

Electronic Mediation in Divorce Cases at the Religious Court of Probolinggo City from the Perspective of Maqasid Al-Syariah

Alvan Fathony¹, Ummu Hani Auliah²

^{1,2}Universitas Nurul Jadid, Indonesia

Correspondence Email: guzithonk@gmail.com

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Abstract: *Maintaining harmony within the marital environment is essential for the stability of any household. However, over time, various challenges may arise that can lead to divorce. This study aims to examine the strategies employed in electronic mediation for divorce cases at the Probolinggo City Religious Court, with particular attention to the implementation of PERMA No. 1 of 2016, and to analyze these practices from the perspective of Maqāṣid Al-Shari‘ah. Employing a qualitative research method, this study was conducted at the Probolinggo City Religious Court, where electronic mediation has been implemented either fully or partially online, in accordance with Article 6(2) of PERMA No. 1 of 2016, prior to the issuance of PERMA No. 3 of 2022. The findings reveal that the success of electronic mediation heavily relies on the active participation and cooperation of the involved parties. Legally, the study identifies a need for more detailed regulations to standardize mediation procedures. Socially, while access to justice has improved, challenges remain due to low public trust. Institutionally, enhancing mediators' competencies and upgrading technological infrastructure are imperative. Electronic mediation increases the efficiency of Islamic justice; however, clear legal provisions are necessary to ensure its validity. Although this method offers flexibility, it may diminish the emotional dimension crucial to reconciliation. Psychologically, it reduces the pressure on parties but may impair effective communication. Therefore, the implementation of electronic mediation must balance legal, social, and psychological considerations. Full commitment from all parties is essential to avoid negative outcomes. The mediators' role as facilitators and intermediaries not decision-makers requires strong collaboration to achieve the desired resolutions. Furthermore, the principles of Maqāṣid Al-Shari‘ah align with contemporary practices, emphasizing community welfare and solutions that conform to Sharia values.*

Keywords: *Divorce Cases, Electronic Mediation, Maqāṣid Al-Shari‘ah, Religious Court*

Abstrak: *Menjaga keharmonisan dalam lingkungan rumah tangga sangat penting untuk kestabilan sebuah keluarga. Namun, seiring waktu, berbagai tantangan dapat muncul yang berpotensi menyebabkan perceraian. Penelitian ini bertujuan untuk mengkaji strategi yang diterapkan dalam mediasi elektronik pada perkara perceraian di Pengadilan Agama Kota Probolinggo, dengan perhatian khusus pada*

pelaksanaan PERMA No. 1 Tahun 2016, serta menganalisis praktik tersebut dari perspektif Maqāṣid Al-Shari‘ah. Penelitian ini menggunakan metode kualitatif dan dilakukan di Pengadilan Agama Kota Probolinggo, di mana mediasi elektronik telah dilaksanakan secara penuh atau sebagian secara online, sesuai dengan Pasal 6 ayat (2) PERMA No. 1 Tahun 2016, sebelum diterbitkannya PERMA No. 3 Tahun 2022. Temuan penelitian menunjukkan bahwa keberhasilan mediasi elektronik sangat bergantung pada partisipasi aktif dan kerja sama dari pihak-pihak yang terlibat. Secara hukum, penelitian ini mengidentifikasi kebutuhan akan regulasi yang lebih rinci untuk menstandarisasi prosedur mediasi. Secara sosial, meskipun akses terhadap keadilan meningkat, tantangan masih ada akibat rendahnya kepercayaan masyarakat. Secara kelembagaan, peningkatan kompetensi mediator dan pembaruan infrastruktur teknologi menjadi hal yang sangat penting. Mediasi elektronik meningkatkan efisiensi peradilan Islam; namun, ketentuan hukum yang jelas diperlukan untuk menjamin keabsahannya. Meskipun metode ini menawarkan fleksibilitas, hal tersebut dapat mengurangi dimensi emosional yang penting dalam proses rekonsiliasi. Secara psikologis, mediasi elektronik mengurangi tekanan pada pihak-pihak yang berperkara, tetapi dapat menghambat komunikasi yang efektif. Oleh karena itu, pelaksanaan mediasi elektronik harus dapat menyeimbangkan pertimbangan hukum, sosial, dan psikologis. Komitmen penuh dari semua pihak sangat diperlukan untuk menghindari hasil yang negatif. Peran mediator sebagai fasilitator dan perantara bukan sebagai pengambil keputusan memerlukan kolaborasi yang kuat untuk mencapai resolusi yang diinginkan. Lebih jauh, prinsip-prinsip Maqāṣid Al-Shari‘ah selaras dengan praktik kontemporer yang menekankan kesejahteraan masyarakat dan solusi yang sesuai dengan nilai-nilai syariah..

