne Shaw that the implementation of non-litigation mediation can outperform the judicial process in legally assisting the parties in a case, including from the results of mediation that prioritizes the interests of children.<sup>18</sup> Demands for non-litigation mediation practices are carried out to anticipate more immediate damage and cracks in households.

The theoretical purpose of marriage in Islamic law is to create *sakinah*, *mawaddah*, and *warahmah* families. Sometimes the theoretical goal of marriage is very different in practice from the goal of marriage. Marriage in the view of the Bugis and Mandar communities that “*iya tu’u di’o alikkangan, iyamo dzi’o mesa pakkasiwiang lao di puang Allah Taala, jari mua ‘alikkangananna macoai, ma mandapai ammase, mua ‘andani macoa, napolean dosa*”, the meaning is that marriage is worship, so if the marriage is good you will get a reward, but if it is not good you will get sin.

Therefore, the practice of mediation, whether organized by judges at the

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<sup>13</sup> Hanna Przybyla-Basista, “The Influence of Spouses' Resistance on Their Decision to Enter into Divorce Mediation,” *Journal of Divorce and Remarriage* 48, No. 3 (2008), p. 31.

<sup>14</sup> Amy J. Kraft and Lynda Leucken, “Childhood Parental Divorce and Cortisol in Young Adulthood: Evidence for Mediation by Family Income,” *Psychoneuroendocrinology* 34, No. 9 (2009), p. 1363–1369.

<sup>15</sup> Andrew Shepard, *An Introduction to the Model Standards...*, p. 2-3.

<sup>16</sup> Jo Daugherty Bailey and Dawn Mccarty, “Assessing Empowerment in Divorce Mediation,” *Negotiation Journal* 25, No. 3 (2009), p. 327–336.

<sup>17</sup> Robert Dingwall, “Divorce Mediation: Should We Change Our Mind ?,” *Journal of Social Welfare and Family Law* 32, No. 2 (2010), p. 107–117.

<sup>18</sup> Lori Anne Shaw, “Divorce Mediation Outcome Research: A Meta-Analysis,” *Conflict Resolution Quarterly* 27, No. 4 (2010), p. 447–67.

Religious Courts or mediators outside the court, is very important to prioritize the content of divorce mediation using the *maqāṣid shari'ah* approach. Divorce mediation which contains the *maqāṣid shari'ah* paradigm based on *maslahat* as conveyed by Al-Gazaliy is an effort to uphold the objectives of shari'a laws in maintaining religion, soul, mind, descent and property.<sup>19</sup>

*Maqāṣid shari'ah* as formulated by *ushul fiqh* scholars is to have the meaning of all the aims and objectives regulated in religion to bring benefit and eliminate exasperation to its servants. Al-Syatibi further perfected the traditional *ushul fiqh* theories in the *al-Muwafaqat* book by formulating *maqāṣid shari'ah* which focused on *al-kulliyah al-khamsah*.<sup>20</sup>

Whereas *maqāṣid shari'ah* seen from the order is *maqāṣid al-dharuriyyah* (primary), *maqāṣid al-hajjiyyat* (secondary), and *maqāṣid al-tahsiniyyat* (complementary).<sup>21</sup> Therefore, based on the *maqāṣid shari'ah* that divorce mediation is in the order of *maqāṣid al-dharuriyyah*, which is obliged to eliminate adultery in marriage, including maintaining the family from conflict, enmity, disharmony, and rifts between husband and wife.

On the other hand, based on the data source of the Directorate General of Religious Courts' annual report, divorce cases are considered an extraordinary matter in Indonesia. Following the report's data, it shows that there were 128,401 divorce cases in 2015. Divorce cases in 2017 included 113,937 divorce *talaq*, while 301,573 divorce lawsuits were filed. In 2018 the details of the divorce *talaq* were 118,853. In 2019, there were 124,776 divorce cases, then 355,842 divorce cases.<sup>22</sup>

The discourse on mediation has produced many studies on the roles and responsibilities of academics,<sup>23</sup> such as Mursyid Djawas and Sri Astuti A. Samad explained that reconciliation efforts in resolving family disputes can be successful with a family resilience approach through traditional Acehese traditional wisdom such as *Keuchik*, *Tuha Peut*, *Teungku Imum*, and *Imum Mukim*. The resolution of

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<sup>19</sup> Abd al-Rahman Yusuf Abd Qardhawi, *Nazhariyah Maqashid Al-Syari'ah Baina Syekh Al-Islam Ibn Taimiyah Wa Jumhur Ushliyyin Dirasah Muqaranah Min Al-Qarn Al-Khamis Ila Al-Tsamin Al-Hijri* (Cairo: Kulliyah Dar al-Ulum, nd). p. 70.

<sup>20</sup> Abu Ishaq Al-Syatibi, *Al-Muwafaqat Fi Ushul Al-Ahkam*, 2nd ed. (Beirut: al-Maktabah al-Taufiqiyyah, 2004). p. 2.

<sup>21</sup> Izz al-Din Abd Al-Salam, *Qawaid Al-Ahkam Fi Masalih Al-Anam* (Beirut: Dar al-Ma'rifah, nd). p. 11.

<sup>22</sup> Directorate General of the Religious Courts of the Republic of Indonesia, *Annual Report of the Religious Courts* (2020). Mursyid Djawas, et.al., "The Government's Role in Decreasing Divorce Rates in Indonesia: The Case of Aceh and South Sulawesi" *Ahkam: Jurnal Ilmu Syariah* 21, No. 1 (2021).

<sup>23</sup> Elizabeth J. Koopman, "The Present and Future Role of Higher Education in Divorce Mediation: Problems and Promise in Teaching, Research, and Service," *Divorce Mediation: Perspectives on the Field*, 2014.

family conflicts in Acehnese society by means of Islamic law at the Syari'ah Court and also by practicing customary law in *sara opat* institutions, a kind of institution that includes *reje* and *imem* is very accurate, effective, and efficient.<sup>24</sup>

This idea of mediating divorce through customs and social institutions is very suitable to be actualized in the Bugis community in South Sulawesi and the Mandar community in West Sulawesi. Both the Bugis and Mandar Communities are ethnic groups that are very strong and thick in carrying out their customs which are tied to the *pangngaderreng* culture as a culture of conduct.<sup>25</sup> Which includes *ade'*, *bicara*, *rapang*, *wari'*, and *syara'*. Mandar was found when the *pangngaderreng* became a social patron as the inner power control to accommodate *syara'*.<sup>26</sup>

The acceptance of *syara'* in *pangngaderreng* culture is a consequence for society to carry out Islamic law. Along with development and *wari' and syara'*.<sup>27</sup> Acculturation of Islam and the culture of the Bugis community and the progress of human civilization which is increasingly modern, sometimes *siri'* in the *pangngaderreng* culture of the Bugis and Mandar communities has gradually shifted. Whereas in the period of traditional life, the enforcement of *siri'* in the Bugis and Mandar communities is very embarrassed and loses its self-respect if there is a disgrace in the family, including for example a married couple who divorced from that family. The connection with the *pangngaderreng* culture has less than optimal function in the Bugis and Mandar communities, especially before and during the Covid-19 pandemic era, the number of divorce cases increased sharply in Religious Courts.

Exposing this background, this study focuses on the dynamics of the legal product of divorce mediation practices in the Religious Courts which incidentally is an institution that can be trusted to enforce Perma No. 1 of 2016. The transformation of *maqāṣid shari'āh* in the practice of mediation in divorce cases in the Religious Courts and outside the courts should prioritize benefit and eliminate adversity to maintain family resilience from various conflicts and disputes. The revitalization of the *pangngaderreng* culture in the practice of divorce mediation in the Religious Courts, which so far is believed to have less

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<sup>24</sup> Mursyid Djawas and Sri Astuti A. Samad, "Conflict, Traditional, and Family Resistance: The Pattern of Dispute Resolution in Acehnese Community According to Islamic Law," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 4, No. 1 (2020), p. 69–71.

<sup>25</sup> Said Nurman, *Religion and Cultural Identity Among the Bugis* (Makassari: Faculty of Islamic Theology of the Alauddin State Institute of Islamic Studies at Makassar, Indonesia, 2004).

<sup>26</sup> Abd Rahim Yunus, "The Acculturation of Islam and Local Culture in Bugis Wedding Tradition: A Historical Perspective," International Conference on Global Education V, Padang, 2017, p. 4.

<sup>27</sup> Wahyuddin Halim, "Islamization or Arabization? The Arab Cultural Influence on the South Sulawesi Muslim Community since the Islamization in the 17th Century," *Suvannabhumi* 10, No. 1 (2018), p. 42.

than optimal function in the Bugis and Mandar communities.

This study is a field legal research using historical and socio-anthropological approaches, while the data is analyzed using *maqāṣid shari'ah* theory and social change theory.<sup>28</sup> Data collection techniques are based on literature studies on legal sources related to the discussion.

### **Dynamics of Legal Product of Divorce Mediation in Religious Courts**

Divorce mediation is an effort to mediate resolving disputes so that the mediator must be neutral, bridging, and must not be partial between the conflicting husband and wife in order to reach a peace agreement.<sup>29</sup> Divorce mediation can be designed to be therapeutic, treat, remedy, and counteract the bad effects of divorce.<sup>30</sup>

Divorce mediation is constructed to reflect on the significance of the marriage and address the possibilities that trigger divorce.<sup>31</sup> Assisting divorced parties to optimize the effectiveness and efficiency of conflict resolution in the family. One of the material contained in mediation is very interesting is a simulation method of husband-wife couples who are active for high cooperation which can overcome the conflicts they face, on the other hand, if the husband and wife do not cooperate less, they tend to have a selfish character.<sup>32</sup>

The success indicator of mediation if the material content is to collaborate, including eliminating partner violence intimidation and focusing on taking care of children,<sup>33</sup> refreshing and taking advantage of free time for discussion which aims to strengthen active communication in the family.<sup>34</sup> The family mediation construction should be intensified during the marriage period so that the husband and wife can build a household with full responsibility, affection, and love. Therefore, the practice of mediation is not only carried out when there is a conflict

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<sup>28</sup> Faisar Ananda and Watni Marpauang, *Metodologi Hukum Islam* (Jakarta: Kencana, 2016). Achmad Ali and Wiwie Heryani, *Sosiologi Hukum: Kajian Empiris terhadap Pengadilan* (Jakarta: Kencana, 2014).

<sup>29</sup> Syahrizal Abbas, *Mediasi dalam Perspektif Hukum Islam, Hukum Adat dan Hukum Nasional* (Jakarta: Kencana Prenada Media Group, 2009).

<sup>30</sup> David A. Sbarra and Robert E. Emery, "In the Presence of Grief: The Role of Cognitive-Emotional Adaptation in Contemporary Divorce Mediation," *Handbook of Divorce and Relationship Dissolution*, Taylor and Francis, 2013.

<sup>31</sup> W Neville, "Reflections on the Growth and Significance of Divorce Mediation," *Divorce Mediation: Perspectives on the Field*, 2014.

<sup>32</sup> Susan M. Worley, "The Effect of Cooperation on Egocentrism in Divorce Mediation: A Simulation Study," *Journal of Divorce*, (2008).

<sup>33</sup> Amy Holtzworth-Munroe, "Controversies in Divorce Mediation and Intimate Partner Violence: A Focus on the Children," *Aggression and Violent Behavior* 16, No. 4 (2011), p. 319-324.

<sup>34</sup> E Beck, "Improving Communication in Divorce Mediation," *Divorce Mediation: Perspectives on the Field*, 2014.



that is already overloaded, critical, and is experiencing a transition period for divorce.<sup>35</sup> The implementation of mediation before the family has problems with conflict, has many advantages for strengthening husband-wife relationships, enhancing cooperation, and also supporting joint care of children.<sup>36</sup>

The fact of the soaring divorce case decisions, it is appropriate to question the speed, accuracy, and efficiency of the judge's functioning as a mediator of divorce cases in the Religious Courts spread across several districts and cities in South Sulawesi and West Sulawesi. The data also shows that the Bugis and Mandar people prefer to resolve disputes and family conflicts in the Religious Courts rather than resolve conflicts with a system or kinship approach. Criticism of the Religious Courts in South Sulawesi and West Sulawesi as one of the case resolution institutions has not been able to accommodate the expectations of the community in settling divorce cases through mediation.

However, the public's assumption of judges acting as mediators in the Religious Courts is still considered a failure. Judges as mediators in conducting divorce mediation are still very symbolic, examinations are too formalistic, very technical, high cost, and cases tend to be overloaded.

The various difficulties faced by judges as mediators in the Religious Courts in general led to the Supreme Court of the Republic of Indonesia to apply Perma No. 1 of 2016. The dynamics of implementing Perma No. 1 of 2016 provides an opportunity to internalize the practice of divorce mediation held by certified mediators from career non-judges at the Religious Courts. Mediation supports all parties to resolve conflicts they face with the help of a mediator who is neutral or impartial. A mediator only tries to bridge all parties in a transparent manner, negotiate, and find the best solution.

The legal position of the implementation of mediation in Law No. 30 of 1999 concerning Arbitration and Alternative Settlements, then followed up by Perma No. 1 of 2016 concerning Mediation as an amendment to Perma No. 1 of 2008 concerning Mediation Procedures. Perma No. 1 of 2016 is implemented to carry out divorce mediation practices in the Religious Courts. Indeed, mediation for divorce in the Religious Courts is to avoid the accumulation of family cases. In fact, the judge's decision will be null and void if the judge examining the divorce case at trial does not enforce mediation at the Religious Court.

The progress of divorce cases that have entered both cases for divorce talaq and cases for divorce in the Religious Courts between 2018 and 2020 in the regions of South Sulawesi and West Sulawesi. The Religious Courts located in South Sulawesi are limited to only taking divorce data from the Parepare Religious

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<sup>35</sup> Sara Molgora, et.al., "Divorce and Coparenting: A Qualitative Study on Family Mediation in Italy," *Journal of Divorce and Remarriage* 55, No. 4 (2014), p. 300–314.

<sup>36</sup> Daniel B. Pickar, "Intermittent Evaluative Mediation with Enduring, Post-Divorce Conflict," *Journal of Child Custody* 8, No. 3 (2011), p. 143–145.

Court, the Sidenreng Rappang Religious Court, the Pinrang Religious Court, and the Enrekang Religious Court. Meanwhile, the Religious Courts in West Sulawesi are also limited by taking data on divorce cases that are submitted to the Polewali Mandar Religious Court, the Majene Religious Court, and the Mamuju Religious Court.

The success and failure of the product of mediation practice by judges from each of the Religious Courts in South Sulawesi in three years from 2018 to 2020. Since 2018, there have been 12 judges at the Parepare Religious Court who were spread into 6 panels. Types of cases, divorced talaq received 106 cases, ended 103 cases and the percentage of case completion was 81%, claimants received 380 cases, dropped 385 cases and percentage of case completion was 93%. The Parepare Religious Court mediated 13 cases and 3 cases that succeeded in peace. In 2019, the remaining cases for divorce talaq in 2018 were 23 cases, divorce talaq received 103 cases, 120 cases were decided and the percentage of case completion was 95%. For divorce with the remainder of 2018 in 26 cases, received 439, drop out of 440 cases and the percentage of completion of cases is 95%. Mediated a number of 82 cases and 5 cases which succeeded in peace. In 2020, the remaining cases for divorce *talaq* in 2019 amounted to 6 cases, 80 cases of divorce received and 80 cases of divorce. There are 25 divorce cases left in 2019, 357 cases received, 379 cases ended.<sup>37</sup>

Referring to the state of divorce cases every year there has been an increase in both talaq and legal divorce at the Parepare Religious Court. The reality cannot be denied, divorce cases are very worrying, because the number of cases for suing for divorce is greater than cases for divorce talaq. In addition, the performance of judges in conducting mediation at the Parepare Religious Court from 2018 to 2020 can be categorized as failing. The failure of judges to mediate at the Parepare Religious Court has not been able to balance the number of divorce cases that were decided and the number of cases that succeeded in mediating to reach a peaceful consensus.

The progress of divorce cases from 2018 to 2020 at the Sidenreng Rappang Religious Court, can be described with data since 2018, the number of divorces *talaq* 154 cases and 555 divorce cases. Mediating 91 divorce cases, succeeded in reaching a peaceful consensus on 2 cases. In 2019, the number of divorces *talaq* received was 213 cases, 202 cases were decided, and the percentage of case settlements was 88%. 699 cases of divorce were accepted, 690 cases were decided on 95%. Mediated 89 cases and succeeded in a peaceful consensus on 0 cases. In 2020, the number of divorces *talaq* received 163 cases, 152 cases broke up and 83% case settlement percentage, 604 divorce cases received, 591 broke up, and

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<sup>37</sup> Chairman of the Parepare Religious Court, "Annual Report of the Parepare Religious Court" (Parepare City, 2020), <http://pa-parepare.go.id/home/leport-tahunan/>.

91% case completion percentage. Mediated 69 cases and succeeded in a 2 case peace consensus.<sup>38</sup>

The strength of the judges at the Sidenreng Rappang Religious Court in conducting mediation is still relatively weak and failed, even in the mediation that was carried out in 2019, not a single case was successfully reconciled. Divorce cases that are accepted are generally terminated and only a very few divorce cases have succeeded in peace.

The Pinrang Religious Court is one of the courts which accepts many divorce cases every year. It is known that in 2018, there were 163 divorces and 640 divorcees, 131 cases of mediation, and 2 cases of the peace agreement were reached. In 2019 there were 208 cases of divorce, 820 cases of divorce, 128 mediation cases, and 4 cases of peace. In 2020, there were 199 divorce cases, 798 divorce cases, 140 mediated cases, and 20 peaceful cases.<sup>39</sup>

Compared to the Parepare Religious Court and the Sidenreng Rappang Religious Court, the Pinrang Religious Court judges have made progress in reconciling divorce cases. In 2020, the success of mediation at the Pinrang Religious Court is inseparable from the active role of judges in reconciling a litigious husband and wife. The success of mediating divorce cases is supported by the knowledge and experience of judges who are familiar with the social culture of the Pinrang community.

In 2019 data, there were 338 divorce cases including 66 cases of divorce, 258 divorce cases, and 51 cases of mediation, only 1 case was successful at the Enrekang Religious Court. In 2020 there were 336 divorce cases and among them, 75 cases of divorce, 246 divorce cases, 31 mediation cases, and none of them succeeded in peace. Mediation from 2019 and 2020 amounted to 82 cases, only 1 case succeeded in peace.<sup>40</sup> Mediation is almost completely ineffective and in fact creates new problems, namely the accumulation of cases that should be resolved, but are hampered by the time-consuming mediation process. Mediation also has an impact on costs (court costs) so that the principle of litigating with a simple, fast, and low cost does not materialize.

Furthermore, the development of divorce case mediation in the Religious Courts located in the West Sulawesi region is limited to the Polewali Mandar Religious Courts and the Majene Religious Courts. The source of information found at the Polewali Mandar Religious Court stated that in 2017 talaq's divorce

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<sup>38</sup> Chairman of the Sidenreng Rappang Religious Court, "Annual Report of the Sidenreng Rappang Religious Court" (Pangkajenne City, 2020), <http://pa-sidenrengappang.go.id/>.

<sup>39</sup> Chairman of the Pinrang Religious Court, "Annual Report of the Pinrang Religious Court" (Pinrang City, 2020), <http://pa-pinrang.go.id/index.php?limitstart=27>.

<sup>40</sup> Chairman of the Enrekang Religious Court, "Annual Report of the Enrekang Religious Court" (Enrekang City, 2020), <https://www.pa-enrekang.com/index.php/transpuarant/sekretariat/perplan/lentuk-tahunan>.

was received by 155 cases, 135 cases were ended. 422 cases of divorce were accepted, 366 cases were ended, related to the mediation report not mentioned in the report on the activities of the Polewali Mandar Religious Court. In 2018 talaq divorce received 175 cases, 160 cases ended. 453 divorce cases were accepted, 427 cases ended and mediation was also not included in the 2018 Polewali Mandar Religious Court activity report. In 2019 *talaq* divorce received 176 cases, 161 cases ended. 507 cases of divorce were accepted, 473 cases were ended.<sup>41</sup> In 2019 there has been no progress on case mediation in the activity report. Meanwhile, the 2020 report has not yet published the number of cases for divorce *talaq* and divorce.

Divorce cases at the Majene Religious Court, in 2017 *talaq* received 44 cases plus the remaining 2 cases in 2016, 41 cases ended. Divorce accepts 131 cases plus the remaining 5 cases from 2016, 128 cases ended, 30 cases mediated and none of the cases succeeded in peace. In 2018, divorce *talaq* received 45 cases plus the remaining 5 cases in 2017, 48 cases were broken. The remaining cases in 2017 were 7 cases, in 2018 129 cases were divorced, 137 cases were ended, 32 cases were mediated and none of the cases were successfully reconciled. In 2019 divorce *Talaq* received 55 cases plus the remaining 2 cases in 2018, 57 cases ended. Divorce accepts 150 cases plus the remaining 6 cases in 2018, 155 cases ended, 40 mediated cases, and 4 peaceful cases.<sup>42</sup> In 2020, the progress of the divorce case has not been published, both from the *talaq* divorce case and the sue divorce case.

Optimizing efforts to provide legal services to the community in all Religious Courts in South Sulawesi and West Sulawesi in enforcing mediation institutions which are run by mediating judges. The mediating judge carries out legal remedies against the justice-seeking community to reconcile the disputing parties. Mediation in all Religious Courts is regulated in article 130 HIR / article 154 Rbg. jo. Perma No. 1 of 2016 concerning Mediation Procedures in Courts.

The legal product of the mediator reports to the examining panel of judges regarding the results of the mediation process that has been carried out with the case husband and wife. If the mediator succeeds in reconciling, the results of the mediation are written in a peace deed. The panel of judges stated in legal considerations, one of which was based on the peace deed agreed and signed by the parties in the case. In one of the verdicts, the panel of judges "punished the applicant/plaintiff and the respondent/defendant to obey the results of the peace agreement that had been reached." Successful mediation without proof of the

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<sup>41</sup> Chairperson of the Polewali Mandar Religious Court, "Annual Report of the Pوليwali Mandar Religious Court" (Polewali City, 2020), <http://pa-polewali.net/index.php/info-peradilan/program-kerja-k-Activity/1-Report-tahunan>.

<sup>42</sup> Chairman of the Majene Religious Court, "Annual Report of the Majene Religious Court" (Majene City, 2020), <https://pa-majene.go.id/informasi-umum/leport-tahunan>.

peace deed of the party presenting the case will withdraw the case that has been submitted at the next trial. Based on Perma No.<sup>43</sup>

There are several types of mediation products, one of which is a successful mediation product, where both husband and wife achieve reconciliation, agree to resolve the problem peacefully and amicably. The peace agreement actualized the peace deed by Perma No. 1 of 2016 Article 27 paragraph 2 or in a divorce case, the party filing for divorce withdraws the case at the next trial. The mediation has succeeded in reaching an agreement, the parties with the assistance of the mediator are obliged to formulate a written agreement in a peace agreement signed by the parties and the mediator. In helping to formulate a peace agreement, the mediator is obliged to ensure that it does not contain provisions that are contrary to law, public order, and also morals, detrimental to the litigant.

The next possibility, the product of partially successful mediation is when two or more cases are filed but not all of them reach an amicable agreement, for example, divorce cases are accumulated with joint assets, a husband and wife agree to share Gono Gini assets are joint assets obtained during the marriage period. peacefully and kinship, but both of them still want to divorce. Also, the product of mediation does not work, if both parties in a case do not reach a peace agreement and want to continue the case. Another type of mediation product is improper mediation if one of the parties is not present at the mediation without justified reasons, involves the rights of the other party, and there are parties who should be subject to law but are not involved in the case.

### **Transformation of *Maqāṣid Shari'ah* in Mediation Practices in Divorce Cases**

The mediator who carries out the mediation can help the parties of a married couple to have a strong character and personality in facing a case.<sup>44</sup> The mediator strengthens the understanding of a married couple regarding the importance of marriage, the consequences after divorce,<sup>45</sup> and a major consideration of the power of mediation is childcare.<sup>46</sup> The mediator conducts mediation in a measured manner, ensuring the benefit, effectiveness, and satisfaction of the parties related to the success of the mediation in achieving

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<sup>43</sup> Chairman of the Supreme Court of the Republic of Indonesia., "Perma RI. No. 1 of 2016 concerning Mediation Procedures in Courts "(Jakarta, 2016), [https://bawas.mahkamahagung.go.id/bawas\\_doc/doc/perma\\_mediasi\\_pengadilan\\_web.pdf](https://bawas.mahkamahagung.go.id/bawas_doc/doc/perma_mediasi_pengadilan_web.pdf).

<sup>44</sup> Robert B. Silver and Deborah C. Silver, "Practice Note: Divorce Mediation with Challenging Parents," *Conflict Resolution Quarterly* 25, (2008).

<sup>45</sup> William A Donohue, et.al., "Interaction Dynamics Predict Successful Negotiation in Divorce Mediation," *Journal of Language and Social Psychology* 35, No. 4 (2015), p. 374–393.

<sup>46</sup> K. Bollen, et.al., "Money or Children? Power Sources in Divorce Mediation," *Journal of Family Studies* 19, No. 2 (2013), p. 159–173

peace.<sup>47</sup>

Measurable mediation can focus on the context of enforcing mediation as regulated in Perma No. 1 of 2016. Other dispute resolution processes are similar to the mediation of divorce cases at the Religious Courts. The very basic similarities are the steps that must be passed by the provisions in Perma No. 1 of 2016.

In general, the mediation stages in divorce cases at the Religious Courts are mapped into three stages, namely the preparation stage, the implementation stage, and also the decision-making stage. The stages of mediation are described systematically and clearly by their respective sequences. In the practice of mediation after registering a divorce case at the Religious Court, the parties of the litigant husband and wife come to court after attending the summons legally and properly by the stipulations of the time and place.

Furthermore, the preparatory stage process in mediation is needed for a mediator to early study and deepen the root of the dispute between husband and wife who are consulted in mediation. The next stage is the implementation stage, the first stage of which is to form a forum. Before starting the mediation, both the mediator and the litigant husband and wife form a forum. In the forum that has been formed, the mediator organizes a joint meeting to deliver the preliminary statements of the husband and wife in the case.

At the time of conducting the mediation, the final stage is the decision-making stage where parties work together with the help of a mediator to evaluate options, get trade-offs and offer packages, minimize debates and find a fair basis for shared allocations. In the end, the parties who agreed were successful in making a joint decision. The stage of determining the mediator's decision can also pressure the parties, find formulas to avoid embarrassment, assist the parties in dealing with the power of attorney (if empowered).

The atmosphere of the location or place of mediation is a comfortable, free and pleasant place.<sup>48</sup> Technical readings and the stages of mediation in the Religious Courts are very important to construct priorities for the application of *maqāṣid shari'āh*. The *maqāṣid shari'āh* perspective on the mechanism of the stages of mediation is still very technical and the material content of divorce mediation is too formal. The very formalistic technical atmosphere of the implementation has made it more difficult and rigid to find a peace agreement. The consideration of the implementation of *maqāṣid shari'āh* in the content of mediation material is to try to strengthen the actualization of benefit, to bury the profundity (damage) in the household of married couples who have problems with

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<sup>47</sup> Stanley N. Cohen, "Divorce Mediation: An Introduction," *Journal of Psychotherapy & Family, Divorce Therapy* 1, (2014).

<sup>48</sup> Angela Corla Garcia, "Locations for Advice-Giving and the Production of Neutrality in Divorce Mediation Sessions," *Conflict Resolution Quarterly* 38, No. 3 (2020).

conflict.

The opinion of al-Ghazaliy was explained systematically and concretely about Maqashid sharia as the basis of maslahah, and also the argument for achieving the goal. Maqashid shariah which is the basis of maslahat is trying to uphold the meaning of syar'i as the absolute authority of Allah in making laws to maintain religion, soul, mind, descent and property.<sup>49</sup> Thus, everything that can realize the meaning of syar'i is called maslahat.

The opinion of Yusuf al-Qardhawi in formulating *maqāṣid shari'āh* is the transformation of the goals desired by the texts which contain the meaning of orders, prohibitions, and permits at the same time. *Maqāṣid shari'āh* means the purpose of Allah SWT. and also His Messenger in transforming Islamic laws. These Islamic laws can be found in the qur'an and hadith which lead to the benefit of mankind.<sup>50</sup> Ibn Qayyim's opinion details the purpose of Islamic law is to manifest the benefit of mankind in the world and the hereafter. In totality, Islamic law contains mercy, justice, benefit, and wisdom.<sup>51</sup>

Furthermore, sharia means an ethical system as well as a value in covering all problems of human life which functions as a consistent and comprehensive life guideline that is implemented in Islamic law. The implementation of sharia in Islamic law is an absolute manifestation to uphold justice and benefit, eliminate prejudice, and reduce difficulties in human affairs. The purpose of Islamic law revealed to humans is the same connotation as the meaning of *maqāṣid shari'āh* in preserving all human interests.<sup>52</sup>

The realization of the *maqāṣid shari'āh* is that Muslims are obliged to maintain their religion, soul, mind, ancestry, and property. As *maqāṣid shari'āh* is generally understood to be the purpose of stipulating and lowering Islamic law to bring about goodness, safety, and happiness, on the other hand, avoiding badness, trouble and damage can threaten human life and existence.

The criticism of divorce through *maqāṣid shari'āh*, which is the judge's decision at the Religious Court, actually has the potential to cause the household to suffer disarray and damage, it is also focused on taking care of the children of both parents who are no longer maximally which causes neglected children.<sup>53</sup> The practice of mediation in the Religious Courts through the application of *maqāṣid*

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<sup>49</sup> Al-Gazaliy, *Al-Mustashfa Fi 'Ilm Al-Ushul*, 1st ed. (Beirut: Dar al-Kutub al-Ilmiyah, 1993).

<sup>50</sup> Yusuf Al-Qardhawi, *Dirasah Fiqh Maqashid Al-Shariah; Baina Al-Maqashid Al-Kulliyah Wa Al-Nushus Al-Juziyyah* (Cairo: Dar al-Syuruq, 2006).

<sup>51</sup> Ibn Qayyim, *I'lam Al-Muwaqi'in Rabb Al-Alamin*, 3rd ed. (Beirut: Dar al-Jail, nd).

<sup>52</sup> Asyraf Wajdi Dusuki and Nurdianawati Irwani Abdullah, "Maqasid Al-Shariah, Maslahah, and Corporate Social Responsibility," *American Journal of Islamic Social Sciences* 24, No. 1 (2007), p. 31.

<sup>53</sup> Ani R. Poladian, et.al., "Family Mediation for Divorce and Parental Separation," *Foundations for Couples' Therapy: Research for the Real World*, (2017), p. 256–267.

*shari'āh* is an action to repair and save a household from a husband and wife on the verge of damage and destruction. The perspective of the *maqāṣid shari'āh* that divorce in the Religious Court is not the best option or way to resolve conflicts between husband and wife in the household.

Seeing the reality of divorce cases in the Religious Courts today, it seems as if there are almost no more efforts, it is very difficult to stem and contain the rate of divorce that has increased sharply from year to year. The Supreme Court needs to review the effectiveness and efficiency of the implementation of mediation through Perma No. 1 of 2016 at the Religious Court with consideration for the benefit contained in the *maqāṣid shari'āh*. The strength of the application of Perma No. 1 of 2016 has not had a major effect on improving the situation of a married couple who filed their case at the Religious Court. The implementation of Perma No. 1 of 2016 does not yet show the balance of the verdict in divorce cases than the success of mediation in the Religious Courts.

The legal construction that is transformed by the Supreme Court in the Religious Courts, *maqāṣid shari'āh* can be a major consideration in improving mediation practice. Changes in law enforcement in the practice of mediation in the Religious Courts mean that judges are no longer given additional duties in carrying out mediation. The mediation must optimally be carried out by the mediator freely and independently, without depending on the Religious Courts. The Supreme Court must be more courageous in establishing a mediation institution for divorce cases as a free, independent, and independent institution in preventing the increasing number of divorces.

Regulatory changes in the implementation of the law as an effort to transform *maqāṣid shari'āh* in the Religious Courts that every registered case should be that a husband and wife who are about to divorce must have a certificate of unsuccessful mediation from the mediation institution. Thus, the Religious Courts no longer accept divorce cases without a certificate of unsuccessful mediation which serves as a subsidiary condition in registering cases.

This opinion is reinforced by several sources from experience, it can be said that the implementation of mediation should be done before the case is entered or registered at the Religious Court. Experience from several times the mediation of several husband and wife couples who quarreled or conflicts with mediation through non-litigation, before the litigant couple filed a case in the Religious Court and the result succeeded in making a peace agreement. Some married couples who have litigated no longer wish to file divorce cases at the Religious Court have returned to harmony in rebuilding their households. In fact, in several cases, after the mediator reported the results of the mediation being unsuccessful, the case examining judges continued the trial process, starting with a vision or settlement by the panel of judges who managed to reconcile the litigants. The essence is that between mediation and peace efforts carried out by



the mediator and the case examining a panel of judges should be the same.

After a husband and wife in a case get advice and advice from the Marriage Advisory, Development and Preservation Agency, it can show an indication that the divorce rate can be slightly suppressed through mediation outside the Court.<sup>54</sup> The experience of mediating divorce cases outside the court can be strengthened when the existence of the Marriage Advisory, Guidance and Preservation Agency while still active, based on data from the Office of Religious Affairs, nearly 50% of married couples who wish to file divorce cases at the Religious Courts can discourage divorce.

### Revitalization of Bugis and Mandar Customary in Divorce Mediation

The Bugis and Mandar peoples have historically been a family group that cannot be separated emotionally because they are tied to a *pangngaderreng* cultural system in South Sulawesi. The two communities were in the same territorial region before the formation of West Sulawesi as the expansion area of the South Sulawesi region on October 5, 2004, through Law No. 26 of 2004. Although separated from regional ties, emotional ties, both physically and physically, are still harmonious and peaceful.

The association of the two societies is bound in a very monumental cultural system, namely the *pangngaderreng* culture. Also, the Bugis and Mandar communities can also be bonded with marriage. The two societies are united with each other because of the same belief in embracing Islam. Returning to the *pangngaderreng* culture, it has five elements that cannot be separated from one another, namely *ade'*, *bicara*, *rapang*, *wari*, and *syara'*.<sup>55</sup> *Pangngaderreng* is a cultural system and a social system that functions as the customary institution or social institution of the Bugis and Mandar peoples. *Pangngaderreng* culture regulates religious, social, cultural, state, and legal norms. *Ade'* can be interpreted as custom, speaking means justice, *rapang* is jurisprudence, *wari* means social layering, and *syara'* means Islamic law.<sup>56</sup>

The Bugis and Mandar people are very loyal and obedient to *ade'* (Bugis) and *ada'* (Mandar) means adat. The obedience and loyalty of the Bugis and Mandar people to adat are due to their deep belief in adat which always protects and preserves himself as a human being with *siri'*. *Siri'* in essence is honor, dignity, dignity for humans. If someone does not have *siri'* in him, he is no longer excited to live, people in Bugis and Mandar societies prefer to die rather than have

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<sup>54</sup> Madelene De Jong, "A Pragmatic Look at Mediation as an Alternative to Divorce Litigation," *Tydskrif Vir Die Suid-Afrikaanse Reg*, No. 3 (2010), p.515–531.

<sup>55</sup> Nurnanigsih Nawawi, "Asimilasi Lontara Pangadereng Dan Syari'at Islam: Pola Perilaku Masyarakat Bugis-Wajo." *Al-Tahrir: Jurnal Pemikiran Islam* 5, No. 1 (2015), p. 25.

<sup>56</sup> Rahmatunnair, "Contextualization of Pangngadereng in the Enforcement of Islamic Shariah in Bugineese Bone Community," *Al-Qalam* 17, No. 1 (2011), p. 94.

no *siri'* in him.

*Siri'* in the expression of the Bugis community is "*Siri' 'emmi ri onroang ri lino, utettong ri ade'e, najagainnami siri'ta, naia siri'e sunge naranreng, nyawa na kira-kira*",<sup>57</sup> the meaning is only based on *siri'* we live in the world, I am loyal to *ade'*, take care of our *siri'*, while *siri'* is the soul of the reward, the life is at stake. While *siri'* in the Mandar community expression is "*apa' siri' di tu' u ita' di'e rupatau mala tuo dini dilino, dipake' de'i ada' dipiara toi siri', dotai tau mate anna dadzi tia andan dian siri'*", the meaning is that only with *siri'* can humans survive in the world, because by upholding customs, maintaining *siri'*, because with *siri'* is death at stake, and life is the ransom. Therefore, *siri'* is the most fundamental value system, there is nothing more valuable than *siri'*, absolute self-esteem exists in every individual in Bugis and Mandar communities, *siri'* is no exception when building marriages

The connection with the enforcement of *siri'* in the Bugis and Mandar communities seems to have experienced a shift in values. The shift in the value of *siri'* itself is marked by a very interesting fact about divorce cases in the Bugis and Mandar communities, which is that divorce cases always dominate rather than divorce talaq in all Religious Courts. Acceleration of suicidal divorce cases is very urgent in the Bugis and Mandar communities. Compared to divorce talaq, family resilience began to be very fragile in Bugis and Mandar societies with the dominance of divorce in the Religious Courts. The dominance of a legal divorce which is the triggering factor is domestic violence, economy, and polygamy. Therefore, The Bugis and Mandar people seem to gradually no longer respect *siri'*, because they are not considered a disgrace' if they go to the Religious Court to ask for a divorce. It should be for the Bugis and Mandar people that it is a disgrace with divorce, let alone committing domestic violence, the disgrace of not being able to meet the economic needs of their families, and also a disgrace 'because of polygamy. A person disobeying or disregarding *siri'* is a disgrace'.

The fragility of family resilience in the Bugis and Mandar communities is also a triggering factor, namely the crisis of figures from family members who are charismatic as role models, and the crisis of optimizing the role of traditional institutions that act as mediators. Cultural and social changes in the Bugis and Mandar communities, sometimes on the part of the parents themselves, who usually play a role in separating the marriages of their children. For families who are experiencing conflict, it seems as if the Religious Court is the last place in conflict resolution. The irony is that it turns out that the Religious Courts are not a place that is capable of repairing the rifts in the households of husband and wife who experience conflict. Data from all divorce cases received at the Religious

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<sup>57</sup> Fikri, et.al., "Idealism and Realism of Islamic Law in Pangngaderreng Culture of the Modern Bugis Bone," *IOP Conference Series: Earth and Environmental Science* 175, No. 1 (2018), p. 2.

Courts are generally decided by the judge.

The strength in carrying out the value of *ade'* in the Bugis and the Mandar community' is to maintain a lasting and sustainable marriage, the implementation of the value of life *sirondo-rondo* which means cooperation, helping each other in doing a job, both heavy and light. The next value that is related to the sustainability of marriage is *siamasei* and *sianuang pa'mai* that in building a household, the husband and wife must love and love each other. The Bugis and Mandar people in fostering a household are also known as *sibaliparri*, husband and wife must maintain household harmony and have a mutual sense of responsibility towards their families, both when joy and sorrow must be faced together, the same fate and co-existence.

Marriage advice and advice are provisions in living the household dish.<sup>58</sup> The revitalization of customary institutions in the Bugis and Mandar communities such as *sirondo-rondo*, *siamasei* and *sianuang pa'mai*, and *sibaliparri* is the basis for certified judges and mediators to carry out mediation in the Religious Courts and outside the courts. Optimizing customary institutions in the Bugis and Mandar communities can be a very strong defense against the increasing divorce rate in the Religious Courts.

Also, reviving the traditional institutions of the *pangngaderreng* cultural system is *syara'* which is the implementation of Islamic law in the Bugis and Mandar communities. The enforcement of Islamic law in Bugis society is carried out by someone who has the title *petta kalie* and in Mandar society it is known as *puang kali*. People who are appointed to be *petta kalie* in Bugis society and *puang kali* in Mandar society are charismatic, scholars who have a deep knowledge of Islam, master jurisprudence and Islamic law.<sup>59</sup> The function of *petta kalie* or *puang kali* is to give advice or marriage advice for married couples who are about to divorce.

The revitalization of *petta kalie* and *puang kali* in Bugis and Mandar communities is that every married couple who is about to divorce, should first ask for advice or marriage advice. Divorce cases are no longer registered with the Religious Courts, before there are marital advice and advice from *petta kalie* and *puang kali*.

## Conclusion

The process of practicing mediation in the Religious Courts is very urgent to implement *maqāṣid shari'āh* as the main consideration by judges at the

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<sup>58</sup> Angela Garcia, "Advice-Giving and Disputant Empowerment in Divorce Mediation Sessions," *Language and Dialogue* 2, No. 3 (2012), p. 398–426,

<sup>59</sup> Ridhwan, et.al., "Masjid Sebagai Pusat Pendidikan Islam pada Masa Kerajaan Sampai Masa Orde Lam di Bone Sulawesi Selatan," *Jurnal Ilmiah Didaktika* 20, No. 1 (2019), p. 83-98.

Religious Courts in deciding divorce cases. The main consideration for the application of *maqāšid shari'āh* has the potential to repair and save a household from a husband and wife on the verge of damage and destruction. The strong assumption of the application of *maqāšid shari'āh* is that divorce in the Religious Court is not the best option or way to resolve conflicts between husband and wife in the household. The Supreme Court needs to review the practice of mediation through Perma No. 1 of 2016 by placing the benefits contained in the *maqāšid shari'āh* for the practice of mediation in the Religious Courts. Revitalizing traditional institutions such as upholding the value of *ade* 'in the Bugis and existing in the Mandar community can be a strength in family resilience in maintaining the marriage. Bringing the customs of the Bugis community and society through social culture in the value of life *sirondo-rondo* which means cooperation, *siamasei* and *sianuang pa'mai* in fostering a household, husband and wife must love and love each other, and *sibaliparri* that husband and wife must take care of each other domestic harmony and mutual responsibility towards their families, both when joys and sorrows must be faced together, of the same fate and responsibility. Also, reviving the customary institutions of the *pangngaderreng* cultural system is *syara* ' which is interpreted as an institution for implementing Islamic law in the Bugis and Mandar communities. The enforcement of Islamic law in Bugis society is carried out by someone who has the title *petta kali* ' and in Mandar society known as *puang kali* ' is a charismatic person, a cleric who has a deep knowledge of Islam, masters jurisprudence and Islamic law. The function of *petta kali* ' or *puang kali* ' is to give advice or marriage advice for husband and wife who want to divorce and their marriage will be long-lasting, lasting, and sustainable.

## References

### Journals and Books

- Abbas, Syahrizal. *Mediasi Dalam Perspektif Hukum Syari'ah, Hukum Adat Dan Hukum Nasional*. Jakarta: Kencana Prenada Media Group, 2009.
- Al-Syatibi, Abu Ishaq. *Al-Muwafaqat Fi Ushul Al-Ahkam*. 2nd ed. Beirut: al-Maktabah al-Taufiqiyah, 2004.
- Al-Gazaliy. *Al-Mustashfa Fi' Ilm Al-Ushul*. 1st ed. Beirut: Dar al-Kutub al-Ilmiyah, 1993.
- Al-Qardhawi, Yusuf. *Dirasah Fi Fiqh Maqashid Al-Shariah; Baina Al-Maqashid Al-Kulliyah Wa Al-Nushus Al-Juziyyah*. Kairo: Dar al-Syuruq, 2006.
- Al-Salam, Izz al-Din Abd., *Qawaid Al-Ahkam Fi Masalih Al-Anam*. Beirut: Dar al\_Ma'rifah, n.d.

- Ali, Achmad and Wiwie Heryani, *Sosiologi Hukum: Kajian Empiris terhadap Pengadilan*, Jakarta: Kencana, 2014.
- Arfa, Faisar Ananda and Watni Marpauang, *Metodologi Hukum Islam*, Jakarta: Kencana, 2016.
- Bailey, Jo Daugherty and Dawn Maccarty, "Assessing Empowerment in Divorce Mediation." *Negotiation Journal* 25, No. 3 (2009). <https://doi.org/10.1111/j.1571-9979.2009.00229.x>.
- Beck, Connie J.A. and Bruce Sales, "A Critical Reappraisal of Divorce Mediation Research and Policy." *Psychology, Public Policy, and Law* 6, no. 4 (2000). <https://doi.org/10.1037/1076-8971.6.4.989>.
- Beck, Connie J.A. and Lynda E. Frost, "Defining a Threshold for Client Competence to Participate in Divorce Mediation." *Psychology, Public Policy, and Law* 12, No. 1 (2006). <https://doi.org/10.1037/1076-8971.12.1.1>.
- Beck, E. "Improving Communication in Divorce Mediation." *Divorce Mediation: Perspectives on the Field*, 2014. <https://doi.org/10.4324/9781315860077>.
- Bollen, K. "Money or Children? Power Sources in Divorce Mediation." *Journal of Family Studies* 19, No. 2 (2013). <https://doi.org/10.5172/jfs.2013.19.2.159>.
- Cohen, Stanley N. "Divorce Mediation: An Introduction." *Journal of Psychotherapy & Family, Divorce Therapy* 1, 2014. <https://doi.org/10.4324/9781315791456>.
- Dingwall, Robert. "Divorce Mediation: Should We Change Our Mind?" *Journal of Social Welfare and Family Law* 32, No. 2 (2010). <https://doi.org/10.1080/09649069.2010.506307>.
- Djawas, Mursyid, and Sri Astuti A. Samad. "Conflict, Traditional, and Family Resistance: The Pattern of Dispute Resolution in Acehese Community According to Islamic Law." *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 4, No. 1 (2020). DOI: <http://dx.doi.org/10.22373/sjhc.v4i1.5271>.
- Djawas, Mursyid, et.al., "The Government's Role in Decreasing Divorce Rates in Indonesia: The Case of Aceh and South Sulawesi" *Ahkam: Jurnal Ilmu Syariah* 21, No. 1 (2021). DOI: 10.15408/ajis.v21i1.20870.
- Donohue, William A, "Interaction Dynamics Predict Successful Negotiation in Divorce Mediation." *Journal of Language and Social Psychology* 35, No. 4 (2015). <https://doi.org/10.1177/0261927X15603090>.
- Dusuki, Asyraf Wajdi, and Nurdianawati Irwani Abdullah. "Maqasid Al-Shariah, Maslahah, and Corporate Social Responsibility." *American Journal of Islamic Social Sciences* 24, No. 1 (2007).

- Ellis, Desmond. "Safety, Equity, and Human Agency; Contributions of Divorce Mediation." *Violence Against Women* 6, No. 9 (2000). <https://doi.org/10.1177/10778010022182254>.
- Emery, Robert E, David Sbarra, and Tara Grover. "Divorce Mediation: Research and Reflections." *Family Court Review* 43, No. 1 (2005).
- Enrekang, Ketua Pengadilan Agama. "Laporan Tahunan Pengadilan Agama Enrekang." Kota Enrekang, 2020. <https://www.pa-enrekang.com/index.php/transparansi/sekretariat/perencanaan/laporan-tahunan>.
- Fikri, Rahmawati, and Zulfah. "Idealism and Realism of Islamic Law in Pangngaderreng Culture of the Modern Bugis Bone." *IOP Conference Series: Earth and Environmental Science* 175, No. 1 (2018). <https://doi.org/10.1088/1755-1315/175/1/012137>.
- Garcia, Angela. "Advice-Giving and Disputant Empowerment in Divorce Mediation Sessions." *Language and Dialogue* 2, No. 3 (2012). <https://doi.org/10.1075/ld.2.3.05gar>.
- Garcia, Angela Corla. "Locations for Advice-Giving and the Production of Neutrality in Divorce Mediation Sessions." *Conflict Resolution Quarterly* 38, No. 3 (2020). <https://doi.org/10.1002/crq.21292>.
- Hahn, R. and David M. Kleist, "Divorce Mediation: Research and Implications for Family and Couples Counseling." *The Family Journal*, 2000. <https://doi.org/10.1177/1066480700082009>.
- Halim, Wahyuddin. "Islamization or Arabization? The Arab Cultural Influence on the South Sulawesi Muslim Community since the Islamization in the 17th Century." *Suvannabhumi* 10, No. 1 (2018).
- Holtzworth-Munroe, Amy. "Controversies in Divorce Mediation and Intimate Partner Violence: A Focus on the Children." *Aggression and Violent Behavior* 16, No. 4 (2011). <https://doi.org/10.1016/j.avb.2011.04.009>.
- Huang, Philip C.C., "Divorce Law Practices and the Origins, Myths, and Realities of Judicial 'mediation' in China." *Modern China* 31, No. 2 (2005). <https://doi.org/10.1177/0097700405274585>.
- Indonesia, Direktorat Jenderal Badan Peradilan Agama Republik. Laporan Tahunan Badan Peradilan Agama (2020).
- Jong, Madelene De. "A Pragmatic Look at Mediation as an Alternative to Divorce Litigation." *Tydskrif Vir Die Suid-Afrikaanse Reg*, No. 3 (2010).
- Kaganas, Felicity and Christine Piper, "Domestic Violence and Divorce Mediation." *Journal of Social Welfare and Family Law* 16, No. 3 (1994). <https://doi.org/10.1080/09649069408413612>.
- Koopman, Elizabeth J., "The Present and Future Role of Higher Education in Divorce Mediation: Problems and Promise in Teaching, Research, and

- Service.” *Divorce Mediation: Perspectives on the Field*, 2014. <https://doi.org/10.4324/9781315860077>.
- Kraft, Amy J. and Lynda Leucken, “Childhood Parental Divorce and Cortisol in Young Adulthood: Evidence for Mediation by Family Income.” *Psychoneuroendocrinology* 34, No. 9 (2009). <https://doi.org/10.1016/j.psyneuen.2009.04.008>.
- Margulies, S and Anya Luchow, “Litigation, Mediation and the Psychology of Divorce.” *Journal of Psychiatry and Law* 20, No. 4 (1992). <https://doi.org/10.1177/009318539202000405>.
- Molgora, Sara, “Divorce and Coparenting: A Qualitative Study on Family Mediation in Italy.” *Journal of Divorce and Remarriage* 55, No. 4 (2014). <https://doi.org/10.1080/10502556.2014.901854>.
- Nawawi, Nurnanigsih. “Asimilasi Lontara Pangadereng Dan Syari’at Islam: Pola Perilaku Masyarakat Bugis-Wajo.” *Al-Tahrir: Jurnal Pemikiran Islam* 15, No. 1 (2015).
- Neville, W. “Reflections on the Growth and Significance of Divorce Mediation.” *Divorce Mediation: Perspectives on the Field*, 2014. <https://doi.org/10.4324/9781315860077>.
- Nurman, Said. *Religion and Cultural Identity Among the Bugis*. Makassar: Faculty of Islamic Theology of the Alauddin State Institute of Islamic Studies at Makassar, Indonesia, 2004.
- Pickar, Daniel, “Intermittent Evaluative Mediation with Enduring, Post-Divorce Conflict.” *Journal of Child Custody* 8, No. 3 (2011). <https://doi.org/10.1080/15379418.2011.594722>.
- Pinrang, Ketua Pengadilan Agama. “Laporan Tahunan Pengadilan Agama Pinrang.” Kota Pinrang, 2020. <http://pa-pinrang.go.id/index.php?limitstart=27>.
- Poladian, Ani R., “Family Mediation for Divorce and Parental Separation.” *Foundations for Couples’ Therapy: Research for the Real World*, 2017. <https://doi.org/10.4324/9781315678610-26>.
- Przybyla-Basista, Hanna, “The Influence of Spouses’ Resistance on Their Decision to Enter into Divorce Mediation.” *Journal of Divorce and Remarriage* 48, No. 3 (2008). [https://doi.org/10.1300/J087v48n03\\_05](https://doi.org/10.1300/J087v48n03_05).
- Qardhawi, Abd al-Rahman Yusuf Abd. *Nazhariyah Maqashid Al-Syari’ah Baina Syekh Al-Islam Ibn Taimiyah Wa Jumhur Ushliyyin Dirasah Muqaranah Min Al-Qarn Al-Khamis Ila Al-Tsamin Al-Hijri*. Kairo: Kulliyah Dar al-Ulum, n.d.
- Qayyim, Ibn. *I’lam Al-Muwaqi’in Rabb Al-Alamin*. 3rd ed. Beirut: Dar al-Jail, n.d.

- Rahmatunnair, "Contextualization of Pangngadereng in the Enforcement of Islamic Shariah in Bugineese Bone Community." *Al-Qalam* 17, No. 1 (2011). DOI: <http://dx.doi.org/10.31969/alq.v17i1.101>.
- Rappang, Ketua Pengadilan Agama Sidenreng. "Laporan Tahunan Pengadilan Agama Sidenreng Rappang." Kota Pangkajenne, 2020. <http://pa-sidenrengrappang.go.id/>.
- Ridhwan, et.al., "Masjid Sebagai Pusat Pendidikan Islam pada Masa Kerajaan Sampai Masa Orde Lam di Bone Sulawesi Selatan," *Jurnal Ilmiah Didaktika* 20, No. 1 (2019). DOI: <http://dx.doi.org/10.22373/jid.v20i1.4648>.
- RI., Ketua Mahkamah Agung. "Perma RI. No. 1 Tahun 2016 Tentang Prosedur Mediasi Di Pengadilan." Jakarta, 2016. [https://bawas.mahkamahagung.go.id/bawas\\_doc/doc/perma\\_mediasi\\_pengadilan\\_web.pdf](https://bawas.mahkamahagung.go.id/bawas_doc/doc/perma_mediasi_pengadilan_web.pdf).
- Sbarra, David A. and Robert E. Emery, "In the Presence of Grief: The Role of Cognitive-Emotional Adaptation in Contemporary Divorce Mediation." *Handbook of Divorce and Relationship Dissolution*, Taylor and Francis, 2013. <https://doi.org/10.4324/9781315820880-40>.
- Schepard, Andrew, "An Introduction to the Model Standards of Practice for Family and Divorce Mediation." *Family Law Quarterly* 35, No. 1 (2001).
- Shaw, Lori Anne, "Divorce Mediation Outcome Research: A Meta-Analysis." *Conflict Resolution Quarterly* 27, No. 4 (2010). <https://doi.org/10.1002/crq.20006>.
- Silver, Robert B. and Deborah C. Silver, "Practice Note: Divorce Mediation with Challenging Parents," *Conflict Resolution Quarterly* 25, (2008). <https://doi.org/10.1002/crq.220>.
- Taylor, Raymond J., "Use of Change Theory in the Context of the Divorce Mediation Session." *Journal of Divorce and Remarriage* 40, no. 1 (2004). [https://doi.org/10.1300/J087v40n01\\_06](https://doi.org/10.1300/J087v40n01_06).
- Twaite, James A. "Divorce Mediation: Promises, Criticisms, Achievements, and Current Challenges." *Journal of Psychiatry and Law* 26, No. 3 (1998). <https://doi.org/10.1177/009318539802600304>.
- Weaver, Jennifer M. and Thomas J. Schofield, "Mediation and Moderation of Divorce Effects on Children's Behavior Problems." *Journal of Family Psychology* 29, No. 1 (2015). <https://doi.org/10.1037/fam0000043>.
- Worley, Susan, "The Effect of Cooperation on Egocentrism in Divorce Mediation: A Simulation Study." *Journal of Divorce* (2008). <https://doi.org/10.4324/9781315860077>.
- Yunus, Abd Rahim, "The Acculturation of Islam and Local Culture in Bugis Wedding Tradition: A Historical Perspective," International Conference on Global Education V, Padang, 2017.



### Internet Data

Chairman of the Parepare Religious Court, "*Annual Report of the Parepare Religious Court*" (Parepare City, 2020), <http://pa-parepare.go.id/home/leport-tahunan/>.

Chairman of the Sidenreng Rappang Religious Court, "*Annual Report of the Sidenreng Rappang Religious Court*" (Pangkajenne City, 2020), <http://pa-sidenrenggrappang.go.id/>.

Chairman of the Pinrang Religious Court, "*Annual Report of the Pinrang Religious Court*" (Pinrang City, 2020), <http://pa-pinrang.go.id/index.php?limitstart=27>.

Chairman of the Enrekang Religious Court, "*Annual Report of the Enrekang Religious Court*" (Enrekang City, 2020), <https://www.pa-enrekang.com/index.php/transparant/sekretariat/perplan/lentuk-tahunan>.

Chairperson of the Polewali Mandar Religious Court, "*Annual Report of the Polewali Mandar Religious Court*" (Polewali City, 2020), <http://pa-polewali.net/index.php/info-peradilan/program-kerja-k-Activity/l-Report-tahunan>.

Chairman of the Majene Religious Court, "*Annual Report of the Majene Religious Court*" (Majene City, 2020), <https://pa-majene.go.id/informasi-umum/leport-tahunan>.

Chairman of the Supreme Court of the Republic of Indonesia., "*Perma RI. No. 1 of 2016 concerning Mediation Procedures in Courts*" (Jakarta, 2016), [https://bawas.mahkamahagung.go.id/bawas\\_doc/doc/perma\\_mediasi\\_pengadilan\\_web.pdf](https://bawas.mahkamahagung.go.id/bawas_doc/doc/perma_mediasi_pengadilan_web.pdf).

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**Transformation of Maqāshid Shari‘ah in Divorce Mediation in Religious Courts:  
Revitalization of the Bugis-Mandar Customs, Indonesia**

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Abstract	:	<p>The focus of this study discusses the dynamics of legal product of divorce mediation practices in Religious Courts; the transformation of <i>maqashid shariah</i> in practice of mediation in divorce cases, and revitalization of <i>pangngaderreng</i> culture in practice of divorce mediation in Bugis and Mandar communities. The research methodology is descriptive qualitative field research, holistic, historical, and socio-anthropological approaches, <i>maqashid shariah</i> theory analysis, social and legal change theory, and social institutions theory. The results of this study indicate that divorce case is an extraordinary matter case in Religious Courts, dynamics of mediation practice in Religious Courts have successful mediation for a written peace agreement in peace deed, other mediation products are partially successful mediation and partially unsuccessful mediation, mediation products are not successful is that husband and wife are committed to divorce; <i>Maqashid shariah</i> transformation can be a major consideration by judges in mediation practice to save households on the verge of collapse, so that <i>maqashid shariah</i> is very urgent to place in Perma No.1 of 2016, and revitalization of Bugis-Mandar traditional institutions is an effort to revive the value of life <i>sirondo-rondo</i>, <i>siamasei</i>, <i>sianuang pa'mai</i>, and <i>sibaliparri</i>, also animate <i>shara'</i> which is performed <i>petta kali'</i> or <i>puang kali'</i>.</p>

Samarah: Jurnal Hukum Keluarga dan Hukum Islam

**Transformation of *Maqashid Shariah* in Divorce Mediation in Religious Courts:  
Revitalization of Bugis-Mandar Traditional Institutions**

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**Abstract**

The focus of this study discusses the dynamics of legal product of divorce mediation practices in Religious Courts; the transformation of *maqashid shariah* in practice of mediation in divorce cases, and revitalization of *pangngaderreng* culture in practice of divorce mediation in Bugis and Mandar communities. The research methodology is descriptive qualitative field research, holistic, historical, and socio-anthropological approaches, *maqashid shariah* theory analysis, social and legal change theory, and social institutions theory. The results of this study indicate that divorce case is an extraordinary matter case in Religious Courts, dynamics of mediation practice in Religious Courts have successful mediation for a written peace agreement in peace deed, other mediation products are partially successful mediation and partially unsuccessful mediation, mediation products are not successful is that husband and wife are committed to divorce; *Maqashid shariah* transformation can be a major consideration by judges in mediation practice to save households on the verge of collapse, so that *maqashid shariah* is very urgent to place in Perma No.1 of 2016, and revitalization of Bugis-Mandar traditional institutions is an effort to revive the value of life *sirondo-rondo*, *siamasei*, *sianuang pa'mai*, and *sibaliparri*, also animate *shara'* which is performed *petta kali'* or *puang kali'*.

**Keywords:** *Maqashid Shariah, divorce mediation, Religious Courts, revitalization of traditional institutions, Bugis-Mandar*

**Transformasi *Maqashid Shariah* dalam Mediasi Perceraian di Pengadilan Agama:  
Revitalisasi Lembaga Adat Bugis-Mandar**

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**Abstrak**

Fokus penelitian ini membahas tentang dinamika produk hukum praktik mediasi perceraian di Pengadilan Agama; transformasi *maqashid syari'ah* dalam praktik mediasi dalam kasus perceraian, dan revitalisasi budaya *pangngaderreng* dalam praktik mediasi perceraian di masyarakat Bugis dan Mandar. Metodologi penelitian yang digunakan adalah penelitian lapangan kualitatif deskriptif, pendekatan holistik, historis, dan sosio-antropologis, analisis

teori *maqashid syari'ah*, teori perubahan sosial dan hukum, dan teori kelembagaan sosial. Hasil penelitian ini menunjukkan bahwa perkara perceraian merupakan perkara luar biasa di Pengadilan Agama, dinamika praktek mediasi di Pengadilan Agama telah berhasil dalam mediasi perjanjian damai tertulis dalam akta damai, produk mediasi lainnya adalah mediasi yang berhasil sebagian dan mediasi yang tidak berhasil sebagian, mediasi tidak berhasil. produk yang tidak berhasil adalah suami dan istri yang berkomitmen untuk bercerai; Transformasi *maqashid syari'ah* dapat menjadi pertimbangan utama hakim dalam praktek mediasi untuk menyelamatkan rumah tangga yang di ambang kehancuran, sehingga *maqashid syari'ah* sangat mendesak untuk ditempatkan dalam Perma No.1 tahun 2016, dan revitalisasi kelembagaan adat Bugis-Mandar merupakan salah satu upaya. menghidupkan kembali nilai-nilai kehidupan *sirondo-rondo*, *siamasei*, *sianuang pa'mai*, dan *sibaliparri*, serta menghidupkan *shara'* yang dilakukan *petta kali'* atau *puang kali'*.

**Keywords:** *Maqashid Syari'ah*, mediasi perceraian, Pengadilan Agama, revitalisasi lembaga adat, Bugis-Mandar

## Introduction

The process of implementing mediation in fortifying family resilience from conflict has long been the subject of discussion as explained by Margulies that mediation is considered an effective effort to resolve husband-wife conflicts that intend to divorce.<sup>1</sup> On the other hand, violence that occurs in the family and also in mediation is still difficult to find theoretical and practical concepts.<sup>2</sup>

The function of the mediator is to reconcile the two sides of the disputing family, helping to carry out active communication. In addition, the mediator also encourages harmony and also emphasizes the parties in conflict to consider the bad consequences of divorce.<sup>3</sup> It is important to strengthen the concept of mediation in resolving family conflicts and childcare.<sup>4</sup> Mediation is conducted by a mediator who acts as a mediator for the disputing parties and plays an active role in resolving the conflict by reaching a peace agreement from the parties.

Mediation is part of the legal system that can resolve family conflicts quickly, easily, and cheaply as long as the parties cooperate.<sup>5</sup> In addition to being able to be carried out by judges, psychologists, and other professionals who have the competence to carry out mediation can understand and address the root causes of problems in family conflicts.<sup>6</sup> According to RA Hahn explained that from several studies of the divorce mediation process carried out there were beneficial and beneficial results for the efficiency and satisfaction of the parties.<sup>7</sup> This opinion is supported by D. Ellis that divorce mediation makes a huge contribution towards the outcome of reconciliation between husband and wife.<sup>8</sup>

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<sup>1</sup> S Margulies, "Litigation, Mediation and the Psychology of Divorce," *Journal of Psychiatry and Law*, 1992.

<sup>2</sup> F Kaganas, "Domestic Violence and Divorce Mediation," *Journal of Social Welfare and Family Law* 16, no. 3 (1994): p. 265–278.

<sup>3</sup> A Schepard, "An Introduction to the Model Standards of Practice for Family and Divorce Mediation," *Family Law Quarterly* 35, no. 1 (2001): p. 2-3.

<sup>4</sup> J Weaver, "Mediation and Moderation of Divorce Effects on Children's Behavior Problems," *Journal of Family Psychology* 29, no. 1 (2015): p. 39–48.

<sup>5</sup> JA Twate, "Divorce Mediation: Promises, Criticisms, Achievements, and Current Challenges," *Journal of Psychiatry and Law*, 1998.

<sup>6</sup> C Beck, "A Critical Reappraisal of Divorce Mediation Research and Policy," *Psychology, Public Policy, and Law* 6, No. 4 (2000): p. 991.

<sup>7</sup> RA Hahn, "Divorce Mediation: Research and Implications for Family and Couples Counseling," *The Family Journal*, 2000.

<sup>8</sup> D Ellis, "Safety, Equity, and Human Agency; Contributions of Divorce Mediation," *Violence Against Woman* 6, no. 9 (2000): p. 1012–1027.

In line with the study conducted by Taylor R., suggesting that the mediator's demands in carrying out his role as the mediator can help to build confidence in the parties. Mediators are required to designing interpersonal communication between both husband and wife in conflict so that each party can introspect themselves towards better interaction changes.<sup>9</sup> The real emphasis of mediation is on reconciling the husband and wife who insisted on divorce.<sup>10</sup> Legal practitioners and academics have studied a lot about the mediation process that can reduce the soaring divorce rate. Mediation is a reliable means of accelerating the reconciliation of families in conflict.<sup>11</sup> Even C. Beck mentioned that the implementation of the formulation of the concept of mediation is a much more recent effort to create justice for wives who are victims of domestic violence.<sup>12</sup>

However, mediation can speed up the settlement of cases, on the contrary as described by Przybyla Basista stated that the reasons for couples who refuse the mediation process are especially wives who experience feelings of trauma and fear of violence from their ex-husbands. Experience from her domestic life, the wife received painful treatment so that she did not have the time and space to negotiate through mediation with her ex-husband.<sup>13</sup> Sometimes children are also victims of violence, experiencing depression and anxiety which can affect the physical and psychological health consequences of divorcing parents.<sup>14</sup> The research also touches on the legal protection of children through the mediation process. Andrew Schepard's views on custody and subsistence needs can be read.<sup>15</sup>

The opinion of J. D. Bailey provides that the sharpening of the practice of mediation in divorce cases can refer to several assumptions that mediation is a golden opportunity to resolve conflicts and household breakdowns in constructing reconciliation between husband and wife. The practice of mediation involves offering a problem-solving process with a focus on the goal of reconciliation.<sup>16</sup>

Compare this with the thought conveyed by Robert Dingwall that the legal system and family policies of the government related to the practice of mediation carried out in European countries such as England, Wales, Scotland, and Northern Ireland are forced attempts to the husband and wife who are going to divorce under control of the mediator to undergo the mediation process before their case reaches the Court.<sup>17</sup> An interesting thought from [Lori Anne Shaw](#) that the implementation of non-litigation mediation can outperform the judicial process in legally assisting the parties in a case, including from the results of mediation that prioritizes the interests of children.<sup>18</sup> Demands for non-litigation mediation practices are carried out to anticipate more immediate damage and cracks in households.