Kata Kunci: Perkara Perceraian, Mediasi Elektronik, Maqāṣid Al-Shari‘ah, Pengadilan Agama

Introduction

Marriage is one of the fundamental institutions in human life that has a significant impact on individuals and society. In Indonesia, marriage is not only based on religious and cultural norms but also has a legal framework regulated by Law Number 1 of 1974 concerning Marriage. However, with the complexity of modern life, the divorce rate has significantly increased. The Supreme Court notes that many couples are having difficulty maintaining their marriages, making the divorce process a last resort. In this context, the mediation system in Islamic law and religious courts plays an important role in resolving household disputes peacefully before a divorce is officially decided.

Supreme Court Regulation of the Republic of Indonesia Number 1 of 2019 on Electronic Case Administration and Court Proceedings introduces the Ecourt and E-Litigation systems as an effort to enhance the effectiveness of the judicial process. However, despite the existence of provisions regarding the use of electronic mediation in the Supreme Court Regulation (PERMA) Number 1 of 2016, its implementation still faces various obstacles. This prompted the Supreme Court to issue PERMA Number 3

of 2022 to clarify the mechanisms and procedures for electronic mediation in divorce cases at the Religious Courts.

Although mediation is a mandatory stage before divorce proceedings can be further processed, the effectiveness of electronic mediation remains a topic of debate, including the lack of understanding and readiness of the parties involved in using technology for mediation, communication barriers, and the limitations of interaction in electronic mediation compared to face-to-face mediation, as well as the suboptimal use of technology in supporting psychological and emotional aspects in the mediation process.

Several previous studies have discussed mediation in divorce cases at the Religious Courts, but they are still limited in the aspect of conventional mediation implementation. The study by Anjani & Setiadi (2023) highlights the implementation of Ecourt and E-Litigasi in the Indonesian judicial system, but does not specifically discuss electronic mediation. Another study by Hidayati, Afsari, & Andini (2019) found that the implementation of PERMA Number 1 of 2016 did not provide sufficient detailed guidance on effective electronic mediation procedures. The novelty of this research lies in the focus of the analysis on the implementation of PERMA Number 3 of 2022 and how the regulation addresses the challenges in the implementation of electronic mediation in Religious Courts. This research will explore the extent to which the effectiveness of electronic mediation can be applied in divorce cases and the factors that influence its success. (Asfahani, 2023)

Life in the marital environment of each couple must be able to maintain the harmony of the household relationship that is formed. A successful marriage is a marriage that is able to form a happy household, so a strong foundation of marriage is needed based on the principles of Islamic law that have been established. Having a strong foundation of marriage, will the formation of a family full of peace, unity, and affection, in accordance with the concept of sakki'na mawaddah warahmah. An ideal marriage is the dream of every couple. (Jiwantara, Hasanah, & Lukman, 2023)

The government also tried to form regulations to protect the authority of marriage. This has been regulated in article 1 of Law Number 1 of 1974 concerning Marriage, as follows:

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

The definition above shows that a marriage will involve a physical and spiritual bond between husband and wife. The physical bond here refers to the rights and obligations carried out by the husband in household life which includes material responsibilities and real actions carried out in daily life such as providing for the family's needs and supporting the partner in life together, while the spiritual bond refers to feelings of love and affection that contribute to happiness, and peace in the household which includes emotional aspects, such as love, affection, understanding and healthy communication between husband and wife.

Over time, many problems occur in building a household, such as unhappy couples and difficulty in realizing marriage with various life problems, causing marriage to not have a positive impact on family life and safety. In fact, under certain conditions, marriage is no longer considered a valuable worship, which can ultimately lead to divorce by the husband to the wife (divorce talak) or the wife to the husband (divorce gugat). Divorce is an act that must be avoided, although in Islam it is permissible to divorce, it is highly recommended that husband and wife do not immediately end their marriage. (Supreme Court of the Republic of Indonesia, 2022)

Divorce in Islam has certain procedures and conditions that must be met. One of them is through the Religious Court, in accordance with Article 39 paragraph (1) in conjunction with Article 115 of the KHI, which states that:

"Divorce can only be carried out before a court hearing after the relevant court has tried and failed to reconcile the two parties."