The theoretical purpose of marriage in Islamic law is to create *sakinah, mawaddah, and warahmah* families. Sometimes the theoretical goal of marriage is very different in practice from the goal of marriage. Marriage in the view of the Bugis and Mandar people that "*iya tu'u di'o*

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<sup>9</sup> R Taylor, "Use of Change Theory in the Context of the Divorce Mediation Session," *Journal of Divorce and Remarriage* 40, no. 1 (2004): p. 90.

<sup>10</sup> P Huang, "Divorce Law Practices and the Origins, Myths, and Realities of Judicial 'mediation' in China," *Modern China* 31, no. 2 (2005): p. 154.

<sup>11</sup> Robert E Emery, David Sbarra, and Tara Grover, "Divorce Mediation: Research and Reflections," *Family Court Review* 43, no. 1 (2005): p. 22–37.

<sup>12</sup> C Beck, "Defining a Threshold for Client Competence to Participate in Divorce Mediation," *Psychology, Public Policy, and Law*, 2006.

<sup>13</sup> H Przybyla-Basista, "The Influence of Spouses' Resistance on Their Decision to Enter into Divorce Mediation," *Journal of Divorce and Remarriage* 48, no. 3 (2008): p. 31.

<sup>14</sup> A Kraft, "Childhood Parental Divorce and Cortisol in Young Adulthood: Evidence for Mediation by Family Income," *Psychoneuroendocrinology* 34, no. 9 (2009): p. 1363–1369.

<sup>15</sup> Schepard, "An Introduction to the Model Standards of Practice for Family and Divorce Mediation."

<sup>16</sup> JD Bailey, "Assessing Empowerment in Divorce Mediation," *Negotiation Journal* 25, no. 3 (2009): p. 327–336.

<sup>17</sup> R Dingwall, "Divorce Mediation: Should We Change Our Mind?," *Journal of Social Welfare and Family Law* 32, no. 2 (2010): p. 107–17.

<sup>18</sup> L Shaw, "Divorce Mediation Outcome Research: A Meta-Analysis," *Conflict Resolution Quarterly* 27, no. 4 (2010): p. 447–67,



*alikkangan, including mesa pakkasiwiang lao di puang Allah Taala, Jari mua 'alikkangananna macoai, ma mandapai reward, but mua 'andani macoa, napolean sin* ". The meaning of marriage is that marriage is worship, so if the marriage is good you will get a reward, but if it is not good you will get sin.

Therefore, the practice of mediation, whether organized by judges at the Religious Courts or mediators outside the court, is very important to prioritize the content of divorce mediation using the *maqashid shariah* approach. Divorce mediation which contains the *maqashid sharia* paradigm based on *maslahat* as conveyed by Al-Gazaliy is an effort to uphold the objectives of shari'a laws in maintaining religion, soul, mind, descent and property.<sup>19</sup>

Maqashid shariah as formulated by *ushul fiqh* scholars is to have the meaning of all the aims and objectives regulated in religion to bring benefit and eliminate exasperation to its servants. Al-Syatibi further perfected the traditional *ushul fiqh* theories in the al-Muwafaqat book by formulating *maqashid shariah* which focused on *al-kulliyah al-khamsah*.<sup>20</sup>

Whereas *maqashid shariah* seen from the order is *maqashid al-dharuriyyah* (primary), *maqashid al-hajiyyah* (secondary), and *maqashid al-tahsiniyyah* (complementary).<sup>21</sup> Therefore, based on the *maqashid shariah* that divorce mediation is in the order of *maqashid al-dharuriyyah*, which is obliged to eliminate adultery in marriage, including maintaining the family from conflict, enmity, disharmony, and rifts between husband and wife.

On the other hand, based on the data source of the Directorate General of Religious Courts' annual report, divorce cases are considered an extraordinary matter in Indonesia. Following the report's data, it shows that there were 128,401 divorce cases in 2015. Divorce cases in 2017 included 113,937 divorce talaq, while 301,573 divorce lawsuits were filed. In 2018 the details of the divorce talaq were 118,853. In 2019, there were 124,776 divorce cases, then 355,842 divorce cases.<sup>22</sup>

The discourse on mediation has produced many studies on the roles and responsibilities of academics,<sup>23</sup> such as Mursyid Jawas and Sri Astuti A. Samad explained that reconciliation efforts in resolving family disputes can be successful with a family resilience approach through traditional Acehese traditional wisdom such as *keuchik, tuha peut, teungku imum, and imum mukim*. The resolution of family conflicts in Acehese society by means of Islamic law at the Syari'ah Court and also by practicing customary law in *sara opat* institutions, a kind of institution that includes *reje* and *imem* is very accurate, effective, and efficient.<sup>24</sup>

This idea of mediating divorce through customs and social institutions is very suitable to be actualized in the Bugis community in South Sulawesi and the Mandar community in West Sulawesi. Both the Bugis and Mandar Communities are ethnic groups that are very strong and thick in carrying out their customs which are tied to the *pangngaderreng* culture as a culture of conduct.<sup>25</sup> which includes *ade', bicara, rapang, wari'*, and *shara'*. Mandar was found when the *pangngaderreng* became a social patron as the inner power control to accommodate *shara'*.<sup>26</sup>

<sup>19</sup> Abd al-Rahman Yusuf Abd Qardhawi, *Nazhariyah Maqashid Al-Syari'ah Baina Syekh Al-Islam Ibn Taimiyah Wa Jumhur Ushliyyin Dirasah Muqaranah Min Al-Qarn Al-Khamis Ila Al-Tsamim Al-Hijri* (Cairo: Kulliyah Dar al-Ulum, nd).p. 70.

<sup>20</sup> Abu Ishaq Al-Syatibi, *Al-Muwafaqat Fi Ushul Al-Ahkam, 2nd ed.* (Beirut: al-Maktabah al-Taufiqiyah, 2004). p. 2.

<sup>21</sup> Izz al-Din Abd Al-Salam, *Qawaid Al-Ahkam Fi Masalih Al-Anam* (Beirut: Dar al-Ma'rifah, nd). p. 11.

<sup>22</sup> Directorate General of the Religious Courts of the Republic of Indonesia, *Annual Report of the Religious Courts* (2020).

<sup>23</sup> E Koopman, "The Present and Future Role of Higher Education in Divorce Mediation: Problems and Promise in Teaching, Research, and Service," *Divorce Mediation: Perspectives on the Field*, 2014.

<sup>24</sup> Mursyid Djawas and Sri Astuti Abdul Samad, "Conflict, Traditional, and Family Resistance: The Pattern of Dispute Resolution in Acehese Community According to Islamic Law," *Samarah: Journal of Family Law and Islamic Law* 4, no. 1 (2020): p. 69–71.

<sup>25</sup> Said Nurman, *Religion and Cultural Identity Among the Bugis* (Makassari: Faculty of Islamic Theology of the Alauddin State Institute of Islamic Studies at Makassar, Indonesia, 2004).

<sup>26</sup> Abd Yunus, "The Acculturation of Islam and Local Culture in Bugis Wedding Tradition: A Historical Perspective," 2017, 4.

The acceptance of *shara'* in *pangngaderreng* culture is a consequence for society to carry out Islamic law. Along with development and *wari 'and shara'*.<sup>27</sup> Acculturation of Islam and the culture of the Bugis community and the progress of human civilization which is increasingly modern, sometimes *siri'* in the *pangngaderreng* culture of the Bugis and Mandar communities has gradually shifted. Whereas in the period of traditional life, the enforcement of *siri'* in the Bugis and Mandar communities is very embarrassed and loses its self-respect if there is a disgrace in the family, including for example a married couple who divorced from that family. The connection with the *pangngaderreng* culture has less than optimal function in the Bugis and Mandar communities, especially before and during the Covid-19 pandemic era, the number of divorce cases increased sharply in Religious Courts.

Exposing this background, this study focuses on the dynamics of the legal product of divorce mediation practices in the Religious Courts which incidentally is an institution that can be trusted to enforce Perma No. 1 of 2016. The transformation of *maqashid syariah* in the practice of mediation in divorce cases in the Religious Courts and outside the courts should prioritize benefit and eliminate adversity to maintain family resilience from various conflicts and disputes. The revitalization of the *pangngaderreng* culture in the practice of divorce mediation in the Religious Courts, which so far is believed to have less than optimal function in the Bugis and Mandar communities.

#### Dynamics of Legal Product of Divorce Mediation in Religious Courts

Divorce mediation is an effort to mediate resolving disputes so that the mediator must be neutral, bridging, and must not be partial between the conflicting husband and wife in order to reach a peace agreement.<sup>28</sup> Divorce mediation can be designed to be therapeutic, treat, remedy, and counteract the bad effects of divorce.<sup>29</sup>

Divorce mediation is constructed to reflect on the significance of the marriage and address the possibilities that trigger divorce.<sup>30</sup> assisting divorced parties to optimize the effectiveness and efficiency of conflict resolution in the family. One of the material contained in mediation is very interesting is a simulation method of husband-wife couples who are active for high cooperation which can overcome the conflicts they face, on the other hand, if the husband and wife do not cooperate less, they tend to have a selfish character.<sup>31</sup>

The success indicator of mediation if the material content is to collaborate, including eliminating partner violence intimidation and focusing on taking care of children,<sup>32</sup> refreshing and taking advantage of free time for discussion which aims to strengthen active communication in the family.<sup>33</sup> The family mediation construction should be intensified during the marriage period so that the husband and wife can build a household with full responsibility, affection, and love. Therefore, the practice of mediation is not only carried out when there is a conflict that is already overloaded, critical, and is experiencing a transition period for divorce.<sup>34</sup> The implementation of mediation before the family has problems with conflict, has many advantages

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<sup>27</sup> Wahyuddin Halim, "Islamization or Arabization? The Arab Cultural Influence on the South Sulawesi Muslim Community since the Islamization in the 17th Century," *Suvannabhumi* 10, no. 1 (2018): p. 42.

<sup>28</sup> Syahrizal Abbas, *Mediation in the Perspective of Sharia Law, Customary Law and National Law* (Jakarta: Kencana Prenada Media Group, 2009).

<sup>29</sup> DA Sbarra, "In the Presence of Grief: The Role of Cognitive-Emotional Adaptation in Contemporary Divorce Mediation," *Handbook of Divorce and Relationship Dissolution*, 2013.

<sup>30</sup> W Neville, "Reflections on the Growth and Significance of Divorce Mediation," *Divorce Mediation: Perspectives on the Field*, 2014.

<sup>31</sup> S Worley, "The Effect of Cooperation on Egocentrism in Divorce Mediation: A Simulation Study," *Divorce Mediation: Perspectives on the Field*, 2014.

<sup>32</sup> A Holtzworth-Munroe, "Controversies in Divorce Mediation and Intimate Partner Violence: A Focus on the Children," *Aggression and Violent Behavior*, 2011.

<sup>33</sup> E Beck, "Improving Communication in Divorce Mediation," *Divorce Mediation: Perspectives on the Field*, 2014.

<sup>34</sup> S Molgora, "Divorce and Coparenting: A Qualitative Study on Family Mediation in Italy," *Journal of Divorce and Remarriage* 55, no. 4 (2014): p. 300–314.

for strengthening husband-wife relationships, enhancing cooperation, and also supporting joint care of children.<sup>35</sup>

The fact of the soaring divorce case decisions, it is appropriate to question the speed, accuracy, and efficiency of the judge's functioning as a mediator of divorce cases in the Religious Courts spread across several districts and cities in South Sulawesi and West Sulawesi. The data also shows that the Bugis and Mandar people prefer to resolve disputes and family conflicts in the Religious Courts rather than resolve conflicts with a system or kinship approach. Criticism of the Religious Courts in South Sulawesi and West Sulawesi as one of the case resolution institutions has not been able to accommodate the expectations of the community in settling divorce cases through mediation.

However, the public's assumption of judges acting as mediators in the Religious Courts is still considered a failure. Judges as mediators in conducting divorce mediation are still very symbolic, examinations are too formalistic, very technical, high cost, and cases tend to be overloaded.

The various difficulties faced by judges as mediators in the Religious Courts in general led to the Supreme Court of the Republic of Indonesia to apply Perma No. 1 of 2016. The dynamics of implementing Perma No. 1 of 2016 provides an opportunity to internalize the practice of divorce mediation held by certified mediators from career non-judges at the Religious Courts. Mediation supports all parties to resolve conflicts they face with the help of a mediator who is neutral or impartial. A mediator only tries to bridge all parties in a transparent manner, negotiate, and find the best solution.

The legal position of the implementation of mediation in Law no. 30 of 1999 concerning Arbitration and Alternative Settlements, then followed up by Perma No. 1 of 2016 concerning Mediation as an amendment to Perma No. 1 of 2008 concerning Mediation Procedures. Perma No. 1 of 2016 is implemented to carry out divorce mediation practices in the Religious Courts. Indeed, mediation for divorce in the Religious Courts is to avoid the accumulation of family cases. In fact, the judge's decision will be null and void if the judge examining the divorce case at trial does not enforce mediation at the Religious Court.

The progress of divorce cases that have entered both cases for divorce talaq and cases for divorce in the Religious Courts between 2018 and 2020 in the regions of South Sulawesi and West Sulawesi. The Religious Courts located in South Sulawesi are limited to only taking divorce data from the Parepare Religious Court, the Sidenreng Rappang Religious Court, the Pinrang Religious Court, and the Enrekang Religious Court. Meanwhile, the Religious Courts in West Sulawesi are also limited by taking data on divorce cases that are submitted to the Polewali Mandar Religious Court, the Majene Religious Court, and the Mamuju Religious Court.

The success and failure of the product of mediation practice by judges from each of the Religious Courts in South Sulawesi in three years from 2018 to 2020. Since 2018, there have been 12 judges at the Parepare Religious Court who were spread into 6 panels. Types of cases, divorced talaq received 106 cases, ended 103 cases and the percentage of case completion was 81%, claimants received 380 cases, dropped 385 cases and percentage of case completion was 93%. The Parepare Religious Court mediated 13 cases and 3 cases that succeeded in peace. In 2019, the remaining cases for divorce talaq in 2018 were 23 cases, divorce talaq received 103 cases, 120 cases were decided and the percentage of case completion was 95%. For divorce with the remainder of 2018 in 26 cases, received 439, drop out of 440 cases and the percentage of completion of cases is 95%. Mediated a number of 82 cases and 5 cases which succeeded in peace. In 2020, the remaining cases for divorce talaq in 2019 amounted to 6 cases, 80 cases of divorce received and 80 cases of divorce. There are 25 divorce cases left in 2019, 357 cases received, 379 cases ended.<sup>36</sup>

Referring to the state of divorce cases every year there has been an increase in both talaq and legal divorce at the Parepare Religious Court. The reality cannot be denied, divorce cases

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<sup>35</sup> D Pickar, "Intermittent Evaluative Mediation with Enduring, Post-Divorce Conflict," *Journal of Child Custody* 8, no. 3 (2011): p. 144-145.

<sup>36</sup> Chairman of the Parepare Religious Court, "Annual Report of the Parepare Religious Court" (City of Parepare, 2020), <http://pa-parepare.go.id/home/leport-tahunan/>.

are very worrying, because the number of cases for suing for divorce is greater than cases for divorce talaq. In addition, the performance of judges in conducting mediation at the Parepare Religious Court from 2018 to 2020 can be categorized as failing. The failure of judges to mediate at the Parepare Religious Court has not been able to balance the number of divorce cases that were decided and the number of cases that succeeded in mediating to reach a peaceful consensus.

The progress of divorce cases from 2018 to 2020 at the Sidenreng Rappang Religious Court, can be described with data since 2018, the number of divorces talaq 154 cases and 555 divorce cases. Mediating 91 divorce cases, succeeded in reaching a peaceful consensus on 2 cases. In 2019, the number of divorces talaq received was 213 cases, 202 cases were decided, and the percentage of case settlements was 88%. 699 cases of divorce were accepted, 690 cases were decided on 95%. Mediated 89 cases and succeeded in a peaceful consensus on 0 cases. In 2020, the number of divorces talaq received 163 cases, 152 cases broke up and 83% case settlement percentage, 604 divorce cases received, 591 broke up, and 91% case completion percentage. Mediated 69 cases and succeeded in a 2 case peace consensus.<sup>37</sup>

The strength of the judges at the Sidenreng Rappang Religious Court in conducting mediation is still relatively weak and failed, even in the mediation that was carried out in 2019, not a single case was successfully reconciled. Divorce cases that are accepted are generally terminated and only a very few divorce cases have succeeded in peace.

The Pinrang Religious Court is one of the courts which accepts many divorce cases every year. It is known that in 2018, there were 163 divorces and 640 divorcees, 131 cases of mediation, and 2 cases of the peace agreement were reached. In 2019 there were 208 cases of divorce, 820 cases of divorce, 128 mediation cases, and 4 cases of peace. In 2020, there were 199 divorce cases, 798 divorce cases, 140 mediated cases, and 20 peaceful cases.<sup>38</sup>

Compared to the Parepare Religious Court and the Sidenreng Rappang Religious Court, the Pinrang Religious Court judges have made progress in reconciling divorce cases. In 2020, the success of mediation at the Pinrang Religious Court is inseparable from the active role of judges in reconciling a litigious husband and wife. The success of mediating divorce cases is supported by the knowledge and experience of judges who are familiar with the social culture of the Pinrang community.

In 2019 data, there were 338 divorce cases including 66 cases of divorce, 258 divorce cases, and 51 cases of mediation, only 1 case was successful at the Enrekang Religious Court. In 2020 there were 336 divorce cases and among them, 75 cases of divorce, 246 divorce cases, 31 mediation cases, and none of them succeeded in peace. Mediation from 2019 and 2020 amounted to 82 cases, only 1 case succeeded in peace.<sup>39</sup> Mediation is almost completely ineffective and in fact creates new problems, namely the accumulation of cases that should be resolved, but are hampered by the time-consuming mediation process. Mediation also has an impact on costs (court costs) so that the principle of litigating with a simple, fast, and low cost does not materialize.

Furthermore, the development of divorce case mediation in the Religious Courts located in the West Sulawesi region is limited to the Polewali Mandar Religious Courts and the Majene Religious Courts. The source of information found at the Polewali Mandar Religious Court stated that in 2017 talaq's divorce was received by 155 cases, 135 cases were ended. 422 cases of divorce were accepted, 366 cases were ended, related to the mediation report not mentioned in the report on the activities of the Polewali Mandar Religious Court. In 2018 talaq divorce received 175 cases, 160 cases ended. 453 divorce cases were accepted, 427 cases ended and mediation was also not included in the 2018 Polewali Mandar Religious Court activity report. In 2019 talaq divorce received 176 cases, 161 cases ended. 507 cases of divorce were accepted, 473

<sup>37</sup> Chairman of the Sidenreng Rappang Religious Court, "Annual Report of the Sidenreng Rappang Religious Court" (City of Pangkajene, 2020), <http://pa-sidenrengappang.go.id/>.

<sup>38</sup> Chairman of the Pinrang Religious Court, "Annual Report of the Pinrang Religious Court" (Kota Pinrang, 2020), <http://pa-pinrang.go.id/index.php?limitstart=27>.

<sup>39</sup> Chairman of the Enrekang Religious Court, "Annual Report of the Enrekang Religious Court" (Enrekang City, 2020), <https://www.pa-enrekang.com/index.php/transparant/sekretariat/perplan/lentuk-tahunan>.

cases were ended.<sup>40</sup>In 2019 there has been no progress on case mediation in the activity report. Meanwhile, the 2020 report has not yet published the number of cases for divorce talaq and divorce.

Divorce cases at the Majene Religious Court, in 2017 talaq received 44 cases plus the remaining 2 cases in 2016, 41 cases ended. Divorce accepts 131 cases plus the remaining 5 cases from 2016, 128 cases ended, 30 cases mediated and none of the cases succeeded in peace. In 2018, divorce talaq received 45 cases plus the remaining 5 cases in 2017, 48 cases were broken. The remaining cases in 2017 were 7 cases, in 2018 129 cases were divorced, 137 cases were ended, 32 cases were mediated and none of the cases were successfully reconciled. In 2019 divorce Talaq received 55 cases plus the remaining 2 cases in 2018, 57 cases ended. Divorce accepts 150 cases plus the remaining 6 cases in 2018, 155 cases ended, 40 mediated cases, and 4 peaceful cases.<sup>41</sup> In 2020, the progress of the divorce case has not been published, both from the talaq divorce case and the sue divorce case.

Optimizing efforts to provide legal services to the community in all Religious Courts in South Sulawesi and West Sulawesi in enforcing mediation institutions which are run by mediating judges. The mediating judge carries out legal remedies against the justice-seeking community to reconcile the disputing parties. Mediation in all Religious Courts is regulated in article 130 HIR / article 154 Rbg. jo. Perma No. 1 of 2016 concerning Mediation Procedures in Courts.

The legal product of the mediator reports to the examining panel of judges regarding the results of the mediation process that has been carried out with the case husband and wife. If the mediator succeeds in reconciling, the results of the mediation are written in a peace deed. The panel of judges stated in legal considerations, one of which was based on the peace deed agreed and signed by the parties in the case. In one of the verdicts, the panel of judges "punished the applicant/plaintiff and the respondent/defendant to obey the results of the peace agreement that had been reached." Successful mediation without proof of the peace deed of the party presenting the case will withdraw the case that has been submitted at the next trial. Based on Perma No.<sup>42</sup>

There are several types of mediation products, one of which is a successful mediation product, where both husband and wife achieve reconciliation, agree to resolve the problem peacefully and amicably. The peace agreement actualized the peace deed by Perma No. 1 of 2016 Article 27 paragraph 2 or in a divorce case, the party filing for divorce withdraws the case at the next trial. The mediation has succeeded in reaching an agreement, the parties with the assistance of the mediator are obliged to formulate a written agreement in a peace agreement signed by the parties and the mediator. In helping to formulate a peace agreement, the mediator is obliged to ensure that it does not contain provisions that are contrary to law, public order, and also morals, detrimental to the litigant.

The next possibility, the product of partially successful mediation is when two or more cases are filed but not all of them reach an amicable agreement, for example, divorce cases are accumulated with joint assets, a husband and wife agree to share Gono Gini assets are joint assets obtained during the marriage period. peacefully and kinship, but both of them still want to divorce. Also, the product of mediation does not work, if both parties in a case do not reach a peace agreement and want to continue the case. Another type of mediation product is improper mediation if one of the parties is not present at the mediation without justified reasons, involves the rights of the other party, and there are parties who should be subject to law but are not involved in the case.

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<sup>40</sup> Chairperson of the Paliwali Mandar Religious Court, "Annual Report of the Paliwali Mandar Religious Court" (Paliwali City, 2020), <http://pa-polewali.net/index.php/info-peradilan/program-kerja-k-Activity/l-Report-tahunan>.

<sup>41</sup> Chairman of the Majene Religious Court, "Annual Report of the Majene Religious Court" (Majene City, 2020), <https://pa-majene.go.id/informasi-umum/leport-tahunan>.

<sup>42</sup> Chairman of the Supreme Court of the Republic of Indonesia., "Perma RI. No. 1 of 2016 concerning Mediation Procedures in Courts" (Jakarta, 2016), [https://bawas.mahkamahagung.go.id/bawas\\_doc/doc/perma\\_mediasi\\_pengadilan\\_web.pdf](https://bawas.mahkamahagung.go.id/bawas_doc/doc/perma_mediasi_pengadilan_web.pdf).

### Transformation of Maqasid al-Sharia in Mediation Practices in Divorce Cases

The mediator who carries out the mediation can help the parties of a married couple to have a strong character and personality in facing a case.<sup>43</sup> The mediator strengthens the understanding of a married couple regarding the importance of marriage, the consequences after divorce,<sup>44</sup> and a major consideration of the power of mediation is childcare.<sup>45</sup> The mediator conducts mediation in a measured manner, ensuring the benefit, effectiveness, and satisfaction of the parties related to the success of the mediation in achieving peace.<sup>46</sup>

Measurable mediation can focus on the context of enforcing mediation as regulated in Perma No. 1 of 2016. Other dispute resolution processes are similar to the mediation of divorce cases at the Religious Courts. The very basic similarities are the steps that must be passed by the provisions in Perma No. 1 of 2016.

In general, the mediation stages in divorce cases at the Religious Courts are mapped into three stages, namely the preparation stage, the implementation stage, and also the decision-making stage. The stages of mediation are described systematically and clearly by their respective sequences. In the practice of mediation after registering a divorce case at the Religious Court, the parties of the litigant husband and wife come to court after attending the summons legally and properly by the stipulations of the time and place.

Furthermore, the preparatory stage process in mediation is needed for a mediator to early study and deepen the root of the dispute between husband and wife who are consulted in mediation. The next stage is the implementation stage, the first stage of which is to form a forum. Before starting the mediation, both the mediator and the litigant husband and wife form a forum. In the forum that has been formed, the mediator organizes a joint meeting to deliver the preliminary statements of the husband and wife in the case.

At the time of conducting the mediation, the final stage is the decision-making stage where parties work together with the help of a mediator to evaluate options, get trade-offs and offer packages, minimize debates and find a fair basis for shared allocations. In the end, the parties who agreed were successful in making a joint decision. The stage of determining the mediator's decision can also pressure the parties, find formulas to avoid embarrassment, assist the parties in dealing with the power of attorney (if empowered).

The atmosphere of the location or place of mediation is a comfortable, free and pleasant place.<sup>47</sup> Technical readings and the stages of mediation in the Religious Courts are very important to construct priorities for the application of *maqashid syariah*. The *maqashid syariah* perspective on the mechanism of the stages of mediation is still very technical and the material content of divorce mediation is too formal. The very formalistic technical atmosphere of the implementation has made it more difficult and rigid to find a peace agreement. The consideration of the implementation of *maqashid syariah* in the content of mediation material is to try to strengthen the actualization of benefit, to bury the profundity (damage) in the household of married couples who have problems with conflict.

The opinion of al-Ghazali was explained systematically and concretely about Maqashid sharia as the basis of *maslahah*, and also the argument for achieving the goal. Maqashid shariah which is the basis of *maslahat* is trying to uphold the meaning of *syar'i* as the absolute authority of Allah in making laws to maintain religion, soul, mind, descent and property.<sup>48</sup> Thus, everything that can realize the meaning of *syar'i* is called *maslahat*. Al-Ghazali reiterated that the *maslahat* in the *maqashid syariah* which is actualized in its implementation in Islamic law is to take

<sup>43</sup> R Silver, "Practice Note: Divorce Mediation with Challenging Parents," *Conflict Resolution Quarterly*, 2008.

<sup>44</sup> W Donohue, "Interaction Dynamics Predict Successful Negotiation in Divorce Mediation," *Journal of Language and Social Psychology* 35, no. 4 (2016): p. 374–393.

<sup>45</sup> K Bollen, "Money or Children? Power Sources in Divorce Mediation," *Journal of Family Studies* 19, no. 2 (2013): p. 159–173

<sup>46</sup> S Cohen, "Divorce Mediation: An Introduction," *Divorce Therapy*, 2014, <https://doi.org/10.4324/9781315791456>.

<sup>47</sup> AC Garcia, "Locations for Advice-Giving and the Production of Neutrality in Divorce Mediation Sessions," *Conflict Resolution Quarterly*, 2020, <https://doi.org/10.1002/crq.21292>.

<sup>48</sup> Al-Ghazali, *Al-Mustashfa Fi 'Ilm Al-Ushul*, 1st ed. (Beirut: Dar al-Kutub al-Ilmiyah, 1993).

advantage as a source of goodness, rejecting obedience as a source of damage.<sup>49</sup> Therefore, benefit must be in accordance with syar'i, even though it is contrary to human intentions, sometimes human intentions are not based on syar'i but may be based on their desires.<sup>50</sup>

The opinion of Yusuf al-Qardhawi in formulating *maqashid shariah* is the transformation of the goals desired by the texts which contain the meaning of orders, prohibitions, and permits at the same time. *Maqasid shariah* means the purpose of Allah SWT. and also His Messenger in transforming Islamic laws. These Islamic laws can be found in the Koran and hadith which lead to the benefit of mankind.<sup>51</sup> Ibn Qayyim's opinion details the purpose of Islamic law is to manifest the benefit of mankind in the world and the hereafter. In totality, Islamic law contains mercy, justice, benefit, and wisdom.<sup>52</sup>

Furthermore, sharia means an ethical system as well as a value in covering all problems of human life which functions as a consistent and comprehensive life guideline that is implemented in Islamic law. The implementation of sharia in Islamic law is an absolute manifestation to uphold justice and benefit, eliminate prejudice, and reduce difficulties in human affairs. The purpose of Islamic law revealed to humans is the same connotation as the meaning of *maqashid shariah* in preserving all human interests.<sup>53</sup>

The realization of the *maqashid shariah* is that Muslims are obliged to maintain their religion, soul, mind, ancestry, and property. As *maqashid shariah* is generally understood to be the purpose of stipulating and lowering Islamic law to bring about goodness, safety, and happiness, on the other hand, avoiding badness, trouble and damage can threaten human life and existence.

The criticism of divorce through *maqashid shariah*, which is the judge's decision at the Religious Court, actually has the potential to cause the household to suffer disarray and damage, it is also focused on taking care of the children of both parents who are no longer maximally which causes neglected children.<sup>54</sup> The practice of mediation in the Religious Courts through the application of *maqashid shariah* is an action to repair and save a household from a husband and wife on the verge of damage and destruction. The perspective of the *maqashid shariah* that divorce in the Religious Court is not the best option or way to resolve conflicts between husband and wife in the household.

Seeing the reality of divorce cases in the Religious Courts today, it seems as if there are almost no more efforts, it is very difficult to stem and contain the rate of divorce that has increased sharply from year to year. The Supreme Court needs to review the effectiveness and efficiency of the implementation of mediation through Perma No. 1 of 2016 at the Religious Court with consideration for the benefit contained in the *maqashid shariah*. The strength of the application of Perma No. 1 of 2016 has not had a major effect on improving the situation of a married couple who filed their case at the Religious Court. The implementation of Perma No. 1 of 2016 does not yet show the balance of the verdict in divorce cases than the success of mediation in the Religious Courts.

The legal construction that is transformed by the Supreme Court in the Religious Courts, *maqashid shariah* can be a major consideration in improving mediation practice. Changes in law enforcement in the practice of mediation in the Religious Courts mean that judges are no longer given additional duties in carrying out mediation. The mediation must optimally be carried out by the mediator freely and independently, without depending on the Religious Courts. The Supreme Court must be more courageous in establishing a mediation institution for divorce cases

<sup>49</sup> Riza Mulia, "Marital Beslag Outside Divorce Lawsuit in the Maqashid Syari'ah Perspective," Samarah: Journal of Family Law and Islamic Law 4, no. 2 (2020): p. 401.

<sup>50</sup> Said Syarifuddin, "Maslahat as Considerations of Islamic Law in View of Imam Malik," Samarah: Journal of Family Law and Islamic Law 4, no. 1 (2020): 90.

<sup>51</sup> Yusuf Al-Qardhawi, *Dirasah Fiqh Maqashid Al-Shariah; Baina Al-Maqashid Al-Kulliyah Wa Al-Nushus Al-Juziyyah* (Cairo: Dar al-Syuruq, 2006).

<sup>52</sup> Ibn Qayyim, *I'lam Al-Muwaqi'in Rabb Al-Alamin*, 3rd ed. (Beirut: Dar al-Jail, nd).

<sup>53</sup> Asyraf Wajdi Dusuki and Nurdianawati Irwani Abdullah, "Maqasid Al-Shariah, Maslahah, and Corporate Social Responsibility," American Journal of Islamic Social Sciences 24, no. 1 (2007): p. 31.

<sup>54</sup> AR Poladian, "Family Mediation for Divorce and Parental Separation," Foundations for Couples' Therapy: Research for the Real World, 2017, 256–267, <https://doi.org/10.4324/9781315678610-26>.

as a free, independent, and independent institution in preventing the increasing number of divorces.

Regulatory changes in the implementation of the law as an effort to transform *maqashid shariah* in the Religious Courts that every registered case should be that a husband and wife who are about to divorce must have a certificate of unsuccessful mediation from the mediation institution. Thus, the Religious Courts no longer accept divorce cases without a certificate of unsuccessful mediation which serves as a subsidiary condition in registering cases.

This opinion is reinforced by several sources from experience, it can be said that the implementation of mediation should be done before the case is entered or registered at the Religious Court. Experience from several times the mediation of several husband and wife couples who quarreled or conflicts with mediation through non-litigation, before the litigant couple filed a case in the Religious Court and the result succeeded in making a peace agreement. Some married couples who have litigated no longer wish to file divorce cases at the Religious Court have returned to harmony in rebuilding their households. In fact, in several cases, after the mediator reported the results of the mediation being unsuccessful, the case examining judges continued the trial process, starting with a vision or settlement by the panel of judges who managed to reconcile the litigants. The essence is that between mediation and peace efforts carried out by the mediator and the case examining a panel of judges should be the same.

After a husband and wife in a case get advice and advice from the Marriage Advisory, Development and Preservation Agency, it can show an indication that the divorce rate can be slightly suppressed through mediation outside the Court.<sup>55</sup> The experience of mediating divorce cases outside the court can be strengthened when the existence of the Marriage Advisory, Guidance and Preservation Agency while still active, based on data from the Office of Religious Affairs, nearly 50% of married couples who wish to file divorce cases at the Religious Courts can discourage divorce.

#### Revitalization of Bugis and Mandar Customary Institutions in divorce mediation

The Bugis and Mandar peoples have historically been a family group that cannot be separated emotionally because they are tied to a *pangngaderreng* cultural system in South Sulawesi. The two communities were in the same territorial region before the formation of West Sulawesi as the expansion area of the South Sulawesi region on October 5, 2004, through Law no. 26 of 2004. Although separated from regional ties, emotional ties, both physically and physically, are still harmonious and peaceful.

The association of the two societies is bound in a very monumental cultural system, namely the *pangngaderreng* culture. Also, the Bugis and Mandar communities can also be bonded with marriage. The two societies are united with each other because of the same belief in embracing Islam. Returning to the *pangngaderreng* culture, it has five elements that cannot be separated from one another, namely *ade'*, talk, *rapang*, *wari*, and *shara'*.<sup>56</sup> *Pangngaderrengis* a cultural system and a social system that functions as the customary institution or social institution of the Bugis and Mandar peoples. *Pangngaderreng* culture regulates religious, social, cultural, state, and legal norms. *Ade'* can be interpreted as custom, speaking means justice, *rapang* is jurisprudence, *wari* means social layering, and *shara'* means Islamic law.<sup>57</sup>

The Bugis and Mandar people are very loyal and obedient to *ade'* (Bugis) and *ada'* (Mandar) means adat. The obedience and loyalty of the Bugis and Mandar people to adat are due to their deep belief in adat which always protects and preserves himself as a human being with *siri'*. *Siri'* in essence is honor, dignity, dignity for humans. If someone does not have *siri'* in him,

<sup>55</sup> M De Jong, "A Pragmatic Look at Mediation as an Alternative to Divorce Litigation," *Tydskrif Vir Die Suid-Afrikaanse Reg*, no. 3 (2010): p.515-531. <https://www.scopus.com/inward/record.uri?partnerID=HzOxMe3b&scp=79959369736&origin=inward>.

<sup>56</sup> Nurmanigsih Nawawi, "Assimilation of Lontara Pangadereng and Islamic Shari'at: Behavioral Patterns of the Bugis-Wajo Society," *Al-Tahrir: Journal of Islamic Thought* 15, no. 1 (2015): p. 25.

<sup>57</sup> Rahmatunnair, "Contextualization of Pangngadereng in the Enforcement of Islamic Shariah in Buginese Bone Community," *Al-Qalam* 17, no. 1 (2011): p. 94.



he is no longer excited to live, people in Bugis and Mandar societies prefer to die rather than have no *siri'* in him.

*Siri'* in the expression of the Bugis society is "*Siri' emmi ri onroang ri lino, utetong ri ade'e, najagainnami siri'ta, naia siri'e sunge naranreng, na life roughly*",<sup>58</sup> While *siri'* in the Mandar community expression is "what is *siri'* in *tu'u ita di'e rupa or mala tuo dini dilino*, using *de'i is dipiara toi siri'*, *dotai tau mate anna dadzi tia andan dian siri'*" This means that only with *siri'* humans can survive in the world, because by upholding customs, maintaining *siri'*, because with *siri'* death is at stake, and life is the ransom.

The connection with the enforcement of *siri'* in the Bugis and Mandar communities seems to have experienced a shift in values. The shift in the value of *siri'* itself is marked by a very interesting fact about divorce cases in the Bugis and Mandar communities, which is that divorce cases always dominate rather than divorce talaq in all Religious Courts. Acceleration of suicidal divorce cases is very urgent in the Bugis and Mandar communities. Compared to divorce talaq, family resilience began to be very fragile in Bugis and Mandar societies with the dominance of divorce in the Religious Courts. The dominance of a legal divorce which is the triggering factor is domestic violence, economy, and polygamy. Therefore, The Bugis and Mandar people seem to gradually no longer respect *siri'*, because they are not considered a disgrace' if they go to the Religious Court to ask for a divorce. It should be for the Bugis and Mandar people that it is a disgrace with divorce, let alone committing domestic violence, the disgrace of not being able to meet the economic needs of their families, and also a disgrace 'because of polygamy. A person disobeying or disregarding *siri'* is a disgrace'.

The fragility of family resilience in the Bugis and Mandar communities is also a triggering factor, namely the crisis of figures from family members who are charismatic as role models, and the crisis of optimizing the role of traditional institutions that act as mediators. Cultural and social changes in the Bugis and Mandar communities, sometimes on the part of the parents themselves, who usually play a role in separating the marriages of their children. For families who are experiencing conflict, it seems as if the Religious Court is the last place in conflict resolution. The irony is that it turns out that the Religious Courts are not a place that is capable of repairing the rifts in the households of husband and wife who experience conflict. Data from all divorce cases received at the Religious Courts are generally decided by the judge.

The strength in carrying out the value of *ade'* in the Bugis and the Mandar community' is to maintain a lasting and sustainable marriage, the implementation of the value of life *sirondo-rondo'i* which means cooperation, helping each other in doing a job, both heavy and light. The next value that is related to the sustainability of marriage is *siamasei* and *sianuang pa'mai* that in building a household, the husband and wife must love and love each other. The Bugis and Mandar people in fostering a household are also known as *sibaliparri*, husband and wife must maintain household harmony and have a mutual sense of responsibility towards their families, both when joy and sorrow must be faced together, the same fate and co-existence.

Marriage advice and advice are provisions in living the household dish.<sup>59</sup> The revitalization of customary institutions in the Bugis and Mandar communities such as *sirondo-rondo'i*, *siamasei* and *sianuang pa'mai*, and *sibaliparri* is the basis for certified judges and mediators to carry out mediation in the Religious Courts and outside the courts. Optimizing customary institutions in the Bugis and Mandar communities can be a very strong defense against the increasing divorce rate in the Religious Courts.

Also, reviving the traditional institutions of the *pangngaderreng* cultural system is *shara'* which is the implementation of Islamic law in the Bugis and Mandar communities. The enforcement of Islamic law in Bugis society is carried out by someone who has the title *petta kali'* and in Mandar society it is known as *puang kali'*. People who are appointed to be *petta kali'* in Bugis society and *puang kali'* in Mandar society are charismatic, scholars who have a deep

<sup>58</sup> Fikri, Rahmawati, and Zulfah, "Idealism and Realism of Islamic Law in Pangngaderreng Culture of the Modern Bugis Bone," IOP Conference Series: Earth and Environmental Science 175, no. 1 (2018): p. 2, <https://doi.org/10.1088/1755-1315/175/1/012137>.

<sup>59</sup> A Garcia, "Advice-Giving and Disputant Empowerment in Divorce Mediation Sessions," Language and Dialogue 2, no. 3 (2012):p. 398–426, <https://doi.org/10.1075/ld.2.3.05gar>.

knowledge of Islam, master jurisprudence and Islamic law. The function of *petta kali'* or *puang kali'* is to give advice or marriage advice for married couples who are about to divorce.

The revitalization of *petta kali'* and *puang kali'* in Bugis and Mandar communities is that every married couple who is about to divorce, should first ask for advice or marriage advice. Divorce cases are no longer registered with the Religious Courts, before there are marital advice and advice from *petta kali'* and *puang kali'*.

### Conclusion

Referring to the divorce case data, it is an extra ordinal matter case in the Religious Courts throughout South Sulawesi and West Sulawesi. The reality that must be given full attention is that currently, divorce cases from divorce lawsuits are increasing in number compared to talaq divorces in the Religious Courts, so there is a concern about family resilience in the Bugis and Mandar communities. Divorce cases are increasing in number which can affect the mediation products in the Religious Courts, which causes the Supreme Court to apply Perma No. 1 of 2016. The dynamics of some of the products of mediation practices in the Religious Courts are successful mediations carried out by a mediator with a husband and wife couple who are having a case to reach a peace agreement as outlined in a peace deed. Another product of mediation is that mediation is partially successful and mediation is partially unsuccessful if the litigating party of the husband and wife submits two main points of the case so that some have succeeded in reaching a peace agreement and some are not successful in achieving reconciliation. The product of mediation is unsuccessful or fails because the litigant husband and wife have committed to divorce so that the mediator finds it difficult to reconcile to achieve reconciliation of the two litigant parties.

The process of practicing mediation in the Religious Courts is very urgent to implement *maqashid syariah* as the main consideration by judges at the Religious Courts in deciding divorce cases. The main consideration for the application of *maqashid syariah* has the potential to repair and save a household from a husband and wife on the verge of damage and destruction. The strong assumption of the application of *maqashid syariah* is that divorce in the Religious Court is not the best option or way to resolve conflicts between husband and wife in the household. The Supreme Court needs to review the practice of mediation through Perma No. 1 of 2016 by placing the benefits contained in the *maqashid syariah* for the practice of mediation in the Religious Courts.

Revitalizing traditional institutions such as upholding the value of *ade'in* in the Bugis and existing in the Mandar community can be a strength in family resilience in maintaining the marriage. Bringing the customs of the Bugis community and society through social culture in the value of life *sirondo-rondo* which means cooperation, *siamasei* and *sianuang pa'mai* in fostering a household, husband and wife must love and love each other, and *sibaliparri* that husband and wife must take care of each other domestic harmony and mutual responsibility towards their families, both when joys and sorrows must be faced together, of the same fate and responsibility. Also, reviving the customary institutions of the *pangngaderreng* cultural system is *shara'* which is interpreted as an institution for implementing Islamic law in the Bugis and Mandar communities. The enforcement of Islamic law in Bugis society is carried out by someone who has the title *petta kali'* and in Mandar society known as *puang kali'* is a charismatic person, a cleric who has a deep knowledge of Islam, masters jurisprudence and Islamic law. The function of *petta kali'* or *puang kali'* is to give advice or marriage advice for husband and wife who want to divorce and their marriage will be long-lasting, lasting, and sustainable.

### References

- Abbas, Syahrizal. *Mediasi Dalam Perspektif Hukum Syari'ah, Hukum Adat Dan Hukum Nasional*. Jakarta: Kencana Prenada Media Group, 2009.
- Al\_Syatibi, Abu Ishaq. *Al-Muwafaqat Fi Ushul Al-Ahkam*. 2nd ed. Beirut: al-Maktabah al-Taufiqiyah, 2004.

Samarah: Jurnal Hukum Keluarga dan Hukum Islam

- Al-Gazaliy. *Al-Mustashfa Fi 'Ilm Al-Ushul*. 1st ed. Beirut: Dar al-Kutub al-Ilmiyah, 1993.
- Al-Qardhawi, Yusuf. *Dirasah Fi Fiqh Maqashid Al-Shariah; Baina Al-Maqashid Al-Kulliyah Wa Al-Nushus Al-Juziyyah*. Kairo: Dar al-Syuruq, 2006.
- Al-Salam, Izz al-Din Abd. *Qawaid Al-Ahkam Fi Masalih Al-Anam*. Beirut: Dar al\_Ma'rifah, n.d.
- Bailey, J.D. "Assessing Empowerment in Divorce Mediation." *Negotiation Journal* 25, no. 3 (2009): 327–36. <https://doi.org/10.1111/j.1571-9979.2009.00229.x>.
- Beck, C. "A Critical Reappraisal of Divorce Mediation Research and Policy." *Psychology, Public Policy, and Law* 6, no. 4 (2000): 989–1056. <https://doi.org/10.1037/1076-8971.6.4.989>.
- . "Defining a Threshold for Client Competence to Participate in Divorce Mediation." *Psychology, Public Policy, and Law*, 2006. <https://doi.org/10.1037/1076-8971.12.1.1>.
- Beck, E. "Improving Communication in Divorce Mediation." *Divorce Mediation: Perspectives on the Field*, 2014. <https://doi.org/10.4324/9781315860077>.
- Bollen, K. "Money or Children? Power Sources in Divorce Mediation." *Journal of Family Studies* 19, no. 2 (2013): 159–73. <https://doi.org/10.5172/jfs.2013.19.2.159>.
- Cohen, S. "Divorce Mediation: An Introduction." *Divorce Therapy*, 2014. <https://doi.org/10.4324/9781315791456>.
- Dingwall, R. "Divorce Mediation: Should We Change Our Mind?" *Journal of Social Welfare and Family Law* 32, no. 2 (2010): 107–17. <https://doi.org/10.1080/09649069.2010.506307>.
- Djawas, Mursyid, and Sri Astuti Abdul Samad. "Conflict, Traditional, and Family Resistance: The Pattern of Dispute Resolution in Acehese Community According to Islamic Law." *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 4, no. 1 (2020): 65–84.
- Donohue, W. "Interaction Dynamics Predict Successful Negotiation in Divorce Mediation." *Journal of Language and Social Psychology* 35, no. 4 (2016): 374–93. <https://doi.org/10.1177/0261927X15603090>.
- Dusuki, Asyraf Wajdi, and Nurdianawati Irwani Abdullah. "Maqasid Al-Shariah, Masalah, and Corporate Social Responsibility." *American Journal of Islamic Social Sciences* 24, no. 1 (2007): 31.
- Ellis, D. "Safety, Equity, and Human Agency; Contributions of Divorce Mediation." *Violence Against Woman* 6, no. 9 (2000): 1012–27. <https://doi.org/10.1177/10778010022182254>.
- Emery, Robert E, David Sbarra, and Tara Grover. "Divorce Mediation: Research and Reflections." *Family Court Review* 43, no. 1 (2005): 22–37.
- Enrekang, Ketua Pengadilan Agama. "Laporan Tahunan Pengadilan Agama Enrekang." Kota Enrekang, 2020. <https://www.pa-enrekang.com/index.php/transparansi/sekretariat/perencanaan/laporan-tahunan>.
- Fikri, Rahmawati, and Zulfah. "Idealism and Realism of Islamic Law in Pangngaderreng Culture of the Modern Bugis Bone." *IOP Conference Series: Earth and Environmental Science* 175, no. 1 (2018): 2. <https://doi.org/10.1088/1755-1315/175/1/012137>.
- Garcia, A. "Advice-Giving and Disputant Empowerment in Divorce Mediation Sessions." *Language and Dialogue* 2, no. 3 (2012): 398–426. <https://doi.org/10.1075/ld.2.3.05gar>.

Samarah: Jurnal Hukum Keluarga dan Hukum Islam

- Garcia, A C. "Locations for Advice-Giving and the Production of Neutrality in Divorce Mediation Sessions." *Conflict Resolution Quarterly*, 2020. <https://doi.org/10.1002/crq.21292>.
- Hahn, R A. "Divorce Mediation: Research and Implications for Family and Couples Counseling." *The Family Journal*, 2000. <https://doi.org/10.1177/1066480700082009>.
- Halim, Wahyuddin. "Islamization or Arabization? The Arab Cultural Influence on the South Sulawesi Muslim Community since the Islamization in the 17th Century." *Suvannabhumi* 10, no. 1 (2018): 42.
- Holtzworth-Munroe, A. "Controversies in Divorce Mediation and Intimate Partner Violence: A Focus on the Children." *Aggression and Violent Behavior*, 2011. <https://doi.org/10.1016/j.avb.2011.04.009>.
- Huang, P. "Divorce Law Practices and the Origins, Myths, and Realities of Judicial 'mediation' in China." *Modern China* 31, no. 2 (2005): 151–203. <https://doi.org/10.1177/0097700405274585>.
- Indonesia, Direktorat Jenderal Badan Peradilan Agama Republik. Laporan Tahunan Badan Peradilan Agama (2020).
- Jong, M De. "A Pragmatic Look at Mediation as an Alternative to Divorce Litigation." *Tydskrif Vir Die Suid-Afrikaanse Reg*, no. 3 (2010): 515–31. <https://www.scopus.com/inward/record.uri?partnerID=HzOxMe3b&scp=79959369736&origin=inward>.
- Kaganas, F. "Domestic Violence and Divorce Mediation." *Journal of Social Welfare and Family Law* 16, no. 3 (1994): 265–78. <https://doi.org/10.1080/09649069408413612>.
- Ketua Pengadilan Agama Parepare. "Laporan Tahunan Pengadilan Agama Parepare." Kota Parepare, 2020. <http://pa-parepare.go.id/home/laporan-tahunan/>.
- Koopman, E. "The Present and Future Role of Higher Education in Divorce Mediation: Problems and Promise in Teaching, Research, and Service." *Divorce Mediation: Perspectives on the Field*, 2014. <https://doi.org/10.4324/9781315860077>.
- Kraft, A. "Childhood Parental Divorce and Cortisol in Young Adulthood: Evidence for Mediation by Family Income." *Psychoneuroendocrinology* 34, no. 9 (2009): 1363–69. <https://doi.org/10.1016/j.psneuen.2009.04.008>.
- Majene, Ketua Pengadilan Agama. "Laporan Tahunan Pengadilan Agama Majene." Kota Majene, 2020. <https://pa-majene.go.id/informasi-umum/laporan-tahunan>.
- Mandar, Ketua Pengadilan Agama Poliwali. "Laporan Tahunan Pengadilan Agama Poliwali Mandar." Kota Poliwali, 2020. <http://pa-polewali.net/index.php/info-peradilan/program-kerja-kegiatan/laporan-tahunan>.
- Margulies, S. "Litigation, Mediation and the Psychology of Divorce." *Journal of Psychiatry and Law*, 1992. <https://doi.org/10.1177/009318539202000405>.
- Molgora, S. "Divorce and Coparenting: A Qualitative Study on Family Mediation in Italy." *Journal of Divorce and Remarriage* 55, no. 4 (2014): 300–314. <https://doi.org/10.1080/10502556.2014.901854>.
- Mulia, Riza. "Marital Beslag Outside Divorce Lawsuit in the Maqashid Syari'ah Perspective." *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 4, no. 2 (2020): 401.

## Samarah: Jurnal Hukum Keluarga dan Hukum Islam

- Nawawi, Nurnanigsih. "Asimilasi Lontara Pangadereng Dan Syari'at Islam: Pola Perilaku Masyarakat Bugis-Wajo." *Al-Tahrir: Jurnal Pemikiran Islam* 15, no. 1 (2015): 25.
- Neville, W. "Reflections on the Growth and Significance of Divorce Mediation." *Divorce Mediation: Perspectives on the Field*, 2014. <https://doi.org/10.4324/9781315860077>.
- Nurman, Said. *Religion and Cultural Identity Among the Bugis*. Makassar: Faculty of Islamic Theology of the Alauddin State Institute of Islamic Studies at Makassar, Indonesia, 2004.
- Pickar, D. "Intermittent Evaluative Mediation with Enduring, Post-Divorce Conflict." *Journal of Child Custody* 8, no. 3 (2011): 144–45. <https://doi.org/10.1080/15379418.2011.594722>.
- Pinrang, Ketua Pengadilan Agama. "Laporan Tahunan Pengadilan Agama Pinrang." Kota Pinrang, 2020. <http://pa-pinrang.go.id/index.php?limitstart=27>.
- Poladian, A R. "Family Mediation for Divorce and Parental Separation." *Foundations for Couples' Therapy: Research for the Real World*, 2017, 256–67. <https://doi.org/10.4324/9781315678610-26>.
- Przybyla-Basista, H. "The Influence of Spouses' Resistance on Their Decision to Enter into Divorce Mediation." *Journal of Divorce and Remarriage* 48, no. 3 (2008): 67–89. [https://doi.org/10.1300/J087v48n03\\_05](https://doi.org/10.1300/J087v48n03_05).
- Qardhawi, Abd al-Rahman Yusuf Abd. *Nazhariyah Maqashid Al-Syari'ah Baina Syekh Al-Islam Ibn Taimiyah Wa Jumhur Ushliyyin Dirasah Muqaranah Min Al-Qarn Al-Khamis Ila Al-Tsamin Al-Hijri*. Kairo: Kulliyah Dar al-Ulum, n.d.
- Qayyim, Ibn. *I'lam Al-Muwaqi'in Rabb Al-Alamin*. 3rd ed. Beirut: Dar al-Jail, n.d.
- Rahmatunnair, Rahmatunnair. "Contextualization of Pangadereng in the Enforcement of Islamic Shariah in Buginese Bone Community." *Al-Qalam* 17, no. 1 (2011): 94.
- Rappang, Ketua Pengadilan Agama Sidenreng. "Laporan Tahunan Pengadilan Agama Sidenreng Rappang." Kota Pangkajene, 2020. <http://pa-sidenrengappang.go.id/>.
- RI., Ketua Mahkamah Agung. "Perma RI. No. 1 Tahun 2016 Tentang Prosedur Mediasi Di Pengadilan." Jakarta, 2016. [https://bawas.mahkamahagung.go.id/bawas\\_doc/doc/perma\\_mediasi\\_pengadilan\\_web.pdf](https://bawas.mahkamahagung.go.id/bawas_doc/doc/perma_mediasi_pengadilan_web.pdf).
- Sbarra, D A. "In the Presence of Grief: The Role of Cognitive-Emotional Adaptation in Contemporary Divorce Mediation." *Handbook of Divorce and Relationship Dissolution*, 2013. <https://doi.org/10.4324/9781315820880-40>.
- Schepard, A. "An Introduction to the Model Standards of Practice for Family and Divorce Mediation." *Family Law Quarterly* 35, no. 1 (2001): 1–24. <https://www.scopus.com/inward/record.uri?partnerID=HzOxMe3b&scp=65449139388&origin=inward>.
- Shaw, L. "Divorce Mediation Outcome Research: A Meta-Analysis." *Conflict Resolution Quarterly* 27, no. 4 (2010): 447–67. <https://doi.org/10.1002/crq.20006>.
- Silver, R. "Practice Note: Divorce Mediation with Challenging Parents." *Conflict Resolution Quarterly*, 2008. <https://doi.org/10.1002/crq.220>.
- Syarifuddin, Said. "Maslahat as Considerations of Islamic Law in View Imam Malik." *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 4, no. 1 (2020): 90.

Samarah: Jurnal Hukum Keluarga dan Hukum Islam

- Taylor, R. "Use of Change Theory in the Context of the Divorce Mediation Session." *Journal of Divorce and Remarriage* 40, no. 1 (2004): 87–92. [https://doi.org/10.1300/J087v40n01\\_06](https://doi.org/10.1300/J087v40n01_06).
- Twaite, J A. "Divorce Mediation: Promises, Criticisms, Achievements, and Current Challenges." *Journal of Psychiatry and Law*, 1998. <https://doi.org/10.1177/009318539802600304>.
- Weaver, J. "Mediation and Moderation of Divorce Effects on Children's Behavior Problems." *Journal of Family Psychology* 29, no. 1 (2015): 39–48. <https://doi.org/10.1037/fam0000043>.
- Worley, S. "The Effect of Cooperation on Egocentrism in Divorce Mediation: A Simulation Study." *Divorce Mediation: Perspectives on the Field*, 2014. <https://doi.org/10.4324/9781315860077>.
- Yunus, Abd. "The Acculturation of Islam and Local Culture in Bugis Wedding Tradition: A Historical Perspective," 2017, 4.

**2. Bukti konfirmasi review dan hasil review  
A dan B(25 Maret 2023)**



FIKRI 2010017401 &lt;fikri@iainpare.ac.id&gt;

**[SJHK] Editor Decision**

7 pesan

Nadhilah Filzah &lt;jurnal@ar-raniry.ac.id&gt;

25 Maret 2023 pukul 16.21

Kepada: Salam Fikri Fikri &lt;fikri@iainpare.ac.id&gt;

Cc: Muhammad Ali Rusdi Bedong &lt;alirusdi@iainpare.ac.id&gt;, Salman Abdul Muthalib &lt;salman@ar-raniry.ac.id&gt;, Mahdalena Nasrun &lt;mahdalena.nasrun@ar-raniry.ac.id&gt;

Dear

Salam Fikri Fikri &lt;fikri@iainpare.ac.id&gt;

Muhammad Ali Rusdi Bedong &lt;alirusdi@iainpare.ac.id&gt;

Salman Abdul Muthalib &lt;salman@ar-raniry.ac.id&gt;

Mahdalena Nasrun &lt;mahdalena.nasrun@ar-raniry.ac.id&gt;

Assalamu alaikum wr.wb.

We have reached a decision regarding your submission to Samarah: Jurnal Hukum Keluarga dan Hukum Islam, "Transformation of Maqāṣid Shari'ah in Divorce Mediation in Religious Courts: Revitalization of the Bugis-Mandar Customs, Indonesia".

Our decision is to: revision required

Please ensure that your article is corrected according to both of 2 Reviewers

Please make sure that the similarity check of your article is no more than 20%

Please make sure that your article uses a new template of Samarah below:  
<https://drive.google.com/file/d/1kqJblnS7rGOjynFxDtXxSeriek0OVvZ/view>

Please ensure your article is corrected within a week.

Thank you so much for your quick response.

Wassalamu alaikum wr.wb.

Best Regard,

Nadhilah Filzah

Universitas Islam Negeri Ar-Raniry Banda Aceh

[nadilafilzah1@gmail.com](mailto:nadilafilzah1@gmail.com)-----  
Reviewer A:

Title

Title reflects the essence of the content of the article (content, method, novelty)

:

its content, methods and findings are in accordance with the focus of the journal Samarah on family law and Islamic law. the editor suggested the title, "traditional" be replaced with "custom" so that the local values that exist in the Bugis and Mandar ethnicities are more visible.

Abstract

Abstract contains problem of research, method, and result

:



in the abstract of theory and its approach there are too many choose just one or two so that it is more focused and sharper in the analysis.

#### Originality

The originality of the subject matter, and the manuscript would be of interest to the the scholar of Islamic countries in general and specifically in Indonesia

:

Divorce in Indonesia shows a number that continues to increase. This article's offer by revitalizing Customs (adat) in the Bugis and Mandar communities to reduce the divorce rate has become something that has attracted both scholars and researchers in the international and national world.

#### The Depth of Literature

Whether the article draws on an appropriate range and depth of literature (if not please indicate which sources of literature should be included by the author in future)

:

1. literature is good enough,
2. although articles can still be added to Islamic law journals in Indonesia such as Ahkam (Jakarta), Ihkam (Madura), Ijtihad (Salatiga), Yuris (Batu Sangkar) or Mazahib (Samarinda).

#### Finding Presentation

Whether the findings presented are subjected to suitable analysis and sound conclusions drawn

:

discussion, analysis and research findings are aligned and sufficient enough as an international article.

Implications for understanding the study of Islamic family law and Islamic law in Islamic in Islamic countries in general and specifically in Indonesia

:

This article once again wants to show that there is integration between the three legal systems in Indonesia, namely Islamic law, customary law and national law. in other terms this is a form of legal pluralism in divorce cases or in Islamic family law which shows dynamics and development. so that this integration will realize the objectives of Islamic law (maqashid al-Syariah) as the core of this article.

#### Technical writing

Articles must be in accordance with the surrounding style and journal template

:

1. The footnotes should follow the samarah format (full name of the author, and so on??).
2. The research method at the end needs to be emphasized
3. References need to be added to Scopus journals specifically for Islamic law.

Additional comment for the author:

can be recommended for publication in future editions.

Is the article qualified for publication?

Please indicate your suggestion whether this article is qualified for Samarah

:

Minor Revision

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-----  
Reviewer B:

Title

Title reflects the essence of the content of the article (content, method, novelty)

:  
the title containing the keywords, maqasid al-Shariah, divorce mediation, religious courts and customary law is a guarantee that this article discusses issues of Islamic family law in Indonesia that in other Islamic world, therefore these keywords are proof that this article is in accordance with the focus of the samarah journal, namely Islamic family law.

Abstract

Abstract contains problem of research, method, and result

:  
on research findings: "sibali parri, siamasei and so on are Mandar traditions, values or customs in Bugis should also be mentioned???"

Originality

The originality of the subject matter, and the manuscript would be of interest to the the scholar of Islamic countries in general and specifically in Indonesia

:  
based on data at the religious court, then customary values in the Bugis and Mandar ethnic groups as the majority of South Sulawesi, and West Sulawesi, besides the Makassar tribe. plus the approach and theory of maqashi al-Shariah are some of the aspects that make this article original, so you find findings that are different from the others.

The Depth of Literature

Whether the article draws on an appropriate range and depth of literature (if not please indicate which sources of literature should be included by the author in future)

:  
reference is good

Finding Presentation

Whether the findings presented are subjected to suitable analysis and sound conclusions drawn

:  
The theory used as an analytical tool successfully displays the research findings in this study. customary values in the Bugis and Mandar ethnic groups as the main argument in achieving maqashid al-shariah, among others, is to reduce the divorce rate in the South and West Sulawesi regions.

Implications for understanding the study of Islamic family law and Islamic law in Islamic in Islamic countries in general and specifically in Indonesia

:  
This study succeeded in explaining the function of law for society, namely as a tool to create peace and order according to the approach used (sociology and legal anthropology). while the main theory used is maqasid al-shariah which is a major concept in Islamic law. So this study is interesting in combining two schools of law, namely national law and Islamic law, while the object of study is adat in society.

## Technical writing

Articles must be in accordance with the surrounding style and journal template

:

1. at the beginning of the writing format should be adjusted to the samarah format.
2. fix sentences or writings that need to be neutralized (follow the samarah journal template).
3. please correct the language (in Mandar, page 5), in Bugis, (page 18). see article manuscript.
4. conclusion is too long, please shorten.

Additional comment for the author:

can be published, see some notes in the text of the article.

Is the article qualified for publication?

Please indicate your suggestion whether this article is qualified for Samarah

:

Minor Revision

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Samarah: Jurnal Hukum Keluarga dan Hukum Islam  
<http://jurnal.ar-raniry.ac.id/index.php/samarah>

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**FIKRI 2010017401** <fikri@iainpare.ac.id>  
Kepada: FIKRI 2010017401 <fikri@iainpare.ac.id>

25 Maret 2023 pukul 18.03

[Kutipan teks disembunyikan]

---

**FIKRI 2010017401** <fikri@iainpare.ac.id>  
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26 Maret 2023 pukul 06.58

----- Forwarded message -----

Dari: **Nadhilah Filzah** <jurnal@ar-raniry.ac.id>

Date: Sab, 25 Mar 2023 16.21

Subject: [SJHK] Editor Decision

To: Salam Fikri Fikri <fikri@iainpare.ac.id>

Cc: Muhammad Ali Rusdi Bedong <alirusdi@iainpare.ac.id>, Salman Abdul Muthalib <salman@ar-raniry.ac.id>, Mahdalena Nasrun <mahdalena.nasrun@ar-raniry.ac.id>

[Kutipan teks disembunyikan]

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**FIKRI 2010017401** <fikri@iainpare.ac.id>  
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28 Maret 2023 pukul 21.41

[Kutipan teks disembunyikan]

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30 Maret 2023 pukul 09.11

[Kutipan teks disembunyikan]

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30 Maret 2023 pukul 09.14

[Kutipan teks disembunyikan]

16/07/24, 13.52

Email IAIN PAREPARE - [SJHK] Editor Decision

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**FIKRI 2010017401** <fikri@iainpare.ac.id>  
Kepada: fikri@stainparepare.ac.id

30 Maret 2023 pukul 09.27

----- Forwarded message -----

Dari: **Nadhilah Filzah** <jurnal@ar-raniry.ac.id>

Date: Sab, 25 Mar 2023 16.21

Subject: [SJHK] Editor Decision

To: Salam Fikri Fikri <fikri@iainpare.ac.id>

Cc: Muhammad Ali Rusdi Bedong <alirusdi@iainpare.ac.id>, Salman Abdul Muthalib <salman@ar-raniry.ac.id>, Mahdalena Nasrun <mahdalena.nasrun@ar-raniry.ac.id>

[Kutipan teks disembunyikan]

## **Transformation of *Maqashid Shariah* in Divorce Mediation in Religious Courts: Revitalization of Bugis-Mandar Traditional Institutions**

### **Abstract**

The focus of this study discusses the dynamics of legal product of divorce mediation practices in Religious Courts; the transformation of *maqashid shariah* in practice of mediation in divorce cases, and revitalization of *pangngaderreng* culture in practice of divorce mediation in Bugis and Mandar communities. The research methodology is descriptive qualitative field research, holistic, historical, and socio-anthropological approaches, *maqashid shariah* theory analysis, social and legal change theory, and social institutions theory. The results of this study indicate that divorce case is an extraordinary matter case in Religious Courts, dynamics of mediation practice in Religious Courts have successful mediation for a written peace agreement in peace deed, other mediation products are partially successful mediation and partially unsuccessful mediation, mediation products are not successful is that husband and wife are committed to divorce; *Maqashid shariah* transformation can be a major consideration by judges in mediation practice to save households on the verge of collapse, so that *maqashid shariah* is very urgent to place in Perma No.1 of 2016, and revitalization of Bugis-Mandar traditional institutions is an effort to revive the value of life *sirondo-rondo*, *siamasei*, *sianuang pa'mai*, and *sibaliparri*, also animate *shara'* which is performed *petta kali'* or *puang kali'*.

**Keywords:** *Maqashid Shariah, divorce mediation, Religious Courts, revitalization of traditional institutions, Bugis-Mandar*

## **Transformasi *Maqashid Shariah* dalam Mediasi Perceraian di Pengadilan Agama: Revitalisasi Lembaga Adat Bugis-Mandar**

Fikri

M. Dalip

Muhammad Ali Rusdi Bedong

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Sekolah Tinggi Agama Islam Negeri Majene

**Samarah:** Jurnal Hukum Keluarga dan Hukum Islam  
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### **Abstrak**

Fokus penelitian ini membahas tentang dinamika produk hukum praktik mediasi perceraian di Pengadilan Agama; transformasi *maqashid syari'ah* dalam praktik mediasi dalam kasus perceraian, dan revitalisasi budaya *pangngaderreng* dalam praktik mediasi perceraian di masyarakat Bugis dan Mandar. Metodologi penelitian yang digunakan adalah penelitian lapangan kualitatif deskriptif, pendekatan holistik, historis, dan sosio-antropologis, analisis teori *maqashid syari'ah*, teori perubahan sosial dan hukum, dan teori kelembagaan sosial. Hasil penelitian ini menunjukkan bahwa perkara perceraian merupakan perkara perkara luar biasa di Pengadilan Agama, dinamika praktek mediasi di Pengadilan Agama telah berhasil dalam mediasi perjanjian damai tertulis dalam akta damai, produk mediasi lainnya adalah mediasi yang berhasil sebagian dan mediasi yang tidak berhasil sebagian, mediasi tidak berhasil. produk yang tidak berhasil adalah suami dan istri yang berkomitmen untuk bercerai; Transformasi *maqashid syari'ah* dapat menjadi pertimbangan utama hakim dalam praktek mediasi untuk menyelamatkan rumah tangga yang di ambang kehancuran, sehingga *maqashid syari'ah* sangat mendesak untuk ditempatkan dalam Perma No.1 tahun 2016, dan revitalisasi kelembagaan adat Bugis-Mandar merupakan salah satu upaya. menghidupkan kembali nilai-nilai kehidupan *sirondo-rondo*, *siamasei*, *sianuang pa'mai*, dan *sibalipparri*, serta menghidupkan *shara'* yang dilakukan *petta kali'* atau *puang kali'*.

**Keywords:** *Maqashid Syari'ah, mediasi perceraian, Pengadilan Agama, revitalisasi lembaga adat, Bugis-Mandar*

### **Introduction**

The process of implementing mediation in fortifying family resilience from conflict has long been the subject of discussion as explained by Margulies that mediation is considered an effective effort to resolve husband-wife conflicts that intend to divorce.<sup>1</sup> On the other hand, violence that occurs in the family and also in mediation is still difficult to

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<sup>1</sup> S Margulies, "Litigation, Mediation and the Psychology of Divorce," Journal of Psychiatry and Law, 1992.  
<http://jurnal.arraniry.ac.id/index.php/samarah>

find theoretical and practical concepts.<sup>2</sup>

The function of the mediator is to reconcile the two sides of the disputing family, helping to carry out active communication. In addition, the mediator also encourages harmony and also emphasizes the parties in conflict to consider the bad consequences of divorce.<sup>3</sup> It is important to strengthen the concept of mediation in resolving family conflicts and childcare.<sup>4</sup> Mediation is conducted by a mediator who acts as a mediator for the disputing parties and plays an active role in resolving the conflict by reaching a peace agreement from the parties.

Mediation is part of the legal system that can resolve family conflicts quickly, easily, and cheaply as long as the parties cooperate.<sup>5</sup> In addition to being able to be carried out by judges, psychologists, and other professionals who have the competence to carry out mediation can understand and address the root causes of problems in family conflicts.<sup>6</sup> According to RA Hahn explained that from several studies of the divorce mediation process carried out there were beneficial and beneficial results for the efficiency and satisfaction of the parties.<sup>7</sup> This opinion is supported by D. Ellis that divorce mediation makes a huge contribution towards the outcome of reconciliation between husband and wife.<sup>8</sup>

In line with the study conducted by Taylor R., suggesting that the mediator's demands in carrying out his role as the mediator can help to build confidence in the parties. Mediators are required to designing interpersonal communication between both husband and wife in conflict so that each party can introspect themselves towards better interaction changes.<sup>9</sup> The real emphasis of mediation is on reconciling the husband and wife who insisted on divorce.<sup>10</sup> Legal practitioners and academics

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<sup>2</sup> F Kaganas, "Domestic Violence and Divorce Mediation," *Journal of Social Welfare and Family Law* 16, no. 3 (1994): p. 265–278.

<sup>3</sup> A Shepard, "An Introduction to the Model Standards of Practice for Family and Divorce Mediation," *Family Law Quarterly* 35, no. 1 (2001): p. 2-3.

<sup>4</sup> J Weaver, "Mediation and Moderation of Divorce Effects on Children's Behavior Problems," *Journal of Family Psychology* 29, no. 1 (2015): p. 39–48.

<sup>5</sup> JA Twaite, "Divorce Mediation: Promises, Criticisms, Achievements, and Current Challenges," *Journal of Psychiatry and Law*, 1998.

<sup>6</sup> C Beck, "A Critical Reappraisal of Divorce Mediation Research and Policy," *Psychology, Public Policy, and Law* 6, No. 4 (2000): p. 991.

<sup>7</sup> RA Hahn, "Divorce Mediation: Research and Implications for Family and Couples Counseling," *The Family Journal*, 2000.

<sup>8</sup> D Ellis, "Safety, Equity, and Human Agency; Contributions of Divorce Mediation," *Violence Against Woman* 6, no. 9 (2000): p. 1012–1027.

<sup>9</sup> R Taylor, "Use of Change Theory in the Context of the Divorce Mediation Session," *Journal of Divorce and Remarriage* 40, no. 1 (2004): p. 90.

<sup>10</sup> P Huang, "Divorce Law Practices and the Origins, Myths, and Realities of Judicial 'mediation' in China," *Modern China* 31, no. 2 (2005): p. 154.

have studied a lot about the mediation process that can reduce the soaring divorce rate. Mediation is a reliable means of accelerating the reconciliation of families in conflict.<sup>11</sup> Even C. Beck mentioned that the implementation of the formulation of the concept of mediation is a much more recent effort to create justice for wives who are victims of domestic violence.<sup>12</sup>

However, mediation can speed up the settlement of cases, on the contrary as described by Przybyla Basista stated that the reasons for couples who refuse the mediation process are especially wives who experience feelings of trauma and fear of violence from their ex-husbands. Experience from her domestic life, the wife received painful treatment so that she did not have the time and space to negotiate through mediation with her ex-husband.<sup>13</sup> Sometimes children are also victims of violence, experiencing depression and anxiety which can affect the physical and psychological health consequences of divorcing parents.<sup>14</sup> The research also touches on the legal protection of children through the mediation process. Andrew Shepard's views on custody and subsistence needs can be read.<sup>15</sup>

The opinion of J. D. Bailey provides that the sharpening of the practice of mediation in divorce cases can refer to several assumptions that mediation is a golden opportunity to resolve conflicts and household breakdowns in constructing reconciliation between husband and wife. The practice of mediation involves offering a problem-solving process with a focus on the goal of reconciliation.<sup>16</sup>

Compare this with the thought conveyed by Robert Dingwall that the legal system and family policies of the government related to the practice of mediation carried out in European countries such as England, Wales, Scotland, and Northern Ireland are forced attempts to the husband and wife who are going to divorce under control of the mediator to

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<sup>11</sup> Robert E Emery, David Sbarra, and Tara Groer, "*Divorce Mediation: Research and Reflections*," *Family Court Review* 43, no. 1 (2005): p. 22–37.

<sup>12</sup> C Beck, "*Defining a Threshold for Client Competence to Participate in Divorce Mediation*," *Psychology, Public Policy, and Law*, 2006.

<sup>13</sup> H Przybyla-Basista, "*The Influence of Spouses' Resistance on Their Decision to Enter into Divorce Mediation*," *Journal of Divorce and Remarriage* 48, no. 3 (2008): p. 31.

<sup>14</sup> A Kraft, "*Childhood Parental Divorce and Cortisol in Young Adulthood: Evidence for Mediation by Family Income*," *Psychoneuroendocrinology* 34, no. 9 (2009): p. 1363–1369.

<sup>15</sup> Shepard, "*An Introduction to the Model Standards of Practice for Family and Divorce Mediation*."

<sup>16</sup> JD Bailey, "*Assessing Empowerment in Divorce Mediation*," *Negotiation Journal* 25, no. 3 (2009): p. 327–336.



undergo the mediation process before their case reaches the Court.<sup>17</sup> An interesting thought from Lori Anne Shaw that the implementation of non-litigation mediation can outperform the judicial process in legally assisting the parties in a case, including from the results of mediation that prioritizes the interests of children.<sup>18</sup> Demands for non-litigation mediation practices are carried out to anticipate more immediate damage and cracks in households.

The theoretical purpose of marriage in Islamic law is to create *sakinah, mawaddah, and warahmah* families. Sometimes the theoretical goal of marriage is very different in practice from the goal of marriage. Marriage in the view of the Bugis and Mandar people that “*iya tu’u di’o alikkangan, including mesa pakkasiwiang lao di puang Allah Taala, Jari mua ‘alikkangananna macoai, ma mandapai* reward, but *mua ‘andani macoa, napolean sin*”. The meaning of marriage is that marriage is worship, so if the marriage is good you will get a reward, but if it is not good you will get sin.

Therefore, the practice of mediation, whether organized by judges at the Religious Courts or mediators outside the court, is very important to prioritize the content of divorce mediation using the *maqashid shariah* approach. Divorce mediation which contains the *maqashid sharia* paradigm based on *maslahat* as conveyed by Al-Gazaliy is an effort to uphold the objectives of shari’a laws in maintaining religion, soul, mind, descent and property.<sup>19</sup>

Maqashid shariah as formulated by *ushul fiqh* scholars is to have the meaning of all the aims and objectives regulated in religion to bring benefit and eliminate exasperation to its servants. Al-Syatibi further perfected the traditional *ushul fiqh* theories in the *al-Muwafaqat* book by formulating *maqashid shariah* which focused on *al-kulliyah al-khamsah*.<sup>20</sup>

Whereas *maqashid shariah* seen from the order is *maqashid al-dharuriyyah* (primary), *maqashid al-hajjiyyat* (secondary), and *maqashid al-tahsiniyyat* (complementary).<sup>21</sup> Therefore, based on the *maqashid shariah* that divorce mediation is in the order of *maqashid al-*

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<sup>17</sup> R Dingwall, “*Divorce Mediation: Should We Change Our Mind ?*,” *Journal of Social Welfare and Family Law* 32, no. 2 (2010): p. 107–17.

<sup>18</sup> L Shaw, “*Divorce Mediation Outcome Research: A Meta-Analysis*,” *Conflict Resolution Quarterly* 27, no. 4 (2010): p. 447–67,

<sup>19</sup> Abd al-Rahman Yusuf Abd Qardhawi, *Nazhariyah Maqashid Al-Syari’ah Baina Syekh Al-Islam Ibn Taimiyah Wa Jumhur Ushliyyin Dirasah Muqaranah Min Al-Qarn Al-Khamis Ila Al-Tsamin Al-Hijri* (Cairo: Kulliyah Dar al-Ulum, nd).p. 70.

<sup>20</sup> Abu Ishaq Al-Syatibi, *Al-Muwafaqat Fi Ushul Al-Ahkam, 2nd ed.* (Beirut: al-Maktabah al-Taufiqiyah, 2004). p. 2.

<sup>21</sup> Izz al-Din Abd Al-Salam, *Qawaid Al-Ahkam Fi Masalih Al-Anam* (Beirut: Dar al-Ma’rifah, nd). p. 11.

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*dharuriyyah*, which is obliged to eliminate adultery in marriage, including maintaining the family from conflict, enmity, disharmony, and rifts between husband and wife.

On the other hand, based on the data source of the Directorate General of Religious Courts' annual report, divorce cases are considered an extraordinary matter in Indonesia. Following the report's data, it shows that there were 128,401 divorce cases in 2015. Divorce cases in 2017 included 113,937 divorce talaq, while 301,573 divorce lawsuits were filed. In 2018 the details of the divorce talaq were 118,853. In 2019, there were 124,776 divorce cases, then 355,842 divorce cases.<sup>22</sup>

The discourse on mediation has produced many studies on the roles and responsibilities of academics,<sup>23</sup> such as Mursyid Jawas and Sri Astuti A. Samad explained that reconciliation efforts in resolving family disputes can be successful with a family resilience approach through traditional Acehese traditional wisdom such as *keuchik*, *tuha peut*, *teungku imum*, and *imum mukim*. The resolution of family conflicts in Acehese society by means of Islamic law at the Syari'ah Court and also by practicing customary law in *sara opat* institutions, a kind of institution that includes *reje* and *imem* is very accurate, effective, and efficient.<sup>24</sup>

This idea of mediating divorce through customs and social institutions is very suitable to be actualized in the Bugis community in South Sulawesi and the Mandar community in West Sulawesi. Both the Bugis and Mandar Communities are ethnic groups that are very strong and thick in carrying out their customs which are tied to the *pangngaderreng* culture as a culture of conduct.<sup>25</sup> which includes *ade'*, *bicara*, *rapang*, *wari'*, and *shara'*. Mandar was found when the *pangngaderreng* became a social patron as the inner power control to accommodate *shara'*.<sup>26</sup>

The acceptance of *shara'* in *pangngaderreng* culture is a consequence for society to carry out Islamic law. Along with

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<sup>22</sup> Directorate General of the Religious Courts of the Republic of Indonesia, *Annual Report of the Religious Courts* (2020).

<sup>23</sup> E Koopman, "The Present and Future Role of Higher Education in Divorce Mediation: Problems and Promise in Teaching, Research, and Service," *Divorce Mediation: Perspectives on the Field*, 2014.

<sup>24</sup> Mursyid Djawas and Sri Astuti Abdul Samad, "Conflict, Traditional, and Family Resistance: The Pattern of Dispute Resolution in Acehese Community According to Islamic Law," *Samarah: Journal of Family Law and Islamic Law* 4, no. 1 (2020): p. 69–71.

<sup>25</sup> Said Nurman, *Religion and Cultural Identity Among the Bugis* (Makassar: Faculty of Islamic Theology of the Alauddin State Institute of Islamic Studies at Makassar, Indonesia, 2004).

<sup>26</sup> Abd Yunus, "The Acculturation of Islam and Local Culture in Bugis Wedding Tradition: A Historical Perspective," 2017, 4.  
<http://jurnal.arraniry.ac.id/index.php/samarah>

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development and *wari 'and shara'*.<sup>27</sup> Acculturation of Islam and the culture of the Bugis community and the progress of human civilization which is increasingly modern, sometimes *siri'* in the *pangngaderreng* culture of the Bugis and Mandar communities has gradually shifted. Whereas in the period of traditional life, the enforcement of *siri'* in the Bugis and Mandar communities is very embarrassed and loses its self-respect if there is a disgrace in the family, including for example a married couple who divorced from that family. The connection with the *pangngaderreng* culture has less than optimal function in the Bugis and Mandar communities, especially before and during the Covid-19 pandemic era, the number of divorce cases increased sharply in Religious Courts.

Exposing this background, this study focuses on the dynamics of the legal product of divorce mediation practices in the Religious Courts which incidentally is an institution that can be trusted to enforce Perma No. 1 of 2016. The transformation of *maqashid syariah* in the practice of mediation in divorce cases in the Religious Courts and outside the courts should prioritize benefit and eliminate adversity to maintain family resilience from various conflicts and disputes. The revitalization of the *pangngaderreng* culture in the practice of divorce mediation in the Religious Courts, which so far is believed to have less than optimal function in the Bugis and Mandar communities.

### **Dynamics of Legal Product of Divorce Mediation in Religious Courts**

Divorce mediation is an effort to mediate resolving disputes so that the mediator must be neutral, bridging, and must not be partial between the conflicting husband and wife in order to reach a peace agreement.<sup>28</sup> Divorce mediation can be designed to be therapeutic, treat, remedy, and counteract the bad effects of divorce.<sup>29</sup>

Divorce mediation is constructed to reflect on the significance of the marriage and address the possibilities that trigger divorce.<sup>30</sup> assisting divorced parties to optimize the effectiveness and efficiency of conflict

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<sup>27</sup> Wahyuddin Halim, *"Islamization or Arabization? The Arab Cultural Influence on the South Sulawesi Muslim Community since the Islamization in the 17th Century,"* Suvannabhumi 10, no. 1 (2018): p. 42.

<sup>28</sup> Syahrizal Abbas, *Mediation in the Perspective of Sharia Law, Customary Law and National Law* (Jakarta: Kencana Prenada Media Group, 2009).

<sup>29</sup> DA Sbarra, *"In the Presence of Grief: The Role of Cognitive-Emotional Adaptation in Contemporary Divorce Mediation,"* Handbook of Divorce and Relationship Dissolution, 2013.

<sup>30</sup> W Neville, *"Reflections on the Growth and Significance of Divorce Mediation,"* Divorce Mediation: Perspectives on the Field, 2014.

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resolution in the family. One of the material contained in mediation is very interesting is a simulation method of husband-wife couples who are active for high cooperation which can overcome the conflicts they face, on the other hand, if the husband and wife do not cooperate less, they tend to have a selfish character.<sup>31</sup>

The success indicator of mediation if the material content is to collaborate, including eliminating partner violence intimidation and focusing on taking care of children,<sup>32</sup> refreshing and taking advantage of free time for discussion which aims to strengthen active communication in the family.<sup>33</sup> The family mediation construction should be intensified during the marriage period so that the husband and wife can build a household with full responsibility, affection, and love. Therefore, the practice of mediation is not only carried out when there is a conflict that is already overloaded, critical, and is experiencing a transition period for divorce.<sup>34</sup> The implementation of mediation before the family has problems with conflict, has many advantages for strengthening husband-wife relationships, enhancing cooperation, and also supporting joint care of children.<sup>35</sup>

The fact of the soaring divorce case decisions, it is appropriate to question the speed, accuracy, and efficiency of the judge's functioning as a mediator of divorce cases in the Religious Courts spread across several districts and cities in South Sulawesi and West Sulawesi. The data also shows that the Bugis and Mandar people prefer to resolve disputes and family conflicts in the Religious Courts rather than resolve conflicts with a system or kinship approach. Criticism of the Religious Courts in South Sulawesi and West Sulawesi as one of the case resolution institutions has not been able to accommodate the expectations of the community in settling divorce cases through mediation.

However, the public's assumption of judges acting as mediators in the Religious Courts is still considered a failure. Judges as mediators in conducting divorce mediation are still very symbolic, examinations are

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<sup>31</sup> S Worley, *"The Effect of Cooperation on Egocentrism in Divorce Mediation: A Simulation Study," Divorce Mediation: Perspectives on the Field*, 2014.

<sup>32</sup> A Holtzworth-Munroe, *"Controversies in Divorce Mediation and Intimate Partner Violence: A Focus on the Children," Aggression and Violent Behavior*, 2011.

<sup>33</sup> E Beck, *"Improving Communication in Divorce Mediation," Divorce Mediation: Perspectives on the Field*, 2014.

<sup>34</sup> S Molgora, *"Divorce and Coparenting: A Qualitative Study on Family Mediation in Italy," Journal of Divorce and Remarriage* 55, no. 4 (2014): p. 300–314.

<sup>35</sup> D Pickar, *"Intermittent Evaluative Mediation with Enduring, Post-Divorce Conflict," Journal of Child Custody* 8, no. 3 (2011): p. 144–145.

too formalistic, very technical, high cost, and cases tend to be overloaded.

The various difficulties faced by judges as mediators in the Religious Courts in general led to the Supreme Court of the Republic of Indonesia to apply Perma No. 1 of 2016. The dynamics of implementing Perma No. 1 of 2016 provides an opportunity to internalize the practice of divorce mediation held by certified mediators from career non-judges at the Religious Courts. Mediation supports all parties to resolve conflicts they face with the help of a mediator who is neutral or impartial. A mediator only tries to bridge all parties in a transparent manner, negotiate, and find the best solution.

The legal position of the implementation of mediation in Law no. 30 of 1999 concerning Arbitration and Alternative Settlements, then followed up by Perma No. 1 of 2016 concerning Mediation as an amendment to Perma No. 1 of 2008 concerning Mediation Procedures. Perma No. 1 of 2016 is implemented to carry out divorce mediation practices in the Religious Courts. Indeed, mediation for divorce in the Religious Courts is to avoid the accumulation of family cases. In fact, the judge's decision will be null and void if the judge examining the divorce case at trial does not enforce mediation at the Religious Court.

The progress of divorce cases that have entered both cases for divorce talaq and cases for divorce in the Religious Courts between 2018 and 2020 in the regions of South Sulawesi and West Sulawesi. The Religious Courts located in South Sulawesi are limited to only taking divorce data from the Parepare Religious Court, the Sidenreng Rappang Religious Court, the Pinrang Religious Court, and the Enrekang Religious Court. Meanwhile, the Religious Courts in West Sulawesi are also limited by taking data on divorce cases that are submitted to the Polewali Mandar Religious Court, the Majene Religious Court, and the Mamuju Religious Court.

The success and failure of the product of mediation practice by judges from each of the Religious Courts in South Sulawesi in three years from 2018 to 2020. Since 2018, there have been 12 judges at the Parepare Religious Court who were spread into 6 panels. Types of cases, divorced talaq received 106 cases, ended 103 cases and the percentage of case completion was 81%, claimants received 380 cases, dropped 385 cases and percentage of case completion was 93%. The Parepare Religious Court mediated 13 cases and 3 cases that succeeded in peace. In 2019, the remaining cases for divorce talaq in 2018 were 23 cases, divorce talaq received 103 cases, 120 cases were decided and the percentage of case completion was 95%. For divorce with the remainder of 2018 in 26 cases, received 439, drop out of 440 cases and the percentage of completion of cases is 95%. Mediated a number of 82 cases and 5 cases which succeeded in peace. In 2020, the remaining cases for divorce talaq in 2019 amounted to 6 cases, 80 cases of divorce received and 80 cases of

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divorce. There are 25 divorce cases left in 2019, 357 cases received, 379 cases ended.<sup>36</sup>

Referring to the state of divorce cases every year there has been an increase in both talaq and legal divorce at the Parepare Religious Court. The reality cannot be denied, divorce cases are very worrying, because the number of cases for suing for divorce is greater than cases for divorce talaq. In addition, the performance of judges in conducting mediation at the Parepare Religious Court from 2018 to 2020 can be categorized as failing. The failure of judges to mediate at the Parepare Religious Court has not been able to balance the number of divorce cases that were decided and the number of cases that succeeded in mediating to reach a peaceful consensus.

The progress of divorce cases from 2018 to 2020 at the Sidenreng Rappang Religious Court, can be described with data since 2018, the number of divorces talaq 154 cases and 555 divorce cases. Mediating 91 divorce cases, succeeded in reaching a peaceful consensus on 2 cases. In 2019, the number of divorces talaq received was 213 cases, 202 cases were decided, and the percentage of case settlements was 88%. 699 cases of divorce were accepted, 690 cases were decided on 95%. Mediated 89 cases and succeeded in a peaceful consensus on 0 cases. In 2020, the number of divorces talaq received 163 cases, 152 cases broke up and 83% case settlement percentage, 604 divorce cases received, 591 broke up, and 91% case completion percentage. Mediated 69 cases and succeeded in a 2 case peace consensus.<sup>37</sup>

The strength of the judges at the Sidenreng Rappang Religious Court in conducting mediation is still relatively weak and failed, even in the mediation that was carried out in 2019, not a single case was successfully reconciled. Divorce cases that are accepted are generally terminated and only a very few divorce cases have succeeded in peace.

The Pinrang Religious Court is one of the courts which accepts many divorce cases every year. It is known that in 2018, there were 163 divorces and 640 divorcees, 131 cases of mediation, and 2 cases of the peace agreement were reached. In 2019 there were 208 cases of divorce, 820 cases of divorce, 128 mediation cases, and 4 cases of peace. In 2020, there were 199 divorce cases, 798 divorce cases, 140 mediated cases, and

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<sup>36</sup> Chairman of the Parepare Religious Court, "Annual Report of the Parepare Religious Court" (City of Parepare, 2020), <http://pa-parepare.go.id/home/leport-tahunan/>.

<sup>37</sup> Chairman of the Sidenreng Rappang Religious Court, "Annual Report of the Sidenreng Rappang Religious Court" (City of Pangkajenne, 2020), <http://pa-sidenrengappang.go.id/>.  
<http://jurnal.arraniry.ac.id/index.php/samarah>

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20 peaceful cases.<sup>38</sup>

Compared to the Parepare Religious Court and the Sidenreng Rappang Religious Court, the Pinrang Religious Court judges have made progress in reconciling divorce cases. In 2020, the success of mediation at the Pinrang Religious Court is inseparable from the active role of judges in reconciling a litigious husband and wife. The success of mediating divorce cases is supported by the knowledge and experience of judges who are familiar with the social culture of the Pinrang community.

In 2019 data, there were 338 divorce cases including 66 cases of divorce, 258 divorce cases, and 51 cases of mediation, only 1 case was successful at the Enrekang Religious Court. In 2020 there were 336 divorce cases and among them, 75 cases of divorce, 246 divorce cases, 31 mediation cases, and none of them succeeded in peace. Mediation from 2019 and 2020 amounted to 82 cases, only 1 case succeeded in peace.<sup>39</sup> Mediation is almost completely ineffective and in fact creates new problems, namely the accumulation of cases that should be resolved, but are hampered by the time-consuming mediation process. Mediation also has an impact on costs (court costs) so that the principle of litigating with a simple, fast, and low cost does not materialize.

Furthermore, the development of divorce case mediation in the Religious Courts located in the West Sulawesi region is limited to the Polewali Mandar Religious Courts and the Majene Religious Courts. The source of information found at the Polewali Mandar Religious Court stated that in 2017 talaq's divorce was received by 155 cases, 135 cases were ended. 422 cases of divorce were accepted, 366 cases were ended, related to the mediation report not mentioned in the report on the activities of the Polewali Mandar Religious Court. In 2018 talaq divorce received 175 cases, 160 cases ended. 453 divorce cases were accepted, 427 cases ended and mediation was also not included in the 2018 Polewali Mandar Religious Court activity report. In 2019 talaq divorce received 176 cases, 161 cases ended. 507 cases of divorce were accepted, 473 cases were ended.<sup>40</sup> In 2019 there has been no progress on case mediation in the activity report. Meanwhile, the 2020 report has not yet published the number of cases for divorce talaq and divorce.

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<sup>38</sup> Chairman of the Pinrang Religious Court, "Annual Report of the Pinrang Religious Court" (Kota Pinrang, 2020), <http://pa-pinrang.go.id/index.php?limitstart=27>.

<sup>39</sup> Chairman of the Enrekang Religious Court, "Annual Report of the Enrekang Religious Court" (Enrekang City, 2020), <https://www.pa-enrekang.com/index.php/transparant/sekretariat/perplan/lentuk-tahunan>.

<sup>40</sup> Chairperson of the Paliwali Mandar Religious Court, "Annual Report of the Paliwali Mandar Religious Court" (Paliwali City, 2020), <http://pa-polewali.net/index.php/info-peradilan/program-kerja-k-Activity/l-Report-tahunan>.  
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Divorce cases at the Majene Religious Court, in 2017 talaq received 44 cases plus the remaining 2 cases in 2016, 41 cases ended. Divorce accepts 131 cases plus the remaining 5 cases from 2016, 128 cases ended, 30 cases mediated and none of the cases succeeded in peace. In 2018, divorce talaq received 45 cases plus the remaining 5 cases in 2017, 48 cases were broken. The remaining cases in 2017 were 7 cases, in 2018 129 cases were divorced, 137 cases were ended, 32 cases were mediated and none of the cases were successfully reconciled. In 2019 divorce Talaq received 55 cases plus the remaining 2 cases in 2018, 57 cases ended. Divorce accepts 150 cases plus the remaining 6 cases in 2018, 155 cases ended, 40 mediated cases, and 4 peaceful cases.<sup>41</sup> In 2020, the progress of the divorce case has not been published, both from the talaq divorce case and the sue divorce case.

Optimizing efforts to provide legal services to the community in all Religious Courts in South Sulawesi and West Sulawesi in enforcing mediation institutions which are run by mediating judges. The mediating judge carries out legal remedies against the justice-seeking community to reconcile the disputing parties. Mediation in all Religious Courts is regulated in article 130 HIR / article 154 Rbg. jo. Perma No. 1 of 2016 concerning Mediation Procedures in Courts.

The legal product of the mediator reports to the examining panel of judges regarding the results of the mediation process that has been carried out with the case husband and wife. If the mediator succeeds in reconciling, the results of the mediation are written in a peace deed. The panel of judges stated in legal considerations, one of which was based on the peace deed agreed and signed by the parties in the case. In one of the verdicts, the panel of judges "punished the applicant/plaintiff and the respondent/defendant to obey the results of the peace agreement that had been reached." Successful mediation without proof of the peace deed of the party presenting the case will withdraw the case that has been submitted at the next trial. Based on Perma No.<sup>42</sup>

There are several types of mediation products, one of which is a successful mediation product, where both husband and wife achieve reconciliation, agree to resolve the problem peacefully and amicably. The peace agreement actualized the peace deed by Perma No. 1 of 2016 Article 27 paragraph 2 or in a divorce case, the party filing for divorce

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<sup>41</sup> Chairman of the Majene Religious Court, *"Annual Report of the Majene Religious Court"* (Majene City, 2020), <https://pa-majene.go.id/informasi-umum/leport-tahunan>.

<sup>42</sup> Chairman of the Supreme Court of the Republic of Indonesia., *"Perma RI. No. 1 of 2016 concerning Mediation Procedures in Courts"* (Jakarta, 2016), [https://bawas.mahkamahagung.go.id/bawas\\_doc/doc/perma\\_mediasi\\_pengadilan\\_web.pdf](https://bawas.mahkamahagung.go.id/bawas_doc/doc/perma_mediasi_pengadilan_web.pdf).  
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withdraws the case at the next trial. The mediation has succeeded in reaching an agreement, the parties with the assistance of the mediator are obliged to formulate a written agreement in a peace agreement signed by the parties and the mediator. In helping to formulate a peace agreement, the mediator is obliged to ensure that it does not contain provisions that are contrary to law, public order, and also morals, detrimental to the litigant.

The next possibility, the product of partially successful mediation is when two or more cases are filed but not all of them reach an amicable agreement, for example, divorce cases are accumulated with joint assets, a husband and wife agree to share Gono Gini assets are joint assets obtained during the marriage period. peacefully and kinship, but both of them still want to divorce. Also, the product of mediation does not work, if both parties in a case do not reach a peace agreement and want to continue the case. Another type of mediation product is improper mediation if one of the parties is not present at the mediation without justified reasons, involves the rights of the other party, and there are parties who should be subject to law but are not involved in the case.

### **Transformation of Maqasid al-Sharia in Mediation Practices in Divorce Cases**

The mediator who carries out the mediation can help the parties of a married couple to have a strong character and personality in facing a case.<sup>43</sup> The mediator strengthens the understanding of a married couple regarding the importance of marriage, the consequences after divorce,<sup>44</sup> and a major consideration of the power of mediation is childcare.<sup>45</sup> The mediator conducts mediation in a measured manner, ensuring the benefit, effectiveness, and satisfaction of the parties related to the success of the mediation in achieving peace.<sup>46</sup>

Measurable mediation can focus on the context of enforcing mediation as regulated in Perma No. 1 of 2016. Other dispute resolution processes are similar to the mediation of divorce cases at the Religious Courts. The very basic similarities are the steps that must be passed by the provisions in Perma No. 1 of 2016.

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<sup>43</sup> R Silver, "Practice Note: Divorce Mediation with Challenging Parents," *Conflict Resolution Quarterly*, 2008.

<sup>44</sup> W Donohue, "Interaction Dynamics Predict Successful Negotiation in Divorce Mediation," *Journal of Language and Social Psychology* 35, no. 4 (2016): p. 374–393.

<sup>45</sup> K Bollen, "Money or Children? Power Sources in Divorce Mediation," *Journal of Family Studies* 19, no. 2 (2013): p. 159–173

<sup>46</sup> S Cohen, "Divorce Mediation: An Introduction," *Divorce Therapy*, 2014, <https://doi.org/10.4324/9781315791456>.  
<http://jurnal.arraniry.ac.id/index.php/samarah>

In general, the mediation stages in divorce cases at the Religious Courts are mapped into three stages, namely the preparation stage, the implementation stage, and also the decision-making stage. The stages of mediation are described systematically and clearly by their respective sequences. In the practice of mediation after registering a divorce case at the Religious Court, the parties of the litigant husband and wife come to court after attending the summons legally and properly by the stipulations of the time and place.

Furthermore, the preparatory stage process in mediation is needed for a mediator to early study and deepen the root of the dispute between husband and wife who are consulted in mediation. The next stage is the implementation stage, the first stage of which is to form a forum. Before starting the mediation, both the mediator and the litigant husband and wife form a forum. In the forum that has been formed, the mediator organizes a joint meeting to deliver the preliminary statements of the husband and wife in the case.

At the time of conducting the mediation, the final stage is the decision-making stage where parties work together with the help of a mediator to evaluate options, get trade-offs and offer packages, minimize debates and find a fair basis for shared allocations. In the end, the parties who agreed were successful in making a joint decision. The stage of determining the mediator's decision can also pressure the parties, find formulas to avoid embarrassment, assist the parties in dealing with the power of attorney (if empowered).

The atmosphere of the location or place of mediation is a comfortable, free and pleasant place.<sup>47</sup> Technical readings and the stages of mediation in the Religious Courts are very important to construct priorities for the application of *maqashid shariah*. The *maqashid shariah* perspective on the mechanism of the stages of mediation is still very technical and the material content of divorce mediation is too formal. The very formalistic technical atmosphere of the implementation has made it more difficult and rigid to find a peace agreement. The consideration of the implementation of *maqashid shariah* in the content of mediation material is to try to strengthen the actualization of benefit, to bury the profundity (damage) in the household of married couples who have problems with conflict.

The opinion of al-Ghazaliy was explained systematically and concretely about Maqashid sharia as the basis of masalahah, and also the argument for achieving the goal. Maqashid shariah which is the basis of maslahat is trying to uphold the meaning of syar'i as the absolute

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<sup>47</sup> AC Garcia, "Locations for Advice-Giving and the Production of Neutrality in Divorce Mediation Sessions," *Conflict Resolution Quarterly*, 2020, <https://doi.org/10.1002/crq.21292>.  
<http://jurnal.arraniry.ac.id/index.php/samarah>

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authority of Allah in making laws to maintain religion, soul, mind, descent and property.<sup>48</sup> Thus, everything that can realize the meaning of syar'i is called maslahat. Al-Ghazaliy reiterated that the maslahat in the maqashid shariah which is actualized in its implementation in Islamic law is to take advantage as a source of goodness, rejecting obedience as a source of damage.<sup>49</sup> Therefore, benefit must be in accordance with syar'i, even though it is contrary to human intentions, sometimes human intentions are not based on syar'i but may be based on their desires.<sup>50</sup>

The opinion of Yusuf al-Qardhawi in formulating *maqashid shariah* is the transformation of the goals desired by the texts which contain the meaning of orders, prohibitions, and permits at the same time. *Maqasid shariah* means the purpose of Allah SWT. and also His Messenger in transforming Islamic laws. These Islamic laws can be found in the Koran and hadith which lead to the benefit of mankind.<sup>51</sup> Ibn Qayyim's opinion details the purpose of Islamic law is to manifest the benefit of mankind in the world and the hereafter. In totality, Islamic law contains mercy, justice, benefit, and wisdom.<sup>52</sup>

Furthermore, sharia means an ethical system as well as a value in covering all problems of human life which functions as a consistent and comprehensive life guideline that is implemented in Islamic law. The implementation of sharia in Islamic law is an absolute manifestation to uphold justice and benefit, eliminate prejudice, and reduce difficulties in human affairs. The purpose of Islamic law revealed to humans is the same connotation as the meaning of *maqashid shariah* in preserving all human interests.<sup>53</sup>

The realization of the *maqashid shariah* is that Muslims are obliged to maintain their religion, soul, mind, ancestry, and property. As *maqashid shariah* is generally understood to be the purpose of stipulating and lowering Islamic law to bring about goodness, safety, and happiness, on the other hand, avoiding badness, trouble and damage can threaten

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<sup>48</sup> Al-Gazaliy, *Al-Mustashfa Fi 'Ilm Al-Ushul*, 1st ed. (Beirut: Dar al-Kutub al-Ilmiyah, 1993).

<sup>49</sup> Riza Mulia, "Marital Beslag Outside Divorce Lawsuit in the Maqashid Syari'ah Perspective," *Samarah: Journal of Family Law and Islamic Law* 4, no. 2 (2020): p. 401.

<sup>50</sup> Said Syarifuddin, "Maslahat as Considerations of Islamic Law in View of Imam Malik," *Samarah: Journal of Family Law and Islamic Law* 4, no. 1 (2020): 90.

<sup>51</sup> Yusuf Al-Qardhawi, *Dirasah Fiqh Maqashid Al-Shariah; Baina Al-Maqashid Al-Kulliyah Wa Al-Nushus Al-Juziyyah* (Cairo: Dar al-Syuruq, 2006).

<sup>52</sup> Ibn Qayyim, *I'lam Al-Muwaqi'in Rabb Al-Alamin*, 3rd ed. (Beirut: Dar al-Jail, nd).

<sup>53</sup> Asyraf Wajdi Dusuki and Nurdianawati Irwani Abdullah, "Maqasid Al-Shariah, Maslahah, and Corporate Social Responsibility," *American Journal of Islamic Social Sciences* 24, no. 1 (2007): p. 31.

The criticism of divorce through *maqashid syariah*, which is the judge's decision at the Religious Court, actually has the potential to cause the household to suffer disarray and damage, it is also focused on taking care of the children of both parents who are no longer maximally which causes neglected children.<sup>54</sup>The practice of mediation in the Religious Courts through the application of *maqashid syariah* is an action to repair and save a household from a husband and wife on the verge of damage and destruction. The perspective of the *maqashid syariah* that divorce in the Religious Court is not the best option or way to resolve conflicts between husband and wife in the household.

Seeing the reality of divorce cases in the Religious Courts today, it seems as if there are almost no more efforts, it is very difficult to stem and contain the rate of divorce that has increased sharply from year to year. The Supreme Court needs to review the effectiveness and efficiency of the implementation of mediation through Perma No. 1 of 2016 at the Religious Court with consideration for the benefit contained in the *maqashid syariah*. The strength of the application of Perma No. 1 of 2016 has not had a major effect on improving the situation of a married couple who filed their case at the Religious Court. The implementation of Perma No. 1 of 2016 does not yet show the balance of the verdict in divorce cases than the success of mediation in the Religious Courts.

The legal construction that is transformed by the Supreme Court in the Religious Courts, *maqashid syariah* can be a major consideration in improving mediation practice. Changes in law enforcement in the practice of mediation in the Religious Courts mean that judges are no longer given additional duties in carrying out mediation. The mediation must optimally be carried out by the mediator freely and independently, without depending on the Religious Courts. The Supreme Court must be more courageous in establishing a mediation institution for divorce cases as a free, independent, and independent institution in preventing the increasing number of divorces.

Regulatory changes in the implementation of the law as an effort to transform *maqashid syariah* in the Religious Courts that every registered case should be that a husband and wife who are about to divorce must have a certificate of unsuccessful mediation from the mediation institution. Thus, the Religious Courts no longer accept divorce cases without a certificate of unsuccessful mediation which serves as a subsidiary condition in registering cases.

This opinion is reinforced by several sources from experience, it

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<sup>54</sup> AR Poladian, "Family Mediation for Divorce and Parental Separation," Foundations for Couples' Therapy: Research for the Real World, 2017, 256–267, <https://doi.org/10.4324/9781315678610-26>.  
<http://jurnal.arraniry.ac.id/index.php/samarah>

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can be said that the implementation of mediation should be done before the case is entered or registered at the Religious Court. Experience from several times the mediation of several husband and wife couples who quarreled or conflicts with mediation through non-litigation, before the litigant couple filed a case in the Religious Court and the result succeeded in making a peace agreement. Some married couples who have litigated no longer wish to file divorce cases at the Religious Court have returned to harmony in rebuilding their households. In fact, in several cases, after the mediator reported the results of the mediation being unsuccessful, the case examining judges continued the trial process, starting with a vision or settlement by the panel of judges who managed to reconcile the litigants. The essence is that between mediation and peace efforts carried out by the mediator and the case examining a panel of judges should be the same.

After a husband and wife in a case get advice and advice from the Marriage Advisory, Development and Preservation Agency, it can show an indication that the divorce rate can be slightly suppressed through mediation outside the Court.<sup>55</sup> The experience of mediating divorce cases outside the court can be strengthened when the existence of the Marriage Advisory, Guidance and Preservation Agency while still active, based on data from the Office of Religious Affairs, nearly 50% of married couples who wish to file divorce cases at the Religious Courts can discourage divorce.

### **Revitalization of Bugis and Mandar Customary Institutions in divorce mediation**

The Bugis and Mandar peoples have historically been a family group that cannot be separated emotionally because they are tied to a *pangngaderreng* cultural system in South Sulawesi. The two communities were in the same territorial region before the formation of West Sulawesi as the expansion area of the South Sulawesi region on October 5, 2004, through Law no. 26 of 2004. Although separated from regional ties, emotional ties, both physically and physically, are still harmonious and peaceful.

The association of the two societies is bound in a very monumental cultural system, namely the *pangngaderreng* culture. Also, the Bugis and Mandar communities can also be bonded with marriage. The two societies are united with each other because of the same belief in

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<sup>55</sup> M De Jong, "A Pragmatic Look at Mediation as an Alternative to Divorce Litigation," *Tydskrif Vir Die Suid-Afrikaanse Reg*, no. 3 (2010): p.515–531.

<https://www.scopus.com/inward/record.uri?partnerID=HzOxMe3b&scp=79959369736&origin=inward>.

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embracing Islam. Returning to the *pangngaderreng* culture, it has five elements that cannot be separated from one another, namely *ade'*, talk, rapang, wari, and *shara'*.<sup>56</sup> *Pangngaderreng* is a cultural system and a social system that functions as the customary institution or social institution of the Bugis and Mandar peoples. *Pangngaderreng* culture regulates religious, social, cultural, state, and legal norms. *Ade'* can be interpreted as custom, speaking means justice, rapang is jurisprudence, wari means social layering, and *shara'* means Islamic law.<sup>57</sup>

The Bugis and Mandar people are very loyal and obedient to *ade'* (Bugis) and *ada'* (Mandar) means adat. The obedience and loyalty of the Bugis and Mandar people to adat are due to their deep belief in adat which always protects and preserves himself as a human being with *siri'*. *Siri'* in essence is honor, dignity, dignity for humans. If someone does not have *siri'* in him, he is no longer excited to live, people in Bugis and Mandar societies prefer to die rather than have no *siri'* in him.

*Siri'* in the expression of the Bugis society is "*Siri' emmi ri onroang ri lino, utetong ri ade'e, najagainnami siri'ta, naia siri'e sunge naranreng, na life roughly*",<sup>58</sup> While *siri'* in the Mandar community expression is "*what is siri' in tu'u ita di'e rupa or mala tuo dini dilino, using de'i is dipiara toi siri', dotai tau mate anna dadzi tia andan dian siri'*" This means that only with *siri'* humans can survive in the world, because by upholding customs, maintaining *siri'*, because with *siri'* death is at stake, and life is the ransom.

The connection with the enforcement of *siri'* in the Bugis and Mandar communities seems to have experienced a shift in values. The shift in the value of *siri'* itself is marked by a very interesting fact about divorce cases in the Bugis and Mandar communities, which is that divorce cases always dominate rather than divorce talaq in all Religious Courts. Acceleration of suicidal divorce cases is very urgent in the Bugis and Mandar communities. Compared to divorce talaq, family resilience began to be very fragile in Bugis and Mandar societies with the dominance of divorce in the Religious Courts. The dominance of a legal divorce which is the triggering factor is domestic violence, economy, and polygamy. Therefore, The Bugis and Mandar people seem to gradually no

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<sup>56</sup> Nurnanigsih Nawawi, "*Assimilation of Lontara Pangadereng and Islamic Shari'at: Behavioral Patterns of the Bugis-Wajo Society*," *Al-Tahrir: Journal of Islamic Thought* 15, no. 1 (2015): p. 25.

<sup>57</sup> Rahmatunnair, "*Contextualization of Pangngadereng in the Enforcement of Islamic Shariah in Buginese Bone Community*," *Al-Qalam* 17, no. 1 (2011): p. 94.

<sup>58</sup> Fikri, Rahmawati, and Zulfah, "*Idealism and Realism of Islamic Law in Pangngaderreng Culture of the Modern Bugis Bone*," *IOP Conference Series: Earth and Environmental Science* 175, no. 1 (2018): p. 2, <https://doi.org/10.1088/1755-1315/175/1/012137>.

longer respect *siri*’, because they are not considered a disgrace’ if they go to the Religious Court to ask for a divorce. It should be for the Bugis and Mandar people that it is a disgrace with divorce, let alone committing domestic violence, the disgrace of not being able to meet the economic needs of their families, and also a disgrace ‘because of polygamy. A person disobeying or disregarding *siri*’ is a disgrace’.

The fragility of family resilience in the Bugis and Mandar communities is also a triggering factor, namely the crisis of figures from family members who are charismatic as role models, and the crisis of optimizing the role of traditional institutions that act as mediators. Cultural and social changes in the Bugis and Mandar communities, sometimes on the part of the parents themselves, who usually play a role in separating the marriages of their children. For families who are experiencing conflict, it seems as if the Religious Court is the last place in conflict resolution. The irony is that it turns out that the Religious Courts are not a place that is capable of repairing the rifts in the households of husband and wife who experience conflict. Data from all divorce cases received at the Religious Courts are generally decided by the judge.

The strength in carrying out the value of *ade* ‘in the Bugis and the Mandar community’ is to maintain a lasting and sustainable marriage, the implementation of the value of life *sirondo-rondo* which means cooperation, helping each other in doing a job, both heavy and light. The next value that is related to the sustainability of marriage is *siamasei* and *sianuang pa'mai* that in building a household, the husband and wife must love and love each other. The Bugis and Mandar people in fostering a household are also known as *sibaliparri*, husband and wife must maintain household harmony and have a mutual sense of responsibility towards their families, both when joy and sorrow must be faced together, the same fate and co-existence.

Marriage advice and advice are provisions in living the household dish.<sup>59</sup>The revitalization of customary institutions in the Bugis and Mandar communities such as *sirondo-rondo*, *siamasei* and *sianuang pa'mai*, and *sibaliparri* is the basis for certified judges and mediators to carry out mediation in the Religious Courts and outside the courts. Optimizing customary institutions in the Bugis and Mandar communities can be a very strong defense against the increasing divorce rate in the Religious Courts.

Also, reviving the traditional institutions of the *panggaderreng* cultural system is *shara*’ which is the implementation of Islamic law in the Bugis and Mandar communities. The enforcement of Islamic law in

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<sup>59</sup> A Garcia, “Advice-Giving and Disputant Empowerment in Divorce Mediation Sessions,” *Language and Dialogue* 2, no. 3 (2012):p. 398–426, <https://doi.org/10.1075/ld.2.3.05gar>.  
<http://jurnal.arraniry.ac.id/index.php/samarah>

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Bugis society is carried out by someone who has the title *petta kali'* and in Mandar society it is known as *puang kali'*. People who are appointed to be *petta kali'* in Bugis society and *puang kali'* in Mandar society are charismatic, scholars who have a deep knowledge of Islam, master jurisprudence and Islamic law. The function of *petta kali'* or *puang kali'* is to give advice or marriage advice for married couples who are about to divorce.

The revitalization of *petta kali'* and *puang kali'* in Bugis and Mandar communities is that every married couple who is about to divorce, should first ask for advice or marriage advice. Divorce cases are no longer registered with the Religious Courts, before there are marital advice and advice from *petta kali'* and *puang kali'*.

## **Conclusion**

Referring to the divorce case data, it is an extra ordinal matter case in the Religious Courts throughout South Sulawesi and West Sulawesi. The reality that must be given full attention is that currently, divorce cases from divorce lawsuits are increasing in number compared to talaq divorces in the Religious Courts, so there is a concern about family resilience in the Bugis and Mandar communities. Divorce cases are increasing in number which can affect the mediation products in the Religious Courts, which causes the Supreme Court to apply Perma No. 1 of 2016. The dynamics of some of the products of mediation practices in the Religious Courts are successful mediations carried out by a mediator with a husband and wife couple who are having a case to reach a peace agreement as outlined in a peace deed. Another product of mediation is that mediation is partially successful and mediation is partially unsuccessful if the litigating party of the husband and wife submits two main points of the case so that some have succeeded in reaching a peace agreement and some are not successful in achieving reconciliation. The product of mediation is unsuccessful or fails because the litigant husband and wife have committed to divorce so that the mediator finds it difficult to reconcile to achieve reconciliation of the two litigant parties.

The process of practicing mediation in the Religious Courts is very urgent to implement *maqashid syariah* as the main consideration by judges at the Religious Courts in deciding divorce cases. The main consideration for the application of *maqashid syariah* has the potential to repair and save a household from a husband and wife on the verge of damage and destruction. The strong assumption of the application of *maqashid syariah* is that divorce in the Religious Court is not the best option or way to resolve conflicts between husband and wife in the household. The Supreme Court needs to review the practice of mediation through Perma No. 1 of 2016 by placing the benefits contained in the <http://jurnal.arraniry.ac.id/index.php/samarah>



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*maqashid shariah* for the practice of mediation in the Religious Courts.

Revitalizing traditional institutions such as upholding the value of *ade* 'in the Bugis and existing in the Mandar community can be a strength in family resilience in maintaining the marriage. Bringing the customs of the Bugis community and society through social culture in the value of life *sirondo-rondoi* which means cooperation, *siamasei* and *sianuang pa'mai* in fostering a household, husband and wife must love and love each other, and sibaliparri that husband and wife must take care of each other domestic harmony and mutual responsibility towards their families, both when joys and sorrows must be faced together, of the same fate and responsibility. Also, reviving the customary institutions of the *pangngaderreng* cultural system is *shara'* which is interpreted as an institution for implementing Islamic law in the Bugis and Mandar communities. The enforcement of Islamic law in Bugis society is carried out by someone who has the title *petta kali'* and in Mandar society known as *puang kali'* is a charismatic person, a cleric who has a deep knowledge of Islam, masters jurisprudence and Islamic law. The function of *petta kali'* or *puang kali'* is to give advice or marriage advice for husband and wife who want to divorce and their marriage will be long-lasting, lasting, and sustainable.

## References

- Abbas, Syahrizal. *Mediasi Dalam Perspektif Hukum Syari'ah, Hukum Adat Dan Hukum Nasional*. Jakarta: Kencana Prenada Media Group, 2009.
- Al\_Syatibi, Abu Ishaq. *Al-Muwafaqat Fi Ushul Al-Ahkam*. 2nd ed. Beirut: al-Maktabah al-Taufiqiyah, 2004.
- Al-Gazaliy. *Al-Mustashfa Fi' Ilm Al-Ushul*. 1st ed. Beirut: Dar al-Kutub al-Ilmiyah, 1993.
- Al-Qardhawi, Yusuf. *Dirasah Fi Fiqh Maqashid Al-Shariah; Baina Al-Maqashid Al-Kulliyah Wa Al-Nushus Al-Juziyyah*. Kairo: Dar al-Syuruq, 2006.
- Al-Salam, Izz al-Din Abd. *Qawaid Al-Ahkam Fi Masalih Al-Anam*. Beirut: Dar al\_Ma'rifah, n.d.
- Bailey, J D. "Assessing Empowerment in Divorce Mediation." *Negotiation Journal* 25, no. 3 (2009): 327–36. <https://doi.org/10.1111/j.1571-9979.2009.00229.x>.
- Beck, C. "A Critical Reappraisal of Divorce Mediation Research and Policy." *Psychology, Public Policy, and Law* 6, no. 4 (2000): 989–1056. <https://doi.org/10.1037/1076-8971.6.4.989>.
- . "Defining a Threshold for Client Competence to Participate in Divorce Mediation." *Psychology, Public Policy, and Law*, 2006. <https://doi.org/10.1037/1076-8971.12.1.1>.
- Beck, E. "Improving Communication in Divorce Mediation." *Divorce* <http://jurnal.arraniry.ac.id/index.php/samarah>

**Samarah:** Jurnal Hukum Keluarga dan Hukum Islam

Volume .... No. .... Januari-Juni ....

ISSN: 2549 – 3132; E-ISSN: 2549 – 3167

- Mediation: Perspectives on the Field*, 2014.  
<https://doi.org/10.4324/9781315860077>.
- Bollen, K. “Money or Children? Power Sources in Divorce Mediation.” *Journal of Family Studies* 19, no. 2 (2013): 159–73.  
<https://doi.org/10.5172/jfs.2013.19.2.159>.
- Cohen, S. “Divorce Mediation: An Introduction.” *Divorce Therapy*, 2014.  
<https://doi.org/10.4324/9781315791456>.
- Dingwall, R. “Divorce Mediation: Should We Change Our Mind?” *Journal of Social Welfare and Family Law* 32, no. 2 (2010): 107–17.  
<https://doi.org/10.1080/09649069.2010.506307>.
- Djawas, Mursyid, and Sri Astuti Abdul Samad. “Conflict, Traditional, and Family Resistance: The Pattern of Dispute Resolution in Acehnese Community According to Islamic Law.” *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 4, no. 1 (2020): 65–84.
- Donohue, W. “Interaction Dynamics Predict Successful Negotiation in Divorce Mediation.” *Journal of Language and Social Psychology* 35, no. 4 (2016): 374–93. <https://doi.org/10.1177/0261927X15603090>.
- Dusuki, Asyraf Wajdi, and Nurdianawati Irwani Abdullah. “Maqasid Al-Shariah, Masalahah, and Corporate Social Responsibility.” *American Journal of Islamic Social Sciences* 24, no. 1 (2007): 31.
- Ellis, D. “Safety, Equity, and Human Agency; Contributions of Divorce Mediation.” *Violence Against Woman* 6, no. 9 (2000): 1012–27.  
<https://doi.org/10.1177/10778010022182254>.
- Emery, Robert E, David Sbarra, and Tara Grover. “Divorce Mediation: Research and Reflections.” *Family Court Review* 43, no. 1 (2005): 22–37.
- Enrekang, Ketua Pengadilan Agama. “Laporan Tahunan Pengadilan Agama Enrekang.” Kota Enrekang, 2020. <https://www.pa-enrekang.com/index.php/transparansi/sekretariat/perencanaan/laporan-tahunan>.
- Fikri, Rahmawati, and Zulfah. “Idealism and Realism of Islamic Law in Pangngaderreng Culture of the Modern Bugis Bone.” *IOP Conference Series: Earth and Environmental Science* 175, no. 1 (2018): 2. <https://doi.org/10.1088/1755-1315/175/1/012137>.
- Garcia, A. “Advice-Giving and Disputant Empowerment in Divorce Mediation Sessions.” *Language and Dialogue* 2, no. 3 (2012): 398–426. <https://doi.org/10.1075/ld.2.3.05gar>.
- Garcia, A C. “Locations for Advice-Giving and the Production of Neutrality in Divorce Mediation Sessions.” *Conflict Resolution Quarterly*, 2020. <https://doi.org/10.1002/crq.21292>.
- Hahn, R A. “Divorce Mediation: Research and Implications for Family and Couples Counseling.” *The Family Journal*, 2000.  
<https://doi.org/10.1177/1066480700082009>.
- Halim, Wahyuddin. “Islamization or Arabization? The Arab Cultural <http://jurnal.arraniry.ac.id/index.php/samarah>

**Samarah: Jurnal Hukum Keluarga dan Hukum Islam**

Volume .... No. .... Januari-Juni ....

ISSN: 2549 – 3132; E-ISSN: 2549 – 3167

- Influence on the South Sulawesi Muslim Community since the Islamization in the 17th Century.” *Suvannabhumi* 10, no. 1 (2018): 42.
- Holtzworth-Munroe, A. “Controversies in Divorce Mediation and Intimate Partner Violence: A Focus on the Children.” *Aggression and Violent Behavior*, 2011. <https://doi.org/10.1016/j.avb.2011.04.009>.
- Huang, P. “Divorce Law Practices and the Origins, Myths, and Realities of Judicial ‘mediation’ in China.” *Modern China* 31, no. 2 (2005): 151–203. <https://doi.org/10.1177/0097700405274585>.
- Indonesia, Direktorat Jenderal Badan Peradilan Agama Republik. Laporan Tahunan Badan Peradilan Agama (2020).
- Jong, M De. “A Pragmatic Look at Mediation as an Alternative to Divorce Litigation.” *Tydskrif Vir Die Suid-Afrikaanse Reg*, no. 3 (2010): 515–31. <https://www.scopus.com/inward/record.uri?partnerID=HzOxMe3b&scp=79959369736&origin=inward>.
- Kaganas, F. “Domestic Violence and Divorce Mediation.” *Journal of Social Welfare and Family Law* 16, no. 3 (1994): 265–78. <https://doi.org/10.1080/09649069408413612>.
- Ketua Pengadilan Agama Parepare. “Laporan Tahunan Pengadilan Agama Parepare.” Kota Parepare, 2020. <http://parepare.go.id/home/laporan-tahunan/>.
- Koopman, E. “The Present and Future Role of Higher Education in Divorce Mediation: Problems and Promise in Teaching, Research, and Service.” *Divorce Mediation: Perspectives on the Field*, 2014. <https://doi.org/10.4324/9781315860077>.
- Kraft, A. “Childhood Parental Divorce and Cortisol in Young Adulthood: Evidence for Mediation by Family Income.” *Psychoneuroendocrinology* 34, no. 9 (2009): 1363–69. <https://doi.org/10.1016/j.psyneuen.2009.04.008>.
- Majene, Ketua Pengadilan Agama. “Laporan Tahunan Pengadilan Agama Majene.” Kota Majene, 2020. <https://pa-majene.go.id/informasi-umum/laporan-tahunan>.
- Mandar, Ketua Pengadilan Agama Poliwali. “Laporan Tahunan Pengadilan Agama Poliwali Mandar.” Kota Poliwali, 2020. <http://palewali.net/index.php/info-peradilan/program-kerja-kegiatan/laporan-tahunan>.
- Margulies, S. “Litigation, Mediation and the Psychology of Divorce.” *Journal of Psychiatry and Law*, 1992. <https://doi.org/10.1177/009318539202000405>.
- Molgora, S. “Divorce and Coparenting: A Qualitative Study on Family Mediation in Italy.” *Journal of Divorce and Remarriage* 55, no. 4 (2014): 300–314. <https://doi.org/10.1080/10502556.2014.901854>.
- Mulia, Riza. “Marital Beslag Outside Divorce Lawsuit in the Maqashid Syari’ah Perspective.” *Samarah: Jurnal Hukum Keluarga Dan* <http://jurnal.arraniry.ac.id/index.php/samarah>

**Samarah:** Jurnal Hukum Keluarga dan Hukum Islam

Volume .... No. .... Januari-Juni ....

ISSN: 2549 – 3132; E-ISSN: 2549 – 3167

*Hukum Islam* 4, no. 2 (2020): 401.

Nawawi, Nurnanigsih. “Asimilasi Lontara Pangadereng Dan Syari’at Islam: Pola Perilaku Masyarakat Bugis-Wajo.” *Al-Tahrir: Jurnal Pemikiran Islam* 15, no. 1 (2015): 25.

Neville, W. “Reflections on the Growth and Significance of Divorce Mediation.” *Divorce Mediation: Perspectives on the Field*, 2014. <https://doi.org/10.4324/9781315860077>.

Nurman, Said. *Religion and Cultural Identity Among the Bugis*. Makassar: Faculty of Islamic Theology of the Alauddin State Institute of Islamic Studies at Makassar, Indonesia, 2004.

Pickar, D. “Intermittent Evaluative Mediation with Enduring, Post-Divorce Conflict.” *Journal of Child Custody* 8, no. 3 (2011): 144–45. <https://doi.org/10.1080/15379418.2011.594722>.

Pinrang, Ketua Pengadilan Agama. “Laporan Tahunan Pengadilan Agama Pinrang.” Kota Pinrang, 2020. <http://pa-pinrang.go.id/index.php?limitstart=27>.

Poladian, A R. “Family Mediation for Divorce and Parental Separation.” *Foundations for Couples’ Therapy: Research for the Real World*, 2017, 256–67. <https://doi.org/10.4324/9781315678610-26>.

Przybyla-Basista, H. “The Influence of Spouses’ Resistance on Their Decision to Enter into Divorce Mediation.” *Journal of Divorce and Remarriage* 48, no. 3 (2008): 67–89. [https://doi.org/10.1300/J087v48n03\\_05](https://doi.org/10.1300/J087v48n03_05).

Qardhawi, Abd al-Rahman Yusuf Abd. *Nazhariyah Maqashid Al-Syari’ah Baina Syekh Al-Islam Ibn Taimiyah Wa Jumhur Ushliyyin Dirasah Muqaranah Min Al-Qarn Al-Khamis Ila Al-Tsamin Al-Hijri*. Kairo: Kulliyah Dar al-Ulum, n.d.

Qayyim, Ibn. *I’lam Al-Muwaqi’in Rabb Al-Alamin*. 3rd ed. Beirut: Dar al-Jail, n.d.

Rahmatunnair, Rahmatunnair. “Contextualization of Pangadereng in the Enforcement of Islamic Shariah in Buginese Bone Community.” *Al-Qalam* 17, no. 1 (2011): 94.

Rappang, Ketua Pengadilan Agama Sidenreng. “Laporan Tahunan Pengadilan Agama Sidenreng Rappang.” Kota Pangkajene, 2020. <http://pa-sidenrengappang.go.id/>.

RI., Ketua Mahkamah Agung. “Perma RI. No. 1 Tahun 2016 Tentang Prosedur Mediasi Di Pengadilan.” Jakarta, 2016. [https://bawas.mahkamahagung.go.id/bawas\\_doc/doc/perma\\_mediasi\\_pengadilan\\_web.pdf](https://bawas.mahkamahagung.go.id/bawas_doc/doc/perma_mediasi_pengadilan_web.pdf).

Sbarra, D A. “In the Presence of Grief: The Role of Cognitive-Emotional Adaptation in Contemporary Divorce Mediation.” *Handbook of Divorce and Relationship Dissolution*, 2013. <https://doi.org/10.4324/9781315820880-40>.

Schepard, A. “An Introduction to the Model Standards of Practice for Family <http://jurnal.arraniry.ac.id/index.php/samarah>

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- and Divorce Mediation.” *Family Law Quarterly* 35, no. 1 (2001): 1–24.  
<https://www.scopus.com/inward/record.uri?partnerID=HzOxMe3b&scop=65449139388&origin=inward>.
- Shaw, L. “Divorce Mediation Outcome Research: A Meta-Analysis.” *Conflict Resolution Quarterly* 27, no. 4 (2010): 447–67.  
<https://doi.org/10.1002/crq.20006>.
- Silver, R. “Practice Note: Divorce Mediation with Challenging Parents.” *Conflict Resolution Quarterly*, 2008. <https://doi.org/10.1002/crq.220>.
- Syarifuddin, Said. “Maslahat as Considerations of Islamic Law in View Imam Malik.” *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 4, no. 1 (2020): 90.
- Taylor, R. “Use of Change Theory in the Context of the Divorce Mediation Session.” *Journal of Divorce and Remarriage* 40, no. 1 (2004): 87–92. [https://doi.org/10.1300/J087v40n01\\_06](https://doi.org/10.1300/J087v40n01_06).
- Twaite, J A. “Divorce Mediation: Promises, Criticisms, Achievements, and Current Challenges.” *Journal of Psychiatry and Law*, 1998. <https://doi.org/10.1177/009318539802600304>.
- Weaver, J. “Mediation and Moderation of Divorce Effects on Children’s Behavior Problems.” *Journal of Family Psychology* 29, no. 1 (2015): 39–48. <https://doi.org/10.1037/fam0000043>.
- Worley, S. “The Effect of Cooperation on Egocentrism in Divorce Mediation: A Simulation Study.” *Divorce Mediation: Perspectives on the Field*, 2014. <https://doi.org/10.4324/9781315860077>.
- Yunus, Abd. “The Acculturation of Islam and Local Culture in Bugis Wedding Tradition: A Historical Perspective,” 2017, 4.

## Hasil Review A

### Transformation of *Maqashid Shariah* in Divorce Mediation in Religious Courts: Revitalization of Bugis-Mandar Traditional Institutions

#### Abstract

The focus of this study discusses the dynamics of legal product of divorce mediation practices in Religious Courts; the transformation of *maqashid syariah* in practice of mediation in divorce cases, and revitalization of *pangngaderreng* culture in practice of divorce mediation in Bugis and Mandar communities. The research methodology is descriptive qualitative field research, holistic, historical, and socio-anthropological approaches, *maqashid syariah* theory analysis, social and legal change theory, and social institutions theory. The results of this study indicate that divorce case is an extraordinary matter case in Religious Courts, dynamics of mediation practice in Religious Courts have successful mediation for a written peace agreement in peace deed, other mediation products are partially successful mediation and partially unsuccessful mediation, mediation products are not successful is that husband and wife are committed to divorce; *Maqashid syariah* transformation can be a major consideration by judges in mediation practice to save households on the verge of collapse, so that *maqashid syariah* is very urgent to place in Perma No.1 of 2016, and revitalization of Bugis-Mandar traditional institutions is an effort to revive the value of life *sirondo-rondo*, *siamasei*, *sianuang pa'mai*, and *sibaliparri*, also animate *shara'* which is performed *petta kali'* or *puang kali'*.

**Keywords:** *Maqashid Shariah*, *divorce mediation*, *Religious Courts*,  
*revitalization of traditional institutions*, *Bugis-Mandar*

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**Commented [MOU3]:** This article once again wants to show that there is integration between the three legal systems in Indonesia, namely Islamic law, customary law and national law. in other terms this is a form of legal pluralism in divorce cases or in Islamic family law which shows dynamics and development. so that this integration will realize the objectives of Islamic law (*maqashid al-Syariah*) as the core of this article.

### Transformasi *Maqashid Shariah* dalam Mediasi Perceraian di Pengadilan Agama: Revitalisasi Lembaga Adat Bugis-Mandar

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#### Abstrak

Fokus penelitian ini membahas tentang dinamika produk hukum praktik mediasi perceraian di Pengadilan Agama; transformasi *maqashid syari'ah* dalam praktik mediasi dalam kasus perceraian, dan revitalisasi budaya *pangngaderreng* dalam praktik mediasi perceraian di masyarakat Bugis dan Mandar. Metodologi penelitian yang digunakan adalah penelitian lapangan kualitatif deskriptif, pendekatan holistik, historis, dan sosio-anthropologis, analisis teori *maqashid syari'ah*, teori perubahan sosial dan hukum, dan teori kelembagaan sosial. Hasil penelitian ini menunjukkan bahwa perkara perceraian merupakan perkara perkara luar biasa di Pengadilan Agama, dinamika praktek mediasi di Pengadilan Agama telah berhasil dalam mediasi perjanjian damai tertulis dalam akta

damai, produk mediasi lainnya adalah mediasi yang berhasil sebagian dan mediasi yang tidak berhasil sebagian, mediasi tidak berhasil. produk yang tidak berhasil adalah suami dan istri yang berkomitmen untuk bercerai; Transformasi *maqashid syari'ah* dapat menjadi pertimbangan utama hakim dalam praktek mediasi untuk menyelamatkan rumah tangga yang di ambang kehancuran, sehingga *maqashid syari'ah* sangat mendesak untuk ditempatkan dalam Perma No.1 tahun 2016, dan revitalisasi kelembagaan adat Bugis-Mandar merupakan salah satu upaya. menghidupkan kembali nilai-nilai kehidupan *sirondo-rondo, siamasei, sianuang pa'mai, dan sibaliparri*, serta menghidupkan *shara'* yang dilakukan *petta kali'* atau *puang kali'*.

**Keywords:** *Maqashid Syari'ah, mediasi perceraian, Pengadilan Agama, revitalisasi lembaga adat, Bugis-Mandar*

## Introduction

The process of implementing mediation in fortifying family resilience from conflict has long been the subject of discussion as explained by Margulies that mediation is considered an effective effort to resolve husband-wife conflicts that intend to divorce.<sup>1</sup> On the other hand, violence that occurs in the family and also in mediation is still difficult to find theoretical and practical concepts.<sup>2</sup>

The function of the mediator is to reconcile the two sides of the disputing family, helping to carry out active communication. In addition, the mediator also encourages harmony and also emphasizes the parties in conflict to consider the bad consequences of divorce.<sup>3</sup> It is important to strengthen the concept of mediation in resolving family conflicts and childcare.<sup>4</sup> Mediation is conducted by a mediator who acts as a mediator for the disputing parties and plays an active role in resolving the conflict by reaching a peace agreement from the parties.

Mediation is part of the legal system that can resolve family conflicts quickly, easily, and cheaply as long as the parties cooperate.<sup>5</sup> In addition to being able to be carried out by judges, psychologists, and other professionals who have the competence to carry out mediation can understand and address the root causes of problems in family conflicts.<sup>6</sup> According to RA Hahn explained that from several studies of the divorce mediation process carried out there were beneficial and beneficial results for the efficiency and satisfaction of the parties.<sup>7</sup> This opinion is supported by D. Ellis that divorce mediation makes a huge contribution towards the outcome of reconciliation between husband and wife.<sup>8</sup>

In line with the study conducted by Taylor R., suggesting that the mediator's demands in carrying out his role as the mediator can help to build confidence in the

**Commented [MOU5]:** Divorce in Indonesia shows a number that continues to increase. This article's offer by revitalizing Customs (adat) in the Bugis and Mandar communities to reduce the divorce rate has become something that has attracted both scholars and researchers in the international and national world.

<sup>1</sup> S Margulies, "Litigation, Mediation and the Psychology of Divorce," *Journal of Psychiatry and Law*, 1992.

<sup>2</sup> F Kaganas, "Domestic Violence and Divorce Mediation," *Journal of Social Welfare and Family Law* 16, no. 3 (1994): p. 265-278.

<sup>3</sup> A Shepard, "An Introduction to the Model Standards of Practice for Family and Divorce Mediation," *Family Law Quarterly* 35, no. 1 (2001): p. 2-3.

<sup>4</sup> J Weaver, "Mediation and Moderation of Divorce Effects on Children's Behavior Problems," *Journal of Family Psychology* 29, no. 1 (2015): p. 39-48.

<sup>5</sup> JA Twaite, "Divorce Mediation: Promises, Criticisms, Achievements, and Current Challenges," *Journal of Psychiatry and Law*, 1998.

<sup>6</sup> C Beck, "A Critical Reappraisal of Divorce Mediation Research and Policy," *Psychology, Public Policy, and Law* 6, No. 4 (2000): p. 991.

<sup>7</sup> RA Hahn, "Divorce Mediation: Research and Implications for Family and Couples Counseling," *The Family Journal*, 2000.

<sup>8</sup> D Ellis, "Safety, Equity, and Human Agency: Contributions of Divorce Mediation," *Violence Against Woman* 6, no. 9 (2000): p. 1012-1027.

parties. Mediators are required to designing interpersonal communication between both husband and wife in conflict so that each party can introspect themselves towards better interaction changes.<sup>9</sup> The real emphasis of mediation is on reconciling the husband and wife who insisted on divorce.<sup>10</sup> Legal practitioners and academics have studied a lot about the mediation process that can reduce the soaring divorce rate. Mediation is a reliable means of accelerating the reconciliation of families in conflict.<sup>11</sup> Even C. Beck mentioned that the implementation of the formulation of the concept of mediation is a much more recent effort to create justice for wives who are victims of domestic violence.<sup>12</sup>

However, mediation can speed up the settlement of cases, on the contrary as described by Przybyla Basista stated that the reasons for couples who refuse the mediation process are especially wives who experience feelings of trauma and fear of violence from their ex-husbands. Experience from her domestic life, the wife received painful treatment so that she did not have the time and space to negotiate through mediation with her ex-husband.<sup>13</sup> Sometimes children are also victims of violence, experiencing depression and anxiety which can affect the physical and psychological health consequences of divorcing parents.<sup>14</sup> The research also touches on the legal protection of children through the mediation process. Andrew Schepard's views on custody and subsistence needs can be read.<sup>15</sup>

The opinion of J. D. Bailey provides that the sharpening of the practice of mediation in divorce cases can refer to several assumptions that mediation is a golden opportunity to resolve conflicts and household breakdowns in constructing reconciliation between husband and wife. The practice of mediation involves offering a problem-solving process with a focus on the goal of reconciliation.<sup>16</sup>

Compare this with the thought conveyed by Robert Dingwall that the legal system and family policies of the government related to the practice of mediation carried out in European countries such as England, Wales, Scotland, and Northern Ireland are forced attempts to the husband and wife who are going to divorce under control of the mediator to undergo the mediation process before their case reaches the Court.<sup>17</sup> An interesting thought from Lori Anne Shaw that the implementation of non-litigation mediation can outperform the judicial process in legally assisting the parties in a case, including from the results of mediation that prioritizes the interests of children.<sup>18</sup> Demands for non-litigation mediation practices are carried out to anticipate more immediate damage and cracks in households.

The theoretical purpose of marriage in Islamic law is to create *sakinah*, *mawaddah*, and *warahmah* families. Sometimes the theoretical goal of marriage is

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<sup>9</sup> R Taylor, "Use of Change Theory in the Context of the Divorce Mediation Session," *Journal of Divorce and Remarriage* 40, no. 1 (2004): p. 90.

<sup>10</sup> P Huang, "Divorce Law Practices and the Origins, Myths, and Realities of Judicial 'mediation' in China," *Modern China* 31, no. 2 (2005): p. 154.

<sup>11</sup> Robert E Emery, David Sbarra, and Tara Grover, "Divorce Mediation: Research and Reflections," *Family Court Review* 43, no. 1 (2005): p. 22–37.

<sup>12</sup> C Beck, "Defining a Threshold for Client Competence to Participate in Divorce Mediation," *Psychology, Public Policy, and Law*, 2006.

<sup>13</sup> H Przybyla-Basista, "The Influence of Spouses' Resistance on Their Decision to Enter into Divorce Mediation," *Journal of Divorce and Remarriage* 48, no. 3 (2008): p. 31.

<sup>14</sup> A Kraft, "Childhood Parental Divorce and Cortisol in Young Adulthood: Evidence for Mediation by Family Income," *Psychoneuroendocrinology* 34, no. 9 (2009): p. 1363–1369.

<sup>15</sup> Schepard, "An Introduction to the Model Standards of Practice for Family and Divorce Mediation."

<sup>16</sup> JD Bailey, "Assessing Empowerment in Divorce Mediation," *Negotiation Journal* 25, no. 3 (2009): p. 327–336.

<sup>17</sup> R Dingwall, "Divorce Mediation: Should We Change Our Mind?," *Journal of Social Welfare and Family Law* 32, no. 2 (2010): p. 107–17.

<sup>18</sup> L Shaw, "Divorce Mediation Outcome Research: A Meta-Analysis," *Conflict Resolution Quarterly* 27, no. 4 (2010): p. 447–67,



very different in practice from the goal of marriage. Marriage in the view of the Bugis and Mandar people that “*iya tu’u di’o alikkangan, including mesa pakkasiwiang lao di puang Allah Taala, Jari mua 'alikkangananna macoai, ma mandapai* reward, but *mua 'andani macoa, napolean sin*”. The meaning of marriage is that marriage is worship, so if the marriage is good you will get a reward, but if it is not good you will get sin.

Therefore, the practice of mediation, whether organized by judges at the Religious Courts or mediators outside the court, is very important to prioritize the content of divorce mediation using the *maqashid shariah* approach. Divorce mediation which contains the *maqashid sharia* paradigm based on *mastahat* as conveyed by Al-Gazaliy is an effort to uphold the objectives of shari’a laws in maintaining religion, soul, mind, descent and property.<sup>19</sup>

Maqashid shariah as formulated by *ushul fiqh* scholars is to have the meaning of all the aims and objectives regulated in religion to bring benefit and eliminate exasperation to its servants. Al-Syatibi further perfected the traditional *ushul fiqh* theories in the al-Muwafaqat book by formulating *maqashid shariah* which focused on *al-kulliyah al-khamsah*.<sup>20</sup>

Whereas *maqashid shariah* seen from the order is *maqashid al-dharuriyyah* (primary), *maqashid al-hajiyat* (secondary), and *maqashid al-tahsiniyyat* (complementary).<sup>21</sup> Therefore, based on the *maqashid shariah* that divorce mediation is in the order of *maqashid al-dharuriyyah*, which is obliged to eliminate adultery in marriage, including maintaining the family from conflict, enmity, disharmony, and rifts between husband and wife.

On the other hand, based on the data source of the Directorate General of Religious Courts' annual report, divorce cases are considered an extraordinary matter in Indonesia. Following the report's data, it shows that there were 128,401 divorce cases in 2015. Divorce cases in 2017 included 113,937 divorce talaq, while 301,573 divorce lawsuits were filed. In 2018 the details of the divorce talaq were 118,853. In 2019, there were 124,776 divorce cases, then 355,842 divorce cases.<sup>22</sup>

The discourse on mediation has produced many studies on the roles and responsibilities of academics,<sup>23</sup> such as Mursyid Jawas and Sri Astuti A. Samad explained that reconciliation efforts in resolving family disputes can be successful with a family resilience approach through traditional Acehese traditional wisdom such as *keuchik, tuha peut, teungku imum, and imum mukim*. The resolution of family conflicts in Acehese society by means of Islamic law at the Syari’ah Court and also by practicing customary law in *sara opat* institutions, a kind of institution that includes *reje* and *imem* is very accurate, effective, and efficient.<sup>24</sup>

This idea of mediating divorce through customs and social institutions is very suitable to be actualized in the Bugis community in South Sulawesi and the Mandar community in West Sulawesi. Both the Bugis and Mandar Communities are ethnic

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<sup>19</sup> Abd al-Rahman Yusuf Abd Qardhawi, *Nazhariyah Maqashid Al-Syari’ah Baina Syekh Al-Islam Ibn Taimiyah Wa Jumhur Ushliyyin Dirasah Muqaranah Min Al-Qarn Al-Khamis Ila Al-Tsamin Al-Hijri* (Cairo: Kulliyah Dar al-Ulum, nd).p. 70.

<sup>20</sup> Abu Ishaq Al-Syatibi, *Al-Muwafaqat Fi Ushul Al-Ahkam, 2nd ed.* (Beirut: al-Maktabah al-Taufiqiyah, 2004). p. 2.

<sup>21</sup> Izz al-Din Abd Al-Salam, *Qawaid Al-Ahkam Fi Masalih Al-Anam* (Beirut: Dar al\_Ma’rifah, nd). p. 11.

<sup>22</sup> Directorate General of the Religious Courts of the Republic of Indonesia, *Annual Report of the Religious Courts* (2020).

<sup>23</sup> E Koopman, “*The Present and Future Role of Higher Education in Divorce Mediation: Problems and Promise in Teaching, Research, and Service*,” *Divorce Mediation: Perspectives on the Field*, 2014.

<sup>24</sup> Mursyid Djawas and Sri Astuti Abdul Samad, “*Conflict, Traditional, and Family Resistance: The Pattern of Dispute Resolution in Acehese Community According to Islamic Law*,” *Samarah: Journal of Family Law and Islamic Law* 4, no. 1 (2020): p. 69–71.

groups that are very strong and thick in carrying out their customs which are tied to the *pangngaderreng* culture as a culture of conduct.<sup>25</sup> which includes *ade'*, *bicara*, *rapang*, *wari'*, and *shara'*. Mandar was found when the *pangngaderreng* became a social patron as the inner power control to accommodate *shara'*.<sup>26</sup>

The acceptance of *shara'* in *pangngaderreng* culture is a consequence for society to carry out Islamic law. Along with development and *wari' and shara'*.<sup>27</sup> Acculturation of Islam and the culture of the Bugis community and the progress of human civilization which is increasingly modern, sometimes *siri'* in the *pangngaderreng* culture of the Bugis and Mandar communities has gradually shifted. Whereas in the period of traditional life, the enforcement of *siri'* in the Bugis and Mandar communities is very embarrassed and loses its self-respect if there is a disgrace in the family, including for example a married couple who divorced from that family. The connection with the *pangngaderreng* culture has less than optimal function in the Bugis and Mandar communities, especially before and during the Covid-19 pandemic era, the number of divorce cases increased sharply in Religious Courts.

Exposing this background, this study focuses on the dynamics of the legal product of divorce mediation practices in the Religious Courts which incidentally is an institution that can be trusted to enforce Perma No. 1 of 2016. The transformation of *maqashid shariah* in the practice of mediation in divorce cases in the Religious Courts and outside the courts should prioritize benefit and eliminate adversity to maintain family resilience from various conflicts and disputes. The revitalization of the *pangngaderreng* culture in the practice of divorce mediation in the Religious Courts, which so far is believed to have less than optimal function in the Bugis and Mandar communities.

### **Dynamics of Legal Product of Divorce Mediation in Religious Courts**

Divorce mediation is an effort to mediate resolving disputes so that the mediator must be neutral, bridging, and must not be partial between the conflicting husband and wife in order to reach a peace agreement.<sup>28</sup> Divorce mediation can be designed to be therapeutic, treat, remedy, and counteract the bad effects of divorce.<sup>29</sup>

Divorce mediation is constructed to reflect on the significance of the marriage and address the possibilities that trigger divorce.<sup>30</sup> assisting divorced parties to optimize the effectiveness and efficiency of conflict resolution in the family. One of the material contained in mediation is very interesting is a simulation method of husband-wife couples who are active for high cooperation which can overcome the conflicts they face, on the other hand, if the husband and wife do not cooperate less, they tend to have a selfish character.<sup>31</sup>

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<sup>25</sup> Said Nurman, *Religion and Cultural Identity Among the Bugis* (Makassari: Faculty of Islamic Theology of the Alauddin State Institute of Islamic Studies at Makassar, Indonesia, 2004).

<sup>26</sup> Abd Yunus, "The Acculturation of Islam and Local Culture in Bugis Wedding Tradition: A Historical Perspective," 2017, 4.

<sup>27</sup> Wahyuddin Halim, "Islamization or Arabization? The Arab Cultural Influence on the South Sulawesi Muslim Community since the Islamization in the 17th Century," *Suvannabhumi* 10, no. 1 (2018): p. 42.

<sup>28</sup> Syahrizal Abbas, *Mediation in the Perspective of Sharia Law, Customary Law and National Law* (Jakarta: Kencana Prenada Media Group, 2009).

<sup>29</sup> DA Sbarra, "In the Presence of Grief: The Role of Cognitive-Emotional Adaptation in Contemporary Divorce Mediation," *Handbook of Divorce and Relationship Dissolution*, 2013.

<sup>30</sup> W Neville, "Reflections on the Growth and Significance of Divorce Mediation," *Divorce Mediation: Perspectives on the Field*, 2014.

<sup>31</sup> S Worley, "The Effect of Cooperation on Egocentrism in Divorce Mediation: A Simulation Study," *Divorce Mediation: Perspectives on the Field*, 2014.

The success indicator of mediation if the material content is to collaborate, including eliminating partner violence intimidation and focusing on taking care of children,<sup>32</sup> refreshing and taking advantage of free time for discussion which aims to strengthen active communication in the family.<sup>33</sup> The family mediation construction should be intensified during the marriage period so that the husband and wife can build a household with full responsibility, affection, and love. Therefore, the practice of mediation is not only carried out when there is a conflict that is already overloaded, critical, and is experiencing a transition period for divorce.<sup>34</sup> The implementation of mediation before the family has problems with conflict, has many advantages for strengthening husband-wife relationships, enhancing cooperation, and also supporting joint care of children.<sup>35</sup>

The fact of the soaring divorce case decisions, it is appropriate to question the speed, accuracy, and efficiency of the judge's functioning as a mediator of divorce cases in the Religious Courts spread across several districts and cities in South Sulawesi and West Sulawesi. The data also shows that the Bugis and Mandar people prefer to resolve disputes and family conflicts in the Religious Courts rather than resolve conflicts with a system or kinship approach. Criticism of the Religious Courts in South Sulawesi and West Sulawesi as one of the case resolution institutions has not been able to accommodate the expectations of the community in settling divorce cases through mediation.

However, the public's assumption of judges acting as mediators in the Religious Courts is still considered a failure. Judges as mediators in conducting divorce mediation are still very symbolic, examinations are too formalistic, very technical, high cost, and cases tend to be overloaded.

The various difficulties faced by judges as mediators in the Religious Courts in general led to the Supreme Court of the Republic of Indonesia to apply Perma No. 1 of 2016. The dynamics of implementing Perma No. 1 of 2016 provides an opportunity to internalize the practice of divorce mediation held by certified mediators from career non-judges at the Religious Courts. Mediation supports all parties to resolve conflicts they face with the help of a mediator who is neutral or impartial. A mediator only tries to bridge all parties in a transparent manner, negotiate, and find the best solution.

The legal position of the implementation of mediation in Law no. 30 of 1999 concerning Arbitration and Alternative Settlements, then followed up by Perma No. 1 of 2016 concerning Mediation as an amendment to Perma No. 1 of 2008 concerning Mediation Procedures. Perma No. 1 of 2016 is implemented to carry out divorce mediation practices in the Religious Courts. Indeed, mediation for divorce in the Religious Courts is to avoid the accumulation of family cases. In fact, the judge's decision will be null and void if the judge examining the divorce case at trial does not enforce mediation at the Religious Court.

The progress of divorce cases that have entered both cases for divorce talaq and cases for divorce in the Religious Courts between 2018 and 2020 in the regions of South Sulawesi and West Sulawesi. The Religious Courts located in South Sulawesi are limited to only taking divorce data from the Parepare Religious Court, the Sidenreng Rappang Religious Court, the Pinrang Religious Court, and the Enrekang Religious Court. Meanwhile, the Religious Courts in West Sulawesi are

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<sup>32</sup> A Holtzworth-Munroe, "Controversies in Divorce Mediation and Intimate Partner Violence: A Focus on the Children," *Aggression and Violent Behavior*, 2011.

<sup>33</sup> E Beck, "Improving Communication in Divorce Mediation," *Divorce Mediation: Perspectives on the Field*, 2014.

<sup>34</sup> S Molgora, "Divorce and Coparenting: A Qualitative Study on Family Mediation in Italy," *Journal of Divorce and Remarriage* 55, no. 4 (2014): p. 300–314.

<sup>35</sup> D Pickar, "Intermittent Evaluative Mediation with Enduring, Post-Divorce Conflict," *Journal of Child Custody* 8, no. 3 (2011): p. 144–145.

also limited by taking data on divorce cases that are submitted to the Polewali Mandar Religious Court, the Majene Religious Court, and the Mamuju Religious Court.

The success and failure of the product of mediation practice by judges from each of the Religious Courts in South Sulawesi in three years from 2018 to 2020. Since 2018, there have been 12 judges at the Parepare Religious Court who were spread into 6 panels. Types of cases, divorced talaq received 106 cases, ended 103 cases and the percentage of case completion was 81%, claimants received 380 cases, dropped 385 cases and percentage of case completion was 93%. The Parepare Religious Court mediated 13 cases and 3 cases that succeeded in peace. In 2019, the remaining cases for divorce talaq in 2018 were 23 cases, divorce talaq received 103 cases, 120 cases were decided and the percentage of case completion was 95%. For divorce with the remainder of 2018 in 26 cases, received 439, drop out of 440 cases and the percentage of completion of cases is 95%. Mediated a number of 82 cases and 5 cases which succeeded in peace. In 2020, the remaining cases for divorce talaq in 2019 amounted to 6 cases, 80 cases of divorce received and 80 cases of divorce. There are 25 divorce cases left in 2019, 357 cases received, 379 cases ended.<sup>36</sup>

Referring to the state of divorce cases every year there has been an increase in both talaq and legal divorce at the Parepare Religious Court. The reality cannot be denied, divorce cases are very worrying, because the number of cases for suing for divorce is greater than cases for divorce talaq. In addition, the performance of judges in conducting mediation at the Parepare Religious Court from 2018 to 2020 can be categorized as failing. The failure of judges to mediate at the Parepare Religious Court has not been able to balance the number of divorce cases that were decided and the number of cases that succeeded in mediating to reach a peaceful consensus.

The progress of divorce cases from 2018 to 2020 at the Sidenreng Rappang Religious Court, can be described with data since 2018, the number of divorces talaq 154 cases and 555 divorce cases. Mediating 91 divorce cases, succeeded in reaching a peaceful consensus on 2 cases. In 2019, the number of divorces talaq received was 213 cases, 202 cases were decided, and the percentage of case settlements was 88%. 699 cases of divorce were accepted, 690 cases were decided on 95%. Mediated 89 cases and succeeded in a peaceful consensus on 0 cases. In 2020, the number of divorces talaq received 163 cases, 152 cases broke up and 83% case settlement percentage, 604 divorce cases received, 591 broke up, and 91% case completion percentage. Mediated 69 cases and succeeded in a 2 case peace consensus.<sup>37</sup>

The strength of the judges at the Sidenreng Rappang Religious Court in conducting mediation is still relatively weak and failed, even in the mediation that was carried out in 2019, not a single case was successfully reconciled. Divorce cases that are accepted are generally terminated and only a very few divorce cases have succeeded in peace.

The Pinrang Religious Court is one of the courts which accepts many divorce cases every year. It is known that in 2018, there were 163 divorces and 640 divorcees, 131 cases of mediation, and 2 cases of the peace agreement were reached. In 2019 there were 208 cases of divorce, 820 cases of divorce, 128 mediation cases, and 4 cases of peace. In 2020, there were 199 divorce cases, 798 divorce cases, 140

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<sup>36</sup> Chairman of the Parepare Religious Court, *"Annual Report of the Parepare Religious Court"* (City of Parepare, 2020), <http://pa-parepare.go.id/home/leport-tahunan/>.

<sup>37</sup> Chairman of the Sidenreng Rappang Religious Court, *"Annual Report of the Sidenreng Rappang Religious Court"* (City of Pangkajenne, 2020), <http://pa-sidenrengappang.go.id/>.

mediated cases, and 20 peaceful cases.<sup>38</sup>

Compared to the Parepare Religious Court and the Sidenreng Rappang Religious Court, the Pinrang Religious Court judges have made progress in reconciling divorce cases. In 2020, the success of mediation at the Pinrang Religious Court is inseparable from the active role of judges in reconciling a litigious husband and wife. The success of mediating divorce cases is supported by the knowledge and experience of judges who are familiar with the social culture of the Pinrang community.

In 2019 data, there were 338 divorce cases including 66 cases of divorce, 258 divorce cases, and 51 cases of mediation, only 1 case was successful at the Enrekang Religious Court. In 2020 there were 336 divorce cases and among them, 75 cases of divorce, 246 divorce cases, 31 mediation cases, and none of them succeeded in peace. Mediation from 2019 and 2020 amounted to 82 cases, only 1 case succeeded in peace.<sup>39</sup> Mediation is almost completely ineffective and in fact creates new problems, namely the accumulation of cases that should be resolved, but are hampered by the time-consuming mediation process. Mediation also has an impact on costs (court costs) so that the principle of litigating with a simple, fast, and low cost does not materialize.

Furthermore, the development of divorce case mediation in the Religious Courts located in the West Sulawesi region is limited to the Polewali Mandar Religious Courts and the Majene Religious Courts. The source of information found at the Polewali Mandar Religious Court stated that in 2017 talaq's divorce was received by 155 cases, 135 cases were ended. 422 cases of divorce were accepted, 366 cases were ended, related to the mediation report not mentioned in the report on the activities of the Polewali Mandar Religious Court. In 2018 talaq divorce received 175 cases, 160 cases ended. 453 divorce cases were accepted, 427 cases ended and mediation was also not included in the 2018 Polewali Mandar Religious Court activity report. In 2019 talaq divorce received 176 cases, 161 cases ended. 507 cases of divorce were accepted, 473 cases were ended.<sup>40</sup> In 2019 there has been no progress on case mediation in the activity report. Meanwhile, the 2020 report has not yet published the number of cases for divorce talaq and divorce.

Divorce cases at the Majene Religious Court, in 2017 talaq received 44 cases plus the remaining 2 cases in 2016, 41 cases ended. Divorce accepts 131 cases plus the remaining 5 cases from 2016, 128 cases ended, 30 cases mediated and none of the cases succeeded in peace. In 2018, divorce talaq received 45 cases plus the remaining 5 cases in 2017, 48 cases were broken. The remaining cases in 2017 were 7 cases, in 2018 129 cases were divorced, 137 cases were ended, 32 cases were mediated and none of the cases were successfully reconciled. In 2019 divorce Talaq received 55 cases plus the remaining 2 cases in 2018, 57 cases ended. Divorce accepts 150 cases plus the remaining 6 cases in 2018, 155 cases ended, 40 mediated cases, and 4 peaceful cases.<sup>41</sup> In 2020, the progress of the divorce case has not been published, both from the talaq divorce case and the sue divorce case.

Optimizing efforts to provide legal services to the community in all Religious Courts in South Sulawesi and West Sulawesi in enforcing mediation institutions

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<sup>38</sup> Chairman of the Pinrang Religious Court, "Annual Report of the Pinrang Religious Court" (Kota Pinrang, 2020), <http://pa-pinrang.go.id/index.php?limitstart=27>.

<sup>39</sup> Chairman of the Enrekang Religious Court, "Annual Report of the Enrekang Religious Court" (Enrekang City, 2020), <https://www.pa-enrekang.com/index.php/transparant/sekretariat/perplan/leentuk-tahunan>.

<sup>40</sup> Chairperson of the Poliwali Mandar Religious Court, "Annual Report of the Poliwali Mandar Religious Court" (Poliwali City, 2020), <http://pa-polewali.net/index.php/info-peradilan/program-kerja-k-Activity/1-Report-tahunan>.

<sup>41</sup> Chairman of the Majene Religious Court, "Annual Report of the Majene Religious Court" (Majene City, 2020), <https://pa-majene.go.id/informasi-umum/leport-tahunan>.

which are run by mediating judges. The mediating judge carries out legal remedies against the justice-seeking community to reconcile the disputing parties. Mediation in all Religious Courts is regulated in article 130 HIR / article 154 Rbg. jo. Perma No. 1 of 2016 concerning Mediation Procedures in Courts.

The legal product of the mediator reports to the examining panel of judges regarding the results of the mediation process that has been carried out with the case husband and wife. If the mediator succeeds in reconciling, the results of the mediation are written in a peace deed. The panel of judges stated in legal considerations, one of which was based on the peace deed agreed and signed by the parties in the case. In one of the verdicts, the panel of judges "punished the applicant/plaintiff and the respondent/defendant to obey the results of the peace agreement that had been reached." Successful mediation without proof of the peace deed of the party presenting the case will withdraw the case that has been submitted at the next trial. Based on Perma No.<sup>42</sup>

There are several types of mediation products, one of which is a successful mediation product, where both husband and wife achieve reconciliation, agree to resolve the problem peacefully and amicably. The peace agreement actualized the peace deed by Perma No. 1 of 2016 Article 27 paragraph 2 or in a divorce case, the party filing for divorce withdraws the case at the next trial. The mediation has succeeded in reaching an agreement, the parties with the assistance of the mediator are obliged to formulate a written agreement in a peace agreement signed by the parties and the mediator. In helping to formulate a peace agreement, the mediator is obliged to ensure that it does not contain provisions that are contrary to law, public order, and also morals, detrimental to the litigant.

The next possibility, the product of partially successful mediation is when two or more cases are filed but not all of them reach an amicable agreement, for example, divorce cases are accumulated with joint assets, a husband and wife agree to share Gono Gini assets are joint assets obtained during the marriage period. peacefully and kinship, but both of them still want to divorce. Also, the product of mediation does not work, if both parties in a case do not reach a peace agreement and want to continue the case. Another type of mediation product is improper mediation if one of the parties is not present at the mediation without justified reasons, involves the rights of the other party, and there are parties who should be subject to law but are not involved in the case.

### **Transformation of Maqasid al-Sharia in Mediation Practices in Divorce Cases**

The mediator who carries out the mediation can help the parties of a married couple to have a strong character and personality in facing a case.<sup>43</sup> The mediator strengthens the understanding of a married couple regarding the importance of marriage, the consequences after divorce,<sup>44</sup> and a major consideration of the power of mediation is childcare.<sup>45</sup> The mediator conducts mediation in a measured manner, ensuring the benefit, effectiveness, and satisfaction of the parties related to the success of the mediation in achieving peace.<sup>46</sup>

Measurable mediation can focus on the context of enforcing mediation as

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<sup>42</sup> Chairman of the Supreme Court of the Republic of Indonesia., "Perma RI. No. 1 of 2016 concerning Mediation Procedures in Courts "(Jakarta, 2016), [https://bawas.mahkamahagung.go.id/bawas\\_doc/doc/perma\\_mediasi\\_pengadilan\\_web.pdf](https://bawas.mahkamahagung.go.id/bawas_doc/doc/perma_mediasi_pengadilan_web.pdf).

<sup>43</sup> R Silver, "Practice Note: Divorce Mediation with Challenging Parents," *Conflict Resolution Quarterly*, 2008.

<sup>44</sup> W Donohue, "Interaction Dynamics Predict Successful Negotiation in Divorce Mediation," *Journal of Language and Social Psychology* 35, no. 4 (2016): p. 374–393.

<sup>45</sup> K Bollen, "Money or Children? Power Sources in Divorce Mediation," *Journal of Family Studies* 19, no. 2 (2013): p. 159–173

<sup>46</sup> S Cohen, "Divorce Mediation: An Introduction," *Divorce Therapy*, 2014, <https://doi.org/10.4324/9781315791456>.

regulated in Perma No. 1 of 2016. Other dispute resolution processes are similar to the mediation of divorce cases at the Religious Courts. The very basic similarities are the steps that must be passed by the provisions in Perma No. 1 of 2016.

In general, the mediation stages in divorce cases at the Religious Courts are mapped into three stages, namely the preparation stage, the implementation stage, and also the decision-making stage. The stages of mediation are described systematically and clearly by their respective sequences. In the practice of mediation after registering a divorce case at the Religious Court, the parties of the litigant husband and wife come to court after attending the summons legally and properly by the stipulations of the time and place.

Furthermore, the preparatory stage process in mediation is needed for a mediator to early study and deepen the root of the dispute between husband and wife who are consulted in mediation. The next stage is the implementation stage, the first stage of which is to form a forum. Before starting the mediation, both the mediator and the litigant husband and wife form a forum. In the forum that has been formed, the mediator organizes a joint meeting to deliver the preliminary statements of the husband and wife in the case.

At the time of conducting the mediation, the final stage is the decision-making stage where parties work together with the help of a mediator to evaluate options, get trade-offs and offer packages, minimize debates and find a fair basis for shared allocations. In the end, the parties who agreed were successful in making a joint decision. The stage of determining the mediator's decision can also pressure the parties, find formulas to avoid embarrassment, assist the parties in dealing with the power of attorney (if empowered).

The atmosphere of the location or place of mediation is a comfortable, free and pleasant place.<sup>47</sup> Technical readings and the stages of mediation in the Religious Courts are very important to construct priorities for the application of *maqashid syariah*. The *maqashid syariah* perspective on the mechanism of the stages of mediation is still very technical and the material content of divorce mediation is too formal. The very formalistic technical atmosphere of the implementation has made it more difficult and rigid to find a peace agreement. The consideration of the implementation of *maqashid syariah* in the content of mediation material is to try to strengthen the actualization of benefit, to bury the profundity (damage) in the household of married couples who have problems with conflict.

The opinion of al-Ghazaliy was explained systematically and concretely about Maqashid sharia as the basis of *maslahah*, and also the argument for achieving the goal. Maqashid syariah which is the basis of *maslahat* is trying to uphold the meaning of *syar'i* as the absolute authority of Allah in making laws to maintain religion, soul, mind, descent and property.<sup>48</sup> Thus, everything that can realize the meaning of *syar'i* is called *maslahat*. Al-Ghazaliy reiterated that the *maslahat* in the *maqashid syariah* which is actualized in its implementation in Islamic law is to take advantage as a source of goodness, rejecting obedience as a source of damage.<sup>49</sup> Therefore, benefit must be in accordance with *syar'i*, even though it is contrary to human intentions, sometimes human intentions are not based on *syar'i* but may be based on their desires.<sup>50</sup>

The opinion of Yusuf al-Qardhawi in formulating *maqashid syariah* is the transformation of the goals desired by the texts which contain the meaning of

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<sup>47</sup> AC Garcia, "Locations for Advice-Giving and the Production of Neutrality in Divorce Mediation Sessions," *Conflict Resolution Quarterly*, 2020, <https://doi.org/10.1002/crq.21292>.

<sup>48</sup> Al-Gazaliy, *Al-Mustashfa Fi 'Ilm Al-Ushul*, 1st ed. (Beirut: Dar al-Kutub al-Ilmiyah, 1993).

<sup>49</sup> Riza Mulia, "Marital Beslag Outside Divorce Lawsuit in the Maqashid Syari'ah Perspective," *Samarah: Journal of Family Law and Islamic Law* 4, no. 2 (2020): p. 401.

<sup>50</sup> Said Syarifuddin, "Maslahat as Considerations of Islamic Law in View of Imam Malik," *Samarah: Journal of Family Law and Islamic Law* 4, no. 1 (2020): 90.

orders, prohibitions, and permits at the same time. *Maqasid shariah* means the purpose of Allah SWT. and also His Messenger in transforming Islamic laws. These Islamic laws can be found in the Koran and hadith which lead to the benefit of mankind.<sup>51</sup> Ibn Qayyim's opinion details the purpose of Islamic law is to manifest the benefit of mankind in the world and the hereafter. In totality, Islamic law contains mercy, justice, benefit, and wisdom.<sup>52</sup>

Furthermore, sharia means an ethical system as well as a value in covering all problems of human life which functions as a consistent and comprehensive life guideline that is implemented in Islamic law. The implementation of sharia in Islamic law is an absolute manifestation to uphold justice and benefit, eliminate prejudice, and reduce difficulties in human affairs. The purpose of Islamic law revealed to humans is the same connotation as the meaning of *maqashid shariah* in preserving all human interests.<sup>53</sup>

The realization of the *maqashid shariah* is that Muslims are obliged to maintain their religion, soul, mind, ancestry, and property. As *maqashid shariah* is generally understood to be the purpose of stipulating and lowering Islamic law to bring about goodness, safety, and happiness, on the other hand, avoiding badness, trouble and damage can threaten human life and existence.

The criticism of divorce through *maqashid shariah*, which is the judge's decision at the Religious Court, actually has the potential to cause the household to suffer disarray and damage, it is also focused on taking care of the children of both parents who are no longer maximally which causes neglected children.<sup>54</sup> The practice of mediation in the Religious Courts through the application of *maqashid shariah* is an action to repair and save a household from a husband and wife on the verge of damage and destruction. The perspective of the *maqashid shariah* that divorce in the Religious Court is not the best option or way to resolve conflicts between husband and wife in the household.

Seeing the reality of divorce cases in the Religious Courts today, it seems as if there are almost no more efforts, it is very difficult to stem and contain the rate of divorce that has increased sharply from year to year. The Supreme Court needs to review the effectiveness and efficiency of the implementation of mediation through Perma No. 1 of 2016 at the Religious Court with consideration for the benefit contained in the *maqashid shariah*. The strength of the application of Perma No. 1 of 2016 has not had a major effect on improving the situation of a married couple who filed their case at the Religious Court. The implementation of Perma No. 1 of 2016 does not yet show the balance of the verdict in divorce cases than the success of mediation in the Religious Courts.

The legal construction that is transformed by the Supreme Court in the Religious Courts, *maqashid shariah* can be a major consideration in improving mediation practice. Changes in law enforcement in the practice of mediation in the Religious Courts mean that judges are no longer given additional duties in carrying out mediation. The mediation must optimally be carried out by the mediator freely and independently, without depending on the Religious Courts. The Supreme Court must be more courageous in establishing a mediation institution for divorce cases as a free, independent, and independent institution in preventing the increasing number of divorces.

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<sup>51</sup> Yusuf Al-Qardhawiy, *Dirasah Fiqh Maqashid Al-Shariah; Baina Al-Maqashid Al-Kulliyah Wa Al-Nushus Al-Juziyyah* (Cairo: Dar al-Syuruq, 2006).

<sup>52</sup> Ibn Qayyim, *I'lam Al-Muwaq' in Rabb Al-Alamin*, 3rd ed. (Beirut: Dar al-Jail, nd).

<sup>53</sup> Asyraf Wajdi Dusuki and Nurdianawati Irwani Abdullah, "Maqasid Al-Shariah, Maslahah, and Corporate Social Responsibility," *American Journal of Islamic Social Sciences* 24, no. 1 (2007): p. 31.

<sup>54</sup> AR Poladian, "Family Mediation for Divorce and Parental Separation," *Foundations for Couples' Therapy: Research for the Real World*, 2017, 256-267, <https://doi.org/10.4324/9781315678610-26>.



Regulatory changes in the implementation of the law as an effort to transform *maqashid syariah* in the Religious Courts that every registered case should be that a husband and wife who are about to divorce must have a certificate of unsuccessful mediation from the mediation institution. Thus, the Religious Courts no longer accept divorce cases without a certificate of unsuccessful mediation which serves as a subsidiary condition in registering cases.

This opinion is reinforced by several sources from experience, it can be said that the implementation of mediation should be done before the case is entered or registered at the Religious Court. Experience from several times the mediation of several husband and wife couples who quarreled or conflicts with mediation through non-litigation, before the litigant couple filed a case in the Religious Court and the result succeeded in making a peace agreement. Some married couples who have litigated no longer wish to file divorce cases at the Religious Court have returned to harmony in rebuilding their households. In fact, in several cases, after the mediator reported the results of the mediation being unsuccessful, the case examining judges continued the trial process, starting with a vision or settlement by the panel of judges who managed to reconcile the litigants. The essence is that between mediation and peace efforts carried out by the mediator and the case examining a panel of judges should be the same.

After a husband and wife in a case get advice and advice from the Marriage Advisory, Development and Preservation Agency, it can show an indication that the divorce rate can be slightly suppressed through mediation outside the Court.<sup>55</sup> The experience of mediating divorce cases outside the court can be strengthened when the existence of the Marriage Advisory, Guidance and Preservation Agency while still active, based on data from the Office of Religious Affairs, nearly 50% of married couples who wish to file divorce cases at the Religious Courts can discourage divorce.

### **Revitalization of Bugis and Mandar Customary Institutions in divorce mediation**

The Bugis and Mandar peoples have historically been a family group that cannot be separated emotionally because they are tied to a *pangngaderreng* cultural system in South Sulawesi. The two communities were in the same territorial region before the formation of West Sulawesi as the expansion area of the South Sulawesi region on October 5, 2004, through Law no. 26 of 2004. Although separated from regional ties, emotional ties, both physically and physically, are still harmonious and peaceful.

The association of the two societies is bound in a very monumental cultural system, namely the *pangngaderreng* culture. Also, the Bugis and Mandar communities can also be bonded with marriage. The two societies are united with each other because of the same belief in embracing Islam. Returning to the *pangngaderreng* culture, it has five elements that cannot be separated from one another, namely *ade'*, talk, *rapang*, *wari*, and *shara'*.<sup>56</sup> *Pangngaderreng* is a cultural system and a social system that functions as the customary institution or social institution of the Bugis and Mandar peoples. *Pangngaderreng* culture regulates religious, social, cultural, state, and legal norms. *Ade'* can be interpreted as custom, speaking means justice, *rapang* is jurisprudence, *wari* means social layering, and

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<sup>55</sup> M De Jong, "A Pragmatic Look at Mediation as an Alternative to Divorce Litigation," *Tydskrif Vir Die Suid-Afrikaanse Reg*, no. 3 (2010): p.515-531. <https://www.scopus.com/inward/record.uri?partnerID=HzOxMe3b&scop=79959369736&origin=inward>.

<sup>56</sup> Nurnaningsih Nawawi, "Assimilation of Lontara Pangadereng and Islamic Shar'at: Behavioral Patterns of the Bugis-Wajo Society," *Al-Tahrir: Journal of Islamic Thought* 15, no. 1 (2015): p. 25.

*shara'* means Islamic law.<sup>57</sup>

The Bugis and Mandar people are very loyal and obedient to *ade'* (Bugis) and *ada'* (Mandar) means adat. The obedience and loyalty of the Bugis and Mandar people to adat are due to their deep belief in adat which always protects and preserves himself as a human being with *siri'*. *Siri'* in essence is honor, dignity, dignity for humans. If someone does not have *siri'* in him, he is no longer excited to live, people in Bugis and Mandar societies prefer to die rather than have no *siri'* in him.

*Siri'* in the expression of the Bugis society is "*Siri' emmi ri onroang ri lino, utetiong ri ade'e, najagaimami siri'ta, naia siri'e sunge naranreng, na life roughly*",<sup>58</sup> While *siri'* in the Mandar community expression is "what is *siri'* in *tu'u ita di'e rupa or mala tuo dini dilino*, using *de'i is dipiara toi siri', dotai tau mate anna dadzi tia andan dian siri'*" This means that only with *siri'* humans can survive in the world, because by upholding customs, maintaining *siri'*, because with *siri'* death is at stake, and life is the ransom.

The connection with the enforcement of *siri'* in the Bugis and Mandar communities seems to have experienced a shift in values. The shift in the value of *siri'* itself is marked by a very interesting fact about divorce cases in the Bugis and Mandar communities, which is that divorce cases always dominate rather than divorce talaq in all Religious Courts. Acceleration of suicidal divorce cases is very urgent in the Bugis and Mandar communities. Compared to divorce talaq, family resilience began to be very fragile in Bugis and Mandar societies with the dominance of divorce in the Religious Courts. The dominance of a legal divorce which is the triggering factor is domestic violence, economy, and polygamy. Therefore, The Bugis and Mandar people seem to gradually no longer respect *siri'*, because they are not considered a disgrace' if they go to the Religious Court to ask for a divorce. It should be for the Bugis and Mandar people that it is a disgrace with divorce, let alone committing domestic violence, the disgrace of not being able to meet the economic needs of their families, and also a disgrace 'because of polygamy. A person disobeying or disregarding *siri'* is a disgrace'.

The fragility of family resilience in the Bugis and Mandar communities is also a triggering factor, namely the crisis of figures from family members who are charismatic as role models, and the crisis of optimizing the role of traditional institutions that act as mediators. Cultural and social changes in the Bugis and Mandar communities, sometimes on the part of the parents themselves, who usually play a role in separating the marriages of their children. For families who are experiencing conflict, it seems as if the Religious Court is the last place in conflict resolution. The irony is that it turns out that the Religious Courts are not a place that is capable of repairing the rifts in the households of husband and wife who experience conflict. Data from all divorce cases received at the Religious Courts are generally decided by the judge.

The strength in carrying out the value of *ade'* in the Bugis and the Mandar community' is to maintain a lasting and sustainable marriage, the implementation of the value of life *sirondo-rondo* which means cooperation, helping each other in doing a job, both heavy and light. The next value that is related to the sustainability of marriage is *siamasei* and *sianuang pa'mai* that in building a household, the husband and wife must love and love each other. The Bugis and Mandar people in fostering a household are also known as *sibaliparri*, husband and wife must maintain household harmony and have a mutual sense of responsibility towards

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<sup>57</sup> Rahmatunnair, "Contextualization of Pangngadereng in the Enforcement of Islamic Shariah in Buginese Bone Community," *Al-Qalam* 17, no. 1 (2011): p. 94.

<sup>58</sup> Fikri, Rahmawati, and Zulfah, "Idealism and Realism of Islamic Law in Pangngadereng Culture of the Modern Bugis Bone," *IOP Conference Series: Earth and Environmental Science* 175, no. 1 (2018): p. 2, <https://doi.org/10.1088/1755-1315/175/1/012137>.

their families, both when joy and sorrow must be faced together, the same fate and co-existence.

Marriage advice and advice are provisions in living the household dish.<sup>59</sup>The revitalization of customary institutions in the Bugis and Mandar communities such as *sirondo-rondo*, *siamasei* and *sianuang pa'mai*, and *sibaliparri* is the basis for certified judges and mediators to carry out mediation in the Religious Courts and outside the courts. Optimizing customary institutions in the Bugis and Mandar communities can be a very strong defense against the increasing divorce rate in the Religious Courts.

Also, reviving the traditional institutions of the *pangngaderreng* cultural system is *shara'* which is the implementation of Islamic law in the Bugis and Mandar communities. The enforcement of Islamic law in Bugis society is carried out by someone who has the title *petta kali'* and in Mandar society it is known as *puang kali'*. People who are appointed to be *petta kali'* in Bugis society and *puang kali'* in Mandar society are charismatic, scholars who have a deep knowledge of Islam, master jurisprudence and Islamic law. The function of *petta kali'* or *puang kali'* is to give advice or marriage advice for married couples who are about to divorce.

The revitalization of *petta kali'* and *puang kali'* in Bugis and Mandar communities is that every married couple who is about to divorce, should first ask for advice or marriage advice. Divorce cases are no longer registered with the Religious Courts, before there are marital advice and advice from *petta kali'* and *puang kali'*.

## Conclusion

Referring to the divorce case data, it is an extra ordinal matter case in the Religious Courts throughout South Sulawesi and West Sulawesi. The reality that must be given full attention is that currently, divorce cases from divorce lawsuits are increasing in number compared to talaq divorces in the Religious Courts, so there is a concern about family resilience in the Bugis and Mandar communities. Divorce cases are increasing in number which can affect the mediation products in the Religious Courts, which causes the Supreme Court to apply Perma No. 1 of 2016. The dynamics of some of the products of mediation practices in the Religious Courts are successful mediations carried out by a mediator with a husband and wife couple who are having a case to reach a peace agreement as outlined in a peace deed. Another product of mediation is that mediation is partially successful and mediation is partially unsuccessful if the litigating party of the husband and wife submits two main points of the case so that some have succeeded in reaching a peace agreement and some are not successful in achieving reconciliation. The product of mediation is unsuccessful or fails because the litigant husband and wife have committed to divorce so that the mediator finds it difficult to reconcile to achieve reconciliation of the two litigant parties.

The process of practicing mediation in the Religious Courts is very urgent to implement *maqashid syariah* as the main consideration by judges at the Religious Courts in deciding divorce cases. The main consideration for the application of *maqashid syariah* has the potential to repair and save a household from a husband and wife on the verge of damage and destruction. The strong assumption of the application of *maqashid syariah* is that divorce in the Religious Court is not the best option or way to resolve conflicts between husband and wife in the household. The Supreme Court needs to review the practice of mediation through Perma No. 1 of

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<sup>59</sup> A Garcia, "Advice-Giving and Disputant Empowerment in Divorce Mediation Sessions," *Language and Dialogue* 2, no. 3 (2012):p. 398-426, <https://doi.org/10.1075/ld.2.3.05gar>.

2016 by placing the benefits contained in the *maqashid shariah* for the practice of mediation in the Religious Courts.

Revitalizing traditional institutions such as upholding the value of *ade* 'in the Bugis and existing in the Mandar community can be a strength in family resilience in maintaining the marriage. Bringing the customs of the Bugis community and society through social culture in the value of life *sirondo-rondo* which means cooperation, *siamasei* and *sianuang pa'mai* in fostering a household, husband and wife must love and love each other, and *sibaliparri* that husband and wife must take care of each other domestic harmony and mutual responsibility towards their families, both when joys and sorrows must be faced together, of the same fate and responsibility. Also, reviving the customary institutions of the *pangngaderreng* cultural system is *shara'* which is interpreted as an institution for implementing Islamic law in the Bugis and Mandar communities. The enforcement of Islamic law in Bugis society is carried out by someone who has the title *petta kali'* and in Mandar society known as *puang kali'* is a charismatic person, a cleric who has a deep knowledge of Islam, masters jurisprudence and Islamic law. The function of *petta kali'* or *puang kali'* is to give advice or marriage advice for husband and wife who want to divorce and their marriage will be long-lasting, lasting, and sustainable.

## References

- Abbas, Syahrizal. *Mediasi Dalam Perspektif Hukum Syari'ah, Hukum Adat Dan Hukum Nasional*. Jakarta: Kencana Prenada Media Group, 2009.
- Al\_Syatibi, Abu Ishaq. *Al-Muwafaqat Fi Ushul Al-Ahkam*. 2nd ed. Beirut: al-Maktabah al-Taufiqiyyah, 2004.
- Al-Gazaliy. *Al-Mustashfa Fi' Ilm Al-Ushul*. 1st ed. Beirut: Dar al-Kutub al-Ilmiyah, 1993.
- Al-Qardhawiy, Yusuf. *Dirasah Fi Fiqh Maqashid Al-Shariah; Baina Al-Maqashid Al-Kulliyah Wa Al-Nushus Al-Juziyyah*. Kairo: Dar al-Syuruq, 2006.
- Al-Salam, Izz al-Din Abd. *Qawaid Al-Ahkam Fi Masalih Al-Anam*. Beirut: Dar al\_Ma'rifah, n.d.
- Bailey, J D. "Assessing Empowerment in Divorce Mediation." *Negotiation Journal* 25, no. 3 (2009): 327–36. <https://doi.org/10.1111/j.1571-9979.2009.00229.x>.
- Beck, C. "A Critical Reappraisal of Divorce Mediation Research and Policy." *Psychology, Public Policy, and Law* 6, no. 4 (2000): 989–1056. <https://doi.org/10.1037/1076-8971.6.4.989>.
- . "Defining a Threshold for Client Competence to Participate in Divorce Mediation." *Psychology, Public Policy, and Law*, 2006. <https://doi.org/10.1037/1076-8971.12.1.1>.
- Beck, E. "Improving Communication in Divorce Mediation." *Divorce Mediation: Perspectives on the Field*, 2014. <https://doi.org/10.4324/9781315860077>.
- Bollen, K. "Money or Children? Power Sources in Divorce Mediation." *Journal of Family Studies* 19, no. 2 (2013): 159–73. <https://doi.org/10.5172/jfs.2013.19.2.159>.
- Cohen, S. "Divorce Mediation: An Introduction." *Divorce Therapy*, 2014. <https://doi.org/10.4324/9781315791456>.
- Dingwall, R. "Divorce Mediation: Should We Change Our Mind?" *Journal of Social Welfare and Family Law* 32, no. 2 (2010): 107–17. <https://doi.org/10.1080/09649069.2010.506307>.
- Djawas, Mursyid, and Sri Astuti Abdul Samad. "Conflict, Traditional, and Family Resistance: The Pattern of Dispute Resolution in Acehnese Community According to Islamic Law." *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 4, no. 1 (2020): 65–84.
- Donohue, W. "Interaction Dynamics Predict Successful Negotiation in Divorce Mediation." *Journal of Language and Social Psychology* 35, no. 4 (2016): 374–93. <https://doi.org/10.1177/0261927X15603090>.
- Dusuki, Asyraf Wajdi, and Nurdianawati Irwani Abdullah. "Maqasid Al-Shariah, Masalahah, and Corporate Social Responsibility." *American Journal of Islamic Social Sciences* 24, no. 1 (2007): 31.
- Ellis, D. "Safety, Equity, and Human Agency; Contributions of Divorce Mediation." *Violence Against Woman* 6, no. 9 (2000): 1012–27.

**Commented [MOU6]:** 1. literature is good enough,  
2. although articles can still be added to Islamic law journals in Indonesia such as Ahkam (Jakarta), Ihkam (Madura), Ijtihad (Salatiga), Yuris (Batu Sangkar) or Mazahib (Samarinda).

- <https://doi.org/10.1177/10778010022182254>.
- Emery, Robert E, David Sbarra, and Tara Grover. "Divorce Mediation: Research and Reflections." *Family Court Review* 43, no. 1 (2005): 22–37.
- Enrekang, Ketua Pengadilan Agama. "Laporan Tahunan Pengadilan Agama Enrekang." Kota Enrekang, 2020. <https://www.pa-enrekang.com/index.php/transparansi/sekretariat/perencanaan/laporan-tahunan>.
- Fikri, Rahmawati, and Zulfah. "Idealism and Realism of Islamic Law in Panggaderreng Culture of the Modern Bugis Bone." *IOP Conference Series: Earth and Environmental Science* 175, no. 1 (2018): 2. <https://doi.org/10.1088/1755-1315/175/1/012137>.
- Garcia, A. "Advice-Giving and Disputant Empowerment in Divorce Mediation Sessions." *Language and Dialogue* 2, no. 3 (2012): 398–426. <https://doi.org/10.1075/ld.2.3.05gar>.
- Garcia, A C. "Locations for Advice-Giving and the Production of Neutrality in Divorce Mediation Sessions." *Conflict Resolution Quarterly*, 2020. <https://doi.org/10.1002/crq.21292>.
- Hahn, R A. "Divorce Mediation: Research and Implications for Family and Couples Counseling." *The Family Journal*, 2000. <https://doi.org/10.1177/1066480700082009>.
- Halim, Wahyuddin. "Islamization or Arabization? The Arab Cultural Influence on the South Sulawesi Muslim Community since the Islamization in the 17th Century." *Suvannabhumi* 10, no. 1 (2018): 42.
- Holtzworth-Munroe, A. "Controversies in Divorce Mediation and Intimate Partner Violence: A Focus on the Children." *Aggression and Violent Behavior*, 2011. <https://doi.org/10.1016/j.avb.2011.04.009>.
- Huang, P. "Divorce Law Practices and the Origins, Myths, and Realities of Judicial 'mediation' in China." *Modern China* 31, no. 2 (2005): 151–203. <https://doi.org/10.1177/0097700405274585>.
- Indonesia, Direktorat Jenderal Badan Peradilan Agama Republik. Laporan Tahunan Badan Peradilan Agama (2020).
- Jong, M De. "A Pragmatic Look at Mediation as an Alternative to Divorce Litigation." *Tydskrif Vir Die Suid-Afrikaanse Reg*, no. 3 (2010): 515–31. <https://www.scopus.com/inward/record.uri?partnerID=HzOxMe3b&scp=79959369736&origin=inward>.
- Kaganas, F. "Domestic Violence and Divorce Mediation." *Journal of Social Welfare and Family Law* 16, no. 3 (1994): 265–78. <https://doi.org/10.1080/09649069408413612>.
- Ketua Pengadilan Agama Parepare. "Laporan Tahunan Pengadilan Agama Parepare." Kota Parepare, 2020. <http://pa-parepare.go.id/home/laporan-tahunan/>.
- Koopman, E. "The Present and Future Role of Higher Education in Divorce Mediation: Problems and Promise in Teaching, Research, and Service." *Divorce Mediation: Perspectives on the Field*, 2014. <https://doi.org/10.4324/9781315860077>.
- Kraft, A. "Childhood Parental Divorce and Cortisol in Young Adulthood: Evidence for Mediation by Family Income." *Psychoneuroendocrinology* 34, no. 9 (2009): 1363–69. <https://doi.org/10.1016/j.psyneuen.2009.04.008>.
- Majene, Ketua Pengadilan Agama. "Laporan Tahunan Pengadilan Agama Majene." Kota Majene, 2020. <https://pa-majene.go.id/informasi-umum/laporan-tahunan>.
- Mandar, Ketua Pengadilan Agama Poliwali. "Laporan Tahunan Pengadilan Agama Poliwali Mandar." Kota Poliwali, 2020. <http://pa-polewali.net/index.php/info-peradilan/program-kerja-kegiatan/laporan-tahunan>.
- Margulies, S. "Litigation, Mediation and the Psychology of Divorce." *Journal of Psychiatry and Law*, 1992. <https://doi.org/10.1177/009318539202000405>.
- Molgora, S. "Divorce and Coparenting: A Qualitative Study on Family Mediation in Italy." *Journal of Divorce and Remarriage* 55, no. 4 (2014): 300–314. <https://doi.org/10.1080/10502556.2014.901854>.
- Mulia, Riza. "Marital Beslag Outside Divorce Lawsuit in the Maqashid Syari'ah Perspective." *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 4, no. 2 (2020): 401.
- Nawawi, Nurnaningsih. "Asimilasi Lontara Pangadereng Dan Syari'at Islam: Pola Perilaku Masyarakat Bugis-Wajo." *Al-Tahrir: Jurnal Pemikiran Islam* 15, no. 1 (2015): 25.
- Neville, W. "Reflections on the Growth and Significance of Divorce Mediation." *Divorce Mediation: Perspectives on the Field*, 2014. <https://doi.org/10.4324/9781315860077>.
- Nurman, Said. *Religion and Cultural Identity Among the Bugis*. Makassar: Faculty of Islamic Theology of the Alauddin State Institute of Islamic Studies at Makassar, Indonesia,

2004.

- Pickar, D. "Intermittent Evaluative Mediation with Enduring, Post-Divorce Conflict." *Journal of Child Custody* 8, no. 3 (2011): 144–45. <https://doi.org/10.1080/15379418.2011.594722>.
- Pinrang, Ketua Pengadilan Agama. "Laporan Tahunan Pengadilan Agama Pinrang." Kota Pinrang, 2020. <http://pa-pinrang.go.id/index.php?limitstart=27>.
- Poladian, A R. "Family Mediation for Divorce and Parental Separation." *Foundations for Couples' Therapy: Research for the Real World*, 2017, 256–67. <https://doi.org/10.4324/9781315678610-26>.
- Przybyla-Basista, H. "The Influence of Spouses' Resistance on Their Decision to Enter into Divorce Mediation." *Journal of Divorce and Remarriage* 48, no. 3 (2008): 67–89. [https://doi.org/10.1300/J087v48n03\\_05](https://doi.org/10.1300/J087v48n03_05).
- Qardhawi, Abd al-Rahman Yusuf Abd. *Nazhariyah Maqashid Al-Syari'ah Baina Syekh Al-Islam Ibn Taimitiyah Wa Jumhur Ushliyyin Dirasah Muqaranah Min Al-Qarn Al-Khamis Ila Al-Tsamin Al-Hijri*. Kairo: Kulliyah Dar al-Ulum, n.d.
- Qayyim, Ibn. *I'lam Al-Muwaqfi 'in Rabb Al-Alamin*. 3rd ed. Beirut: Dar al-Jail, n.d.
- Rahmatunnair, Rahmatunnair. "Contextualization of Pangngadereng in the Enforcement of Islamic Shariah in Buginese Bone Community." *Al-Qalam* 17, no. 1 (2011): 94.
- Rappang, Ketua Pengadilan Agama Sidenreng. "Laporan Tahunan Pengadilan Agama Sidenreng Rappang." Kota Pangkajenne, 2020. <http://pa-sidenrengappang.go.id/>.
- RI., Ketua Mahkamah Agung. "Perma RI. No. 1 Tahun 2016 Tentang Prosedur Mediasi Di Pengadilan." Jakarta, 2016. [https://bawas.mahkamahagung.go.id/bawas\\_doc/doc/perma\\_mediasi\\_pengadilan\\_web.pdf](https://bawas.mahkamahagung.go.id/bawas_doc/doc/perma_mediasi_pengadilan_web.pdf).
- Sbarra, D A. "In the Presence of Grief: The Role of Cognitive-Emotional Adaptation in Contemporary Divorce Mediation." *Handbook of Divorce and Relationship Dissolution*, 2013. <https://doi.org/10.4324/9781315820880-40>.
- Schepard, A. "An Introduction to the Model Standards of Practice for Family and Divorce Mediation." *Family Law Quarterly* 35, no. 1 (2001): 1–24. <https://www.scopus.com/inward/record.uri?partnerID=HzOxMe3b&scop=65449139388&origin=inward>.
- Shaw, L. "Divorce Mediation Outcome Research: A Meta-Analysis." *Conflict Resolution Quarterly* 27, no. 4 (2010): 447–67. <https://doi.org/10.1002/crq.20006>.
- Silver, R. "Practice Note: Divorce Mediation with Challenging Parents." *Conflict Resolution Quarterly*, 2008. <https://doi.org/10.1002/crq.220>.
- Syarifuddin, Said. "Maslahat as Considerations of Islamic Law in View Imam Malik." *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 4, no. 1 (2020): 90.
- Taylor, R. "Use of Change Theory in the Context of the Divorce Mediation Session." *Journal of Divorce and Remarriage* 40, no. 1 (2004): 87–92. [https://doi.org/10.1300/J087v40n01\\_06](https://doi.org/10.1300/J087v40n01_06).
- Twaite, J A. "Divorce Mediation: Promises, Criticisms, Achievements, and Current Challenges." *Journal of Psychiatry and Law*, 1998. <https://doi.org/10.1177/009318539802600304>.
- Weaver, J. "Mediation and Moderation of Divorce Effects on Children's Behavior Problems." *Journal of Family Psychology* 29, no. 1 (2015): 39–48. <https://doi.org/10.1037/fam0000043>.
- Worley, S. "The Effect of Cooperation on Egocentrism in Divorce Mediation: A Simulation Study." *Divorce Mediation: Perspectives on the Field*, 2014. <https://doi.org/10.4324/9781315860077>.
- Yunus, Abd. "The Acculturation of Islam and Local Culture in Bugis Wedding Tradition: A Historical Perspective," 2017, 4.

## Hasil Review B

### Transformation of *Maqashid Shariah* in Divorce Mediation in Religious Courts: Revitalization of Bugis-Mandar Traditional Institutions

## Abstract

The focus of this study discusses the dynamics of legal product of divorce mediation practices in Religious Courts; the transformation of *maqashid shariah* in practice of mediation in divorce cases, and revitalization of *pangngaderreng* culture in practice of divorce mediation in Bugis and Mandar communities. The research methodology is descriptive qualitative field research, holistic, historical, and socio-anthropological approaches, *maqashid shariah* theory analysis, social and legal change theory, and social institutions theory. The results of this study indicate that divorce case is an extraordinary matter case in Religious Courts, dynamics of mediation practice in Religious Courts have successful mediation for a written peace agreement in peace deed, other mediation products are partially successful mediation and partially unsuccessful mediation, mediation products are not successful is that husband and wife are committed to divorce; *Maqashid shariah* transformation can be a major consideration by judges in mediation practice to save households on the verge of collapse, so that *maqashid shariah* is very urgent to place in Perma No.1 of 2016, and revitalization of Bugis-Mandar traditional institutions is an effort to revive the value of life *sirondo-rondo*, *siamasei*, *sianuang pa'mai*, and *sibaliparri*, also animate *shara'* which is performed *petta kali'* or *puang kali'*.

**Keywords:** *Maqashid Shariah, divorce mediation, Religious Courts, revitalization of traditional institutions, Bugis-Mandar*

**Commented [MOU7]:** the title containing the keywords, maqasid al-Shariah, divorce mediation, religious courts and customary law is a guarantee that this article discusses issues of Islamic family law in Indonesia that in other Islamic world. therefore these keywords are proof that this article is in accordance with the focus of the samarah journal, namely Islamic family law.

**Commented [MOU8]:** This study succeeded in explaining the function of law for society, namely as a tool to create peace and order according to the approach used (sociology and legal anthropology). while the main theory used is maqasid al-shariah which is a major concept in Islamic law. So this study is interesting in combining two schools of law, namely national law and Islamic law, while the object of study is adat in society.

**Commented [MOU9]:** On research findings: "sibali parri, siamasei and so on are Mandar traditions, values or customs in Bugis should also be mentioned???"

### Transformasi *Maqashid Shariah* dalam Mediasi Perceraian di Pengadilan Agama: Revitalisasi Lembaga Adat Bugis-Mandar

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## Abstrak

Fokus penelitian ini membahas tentang dinamika produk hukum praktik mediasi perceraian di Pengadilan Agama; transformasi *maqashid syari'ah* dalam praktik mediasi dalam kasus perceraian, dan revitalisasi budaya *pangngaderreng* dalam praktik mediasi perceraian di masyarakat Bugis dan Mandar. Metodologi penelitian yang digunakan adalah penelitian lapangan kualitatif deskriptif, pendekatan holistik, historis, dan sosio-anthropologis, analisis teori *maqashid syari'ah*, teori perubahan sosial dan hukum, dan teori kelembagaan sosial. Hasil penelitian ini menunjukkan bahwa perkara perceraian merupakan perkara perkara luar biasa di Pengadilan Agama, dinamika praktek mediasi di Pengadilan Agama telah berhasil dalam mediasi perjanjian damai tertulis dalam akta damai, produk mediasi lainnya adalah mediasi yang berhasil sebagian dan mediasi yang tidak berhasil sebagian, mediasi tidak berhasil. produk yang tidak berhasil adalah suami dan istri yang berkomitmen untuk bercerai; Transformasi *maqashid syari'ah* dapat menjadi pertimbangan utama hakim dalam praktek mediasi untuk menyelamatkan rumah

tangga yang di ambang kehancuran, sehingga *maqashid syari'ah* sangat mendesak untuk ditempatkan dalam Perma No.1 tahun 2016, dan revitalisasi kelembagaan adat Bugis-Mandar merupakan salah satu upaya. menghidupkan kembali nilai-nilai kehidupan *sirondo-rondo*, *siamasei*, *sianuang pa'mai*, dan *sibaliparri*, serta menghidupkan *shara'* yang dilakukan *petta kali'* atau *puang kali'*.

**Keywords:** *Maqashid Syari'ah, mediasi perceraian, Pengadilan Agama, revitalisasi lembaga adat, Bugis-Mandar*

## Introduction

The process of implementing mediation in fortifying family resilience from conflict has long been the subject of discussion as explained by Margulies that mediation is considered an effective effort to resolve husband-wife conflicts that intend to divorce.<sup>60</sup> On the other hand, violence that occurs in the family and also in mediation is still difficult to find theoretical and practical concepts.<sup>61</sup>

The function of the mediator is to reconcile the two sides of the disputing family, helping to carry out active communication. In addition, the mediator also encourages harmony and also emphasizes the parties in conflict to consider the bad consequences of divorce.<sup>62</sup> It is important to strengthen the concept of mediation in resolving family conflicts and childcare.<sup>63</sup> Mediation is conducted by a mediator who acts as a mediator for the disputing parties and plays an active role in resolving the conflict by reaching a peace agreement from the parties.

Mediation is part of the legal system that can resolve family conflicts quickly, easily, and cheaply as long as the parties cooperate.<sup>64</sup> In addition to being able to be carried out by judges, psychologists, and other professionals who have the competence to carry out mediation can understand and address the root causes of problems in family conflicts.<sup>65</sup> According to RA Hahn explained that from several studies of the divorce mediation process carried out there were beneficial and beneficial results for the efficiency and satisfaction of the parties.<sup>66</sup> This opinion is supported by D. Ellis that divorce mediation makes a huge contribution towards the outcome of reconciliation between husband and wife.<sup>67</sup>

In line with the study conducted by Taylor R., suggesting that the mediator's demands in carrying out his role as the mediator can help to build confidence in the parties. Mediators are required to designing interpersonal communication between both husband and wife in conflict so that each party can introspect themselves

**Commented [MOU11]:** Based on data at the religious court, then customary values in the Bugis and Mandar ethnic groups as the majority of South Sulawesi. and West Sulawesi, besides the Makassar tribe. plus the approach and theory of maqashi al-Shariah are some of the aspects that make this article original, so you find findings that are different from the others.

**Commented [MOU12]:** The theory used as an analytical tool successfully displays the research findings in this study. customary values in the Bugis and Mandar ethnic groups as the main argument in achieving maqashid al-shariah, among others, is to reduce the divorce rate in the South and West Sulawesi regions.

<sup>60</sup> S Margulies, "Litigation, Mediation and the Psychology of Divorce," *Journal of Psychiatry and Law*, 1992.

<sup>61</sup> F Kaganas, "Domestic Violence and Divorce Mediation," *Journal of Social Welfare and Family Law* 16, no. 3 (1994): p. 265-278.

<sup>62</sup> A Schepard, "An Introduction to the Model Standards of Practice for Family and Divorce Mediation," *Family Law Quarterly* 35, no. 1 (2001): p. 2-3.

<sup>63</sup> J Weaver, "Mediation and Moderation of Divorce Effects on Children's Behavior Problems," *Journal of Family Psychology* 29, no. 1 (2015): p. 39-48.

<sup>64</sup> JA Twaite, "Divorce Mediation: Promises, Criticisms, Achievements, and Current Challenges," *Journal of Psychiatry and Law*, 1998.

<sup>65</sup> C Beck, "A Critical Reappraisal of Divorce Mediation Research and Policy," *Psychology, Public Policy, and Law* 6, No. 4 (2000): p. 991.

<sup>66</sup> RA Hahn, "Divorce Mediation: Research and Implications for Family and Couples Counseling," *The Family Journal*, 2000.

<sup>67</sup> D Ellis, "Safety, Equity, and Human Agency: Contributions of Divorce Mediation," *Violence Against Woman* 6, no. 9 (2000): p. 1012-1027.



towards better interaction changes.<sup>68</sup> The real emphasis of mediation is on reconciling the husband and wife who insisted on divorce.<sup>69</sup> Legal practitioners and academics have studied a lot about the mediation process that can reduce the soaring divorce rate. Mediation is a reliable means of accelerating the reconciliation of families in conflict.<sup>70</sup> Even C. Beck mentioned that the implementation of the formulation of the concept of mediation is a much more recent effort to create justice for wives who are victims of domestic violence.<sup>71</sup>

However, mediation can speed up the settlement of cases, on the contrary as described by Przybyla Basista stated that the reasons for couples who refuse the mediation process are especially wives who experience feelings of trauma and fear of violence from their ex-husbands. Experience from her domestic life, the wife received painful treatment so that she did not have the time and space to negotiate through mediation with her ex-husband.<sup>72</sup> Sometimes children are also victims of violence, experiencing depression and anxiety which can affect the physical and psychological health consequences of divorcing parents.<sup>73</sup> The research also touches on the legal protection of children through the mediation process. Andrew Schepard's views on custody and subsistence needs can be read.<sup>74</sup>

The opinion of J. D. Bailey provides that the sharpening of the practice of mediation in divorce cases can refer to several assumptions that mediation is a golden opportunity to resolve conflicts and household breakdowns in constructing reconciliation between husband and wife. The practice of mediation involves offering a problem-solving process with a focus on the goal of reconciliation.<sup>75</sup>

Compare this with the thought conveyed by Robert Dingwall that the legal system and family policies of the government related to the practice of mediation carried out in European countries such as England, Wales, Scotland, and Northern Ireland are forced attempts to the husband and wife who are going to divorce under control of the mediator to undergo the mediation process before their case reaches the Court.<sup>76</sup> An interesting thought from Lori Anne Shaw that the implementation of non-litigation mediation can outperform the judicial process in legally assisting the parties in a case, including from the results of mediation that prioritizes the interests of children.<sup>77</sup> Demands for non-litigation mediation practices are carried out to anticipate more immediate damage and cracks in households.

The theoretical purpose of marriage in Islamic law is to create *sakinah, mawaddah, and warahmah* families. Sometimes the theoretical goal of marriage is very different in practice from the goal of marriage. Marriage in the view of the Bugis and Mandar people that *"iya tu'u di'o alikkangan, including mesa*

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<sup>68</sup> R Taylor, "Use of Change Theory in the Context of the Divorce Mediation Session," *Journal of Divorce and Remarriage* 40, no. 1 (2004): p. 90.

<sup>69</sup> P Huang, "Divorce Law Practices and the Origins, Myths, and Realities of Judicial 'mediation' in China," *Modern China* 31, no. 2 (2005): p. 154.

<sup>70</sup> Robert E Emery, David Sbarra, and Tara Grover, "Divorce Mediation: Research and Reflections," *Family Court Review* 43, no. 1 (2005): p. 22–37.

<sup>71</sup> C Beck, "Defining a Threshold for Client Competence to Participate in Divorce Mediation," *Psychology, Public Policy, and Law*, 2006.

<sup>72</sup> H Przybyla-Basista, "The Influence of Spouses' Resistance on Their Decision to Enter into Divorce Mediation," *Journal of Divorce and Remarriage* 48, no. 3 (2008): p. 31.

<sup>73</sup> A Kraft, "Childhood Parental Divorce and Cortisol in Young Adulthood: Evidence for Mediation by Family Income," *Psychoneuroendocrinology* 34, no. 9 (2009): p. 1363–1369.

<sup>74</sup> Schepard, "An Introduction to the Model Standards of Practice for Family and Divorce Mediation."

<sup>75</sup> JD Bailey, "Assessing Empowerment in Divorce Mediation," *Negotiation Journal* 25, no. 3 (2009): p. 327–336.

<sup>76</sup> R Dingwall, "Divorce Mediation: Should We Change Our Mind?," *Journal of Social Welfare and Family Law* 32, no. 2 (2010): p. 107–17.

<sup>77</sup> L Shaw, "Divorce Mediation Outcome Research: A Meta-Analysis," *Conflict Resolution Quarterly* 27, no. 4 (2010): p. 447–67,

*pakkasiwiang lao di puang Allah Taala, Jari mua 'alikkangananna macoai, ma mandapai* reward, but *mua 'andani macoa, napolean sin* ". The meaning of marriage is that marriage is worship, so if the marriage is good you will get a reward, but if it is not good you will get sin.

Therefore, the practice of mediation, whether organized by judges at the Religious Courts or mediators outside the court, is very important to prioritize the content of divorce mediation using the *maqashid shariah* approach. Divorce mediation which contains the *maqashid sharia* paradigm based on *maslahat* as conveyed by Al-Gazali is an effort to uphold the objectives of shari'a laws in maintaining religion, soul, mind, descent and property.<sup>78</sup>

Maqashid shariah as formulated by *ushul fiqh* scholars is to have the meaning of all the aims and objectives regulated in religion to bring benefit and eliminate exasperation to its servants. Al-Syatibi further perfected the traditional *ushul fiqh* theories in the *al-Muwafaqat* book by formulating *maqashid shariah* which focused on *al-kulliyah al-khamsah*.<sup>79</sup>

Whereas *maqashid shariah* seen from the order is *maqashid al-dharuriyyah* (primary), *maqashid al-hajiyyat* (secondary), and *maqashid al-tahsiniyyat* (complementary).<sup>80</sup> Therefore, based on the *maqashid shariah* that divorce mediation is in the order of *maqashid al-dharuriyyah*, which is obliged to eliminate adultery in marriage, including maintaining the family from conflict, enmity, disharmony, and rifts between husband and wife.

On the other hand, based on the data source of the Directorate General of Religious Courts' annual report, divorce cases are considered an extraordinary matter in Indonesia. Following the report's data, it shows that there were 128,401 divorce cases in 2015. Divorce cases in 2017 included 113,937 divorce talaq, while 301,573 divorce lawsuits were filed. In 2018 the details of the divorce talaq were 118,853. In 2019, there were 124,776 divorce cases, then 355,842 divorce cases.<sup>81</sup>

The discourse on mediation has produced many studies on the roles and responsibilities of academics,<sup>82</sup> such as Mursyid Jawas and Sri Astuti A. Samad explained that reconciliation efforts in resolving family disputes can be successful with a family resilience approach through traditional Acehese traditional wisdom such as *keuchik*, *tuha peut*, *teungku imum*, and *imum mukim*. The resolution of family conflicts in Acehese society by means of Islamic law at the Syari'ah Court and also by practicing customary law in *sara opat* institutions, a kind of institution that includes *reje* and *imem* is very accurate, effective, and efficient.<sup>83</sup>

This idea of mediating divorce through customs and social institutions is very suitable to be actualized in the Bugis community in South Sulawesi and the Mandar community in West Sulawesi. Both the Bugis and Mandar Communities are ethnic groups that are very strong and thick in carrying out their customs which are tied to

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<sup>78</sup> Abd al-Rahman Yusuf Abd Qardhawi, *Nazhariyah Maqashid Al-Syari'ah Baina Syekh Al-Islam Ibn Taimiyah Wa Jumhur Ushliyyin Dirasah Muqaranah Min Al-Qarn Al-Khamis Ila Al-Tsamin Al-Hijri* (Cairo: Kulliyah Dar al-Ulum, nd).p. 70.

<sup>79</sup> Abu Ishaq Al-Syatibi, *Al-Muwafaqat Fi Ushul Al-Ahkam*, 2nd ed. (Beirut: al-Maktabah al-Taufiqiyyah, 2004). p. 2.

<sup>80</sup> Izz al-Din Abd Al-Salam, *Qawaid Al-Ahkam Fi Masalih Al-Anam* (Beirut: Dar al-Ma'rifah, nd). p. 11.

<sup>81</sup> Directorate General of the Religious Courts of the Republic of Indonesia, *Annual Report of the Religious Courts* (2020).

<sup>82</sup> E Koopman, "The Present and Future Role of Higher Education in Divorce Mediation: Problems and Promise in Teaching, Research, and Service," *Divorce Mediation: Perspectives on the Field*, 2014.

<sup>83</sup> Mursyid Djawas and Sri Astuti Abdul Samad, "Conflict, Traditional, and Family Resistance: The Pattern of Dispute Resolution in Acehese Community According to Islamic Law," *Samarah: Journal of Family Law and Islamic Law* 4, no. 1 (2020): p. 69–71.

the *panggaderreng* culture as a culture of conduct.<sup>84</sup> which includes *ade'*, *bicara*, *rapang*, *wari'*, and *shara'*. Mandar was found when the *panggaderreng* became a social patron as the inner power control to accommodate *shara'*.<sup>85</sup>

The acceptance of *shara'* in *panggaderreng* culture is a consequence for society to carry out Islamic law. Along with development and *wari' and shara'*.<sup>86</sup> Acculturation of Islam and the culture of the Bugis community and the progress of human civilization which is increasingly modern, sometimes *siri'* in the *panggaderreng* culture of the Bugis and Mandar communities has gradually shifted. Whereas in the period of traditional life, the enforcement of *siri'* in the Bugis and Mandar communities is very embarrassed and loses its self-respect if there is a disgrace in the family, including for example a married couple who divorced from that family. The connection with the *panggaderreng* culture has less than optimal function in the Bugis and Mandar communities, especially before and during the Covid-19 pandemic era, the number of divorce cases increased sharply in Religious Courts.

Exposing this background, this study focuses on the dynamics of the legal product of divorce mediation practices in the Religious Courts which incidentally is an institution that can be trusted to enforce Perma No. 1 of 2016. The transformation of *maqashid syariah* in the practice of mediation in divorce cases in the Religious Courts and outside the courts should prioritize benefit and eliminate adversity to maintain family resilience from various conflicts and disputes. The revitalization of the *panggaderreng* culture in the practice of divorce mediation in the Religious Courts, which so far is believed to have less than optimal function in the Bugis and Mandar communities.

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### Dynamics of Legal Product of Divorce Mediation in Religious Courts

Divorce mediation is an effort to mediate resolving disputes so that the mediator must be neutral, bridging, and must not be partial between the conflicting husband and wife in order to reach a peace agreement.<sup>87</sup> Divorce mediation can be designed to be therapeutic, treat, remedy, and counteract the bad effects of divorce.<sup>88</sup>

Divorce mediation is constructed to reflect on the significance of the marriage and address the possibilities that trigger divorce.<sup>89</sup> assisting divorced parties to optimize the effectiveness and efficiency of conflict resolution in the family. One of the material contained in mediation is very interesting is a simulation method of husband-wife couples who are active for high cooperation which can overcome the conflicts they face, on the other hand, if the husband and wife do not cooperate less, they tend to have a selfish character.<sup>90</sup>

The success indicator of mediation if the material content is to collaborate,

<sup>84</sup> Said Nurman, *Religion and Cultural Identity Among the Bugis* (Makassar: Faculty of Islamic Theology of the Alauddin State Institute of Islamic Studies at Makassar, Indonesia, 2004).

<sup>85</sup> Abd Yunus, "The Acculturation of Islam and Local Culture in Bugis Wedding Tradition: A Historical Perspective," 2017, 4.

<sup>86</sup> Wahyuddin Halim, "Islamization or Arabization? The Arab Cultural Influence on the South Sulawesi Muslim Community since the Islamization in the 17th Century," *Suvannabhumi* 10, no. 1 (2018): p. 42.

<sup>87</sup> Syahrizal Abbas, *Mediation in the Perspective of Sharia Law, Customary Law and National Law* (Jakarta: Kencana Prenada Media Group, 2009).

<sup>88</sup> DA Sbarra, "In the Presence of Grief: The Role of Cognitive-Emotional Adaptation in Contemporary Divorce Mediation," *Handbook of Divorce and Relationship Dissolution*, 2013.

<sup>89</sup> W Neville, "Reflections on the Growth and Significance of Divorce Mediation," *Divorce Mediation: Perspectives on the Field*, 2014.

<sup>90</sup> S Worley, "The Effect of Cooperation on Egocentrism in Divorce Mediation: A Simulation Study," *Divorce Mediation: Perspectives on the Field*, 2014.

including eliminating partner violence intimidation and focusing on taking care of children,<sup>91</sup> refreshing and taking advantage of free time for discussion which aims to strengthen active communication in the family.<sup>92</sup> The family mediation construction should be intensified during the marriage period so that the husband and wife can build a household with full responsibility, affection, and love. Therefore, the practice of mediation is not only carried out when there is a conflict that is already overloaded, critical, and is experiencing a transition period for divorce.<sup>93</sup> The implementation of mediation before the family has problems with conflict, has many advantages for strengthening husband-wife relationships, enhancing cooperation, and also supporting joint care of children.<sup>94</sup>

The fact of the soaring divorce case decisions, it is appropriate to question the speed, accuracy, and efficiency of the judge's functioning as a mediator of divorce cases in the Religious Courts spread across several districts and cities in South Sulawesi and West Sulawesi. The data also shows that the Bugis and Mandar people prefer to resolve disputes and family conflicts in the Religious Courts rather than resolve conflicts with a system or kinship approach. Criticism of the Religious Courts in South Sulawesi and West Sulawesi as one of the case resolution institutions has not been able to accommodate the expectations of the community in settling divorce cases through mediation.

However, the public's assumption of judges acting as mediators in the Religious Courts is still considered a failure. Judges as mediators in conducting divorce mediation are still very symbolic, examinations are too formalistic, very technical, high cost, and cases tend to be overloaded.

The various difficulties faced by judges as mediators in the Religious Courts in general led to the Supreme Court of the Republic of Indonesia to apply Perma No. 1 of 2016. The dynamics of implementing Perma No. 1 of 2016 provides an opportunity to internalize the practice of divorce mediation held by certified mediators from career non-judges at the Religious Courts. Mediation supports all parties to resolve conflicts they face with the help of a mediator who is neutral or impartial. A mediator only tries to bridge all parties in a transparent manner, negotiate, and find the best solution.

The legal position of the implementation of mediation in Law no. 30 of 1999 concerning Arbitration and Alternative Settlements, then followed up by Perma No. 1 of 2016 concerning Mediation as an amendment to Perma No. 1 of 2008 concerning Mediation Procedures. Perma No. 1 of 2016 is implemented to carry out divorce mediation practices in the Religious Courts. Indeed, mediation for divorce in the Religious Courts is to avoid the accumulation of family cases. In fact, the judge's decision will be null and void if the judge examining the divorce case at trial does not enforce mediation at the Religious Court.

The progress of divorce cases that have entered both cases for divorce talaq and cases for divorce in the Religious Courts between 2018 and 2020 in the regions of South Sulawesi and West Sulawesi. The Religious Courts located in South Sulawesi are limited to only taking divorce data from the Parepare Religious Court, the Sidenreng Rappang Religious Court, the Pinrang Religious Court, and the Enrekang Religious Court. Meanwhile, the Religious Courts in West Sulawesi are also limited by taking data on divorce cases that are submitted to the Polewali

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<sup>91</sup> A Holtzworth-Munroe, "Controversies in Divorce Mediation and Intimate Partner Violence: A Focus on the Children," *Aggression and Violent Behavior*, 2011.

<sup>92</sup> E Beck, "Improving Communication in Divorce Mediation," *Divorce Mediation: Perspectives on the Field*, 2014.

<sup>93</sup> S Molgora, "Divorce and Coparenting: A Qualitative Study on Family Mediation in Italy," *Journal of Divorce and Remarriage* 55, no. 4 (2014): p. 300–314.

<sup>94</sup> D Pickar, "Intermittent Evaluative Mediation with Enduring, Post-Divorce Conflict," *Journal of Child Custody* 8, no. 3 (2011): p. 144–145.

Mandar Religious Court, the Majene Religious Court, and the Mamuju Religious Court.

The success and failure of the product of mediation practice by judges from each of the Religious Courts in South Sulawesi in three years from 2018 to 2020. Since 2018, there have been 12 judges at the Parepare Religious Court who were spread into 6 panels. Types of cases, divorced talaq received 106 cases, ended 103 cases and the percentage of case completion was 81%, claimants received 380 cases, dropped 385 cases and percentage of case completion was 93%. The Parepare Religious Court mediated 13 cases and 3 cases that succeeded in peace. In 2019, the remaining cases for divorce talaq in 2018 were 23 cases, divorce talaq received 103 cases, 120 cases were decided and the percentage of case completion was 95%. For divorce with the remainder of 2018 in 26 cases, received 439, drop out of 440 cases and the percentage of completion of cases is 95%. Mediated a number of 82 cases and 5 cases which succeeded in peace. In 2020, the remaining cases for divorce talaq in 2019 amounted to 6 cases, 80 cases of divorce received and 80 cases of divorce. There are 25 divorce cases left in 2019, 357 cases received, 379 cases ended.<sup>95</sup>

Referring to the state of divorce cases every year there has been an increase in both talaq and legal divorce at the Parepare Religious Court. The reality cannot be denied, divorce cases are very worrying, because the number of cases for suing for divorce is greater than cases for divorce talaq. In addition, the performance of judges in conducting mediation at the Parepare Religious Court from 2018 to 2020 can be categorized as failing. The failure of judges to mediate at the Parepare Religious Court has not been able to balance the number of divorce cases that were decided and the number of cases that succeeded in mediating to reach a peaceful consensus.

The progress of divorce cases from 2018 to 2020 at the Sidenreng Rappang Religious Court, can be described with data since 2018, the number of divorces talaq 154 cases and 555 divorce cases. Mediating 91 divorce cases, succeeded in reaching a peaceful consensus on 2 cases. In 2019, the number of divorces talaq received was 213 cases, 202 cases were decided, and the percentage of case settlements was 88%. 699 cases of divorce were accepted, 690 cases were decided on 95%. Mediated 89 cases and succeeded in a peaceful consensus on 0 cases. In 2020, the number of divorces talaq received 163 cases, 152 cases broke up and 83% case settlement percentage, 604 divorce cases received, 591 broke up, and 91% case completion percentage. Mediated 69 cases and succeeded in a 2 case peace consensus.<sup>96</sup>

The strength of the judges at the Sidenreng Rappang Religious Court in conducting mediation is still relatively weak and failed, even in the mediation that was carried out in 2019, not a single case was successfully reconciled. Divorce cases that are accepted are generally terminated and only a very few divorce cases have succeeded in peace.

The Pinrang Religious Court is one of the courts which accepts many divorce cases every year. It is known that in 2018, there were 163 divorces and 640 divorcees, 131 cases of mediation, and 2 cases of the peace agreement were reached. In 2019 there were 208 cases of divorce, 820 cases of divorce, 128 mediation cases, and 4 cases of peace. In 2020, there were 199 divorce cases, 798 divorce cases, 140 mediated cases, and 20 peaceful cases.<sup>97</sup>

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<sup>95</sup> Chairman of the Parepare Religious Court, "Annual Report of the Parepare Religious Court" (City of Parepare, 2020), <http://pa-parepare.go.id/home/leport-tahunan/>.

<sup>96</sup> Chairman of the Sidenreng Rappang Religious Court, "Annual Report of the Sidenreng Rappang Religious Court" (City of Pangkajenne, 2020), <http://pa-sidenrengrappang.go.id/>.

<sup>97</sup> Chairman of the Pinrang Religious Court, "Annual Report of the Pinrang Religious Court" (Kota Pinrang, 2020), <http://pa-pinrang.go.id/index.php?limitstart=27>.

Compared to the Parepare Religious Court and the Sidenreng Rappang Religious Court, the Pinrang Religious Court judges have made progress in reconciling divorce cases. In 2020, the success of mediation at the Pinrang Religious Court is inseparable from the active role of judges in reconciling a litigious husband and wife. The success of mediating divorce cases is supported by the knowledge and experience of judges who are familiar with the social culture of the Pinrang community.

In 2019 data, there were 338 divorce cases including 66 cases of divorce, 258 divorce cases, and 51 cases of mediation, only 1 case was successful at the Enrekang Religious Court. In 2020 there were 336 divorce cases and among them, 75 cases of divorce, 246 divorce cases, 31 mediation cases, and none of them succeeded in peace. Mediation from 2019 and 2020 amounted to 82 cases, only 1 case succeeded in peace.<sup>98</sup> Mediation is almost completely ineffective and in fact creates new problems, namely the accumulation of cases that should be resolved, but are hampered by the time-consuming mediation process. Mediation also has an impact on costs (court costs) so that the principle of litigating with a simple, fast, and low cost does not materialize.

Furthermore, the development of divorce case mediation in the Religious Courts located in the West Sulawesi region is limited to the Polewali Mandar Religious Courts and the Majene Religious Courts. The source of information found at the Polewali Mandar Religious Court stated that in 2017 talaq's divorce was received by 155 cases, 135 cases were ended. 422 cases of divorce were accepted, 366 cases were ended, related to the mediation report not mentioned in the report on the activities of the Polewali Mandar Religious Court. In 2018 talaq divorce received 175 cases, 160 cases ended. 453 divorce cases were accepted, 427 cases ended and mediation was also not included in the 2018 Polewali Mandar Religious Court activity report. In 2019 talaq divorce received 176 cases, 161 cases ended. 507 cases of divorce were accepted, 473 cases were ended.<sup>99</sup> In 2019 there has been no progress on case mediation in the activity report. Meanwhile, the 2020 report has not yet published the number of cases for divorce talaq and divorce.

Divorce cases at the Majene Religious Court, in 2017 talaq received 44 cases plus the remaining 2 cases in 2016, 41 cases ended. Divorce accepts 131 cases plus the remaining 5 cases from 2016, 128 cases ended, 30 cases mediated and none of the cases succeeded in peace. In 2018, divorce talaq received 45 cases plus the remaining 5 cases in 2017, 48 cases were broken. The remaining cases in 2017 were 7 cases, in 2018 129 cases were divorced, 137 cases were ended, 32 cases were mediated and none of the cases were successfully reconciled. In 2019 divorce Talaq received 55 cases plus the remaining 2 cases in 2018, 57 cases ended. Divorce accepts 150 cases plus the remaining 6 cases in 2018, 155 cases ended, 40 mediated cases, and 4 peaceful cases.<sup>100</sup> In 2020, the progress of the divorce case has not been published, both from the talaq divorce case and the sue divorce case.

Optimizing efforts to provide legal services to the community in all Religious Courts in South Sulawesi and West Sulawesi in enforcing mediation institutions which are run by mediating judges. The mediating judge carries out legal remedies against the justice-seeking community to reconcile the disputing parties. Mediation in all Religious Courts is regulated in article 130 HIR / article 154 Rbg. jo. Perma

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<sup>98</sup> Chairman of the Enrekang Religious Court, "Annual Report of the Enrekang Religious Court" (Enrekang City, 2020), <https://www.pa-enrekang.com/index.php/transparant/sekretariat/perplan/leentuk-tahunan>.

<sup>99</sup> Chairperson of the Poliwali Mandar Religious Court, "Annual Report of the Poliwali Mandar Religious Court" (Poliwali City, 2020), <http://pa-polewali.net/index.php/info-peradilan/program-kerja-k-Activity/1-Report-tahunan>.

<sup>100</sup> Chairman of the Majene Religious Court, "Annual Report of the Majene Religious Court" (Majene City, 2020), <https://pa-majene.go.id/informasi-umum/leport-tahunan>.

No. 1 of 2016 concerning Mediation Procedures in Courts.

The legal product of the mediator reports to the examining panel of judges regarding the results of the mediation process that has been carried out with the case husband and wife. If the mediator succeeds in reconciling, the results of the mediation are written in a peace deed. The panel of judges stated in legal considerations, one of which was based on the peace deed agreed and signed by the parties in the case. In one of the verdicts, the panel of judges "punished the applicant/plaintiff and the respondent/defendant to obey the results of the peace agreement that had been reached." Successful mediation without proof of the peace deed of the party presenting the case will withdraw the case that has been submitted at the next trial. Based on Perma No.<sup>101</sup>

There are several types of mediation products, one of which is a successful mediation product, where both husband and wife achieve reconciliation, agree to resolve the problem peacefully and amicably. The peace agreement actualized the peace deed by Perma No. 1 of 2016 Article 27 paragraph 2 or in a divorce case, the party filing for divorce withdraws the case at the next trial. The mediation has succeeded in reaching an agreement, the parties with the assistance of the mediator are obliged to formulate a written agreement in a peace agreement signed by the parties and the mediator. In helping to formulate a peace agreement, the mediator is obliged to ensure that it does not contain provisions that are contrary to law, public order, and also morals, detrimental to the litigant.

The next possibility, the product of partially successful mediation is when two or more cases are filed but not all of them reach an amicable agreement, for example, divorce cases are accumulated with joint assets, a husband and wife agree to share Gono Gini assets are joint assets obtained during the marriage period. peacefully and kinship, but both of them still want to divorce. Also, the product of mediation does not work, if both parties in a case do not reach a peace agreement and want to continue the case. Another type of mediation product is improper mediation if one of the parties is not present at the mediation without justified reasons, involves the rights of the other party, and there are parties who should be subject to law but are not involved in the case.

### **Transformation of Maqasid al-Sharia in Mediation Practices in Divorce Cases**

The mediator who carries out the mediation can help the parties of a married couple to have a strong character and personality in facing a case.<sup>102</sup> The mediator strengthens the understanding of a married couple regarding the importance of marriage, the consequences after divorce,<sup>103</sup> and a major consideration of the power of mediation is childcare.<sup>104</sup> The mediator conducts mediation in a measured manner, ensuring the benefit, effectiveness, and satisfaction of the parties related to the success of the mediation in achieving peace.<sup>105</sup>

Measurable mediation can focus on the context of enforcing mediation as regulated in Perma No. 1 of 2016. Other dispute resolution processes are similar to the mediation of divorce cases at the Religious Courts. The very basic similarities are the steps that must be passed by the provisions in Perma No. 1 of 2016.

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<sup>101</sup> Chairman of the Supreme Court of the Republic of Indonesia., "Perma RI. No. 1 of 2016 concerning Mediation Procedures in Courts "(Jakarta, 2016), [https://bawas.mahkamahagung.go.id/bawas\\_doc/doc/perma\\_mediasi\\_pengadilan\\_web.pdf](https://bawas.mahkamahagung.go.id/bawas_doc/doc/perma_mediasi_pengadilan_web.pdf).

<sup>102</sup> R Silver, "Practice Note: Divorce Mediation with Challenging Parents," *Conflict Resolution Quarterly*, 2008.

<sup>103</sup> W Donohue, "Interaction Dynamics Predict Successful Negotiation in Divorce Mediation," *Journal of Language and Social Psychology* 35, no. 4 (2016): p. 374–393.

<sup>104</sup> K Bollen, "Money or Children? Power Sources in Divorce Mediation," *Journal of Family Studies* 19, no. 2 (2013): p. 159–173

<sup>105</sup> S Cohen, "Divorce Mediation: An Introduction," *Divorce Therapy*, 2014, <https://doi.org/10.4324/9781315791456>.

In general, the mediation stages in divorce cases at the Religious Courts are mapped into three stages, namely the preparation stage, the implementation stage, and also the decision-making stage. The stages of mediation are described systematically and clearly by their respective sequences. In the practice of mediation after registering a divorce case at the Religious Court, the parties of the litigant husband and wife come to court after attending the summons legally and properly by the stipulations of the time and place.

Furthermore, the preparatory stage process in mediation is needed for a mediator to early study and deepen the root of the dispute between husband and wife who are consulted in mediation. The next stage is the implementation stage, the first stage of which is to form a forum. Before starting the mediation, both the mediator and the litigant husband and wife form a forum. In the forum that has been formed, the mediator organizes a joint meeting to deliver the preliminary statements of the husband and wife in the case.

At the time of conducting the mediation, the final stage is the decision-making stage where parties work together with the help of a mediator to evaluate options, get trade-offs and offer packages, minimize debates and find a fair basis for shared allocations. In the end, the parties who agreed were successful in making a joint decision. The stage of determining the mediator's decision can also pressure the parties, find formulas to avoid embarrassment, assist the parties in dealing with the power of attorney (if empowered).

The atmosphere of the location or place of mediation is a comfortable, free and pleasant place.<sup>106</sup> Technical readings and the stages of mediation in the Religious Courts are very important to construct priorities for the application of *maqashid shariah*. The *maqashid shariah* perspective on the mechanism of the stages of mediation is still very technical and the material content of divorce mediation is too formal. The very formalistic technical atmosphere of the implementation has made it more difficult and rigid to find a peace agreement. The consideration of the implementation of *maqashid shariah* in the content of mediation material is to try to strengthen the actualization of benefit, to bury the profundity (damage) in the household of married couples who have problems with conflict.

The opinion of al-Ghazali was explained systematically and concretely about *Maqashid sharia* as the basis of *maslahah*, and also the argument for achieving the goal. *Maqashid shariah* which is the basis of *maslahat* is trying to uphold the meaning of *syar'i* as the absolute authority of Allah in making laws to maintain religion, soul, mind, descent and property.<sup>107</sup> Thus, everything that can realize the meaning of *syar'i* is called *maslahat*. Al-Ghazali reiterated that the *maslahat* in the *maqashid shariah* which is actualized in its implementation in Islamic law is to take advantage as a source of goodness, rejecting obedience as a source of damage.<sup>108</sup> Therefore, benefit must be in accordance with *syar'i*, even though it is contrary to human intentions, sometimes human intentions are not based on *syar'i* but may be based on their desires.<sup>109</sup>

The opinion of Yusuf al-Qardhawi in formulating *maqashid shariah* is the transformation of the goals desired by the texts which contain the meaning of orders, prohibitions, and permits at the same time. *Maqasid shariah* means the purpose of Allah SWT. and also His Messenger in transforming Islamic laws. These

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<sup>106</sup> AC Garcia, "Locations for Advice-Giving and the Production of Neutrality in Divorce Mediation Sessions," *Conflict Resolution Quarterly*, 2020, <https://doi.org/10.1002/crq.21292>.

<sup>107</sup> Al-Gazali, *Al-Mustashfa Fi 'Ilm Al-Ushul*, 1st ed. (Beirut: Dar al-Kutub al-Ilmiyah, 1993).

<sup>108</sup> Riza Mulia, "Marital Beslag Outside Divorce Lawsuit in the *Maqashid Syari'ah* Perspective," *Samarah: Journal of Family Law and Islamic Law* 4, no. 2 (2020): p. 401.

<sup>109</sup> Said Syarifuddin, "Maslahat as Considerations of Islamic Law in View of Imam Malik," *Samarah: Journal of Family Law and Islamic Law* 4, no. 1 (2020): 90.



Islamic laws can be found in the Koran and hadith which lead to the benefit of mankind.<sup>110</sup> Ibn Qayyim's opinion details the purpose of Islamic law is to manifest the benefit of mankind in the world and the hereafter. In totality, Islamic law contains mercy, justice, benefit, and wisdom.<sup>111</sup>

Furthermore, sharia means an ethical system as well as a value in covering all problems of human life which functions as a consistent and comprehensive life guideline that is implemented in Islamic law. The implementation of sharia in Islamic law is an absolute manifestation to uphold justice and benefit, eliminate prejudice, and reduce difficulties in human affairs. The purpose of Islamic law revealed to humans is the same connotation as the meaning of *maqashid shariah* in preserving all human interests.<sup>112</sup>

The realization of the *maqashid shariah* is that Muslims are obliged to maintain their religion, soul, mind, ancestry, and property. As *maqashid shariah* is generally understood to be the purpose of stipulating and lowering Islamic law to bring about goodness, safety, and happiness, on the other hand, avoiding badness, trouble and damage can threaten human life and existence.

The criticism of divorce through *maqashid shariah*, which is the judge's decision at the Religious Court, actually has the potential to cause the household to suffer disarray and damage, it is also focused on taking care of the children of both parents who are no longer maximally which causes neglected children.<sup>113</sup> The practice of mediation in the Religious Courts through the application of *maqashid shariah* is an action to repair and save a household from a husband and wife on the verge of damage and destruction. The perspective of the *maqashid shariah* that divorce in the Religious Court is not the best option or way to resolve conflicts between husband and wife in the household.

Seeing the reality of divorce cases in the Religious Courts today, it seems as if there are almost no more efforts, it is very difficult to stem and contain the rate of divorce that has increased sharply from year to year. The Supreme Court needs to review the effectiveness and efficiency of the implementation of mediation through Perma No. 1 of 2016 at the Religious Court with consideration for the benefit contained in the *maqashid shariah*. The strength of the application of Perma No. 1 of 2016 has not had a major effect on improving the situation of a married couple who filed their case at the Religious Court. The implementation of Perma No. 1 of 2016 does not yet show the balance of the verdict in divorce cases than the success of mediation in the Religious Courts.

The legal construction that is transformed by the Supreme Court in the Religious Courts, *maqashid shariah* can be a major consideration in improving mediation practice. Changes in law enforcement in the practice of mediation in the Religious Courts mean that judges are no longer given additional duties in carrying out mediation. The mediation must optimally be carried out by the mediator freely and independently, without depending on the Religious Courts. The Supreme Court must be more courageous in establishing a mediation institution for divorce cases as a free, independent, and independent institution in preventing the increasing number of divorces.

Regulatory changes in the implementation of the law as an effort to transform

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<sup>110</sup> Yusuf Al-Qardhawi, *Dirasah Fiqh Maqashid Al-Shariah; Baina Al-Maqashid Al-Kulliyah Wa Al-Nushus Al-Juziyyah* (Cairo: Dar al-Syuruq, 2006).

<sup>111</sup> Ibn Qayyim, *I'lam Al-Muwaqifi'in Rabb Al-Alamin*, 3rd ed. (Beirut: Dar al-Jail, nd).

<sup>112</sup> Asyraf Wajdi Dusuki and Nurdianawati Irwani Abdullah, "Maqasid Al-Shariah, Masalahah, and Corporate Social Responsibility," *American Journal of Islamic Social Sciences* 24, no. 1 (2007): p. 31.

<sup>113</sup> AR Poladian, "Family Mediation for Divorce and Parental Separation," *Foundations for Couples' Therapy: Research for the Real World*, 2017, 256-267, <https://doi.org/10.4324/9781315678610-26>.

*maqashid shariah* in the Religious Courts that every registered case should be that a husband and wife who are about to divorce must have a certificate of unsuccessful mediation from the mediation institution. Thus, the Religious Courts no longer accept divorce cases without a certificate of unsuccessful mediation which serves as a subsidiary condition in registering cases.

This opinion is reinforced by several sources from experience, it can be said that the implementation of mediation should be done before the case is entered or registered at the Religious Court. Experience from several times the mediation of several husband and wife couples who quarreled or conflicts with mediation through non-litigation, before the litigant couple filed a case in the Religious Court and the result succeeded in making a peace agreement. Some married couples who have litigated no longer wish to file divorce cases at the Religious Court have returned to harmony in rebuilding their households. In fact, in several cases, after the mediator reported the results of the mediation being unsuccessful, the case examining judges continued the trial process, starting with a vision or settlement by the panel of judges who managed to reconcile the litigants. The essence is that between mediation and peace efforts carried out by the mediator and the case examining a panel of judges should be the same.

After a husband and wife in a case get advice and advice from the Marriage Advisory, Development and Preservation Agency, it can show an indication that the divorce rate can be slightly suppressed through mediation outside the Court.<sup>114</sup> The experience of mediating divorce cases outside the court can be strengthened when the existence of the Marriage Advisory, Guidance and Preservation Agency while still active, based on data from the Office of Religious Affairs, nearly 50% of married couples who wish to file divorce cases at the Religious Courts can discourage divorce.

### **Revitalization of Bugis and Mandar Customary Institutions in divorce mediation**

The Bugis and Mandar peoples have historically been a family group that cannot be separated emotionally because they are tied to a *pangngaderreng* cultural system in South Sulawesi. The two communities were in the same territorial region before the formation of West Sulawesi as the expansion area of the South Sulawesi region on October 5, 2004, through Law no. 26 of 2004. Although separated from regional ties, emotional ties, both physically and physically, are still harmonious and peaceful.

The association of the two societies is bound in a very monumental cultural system, namely the *pangngaderreng* culture. Also, the Bugis and Mandar communities can also be bonded with marriage. The two societies are united with each other because of the same belief in embracing Islam. Returning to the *pangngaderreng* culture, it has five elements that cannot be separated from one another, namely *ade'*, talk, *rapang*, *wari*, and *shara'*.<sup>115</sup> *Pangngaderreng* is a cultural system and a social system that functions as the customary institution or social institution of the Bugis and Mandar peoples. *Pangngaderreng* culture regulates religious, social, cultural, state, and legal norms. *Ade'* can be interpreted as custom, speaking means justice, *rapang* is jurisprudence, *wari* means social layering, and

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<sup>114</sup> M De Jong, "A Pragmatic Look at Mediation as an Alternative to Divorce Litigation," *Tydskrif Vir Die Suid-Afrikaanse Reg*, no. 3 (2010): p.515-531. <https://www.scopus.com/inward/record.uri?partnerID=HzOxMe3b&scp=79959369736&origin=inward>.

<sup>115</sup> Nurmaningsih Nawawi, "Assimilation of Lontara Pangadereng and Islamic Shari'at: Behavioral Patterns of the Bugis-Wajo Society," *Al-Tahrir: Journal of Islamic Thought* 15, no. 1 (2015): p. 25.

*shara'* means Islamic law.<sup>116</sup>

The Bugis and Mandar people are very loyal and obedient to *ade'* (Bugis) and *ada'* (Mandar) means adat. The obedience and loyalty of the Bugis and Mandar people to adat are due to their deep belief in adat which always protects and preserves himself as a human being with *siri'*. *Siri'* in essence is honor, dignity, dignity for humans. If someone does not have *siri'* in him, he is no longer excited to live, people in Bugis and Mandar societies prefer to die rather than have no *siri'* in him.

*Siri'* in the expression of the Bugis society is "*Siri' emmi ri onroang ri lino, utetiong ri ade'e, najagaimami siri'ta, naia siri'e sunge naranreng, na life roughly*",<sup>117</sup> While *siri'* in the Mandar community expression is "what is *siri'* in *tu'u ita di'e rupa or mala tuo dini dilino*, using *de'i is dipiara toi siri', dotai tau mate anna dadzi tia andan dian siri'*" This means that only with *siri'* humans can survive in the world, because by upholding customs, maintaining *siri'*, because with *siri'* death is at stake, and life is the ransom.

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The connection with the enforcement of *siri'* in the Bugis and Mandar communities seems to have experienced a shift in values. The shift in the value of *siri'* itself is marked by a very interesting fact about divorce cases in the Bugis and Mandar communities, which is that divorce cases always dominate rather than divorce talaq in all Religious Courts. Acceleration of suicidal divorce cases is very urgent in the Bugis and Mandar communities. Compared to divorce talaq, family resilience began to be very fragile in Bugis and Mandar societies with the dominance of divorce in the Religious Courts. The dominance of a legal divorce which is the triggering factor is domestic violence, economy, and polygamy. Therefore, The Bugis and Mandar people seem to gradually no longer respect *siri'*, because they are not considered a disgrace' if they go to the Religious Court to ask for a divorce. It should be for the Bugis and Mandar people that it is a disgrace with divorce, let alone committing domestic violence, the disgrace of not being able to meet the economic needs of their families, and also a disgrace 'because of polygamy. A person disobeying or disregarding *siri'* is a disgrace'.

The fragility of family resilience in the Bugis and Mandar communities is also a triggering factor, namely the crisis of figures from family members who are charismatic as role models, and the crisis of optimizing the role of traditional institutions that act as mediators. Cultural and social changes in the Bugis and Mandar communities, sometimes on the part of the parents themselves, who usually play a role in separating the marriages of their children. For families who are experiencing conflict, it seems as if the Religious Court is the last place in conflict resolution. The irony is that it turns out that the Religious Courts are not a place that is capable of repairing the rifts in the households of husband and wife who experience conflict. Data from all divorce cases received at the Religious Courts are generally decided by the judge.

The strength in carrying out the value of *ade'* in the Bugis and the Mandar community' is to maintain a lasting and sustainable marriage, the implementation of the value of life *sirondo-rondo* which means cooperation, helping each other in doing a job, both heavy and light. The next value that is related to the sustainability of marriage is *siamasei* and *sianuang pa'mai* that in building a household, the husband and wife must love and love each other. The Bugis and Mandar people in fostering a household are also known as *sibaliparri*, husband and wife must maintain household harmony and have a mutual sense of responsibility towards

<sup>116</sup> Rahmatunnair, "Contextualization of Pangngadereng in the Enforcement of Islamic Shariah in Buginese Bone Community," *Al-Qalam* 17, no. 1 (2011): p. 94.

<sup>117</sup> Fikri, Rahmawati, and Zulfah, "Idealism and Realism of Islamic Law in Pangngadereng Culture of the Modern Bugis Bone," *IOP Conference Series: Earth and Environmental Science* 175, no. 1 (2018): p. 2, <https://doi.org/10.1088/1755-1315/175/1/012137>.

their families, both when joy and sorrow must be faced together, the same fate and co-existence.

Marriage advice and advice are provisions in living the household dish.<sup>118</sup>The revitalization of customary institutions in the Bugis and Mandar communities such as *sirondo-rondo*, *siamasei* and *sianuang pa'mai*, and *sibaliparri* is the basis for certified judges and mediators to carry out mediation in the Religious Courts and outside the courts. Optimizing customary institutions in the Bugis and Mandar communities can be a very strong defense against the increasing divorce rate in the Religious Courts.

Also, reviving the traditional institutions of the *pangngaderreng* cultural system is *shara'* which is the implementation of Islamic law in the Bugis and Mandar communities. The enforcement of Islamic law in Bugis society is carried out by someone who has the title *petta kali'* and in Mandar society it is known as *puang kali'*. People who are appointed to be *petta kali'* in Bugis society and *puang kali'* in Mandar society are charismatic, scholars who have a deep knowledge of Islam, master jurisprudence and Islamic law. The function of *petta kali'* or *puang kali'* is to give advice or marriage advice for married couples who are about to divorce.

The revitalization of *petta kali'* and *puang kali'* in Bugis and Mandar communities is that every married couple who is about to divorce, should first ask for advice or marriage advice. Divorce cases are no longer registered with the Religious Courts, before there are marital advice and advice from *petta kali'* and *puang kali'*.

## Conclusion

Referring to the divorce case data, it is an extra ordinal matter case in the Religious Courts throughout South Sulawesi and West Sulawesi. The reality that must be given full attention is that currently, divorce cases from divorce lawsuits are increasing in number compared to talaq divorces in the Religious Courts, so there is a concern about family resilience in the Bugis and Mandar communities. Divorce cases are increasing in number which can affect the mediation products in the Religious Courts, which causes the Supreme Court to apply Perma No. 1 of 2016. The dynamics of some of the products of mediation practices in the Religious Courts are successful mediations carried out by a mediator with a husband and wife couple who are having a case to reach a peace agreement as outlined in a peace deed. Another product of mediation is that mediation is partially successful and mediation is partially unsuccessful if the litigating party of the husband and wife submits two main points of the case so that some have succeeded in reaching a peace agreement and some are not successful in achieving reconciliation. The product of mediation is unsuccessful or fails because the litigant husband and wife have committed to divorce so that the mediator finds it difficult to reconcile to achieve reconciliation of the two litigant parties.

The process of practicing mediation in the Religious Courts is very urgent to implement *maqashid shariah* as the main consideration by judges at the Religious Courts in deciding divorce cases. The main consideration for the application of *maqashid shariah* has the potential to repair and save a household from a husband and wife on the verge of damage and destruction. The strong assumption of the application of *maqashid shariah* is that divorce in the Religious Court is not the best option or way to resolve conflicts between husband and wife in the household. The Supreme Court needs to review the practice of mediation through Perma No. 1 of

<sup>118</sup> A Garcia, "Advice-Giving and Disputant Empowerment in Divorce Mediation Sessions," *Language and Dialogue* 2, no. 3 (2012):p. 398-426, <https://doi.org/10.1075/ld.2.3.05gar>.

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2016 by placing the benefits contained in the *maqashid shariah* for the practice of mediation in the Religious Courts.

Revitalizing traditional institutions such as upholding the value of *ade* 'in the Bugis and existing in the Mandar community can be a strength in family resilience in maintaining the marriage. Bringing the customs of the Bugis community and society through social culture in the value of life *sirondo-rondo* which means cooperation, *siamasei* and *sianuang pa'mai* in fostering a household, husband and wife must love and love each other, and *sibaliparri* that husband and wife must take care of each other domestic harmony and mutual responsibility towards their families, both when joys and sorrows must be faced together, of the same fate and responsibility. Also, reviving the customary institutions of the *pangngaderreng* cultural system is *shara'* which is interpreted as an institution for implementing Islamic law in the Bugis and Mandar communities. The enforcement of Islamic law in Bugis society is carried out by someone who has the title *petta kali'* and in Mandar society known as *puang kali'* is a charismatic person, a cleric who has a deep knowledge of Islam, masters jurisprudence and Islamic law. The function of *petta kali'* or *puang kali'* is to give advice or marriage advice for husband and wife who want to divorce and their marriage will be long-lasting, lasting, and sustainable.

## References

- Abbas, Syahrizal. *Mediasi Dalam Perspektif Hukum Syari'ah, Hukum Adat Dan Hukum Nasional*. Jakarta: Kencana Prenada Media Group, 2009.
- Al\_Syatibi, Abu Ishaq. *Al-Muwafaqat Fi Ushul Al-Ahkam*. 2nd ed. Beirut: al-Maktabah al-Taufiqiyah, 2004.
- Al-Gazaliy. *Al-Mustashfa Fi' Ilm Al-Ushul*. 1st ed. Beirut: Dar al-Kutub al-Ilmiyah, 1993.
- Al-Qardhawiy, Yusuf. *Dirasah Fi Fiqh Maqashid Al-Shariah; Baina Al-Maqashid Al-Kulliyah Wa Al-Nushus Al-Juziyyah*. Cairo: Dar al-Syuruq, 2006.
- Al-Salam, Izz al-Din Abd. *Qawaid Al-Ahkam Fi Masalih Al-Anam*. Beirut: Dar al\_Ma'rifah, n.d.
- Bailey, J D. "Assessing Empowerment in Divorce Mediation." *Negotiation Journal* 25, no. 3 (2009): 327–36. <https://doi.org/10.1111/j.1571-9979.2009.00229.x>.
- Beck, C. "A Critical Reappraisal of Divorce Mediation Research and Policy." *Psychology, Public Policy, and Law* 6, no. 4 (2000): 989–1056. <https://doi.org/10.1037/1076-8971.6.4.989>.
- . "Defining a Threshold for Client Competence to Participate in Divorce Mediation." *Psychology, Public Policy, and Law*, 2006. <https://doi.org/10.1037/1076-8971.12.1.1>.
- Beck, E. "Improving Communication in Divorce Mediation." *Divorce Mediation: Perspectives on the Field*, 2014. <https://doi.org/10.4324/9781315860077>.
- Bollen, K. "Money or Children? Power Sources in Divorce Mediation." *Journal of Family Studies* 19, no. 2 (2013): 159–73. <https://doi.org/10.5172/jfs.2013.19.2.159>.
- Cohen, S. "Divorce Mediation: An Introduction." *Divorce Therapy*, 2014. <https://doi.org/10.4324/9781315791456>.
- Dingwall, R. "Divorce Mediation: Should We Change Our Mind?" *Journal of Social Welfare and Family Law* 32, no. 2 (2010): 107–17. <https://doi.org/10.1080/09649069.2010.506307>.
- Djawas, Mursyid, and Sri Astuti Abdul Samad. "Conflict, Traditional, and Family Resistance: The Pattern of Dispute Resolution in Acehnese Community According to Islamic Law." *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 4, no. 1 (2020): 65–84.
- Donohue, W. "Interaction Dynamics Predict Successful Negotiation in Divorce Mediation." *Journal of Language and Social Psychology* 35, no. 4 (2016): 374–93. <https://doi.org/10.1177/0261927X15603090>.
- Dusuki, Asyraf Wajdi, and Nurdianawati Irwani Abdullah. "Maqasid Al-Shariah, Masalahah, and Corporate Social Responsibility." *American Journal of Islamic Social Sciences* 24, no. 1 (2007): 31.
- Ellis, D. "Safety, Equity, and Human Agency; Contributions of Divorce Mediation." *Violence Against Woman* 6, no. 9 (2000): 1012–27.

- <https://doi.org/10.1177/10778010022182254>.
- Emery, Robert E, David Sbarra, and Tara Grover. "Divorce Mediation: Research and Reflections." *Family Court Review* 43, no. 1 (2005): 22–37.
- Enrekang, Ketua Pengadilan Agama. "Laporan Tahunan Pengadilan Agama Enrekang." Kota Enrekang, 2020. <https://www.pa-enrekang.com/index.php/transparansi/sekretariat/perencanaan/laporan-tahunan>.
- Fikri, Rahmawati, and Zulfah. "Idealism and Realism of Islamic Law in Pangngaderreng Culture of the Modern Bugis Bone." *IOP Conference Series: Earth and Environmental Science* 175, no. 1 (2018): 2. <https://doi.org/10.1088/1755-1315/175/1/012137>.
- Garcia, A. "Advice-Giving and Disputant Empowerment in Divorce Mediation Sessions." *Language and Dialogue* 2, no. 3 (2012): 398–426. <https://doi.org/10.1075/ld.2.3.05gar>.
- Garcia, A C. "Locations for Advice-Giving and the Production of Neutrality in Divorce Mediation Sessions." *Conflict Resolution Quarterly*, 2020. <https://doi.org/10.1002/crq.21292>.
- Hahn, R A. "Divorce Mediation: Research and Implications for Family and Couples Counseling." *The Family Journal*, 2000. <https://doi.org/10.1177/1066480700082009>.
- Halim, Wahyuddin. "Islamization or Arabization? The Arab Cultural Influence on the South Sulawesi Muslim Community since the Islamization in the 17th Century." *Suvannabhumi* 10, no. 1 (2018): 42.
- Holtzworth-Munroe, A. "Controversies in Divorce Mediation and Intimate Partner Violence: A Focus on the Children." *Aggression and Violent Behavior*, 2011. <https://doi.org/10.1016/j.avb.2011.04.009>.
- Huang, P. "Divorce Law Practices and the Origins, Myths, and Realities of Judicial 'mediation' in China." *Modern China* 31, no. 2 (2005): 151–203. <https://doi.org/10.1177/0097700405274585>.
- Indonesia, Direktorat Jenderal Badan Peradilan Agama Republik. Laporan Tahunan Badan Peradilan Agama (2020).
- Jong, M De. "A Pragmatic Look at Mediation as an Alternative to Divorce Litigation." *Tydskrif Vir Die Suid-Afrikaanse Reg*, no. 3 (2010): 515–31. <https://www.scopus.com/inward/record.uri?partnerID=HzOxMe3b&scp=79959369736&origin=inward>.
- Kaganas, F. "Domestic Violence and Divorce Mediation." *Journal of Social Welfare and Family Law* 16, no. 3 (1994): 265–78. <https://doi.org/10.1080/09649069408413612>.
- Ketua Pengadilan Agama Parepare. "Laporan Tahunan Pengadilan Agama Parepare." Kota Parepare, 2020. <http://pa-parepare.go.id/home/laporan-tahunan/>.
- Koopman, E. "The Present and Future Role of Higher Education in Divorce Mediation: Problems and Promise in Teaching, Research, and Service." *Divorce Mediation: Perspectives on the Field*, 2014. <https://doi.org/10.4324/9781315860077>.
- Kraft, A. "Childhood Parental Divorce and Cortisol in Young Adulthood: Evidence for Mediation by Family Income." *Psychoneuroendocrinology* 34, no. 9 (2009): 1363–69. <https://doi.org/10.1016/j.psyneuen.2009.04.008>.
- Majene, Ketua Pengadilan Agama. "Laporan Tahunan Pengadilan Agama Majene." Kota Majene, 2020. <https://pa-majene.go.id/informasi-umum/laporan-tahunan>.
- Mandar, Ketua Pengadilan Agama Poliwali. "Laporan Tahunan Pengadilan Agama Poliwali Mandar." Kota Poliwali, 2020. <http://pa-polewali.net/index.php/info-peradilan/program-kerja-kegiatan/laporan-tahunan>.
- Margulies, S. "Litigation, Mediation and the Psychology of Divorce." *Journal of Psychiatry and Law*, 1992. <https://doi.org/10.1177/009318539202000405>.
- Molgora, S. "Divorce and Coparenting: A Qualitative Study on Family Mediation in Italy." *Journal of Divorce and Remarriage* 55, no. 4 (2014): 300–314. <https://doi.org/10.1080/10502556.2014.901854>.
- Mulia, Riza. "Marital Beslag Outside Divorce Lawsuit in the Maqashid Syari'ah Perspective." *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 4, no. 2 (2020): 401.
- Nawawi, Nurnanisih. "Asimilasi Lontara Pangadereng Dan Syari'at Islam: Pola Perilaku Masyarakat Bugis-Wajo." *Al-Tahrir: Jurnal Pemikiran Islam* 15, no. 1 (2015): 25.
- Neville, W. "Reflections on the Growth and Significance of Divorce Mediation." *Divorce Mediation: Perspectives on the Field*, 2014. <https://doi.org/10.4324/9781315860077>.
- Nurman, Said. *Religion and Cultural Identity Among the Bugis*. Makassar: Faculty of Islamic Theology of the Alauddin State Institute of Islamic Studies at Makassar, Indonesia,

- 2004.
- Pickar, D. "Intermittent Evaluative Mediation with Enduring, Post-Divorce Conflict." *Journal of Child Custody* 8, no. 3 (2011): 144–45. <https://doi.org/10.1080/15379418.2011.594722>.
- Pinrang, Ketua Pengadilan Agama. "Laporan Tahunan Pengadilan Agama Pinrang." Kota Pinrang, 2020. <http://pa-pinrang.go.id/index.php?limitstart=27>.
- Poladian, A R. "Family Mediation for Divorce and Parental Separation." *Foundations for Couples' Therapy: Research for the Real World*, 2017, 256–67. <https://doi.org/10.4324/9781315678610-26>.
- Przybyla-Basista, H. "The Influence of Spouses' Resistance on Their Decision to Enter into Divorce Mediation." *Journal of Divorce and Remarriage* 48, no. 3 (2008): 67–89. [https://doi.org/10.1300/J087v48n03\\_05](https://doi.org/10.1300/J087v48n03_05).
- Qardhawi, Abd al-Rahman Yusuf Abd. *Nazhariyah Maqashid Al-Syari'ah Baina Syekh Al-Islam Ibn Taimitiyah Wa Jumhur Ushliyyin Dirasah Muqaranah Min Al-Qarn Al-Khamis Ila Al-Tsamin Al-Hijri*. Kairo: Kulliyah Dar al-Ulum, n.d.
- Qayyim, Ibn. *I'lam Al-Muwaqfi 'in Rabb Al-Alamin*. 3rd ed. Beirut: Dar al-Jail, n.d.
- Rahmatunnair, Rahmatunnair. "Contextualization of Pangngadereng in the Enforcement of Islamic Shariah in Buginese Bone Community." *Al-Qalam* 17, no. 1 (2011): 94.
- Rappang, Ketua Pengadilan Agama Sidenreng. "Laporan Tahunan Pengadilan Agama Sidenreng Rappang." Kota Pangkajenne, 2020. <http://pa-sidenrengappang.go.id/>.
- RI., Ketua Mahkamah Agung. "Perma RI. No. 1 Tahun 2016 Tentang Prosedur Mediasi Di Pengadilan." Jakarta, 2016. [https://bawas.mahkamahagung.go.id/bawas\\_doc/doc/perma\\_mediasi\\_pengadilan\\_web.pdf](https://bawas.mahkamahagung.go.id/bawas_doc/doc/perma_mediasi_pengadilan_web.pdf).
- Sbarra, D A. "In the Presence of Grief: The Role of Cognitive-Emotional Adaptation in Contempory Divorce Mediation." *Handbook of Divorce and Relationship Dissolution*, 2013. <https://doi.org/10.4324/9781315820880-40>.
- Schepard, A. "An Introduction to the Model Standards of Practice for Family and Divorce Mediation." *Family Law Quarterly* 35, no. 1 (2001): 1–24. <https://www.scopus.com/inward/record.uri?partnerID=HzOxMe3b&scop=65449139388&origin=inward>.
- Shaw, L. "Divorce Mediation Outcome Research: A Meta-Analysis." *Conflict Resolution Quarterly* 27, no. 4 (2010): 447–67. <https://doi.org/10.1002/crq.20006>.
- Silver, R. "Practice Note: Divorce Mediation with Challenging Parents." *Conflict Resolution Quarterly*, 2008. <https://doi.org/10.1002/crq.220>.
- Syarifuddin, Said. "Maslahat as Considerations of Islamic Law in View Imam Malik." *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 4, no. 1 (2020): 90.
- Taylor, R. "Use of Change Theory in the Context of the Divorce Mediation Session." *Journal of Divorce and Remarriage* 40, no. 1 (2004): 87–92. [https://doi.org/10.1300/J087v40n01\\_06](https://doi.org/10.1300/J087v40n01_06).
- Twaite, J A. "Divorce Mediation: Promises, Criticisms, Achievements, and Current Challenges." *Journal of Psychiatry and Law*, 1998. <https://doi.org/10.1177/009318539802600304>.
- Weaver, J. "Mediation and Moderation of Divorce Effects on Children's Behavior Problems." *Journal of Family Psychology* 29, no. 1 (2015): 39–48. <https://doi.org/10.1037/fam0000043>.
- Worley, S. "The Effect of Cooperation on Egocentrism in Divorce Mediation: A Simulation Study." *Divorce Mediation: Perspectives on the Field*, 2014. <https://doi.org/10.4324/9781315860077>.
- Yunus, Abd. "The Acculturation of Islam and Local Culture in Bugis Wedding Tradition: A Historical Perspective," 2017, 4.

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**Title** Transformation of Maqā'id Shari'ah in Divorce Mediation in Religious Courts: Revitalization of the Bugis-Mandar Customs, Indonesia

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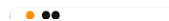
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**Transformation of *Maqāṣid Shari'ah* in Divorce Mediation in Religious Courts: Revitalization of the Bugis-Mandar Customs, Indonesia**

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**Abstract:** The focus of this research discusses the transformation of *maqāṣid shari'ah* in mediation practices in divorce cases, and the revitalization of *adat* in mediation practices in Bugis and Mandar communities. This study is a field legal research using historical and socio-anthropological approaches, while the data is analyzed using *maqāṣid shari'ah* theory and social change theory. Data collection techniques are based on literature studies on legal sources related to the discussion. This study concludes that divorce is an extraordinary case in the religious courts, dynamics of mediation practice in Religious Courts have successful mediation for a written peace agreement in peace deed, other mediation products are partially successful mediation and partially unsuccessful mediation, mediation products are not successful is that husband and wife are committed to divorce; *maqāṣid shari'ah* transformation can be a major consideration by judges in mediation practice to save households on the verge of collapse, so that *maqāṣid shari'ah* is very urgent to place in Perma No.1 of 2016, and revitalization of Bugis-Mandar customary is an effort to revive the value of life *sirondo-rondo*, *siamasei*, *sianuang pa'mai*, and *sibaliparri*, also animate *shara'* which is performed *petta kalie* (Bugis) or *puang kali'* (Mandar).

**Keywords:** *Maqāṣid shari'ah*, divorce mediation, religious courts, customary revitalization, bugis-mandar, Islamic family law

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## Transformation of *Maqāṣid Shari'ah* in Divorce Mediation

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**Abstrak:** Fokus penelitian ini membahas tentang transformasi *maqāṣid syari'ah* dalam praktik mediasi dalam kasus perceraian, dan revitalisasi adat dalam praktik mediasi dalam masyarakat Bugis dan Mandar. Kajian tersebut merupakan penelitian hukum lapangan dengan menggunakan pendekatan historis, dan sosio-antropologis sedangkan data dianalisis dengan memakai teori *maqāṣid syari'ah* dan teori perubahan sosial. Teknik pengumpulan data berdasarkan pada studi literatur pada sumber-sumber hukum yang terkait dengan pembahasan. Penelitian ini menyimpulkan bahwa perceraian merupakan perkara luar biasa di Pengadilan Agama, dinamika praktik mediasi di Pengadilan Agama telah berhasil dalam mediasi perjanjian damai tertulis dalam akta damai, produk mediasi lainnya adalah mediasi yang berhasil sebagian dan mediasi yang tidak berhasil sebagian, mediasi tidak berhasil. produk yang tidak berhasil adalah suami dan istri yang berkomitmen untuk bercerai; Transformasi *maqāṣid syari'ah* dapat menjadi pertimbangan utama hakim dalam praktik mediasi untuk menyelamatkan rumah tangga yang di ambang kehancuran, sehingga *maqāṣid syari'ah* sangat mendesak untuk ditempatkan dalam Perma No.1 Tahun 2016, dan revitalisasi kelembagaan adat Bugis-Mandar merupakan salah satu upaya. menghidupkan kembali nilai-nilai kehidupan *sirondo-rondo*, *siamasei*, *sianuang pa'mai*, dan *sibaliparri*, serta menghidupkan *shara'* yang dilakukan *petta kalie* (Bugis) *puang kali'* (Mandar).  
**Keywords:** *Maqāṣid shari'ah*, mediasi perceraian, Pengadilan Agama, revitalisasi adat, Bugis-Mandar

## Introduction

The process of implementing mediation in fortifying family resilience from conflict has long been the subject of discussion as explained by Margulies that mediation is considered an effective effort to resolve husband-wife conflicts that intend to divorce.<sup>1</sup> On the other hand, violence that occurs in the family and also in mediation is still difficult to find theoretical and practical concepts.<sup>2</sup>

The function of the mediator is to reconcile the two sides of the disputing family, helping to carry out active communication. In addition, the mediator also encourages harmony and also emphasizes the parties in conflict to consider the bad consequences of divorce.<sup>3</sup> It is important to strengthen the concept of mediation in resolving family conflicts and childcare.<sup>4</sup> Mediation is conducted by a mediator who acts as a mediator for the disputing parties and plays an

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<sup>1</sup> Sam Margulies and Anya Luchow, "Litigation, Mediation and the Psychology of Divorce," *Journal of Psychiatry and Law* 20, No. 4 (1992).

<sup>2</sup> Felicity Kaganas and Christine Piper, "Domestic Violence and Divorce Mediation," *Journal of Social Welfare and Family Law* 16, No. 3 (1994), p. 265–278.

<sup>3</sup> Andrew Shepard, "An Introduction to the Model Standards of Practice for Family and Divorce Mediation," *Family Law Quarterly* 35, No. 1 (2001), p. 2-3.

<sup>4</sup> Jennifer M. Weaver and Thomas J. Schofield, "Mediation and Moderation of Divorce Effects on Children's Behavior Problems," *Journal of Family Psychology* 29, No. 1 (2015), p. 39–48.

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active role in resolving the conflict by reaching a peace agreement from the parties.

Mediation is part of the legal system that can resolve family conflicts quickly, easily, and cheaply as long as the parties cooperate.<sup>5</sup> In addition to being able to be carried out by judges, psychologists, and other professionals who have the competence to carry out mediation can understand and address the root causes of problems in family conflicts.<sup>6</sup> According to RA Hahn explained that from several studies of the divorce mediation process carried out there were beneficial and beneficial results for the efficiency and satisfaction of the parties.<sup>7</sup> This opinion is supported by Ellis that divorce mediation makes a huge contribution towards the outcome of reconciliation between husband and wife.<sup>8</sup>

In line with the study conducted by Taylor suggesting that the mediator's demands in carrying out his role as the mediator can help to build confidence in the parties. Mediators are required to designing interpersonal communication between both husband and wife in conflict so that each party can introspect themselves towards better interaction changes.<sup>9</sup> The real emphasis of mediation is on reconciling the husband and wife who insisted on divorce.<sup>10</sup> Legal practitioners and academics have studied a lot about the mediation process that can reduce the soaring divorce rate. Mediation is a reliable means of accelerating the reconciliation of families in conflict.<sup>11</sup> Even C. Beck mentioned that the implementation of the formulation of the concept of mediation is a much more recent effort to create justice for wives who are victims of domestic violence.<sup>12</sup>

However, mediation can speed up the settlement of cases, on the contrary as described by Przybyla Basista stated that the reasons for couples who refuse the mediation process are especially wives who experience feelings of trauma and fear of violence from their ex-husbands. Experience from her domestic life, the wife received painful treatment so that she did not have the time and space to

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<sup>5</sup> James A Twaite, et.al., "Divorce Mediation: Promises, Criticisms, Achievements, and Current Challenges," *Journal of Psychiatry and Law* 26, No. 3 (1998).

<sup>6</sup> Connie J.A. Beck and Bruce Sales, "A Critical Reappraisal of Divorce Mediation Research and Policy," *Psychology, Public Policy, and Law* 6, No. 4 (2000), p. 989-1056.

<sup>7</sup> R. Hahn and David M. Kleist, "Divorce Mediation: Research and Implications for Family and Couples Counseling," *The Family Journal*, (2000).

<sup>8</sup> Desmond Ellis, "Safety, Equity, and Human Agency; Contributions of Divorce Mediation," *Violence Against Woman* 6, No. 9 (2000), p. 1012-1027.

<sup>9</sup> Raymond J. Taylor, "Use of Change Theory in the Context of the Divorce Mediation Session," *Journal of Divorce and Remarriage* 40, No. 1 (2004), p. 90.

<sup>10</sup> Philip C.C. Huang, "Divorce Law Practices and the Origins, Myths, and Realities of Judicial 'mediation' in China," *Modern China* 31, No. 2 (2005), p. 154.

<sup>11</sup> Robert E. Emery, et.al., "Divorce Mediation: Research and Reflections," *Family Court Review* 43, No. 1 (2005), p. 22-37.

<sup>12</sup> Connie J.A. Beck and Lynda E. Frost, "Defining a Threshold for Client Competence to Participate in Divorce Mediation," *Psychology, Public Policy, and Law* 12, No. 1 (2006), p. 1-13.

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negotiate through mediation with her ex-husband.<sup>13</sup> Sometimes children are also victims of violence, experiencing depression and anxiety which can affect the physical and psychological health consequences of divorcing parents.<sup>14</sup> The research also touches on the legal protection of children through the mediation process. Andrew Schepard's views on custody and subsistence needs can be read.<sup>15</sup>

The opinion of Bailey provides that the sharpening of the practice of mediation in divorce cases can refer to several assumptions that mediation is a golden opportunity to resolve conflicts and household breakdowns in constructing reconciliation between husband and wife. The practice of mediation involves offering a problem-solving process with a focus on the goal of reconciliation.<sup>16</sup>

Compare this with the thought conveyed by Robert Dingwall that the legal system and family policies of the government related to the practice of mediation carried out in European countries such as England, Wales, Scotland, and Northern Ireland are forced attempts to the husband and wife who are going to divorce under control of the mediator to undergo the mediation process before their case reaches the Court.<sup>17</sup> An interesting thought from Lori Anne Shaw that the implementation of non-litigation mediation can outperform the judicial process in legally assisting the parties in a case, including from the results of mediation that prioritizes the interests of children.<sup>18</sup> Demands for non-litigation mediation practices are carried out to anticipate more immediate damage and cracks in households.

The theoretical purpose of marriage in Islamic law is to create *sakinah*, *mawaddah*, and *warahmah* families. Sometimes the theoretical goal of marriage is very different in practice from the goal of marriage. Marriage in the view of the Bugis and Mandar people that "*iya tu'u di'o alikkangan, including mesa pakkasiwang lao di puang Allah Taala, Jari mua 'alikkangananna macoai, ma mandapai* reward, but *mua 'andani macoa, napolean sin*". The meaning of marriage is that marriage is worship, so if the marriage is good you will get a reward, but if it is not good you will get sin.

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<sup>13</sup> Hanna Przybyla-Basista, "The Influence of Spouses' Resistance on Their Decision to Enter into Divorce Mediation," *Journal of Divorce and Remarriage* 48, No. 3 (2008), p. 31.

<sup>14</sup> Amy J. Kraft and Lynda Leucken, "Childhood Parental Divorce and Cortisol in Young Adulthood: Evidence for Mediation by Family Income," *Psychoneuroendocrinology* 34, No. 9 (2009), p. 1363–1369.

<sup>15</sup> Andrew Schepard, *An Introduction to the Model Standards...*, p. 2-3.

<sup>16</sup> Jo Daugherty Bailey and Dawn Mccarty, "Assessing Empowerment in Divorce Mediation," *Negotiation Journal* 25, No. 3 (2009), p. 327–336.

<sup>17</sup> Robert Dingwall, "Divorce Mediation: Should We Change Our Mind?," *Journal of Social Welfare and Family Law* 32, No. 2 (2010), p. 107–117.

<sup>18</sup> Lori Anne Shaw, "Divorce Mediation Outcome Research: A Meta-Analysis," *Conflict Resolution Quarterly* 27, No. 4 (2010), p. 447–67.

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Therefore, the practice of mediation, whether organized by judges at the Religious Courts or mediators outside the court, is very important to prioritize the content of divorce mediation using the *maqāṣid shari'ah* approach. Divorce mediation which contains the *maqāṣid shari'ah* paradigm based on *maslahat* as conveyed by Al-Gazali is an effort to uphold the objectives of shari'a laws in maintaining religion, soul, mind, descent and property.<sup>19</sup>

*Maqāṣid shari'ah* as formulated by *ushul fiqh* scholars is to have the meaning of all the aims and objectives regulated in religion to bring benefit and eliminate exasperation to its servants. Al-Syatibi further perfected the traditional *ushul fiqh* theories in the *al-Muwafaqat* book by formulating *maqāṣid shari'ah* which focused on *al-kulliyah al-khamsah*.<sup>20</sup>

Whereas *maqāṣid shari'ah* seen from the order is *maqāṣid al-dharuriyyah* (primary), *maqāṣid al-hajiyat* (secondary), and *maqāṣid al-tahsiniiyyat* (complementary).<sup>21</sup> Therefore, based on the *maqāṣid shari'ah* that divorce mediation is in the order of *maqāṣid al-dharuriyyah*, which is obliged to eliminate adultery in marriage, including maintaining the family from conflict, enmity, disharmony, and rifts between husband and wife.

On the other hand, based on the data source of the Directorate General of Religious Courts' annual report, divorce cases are considered an extraordinary matter in Indonesia. Following the report's data, it shows that there were 128,401 divorce cases in 2015. Divorce cases in 2017 included 113,937 divorce *talaq*, while 301,573 divorce lawsuits were filed. In 2018 the details of the divorce *talaq* were 118,853. In 2019, there were 124,776 divorce cases, then 355,842 divorce cases.<sup>22</sup>

The discourse on mediation has produced many studies on the roles and responsibilities of academics,<sup>23</sup> such as Mursyid Djawas and Sri Astuti A. Samad explained that reconciliation efforts in resolving family disputes can be successful with a family resilience approach through traditional Acehese traditional wisdom such as *Keuchik*, *Tuha Peut*, *Teungku Imum*, and *Imum Mukim*. The resolution of family conflicts in Acehese society by means of Islamic law at the Syari'ah Court and also by practicing customary law in *sara*

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<sup>19</sup> Abd al-Rahman Yusuf Abd Qardhawi, *Nazhariyah Maqashid Al-Syari'ah Baina Syekh Al-Islam Ibn Taimiyah Wa Jumhur Ushliyyin Dirasah Muqaranah Min Al-Qarn Al-Khamsi Ila Al-Tsamin Al-Hijri* (Cairo: Kulliyah Dar al-Ulum, nd). p. 70.

<sup>20</sup> Abu Ishaq Al-Syatibi, *Al-Muwafaqat Fi Ushul Al-Ahkam*, 2nd ed. (Beirut: al-Maktabah al-Taufiqiyah, 2004). p. 2.

<sup>21</sup> Izz al-Din Abd Al-Salam, *Qawaid Al-Ahkam Fi Masalih Al-Anam* (Beirut: Dar al-Ma'rifah, nd). p. 11.

<sup>22</sup> Directorate General of the Religious Courts of the Republic of Indonesia, *Annual Report of the Religious Courts* (2020).

<sup>23</sup> Elizabeth J. Koopman, "The Present and Future Role of Higher Education in Divorce Mediation: Problems and Promise in Teaching, Research, and Service," *Divorce Mediation: Perspectives on the Field*, 2014.



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*opat* institutions, a kind of institution that includes *reje* and *imem* is very accurate, effective, and efficient.<sup>24</sup>

This idea of mediating divorce through customs and social institutions is very suitable to be actualized in the Bugis community in South Sulawesi and the Mandar community in West Sulawesi. Both the Bugis and Mandar Communities are ethnic groups that are very strong and thick in carrying out their customs which are tied to the *pangngaderreng* culture as a culture of conduct.<sup>25</sup> Which includes *ade'*, *bicara*, *rapang*, *wari'*, and *syara'*. Mandar was found when the *pangngaderreng* became a social patron as the inner power control to accommodate *syara'*.<sup>26</sup>

The acceptance of *syara'* in *pangngaderreng* culture is a consequence for society to carry out Islamic law. Along with development and *wari'* and *syara'*.<sup>27</sup> Acculturation of Islam and the culture of the Bugis community and the progress of human civilization which is increasingly modern, sometimes *siri'* in the *pangngaderreng* culture of the Bugis and Mandar communities has gradually shifted. Whereas in the period of traditional life, the enforcement of *siri'* in the Bugis and Mandar communities is very embarrassed and loses its self-respect if there is a disgrace in the family, including for example a married couple who divorced from that family. The connection with the *pangngaderreng* culture has less than optimal function in the Bugis and Mandar communities, especially before and during the Covid-19 pandemic era, the number of divorce cases increased sharply in Religious Courts.

Exposing this background, this study focuses on the dynamics of the legal product of divorce mediation practices in the Religious Courts which incidentally is an institution that can be trusted to enforce Perma No. 1 of 2016. The transformation of *maqāṣid shari'āh* in the practice of mediation in divorce cases in the Religious Courts and outside the courts should prioritize benefit and eliminate adversity to maintain family resilience from various conflicts and disputes. The revitalization of the *pangngaderreng* culture in the practice of divorce mediation in the Religious Courts, which so far is believed to have less than optimal function in the Bugis and Mandar communities.

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<sup>24</sup> Mursyid Djawas and Sri Astuti A. Samad, "Conflict, Traditional, and Family Resistance: The Pattern of Dispute Resolution in Acehese Community According to Islamic Law," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 4, No. 1 (2020), p. 69–71.

<sup>25</sup> Said Nurman, *Religion and Cultural Identity Among the Bugis* (Makassar: Faculty of Islamic Theology of the Alauddin State Institute of Islamic Studies at Makassar, Indonesia, 2004).

<sup>26</sup> Abd Rahim Yunus, "The Acculturation of Islam and Local Culture in Bugis Wedding Tradition: A Historical Perspective," International Conference on Global Education V, Padang, 2017, p. 4.

<sup>27</sup> Wahyuddin Halim, "Islamization or Arabization? The Arab Cultural Influence on the South Sulawesi Muslim Community since the Islamization in the 17th Century," *Suvannabhumi* 10, No. 1 (2018), p. 42.

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This study is a field legal research using historical and socio-anthropological approaches, while the data is analyzed using *maqāsid shari'ah* theory and social change theory.<sup>28</sup> Data collection techniques are based on literature studies on legal sources related to the discussion.

### Dynamics of Legal Product of Divorce Mediation in Religious Courts

Divorce mediation is an effort to mediate resolving disputes so that the mediator must be neutral, bridging, and must not be partial between the conflicting husband and wife in order to reach a peace agreement.<sup>29</sup> Divorce mediation can be designed to be therapeutic, treat, remedy, and counteract the bad effects of divorce.<sup>30</sup>

Divorce mediation is constructed to reflect on the significance of the marriage and address the possibilities that trigger divorce.<sup>31</sup> Assisting divorced parties to optimize the effectiveness and efficiency of conflict resolution in the family. One of the material contained in mediation is very interesting is a simulation method of husband-wife couples who are active for high cooperation which can overcome the conflicts they face, on the other hand, if the husband and wife do not cooperate less, they tend to have a selfish character.<sup>32</sup>

The success indicator of mediation if the material content is to collaborate, including eliminating partner violence intimidation and focusing on taking care of children,<sup>33</sup> refreshing and taking advantage of free time for discussion which aims to strengthen active communication in the family.<sup>34</sup> The family mediation construction should be intensified during the marriage period so that the husband and wife can build a household with full responsibility, affection, and love. Therefore, the practice of mediation is not only carried out when there is a conflict that is already overloaded, critical, and is experiencing a

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<sup>28</sup> Faisar Ananda and Watni Marpauang, *Metodologi Hukum Islam* (Jakarta: Kencana, 2016). Achmad Ali and Wiwie Heryani, *Sosiologi Hukum: Kajian Empiris terhadap Pengadilan* (Jakarta: Kencana, 2014).

<sup>29</sup> Syahrizal Abbas, *Mediasi dalam Perspektif Hukum Islam, Hukum Adat dan Hukum Nasional* (Jakarta: Kencana Prenada Media Group, 2009).

<sup>30</sup> David A. Sbarra and Robert E. Emery, "In the Presence of Grief: The Role of Cognitive-Emotional Adaptation in Contemporary Divorce Mediation," *Handbook of Divorce and Relationship Dissolution*, Taylor and Francis, 2013.

<sup>31</sup> W Neville, "Reflections on the Growth and Significance of Divorce Mediation," *Divorce Mediation: Perspectives on the Field*, 2014.

<sup>32</sup> Susan M. Worley, "The Effect of Cooperation on Egocentrism in Divorce Mediation: A Simulation Study," *Journal of Divorce*, (2008).

<sup>33</sup> Amy Holtzworth-Munroe, "Controversies in Divorce Mediation and Intimate Partner Violence: A Focus on the Children," *Aggression and Violent Behavior* 16, No. 4 (2011), p. 319-324.

<sup>34</sup> E Beck, "Improving Communication in Divorce Mediation," *Divorce Mediation: Perspectives on the Field*, 2014.

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transition period for divorce.<sup>35</sup> The implementation of mediation before the family has problems with conflict, has many advantages for strengthening husband-wife relationships, enhancing cooperation, and also supporting joint care of children.<sup>36</sup>

The fact of the soaring divorce case decisions, it is appropriate to question the speed, accuracy, and efficiency of the judge's functioning as a mediator of divorce cases in the Religious Courts spread across several districts and cities in South Sulawesi and West Sulawesi. The data also shows that the Bugis and Mandar people prefer to resolve disputes and family conflicts in the Religious Courts rather than resolve conflicts with a system or kinship approach. Criticism of the Religious Courts in South Sulawesi and West Sulawesi as one of the case resolution institutions has not been able to accommodate the expectations of the community in settling divorce cases through mediation.

However, the public's assumption of judges acting as mediators in the Religious Courts is still considered a failure. Judges as mediators in conducting divorce mediation are still very symbolic, examinations are too formalistic, very technical, high cost, and cases tend to be overloaded.

The various difficulties faced by judges as mediators in the Religious Courts in general led to the Supreme Court of the Republic of Indonesia to apply Perma No. 1 of 2016. The dynamics of implementing Perma No. 1 of 2016 provides an opportunity to internalize the practice of divorce mediation held by certified mediators from career non-judges at the Religious Courts. Mediation supports all parties to resolve conflicts they face with the help of a mediator who is neutral or impartial. A mediator only tries to bridge all parties in a transparent manner, negotiate, and find the best solution.

The legal position of the implementation of mediation in Law No. 30 of 1999 concerning Arbitration and Alternative Settlements, then followed up by Perma No. 1 of 2016 concerning Mediation as an amendment to Perma No. 1 of 2008 concerning Mediation Procedures. Perma No. 1 of 2016 is implemented to carry out divorce mediation practices in the Religious Courts. Indeed, mediation for divorce in the Religious Courts is to avoid the accumulation of family cases. In fact, the judge's decision will be null and void if the judge examining the divorce case at trial does not enforce mediation at the Religious Court.

The progress of divorce cases that have entered both cases for divorce talaq and cases for divorce in the Religious Courts between 2018 and 2020 in the regions of South Sulawesi and West Sulawesi. The Religious Courts located in South Sulawesi are limited to only taking divorce data from the Parepare Religious Court, the Sidenreng Rappang Religious Court, the Pinrang Religious

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<sup>35</sup> Sara Molgora, et.al., "Divorce and Coparenting: A Qualitative Study on Family Mediation in Italy," *Journal of Divorce and Remarriage* 55, No. 4 (2014), p. 300-314.

<sup>36</sup> Daniel B. Pickar, "Intermittent Evaluative Mediation with Enduring, Post-Divorce Conflict," *Journal of Child Custody* 8, No. 3 (2011), p. 143-145.

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Court, and the Enrekang Religious Court. Meanwhile, the Religious Courts in West Sulawesi are also limited by taking data on divorce cases that are submitted to the Polewali Mandar Religious Court, the Majene Religious Court, and the Mamuju Religious Court.

The success and failure of the product of mediation practice by judges from each of the Religious Courts in South Sulawesi in three years from 2018 to 2020. Since 2018, there have been 12 judges at the Parepare Religious Court who were spread into 6 panels. Types of cases, divorced *talaq* received 106 cases, ended 103 cases and the percentage of case completion was 81%, claimants received 380 cases, dropped 385 cases and percentage of case completion was 93%. The Parepare Religious Court mediated 13 cases and 3 cases that succeeded in peace. In 2019, the remaining cases for divorce *talaq* in 2018 were 23 cases, divorce *talaq* received 103 cases, 120 cases were decided and the percentage of case completion was 95%. For divorce with the remainder of 2018 in 26 cases, received 439, drop out of 440 cases and the percentage of completion of cases is 95%. Mediated a number of 82 cases and 5 cases which succeeded in peace. In 2020, the remaining cases for divorce *talaq* in 2019 amounted to 6 cases, 80 cases of divorce received and 80 cases of divorce. There are 25 divorce cases left in 2019, 357 cases received, 379 cases ended.<sup>37</sup>

Referring to the state of divorce cases every year there has been an increase in both *talaq* and legal divorce at the Parepare Religious Court. The reality cannot be denied, divorce cases are very worrying, because the number of cases for suing for divorce is greater than cases for divorce *talaq*. In addition, the performance of judges in conducting mediation at the Parepare Religious Court from 2018 to 2020 can be categorized as failing. The failure of judges to mediate at the Parepare Religious Court has not been able to balance the number of divorce cases that were decided and the number of cases that succeeded in mediating to reach a peaceful consensus.

The progress of divorce cases from 2018 to 2020 at the Sidenreng Rappang Religious Court, can be described with data since 2018, the number of divorces *talaq* 154 cases and 555 divorce cases. Mediating 91 divorce cases, succeeded in reaching a peaceful consensus on 2 cases. In 2019, the number of divorces *talaq* received was 213 cases, 202 cases were decided, and the percentage of case settlements was 88%. 699 cases of divorce were accepted, 690 cases were decided on 95%. Mediated 89 cases and succeeded in a peaceful consensus on 0 cases. In 2020, the number of divorces *talaq* received 163 cases, 152 cases broke up and 83% case settlement percentage, 604 divorce cases received, 591 broke up, and 91% case completion percentage. Mediated 69 cases

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<sup>37</sup> Chairman of the Parepare Religious Court, "Annual Report of the Parepare Religious Court" (Parepare City, 2020), <http://pa-parepare.go.id/home/leport-tahunan/>.

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and succeeded in a 2 case peace consensus.<sup>38</sup>

The strength of the judges at the Sidenreng Rappang Religious Court in conducting mediation is still relatively weak and failed, even in the mediation that was carried out in 2019, not a single case was successfully reconciled. Divorce cases that are accepted are generally terminated and only a very few divorce cases have succeeded in peace.

The Pinrang Religious Court is one of the courts which accepts many divorce cases every year. It is known that in 2018, there were 163 divorces and 640 divorcees, 131 cases of mediation, and 2 cases of the peace agreement were reached. In 2019 there were 208 cases of divorce, 820 cases of divorce, 128 mediation cases, and 4 cases of peace. In 2020, there were 199 divorce cases, 798 divorce cases, 140 mediated cases, and 20 peaceful cases.<sup>39</sup>

Compared to the Parepare Religious Court and the Sidenreng Rappang Religious Court, the Pinrang Religious Court judges have made progress in reconciling divorce cases. In 2020, the success of mediation at the Pinrang Religious Court is inseparable from the active role of judges in reconciling a litigious husband and wife. The success of mediating divorce cases is supported by the knowledge and experience of judges who are familiar with the social culture of the Pinrang community.

In 2019 data, there were 338 divorce cases including 66 cases of divorce, 258 divorce cases, and 51 cases of mediation, only 1 case was successful at the Enrekang Religious Court. In 2020 there were 336 divorce cases and among them, 75 cases of divorce, 246 divorce cases, 31 mediation cases, and none of them succeeded in peace. Mediation from 2019 and 2020 amounted to 82 cases, only 1 case succeeded in peace.<sup>40</sup> Mediation is almost completely ineffective and in fact creates new problems, namely the accumulation of cases that should be resolved, but are hampered by the time-consuming mediation process. Mediation also has an impact on costs (court costs) so that the principle of litigating with a simple, fast, and low cost does not materialize.

Furthermore, the development of divorce case mediation in the Religious Courts located in the West Sulawesi region is limited to the Polewali Mandar Religious Courts and the Majene Religious Courts. The source of information found at the Polewali Mandar Religious Court stated that in 2017 talaq's divorce was received by 155 cases, 135 cases were ended. 422 cases of divorce were accepted, 366 cases were ended, related to the mediation report not mentioned in

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<sup>38</sup> Chairman of the Sidenreng Rappang Religious Court, "Annual Report of the Sidenreng Rappang Religious Court" (Pangkajene City, 2020), <http://pa-sidenreng-rappang.go.id/>.

<sup>39</sup> Chairman of the Pinrang Religious Court, "Annual Report of the Pinrang Religious Court" (Pinrang City, 2020), <http://pa-pinrang.go.id/index.php?limitstart=27>.

<sup>40</sup> Chairman of the Enrekang Religious Court, "Annual Report of the Enrekang Religious Court" (Enrekang City, 2020), <https://www.pa-enrekang.com/index.php/transparant/sekretariat/perplan/lentuk-tahunan>.

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the report on the activities of the Polewali Mandar Religious Court. In 2018 *talaq* divorce received 175 cases, 160 cases ended. 453 divorce cases were accepted, 427 cases ended and mediation was also not included in the 2018 Polewali Mandar Religious Court activity report. In 2019 *talaq* divorce received 176 cases, 161 cases ended. 507 cases of divorce were accepted, 473 cases were ended.<sup>41</sup> In 2019 there has been no progress on case mediation in the activity report. Meanwhile, the 2020 report has not yet published the number of cases for divorce *talaq* and divorce.

Divorce cases at the Majene Religious Court, in 2017 *talaq* received 44 cases plus the remaining 2 cases in 2016, 41 cases ended. Divorce accepts 131 cases plus the remaining 5 cases from 2016, 128 cases ended, 30 cases mediated and none of the cases succeeded in peace. In 2018, divorce *talaq* received 45 cases plus the remaining 5 cases in 2017, 48 cases were broken. The remaining cases in 2017 were 7 cases, in 2018 129 cases were divorced, 137 cases were ended, 32 cases were mediated and none of the cases were successfully reconciled. In 2019 divorce *Talaq* received 55 cases plus the remaining 2 cases in 2018, 57 cases ended. Divorce accepts 150 cases plus the remaining 6 cases in 2018, 155 cases ended, 40 mediated cases, and 4 peaceful cases.<sup>42</sup> In 2020, the progress of the divorce case has not been published, both from the *talaq* divorce case and the sue divorce case.

Optimizing efforts to provide legal services to the community in all Religious Courts in South Sulawesi and West Sulawesi in enforcing mediation institutions which are run by mediating judges. The mediating judge carries out legal remedies against the justice-seeking community to reconcile the disputing parties. Mediation in all Religious Courts is regulated in article 130 HIR / article 154 Rbg. jo. Perma No. 1 of 2016 concerning Mediation Procedures in Courts.

The legal product of the mediator reports to the examining panel of judges regarding the results of the mediation process that has been carried out with the case husband and wife. If the mediator succeeds in reconciling, the results of the mediation are written in a peace deed. The panel of judges stated in legal considerations, one of which was based on the peace deed agreed and signed by the parties in the case. In one of the verdicts, the panel of judges "punished the applicant/plaintiff and the respondent/defendant to obey the results of the peace agreement that had been reached." Successful mediation without proof of the peace deed of the party presenting the case will withdraw the case

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<sup>41</sup> Chairperson of the Polewali Mandar Religious Court, "Annual Report of the Polewali Mandar Religious Court" (Polewali City, 2020), <http://pa-polewali.net/index.php/info-paradilan/program-kerja-k-Activity/l-Report-tahunan>.

<sup>42</sup> Chairman of the Majene Religious Court, "Annual Report of the Majene Religious Court" (Majene City, 2020), <https://pa-majene.go.id/informasi-umum/leport-tahunan>.

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that has been submitted at the next trial. Based on Perma No.<sup>43</sup>

There are several types of mediation products, one of which is a successful mediation product, where both husband and wife achieve reconciliation, agree to resolve the problem peacefully and amicably. The peace agreement actualized the peace deed by Perma No. 1 of 2016 Article 27 paragraph 2 or in a divorce case, the party filing for divorce withdraws the case at the next trial. The mediation has succeeded in reaching an agreement, the parties with the assistance of the mediator are obliged to formulate a written agreement in a peace agreement signed by the parties and the mediator. In helping to formulate a peace agreement, the mediator is obliged to ensure that it does not contain provisions that are contrary to law, public order, and also morals, detrimental to the litigant.

The next possibility, the product of partially successful mediation is when two or more cases are filed but not all of them reach an amicable agreement, for example, divorce cases are accumulated with joint assets, a husband and wife agree to share Gono Gini assets are joint assets obtained during the marriage period. peacefully and kinship, but both of them still want to divorce. Also, the product of mediation does not work, if both parties in a case do not reach a peace agreement and want to continue the case. Another type of mediation product is improper mediation if one of the parties is not present at the mediation without justified reasons, involves the rights of the other party, and there are parties who should be subject to law but are not involved in the case.

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The mediator who carries out the mediation can help the parties of a married couple to have a strong character and personality in facing a case.<sup>44</sup> The mediator strengthens the understanding of a married couple regarding the importance of marriage, the consequences after divorce,<sup>45</sup> and a major consideration of the power of mediation is childcare.<sup>46</sup> The mediator conducts mediation in a measured manner, ensuring the benefit, effectiveness, and satisfaction of the parties related to the success of the mediation in achieving

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<sup>43</sup> Chairman of the Supreme Court of the Republic of Indonesia., "*Perma RI. No. 1 of 2016 concerning Mediation Procedures in Courts*" (Jakarta, 2016), [https://bawas.mahkamahagung.go.id/bawas\\_doc/doc/perma\\_mediasi\\_pengadilan\\_web.pdf](https://bawas.mahkamahagung.go.id/bawas_doc/doc/perma_mediasi_pengadilan_web.pdf).

<sup>44</sup> Robert B. Silver and Deborah C. Silver, "Practice Note: Divorce Mediation with Challenging Parents," *Conflict Resolution Quarterly* 25, (2008).

<sup>45</sup> William A Donohue, et.al., "Interaction Dynamics Predict Successful Negotiation in Divorce Mediation," *Journal of Language and Social Psychology* 35, No. 4 (2015), p. 374–393.

<sup>46</sup> K. Bollen, et.al., "Money or Children? Power Sources in Divorce Mediation," *Journal of Family Studies* 19, No. 2 (2013), p. 159–173

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peace.<sup>47</sup>

Measurable mediation can focus on the context of enforcing mediation as regulated in Perma No. 1 of 2016. Other dispute resolution processes are similar to the mediation of divorce cases at the Religious Courts. The very basic similarities are the steps that must be passed by the provisions in Perma No. 1 of 2016.

In general, the mediation stages in divorce cases at the Religious Courts are mapped into three stages, namely the preparation stage, the implementation stage, and also the decision-making stage. The stages of mediation are described systematically and clearly by their respective sequences. In the practice of mediation after registering a divorce case at the Religious Court, the parties of the litigant husband and wife come to court after attending the summons legally and properly by the stipulations of the time and place.

Furthermore, the preparatory stage process in mediation is needed for a mediator to early study and deepen the root of the dispute between husband and wife who are consulted in mediation. The next stage is the implementation stage, the first stage of which is to form a forum. Before starting the mediation, both the mediator and the litigant husband and wife form a forum. In the forum that has been formed, the mediator organizes a joint meeting to deliver the preliminary statements of the husband and wife in the case.

At the time of conducting the mediation, the final stage is the decision-making stage where parties work together with the help of a mediator to evaluate options, get trade-offs and offer packages, minimize debates and find a fair basis for shared allocations. In the end, the parties who agreed were successful in making a joint decision. The stage of determining the mediator's decision can also pressure the parties, find formulas to avoid embarrassment, assist the parties in dealing with the power of attorney (if empowered).

The atmosphere of the location or place of mediation is a comfortable, free and pleasant place.<sup>48</sup> Technical readings and the stages of mediation in the Religious Courts are very important to construct priorities for the application of *maqāṣid shari'ah*. The *maqāṣid shari'ah* perspective on the mechanism of the stages of mediation is still very technical and the material content of divorce mediation is too formal. The very formalistic technical atmosphere of the implementation has made it more difficult and rigid to find a peace agreement. The consideration of the implementation of *maqāṣid shari'ah* in the content of mediation material is to try to strengthen the actualization of benefit, to bury the profundity (damage) in the household of married couples who have problems with conflict.

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<sup>47</sup> Stanley N. Cohen, "Divorce Mediation: An Introduction," *Journal of Psychotherapy & Family, Divorce Therapy* 1, (2014).

<sup>48</sup> Angela Corla Garcia, "Locations for Advice-Giving and the Production of Neutrality in Divorce Mediation Sessions," *Conflict Resolution Quarterly* 38, No. 3 (2020).



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The opinion of al-Ghazaliy was explained systematically and concretely about Maqashid sharia as the basis of maslahah, and also the argument for achieving the goal. Maqashid shariah which is the basis of maslahat is trying to uphold the meaning of syar'i as the absolute authority of Allah in making laws to maintain religion, soul, mind, descent and property.<sup>49</sup> Thus, everything that can realize the meaning of syar'i is called maslahat.

The opinion of Yusuf al-Qardhawi in formulating *maqāṣid shari'ah* is the transformation of the goals desired by the texts which contain the meaning of orders, prohibitions, and permits at the same time. *Maqāṣid shari'ah* means the purpose of Allah SWT. and also His Messenger in transforming Islamic laws. These Islamic laws can be found in the qur'an and hadith which lead to the benefit of mankind.<sup>50</sup> Ibn Qayyim's opinion details the purpose of Islamic law is to manifest the benefit of mankind in the world and the hereafter. In totality, Islamic law contains mercy, justice, benefit, and wisdom.<sup>51</sup>

Furthermore, sharia means an ethical system as well as a value in covering all problems of human life which functions as a consistent and comprehensive life guideline that is implemented in Islamic law. The implementation of sharia in Islamic law is an absolute manifestation to uphold justice and benefit, eliminate prejudice, and reduce difficulties in human affairs. The purpose of Islamic law revealed to humans is the same connotation as the meaning of *maqāṣid shari'ah* in preserving all human interests.<sup>52</sup>

The realization of the *maqāṣid shari'ah* is that Muslims are obliged to maintain their religion, soul, mind, ancestry, and property. As *maqāṣid shari'ah* is generally understood to be the purpose of stipulating and lowering Islamic law to bring about goodness, safety, and happiness, on the other hand, avoiding badness, trouble and damage can threaten human life and existence.

The criticism of divorce through *maqāṣid shari'ah*, which is the judge's decision at the Religious Court, actually has the potential to cause the household to suffer disarray and damage, it is also focused on taking care of the children of both parents who are no longer maximally which causes neglected children.<sup>53</sup> The practice of mediation in the Religious Courts through the application of *maqāṣid shari'ah* is an action to repair and save a household from a husband and wife on the verge of damage and destruction. The perspective of the *maqāṣid*

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<sup>49</sup> Al-Gazaliy, *Al-Mustashfa Fi 'Ilm Al-Ushul*, 1st ed. (Beirut: Dar al-Kutub al-Ilmiyah, 1993).

<sup>50</sup> Yusuf Al-Qardhawi, *Dirasah Fiqh Maqashid Al-Shariah; Baina Al-Maqashid Al-Kulliyah Wa Al-Nushus Al-Juz'iyyah* (Cairo: Dar al-Syuruq, 2006).

<sup>51</sup> Ibn Qayyim, *I'lam Al-Muwaqifi'n Rabb Al-Alamin*, 3rd ed. (Beirut: Dar al-Jail, nd).

<sup>52</sup> Asyraf Wajdi Dusuki and Nurdianawati Irwani Abdullah, "Maqasid Al-Shariah, Maslahah, and Corporate Social Responsibility," *American Journal of Islamic Social Sciences* 24, No. 1 (2007), p. 31.

<sup>53</sup> Ani R. Poladian, et.al., "Family Mediation for Divorce and Parental Separation," *Foundations for Couples' Therapy: Research for the Real World*, (2017), p. 256–267.

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*shari'ah* that divorce in the Religious Court is not the best option or way to resolve conflicts between husband and wife in the household.

Seeing the reality of divorce cases in the Religious Courts today, it seems as if there are almost no more efforts, it is very difficult to stem and contain the rate of divorce that has increased sharply from year to year. The Supreme Court needs to review the effectiveness and efficiency of the implementation of mediation through Perma No. 1 of 2016 at the Religious Court with consideration for the benefit contained in the *maqāṣid shari'ah*. The strength of the application of Perma No. 1 of 2016 has not had a major effect on improving the situation of a married couple who filed their case at the Religious Court. The implementation of Perma No. 1 of 2016 does not yet show the balance of the verdict in divorce cases than the success of mediation in the Religious Courts.

The legal construction that is transformed by the Supreme Court in the Religious Courts, *maqāṣid shari'ah* can be a major consideration in improving mediation practice. Changes in law enforcement in the practice of mediation in the Religious Courts mean that judges are no longer given additional duties in carrying out mediation. The mediation must optimally be carried out by the mediator freely and independently, without depending on the Religious Courts. The Supreme Court must be more courageous in establishing a mediation institution for divorce cases as a free, independent, and independent institution in preventing the increasing number of divorces.

Regulatory changes in the implementation of the law as an effort to transform *maqāṣid shari'ah* in the Religious Courts that every registered case should be that a husband and wife who are about to divorce must have a certificate of unsuccessful mediation from the mediation institution. Thus, the Religious Courts no longer accept divorce cases without a certificate of unsuccessful mediation which serves as a subsidiary condition in registering cases.

This opinion is reinforced by several sources from experience, it can be said that the implementation of mediation should be done before the case is entered or registered at the Religious Court. Experience from several times the mediation of several husband and wife couples who quarreled or conflicts with mediation through non-litigation, before the litigant couple filed a case in the Religious Court and the result succeeded in making a peace agreement. Some married couples who have litigated no longer wish to file divorce cases at the Religious Court have returned to harmony in rebuilding their households. In fact, in several cases, after the mediator reported the results of the mediation being unsuccessful, the case examining judges continued the trial process, starting with a vision or settlement by the panel of judges who managed to reconcile the litigants. The essence is that between mediation and peace efforts carried out by the mediator and the case examining a panel of judges should be the same.

After a husband and wife in a case get advice and advice from the

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Marriage Advisory, Development and Preservation Agency, it can show an indication that the divorce rate can be slightly suppressed through mediation outside the Court.<sup>54</sup> The experience of mediating divorce cases outside the court can be strengthened when the existence of the Marriage Advisory, Guidance and Preservation Agency while still active, based on data from the Office of Religious Affairs, nearly 50% of married couples who wish to file divorce cases at the Religious Courts can discourage divorce.

### **Revitalization of Bugis and Mandar Customary in Divorce Mediation**

The Bugis and Mandar peoples have historically been a family group that cannot be separated emotionally because they are tied to a *pangngaderreng* cultural system in South Sulawesi. The two communities were in the same territorial region before the formation of West Sulawesi as the expansion area of the South Sulawesi region on October 5, 2004, through Law No. 26 of 2004. Although separated from regional ties, emotional ties, both physically and physically, are still harmonious and peaceful.

The association of the two societies is bound in a very monumental cultural system, namely the *pangngaderreng* culture. Also, the Bugis and Mandar communities can also be bonded with marriage. The two societies are united with each other because of the same belief in embracing Islam. Returning to the *pangngaderreng* culture, it has five elements that cannot be separated from one another, namely *ade'*, *bicara*, *rapang*, *wari*, and *syara'*.<sup>55</sup> *Pangngaderreng* is a cultural system and a social system that functions as the customary institution or social institution of the Bugis and Mandar peoples. *Pangngaderreng* culture regulates religious, social, cultural, state, and legal norms. *Ade'* can be interpreted as custom, speaking means justice, *rapang* is jurisprudence, *wari* means social layering, and *syara'* means Islamic law.<sup>56</sup>

The Bugis and Mandar people are very loyal and obedient to *ade'* (Bugis) and *ada'* (Mandar) means adat. The obedience and loyalty of the Bugis and Mandar people to adat are due to their deep belief in adat which always protects and preserves himself as a human being with *siri'*. *Siri'* in essence is honor, dignity, dignity for humans. If someone does not have *siri'* in him, he is no longer excited to live, people in Bugis and Mandar societies prefer to die rather than have no *siri'* in him.

*Siri'* in the expression of the Bugis society is "*Siri' emmi ri onroang ri lino, utettong ri ade'e, najagainnami siri'ta, naia siri'e sunge naranreng, na life*

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<sup>54</sup> Madelene De Jong, "A Pragmatic Look at Mediation as an Alternative to Divorce Litigation," *Tydskrif Vir Die Suid-Afrikaanse Reg*, No. 3 (2010), p.515–531.

<sup>55</sup> Nurnaningsih Nawawi, "Asimilasi Lontara Pangadereng Dan Syari'at Islam: Pola Perilaku Masyarakat Bugis-Wajo." *Al-Tahrir: Jurnal Pemikiran Islam* 5, No. 1 (2015), p. 25.

<sup>56</sup> Rahmatunnair, "Contextualization of Pangngadereng in the Enforcement of Islamic Shariah in Buginese Bone Community," *Al-Qalam* 17, No. 1 (2011), p. 94.

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roughly";<sup>57</sup> While *siri'* in the Mandar community expression is "what is *siri'* in *tu'u ita di'e rupa or mala tuo dini dilino*, using *de'i is dipiara toi siri'*, *dotai tau mate anna dadzi tia andan dian siri'*" This means that only with *siri'* humans can survive in the world, because by upholding customs, maintaining *siri'*, because with *siri'* death is at stake, and life is the ransom.

The connection with the enforcement of *siri'* in the Bugis and Mandar communities seems to have experienced a shift in values. The shift in the value of *siri'* itself is marked by a very interesting fact about divorce cases in the Bugis and Mandar communities, which is that divorce cases always dominate rather than divorce *talaq* in all Religious Courts. Acceleration of suicidal divorce cases is very urgent in the Bugis and Mandar communities. Compared to divorce *talaq*, family resilience began to be very fragile in Bugis and Mandar societies with the dominance of divorce in the Religious Courts. The dominance of a legal divorce which is the triggering factor is domestic violence, economy, and polygamy. Therefore, The Bugis and Mandar people seem to gradually no longer respect *siri'*, because they are not considered a disgrace' if they go to the Religious Court to ask for a divorce. It should be for the Bugis and Mandar people that it is a disgrace with divorce, let alone committing domestic violence, the disgrace of not being able to meet the economic needs of their families, and also a disgrace 'because of polygamy. A person disobeying or disregarding *siri'* is a disgrace'.

The fragility of family resilience in the Bugis and Mandar communities is also a triggering factor, namely the crisis of figures from family members who are charismatic as role models, and the crisis of optimizing the role of traditional institutions that act as mediators. Cultural and social changes in the Bugis and Mandar communities, sometimes on the part of the parents themselves, who usually play a role in separating the marriages of their children. For families who are experiencing conflict, it seems as if the Religious Court is the last place in conflict resolution. The irony is that it turns out that the Religious Courts are not a place that is capable of repairing the rifts in the households of husband and wife who experience conflict. Data from all divorce cases received at the Religious Courts are generally decided by the judge.

The strength in carrying out the value of *ade'* in the Bugis and the Mandar community' is to maintain a lasting and sustainable marriage, the implementation of the value of life *sirondo-rondo* which means cooperation, helping each other in doing a job, both heavy and light. The next value that is related to the sustainability of marriage is *siamasei* and *sianuang pa'mai* that in building a household, the husband and wife must love and love each other. The

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<sup>57</sup> Fikri, et.al., "Idealism and Realism of Islamic Law in Panggaderreng Culture of the Modern Bugis Bone," *IOP Conference Series: Earth and Environmental Science* 175, No. 1 (2018), p. 2.

<http://jurnal.ar-raniry.ac.id/index.php/samarah>

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Bugis and Mandar people in fostering a household are also known as *sibaliparri*, husband and wife must maintain household harmony and have a mutual sense of responsibility towards their families, both when joy and sorrow must be faced together, the same fate and co-existence.

Marriage advice and advice are provisions in living the household dish.<sup>58</sup> The revitalization of customary institutions in the Bugis and Mandar communities such as *sirondo-rondoi*, *siamasei* and *sianuang pa'mai*, and *sibaliparri* is the basis for certified judges and mediators to carry out mediation in the Religious Courts and outside the courts. Optimizing customary institutions in the Bugis and Mandar communities can be a very strong defense against the increasing divorce rate in the Religious Courts.

Also, reviving the traditional institutions of the *pangngaderreng* cultural system is *syara'* which is the implementation of Islamic law in the Bugis and Mandar communities. The enforcement of Islamic law in Bugis society is carried out by someone who has the title *petta kalie* and in Mandar society it is known as *puang kali*. People who are appointed to be *petta kalie* in Bugis society and *puang kali* in Mandar society are charismatic, scholars who have a deep knowledge of Islam, master jurisprudence and Islamic law.<sup>59</sup> The function of *petta kalie* or *puang kali* is to give advice or marriage advice for married couples who are about to divorce.

The revitalization of *petta kalie* and *puang kali* in Bugis and Mandar communities is that every married couple who is about to divorce, should first ask for advice or marriage advice. Divorce cases are no longer registered with the Religious Courts, before there are marital advice and advice from *petta kalie* and *puang kali*.

### Conclusion

Referring to the divorce case data, it is an extra ordinal matter case in the Religious Courts throughout South Sulawesi and West Sulawesi. The reality that must be given full attention is that currently, divorce cases from divorce lawsuits are increasing in number compared to talaq divorces in the Religious Courts, so there is a concern about family resilience in the Bugis and Mandar communities. Divorce cases are increasing in number which can affect the mediation products in the Religious Courts, which causes the Supreme Court to apply Perma No. 1 of 2016. The dynamics of some of the products of mediation practices in the Religious Courts are successful mediations carried out by a mediator with a husband and wife couple who are having a case to reach a peace agreement as

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<sup>58</sup> Angela Garcia, "Advice-Giving and Disputant Empowerment in Divorce Mediation Sessions," *Language and Dialogue* 2, No. 3 (2012), p. 398–426.

<sup>59</sup> Ridhwan, et.al., "Masjid Sebagai Pusat Pendidikan Islam pada Masa Kerajaan Sampai Masa Orde Lam di Bone Sulawesi Selatan," *Jurnal Ilmiah Didaktika* 20, No. 1 (2019), p. 83-98.

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outlined in a peace deed. Another product of mediation is that mediation is partially successful and mediation is partially unsuccessful if the litigating party of the husband and wife submits two main points of the case so that some have succeeded in reaching a peace agreement and some are not successful in achieving reconciliation. The product of mediation is unsuccessful or fails because the litigant husband and wife have committed to divorce so that the mediator finds it difficult to reconcile to achieve reconciliation of the two litigant parties.

The process of practicing mediation in the Religious Courts is very urgent to implement *maqāsid shari'ah* as the main consideration by judges at the Religious Courts in deciding divorce cases. The main consideration for the application of *maqāsid shari'ah* has the potential to repair and save a household from a husband and wife on the verge of damage and destruction. The strong assumption of the application of *maqāsid shari'ah* is that divorce in the Religious Court is not the best option or way to resolve conflicts between husband and wife in the household. The Supreme Court needs to review the practice of mediation through Perma No. 1 of 2016 by placing the benefits contained in the *maqāsid shari'ah* for the practice of mediation in the Religious Courts.

Revitalizing traditional institutions such as upholding the value of *ade* 'in the Bugis and existing in the Mandar community can be a strength in family resilience in maintaining the marriage. Bringing the customs of the Bugis community and society through social culture in the value of life *sirondo-rondo* which means cooperation, *siamasei* and *sianuang pa'mai* in fostering a household, husband and wife must love and love each other, and *sibaliparri* that husband and wife must take care of each other domestic harmony and mutual responsibility towards their families, both when joys and sorrows must be faced together, of the same fate and responsibility. Also, reviving the customary institutions of the *panggaderreng* cultural system is *syara'* which is interpreted as an institution for implementing Islamic law in the Bugis and Mandar communities. The enforcement of Islamic law in Bugis society is carried out by someone who has the title *petta kali'* and in Mandar society known as *puang kali'* is a charismatic person, a cleric who has a deep knowledge of Islam, masters jurisprudence and Islamic law. The function of *petta kali'* or *puang kali'* is to give advice or marriage advice for husband and wife who want to divorce and their marriage will be long-lasting, lasting, and sustainable.

## **References**

### **Journals and Books**

Abbas, Syahrizal. *Mediasi Dalam Perspektif Hukum Syari'ah, Hukum Adat Dan Hukum Nasional*. Jakarta: Kencana Prenada Media Group, 2009.

<http://jurnal.ar-raniry.ac.id/index.php/samarah>

### Transformation of *Maqāsid Shari'ah* in Divorce Mediation

Fikri Fikri, et.al.,

DOI:

- Al-Syatibi, Abu Ishaq. *Al-Muwafaqat Fi Ushul Al-Ahkam*. 2nd ed. Beirut: al-Maktabah al-Taufiqiyyah, 2004.
- Al-Gazaliy. *Al-Mustashfa Fi' Ilm Al-Ushul*. 1st ed. Beirut: Dar al-Kutub al-Ilmiyah, 1993.
- Al-Qardhawi, Yusuf. *Dirasah Fi Fiqh Maqashid Al-Shariah; Baina Al-Maqashid Al-Kulliyah Wa Al-Nushus Al-Juziyyah*. Kairo: Dar al-Syuruq, 2006.
- Al-Salam, Izz al-Din Abd. *Qawaid Al-Ahkam Fi Masalih Al-Anam*. Beirut: Dar al-Ma'rifah, n.d.
- Ali, Achmad and Wiewe Heryani, *Sosiologi Hukum: Kajian Empiris terhadap Pengadilan*, Jakarta: Kencana, 2014.
- Arfa, Faisar Ananda and Watni Marpuang, *Metodologi Hukum Islam*, Jakarta: Kencana, 2016.
- Bailey, Jo Daugherty and Dawn Maccarty, "Assessing Empowerment in Divorce Mediation." *Negotiation Journal* 25, No. 3 (2009). <https://doi.org/10.1111/j.1571-9979.2009.00229.x>.
- Beck, Connie J.A. and Bruce Sales, "A Critical Reappraisal of Divorce Mediation Research and Policy." *Psychology, Public Policy, and Law* 6, no. 4 (2000). <https://doi.org/10.1037/1076-8971.6.4.989>.
- Beck, Connie J.A. and Lynda E. Frost, "Defining a Threshold for Client Competence to Participate in Divorce Mediation." *Psychology, Public Policy, and Law* 12, No. 1 (2006). <https://doi.org/10.1037/1076-8971.12.1.1>.
- Beck, E. "Improving Communication in Divorce Mediation." *Divorce Mediation: Perspectives on the Field*, 2014. <https://doi.org/10.4324/9781315860077>.
- Bollen, K. "Money or Children? Power Sources in Divorce Mediation." *Journal of Family Studies* 19, No. 2 (2013). <https://doi.org/10.5172/jfs.2013.19.2.159>.
- Cohen, Stanley N. "Divorce Mediation: An Introduction." *Journal of Psychotherapy & Family, Divorce Therapy* 1, 2014. <https://doi.org/10.4324/9781315791456>.
- Dingwall, Robert. "Divorce Mediation: Should We Change Our Mind?" *Journal of Social Welfare and Family Law* 32, No. 2 (2010). <https://doi.org/10.1080/09649069.2010.506307>.
- Djawas, Mursyid, and Sri Astuti A. Samad. "Conflict, Traditional, and Family Resistance: The Pattern of Dispute Resolution in Acehese Community According to Islamic Law." *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 4, No. 1 (2020). DOI: <http://dx.doi.org/10.22373/sjhk.v4i1.5271>.

### Transformation of *Maqāsid Shari'ah* in Divorce Mediation

Fikri Fikri, et.al.,

DOI:

- Donohue, William A, "Interaction Dynamics Predict Successful Negotiation in Divorce Mediation." *Journal of Language and Social Psychology* 35, No. 4 (2015). <https://doi.org/10.1177/0261927X15603090>.
- Dusuki, Asyraf Wajdi, and Nurdianawati Irwani Abdullah. "Maqasid Al-Shariah, Maslahah, and Corporate Social Responsibility." *American Journal of Islamic Social Sciences* 24, No. 1 (2007).
- Ellis, Desmond. "Safety, Equity, and Human Agency; Contributions of Divorce Mediation." *Violence Against Woman* 6, No. 9 (2000). <https://doi.org/10.1177/10778010022182254>.
- Emery, Robert E, David Sbarra, and Tara Grover. "Divorce Mediation: Research and Reflections." *Family Court Review* 43, No. 1 (2005).
- Enrekang, Ketua Pengadilan Agama. "Laporan Tahunan Pengadilan Agama Enrekang." Kota Enrekang, 2020. <https://www.paanrekang.com/index.php/transparansi/sekretariat/perencanaan/laporan-tahunan>.
- Fikri, Rahmawati, and Zulfah. "Idealism and Realism of Islamic Law in Panggadereng Culture of the Modern Bugis Bone." *IOP Conference Series: Earth and Environmental Science* 175, No. 1 (2018). <https://doi.org/10.1088/1755-1315/175/1/012137>.
- Garcia, Angela. "Advice-Giving and Disputant Empowerment in Divorce Mediation Sessions." *Language and Dialogue* 2, No. 3 (2012). <https://doi.org/10.1075/dl.2.3.05gar>.
- Garcia, Angela Corla. "Locations for Advice-Giving and the Production of Neutrality in Divorce Mediation Sessions." *Conflict Resolution Quarterly* 38, No. 3 (2020). <https://doi.org/10.1002/crq.21292>.
- Hahn, R. and David M. Kleist, "Divorce Mediation: Research and Implications for Family and Couples Counseling." *The Family Journal*, 2000. <https://doi.org/10.1177/1066480700082009>.
- Halim, Wahyuddin. "Islamization or Arabization? The Arab Cultural Influence on the South Sulawesi Muslim Community since the Islamization in the 17th Century." *Suvannabhumi* 10, No. 1 (2018).
- Holtzworth-Munroe, Amy. "Controversies in Divorce Mediation and Intimate Partner Violence: A Focus on the Children." *Aggression and Violent Behavior* 16, No. 4 (2011). <https://doi.org/10.1016/j.avb.2011.04.009>.
- Huang, Philip C.C., "Divorce Law Practices and the Origins, Myths, and Realities of Judicial 'mediation' in China." *Modern China* 31, No. 2 (2005). <https://doi.org/10.1177/0097700405274585>.
- Indonesia, Direktorat Jenderal Badan Peradilan Agama Republik. Laporan Tahunan Badan Peradilan Agama (2020).
- Jong, Madelene De. "A Pragmatic Look at Mediation as an Alternative to Divorce Litigation." *Tydskrif Vir Die Suid-Afrikaanse Reg*, No. 3 (2010).

<http://jurnal.ar-raniry.ac.id/index.php/samarah>



### Transformation of *Maqāsid Shari'ah* in Divorce Mediation

Fikri Fikri, et.al.,

DOI:

- Kaganas, Felicity and Christine Piper, "Domestic Violence and Divorce Mediation." *Journal of Social Welfare and Family Law* 16, No. 3 (1994). <https://doi.org/10.1080/09649069408413612>.
- Koopman, Elizabeth J., "The Present and Future Role of Higher Education in Divorce Mediation: Problems and Promise in Teaching, Research, and Service." *Divorce Mediation: Perspectives on the Field*, 2014. <https://doi.org/10.4324/9781315860077>.
- Kraft, Amy J. and Lynda Leucken, "Childhood Parental Divorce and Cortisol in Young Adulthood: Evidence for Mediation by Family Income." *Psychoneuroendocrinology* 34, No. 9 (2009). <https://doi.org/10.1016/j.psyneuen.2009.04.008>.
- Margulies, S and Anya Luchow, "Litigation, Mediation and the Psychology of Divorce." *Journal of Psychiatry and Law* 20, No. 4 (1992). <https://doi.org/10.1177/009318539202000405>.
- Molgora, Sara, "Divorce and Coparenting: A Qualitative Study on Family Mediation in Italy." *Journal of Divorce and Remarriage* 55, No. 4 (2014). <https://doi.org/10.1080/10502556.2014.901854>.
- Nawawi, Nurnaningsih. "Asimilasi Lontara Pangadereng Dan Syari'at Islam: Pola Perilaku Masyarakat Bugis-Wajo." *Al-Tahrir: Jurnal Pemikiran Islam* 15, No. 1 (2015).
- Neville, W. "Reflections on the Growth and Significance of Divorce Mediation." *Divorce Mediation: Perspectives on the Field*, 2014. <https://doi.org/10.4324/9781315860077>.
- Nurman, Said. *Religion and Cultural Identity Among the Bugis*. Makassar: Faculty of Islamic Theology of the Alauddin State Institute of Islamic Studies at Makassar, Indonesia, 2004.
- Pickar, Daniel, "Intermittent Evaluative Mediation with Enduring, Post-Divorce Conflict." *Journal of Child Custody* 8, No. 3 (2011). <https://doi.org/10.1080/15379418.2011.594722>.
- Pinrang, Ketua Pengadilan Agama. "Laporan Tahunan Pengadilan Agama Pinrang." Kota Pinrang, 2020. <http://pa-pinrang.go.id/index.php?limitstart=27>.
- Poladian, Ani R., "Family Mediation for Divorce and Parental Separation." *Foundations for Couples' Therapy: Research for the Real World*, 2017. <https://doi.org/10.4324/9781315678610-26>.
- Przybyla-Basista, Hanna, "The Influence of Spouses' Resistance on Their Decision to Enter into Divorce Mediation." *Journal of Divorce and Remarriage* 48, No. 3 (2008). [https://doi.org/10.1300/J087v48n03\\_05](https://doi.org/10.1300/J087v48n03_05).
- Qardhawiy, Abd al-Rahman Yusuf Abd. *Nazhariyah Maqashid Al-Syari'ah Baina Syekh Al-Islam Ibn Taimiyah Wa Jumhur Ushliyyin Dirasah Muqaranah Min Al-Qarn Al-Khamis Ila Al-Tsamin Al-Hijri*. Kairo: Kulliyah Dar al-Ulum, n.d.

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### Transformation of *Maqāsid Shari'ah* in Divorce Mediation

Fikri Fikri, et.al.,

DOI:

- Qayyim, Ibn. *I'lam Al-Murwaqi'in Rabb Al-Alamin*. 3rd ed. Beirut: Dar al-Jail, n.d.
- Rahmatunnair, "Contextualization of Pangngadereng in the Enforcement of Islamic Shariah in Bugineese Bone Community." *Al-Qalam* 17, No. 1 (2011). DOI: <http://dx.doi.org/10.31969/alq.v17i1.101>.
- Rappang, Ketua Pengadilan Agama Sidenreng. "Laporan Tahunan Pengadilan Agama Sidenreng Rappang." Kota Pangkajenne, 2020. <http://pa-sidenrengappang.go.id/>.
- Ridhwan, et.al., "Masjid Sebagai Pusat Pendidikan Islam pada Masa Kerajaan Sampai Masa Orde Lam di Bone Sulawesi Selatan," *Jurnal Ilmiah Didaktika* 20, No. 1 (2019). DOI: <http://dx.doi.org/10.22373/jid.v20i1.4648>.
- RI., Ketua Mahkamah Agung. "Perma RI. No. 1 Tahun 2016 Tentang Prosedur Mediasi Di Pengadilan." Jakarta, 2016. [https://bawas.mahkamahagung.go.id/bawas\\_doc/doc/perma\\_mediasi\\_pengadilan\\_web.pdf](https://bawas.mahkamahagung.go.id/bawas_doc/doc/perma_mediasi_pengadilan_web.pdf).
- Sbarra, David A. and Robert E. Emery, "In the Presence of Grief: The Role of Cognitive-Emotional Adaptation in Contemporary Divorce Mediation." *Handbook of Divorce and Relationship Dissolution*, Taylor and Francis, 2013. <https://doi.org/10.4324/9781315820880-40>.
- Schepard, Andrew, "An Introduction to the Model Standards of Practice for Family and Divorce Mediation." *Family Law Quarterly* 35, No. 1 (2001).
- Shaw, Lori Anne, "Divorce Mediation Outcome Research: A Meta-Analysis." *Conflict Resolution Quarterly* 27, No. 4 (2010). <https://doi.org/10.1002/crq.20006>.
- Silver, Robert B. and Deborah C. Silver, "Practice Note: Divorce Mediation with Challenging Parents," *Conflict Resolution Quarterly* 25, (2008). <https://doi.org/10.1002/crq.220>.
- Taylor, Raymond J., "Use of Change Theory in the Context of the Divorce Mediation Session." *Journal of Divorce and Remarriage* 40, no. 1 (2004). [https://doi.org/10.1300/J087v40n01\\_06](https://doi.org/10.1300/J087v40n01_06).
- Twaite, James A. "Divorce Mediation: Promises, Criticisms, Achievements, and Current Challenges." *Journal of Psychiatry and Law* 26, No. 3 (1998). <https://doi.org/10.1177/009318539802600304>.
- Weaver, Jennifer M. and Thomas J. Schofield, "Mediation and Moderation of Divorce Effects on Children's Behavior Problems." *Journal of Family Psychology* 29, No. 1 (2015). <https://doi.org/10.1037/fam0000043>.
- Worley, Susan, "The Effect of Cooperation on Egocentrism in Divorce Mediation: A Simulation Study." *Journal of Divorce* (2008). <https://doi.org/10.4324/9781315860077>.

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Yunus, Abd Rahim, "The Acculturation of Islam and Local Culture in Bugis Wedding Tradition: A Historical Perspective," International Conference on Global Education V, Padang, 2017.

### **Internet Data**

Chairman of the Parepare Religious Court, "*Annual Report of the Parepare Religious Court*" (Parepare City, 2020), <http://pa-parepare.go.id/home/leport-tahunan/>.

Chairman of the Sidenreng Rappang Religious Court, "*Annual Report of the Sidenreng Rappang Religious Court*" (Pangkajenne City, 2020), <http://pa-sidenrengappang.go.id/>.

Chairman of the Pinrang Religious Court, "*Annual Report of the Pinrang Religious Court*" (Pinrang City, 2020), <http://pa-pinrang.go.id/index.php?limitstart=27>.

Chairman of the Enrekang Religious Court, "*Annual Report of the Enrekang Religious Court*" (Enrekang City, 2020), <https://www.pa-enrekang.com/index.php/transparant/sekretariat/perplan/lentuk-tahunan>.

Chairperson of the Polewali Mandar Religious Court, "*Annual Report of the Polewali Mandar Religious Court*" (Polewali City, 2020), <http://pa-polewali.net/index.php/info-peradilan/program-kerja-k> Activity/1 Report-tahunan.

Chairman of the Majene Religious Court, "*Annual Report of the Majene Religious Court*" (Majene City, 2020), <https://pa-majene.go.id/informasi-umum/leport-tahunan>.

Chairman of the Supreme Court of the Republic of Indonesia., "*Perma RI. No. 1 of 2016 concerning Mediation Procedures in Courts*" (Jakarta, 2016), [https://bawas.mahkamahagung.go.id/bawas\\_doc/doc/perma\\_mediasi\\_pengadilan\\_web.pdf](https://bawas.mahkamahagung.go.id/bawas_doc/doc/perma_mediasi_pengadilan_web.pdf).

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Dear  
Fikri Fikri <fikri@iainpare.ac.id>  
Muhammad Ali Rusdi Bedong <alirusdi@iainpare.ac.id>  
Salman Abdul Muthalib <salman@ar-raniry.ac.id>  
Mahdalena Nasrun <mahdalena.nasrun@ar-raniry.ac.id>

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Wassalamu alaikum warahmatullah wabarakatuh  
Best regards,

Nadhilah Filzah  
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[nadilafilzah1@gmail.com](mailto:nadilafilzah1@gmail.com)

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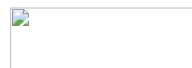
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**Authors** Fikri Fikri, Muhammad Ali Rusdi Bedong, Muhyiddin Salim, Salman Abdul Muthalib, Ali Abubakar

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### **Transformation of *Maqāṣid Shari'āh* in Divorce Mediation in Religious Courts: Revitalization of the Bugis-Mandar Customs, Indonesia**

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**Abstract:** The focus of this research discusses the transformation of *maqāṣid shari'āh* in mediation practices in divorce cases, and the revitalization of *adat* in mediation practices in Bugis and Mandar communities. This study is a field legal research using historical and socio-anthropological approaches, while the data is analyzed using *maqāṣid shari'āh* theory and social change theory. Data collection techniques are based on literature studies on legal sources related to the discussion. This study concludes that divorce is an extraordinary case in the religious courts, dynamics of mediation practice in Religious Courts have successful mediation for a written peace agreement in peace deed, other mediation products are partially successful mediation and partially unsuccessful mediation, mediation products are not successful is that husband and wife are committed to divorce; *maqāṣid shari'āh* transformation can be a major consideration by judges in mediation practice to save households on the verge of collapse, so that *maqāṣid shari'āh* is very urgent to place in Perma No.1 of 2016, and revitalization of Bugis-Mandar customary is an effort to revive the value of life *sirondo-rondo*, *siamasei*, *sianuang pa'mai*, and *sibaliparri*, also animate *shara'* which is performed *petta kalie* (Bugis) or *puang kali'* (Mandar).

**Keywords:** *Maqāṣid shari'āh*, divorce mediation, religious courts, bugis-mandar customs, Islamic family law

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**Abstrak:** Fokus penelitian ini membahas tentang transformasi *maqāṣid syari'ah* dalam praktik mediasi dalam kasus perceraian, dan revitalisasi adat dalam praktik mediasi dalam masyarakat Bugis dan Mandar. Kajian tersebut merupakan penelitian hukum lapangan dengan menggunakan pendekatan historis, dan sosio-antropologis sedangkan data dianalisis dengan memakai teori *maqāṣid syari'ah* dan teori perubahan sosial. Teknik pengumpulan data berdasarkan pada studi literatur pada sumber-sumber hukum yang terkait dengan pembahasan. Penelitian ini menyimpulkan bahwa perceraian merupakan perkara luar biasa di Pengadilan Agama, dinamika praktik mediasi di Pengadilan Agama telah berhasil dalam mediasi perjanjian damai tertulis dalam akta damai, produk mediasi lainnya adalah mediasi yang berhasil sebagian dan mediasi yang tidak berhasil sebagian, mediasi tidak berhasil. produk yang tidak berhasil adalah suami dan istri yang berkomitmen untuk bercerai; Transformasi *maqāṣid syari'ah* dapat menjadi pertimbangan utama hakim dalam praktik mediasi untuk menyelamatkan rumah tangga yang di ambang kehancuran, sehingga *maqāṣid syari'ah* sangat mendesak untuk ditempatkan dalam Perma No.1 Tahun 2016, dan revitalisasi kelembagaan adat Bugis-Mandar merupakan salah satu upaya. menghidupkan kembali nilai-nilai kehidupan *sirondo-rondo*, *siamasei*, *stianuang pa'mai*, dan *sibaliparri*, serta menghidupkan *shara'* yang dilakukan *petta kalie* (Bugis) *puang kali'* (Mandar).

**Keywords:** *Maqāṣid shari'ah*, mediasi perceraian, pengadilan agama, adat Bugis-Mandar, hukum keluarga Islam

## Introduction

The process of implementing mediation in fortifying family resilience from conflict has long been the subject of discussion as explained by Margulies that mediation is considered an effective effort to resolve husband-wife conflicts that intend to divorce.<sup>1</sup> On the other hand, violence that occurs in the family and also in mediation is still difficult to find theoretical and practical concepts.<sup>2</sup>

The function of the mediator is to reconcile the two sides of the disputing family, helping to carry out active communication. In addition, the mediator also encourages harmony and also emphasizes the parties in conflict to consider the bad consequences of divorce.<sup>3</sup> It is important to strengthen the concept of mediation in resolving family conflicts and childcare.<sup>4</sup> Mediation is conducted by

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<sup>1</sup> Sam Margulies and Anya Luchow, "Litigation, Mediation and the Psychology of Divorce," *Journal of Psychiatry and Law* 20, No. 4 (1992).

<sup>2</sup> Felicity Kaganas and Christine Piper, "Domestic Violence and Divorce Mediation," *Journal of Social Welfare and Family Law* 16, No. 3 (1994), p. 265-278.

<sup>3</sup> Andrew Schepard, "An Introduction to the Model Standards of Practice for Family and Divorce Mediation," *Family Law Quarterly* 35, No. 1 (2001), p. 2-3.

<sup>4</sup> Jennifer M. Weaver and Thomas J. Schofield, "Mediation and Moderation of Divorce Effects on Children's Behavior Problems," *Journal of Family Psychology* 29, No. 1 (2015), p. 39-48.

a mediator who acts as a mediator for the disputing parties and plays an active role in resolving the conflict by reaching a peace agreement from the parties.

Mediation is part of the legal system that can resolve family conflicts quickly, easily, and cheaply as long as the parties cooperate.<sup>5</sup> In addition to being able to be carried out by judges, psychologists, and other professionals who have the competence to carry out mediation can understand and address the root causes of problems in family conflicts.<sup>6</sup> According to RA Hahn explained that from several studies of the divorce mediation process carried out there were beneficial and beneficial results for the efficiency and satisfaction of the parties.<sup>7</sup> This opinion is supported by Ellis that divorce mediation makes a huge contribution towards the outcome of reconciliation between husband and wife.<sup>8</sup>

In line with the study conducted by Taylor suggesting that the mediator's demands in carrying out his role as the mediator can help to build confidence in the parties. Mediators are required to designing interpersonal communication between both husband and wife in conflict so that each party can introspect themselves towards better interaction changes.<sup>9</sup> The real emphasis of mediation is on reconciling the husband and wife who insisted on divorce.<sup>10</sup> Legal practitioners and academics have studied a lot about the mediation process that can reduce the soaring divorce rate. Mediation is a reliable means of accelerating the reconciliation of families in conflict.<sup>11</sup> Even C. Beck mentioned that the implementation of the formulation of the concept of mediation is a much more recent effort to create justice for wives who are victims of domestic violence.<sup>12</sup>

However, mediation can speed up the settlement of cases, on the contrary as described by Przybyla Basista stated that the reasons for couples who refuse the mediation process are especially wives who experience feelings of trauma and fear of violence from their ex-husbands. Experience from her domestic life, the wife received painful treatment so that she did not have the time and space to

<sup>5</sup> James A Twaite, et.al., "Divorce Mediation: Promises, Criticisms, Achievements, and Current Challenges," *Journal of Psychiatry and Law* 26, No. 3 (1998).

<sup>6</sup> Connie J.A. Beck and Bruce Sales, "A Critical Reappraisal of Divorce Mediation Research and Policy," *Psychology, Public Policy, and Law* 6, No. 4 (2000), p. 989-1056.

<sup>7</sup> R. Hahn and David M. Kleist, "Divorce Mediation: Research and Implications for Family and Couples Counseling," *The Family Journal*, (2000).

<sup>8</sup> Desmond Ellis, "Safety, Equity, and Human Agency: Contributions of Divorce Mediation," *Violence Against Woman* 6, No. 9 (2000), p. 1012-1027.

<sup>9</sup> Raymond J. Taylor, "Use of Change Theory in the Context of the Divorce Mediation Session," *Journal of Divorce and Remarriage* 40, No. 1 (2004), p. 90.

<sup>10</sup> Philip C.C. Huang, "Divorce Law Practices and the Origins, Myths, and Realities of Judicial 'mediation' in China," *Modern China* 31, No. 2 (2005), p. 154.

<sup>11</sup> Robert E. Emery, et.al., "Divorce Mediation: Research and Reflections," *Family Court Review* 43, No. 1 (2005), p. 22-37.

<sup>12</sup> Connie J.A. Beck and Lynda E. Frost, "Defining a Threshold for Client Competence to Participate in Divorce Mediation," *Psychology, Public Policy, and Law* 12, No. 1 (2006), p. 1-13.

negotiate through mediation with her ex-husband.<sup>13</sup> Sometimes children are also victims of violence, experiencing depression and anxiety which can affect the physical and psychological health consequences of divorcing parents.<sup>14</sup> The research also touches on the legal protection of children through the mediation process. Andrew Schepard's views on custody and subsistence needs can be read.<sup>15</sup>

The opinion of Bailey provides that the sharpening of the practice of mediation in divorce cases can refer to several assumptions that mediation is a golden opportunity to resolve conflicts and household breakdowns in constructing reconciliation between husband and wife. The practice of mediation involves offering a problem-solving process with a focus on the goal of reconciliation.<sup>16</sup>

Compare this with the thought conveyed by Robert Dingwall that the legal system and family policies of the government related to the practice of mediation carried out in European countries such as England, Wales, Scotland, and Northern Ireland are forced attempts to the husband and wife who are going to divorce under control of the mediator to undergo the mediation process before their case reaches the Court.<sup>17</sup> An interesting thought from Lori Anne Shaw that the implementation of non-litigation mediation can outperform the judicial process in legally assisting the parties in a case, including from the results of mediation that prioritizes the interests of children.<sup>18</sup> Demands for non-litigation mediation practices are carried out to anticipate more immediate damage and cracks in households.

The theoretical purpose of marriage in Islamic law is to create *sakinah, mawaddah, and warahmah* families. Sometimes the theoretical goal of marriage is very different in practice from the goal of marriage. Marriage in the view of the Bugis and Mandar communities that "*iya tu'u di'o alikkangan, iyamo dzi'o mesa pakkasiwang lao di puang Allah Taala, jari mua 'alikkangananna macoai, ma mandapai ammasse, mua 'andani macoa, napolean dosa*", the meaning is that marriage is worship, so if the marriage is good you will get a reward, but if it is not good you will get sin.

Therefore, the practice of mediation, whether organized by judges at the

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<sup>13</sup> Hanna Przybyla-Basista, "The Influence of Spouses' Resistance on Their Decision to Enter into Divorce Mediation," *Journal of Divorce and Remarriage* 48, No. 3 (2008), p. 31.

<sup>14</sup> Amy J. Kraft and Lynda Leucken, "Childhood Parental Divorce and Cortisol in Young Adulthood: Evidence for Mediation by Family Income," *Psychoneuroendocrinology* 34, No. 9 (2009), p. 1363–1369.

<sup>15</sup> Andrew Schepard, *An Introduction to the Model Standards...*, p. 2-3.

<sup>16</sup> Jo Daugherty Bailey and Dawn Mccarty, "Assessing Empowerment in Divorce Mediation," *Negotiation Journal* 25, No. 3 (2009), p. 327–336.

<sup>17</sup> Robert Dingwall, "Divorce Mediation: Should We Change Our Mind?," *Journal of Social Welfare and Family Law* 32, No. 2 (2010), p. 107–117.

<sup>18</sup> Lori Anne Shaw, "Divorce Mediation Outcome Research: A Meta-Analysis," *Conflict Resolution Quarterly* 27, No. 4 (2010), p. 447–67.

Religious Courts or mediators outside the court, is very important to prioritize the content of divorce mediation using the *maqāshid shari'ah* approach. Divorce mediation which contains the *maqāshid shari'ah* paradigm based on *maslahat* as conveyed by Al-Gazaliy is an effort to uphold the objectives of shari'a laws in maintaining religion, soul, mind, descent and property.<sup>19</sup>

*Maqāshid shari'ah* as formulated by *ushul fiqh* scholars is to have the meaning of all the aims and objectives regulated in religion to bring benefit and eliminate exasperation to its servants. Al-Syatibi further perfected the traditional *ushul fiqh* theories in the *al-Muwafaqat* book by formulating *maqāshid shari'ah* which focused on *al-kulliyah al-khamsah*.<sup>20</sup>

Whereas *maqāshid shari'ah* seen from the order is *maqāshid al-dharuriyyah* (primary), *maqāshid al-hajiyyat* (secondary), and *maqāshid al-tahsiniyyat* (complementary).<sup>21</sup> Therefore, based on the *maqāshid shari'ah* that divorce mediation is in the order of *maqāshid al-dharuriyyah*, which is obliged to eliminate adultery in marriage, including maintaining the family from conflict, enmity, disharmony, and rifts between husband and wife.

On the other hand, based on the data source of the Directorate General of Religious Courts' annual report, divorce cases are considered an extraordinary matter in Indonesia. Following the report's data, it shows that there were 128,401 divorce cases in 2015. Divorce cases in 2017 included 113,937 divorce *talaq*, while 301,573 divorce lawsuits were filed. In 2018 the details of the divorce *talaq* were 118,853. In 2019, there were 124,776 divorce cases, then 355,842 divorce cases.<sup>22</sup>

The discourse on mediation has produced many studies on the roles and responsibilities of academics,<sup>23</sup> such as Mursyid Djawas and Sri Astuti A. Samad explained that reconciliation efforts in resolving family disputes can be successful with a family resilience approach through traditional Acehese traditional wisdom such as *Keuchik*, *Tuha Peut*, *Teungku Imum*, and *Imum Mukim*. The resolution of

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<sup>19</sup> Abd al-Rahman Yusuf Abd Qardhawiy, *Nazhariyah Maqashid Al-Syari'ah Baina Syekh Al-Islam Ibn Taimiyah Wa Jumhur Ushliyyin Dirasah Muqaranah Min Al-Qarn Al-Khamis Ila Al-Tsamin Al-Hijri* (Cairo: Kulliyah Dar al-Ulum, nd). p. 70.

<sup>20</sup> Abu Ishaq Al-Syatibi, *Al-Muwafaqat Fi Ushul Al-Ahkam*, 2nd ed. (Beirut: al-Maktabah al-Taufiqiyyah, 2004). p. 2.

<sup>21</sup> Izz al-Din Abd Al-Salam, *Qawaid Al-Ahkam Fi Masalih Al-Anam* (Beirut: Dar al-Ma'rifah, nd). p. 11.

<sup>22</sup> Directorate General of the Religious Courts of the Republic of Indonesia, *Annual Report of the Religious Courts* (2020). Mursyid Djawas, et.al., "The Government's Role in Decreasing Divorce Rates in Indonesia: The Case of Aceh and South Sulawesi" *Ahkan: Jurnal Ilmu Syariah* 21, No. 1 (2021).

<sup>23</sup> Elizabeth J. Koopman, "The Present and Future Role of Higher Education in Divorce Mediation: Problems and Promise in Teaching, Research, and Service," *Divorce Mediation: Perspectives on the Field*, 2014.

family conflicts in Acehnese society by means of Islamic law at the Syari'ah Court and also by practicing customary law in *sara opat* institutions, a kind of institution that includes *reje* and *imem* is very accurate, effective, and efficient.<sup>24</sup>

This idea of mediating divorce through customs and social institutions is very suitable to be actualized in the Bugis community in South Sulawesi and the Mandar community in West Sulawesi. Both the Bugis and Mandar Communities are ethnic groups that are very strong and thick in carrying out their customs which are tied to the *pangngaderreng* culture as a culture of conduct.<sup>25</sup> Which includes *ade'*, *bicara*, *rapang*, *wari'*, and *syara'*. Mandar was found when the *pangngaderreng* became a social patron as the inner power control to accommodate *syara'*.<sup>26</sup>

The acceptance of *syara'* in *pangngaderreng* culture is a consequence for society to carry out Islamic law. Along with development and *wari'* and *syara'*.<sup>27</sup> Acculturation of Islam and the culture of the Bugis community and the progress of human civilization which is increasingly modern, sometimes *siri'* in the *pangngaderreng* culture of the Bugis and Mandar communities has gradually shifted. Whereas in the period of traditional life, the enforcement of *siri'* in the Bugis and Mandar communities is very embarrassed and loses its self-respect if there is a disgrace in the family, including for example a married couple who divorced from that family. The connection with the *pangngaderreng* culture has less than optimal function in the Bugis and Mandar communities, especially before and during the Covid-19 pandemic era, the number of divorce cases increased sharply in Religious Courts.

Exposing this background, this study focuses on the dynamics of the legal product of divorce mediation practices in the Religious Courts which incidentally is an institution that can be trusted to enforce Perma No. 1 of 2016. The transformation of *maqāsid shari'ah* in the practice of mediation in divorce cases in the Religious Courts and outside the courts should prioritize benefit and eliminate adversity to maintain family resilience from various conflicts and disputes. The revitalization of the *pangngaderreng* culture in the practice of divorce mediation in the Religious Courts, which so far is believed to have less

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<sup>24</sup> Mursyid Djawas and Sri Astuti A. Samad, "Conflict, Traditional, and Family Resistance: The Pattern of Dispute Resolution in Acehnese Community According to Islamic Law," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 4, No. 1 (2020), p. 69–71.

<sup>25</sup> Said Nurman, *Religion and Cultural Identity Among the Bugis* (Makassar: Faculty of Islamic Theology of the Alauddin State Institute of Islamic Studies at Makassar, Indonesia, 2004).

<sup>26</sup> Abd Rahim Yunus, "The Acculturation of Islam and Local Culture in Bugis Wedding Tradition: A Historical Perspective," International Conference on Global Education V, Padang, 2017, p. 4.

<sup>27</sup> Wahyuddin Halim, "Islamization or Arabization? The Arab Cultural Influence on the South Sulawesi Muslim Community since the Islamization in the 17th Century," *Suvannabhumi* 10, No. 1 (2018), p. 42.



than optimal function in the Bugis and Mandar communities.

This study is a field legal research using historical and socio-anthropological approaches, while the data is analyzed using *maqāshid shari'ah* theory and social change theory.<sup>28</sup> Data collection techniques are based on literature studies on legal sources related to the discussion.

### **Dynamics of Legal Product of Divorce Mediation in Religious Courts**

Divorce mediation is an effort to mediate resolving disputes so that the mediator must be neutral, bridging, and must not be partial between the conflicting husband and wife in order to reach a peace agreement.<sup>29</sup> Divorce mediation can be designed to be therapeutic, treat, remedy, and counteract the bad effects of divorce.<sup>30</sup>

Divorce mediation is constructed to reflect on the significance of the marriage and address the possibilities that trigger divorce.<sup>31</sup> Assisting divorced parties to optimize the effectiveness and efficiency of conflict resolution in the family. One of the material contained in mediation is very interesting is a simulation method of husband-wife couples who are active for high cooperation which can overcome the conflicts they face, on the other hand, if the husband and wife do not cooperate less, they tend to have a selfish character.<sup>32</sup>

The success indicator of mediation if the material content is to collaborate, including eliminating partner violence intimidation and focusing on taking care of children,<sup>33</sup> refreshing and taking advantage of free time for discussion which aims to strengthen active communication in the family.<sup>34</sup> The family mediation construction should be intensified during the marriage period so that the husband and wife can build a household with full responsibility, affection, and love. Therefore, the practice of mediation is not only carried out when there is a conflict

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<sup>28</sup> Faisar Ananda and Watni Marpuang, *Metodologi Hukum Islam* (Jakarta: Kencana, 2016). Achmad Ali and Wiwie Heryani, *Sosiologi Hukum: Kajian Empiris terhadap Pengadilan* (Jakarta: Kencana, 2014).

<sup>29</sup> Syahrizal Abbas, *Mediasi dalam Perspektif Hukum Islam, Hukum Adat dan Hukum Nasional* (Jakarta: Kencana Prenada Media Group, 2009).

<sup>30</sup> David A. Sbarra and Robert E. Emery, "In the Presence of Grief: The Role of Cognitive-Emotional Adaptation in Contemporary Divorce Mediation," *Handbook of Divorce and Relationship Dissolution*, Taylor and Francis, 2013.

<sup>31</sup> W Neville, "Reflections on the Growth and Significance of Divorce Mediation," *Divorce Mediation: Perspectives on the Field*, 2014.

<sup>32</sup> Susan M. Worley, "The Effect of Cooperation on Egocentrism in Divorce Mediation: A Simulation Study," *Journal of Divorce*, (2008).

<sup>33</sup> Amy Holtzworth-Munroe, "Controversies in Divorce Mediation and Intimate Partner Violence: A Focus on the Children," *Aggression and Violent Behavior* 16, No. 4 (2011), p. 319-324.

<sup>34</sup> E Beck, "Improving Communication in Divorce Mediation," *Divorce Mediation: Perspectives on the Field*, 2014.

that is already overloaded, critical, and is experiencing a transition period for divorce.<sup>35</sup> The implementation of mediation before the family has problems with conflict, has many advantages for strengthening husband-wife relationships, enhancing cooperation, and also supporting joint care of children.<sup>36</sup>

The fact of the soaring divorce case decisions, it is appropriate to question the speed, accuracy, and efficiency of the judge's functioning as a mediator of divorce cases in the Religious Courts spread across several districts and cities in South Sulawesi and West Sulawesi. The data also shows that the Bugis and Mandar people prefer to resolve disputes and family conflicts in the Religious Courts rather than resolve conflicts with a system or kinship approach. Criticism of the Religious Courts in South Sulawesi and West Sulawesi as one of the case resolution institutions has not been able to accommodate the expectations of the community in settling divorce cases through mediation.

However, the public's assumption of judges acting as mediators in the Religious Courts is still considered a failure. Judges as mediators in conducting divorce mediation are still very symbolic, examinations are too formalistic, very technical, high cost, and cases tend to be overloaded.

The various difficulties faced by judges as mediators in the Religious Courts in general led to the Supreme Court of the Republic of Indonesia to apply Perma No. 1 of 2016. The dynamics of implementing Perma No. 1 of 2016 provides an opportunity to internalize the practice of divorce mediation held by certified mediators from career non-judges at the Religious Courts. Mediation supports all parties to resolve conflicts they face with the help of a mediator who is neutral or impartial. A mediator only tries to bridge all parties in a transparent manner, negotiate, and find the best solution.

The legal position of the implementation of mediation in Law No. 30 of 1999 concerning Arbitration and Alternative Settlements, then followed up by Perma No. 1 of 2016 concerning Mediation as an amendment to Perma No. 1 of 2008 concerning Mediation Procedures. Perma No. 1 of 2016 is implemented to carry out divorce mediation practices in the Religious Courts. Indeed, mediation for divorce in the Religious Courts is to avoid the accumulation of family cases. In fact, the judge's decision will be null and void if the judge examining the divorce case at trial does not enforce mediation at the Religious Court.

The progress of divorce cases that have entered both cases for divorce talaq and cases for divorce in the Religious Courts between 2018 and 2020 in the regions of South Sulawesi and West Sulawesi. The Religious Courts located in South Sulawesi are limited to only taking divorce data from the Parepare Religious

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<sup>35</sup> Sara Molgora, et.al., "Divorce and Coparenting: A Qualitative Study on Family Mediation in Italy," *Journal of Divorce and Remarriage* 55, No. 4 (2014), p. 300–314.

<sup>36</sup> Daniel B. Pickar, "Intermittent Evaluative Mediation with Enduring, Post-Divorce Conflict," *Journal of Child Custody* 8, No. 3 (2011), p. 143–145.

Court, the Sidenreng Rappang Religious Court, the Pinrang Religious Court, and the Enrekang Religious Court. Meanwhile, the Religious Courts in West Sulawesi are also limited by taking data on divorce cases that are submitted to the Polewali Mandar Religious Court, the Majene Religious Court, and the Mamuju Religious Court.

The success and failure of the product of mediation practice by judges from each of the Religious Courts in South Sulawesi in three years from 2018 to 2020. Since 2018, there have been 12 judges at the Parepare Religious Court who were spread into 6 panels. Types of cases, divorced *talaq* received 106 cases, ended 103 cases and the percentage of case completion was 81%, claimants received 380 cases, dropped 385 cases and percentage of case completion was 93%. The Parepare Religious Court mediated 13 cases and 3 cases that succeeded in peace. In 2019, the remaining cases for divorce *talaq* in 2018 were 23 cases, divorce *talaq* received 103 cases, 120 cases were decided and the percentage of case completion was 95%. For divorce with the remainder of 2018 in 26 cases, received 439, drop out of 440 cases and the percentage of completion of cases is 95%. Mediated a number of 82 cases and 5 cases which succeeded in peace. In 2020, the remaining cases for divorce *talaq* in 2019 amounted to 6 cases, 80 cases of divorce received and 80 cases of divorce. There are 25 divorce cases left in 2019, 357 cases received, 379 cases ended.<sup>37</sup>

Referring to the state of divorce cases every year there has been an increase in both *talaq* and legal divorce at the Parepare Religious Court. The reality cannot be denied, divorce cases are very worrying, because the number of cases for suing for divorce is greater than cases for divorce *talaq*. In addition, the performance of judges in conducting mediation at the Parepare Religious Court from 2018 to 2020 can be categorized as failing. The failure of judges to mediate at the Parepare Religious Court has not been able to balance the number of divorce cases that were decided and the number of cases that succeeded in mediating to reach a peaceful consensus.

The progress of divorce cases from 2018 to 2020 at the Sidenreng Rappang Religious Court, can be described with data since 2018, the number of divorces *talaq* 154 cases and 555 divorce cases. Mediating 91 divorce cases, succeeded in reaching a peaceful consensus on 2 cases. In 2019, the number of divorces *talaq* received was 213 cases, 202 cases were decided, and the percentage of case settlements was 88%. 699 cases of divorce were accepted, 690 cases were decided on 95%. Mediated 89 cases and succeeded in a peaceful consensus on 0 cases. In 2020, the number of divorces *talaq* received 163 cases, 152 cases broke up and 83% case settlement percentage, 604 divorce cases received, 591 broke up, and

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<sup>37</sup> Chairman of the Parepare Religious Court, "Annual Report of the Parepare Religious Court" (Parepare City, 2020), <http://pa-parepare.go.id/home/leport-tahunan/>.

91% case completion percentage. Mediated 69 cases and succeeded in a 2 case peace consensus.<sup>38</sup>

The strength of the judges at the Sidenreng Rappang Religious Court in conducting mediation is still relatively weak and failed, even in the mediation that was carried out in 2019, not a single case was successfully reconciled. Divorce cases that are accepted are generally terminated and only a very few divorce cases have succeeded in peace.

The Pinrang Religious Court is one of the courts which accepts many divorce cases every year. It is known that in 2018, there were 163 divorces and 640 divorcees, 131 cases of mediation, and 2 cases of the peace agreement were reached. In 2019 there were 208 cases of divorce, 820 cases of divorce, 128 mediation cases, and 4 cases of peace. In 2020, there were 199 divorce cases, 798 divorce cases, 140 mediated cases, and 20 peaceful cases.<sup>39</sup>

Compared to the Parepare Religious Court and the Sidenreng Rappang Religious Court, the Pinrang Religious Court judges have made progress in reconciling divorce cases. In 2020, the success of mediation at the Pinrang Religious Court is inseparable from the active role of judges in reconciling a litigious husband and wife. The success of mediating divorce cases is supported by the knowledge and experience of judges who are familiar with the social culture of the Pinrang community.

In 2019 data, there were 338 divorce cases including 66 cases of divorce, 258 divorce cases, and 51 cases of mediation, only 1 case was successful at the Enrekang Religious Court. In 2020 there were 336 divorce cases and among them, 75 cases of divorce, 246 divorce cases, 31 mediation cases, and none of them succeeded in peace. Mediation from 2019 and 2020 amounted to 82 cases, only 1 case succeeded in peace.<sup>40</sup> Mediation is almost completely ineffective and in fact creates new problems, namely the accumulation of cases that should be resolved, but are hampered by the time-consuming mediation process. Mediation also has an impact on costs (court costs) so that the principle of litigating with a simple, fast, and low cost does not materialize.

Furthermore, the development of divorce case mediation in the Religious Courts located in the West Sulawesi region is limited to the Polewali Mandar Religious Courts and the Majene Religious Courts. The source of information found at the Polewali Mandar Religious Court stated that in 2017 talaq's divorce

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<sup>38</sup> Chairman of the Sidenreng Rappang Religious Court, "Annual Report of the Sidenreng Rappang Religious Court" (Pangkajene City, 2020), <http://pa-sidenreng-rappang.go.id/>.

<sup>39</sup> Chairman of the Pinrang Religious Court, "Annual Report of the Pinrang Religious Court" (Pinrang City, 2020), <http://pa-pinrang.go.id/index.php?limitstart=27>.

<sup>40</sup> Chairman of the Enrekang Religious Court, "Annual Report of the Enrekang Religious Court" (Enrekang City, 2020), <https://www.pa-enrekang.com/index.php/transparant/sekretariat/perplan/lentuk-tahunan>.

was received by 155 cases, 135 cases were ended. 422 cases of divorce were accepted, 366 cases were ended, related to the mediation report not mentioned in the report on the activities of the Polewali Mandar Religious Court. In 2018 *talaq* divorce received 175 cases, 160 cases ended. 453 divorce cases were accepted, 427 cases ended and mediation was also not included in the 2018 Polewali Mandar Religious Court activity report. In 2019 *talaq* divorce received 176 cases, 161 cases ended. 507 cases of divorce were accepted, 473 cases were ended.<sup>41</sup> In 2019 there has been no progress on case mediation in the activity report. Meanwhile, the 2020 report has not yet published the number of cases for divorce *talaq* and divorce.

Divorce cases at the Majene Religious Court, in 2017 *talaq* received 44 cases plus the remaining 2 cases in 2016, 41 cases ended. Divorce accepts 131 cases plus the remaining 5 cases from 2016, 128 cases ended, 30 cases mediated and none of the cases succeeded in peace. In 2018, divorce *talaq* received 45 cases plus the remaining 5 cases in 2017, 48 cases were broken. The remaining cases in 2017 were 7 cases, in 2018 129 cases were divorced, 137 cases were ended, 32 cases were mediated and none of the cases were successfully reconciled. In 2019 divorce *Talaq* received 55 cases plus the remaining 2 cases in 2018, 57 cases ended. Divorce accepts 150 cases plus the remaining 6 cases in 2018, 155 cases ended, 40 mediated cases, and 4 peaceful cases.<sup>42</sup> In 2020, the progress of the divorce case has not been published, both from the *talaq* divorce case and the sue divorce case.

Optimizing efforts to provide legal services to the community in all Religious Courts in South Sulawesi and West Sulawesi in enforcing mediation institutions which are run by mediating judges. The mediating judge carries out legal remedies against the justice-seeking community to reconcile the disputing parties. Mediation in all Religious Courts is regulated in article 130 HIR / article 154 Rbg. jo. Perma No. 1 of 2016 concerning Mediation Procedures in Courts.

The legal product of the mediator reports to the examining panel of judges regarding the results of the mediation process that has been carried out with the case husband and wife. If the mediator succeeds in reconciling, the results of the mediation are written in a peace deed. The panel of judges stated in legal considerations, one of which was based on the peace deed agreed and signed by the parties in the case. In one of the verdicts, the panel of judges "punished the applicant/plaintiff and the respondent/defendant to obey the results of the peace agreement that had been reached." Successful mediation without proof of the

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<sup>41</sup> Chairperson of the Polewali Mandar Religious Court, "Annual Report of the *Poliwali Mandar Religious Court*" (Polewali City, 2020), <http://pa-polewali.net/index.php/info-peradilan/program-kerja-k-Activity/l-Report-tahunan>.

<sup>42</sup> Chairman of the Majene Religious Court, "Annual Report of the *Majene Religious Court*" (Majene City, 2020), <https://pa-majene.go.id/informasi-umum/leport-tahunan>.

peace deed of the party presenting the case will withdraw the case that has been submitted at the next trial. Based on Perma No.<sup>43</sup>

There are several types of mediation products, one of which is a successful mediation product, where both husband and wife achieve reconciliation, agree to resolve the problem peacefully and amicably. The peace agreement actualized the peace deed by Perma No. 1 of 2016 Article 27 paragraph 2 or in a divorce case, the party filing for divorce withdraws the case at the next trial. The mediation has succeeded in reaching an agreement, the parties with the assistance of the mediator are obliged to formulate a written agreement in a peace agreement signed by the parties and the mediator. In helping to formulate a peace agreement, the mediator is obliged to ensure that it does not contain provisions that are contrary to law, public order, and also morals, detrimental to the litigant.

The next possibility, the product of partially successful mediation is when two or more cases are filed but not all of them reach an amicable agreement, for example, divorce cases are accumulated with joint assets, a husband and wife agree to share Gono Gini assets are joint assets obtained during the marriage period. peacefully and kinship, but both of them still want to divorce. Also, the product of mediation does not work, if both parties in a case do not reach a peace agreement and want to continue the case. Another type of mediation product is improper mediation if one of the parties is not present at the mediation without justified reasons, involves the rights of the other party, and there are parties who should be subject to law but are not involved in the case.

### **Transformation of *Maqāṣid Shari'ah* in Mediation Practices in Divorce Cases**

The mediator who carries out the mediation can help the parties of a married couple to have a strong character and personality in facing a case.<sup>44</sup> The mediator strengthens the understanding of a married couple regarding the importance of marriage, the consequences after divorce,<sup>45</sup> and a major consideration of the power of mediation is childcare.<sup>46</sup> The mediator conducts mediation in a measured manner, ensuring the benefit, effectiveness, and satisfaction of the parties related to the success of the mediation in achieving

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<sup>43</sup> Chairman of the Supreme Court of the Republic of Indonesia., "Perma RI. No. 1 of 2016 concerning Mediation Procedures in Courts "(Jakarta, 2016), [https://bawas.mahkamahagung.go.id/bawas\\_doc/doc/perma\\_mediasi\\_pengadilan\\_web.pdf](https://bawas.mahkamahagung.go.id/bawas_doc/doc/perma_mediasi_pengadilan_web.pdf).

<sup>44</sup> Robert B. Silver and Deborah C. Silver, "Practice Note: Divorce Mediation with Challenging Parents," *Conflict Resolution Quarterly* 25, (2008).

<sup>45</sup> William A Donohue, et.al., "Interaction Dynamics Predict Successful Negotiation in Divorce Mediation," *Journal of Language and Social Psychology* 35, No. 4 (2015), p. 374–393.

<sup>46</sup> K. Bollen, et.al., "Money or Children? Power Sources in Divorce Mediation," *Journal of Family Studies* 19, No. 2 (2013), p. 159–173

peace.<sup>47</sup>

Measurable mediation can focus on the context of enforcing mediation as regulated in Perma No. 1 of 2016. Other dispute resolution processes are similar to the mediation of divorce cases at the Religious Courts. The very basic similarities are the steps that must be passed by the provisions in Perma No. 1 of 2016.

In general, the mediation stages in divorce cases at the Religious Courts are mapped into three stages, namely the preparation stage, the implementation stage, and also the decision-making stage. The stages of mediation are described systematically and clearly by their respective sequences. In the practice of mediation after registering a divorce case at the Religious Court, the parties of the litigant husband and wife come to court after attending the summons legally and properly by the stipulations of the time and place.

Furthermore, the preparatory stage process in mediation is needed for a mediator to early study and deepen the root of the dispute between husband and wife who are consulted in mediation. The next stage is the implementation stage, the first stage of which is to form a forum. Before starting the mediation, both the mediator and the litigant husband and wife form a forum. In the forum that has been formed, the mediator organizes a joint meeting to deliver the preliminary statements of the husband and wife in the case.

At the time of conducting the mediation, the final stage is the decision-making stage where parties work together with the help of a mediator to evaluate options, get trade-offs and offer packages, minimize debates and find a fair basis for shared allocations. In the end, the parties who agreed were successful in making a joint decision. The stage of determining the mediator's decision can also pressure the parties, find formulas to avoid embarrassment, assist the parties in dealing with the power of attorney (if empowered).

The atmosphere of the location or place of mediation is a comfortable, free and pleasant place.<sup>48</sup> Technical readings and the stages of mediation in the Religious Courts are very important to construct priorities for the application of *maqāṣid shari'āh*. The *maqāṣid shari'āh* perspective on the mechanism of the stages of mediation is still very technical and the material content of divorce mediation is too formal. The very formalistic technical atmosphere of the implementation has made it more difficult and rigid to find a peace agreement. The consideration of the implementation of *maqāṣid shari'āh* in the content of mediation material is to try to strengthen the actualization of benefit, to bury the profundity (damage) in the household of married couples who have problems with

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<sup>47</sup> Stanley N. Cohen, "Divorce Mediation: An Introduction," *Journal of Psychotherapy & Family, Divorce Therapy* 1, (2014).

<sup>48</sup> Angela Corla Garcia, "Locations for Advice-Giving and the Production of Neutrality in Divorce Mediation Sessions," *Conflict Resolution Quarterly* 38, No. 3 (2020).

conflict.

The opinion of al-Ghazaliy was explained systematically and concretely about Maqashid sharia as the basis of maslahah, and also the argument for achieving the goal. Maqashid shariah which is the basis of maslahat is trying to uphold the meaning of syar'i as the absolute authority of Allah in making laws to maintain religion, soul, mind, descent and property.<sup>49</sup> Thus, everything that can realize the meaning of syar'i is called maslahat.

The opinion of Yusuf al-Qardhawi in formulating *maqāshid shari'ah* is the transformation of the goals desired by the texts which contain the meaning of orders, prohibitions, and permits at the same time. *Maqāshid shari'ah* means the purpose of Allah SWT. and also His Messenger in transforming Islamic laws. These Islamic laws can be found in the Qur'an and hadith which lead to the benefit of mankind.<sup>50</sup> Ibn Qayyim's opinion details the purpose of Islamic law is to manifest the benefit of mankind in the world and the hereafter. In totality, Islamic law contains mercy, justice, benefit, and wisdom.<sup>51</sup>

Furthermore, sharia means an ethical system as well as a value in covering all problems of human life which functions as a consistent and comprehensive life guideline that is implemented in Islamic law. The implementation of sharia in Islamic law is an absolute manifestation to uphold justice and benefit, eliminate prejudice, and reduce difficulties in human affairs. The purpose of Islamic law revealed to humans is the same connotation as the meaning of *maqāshid shari'ah* in preserving all human interests.<sup>52</sup>

The realization of the *maqāshid shari'ah* is that Muslims are obliged to maintain their religion, soul, mind, ancestry, and property. As *maqāshid shari'ah* is generally understood to be the purpose of stipulating and lowering Islamic law to bring about goodness, safety, and happiness, on the other hand, avoiding badness, trouble and damage can threaten human life and existence.

The criticism of divorce through *maqāshid shari'ah*, which is the judge's decision at the Religious Court, actually has the potential to cause the household to suffer disarray and damage, it is also focused on taking care of the children of both parents who are no longer maximally which causes neglected children.<sup>53</sup> The practice of mediation in the Religious Courts through the application of *maqāshid*

<sup>49</sup> Al-Gazaliy, *Al-Mustashfa Fi 'Ilm Al-Ushul, 1st ed.* (Beirut: Dar al-Kutub al-Ilmiyah, 1993).

<sup>50</sup> Yusuf Al-Qardhawi, *Dirasah Fiqh Maqashid Al-Shariah; Baina Al-Maqashid Al-Kulliyah Wa Al-Nushus Al-Juz'iyah* (Cairo: Dar al-Syuruq, 2006).

<sup>51</sup> Ibn Qayyim, *I'lam Al-Muwaqin Rabb Al-Alamin, 3rd ed.* (Beirut: Dar al-Jail, nd).

<sup>52</sup> Asyraf Wajdi Dusuki and Nurdianawati Irwani Abdullah, "Maqasid Al-Shariah, Maslahah, and Corporate Social Responsibility," *American Journal of Islamic Social Sciences* 24, No. 1 (2007), p. 31.

<sup>53</sup> Ani R. Poladian, et.al., "Family Mediation for Divorce and Parental Separation," *Foundations for Couples' Therapy: Research for the Real World*, (2017), p. 256–267.



*shari'āh* is an action to repair and save a household from a husband and wife on the verge of damage and destruction. The perspective of the *maqāṣid shari'āh* that divorce in the Religious Court is not the best option or way to resolve conflicts between husband and wife in the household.

Seeing the reality of divorce cases in the Religious Courts today, it seems as if there are almost no more efforts, it is very difficult to stem and contain the rate of divorce that has increased sharply from year to year. The Supreme Court needs to review the effectiveness and efficiency of the implementation of mediation through Perma No. 1 of 2016 at the Religious Court with consideration for the benefit contained in the *maqāṣid shari'āh*. The strength of the application of Perma No. 1 of 2016 has not had a major effect on improving the situation of a married couple who filed their case at the Religious Court. The implementation of Perma No. 1 of 2016 does not yet show the balance of the verdict in divorce cases than the success of mediation in the Religious Courts.

The legal construction that is transformed by the Supreme Court in the Religious Courts, *maqāṣid shari'āh* can be a major consideration in improving mediation practice. Changes in law enforcement in the practice of mediation in the Religious Courts mean that judges are no longer given additional duties in carrying out mediation. The mediation must optimally be carried out by the mediator freely and independently, without depending on the Religious Courts. The Supreme Court must be more courageous in establishing a mediation institution for divorce cases as a free, independent, and independent institution in preventing the increasing number of divorces.

Regulatory changes in the implementation of the law as an effort to transform *maqāṣid shari'āh* in the Religious Courts that every registered case should be that a husband and wife who are about to divorce must have a certificate of unsuccessful mediation from the mediation institution. Thus, the Religious Courts no longer accept divorce cases without a certificate of unsuccessful mediation which serves as a subsidiary condition in registering cases.

This opinion is reinforced by several sources from experience, it can be said that the implementation of mediation should be done before the case is entered or registered at the Religious Court. Experience from several times the mediation of several husband and wife couples who quarreled or conflicts with mediation through non-litigation, before the litigant couple filed a case in the Religious Court and the result succeeded in making a peace agreement. Some married couples who have litigated no longer wish to file divorce cases at the Religious Court have returned to harmony in rebuilding their households. In fact, in several cases, after the mediator reported the results of the mediation being unsuccessful, the case examining judges continued the trial process, starting with a vision or settlement by the panel of judges who managed to reconcile the litigants. The essence is that between mediation and peace efforts carried out by

the mediator and the case examining a panel of judges should be the same.

After a husband and wife in a case get advice and advice from the Marriage Advisory, Development and Preservation Agency, it can show an indication that the divorce rate can be slightly suppressed through mediation outside the Court.<sup>54</sup> The experience of mediating divorce cases outside the court can be strengthened when the existence of the Marriage Advisory, Guidance and Preservation Agency while still active, based on data from the Office of Religious Affairs, nearly 50% of married couples who wish to file divorce cases at the Religious Courts can discourage divorce.

### Revitalization of Bugis and Mandar Customary in Divorce Mediation

The Bugis and Mandar peoples have historically been a family group that cannot be separated emotionally because they are tied to a *pangngaderreng* cultural system in South Sulawesi. The two communities were in the same territorial region before the formation of West Sulawesi as the expansion area of the South Sulawesi region on October 5, 2004, through Law No. 26 of 2004. Although separated from regional ties, emotional ties, both physically and physically, are still harmonious and peaceful.

The association of the two societies is bound in a very monumental cultural system, namely the *pangngaderreng* culture. Also, the Bugis and Mandar communities can also be bonded with marriage. The two societies are united with each other because of the same belief in embracing Islam. Returning to the *pangngaderreng* culture, it has five elements that cannot be separated from one another, namely *ade'*, *bicara*, *rapang*, *wari*, and *syara'*.<sup>55</sup> *Pangngaderreng* is a cultural system and a social system that functions as the customary institution or social institution of the Bugis and Mandar peoples. *Pangngaderreng* culture regulates religious, social, cultural, state, and legal norms. *Ade'* can be interpreted as custom, speaking means justice, *rapang* is jurisprudence, *wari* means social layering, and *syara'* means Islamic law.<sup>56</sup>

The Bugis and Mandar people are very loyal and obedient to *ade'* (Bugis) and *ada'* (Mandar) means adat. The obedience and loyalty of the Bugis and Mandar people to adat are due to their deep belief in adat which always protects and preserves himself as a human being with *siri'*. *Siri'* in essence is honor, dignity, dignity for humans. If someone does not have *siri'* in him, he is no longer excited to live, people in Bugis and Mandar societies prefer to die rather than have

<sup>54</sup> Madelene De Jong, "A Pragmatic Look at Mediation as an Alternative to Divorce Litigation," *Tydskrif Vir Die Suid-Afrikaanse Reg*, No. 3 (2010), p.515–531.

<sup>55</sup> Nurnaningsih Nawawi, "Asimilasi Lontara Pangadereng Dan Syari'at Islam: Pola Perilaku Masyarakat Bugis-Wajo," *Al-Tahrir: Jurnal Pemikiran Islam* 5, No. 1 (2015), p. 25.

<sup>56</sup> Rahmatunnair, "Contextualization of Pangngadereng in the Enforcement of Islamic Shariah in Buginese Bone Community," *Al-Qalam* 17, No. 1 (2011), p. 94.

no *siri'* in him.

*Siri'* in the expression of the Bugis community is "*Siri' 'emmi ri onroang ri lino, utettong ri ade'e, najagainnami siri'ta, naia siri'e sunge naranreng, nyawa na kira-kira*",<sup>57</sup> the meaning is only based on *siri'* we live in the world, I am loyal to *ade'*, take care of our *siri'*, while *siri'* is the soul of the reward, the life is at stake. While *siri'* in the Mandar community expression is "*apa' siri' di tu'u ita' di'e rupatau mala tuo dini dilino, dipake' de'i ada' dipiara toi siri', dotai tau mate anna dadzi tia andan dian siri'*", the meaning is that only with *siri'* can humans survive in the world, because by upholding customs, maintaining *siri'*, because with *siri'* is death at stake, and life is the ransom. Therefore, *siri'* is the most fundamental value system, there is nothing more valuable than *siri'*, absolute self-esteem exists in every individual in Bugis and Mandar communities, *siri'* is no exception when building marriages

The connection with the enforcement of *siri'* in the Bugis and Mandar communities seems to have experienced a shift in values. The shift in the value of *siri'* itself is marked by a very interesting fact about divorce cases in the Bugis and Mandar communities, which is that divorce cases always dominate rather than divorce talaq in all Religious Courts. Acceleration of suicidal divorce cases is very urgent in the Bugis and Mandar communities. Compared to divorce talaq, family resilience began to be very fragile in Bugis and Mandar societies with the dominance of divorce in the Religious Courts. The dominance of a legal divorce which is the triggering factor is domestic violence, economy, and polygamy. Therefore, The Bugis and Mandar people seem to gradually no longer respect *siri'*, because they are not considered a disgrace' if they go to the Religious Court to ask for a divorce. It should be for the Bugis and Mandar people that it is a disgrace with divorce, let alone committing domestic violence, the disgrace of not being able to meet the economic needs of their families, and also a disgrace 'because of polygamy. A person disobeying or disregarding *siri'* is a disgrace'.

The fragility of family resilience in the Bugis and Mandar communities is also a triggering factor, namely the crisis of figures from family members who are charismatic as role models, and the crisis of optimizing the role of traditional institutions that act as mediators. Cultural and social changes in the Bugis and Mandar communities, sometimes on the part of the parents themselves, who usually play a role in separating the marriages of their children. For families who are experiencing conflict, it seems as if the Religious Court is the last place in conflict resolution. The irony is that it turns out that the Religious Courts are not a place that is capable of repairing the rifts in the households of husband and wife who experience conflict. Data from all divorce cases received at the Religious

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<sup>57</sup> Fikri, et.al., "Idealism and Realism of Islamic Law in Pangngaderreng Culture of the Modern Bugis Bone," *IOP Conference Series: Earth and Environmental Science* 175, No. 1 (2018), p. 2.

Courts are generally decided by the judge.

The strength in carrying out the value of *ade'* in the Bugis and the Mandar community' is to maintain a lasting and sustainable marriage, the implementation of the value of life *sirondo-rondo'i* which means cooperation, helping each other in doing a job, both heavy and light. The next value that is related to the sustainability of marriage is *siamasei* and *sianuang pa'mai* that in building a household, the husband and wife must love and love each other. The Bugis and Mandar people in fostering a household are also known as *sibaliparri*, husband and wife must maintain household harmony and have a mutual sense of responsibility towards their families, both when joy and sorrow must be faced together, the same fate and co-existence.

Marriage advice and advice are provisions in living the household dish.<sup>58</sup>

The revitalization of customary institutions in the Bugis and Mandar communities such as *sirondo-rondo'i*, *siamasei* and *sianuang pa'mai*, and *sibaliparri* is the basis for certified judges and mediators to carry out mediation in the Religious Courts and outside the courts. Optimizing customary institutions in the Bugis and Mandar communities can be a very strong defense against the increasing divorce rate in the Religious Courts.

Also, reviving the traditional institutions of the *pangngaderreng* cultural system is *syara'* which is the implementation of Islamic law in the Bugis and Mandar communities. The enforcement of Islamic law in Bugis society is carried out by someone who has the title *petta kalie* and in Mandar society it is known as *puang kali*. People who are appointed to be *petta kalie* in Bugis society and *puang kali* in Mandar society are charismatic, scholars who have a deep knowledge of Islam, master jurisprudence and Islamic law.<sup>59</sup> The function of *petta kalie* or *puang kali* is to give advice or marriage advice for married couples who are about to divorce.

The revitalization of *petta kalie* and *puang kali* in Bugis and Mandar communities is that every married couple who is about to divorce, should first ask for advice or marriage advice. Divorce cases are no longer registered with the Religious Courts, before there are marital advice and advice from *petta kalie* and *puang kali*.

## Conclusion

The process of practicing mediation in the Religious Courts is very urgent to implement *maqāṣid shari'ah* as the main consideration by judges at the

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<sup>58</sup> Angela Garcia, "Advice-Giving and Disputant Empowerment in Divorce Mediation Sessions," *Language and Dialogue* 2, No. 3 (2012), p. 398–426,

<sup>59</sup> Ridhwan, et.al., "Masjid Sebagai Pusat Pendidikan Islam pada Masa Kerajaan Sampai Masa Orde Lam di Bone Sulawesi Selatan," *Jurnal Ilmiah Didaktika* 20, No. 1 (2019), p. 83-98.

Religious Courts in deciding divorce cases. The main consideration for the application of *maqāsid shari'āh* has the potential to repair and save a household from a husband and wife on the verge of damage and destruction. The strong assumption of the application of *maqāsid shari'āh* is that divorce in the Religious Court is not the best option or way to resolve conflicts between husband and wife in the household. The Supreme Court needs to review the practice of mediation through Perma No. 1 of 2016 by placing the benefits contained in the *maqāsid shari'āh* for the practice of mediation in the Religious Courts. Revitalizing traditional institutions such as upholding the value of *ade'in* in the Bugis and existing in the Mandar community can be a strength in family resilience in maintaining the marriage. Bringing the customs of the Bugis community and society through social culture in the value of life *sirondo-rondo* which means cooperation, *siamasei* and *sianuang pa'mai* in fostering a household, husband and wife must love and love each other, and *sibaliparri* that husband and wife must take care of each other domestic harmony and mutual responsibility towards their families, both when joys and sorrows must be faced together, of the same fate and responsibility. Also, reviving the customary institutions of the *pangngaderreng* cultural system is *syara'* which is interpreted as an institution for implementing Islamic law in the Bugis and Mandar communities. The enforcement of Islamic law in Bugis society is carried out by someone who has the title *petta kali'* and in Mandar society known as *puang kali'* is a charismatic person, a cleric who has a deep knowledge of Islam, masters jurisprudence and Islamic law. The function of *petta kali'* or *puang kali'* is to give advice or marriage advice for husband and wife who want to divorce and their marriage will be long-lasting, lasting, and sustainable.

## References

### Journals and Books

- Abbas, Syahrizal. *Mediasi Dalam Perspektif Hukum Syari'ah, Hukum Adat Dan Hukum Nasional*. Jakarta: Kencana Prenada Media Group, 2009.
- Al-Syatibi, Abu Ishaq. *Al-Muwafaqat Fi Ushul Al-Ahkam*. 2nd ed. Beirut: al-Maktabah al-Taufiqiyah, 2004.
- Al-Gazaliy. *Al-Mustashfa Fi' Ilm Al-Ushul*. 1st ed. Beirut: Dar al-Kutub al-Ilmiyah, 1993.
- Al-Qardhawi, Yusuf. *Dirasah Fi Fiqh Maqashid Al-Shariah; Baina Al-Maqashid Al-Kulliyah Wa Al-Nushus Al-Juziyyah*. Kairo: Dar al-Syuruq, 2006.
- Al-Salam, Izz al-Din Abd., *Qawaid Al-Ahkam Fi Masalih Al-Anam*. Beirut: Dar al-Ma'rifah, n.d.

- Ali, Achmad and Wiwie Heryani, *Sosiologi Hukum: Kajian Empiris terhadap Pengadilan*, Jakarta: Kencana, 2014.
- Arfa, Faisar Ananda and Watni Marpaung, *Metodologi Hukum Islam*, Jakarta: Kencana, 2016.
- Bailey, Jo Daugherty and Dawn Maccarty, "Assessing Empowerment in Divorce Mediation." *Negotiation Journal* 25, No. 3 (2009). <https://doi.org/10.1111/j.1571-9979.2009.00229.x>.
- Beck, Connie J.A. and Bruce Sales, "A Critical Reappraisal of Divorce Mediation Research and Policy." *Psychology, Public Policy, and Law* 6, no. 4 (2000). <https://doi.org/10.1037/1076-8971.6.4.989>.
- Beck, Connie J.A. and Lynda E. Frost, "Defining a Threshold for Client Competence to Participate in Divorce Mediation." *Psychology, Public Policy, and Law* 12, No. 1 (2006). <https://doi.org/10.1037/1076-8971.12.1.1>.
- Beck, E. "Improving Communication in Divorce Mediation." *Divorce Mediation: Perspectives on the Field*, 2014. <https://doi.org/10.4324/9781315860077>.
- Bollen, K. "Money or Children? Power Sources in Divorce Mediation." *Journal of Family Studies* 19, No. 2 (2013). <https://doi.org/10.5172/jfs.2013.19.2.159>.
- Cohen, Stanley N. "Divorce Mediation: An Introduction." *Journal of Psychotherapy & Family, Divorce Therapy* 1, 2014. <https://doi.org/10.4324/9781315791456>.
- Dingwall, Robert. "Divorce Mediation: Should We Change Our Mind?" *Journal of Social Welfare and Family Law* 32, No. 2 (2010). <https://doi.org/10.1080/09649069.2010.506307>.
- Djawas, Mursyid, and Sri Astuti A. Samad. "Conflict, Traditional, and Family Resistance: The Pattern of Dispute Resolution in Acehese Community According to Islamic Law." *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 4, No. 1 (2020). DOI: <http://dx.doi.org/10.22373/sjhc.v4i1.5271>.
- Djawas, Mursyid, et.al., "The Government's Role in Decreasing Divorce Rates in Indonesia: The Case of Aceh and South Sulawesi" *Ahkam: Jurnal Ilmu Syariah* 21, No. 1 (2021). DOI: 10.15408/ajis.v21i1.20870.
- Donohue, William A, "Interaction Dynamics Predict Successful Negotiation in Divorce Mediation." *Journal of Language and Social Psychology* 35, No. 4 (2015). <https://doi.org/10.1177/0261927X15603090>.
- Dusuki, Asyraf Wajdi, and Nurdianawati Irwani Abdullah. "Maqasid Al-Shariah, Maslahah, and Corporate Social Responsibility." *American Journal of Islamic Social Sciences* 24, No. 1 (2007).

- Ellis, Desmond. "Safety, Equity, and Human Agency: Contributions of Divorce Mediation." *Violence Against Women* 6, No. 9 (2000). <https://doi.org/10.1177/10778010022182254>.
- Emery, Robert E, David Sbarra, and Tara Grover. "Divorce Mediation: Research and Reflections." *Family Court Review* 43, No. 1 (2005).
- Enrekang, Ketua Pengadilan Agama. "Laporan Tahunan Pengadilan Agama Enrekang." Kota Enrekang, 2020. <https://www.pa-enrekang.com/index.php/transparansi/sekretariat/perencanaan/laporan-tahunan>.
- Fikri, Rahmawati, and Zulfah. "Idealism and Realism of Islamic Law in Panggadereng Culture of the Modern Bugis Bone." *IOP Conference Series: Earth and Environmental Science* 175, No. 1 (2018). <https://doi.org/10.1088/1755-1315/175/1/012137>.
- Garcia, Angela. "Advice-Giving and Disputant Empowerment in Divorce Mediation Sessions." *Language and Dialogue* 2, No. 3 (2012). <https://doi.org/10.1075/d.2.3.05gar>.
- Garcia, Angela Corla. "Locations for Advice-Giving and the Production of Neutrality in Divorce Mediation Sessions." *Conflict Resolution Quarterly* 38, No. 3 (2020). <https://doi.org/10.1002/crq.21292>.
- Hahn, R. and David M. Kleist, "Divorce Mediation: Research and Implications for Family and Couples Counseling." *The Family Journal*, 2000. <https://doi.org/10.1177/1066480700082009>.
- Halim, Wahyuddin. "Islamization or Arabization? The Arab Cultural Influence on the South Sulawesi Muslim Community since the Islamization in the 17th Century." *Suvannabhumi* 10, No. 1 (2018).
- Holtzworth-Munroe, Amy. "Controversies in Divorce Mediation and Intimate Partner Violence: A Focus on the Children." *Aggression and Violent Behavior* 16, No. 4 (2011). <https://doi.org/10.1016/j.avb.2011.04.009>.
- Huang, Philip C.C., "Divorce Law Practices and the Origins, Myths, and Realities of Judicial 'mediation' in China." *Modern China* 31, No. 2 (2005). <https://doi.org/10.1177/0097700405274585>.
- Indonesia, Direktorat Jenderal Badan Peradilan Agama Republik. Laporan Tahunan Badan Peradilan Agama (2020).
- Jong, Madelene De. "A Pragmatic Look at Mediation as an Alternative to Divorce Litigation." *Tydskrif Vir Die Suid-Afrikaanse Reg*, No. 3 (2010).
- Kaganas, Felicity and Christine Piper, "Domestic Violence and Divorce Mediation." *Journal of Social Welfare and Family Law* 16, No. 3 (1994). <https://doi.org/10.1080/09649069408413612>.
- Koopman, Elizabeth J., "The Present and Future Role of Higher Education in Divorce Mediation: Problems and Promise in Teaching, Research, and

- Service." *Divorce Mediation: Perspectives on the Field*, 2014. <https://doi.org/10.4324/9781315860077>.
- Kraft, Amy J. and Lynda Leucken, "Childhood Parental Divorce and Cortisol in Young Adulthood: Evidence for Mediation by Family Income." *Psychoneuroendocrinology* 34, No. 9 (2009). <https://doi.org/10.1016/j.psyneuen.2009.04.008>.
- Margulies, S and Anya Luchow, "Litigation, Mediation and the Psychology of Divorce." *Journal of Psychiatry and Law* 20, No. 4 (1992). <https://doi.org/10.1177/009318539202000405>.
- Molgora, Sara, "Divorce and Coparenting: A Qualitative Study on Family Mediation in Italy." *Journal of Divorce and Remarriage* 55, No. 4 (2014). <https://doi.org/10.1080/10502556.2014.901854>.
- Nawawi, Nurmaningsih. "Asimilasi Lontara Pangadereng Dan Syari'at Islam: Pola Perilaku Masyarakat Bugis-Wajo." *Al-Tahrir: Jurnal Pemikiran Islam* 15, No. 1 (2015).
- Neville, W. "Reflections on the Growth and Significance of Divorce Mediation." *Divorce Mediation: Perspectives on the Field*, 2014. <https://doi.org/10.4324/9781315860077>.
- Nurman, Said. *Religion and Cultural Identity Among the Bugis*. Makassar: Faculty of Islamic Theology of the Alauddin State Institute of Islamic Studies at Makassar, Indonesia, 2004.
- Pickar, Daniel, "Intermittent Evaluative Mediation with Enduring, Post-Divorce Conflict." *Journal of Child Custody* 8, No. 3 (2011). <https://doi.org/10.1080/15379418.2011.594722>.
- Pinrang, Ketua Pengadilan Agama. "Laporan Tahunan Pengadilan Agama Pinrang." Kota Pinrang, 2020. <http://pa-pinrang.go.id/index.php?limitstart=27>.
- Poladian, Ani R., "Family Mediation for Divorce and Parental Separation." *Foundations for Couples' Therapy: Research for the Real World*, 2017. <https://doi.org/10.4324/9781315678610-26>.
- Przybyla-Basista, Hanna, "The Influence of Spouses' Resistance on Their Decision to Enter into Divorce Mediation." *Journal of Divorce and Remarriage* 48, No. 3 (2008). [https://doi.org/10.1300/J087v48n03\\_05](https://doi.org/10.1300/J087v48n03_05).
- Qardhawi, Abd al-Rahman Yusuf Abd. *Nazhariyah Maqashid Al-Syari'ah Baina Syekh Al-Islam Ibn Taimiyah Wa Jumhur Ushliyyin Dirasah Muqaranah Min Al-Qarn Al-Khamis Ila Al-Tsamin Al-Hijri*. Kairo: Kulliyah Dar al-Ulum, n.d.
- Qayyim, Ibn. *I'lam Al-Muwaqi'in Rabb Al-Alamin*. 3rd ed. Beirut: Dar al-Jail, n.d.



- Rahmatunnair, "Contextualization of Pangngadereng in the Enforcement of Islamic Shariah in Buginese Bone Community." *Al-Qalam* 17, No. 1 (2011). DOI: <http://dx.doi.org/10.31969/alq.v17i1.101>.
- Rappang, Ketua Pengadilan Agama Sidenreng. "Laporan Tahunan Pengadilan Agama Sidenreng Rappang." Kota Pangkajenne, 2020. <http://pa-sidenrengrippang.go.id/>.
- Ridhwan, et.al., "Masjid Sebagai Pusat Pendidikan Islam pada Masa Kerajaan Sampai Masa Orde Lam di Bone Sulawesi Selatan," *Jurnal Ilmiah Didaktika* 20, No. 1 (2019). DOI: <http://dx.doi.org/10.22373/jid.v20i1.4648>.
- RI., Ketua Mahkamah Agung. "Perma RI. No. 1 Tahun 2016 Tentang Prosedur Mediasi Di Pengadilan." Jakarta, 2016. [https://bawas.mahkamahagung.go.id/bawas\\_doc/doc/perma\\_mediasi\\_pengadilan\\_web.pdf](https://bawas.mahkamahagung.go.id/bawas_doc/doc/perma_mediasi_pengadilan_web.pdf).
- Sbarra, David A. and Robert E. Emery, "In the Presence of Grief: The Role of Cognitive-Emotional Adaptation in Contemporary Divorce Mediation." *Handbook of Divorce and Relationship Dissolution*, Taylor and Francis, 2013. <https://doi.org/10.4324/9781315820880-40>.
- Schepard, Andrew, "An Introduction to the Model Standards of Practice for Family and Divorce Mediation." *Family Law Quarterly* 35, No. 1 (2001).
- Shaw, Lori Anne, "Divorce Mediation Outcome Research: A Meta-Analysis." *Conflict Resolution Quarterly* 27, No. 4 (2010). <https://doi.org/10.1002/crq.20006>.
- Silver, Robert B. and Deborah C. Silver, "Practice Note: Divorce Mediation with Challenging Parents," *Conflict Resolution Quarterly* 25, (2008). <https://doi.org/10.1002/crq.220>.
- Taylor, Raymond J., "Use of Change Theory in the Context of the Divorce Mediation Session." *Journal of Divorce and Remarriage* 40, no. 1 (2004). [https://doi.org/10.1300/J087v40n01\\_06](https://doi.org/10.1300/J087v40n01_06).
- Twaite, James A. "Divorce Mediation: Promises, Criticisms, Achievements, and Current Challenges." *Journal of Psychiatry and Law* 26, No. 3 (1998). <https://doi.org/10.1177/009318539802600304>.
- Weaver, Jennifer M. and Thomas J. Schofield, "Mediation and Moderation of Divorce Effects on Children's Behavior Problems." *Journal of Family Psychology* 29, No. 1 (2015). <https://doi.org/10.1037/fam0000043>.
- Worley, Susan, "The Effect of Cooperation on Egocentrism in Divorce Mediation: A Simulation Study." *Journal of Divorce* (2008). <https://doi.org/10.4324/9781315860077>.
- Yunus, Abd Rahim, "The Acculturation of Islam and Local Culture in Bugis Wedding Tradition: A Historical Perspective," International Conference on Global Education V, Padang, 2017.

### Internet Data

- Chairman of the Parepare Religious Court, "*Annual Report of the Parepare Religious Court*" (Parepare City, 2020), <http://pa-parepare.go.id/home/leport-tahunan/>.
- Chairman of the Sidenreng Rappang Religious Court, "*Annual Report of the Sidenreng Rappang Religious Court*" (Pangkajene City, 2020), <http://pa-sidenrengrappang.go.id/>.
- Chairman of the Pinrang Religious Court, "*Annual Report of the Pinrang Religious Court*" (Pinrang City, 2020), <http://pa-pinrang.go.id/index.php?limitstart=27>.
- Chairman of the Enrekang Religious Court, "*Annual Report of the Enrekang Religious Court*" (Enrekang City, 2020), <https://www.pa-enrekang.com/index.php/transparant/sekretariat/perplan/lentuk-tahunan>.
- Chairperson of the Polewali Mandar Religious Court, "*Annual Report of the Polewali Mandar Religious Court*" (Polewali City, 2020), <http://pa-polewali.net/index.php/info-peradilan/program-kerja-k> Activity/Report-tahunan.
- Chairman of the Majene Religious Court, "*Annual Report of the Majene Religious Court*" (Majene City, 2020), <https://pa-majene.go.id/informasi-umum/leport-tahunan>.
- Chairman of the Supreme Court of the Republic of Indonesia., "*Perma RI No. 1 of 2016 concerning Mediation Procedures in Courts*" (Jakarta, 2016), [https://bawas.mahkamahagung.go.id/bawas\\_doc/doc/perma\\_mediasi\\_pengadilan\\_web.pdf](https://bawas.mahkamahagung.go.id/bawas_doc/doc/perma_mediasi_pengadilan_web.pdf).

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### **Transformation of *Maqāshid Shari'āh* in Divorce Mediation in Religious Courts: Revitalization of the Bugis-Mandar Customs, Indonesia**

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**Abstract:** The focus of this research discusses the transformation of *maqāshid shari'āh* in mediation practices in divorce cases, and the revitalization of *adat* in mediation practices in Bugis and Mandar communities. This study is a field legal research using historical and socio-anthropological approaches, while the data is analyzed using *maqāshid shari'āh* theory and social change theory. Data collection techniques are based on literature studies on legal sources related to the discussion. This study concludes that divorce is an extraordinary case in the religious courts, dynamics of mediation practice in Religious Courts have successful mediation for a written peace agreement in peace deed, other mediation products are partially successful mediation and partially unsuccessful mediation, mediation products are not successful is that husband and wife are committed to divorce; *maqāshid shari'āh* transformation can be a major consideration by judges in mediation practice to save households on the verge of collapse, so that *maqāshid shari'āh* is very urgent to place in Perma No.1 of 2016, and revitalization of Bugis-Mandar customary is an effort to revive the value of life *sirondo-rondo*, *siamasei*, *sianuang pa'mai*, and *sibaliparri*, also animate *shara'* which is performed *petta kalie* (Bugis) or *puang kali'* (Mandar).

**Keywords:** *Maqāshid shari'āh*, divorce mediation, religious courts, bugis-mandar customs, Islamic family law

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**Abstrak:** Fokus penelitian ini membahas tentang transformasi *maqāṣid syari'ah* dalam praktik mediasi dalam kasus perceraian, dan revitalisasi adat dalam praktik mediasi dalam masyarakat Bugis dan Mandar. Kajian tersebut merupakan penelitian hukum lapangan dengan menggunakan pendekatan historis, dan sosio-antropologis sedangkan data dianalisis dengan memakai teori *maqāṣid syari'ah* dan teori perubahan sosial. Teknik pengumpulan data berdasarkan pada studi literatur pada sumber-sumber hukum yang terkait dengan pembahasan. Penelitian ini menyimpulkan bahwa perceraian merupakan perkara luar biasa di Pengadilan Agama, dinamika praktik mediasi di Pengadilan Agama telah berhasil dalam mediasi perjanjian damai tertulis dalam akta damai, produk mediasi lainnya adalah mediasi yang berhasil sebagian dan mediasi yang tidak berhasil sebagian, mediasi tidak berhasil. produk yang tidak berhasil adalah suami dan istri yang berkomitmen untuk bercerai; Transformasi *maqāṣid syari'ah* dapat menjadi pertimbangan utama hakim dalam praktik mediasi untuk menyelamatkan rumah tangga yang di ambang kehancuran, sehingga *maqāṣid syari'ah* sangat mendesak untuk ditempatkan dalam Perma No.1 Tahun 2016, dan revitalisasi kelembagaan adat Bugis-Mandar merupakan salah satu upaya. menghidupkan kembali nilai-nilai kehidupan *sirondo-rondo*, *siamasei*, *sianuang pa'mai*, dan *sibaliparri*, serta menghidupkan *shara'* yang dilakukan *petta kalie* (Bugis) *puang kali'* (Mandar).

**Keywords:** *Maqāṣid shari'ah*, mediasi perceraian, pengadilan agama, adat Bugis-Mandar, hukum keluarga Islam

## Introduction

The process of implementing mediation in fortifying family resilience from conflict has long been the subject of discussion as explained by Margulies that mediation is considered an effective effort to resolve husband-wife conflicts that intend to divorce.<sup>1</sup> On the other hand, violence that occurs in the family and also in mediation is still difficult to find theoretical and practical concepts.<sup>2</sup>

The function of the mediator is to reconcile the two sides of the disputing family, helping to carry out active communication. In addition, the mediator also encourages harmony and also emphasizes the parties in conflict to consider the bad consequences of divorce.<sup>3</sup> It is important to strengthen the concept of mediation in resolving family conflicts and childcare.<sup>4</sup> Mediation is conducted by

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<sup>1</sup> Sam Margulies and Anya Luchow, "Litigation, Mediation and the Psychology of Divorce," *Journal of Psychiatry and Law* 20, No. 4 (1992).

<sup>2</sup> Felicity Kaganas and Christine Piper, "Domestic Violence and Divorce Mediation," *Journal of Social Welfare and Family Law* 16, No. 3 (1994), p. 265-278.

<sup>3</sup> Andrew Schepard, "An Introduction to the Model Standards of Practice for Family and Divorce Mediation," *Family Law Quarterly* 35, No. 1 (2001), p. 2-3.

<sup>4</sup> Jennifer M. Weaver and Thomas J. Schofield, "Mediation and Moderation of Divorce Effects on Children's Behavior Problems," *Journal of Family Psychology* 29, No. 1 (2015), p. 39-48.

a mediator who acts as a mediator for the disputing parties and plays an active role in resolving the conflict by reaching a peace agreement from the parties.

Mediation is part of the legal system that can resolve family conflicts quickly, easily, and cheaply as long as the parties cooperate.<sup>5</sup> In addition to being able to be carried out by judges, psychologists, and other professionals who have the competence to carry out mediation can understand and address the root causes of problems in family conflicts.<sup>6</sup> According to RA Hahn explained that from several studies of the divorce mediation process carried out there were beneficial and beneficial results for the efficiency and satisfaction of the parties.<sup>7</sup> This opinion is supported by Ellis that divorce mediation makes a huge contribution towards the outcome of reconciliation between husband and wife.<sup>8</sup>

In line with the study conducted by Taylor suggesting that the mediator's demands in carrying out his role as the mediator can help to build confidence in the parties. Mediators are required to designing interpersonal communication between both husband and wife in conflict so that each party can introspect themselves towards better interaction changes.<sup>9</sup> The real emphasis of mediation is on reconciling the husband and wife who insisted on divorce.<sup>10</sup> Legal practitioners and academics have studied a lot about the mediation process that can reduce the soaring divorce rate. Mediation is a reliable means of accelerating the reconciliation of families in conflict.<sup>11</sup> Even C. Beck mentioned that the implementation of the formulation of the concept of mediation is a much more recent effort to create justice for wives who are victims of domestic violence.<sup>12</sup>

However, mediation can speed up the settlement of cases, on the contrary as described by Przybyla Basista stated that the reasons for couples who refuse the mediation process are especially wives who experience feelings of trauma and fear of violence from their ex-husbands. Experience from her domestic life, the wife received painful treatment so that she did not have the time and space to

<sup>5</sup> James A Twaite, et.al., "Divorce Mediation: Promises, Criticisms, Achievements, and Current Challenges," *Journal of Psychiatry and Law* 26, No. 3 (1998).

<sup>6</sup> Connie J.A. Beck and Bruce Sales, "A Critical Reappraisal of Divorce Mediation Research and Policy," *Psychology, Public Policy, and Law* 6, No. 4 (2000), p. 989-1056.

<sup>7</sup> R. Hahn and David M. Kleist, "Divorce Mediation: Research and Implications for Family and Couples Counseling," *The Family Journal*, (2000).

<sup>8</sup> Desmond Ellis, "Safety, Equity, and Human Agency: Contributions of Divorce Mediation," *Violence Against Woman* 6, No. 9 (2000), p. 1012-1027.

<sup>9</sup> Raymond J. Taylor, "Use of Change Theory in the Context of the Divorce Mediation Session," *Journal of Divorce and Remarriage* 40, No. 1 (2004), p. 90.

<sup>10</sup> Philip C.C. Huang, "Divorce Law Practices and the Origins, Myths, and Realities of Judicial 'mediation' in China," *Modern China* 31, No. 2 (2005), p. 154.

<sup>11</sup> Robert E. Emery, et.al., "Divorce Mediation: Research and Reflections," *Family Court Review* 43, No. 1 (2005), p. 22-37.

<sup>12</sup> Connie J.A. Beck and Lynda E. Frost, "Defining a Threshold for Client Competence to Participate in Divorce Mediation," *Psychology, Public Policy, and Law* 12, No. 1 (2006), p. 1-13.

negotiate through mediation with her ex-husband.<sup>13</sup> Sometimes children are also victims of violence, experiencing depression and anxiety which can affect the physical and psychological health consequences of divorcing parents.<sup>14</sup> The research also touches on the legal protection of children through the mediation process. Andrew Schepard's views on custody and subsistence needs can be read.<sup>15</sup>

The opinion of Bailey provides that the sharpening of the practice of mediation in divorce cases can refer to several assumptions that mediation is a golden opportunity to resolve conflicts and household breakdowns in constructing reconciliation between husband and wife. The practice of mediation involves offering a problem-solving process with a focus on the goal of reconciliation.<sup>16</sup>

Compare this with the thought conveyed by Robert Dingwall that the legal system and family policies of the government related to the practice of mediation carried out in European countries such as England, Wales, Scotland, and Northern Ireland are forced attempts to the husband and wife who are going to divorce under control of the mediator to undergo the mediation process before their case reaches the Court.<sup>17</sup> An interesting thought from Lori Anne Shaw that the implementation of non-litigation mediation can outperform the judicial process in legally assisting the parties in a case, including from the results of mediation that prioritizes the interests of children.<sup>18</sup> Demands for non-litigation mediation practices are carried out to anticipate more immediate damage and cracks in households.

The theoretical purpose of marriage in Islamic law is to create *sakinah, mawaddah, and warahmah* families. Sometimes the theoretical goal of marriage is very different in practice from the goal of marriage. Marriage in the view of the Bugis and Mandar communities that "*iya tu'u di'o alikkangan, iyamo dzi'o mesa pakkasiwang lao di puang Allah Taala, jari mua 'alikkangananna macoai, ma mandapai ambase, mua 'andani macoa, napolean dosa*", the meaning is that marriage is worship, so if the marriage is good you will get a reward, but if it is not good you will get sin.

Therefore, the practice of mediation, whether organized by judges at the

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<sup>13</sup> Hanna Przybyla-Basista, "The Influence of Spouses' Resistance on Their Decision to Enter into Divorce Mediation," *Journal of Divorce and Remarriage* 48, No. 3 (2008), p. 31.

<sup>14</sup> Amy J. Kraft and Lynda Leucken, "Childhood Parental Divorce and Cortisol in Young Adulthood: Evidence for Mediation by Family Income," *Psychoneuroendocrinology* 34, No. 9 (2009), p. 1363–1369.

<sup>15</sup> Andrew Schepard, *An Introduction to the Model Standards...*, p. 2-3.

<sup>16</sup> Jo Daugherty Bailey and Dawn Mccarty, "Assessing Empowerment in Divorce Mediation," *Negotiation Journal* 25, No. 3 (2009), p. 327–336.

<sup>17</sup> Robert Dingwall, "Divorce Mediation: Should We Change Our Mind?," *Journal of Social Welfare and Family Law* 32, No. 2 (2010), p. 107–117.

<sup>18</sup> Lori Anne Shaw, "Divorce Mediation Outcome Research: A Meta-Analysis," *Conflict Resolution Quarterly* 27, No. 4 (2010), p. 447–67.



Religious Courts or mediators outside the court, is very important to prioritize the content of divorce mediation using the *maqāshid shari'ah* approach. Divorce mediation which contains the *maqāshid shari'ah* paradigm based on *maslahat* as conveyed by Al-Gazaliy is an effort to uphold the objectives of shari'a laws in maintaining religion, soul, mind, descent and property.<sup>19</sup>

*Maqāshid shari'ah* as formulated by *ushul fiqh* scholars is to have the meaning of all the aims and objectives regulated in religion to bring benefit and eliminate exasperation to its servants. Al-Syatibi further perfected the traditional *ushul fiqh* theories in the *al-Muwafaqat* book by formulating *maqāshid shari'ah* which focused on *al-kulliyah al-khamsah*.<sup>20</sup>

Whereas *maqāshid shari'ah* seen from the order is *maqāshid al-dharuriyyah* (primary), *maqāshid al-hajiyyat* (secondary), and *maqāshid al-tahsiniyyat* (complementary).<sup>21</sup> Therefore, based on the *maqāshid shari'ah* that divorce mediation is in the order of *maqāshid al-dharuriyyah*, which is obliged to eliminate adultery in marriage, including maintaining the family from conflict, enmity, disharmony, and rifts between husband and wife.

On the other hand, based on the data source of the Directorate General of Religious Courts' annual report, divorce cases are considered an extraordinary matter in Indonesia. Following the report's data, it shows that there were 128,401 divorce cases in 2015. Divorce cases in 2017 included 113,937 divorce *talaq*, while 301,573 divorce lawsuits were filed. In 2018 the details of the divorce *talaq* were 118,853. In 2019, there were 124,776 divorce cases, then 355,842 divorce cases.<sup>22</sup>

The discourse on mediation has produced many studies on the roles and responsibilities of academics,<sup>23</sup> such as Mursyid Djawas and Sri Astuti A. Samad explained that reconciliation efforts in resolving family disputes can be successful with a family resilience approach through traditional Acehese traditional wisdom such as *Keuchik*, *Tuha Peut*, *Teungku Imum*, and *Imum Mukim*. The resolution of

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<sup>19</sup> Abd al-Rahman Yusuf Abd Qardhawiy, *Nazhariyah Maqashid Al-Syari'ah Baina Syekh Al-Islam Ibn Taimiyah Wa Jumhur Ushliyyin Dirasah Muqaranah Min Al-Qarn Al-Khamis Ila Al-Tsamin Al-Hijri* (Cairo: Kulliyah Dar al-Ulum, nd). p. 70.

<sup>20</sup> Abu Ishaq Al-Syatibi, *Al-Muwafaqat Fi Ushul Al-Ahkam*, 2nd ed. (Beirut: al-Maktabah al-Taufiqiyyah, 2004). p. 2.

<sup>21</sup> Izz al-Din Abd Al-Salam, *Qawaid Al-Ahkam Fi Masalih Al-Anam* (Beirut: Dar al-Ma'rifah, nd). p. 11.

<sup>22</sup> Directorate General of the Religious Courts of the Republic of Indonesia, *Annual Report of the Religious Courts* (2020). Mursyid Djawas, et.al., "The Government's Role in Decreasing Divorce Rates in Indonesia: The Case of Aceh and South Sulawesi" *Ahkan: Jurnal Ilmu Syariah* 21, No. 1 (2021).

<sup>23</sup> Elizabeth J. Koopman, "The Present and Future Role of Higher Education in Divorce Mediation: Problems and Promise in Teaching, Research, and Service," *Divorce Mediation: Perspectives on the Field*, 2014.

family conflicts in Acehese society by means of Islamic law at the Syari'ah Court and also by practicing customary law in *sara opat* institutions, a kind of institution that includes *reje* and *imem* is very accurate, effective, and efficient.<sup>24</sup>

This idea of mediating divorce through customs and social institutions is very suitable to be actualized in the Bugis community in South Sulawesi and the Mandar community in West Sulawesi. Both the Bugis and Mandar Communities are ethnic groups that are very strong and thick in carrying out their customs which are tied to the *pangngaderreng* culture as a culture of conduct.<sup>25</sup> Which includes *ade'*, *bicara*, *rapang*, *wari'*, and *syara'*. Mandar was found when the *pangngaderreng* became a social patron as the inner power control to accommodate *syara'*.<sup>26</sup>

The acceptance of *syara'* in *pangngaderreng* culture is a consequence for society to carry out Islamic law. Along with development and *wari'* and *syara'*.<sup>27</sup> Acculturation of Islam and the culture of the Bugis community and the progress of human civilization which is increasingly modern, sometimes *siri'* in the *pangngaderreng* culture of the Bugis and Mandar communities has gradually shifted. Whereas in the period of traditional life, the enforcement of *siri'* in the Bugis and Mandar communities is very embarrassed and loses its self-respect if there is a disgrace in the family, including for example a married couple who divorced from that family. The connection with the *pangngaderreng* culture has less than optimal function in the Bugis and Mandar communities, especially before and during the Covid-19 pandemic era, the number of divorce cases increased sharply in Religious Courts.

Exposing this background, this study focuses on the dynamics of the legal product of divorce mediation practices in the Religious Courts which incidentally is an institution that can be trusted to enforce Perma No. 1 of 2016. The transformation of *maqāsid shari'ah* in the practice of mediation in divorce cases in the Religious Courts and outside the courts should prioritize benefit and eliminate adversity to maintain family resilience from various conflicts and disputes. The revitalization of the *pangngaderreng* culture in the practice of divorce mediation in the Religious Courts, which so far is believed to have less

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<sup>24</sup> Mursyid Djawas and Sri Astuti A. Samad, "Conflict, Traditional, and Family Resistance: The Pattern of Dispute Resolution in Acehese Community According to Islamic Law," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 4, No. 1 (2020), p. 69–71.

<sup>25</sup> Said Nurman, *Religion and Cultural Identity Among the Bugis* (Makassar: Faculty of Islamic Theology of the Alauddin State Institute of Islamic Studies at Makassar, Indonesia, 2004).

<sup>26</sup> Abd Rahim Yunus, "The Acculturation of Islam and Local Culture in Bugis Wedding Tradition: A Historical Perspective," International Conference on Global Education V, Padang, 2017, p. 4.

<sup>27</sup> Wahyuddin Halim, "Islamization or Arabization? The Arab Cultural Influence on the South Sulawesi Muslim Community since the Islamization in the 17th Century," *Suvannabhumi* 10, No. 1 (2018), p. 42.

than optimal function in the Bugis and Mandar communities.

This study is a field legal research using historical and socio-anthropological approaches, while the data is analyzed using *maqāshid shari'ah* theory and social change theory.<sup>28</sup> Data collection techniques are based on literature studies on legal sources related to the discussion.

### Dynamics of Legal Product of Divorce Mediation in Religious Courts

Divorce mediation is an effort to mediate resolving disputes so that the mediator must be neutral, bridging, and must not be partial between the conflicting husband and wife in order to reach a peace agreement.<sup>29</sup> Divorce mediation can be designed to be therapeutic, treat, remedy, and counteract the bad effects of divorce.<sup>30</sup>

Divorce mediation is constructed to reflect on the significance of the marriage and address the possibilities that trigger divorce.<sup>31</sup> Assisting divorced parties to optimize the effectiveness and efficiency of conflict resolution in the family. One of the material contained in mediation is very interesting is a simulation method of husband-wife couples who are active for high cooperation which can overcome the conflicts they face, on the other hand, if the husband and wife do not cooperate less, they tend to have a selfish character.<sup>32</sup>

The success indicator of mediation if the material content is to collaborate, including eliminating partner violence intimidation and focusing on taking care of children,<sup>33</sup> refreshing and taking advantage of free time for discussion which aims to strengthen active communication in the family.<sup>34</sup> The family mediation construction should be intensified during the marriage period so that the husband and wife can build a household with full responsibility, affection, and love. Therefore, the practice of mediation is not only carried out when there is a conflict

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<sup>28</sup> Faisar Ananda and Watni Marpuang, *Metodologi Hukum Islam* (Jakarta: Kencana, 2016). Achmad Ali and Wiwie Heryani, *Sosiologi Hukum: Kajian Empiris terhadap Pengadilan* (Jakarta: Kencana, 2014).

<sup>29</sup> Syahrizal Abbas, *Mediasi dalam Perspektif Hukum Islam, Hukum Adat dan Hukum Nasional* (Jakarta: Kencana Prenada Media Group, 2009).

<sup>30</sup> David A. Sbarra and Robert E. Emery, "In the Presence of Grief: The Role of Cognitive-Emotional Adaptation in Contemporary Divorce Mediation," *Handbook of Divorce and Relationship Dissolution*, Taylor and Francis, 2013.

<sup>31</sup> W Neville, "Reflections on the Growth and Significance of Divorce Mediation," *Divorce Mediation: Perspectives on the Field*, 2014.

<sup>32</sup> Susan M. Worley, "The Effect of Cooperation on Egocentrism in Divorce Mediation: A Simulation Study," *Journal of Divorce*, (2008).

<sup>33</sup> Amy Holtzworth-Munroe, "Controversies in Divorce Mediation and Intimate Partner Violence: A Focus on the Children," *Aggression and Violent Behavior* 16, No. 4 (2011), p. 319-324.

<sup>34</sup> E Beck, "Improving Communication in Divorce Mediation," *Divorce Mediation: Perspectives on the Field*, 2014.

that is already overloaded, critical, and is experiencing a transition period for divorce.<sup>35</sup> The implementation of mediation before the family has problems with conflict, has many advantages for strengthening husband-wife relationships, enhancing cooperation, and also supporting joint care of children.<sup>36</sup>

The fact of the soaring divorce case decisions, it is appropriate to question the speed, accuracy, and efficiency of the judge's functioning as a mediator of divorce cases in the Religious Courts spread across several districts and cities in South Sulawesi and West Sulawesi. The data also shows that the Bugis and Mandar people prefer to resolve disputes and family conflicts in the Religious Courts rather than resolve conflicts with a system or kinship approach. Criticism of the Religious Courts in South Sulawesi and West Sulawesi as one of the case resolution institutions has not been able to accommodate the expectations of the community in settling divorce cases through mediation.

However, the public's assumption of judges acting as mediators in the Religious Courts is still considered a failure. Judges as mediators in conducting divorce mediation are still very symbolic, examinations are too formalistic, very technical, high cost, and cases tend to be overloaded.

The various difficulties faced by judges as mediators in the Religious Courts in general led to the Supreme Court of the Republic of Indonesia to apply Perma No. 1 of 2016. The dynamics of implementing Perma No. 1 of 2016 provides an opportunity to internalize the practice of divorce mediation held by certified mediators from career non-judges at the Religious Courts. Mediation supports all parties to resolve conflicts they face with the help of a mediator who is neutral or impartial. A mediator only tries to bridge all parties in a transparent manner, negotiate, and find the best solution.

The legal position of the implementation of mediation in Law No. 30 of 1999 concerning Arbitration and Alternative Settlements, then followed up by Perma No. 1 of 2016 concerning Mediation as an amendment to Perma No. 1 of 2008 concerning Mediation Procedures. Perma No. 1 of 2016 is implemented to carry out divorce mediation practices in the Religious Courts. Indeed, mediation for divorce in the Religious Courts is to avoid the accumulation of family cases. In fact, the judge's decision will be null and void if the judge examining the divorce case at trial does not enforce mediation at the Religious Court.

The progress of divorce cases that have entered both cases for divorce talaq and cases for divorce in the Religious Courts between 2018 and 2020 in the regions of South Sulawesi and West Sulawesi. The Religious Courts located in South Sulawesi are limited to only taking divorce data from the Parepare Religious

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<sup>35</sup> Sara Molgora, et.al., "Divorce and Coparenting: A Qualitative Study on Family Mediation in Italy," *Journal of Divorce and Remarriage* 55, No. 4 (2014), p. 300–314.

<sup>36</sup> Daniel B. Pickar, "Intermittent Evaluative Mediation with Enduring, Post-Divorce Conflict," *Journal of Child Custody* 8, No. 3 (2011), p. 143–145.

Court, the Sidenreng Rappang Religious Court, the Pinrang Religious Court, and the Enrekang Religious Court. Meanwhile, the Religious Courts in West Sulawesi are also limited by taking data on divorce cases that are submitted to the Polewali Mandar Religious Court, the Majene Religious Court, and the Mamuju Religious Court.

The success and failure of the product of mediation practice by judges from each of the Religious Courts in South Sulawesi in three years from 2018 to 2020. Since 2018, there have been 12 judges at the Parepare Religious Court who were spread into 6 panels. Types of cases, divorced *talaq* received 106 cases, ended 103 cases and the percentage of case completion was 81%, claimants received 380 cases, dropped 385 cases and percentage of case completion was 93%. The Parepare Religious Court mediated 13 cases and 3 cases that succeeded in peace. In 2019, the remaining cases for divorce *talaq* in 2018 were 23 cases, divorce *talaq* received 103 cases, 120 cases were decided and the percentage of case completion was 95%. For divorce with the remainder of 2018 in 26 cases, received 439, drop out of 440 cases and the percentage of completion of cases is 95%. Mediated a number of 82 cases and 5 cases which succeeded in peace. In 2020, the remaining cases for divorce *talaq* in 2019 amounted to 6 cases, 80 cases of divorce received and 80 cases of divorce. There are 25 divorce cases left in 2019, 357 cases received, 379 cases ended.<sup>37</sup>

Referring to the state of divorce cases every year there has been an increase in both *talaq* and legal divorce at the Parepare Religious Court. The reality cannot be denied, divorce cases are very worrying, because the number of cases for suing for divorce is greater than cases for divorce *talaq*. In addition, the performance of judges in conducting mediation at the Parepare Religious Court from 2018 to 2020 can be categorized as failing. The failure of judges to mediate at the Parepare Religious Court has not been able to balance the number of divorce cases that were decided and the number of cases that succeeded in mediating to reach a peaceful consensus.

The progress of divorce cases from 2018 to 2020 at the Sidenreng Rappang Religious Court, can be described with data since 2018, the number of divorces *talaq* 154 cases and 555 divorce cases. Mediating 91 divorce cases, succeeded in reaching a peaceful consensus on 2 cases. In 2019, the number of divorces *talaq* received was 213 cases, 202 cases were decided, and the percentage of case settlements was 88%. 699 cases of divorce were accepted, 690 cases were decided on 95%. Mediated 89 cases and succeeded in a peaceful consensus on 0 cases. In 2020, the number of divorces *talaq* received 163 cases, 152 cases broke up and 83% case settlement percentage, 604 divorce cases received, 591 broke up, and

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<sup>37</sup> Chairman of the Parepare Religious Court, "Annual Report of the Parepare Religious Court" (Parepare City, 2020), <http://pa-parepare.go.id/home/leport-tahunan/>.

91% case completion percentage. Mediated 69 cases and succeeded in a 2 case peace consensus.<sup>38</sup>

The strength of the judges at the Sidenreng Rappang Religious Court in conducting mediation is still relatively weak and failed, even in the mediation that was carried out in 2019, not a single case was successfully reconciled. Divorce cases that are accepted are generally terminated and only a very few divorce cases have succeeded in peace.

The Pinrang Religious Court is one of the courts which accepts many divorce cases every year. It is known that in 2018, there were 163 divorces and 640 divorcees, 131 cases of mediation, and 2 cases of the peace agreement were reached. In 2019 there were 208 cases of divorce, 820 cases of divorce, 128 mediation cases, and 4 cases of peace. In 2020, there were 199 divorce cases, 798 divorce cases, 140 mediated cases, and 20 peaceful cases.<sup>39</sup>

Compared to the Parepare Religious Court and the Sidenreng Rappang Religious Court, the Pinrang Religious Court judges have made progress in reconciling divorce cases. In 2020, the success of mediation at the Pinrang Religious Court is inseparable from the active role of judges in reconciling a litigious husband and wife. The success of mediating divorce cases is supported by the knowledge and experience of judges who are familiar with the social culture of the Pinrang community.

In 2019 data, there were 338 divorce cases including 66 cases of divorce, 258 divorce cases, and 51 cases of mediation, only 1 case was successful at the Enrekang Religious Court. In 2020 there were 336 divorce cases and among them, 75 cases of divorce, 246 divorce cases, 31 mediation cases, and none of them succeeded in peace. Mediation from 2019 and 2020 amounted to 82 cases, only 1 case succeeded in peace.<sup>40</sup> Mediation is almost completely ineffective and in fact creates new problems, namely the accumulation of cases that should be resolved, but are hampered by the time-consuming mediation process. Mediation also has an impact on costs (court costs) so that the principle of litigating with a simple, fast, and low cost does not materialize.

Furthermore, the development of divorce case mediation in the Religious Courts located in the West Sulawesi region is limited to the Polewali Mandar Religious Courts and the Majene Religious Courts. The source of information found at the Polewali Mandar Religious Court stated that in 2017 talaq's divorce

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<sup>38</sup> Chairman of the Sidenreng Rappang Religious Court, "Annual Report of the Sidenreng Rappang Religious Court" (Pangkajene City, 2020), <http://pa-sidenreng-rappang.go.id/>.

<sup>39</sup> Chairman of the Pinrang Religious Court, "Annual Report of the Pinrang Religious Court" (Pinrang City, 2020), <http://pa-pinrang.go.id/index.php?limitstart=27>.

<sup>40</sup> Chairman of the Enrekang Religious Court, "Annual Report of the Enrekang Religious Court" (Enrekang City, 2020), <https://www.pa-enrekang.com/index.php/transparant/sekretariat/perplan/lentuk-tahunan>.

was received by 155 cases, 135 cases were ended. 422 cases of divorce were accepted, 366 cases were ended, related to the mediation report not mentioned in the report on the activities of the Polewali Mandar Religious Court. In 2018 *talaq* divorce received 175 cases, 160 cases ended. 453 divorce cases were accepted, 427 cases ended and mediation was also not included in the 2018 Polewali Mandar Religious Court activity report. In 2019 *talaq* divorce received 176 cases, 161 cases ended. 507 cases of divorce were accepted, 473 cases were ended.<sup>41</sup> In 2019 there has been no progress on case mediation in the activity report. Meanwhile, the 2020 report has not yet published the number of cases for divorce *talaq* and divorce.

Divorce cases at the Majene Religious Court, in 2017 *talaq* received 44 cases plus the remaining 2 cases in 2016, 41 cases ended. Divorce accepts 131 cases plus the remaining 5 cases from 2016, 128 cases ended, 30 cases mediated and none of the cases succeeded in peace. In 2018, divorce *talaq* received 45 cases plus the remaining 5 cases in 2017, 48 cases were broken. The remaining cases in 2017 were 7 cases, in 2018 129 cases were divorced, 137 cases were ended, 32 cases were mediated and none of the cases were successfully reconciled. In 2019 divorce *Talaq* received 55 cases plus the remaining 2 cases in 2018, 57 cases ended. Divorce accepts 150 cases plus the remaining 6 cases in 2018, 155 cases ended, 40 mediated cases, and 4 peaceful cases.<sup>42</sup> In 2020, the progress of the divorce case has not been published, both from the *talaq* divorce case and the sue divorce case.

Optimizing efforts to provide legal services to the community in all Religious Courts in South Sulawesi and West Sulawesi in enforcing mediation institutions which are run by mediating judges. The mediating judge carries out legal remedies against the justice-seeking community to reconcile the disputing parties. Mediation in all Religious Courts is regulated in article 130 HIR / article 154 Rbg. jo. Perma No. 1 of 2016 concerning Mediation Procedures in Courts.

The legal product of the mediator reports to the examining panel of judges regarding the results of the mediation process that has been carried out with the case husband and wife. If the mediator succeeds in reconciling, the results of the mediation are written in a peace deed. The panel of judges stated in legal considerations, one of which was based on the peace deed agreed and signed by the parties in the case. In one of the verdicts, the panel of judges "punished the applicant/plaintiff and the respondent/defendant to obey the results of the peace agreement that had been reached." Successful mediation without proof of the

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<sup>41</sup> Chairperson of the Polewali Mandar Religious Court, "Annual Report of the *Poliwali Mandar Religious Court*" (Polewali City, 2020), <http://pa-polewali.net/index.php/info-peradilan/program-kerja-k-Activity/l-Report-tahunan>.

<sup>42</sup> Chairman of the Majene Religious Court, "Annual Report of the *Majene Religious Court*" (Majene City, 2020), <https://pa-majene.go.id/informasi-umum/leport-tahunan>.

peace deed of the party presenting the case will withdraw the case that has been submitted at the next trial. Based on Perma No.<sup>43</sup>

There are several types of mediation products, one of which is a successful mediation product, where both husband and wife achieve reconciliation, agree to resolve the problem peacefully and amicably. The peace agreement actualized the peace deed by Perma No. 1 of 2016 Article 27 paragraph 2 or in a divorce case, the party filing for divorce withdraws the case at the next trial. The mediation has succeeded in reaching an agreement, the parties with the assistance of the mediator are obliged to formulate a written agreement in a peace agreement signed by the parties and the mediator. In helping to formulate a peace agreement, the mediator is obliged to ensure that it does not contain provisions that are contrary to law, public order, and also morals, detrimental to the litigant.

The next possibility, the product of partially successful mediation is when two or more cases are filed but not all of them reach an amicable agreement, for example, divorce cases are accumulated with joint assets, a husband and wife agree to share Gono Gini assets are joint assets obtained during the marriage period. peacefully and kinship, but both of them still want to divorce. Also, the product of mediation does not work, if both parties in a case do not reach a peace agreement and want to continue the case. Another type of mediation product is improper mediation if one of the parties is not present at the mediation without justified reasons, involves the rights of the other party, and there are parties who should be subject to law but are not involved in the case.

### **Transformation of *Maqāṣid Shari'ah* in Mediation Practices in Divorce Cases**

The mediator who carries out the mediation can help the parties of a married couple to have a strong character and personality in facing a case.<sup>44</sup> The mediator strengthens the understanding of a married couple regarding the importance of marriage, the consequences after divorce,<sup>45</sup> and a major consideration of the power of mediation is childcare.<sup>46</sup> The mediator conducts mediation in a measured manner, ensuring the benefit, effectiveness, and satisfaction of the parties related to the success of the mediation in achieving

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<sup>43</sup> Chairman of the Supreme Court of the Republic of Indonesia., "Perma RI. No. 1 of 2016 concerning Mediation Procedures in Courts "(Jakarta, 2016), [https://bawas.mahkamahagung.go.id/bawas\\_doc/doc/perma\\_mediasi\\_pengadilan\\_web.pdf](https://bawas.mahkamahagung.go.id/bawas_doc/doc/perma_mediasi_pengadilan_web.pdf).

<sup>44</sup> Robert B. Silver and Deborah C. Silver, "Practice Note: Divorce Mediation with Challenging Parents," *Conflict Resolution Quarterly* 25, (2008).

<sup>45</sup> William A Donohue, et.al., "Interaction Dynamics Predict Successful Negotiation in Divorce Mediation," *Journal of Language and Social Psychology* 35, No. 4 (2015), p. 374–393.

<sup>46</sup> K. Bollen, et.al., "Money or Children? Power Sources in Divorce Mediation," *Journal of Family Studies* 19, No. 2 (2013), p. 159–173



peace.<sup>47</sup>

Measurable mediation can focus on the context of enforcing mediation as regulated in Perma No. 1 of 2016. Other dispute resolution processes are similar to the mediation of divorce cases at the Religious Courts. The very basic similarities are the steps that must be passed by the provisions in Perma No. 1 of 2016.

In general, the mediation stages in divorce cases at the Religious Courts are mapped into three stages, namely the preparation stage, the implementation stage, and also the decision-making stage. The stages of mediation are described systematically and clearly by their respective sequences. In the practice of mediation after registering a divorce case at the Religious Court, the parties of the litigant husband and wife come to court after attending the summons legally and properly by the stipulations of the time and place.

Furthermore, the preparatory stage process in mediation is needed for a mediator to early study and deepen the root of the dispute between husband and wife who are consulted in mediation. The next stage is the implementation stage, the first stage of which is to form a forum. Before starting the mediation, both the mediator and the litigant husband and wife form a forum. In the forum that has been formed, the mediator organizes a joint meeting to deliver the preliminary statements of the husband and wife in the case.

At the time of conducting the mediation, the final stage is the decision-making stage where parties work together with the help of a mediator to evaluate options, get trade-offs and offer packages, minimize debates and find a fair basis for shared allocations. In the end, the parties who agreed were successful in making a joint decision. The stage of determining the mediator's decision can also pressure the parties, find formulas to avoid embarrassment, assist the parties in dealing with the power of attorney (if empowered).

The atmosphere of the location or place of mediation is a comfortable, free and pleasant place.<sup>48</sup> Technical readings and the stages of mediation in the Religious Courts are very important to construct priorities for the application of *maqāṣid shari'āh*. The *maqāṣid shari'āh* perspective on the mechanism of the stages of mediation is still very technical and the material content of divorce mediation is too formal. The very formalistic technical atmosphere of the implementation has made it more difficult and rigid to find a peace agreement. The consideration of the implementation of *maqāṣid shari'āh* in the content of mediation material is to try to strengthen the actualization of benefit, to bury the profundity (damage) in the household of married couples who have problems with

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<sup>47</sup> Stanley N. Cohen, "Divorce Mediation: An Introduction," *Journal of Psychotherapy & Family, Divorce Therapy* 1, (2014).

<sup>48</sup> Angela Corla Garcia, "Locations for Advice-Giving and the Production of Neutrality in Divorce Mediation Sessions," *Conflict Resolution Quarterly* 38, No. 3 (2020).

conflict.

The opinion of al-Ghazaliy was explained systematically and concretely about Maqashid sharia as the basis of maslahah, and also the argument for achieving the goal. Maqashid shariah which is the basis of maslahat is trying to uphold the meaning of syar'i as the absolute authority of Allah in making laws to maintain religion, soul, mind, descent and property.<sup>49</sup> Thus, everything that can realize the meaning of syar'i is called maslahat.

The opinion of Yusuf al-Qardhawi in formulating *maqāshid shari'ah* is the transformation of the goals desired by the texts which contain the meaning of orders, prohibitions, and permits at the same time. *Maqāshid shari'ah* means the purpose of Allah SWT. and also His Messenger in transforming Islamic laws. These Islamic laws can be found in the Qur'an and hadith which lead to the benefit of mankind.<sup>50</sup> Ibn Qayyim's opinion details the purpose of Islamic law is to manifest the benefit of mankind in the world and the hereafter. In totality, Islamic law contains mercy, justice, benefit, and wisdom.<sup>51</sup>

Furthermore, sharia means an ethical system as well as a value in covering all problems of human life which functions as a consistent and comprehensive life guideline that is implemented in Islamic law. The implementation of sharia in Islamic law is an absolute manifestation to uphold justice and benefit, eliminate prejudice, and reduce difficulties in human affairs. The purpose of Islamic law revealed to humans is the same connotation as the meaning of *maqāshid shari'ah* in preserving all human interests.<sup>52</sup>

The realization of the *maqāshid shari'ah* is that Muslims are obliged to maintain their religion, soul, mind, ancestry, and property. As *maqāshid shari'ah* is generally understood to be the purpose of stipulating and lowering Islamic law to bring about goodness, safety, and happiness, on the other hand, avoiding badness, trouble and damage can threaten human life and existence.

The criticism of divorce through *maqāshid shari'ah*, which is the judge's decision at the Religious Court, actually has the potential to cause the household to suffer disarray and damage, it is also focused on taking care of the children of both parents who are no longer maximally which causes neglected children.<sup>53</sup> The practice of mediation in the Religious Courts through the application of *maqāshid*

<sup>49</sup> Al-Gazaliy, *Al-Mustashfa Fi 'Ilm Al-Ushul, 1st ed.* (Beirut: Dar al-Kutub al-Ilmiyah, 1993).

<sup>50</sup> Yusuf Al-Qardhawi, *Dirasah Fiqh Maqashid Al-Shariah; Baina Al-Maqashid Al-Kulliyah Wa Al-Nushus Al-Juz'iyah* (Cairo: Dar al-Syuruq, 2006).

<sup>51</sup> Ibn Qayyim, *I'lam Al-Muwaqin Rabb Al-Alamin, 3rd ed.* (Beirut: Dar al-Jail, nd).

<sup>52</sup> Asyraf Wajdi Dusuki and Nurdianawati Irwani Abdullah, "Maqasid Al-Shariah, Maslahah, and Corporate Social Responsibility," *American Journal of Islamic Social Sciences* 24, No. 1 (2007), p. 31.

<sup>53</sup> Ani R. Poladian, et.al., "Family Mediation for Divorce and Parental Separation," *Foundations for Couples' Therapy: Research for the Real World*, (2017), p. 256–267.

*shari'āh* is an action to repair and save a household from a husband and wife on the verge of damage and destruction. The perspective of the *maqāṣid shari'āh* that divorce in the Religious Court is not the best option or way to resolve conflicts between husband and wife in the household.

Seeing the reality of divorce cases in the Religious Courts today, it seems as if there are almost no more efforts, it is very difficult to stem and contain the rate of divorce that has increased sharply from year to year. The Supreme Court needs to review the effectiveness and efficiency of the implementation of mediation through Perma No. 1 of 2016 at the Religious Court with consideration for the benefit contained in the *maqāṣid shari'āh*. The strength of the application of Perma No. 1 of 2016 has not had a major effect on improving the situation of a married couple who filed their case at the Religious Court. The implementation of Perma No. 1 of 2016 does not yet show the balance of the verdict in divorce cases than the success of mediation in the Religious Courts.

The legal construction that is transformed by the Supreme Court in the Religious Courts, *maqāṣid shari'āh* can be a major consideration in improving mediation practice. Changes in law enforcement in the practice of mediation in the Religious Courts mean that judges are no longer given additional duties in carrying out mediation. The mediation must optimally be carried out by the mediator freely and independently, without depending on the Religious Courts. The Supreme Court must be more courageous in establishing a mediation institution for divorce cases as a free, independent, and independent institution in preventing the increasing number of divorces.

Regulatory changes in the implementation of the law as an effort to transform *maqāṣid shari'āh* in the Religious Courts that every registered case should be that a husband and wife who are about to divorce must have a certificate of unsuccessful mediation from the mediation institution. Thus, the Religious Courts no longer accept divorce cases without a certificate of unsuccessful mediation which serves as a subsidiary condition in registering cases.

This opinion is reinforced by several sources from experience, it can be said that the implementation of mediation should be done before the case is entered or registered at the Religious Court. Experience from several times the mediation of several husband and wife couples who quarreled or conflicts with mediation through non-litigation, before the litigant couple filed a case in the Religious Court and the result succeeded in making a peace agreement. Some married couples who have litigated no longer wish to file divorce cases at the Religious Court have returned to harmony in rebuilding their households. In fact, in several cases, after the mediator reported the results of the mediation being unsuccessful, the case examining judges continued the trial process, starting with a vision or settlement by the panel of judges who managed to reconcile the litigants. The essence is that between mediation and peace efforts carried out by

the mediator and the case examining a panel of judges should be the same.

After a husband and wife in a case get advice and advice from the Marriage Advisory, Development and Preservation Agency, it can show an indication that the divorce rate can be slightly suppressed through mediation outside the Court.<sup>54</sup> The experience of mediating divorce cases outside the court can be strengthened when the existence of the Marriage Advisory, Guidance and Preservation Agency while still active, based on data from the Office of Religious Affairs, nearly 50% of married couples who wish to file divorce cases at the Religious Courts can discourage divorce.

### Revitalization of Bugis and Mandar Customary in Divorce Mediation

The Bugis and Mandar peoples have historically been a family group that cannot be separated emotionally because they are tied to a *pangngaderreng* cultural system in South Sulawesi. The two communities were in the same territorial region before the formation of West Sulawesi as the expansion area of the South Sulawesi region on October 5, 2004, through Law No. 26 of 2004. Although separated from regional ties, emotional ties, both physically and physically, are still harmonious and peaceful.

The association of the two societies is bound in a very monumental cultural system, namely the *pangngaderreng* culture. Also, the Bugis and Mandar communities can also be bonded with marriage. The two societies are united with each other because of the same belief in embracing Islam. Returning to the *pangngaderreng* culture, it has five elements that cannot be separated from one another, namely *ade'*, *bicara*, *rapang*, *wari*, and *syara'*.<sup>55</sup> *Pangngaderreng* is a cultural system and a social system that functions as the customary institution or social institution of the Bugis and Mandar peoples. *Pangngaderreng* culture regulates religious, social, cultural, state, and legal norms. *Ade'* can be interpreted as custom, speaking means justice, *rapang* is jurisprudence, *wari* means social layering, and *syara'* means Islamic law.<sup>56</sup>

The Bugis and Mandar people are very loyal and obedient to *ade'* (Bugis) and *ada'* (Mandar) means adat. The obedience and loyalty of the Bugis and Mandar people to adat are due to their deep belief in adat which always protects and preserves himself as a human being with *siri'*. *Siri'* in essence is honor, dignity, dignity for humans. If someone does not have *siri'* in him, he is no longer excited to live, people in Bugis and Mandar societies prefer to die rather than have

<sup>54</sup> Madelene De Jong, "A Pragmatic Look at Mediation as an Alternative to Divorce Litigation," *Tydskrif Vir Die Suid-Afrikaanse Reg*, No. 3 (2010), p.515–531.

<sup>55</sup> Nurnaningsih Nawawi, "Asimilasi Lontara Pangadereng Dan Syari'at Islam: Pola Perilaku Masyarakat Bugis-Wajo," *Al-Tahrir: Jurnal Pemikiran Islam* 5, No. 1 (2015), p. 25.

<sup>56</sup> Rahmatunnair, "Contextualization of Pangngadereng in the Enforcement of Islamic Shariah in Buginese Bone Community," *Al-Qalam* 17, No. 1 (2011), p. 94.

no *siri'* in him.

*Siri'* in the expression of the Bugis community is "*Siri' 'emmi ri onroang ri lino, utettong ri ade'e, najagainnami siri'ta, naia siri'e sunge naranreng, nyawa na kira-kira*",<sup>57</sup> the meaning is only based on *siri'* we live in the world, I am loyal to *ade'*, take care of our *siri'*, while *siri'* is the soul of the reward, the life is at stake. While *siri'* in the Mandar community expression is "*apa' siri' di tu'u ita' di'e rupatau mala tuo dini dilino, dipake' de'i ada' dipiara toi siri', dotai tau mate anna dadzi tia andan dian siri'*", the meaning is that only with *siri'* can humans survive in the world, because by upholding customs, maintaining *siri'*, because with *siri'* is death at stake, and life is the ransom. Therefore, *siri'* is the most fundamental value system, there is nothing more valuable than *siri'*, absolute self-esteem exists in every individual in Bugis and Mandar communities, *siri'* is no exception when building marriages

The connection with the enforcement of *siri'* in the Bugis and Mandar communities seems to have experienced a shift in values. The shift in the value of *siri'* itself is marked by a very interesting fact about divorce cases in the Bugis and Mandar communities, which is that divorce cases always dominate rather than divorce talaq in all Religious Courts. Acceleration of suicidal divorce cases is very urgent in the Bugis and Mandar communities. Compared to divorce talaq, family resilience began to be very fragile in Bugis and Mandar societies with the dominance of divorce in the Religious Courts. The dominance of a legal divorce which is the triggering factor is domestic violence, economy, and polygamy. Therefore, The Bugis and Mandar people seem to gradually no longer respect *siri'*, because they are not considered a disgrace' if they go to the Religious Court to ask for a divorce. It should be for the Bugis and Mandar people that it is a disgrace with divorce, let alone committing domestic violence, the disgrace of not being able to meet the economic needs of their families, and also a disgrace 'because of polygamy. A person disobeying or disregarding *siri'* is a disgrace'.

The fragility of family resilience in the Bugis and Mandar communities is also a triggering factor, namely the crisis of figures from family members who are charismatic as role models, and the crisis of optimizing the role of traditional institutions that act as mediators. Cultural and social changes in the Bugis and Mandar communities, sometimes on the part of the parents themselves, who usually play a role in separating the marriages of their children. For families who are experiencing conflict, it seems as if the Religious Court is the last place in conflict resolution. The irony is that it turns out that the Religious Courts are not a place that is capable of repairing the rifts in the households of husband and wife who experience conflict. Data from all divorce cases received at the Religious

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<sup>57</sup> Fikri, et.al., "Idealism and Realism of Islamic Law in Pangngaderreng Culture of the Modern Bugis Bone," *IOP Conference Series: Earth and Environmental Science* 175, No. 1 (2018), p. 2.

Courts are generally decided by the judge.

The strength in carrying out the value of *ade'* in the Bugis and the Mandar community' is to maintain a lasting and sustainable marriage, the implementation of the value of life *sirondo-rondo* which means cooperation, helping each other in doing a job, both heavy and light. The next value that is related to the sustainability of marriage is *siamasei* and *sianuang pa'mai* that in building a household, the husband and wife must love and love each other. The Bugis and Mandar people in fostering a household are also known as *sibaliparri*, husband and wife must maintain household harmony and have a mutual sense of responsibility towards their families, both when joy and sorrow must be faced together, the same fate and co-existence.

Marriage advice and advice are provisions in living the household dish.<sup>58</sup>

The revitalization of customary institutions in the Bugis and Mandar communities such as *sirondo-rondo*, *siamasei* and *sianuang pa'mai*, and *sibaliparri* is the basis for certified judges and mediators to carry out mediation in the Religious Courts and outside the courts. Optimizing customary institutions in the Bugis and Mandar communities can be a very strong defense against the increasing divorce rate in the Religious Courts.

Also, reviving the traditional institutions of the *pangngaderreng* cultural system is *syara'* which is the implementation of Islamic law in the Bugis and Mandar communities. The enforcement of Islamic law in Bugis society is carried out by someone who has the title *petta kalie* and in Mandar society it is known as *puang kali*. People who are appointed to be *petta kalie* in Bugis society and *puang kali* in Mandar society are charismatic, scholars who have a deep knowledge of Islam, master jurisprudence and Islamic law.<sup>59</sup> The function of *petta kalie* or *puang kali* is to give advice or marriage advice for married couples who are about to divorce.

The revitalization of *petta kalie* and *puang kali* in Bugis and Mandar communities is that every married couple who is about to divorce, should first ask for advice or marriage advice. Divorce cases are no longer registered with the Religious Courts, before there are marital advice and advice from *petta kalie* and *puang kali*.

## Conclusion

The process of practicing mediation in the Religious Courts is very urgent to implement *maqāṣid shari'āh* as the main consideration by judges at the

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<sup>58</sup> Angela Garcia, "Advice-Giving and Disputant Empowerment in Divorce Mediation Sessions," *Language and Dialogue* 2, No. 3 (2012), p. 398–426,

<sup>59</sup> Ridhwan, et.al., "Masjid Sebagai Pusat Pendidikan Islam pada Masa Kerajaan Sampai Masa Orde Lam di Bone Sulawesi Selatan," *Jurnal Ilmiah Didaktika* 20, No. 1 (2019), p. 83-98.

Religious Courts in deciding divorce cases. The main consideration for the application of *maqāṣid shari'āh* has the potential to repair and save a household from a husband and wife on the verge of damage and destruction. The strong assumption of the application of *maqāṣid shari'āh* is that divorce in the Religious Court is not the best option or way to resolve conflicts between husband and wife in the household. The Supreme Court needs to review the practice of mediation through Perma No. 1 of 2016 by placing the benefits contained in the *maqāṣid shari'āh* for the practice of mediation in the Religious Courts. Revitalizing traditional institutions such as upholding the value of *ade'in* in the Bugis and existing in the Mandar community can be a strength in family resilience in maintaining the marriage. Bringing the customs of the Bugis community and society through social culture in the value of life *sirondo-rondo* which means cooperation, *siamasei* and *sianuang pa'mai* in fostering a household, husband and wife must love and love each other, and *sibaliparri* that husband and wife must take care of each other domestic harmony and mutual responsibility towards their families, both when joys and sorrows must be faced together, of the same fate and responsibility. Also, reviving the customary institutions of the *pangngaderreng* cultural system is *syara'* which is interpreted as an institution for implementing Islamic law in the Bugis and Mandar communities. The enforcement of Islamic law in Bugis society is carried out by someone who has the title *petta kali'* and in Mandar society known as *puang kali'* is a charismatic person, a cleric who has a deep knowledge of Islam, masters jurisprudence and Islamic law. The function of *petta kali'* or *puang kali'* is to give advice or marriage advice for husband and wife who want to divorce and their marriage will be long-lasting, lasting, and sustainable.

## References

### Journals and Books

- Abbas, Syahrizal. *Mediasi Dalam Perspektif Hukum Syari'ah, Hukum Adat Dan Hukum Nasional*. Jakarta: Kencana Prenada Media Group, 2009.
- Al-Syatibi, Abu Ishaq. *Al-Muwafaqat Fi Ushul Al-Ahkam*. 2nd ed. Beirut: al-Maktabah al-Taufiqiyah, 2004.
- Al-Gazaliy. *Al-Mustashfa Fi' Ilm Al-Ushul*. 1st ed. Beirut: Dar al-Kutub al-Ilmiyah, 1993.
- Al-Qardhawi, Yusuf. *Dirasah Fi Fiqh Maqashid Al-Shariah; Baina Al-Maqashid Al-Kulliyah Wa Al-Nushus Al-Juziyyah*. Kairo: Dar al-Syuruq, 2006.
- Al-Salam, Izz al-Din Abd., *Qawaid Al-Ahkam Fi Masalih Al-Anam*. Beirut: Dar al-Ma'rifah, n.d.

- Ali, Achmad and Wiwie Heryani, *Sosiologi Hukum: Kajian Empiris terhadap Pengadilan*, Jakarta: Kencana, 2014.
- Arfa, Faisar Ananda and Watni Marpaung, *Metodologi Hukum Islam*, Jakarta: Kencana, 2016.
- Bailey, Jo Daugherty and Dawn Maccarty, "Assessing Empowerment in Divorce Mediation." *Negotiation Journal* 25, No. 3 (2009). <https://doi.org/10.1111/j.1571-9979.2009.00229.x>.
- Beck, Connie J.A. and Bruce Sales, "A Critical Reappraisal of Divorce Mediation Research and Policy." *Psychology, Public Policy, and Law* 6, no. 4 (2000). <https://doi.org/10.1037/1076-8971.6.4.989>.
- Beck, Connie J.A. and Lynda E. Frost, "Defining a Threshold for Client Competence to Participate in Divorce Mediation." *Psychology, Public Policy, and Law* 12, No. 1 (2006). <https://doi.org/10.1037/1076-8971.12.1.1>.
- Beck, E. "Improving Communication in Divorce Mediation." *Divorce Mediation: Perspectives on the Field*, 2014. <https://doi.org/10.4324/9781315860077>.
- Bollen, K. "Money or Children? Power Sources in Divorce Mediation." *Journal of Family Studies* 19, No. 2 (2013). <https://doi.org/10.5172/jfs.2013.19.2.159>.
- Cohen, Stanley N. "Divorce Mediation: An Introduction." *Journal of Psychotherapy & Family, Divorce Therapy* 1, 2014. <https://doi.org/10.4324/9781315791456>.
- Dingwall, Robert. "Divorce Mediation: Should We Change Our Mind?" *Journal of Social Welfare and Family Law* 32, No. 2 (2010). <https://doi.org/10.1080/09649069.2010.506307>.
- Djawas, Mursyid, and Sri Astuti A. Samad. "Conflict, Traditional, and Family Resistance: The Pattern of Dispute Resolution in Acehese Community According to Islamic Law." *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 4, No. 1 (2020). DOI: <http://dx.doi.org/10.22373/sjhc.v4i1.5271>.
- Djawas, Mursyid, et.al., "The Government's Role in Decreasing Divorce Rates in Indonesia: The Case of Aceh and South Sulawesi" *Ahkam: Jurnal Ilmu Syariah* 21, No. 1 (2021). DOI: 10.15408/ajis.v21i1.20870.
- Donohue, William A, "Interaction Dynamics Predict Successful Negotiation in Divorce Mediation." *Journal of Language and Social Psychology* 35, No. 4 (2015). <https://doi.org/10.1177/0261927X15603090>.
- Dusuki, Asyraf Wajdi, and Nurdianawati Irwani Abdullah. "Maqasid Al-Shariah, Maslahah, and Corporate Social Responsibility." *American Journal of Islamic Social Sciences* 24, No. 1 (2007).



- Ellis, Desmond. "Safety, Equity, and Human Agency; Contributions of Divorce Mediation." *Violence Against Woman* 6, No. 9 (2000). <https://doi.org/10.1177/10778010022182254>.
- Emery, Robert E, David Sbarra, and Tara Grover. "Divorce Mediation: Research and Reflections." *Family Court Review* 43, No. 1 (2005).
- Enrekang, Ketua Pengadilan Agama. "Laporan Tahunan Pengadilan Agama Enrekang." Kota Enrekang, 2020. <https://www.pa-enrekang.com/index.php/transparansi/sekretariat/perencanaan/laporan-tahunan>.
- Fikri, Rahmawati, and Zulfah. "Idealism and Realism of Islamic Law in Panggadereng Culture of the Modern Bugis Bone." *IOP Conference Series: Earth and Environmental Science* 175, No. 1 (2018). <https://doi.org/10.1088/1755-1315/175/1/012137>.
- Garcia, Angela. "Advice-Giving and Disputant Empowerment in Divorce Mediation Sessions." *Language and Dialogue* 2, No. 3 (2012). <https://doi.org/10.1075/dl.2.3.05gar>.
- Garcia, Angela Corla. "Locations for Advice-Giving and the Production of Neutrality in Divorce Mediation Sessions." *Conflict Resolution Quarterly* 38, No. 3 (2020). <https://doi.org/10.1002/crq.21292>.
- Hahn, R. and David M. Kleist, "Divorce Mediation: Research and Implications for Family and Couples Counseling." *The Family Journal*, 2000. <https://doi.org/10.1177/1066480700082009>.
- Halim, Wahyuddin. "Islamization or Arabization? The Arab Cultural Influence on the South Sulawesi Muslim Community since the Islamization in the 17th Century." *Suvannabhumi* 10, No. 1 (2018).
- Holtzworth-Munroe, Amy. "Controversies in Divorce Mediation and Intimate Partner Violence: A Focus on the Children." *Aggression and Violent Behavior* 16, No. 4 (2011). <https://doi.org/10.1016/j.avb.2011.04.009>.
- Huang, Philip C.C., "Divorce Law Practices and the Origins, Myths, and Realities of Judicial 'mediation' in China." *Modern China* 31, No. 2 (2005). <https://doi.org/10.1177/0097700405274585>.
- Indonesia, Direktorat Jenderal Badan Peradilan Agama Republik. Laporan Tahunan Badan Peradilan Agama (2020).
- Jong, Madelene De. "A Pragmatic Look at Mediation as an Alternative to Divorce Litigation." *Tydskrif Vir Die Suid-Afrikaanse Reg*, No. 3 (2010).
- Kaganas, Felicity and Christine Piper, "Domestic Violence and Divorce Mediation." *Journal of Social Welfare and Family Law* 16, No. 3 (1994). <https://doi.org/10.1080/09649069408413612>.
- Koopman, Elizabeth J., "The Present and Future Role of Higher Education in Divorce Mediation: Problems and Promise in Teaching, Research, and

- Service.” *Divorce Mediation: Perspectives on the Field*, 2014. <https://doi.org/10.4324/9781315860077>.
- Kraft, Amy J. and Lynda Leucken, “Childhood Parental Divorce and Cortisol in Young Adulthood: Evidence for Mediation by Family Income.” *Psychoneuroendocrinology* 34, No. 9 (2009). <https://doi.org/10.1016/j.psyneuen.2009.04.008>.
- Margulies, S and Anya Luchow, “Litigation, Mediation and the Psychology of Divorce.” *Journal of Psychiatry and Law* 20, No. 4 (1992). <https://doi.org/10.1177/009318539202000405>.
- Molgora, Sara, “Divorce and Coparenting: A Qualitative Study on Family Mediation in Italy.” *Journal of Divorce and Remarriage* 55, No. 4 (2014). <https://doi.org/10.1080/10502556.2014.901854>.
- Nawawi, Nurmaningsih. “Asimilasi Lontara Pangadereng Dan Syari’at Islam: Pola Perilaku Masyarakat Bugis-Wajo.” *Al-Tahrir: Jurnal Pemikiran Islam* 15, No. 1 (2015).
- Neville, W. “Reflections on the Growth and Significance of Divorce Mediation.” *Divorce Mediation: Perspectives on the Field*, 2014. <https://doi.org/10.4324/9781315860077>.
- Nurman, Said. *Religion and Cultural Identity Among the Bugis*. Makassar: Faculty of Islamic Theology of the Alauddin State Institute of Islamic Studies at Makassar, Indonesia, 2004.
- Pickar, Daniel, “Intermittent Evaluative Mediation with Enduring, Post-Divorce Conflict.” *Journal of Child Custody* 8, No. 3 (2011). <https://doi.org/10.1080/15379418.2011.594722>.
- Pinrang, Ketua Pengadilan Agama. “Laporan Tahunan Pengadilan Agama Pinrang.” Kota Pinrang, 2020. <http://pa-pinrang.go.id/index.php?limitstart=27>.
- Poladian, Ani R., “Family Mediation for Divorce and Parental Separation.” *Foundations for Couples’ Therapy: Research for the Real World*, 2017. <https://doi.org/10.4324/9781315678610-26>.
- Przybyla-Basista, Hanna, “The Influence of Spouses’ Resistance on Their Decision to Enter into Divorce Mediation.” *Journal of Divorce and Remarriage* 48, No. 3 (2008). [https://doi.org/10.1300/J087v48n03\\_05](https://doi.org/10.1300/J087v48n03_05).
- Qardhawiy, Abd al-Rahman Yusuf Abd. *Nazhariyah Maqashid Al-Syari’ah Baina Syekh Al-Islam Ibn Taimiyah Wa Jumhur Ushliyyin Dirasah Muqaranah Min Al-Qarn Al-Khamis Ila Al-Tsamin Al-Hijri*. Kairo: Kulliyah Dar al-Ulum, n.d.
- Qayyim, Ibn. *I’lam Al-Muwaqi’in Rabb Al-Alamin*. 3rd ed. Beirut: Dar al-Jail, n.d.

- Rahmatunnair, "Contextualization of Pangngadereng in the Enforcement of Islamic Shariah in Buginese Bone Community." *Al-Qalam* 17, No. 1 (2011). DOI: <http://dx.doi.org/10.31969/alq.v17i1.101>.
- Rappang, Ketua Pengadilan Agama Sidenreng. "Laporan Tahunan Pengadilan Agama Sidenreng Rappang." Kota Pangkajenne, 2020. <http://pa-sidenrengrappang.go.id/>.
- Ridhwan, et.al., "Masjid Sebagai Pusat Pendidikan Islam pada Masa Kerajaan Sampai Masa Orde Lam di Bone Sulawesi Selatan," *Jurnal Ilmiah Didaktika* 20, No. 1 (2019). DOI: <http://dx.doi.org/10.22373/jid.v20i1.4648>.
- RI., Ketua Mahkamah Agung. "Perma RI. No. 1 Tahun 2016 Tentang Prosedur Mediasi Di Pengadilan." Jakarta, 2016. [https://bawas.mahkamahagung.go.id/bawas\\_doc/doc/perma\\_mediasi\\_pengadilan\\_web.pdf](https://bawas.mahkamahagung.go.id/bawas_doc/doc/perma_mediasi_pengadilan_web.pdf).
- Sbarra, David A. and Robert E. Emery, "In the Presence of Grief: The Role of Cognitive-Emotional Adaptation in Contemporary Divorce Mediation." *Handbook of Divorce and Relationship Dissolution*, Taylor and Francis, 2013. <https://doi.org/10.4324/9781315820880-40>.
- Schepard, Andrew, "An Introduction to the Model Standards of Practice for Family and Divorce Mediation." *Family Law Quarterly* 35, No. 1 (2001).
- Shaw, Lori Anne, "Divorce Mediation Outcome Research: A Meta-Analysis." *Conflict Resolution Quarterly* 27, No. 4 (2010). <https://doi.org/10.1002/crq.20006>.
- Silver, Robert B. and Deborah C. Silver, "Practice Note: Divorce Mediation with Challenging Parents," *Conflict Resolution Quarterly* 25, (2008). <https://doi.org/10.1002/crq.220>.
- Taylor, Raymond J., "Use of Change Theory in the Context of the Divorce Mediation Session." *Journal of Divorce and Remarriage* 40, no. 1 (2004). [https://doi.org/10.1300/J087v40n01\\_06](https://doi.org/10.1300/J087v40n01_06).
- Twaite, James A. "Divorce Mediation: Promises, Criticisms, Achievements, and Current Challenges." *Journal of Psychiatry and Law* 26, No. 3 (1998). <https://doi.org/10.1177/009318539802600304>.
- Weaver, Jennifer M. and Thomas J. Schofield, "Mediation and Moderation of Divorce Effects on Children's Behavior Problems." *Journal of Family Psychology* 29, No. 1 (2015). <https://doi.org/10.1037/fam0000043>.
- Worley, Susan, "The Effect of Cooperation on Egocentrism in Divorce Mediation: A Simulation Study." *Journal of Divorce* (2008). <https://doi.org/10.4324/9781315860077>.
- Yunus, Abd Rahim, "The Acculturation of Islam and Local Culture in Bugis Wedding Tradition: A Historical Perspective," International Conference on Global Education V, Padang, 2017.

### Internet Data

- Chairman of the Parepare Religious Court, "*Annual Report of the Parepare Religious Court*" (Parepare City, 2020), <http://pa-parepare.go.id/home/leport-tahunan/>.
- Chairman of the Sidenreng Rappang Religious Court, "*Annual Report of the Sidenreng Rappang Religious Court*" (Pangkajene City, 2020), <http://pa-sidenrengrappang.go.id/>.
- Chairman of the Pinrang Religious Court, "*Annual Report of the Pinrang Religious Court*" (Pinrang City, 2020), <http://pa-pinrang.go.id/index.php?limitstart=27>.
- Chairman of the Enrekang Religious Court, "*Annual Report of the Enrekang Religious Court*" (Enrekang City, 2020), <https://www.pa-enrekang.com/index.php/transparant/sekretariat/perplan/lentuk-tahunan>.
- Chairperson of the Polewali Mandar Religious Court, "*Annual Report of the Polewali Mandar Religious Court*" (Polewali City, 2020), <http://pa-polewali.net/index.php/info-peradilan/program-kerja-k> Activity/Report-tahunan.
- Chairman of the Majene Religious Court, "*Annual Report of the Majene Religious Court*" (Majene City, 2020), <https://pa-majene.go.id/informasi-umum/leport-tahunan>.
- Chairman of the Supreme Court of the Republic of Indonesia., "*Perma RI. No. 1 of 2016 concerning Mediation Procedures in Courts*" (Jakarta, 2016), [https://bawas.mahkamahagung.go.id/bawas\\_doc/doc/perma\\_mediasi\\_pengadilan\\_web.pdf](https://bawas.mahkamahagung.go.id/bawas_doc/doc/perma_mediasi_pengadilan_web.pdf).