Law Number 3 of 2006 concerning Religious Courts also mentions the duties and authorities, as stated in Article 49:

"Religious courts have the duty and authority to examine, decide, and resolve civil cases in the fields of marriage; inheritance; wills; grants; endowments; zakat; infaq; shadaqah; and sharia economics."

Before the divorce is legalized in the Religious Court, there are many processes that must be carried out. With the many processes of resolving cases/disputes, cases often pile up which results in slowness, wasting time and expensive costs. Departing from these problems, the Supreme Court made Regulation Number 1 of 2019 concerning Electronic Administration of Cases and Trials in Court as a form of service to the public in terms of the process of registering cases and holding court online. The use of information technology in the electronic case administration system known as the Ecourt system and the electronic court proceeding system is known as the E-Litigation system. (Anjani & Setiadi, 2023)

A series of processes included in PERMA No. 1 of 2019, namely lawsuits/applications/objections/rebuttals/resistances/interventions, receipt of payments, delivery of summons/notifications, answers, replies, duplicates, conclusions, receipt of legal remedies, as well as management, delivery and storage of civil/civil religious/military administrative/state administrative case documents. Before conducting a case examination in Court, especially Religious Courts in divorce cases, plaintiffs and defendants are required to conduct mediation. However, in this case PERMA No. 1 2019 does not discuss and mention the use of electronic mediation as it should be in the use of Ecourt and E-Litigation. This shows that the regulation has not comprehensively accommodated aspects of mediation carried out electronically in electronic legal processes. In fact, Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2016 has explained a glimpse of the use of online mediation, which shows that online mediation is in accordance with applicable provisions, does not violate norms and is regulated in several articles.

In PERMA No. 1 of 2016, Article 5 paragraph (3), it states that:

“Mediation meetings can be conducted via long-distance audio-visual communication media that allows all parties to see and hear each other directly and participate in the meeting.”

In PERMA No. 1 of 2016 Article 6 paragraph (2), it states that:

“The presence of the Parties through long-distance audio-visual communication as referred to in Article 5 paragraph (3) is considered as direct presence.”

Supreme Court Regulation No. 1 of 2016 states that the use of long-distance audio-visual mediation, better known as online mediation or electronic mediation, is one of the focuses that is in line with the principles of justice, namely simple, fast and low cost. Along with various problems that previously in PERMA Number 1 of 2016 only mentioned the permissibility of mediation using remote audio visuals without providing more detailed guidance on the process and procedures of electronic mediation, resulting in the implementation of online mediation in various courts often differing in terms of procedures and practices. So starting from this problem, the Supreme Court responded and issued PERMA No. 3 of 2022 which discusses in more detail the process and procedures and limitations of electronic mediation. This step was taken by the Supreme Court in issuing the PERMA as a response to the urgent legal and social needs to regulate electronic/online mediation in more detail so as to avoid ambiguity or differences in practice in the implementation of online mediation that could hinder the process. (Hamzah, Hasmulyadi, & Amirullah, 2022)

The implementation of online mediation is generally different from face-to-face mediation, especially in the use of technology. The use of technology in question is not limited to the use of e-mail to conduct discussions because face-to-face mediators can also use e-mail in the dispute resolution process. In Online Mediation, the mediator provides a communication tool that can connect e-mail with other communication tools, such as online chat, video conferencing, facsimile, and telephone. (Putra, Hasan, & Makkawaru, 2023)

A number of courts have attempted to implement the Regulation of the Supreme Court of the Republic of Indonesia Number 3 of 2022 to improve the quality of simple, fast and low-cost justice. One example of a court that has active in implementing the Regulation is the Probolinggo City State Religious Court, which has conducted online mediation for 2 (two) divorce cases as part of their efforts. However, the Regulation only regulates the procedures and methods of online mediation without providing specific guidance on strategies for implementing online mediation. This causes each court to use different strategies, which ultimately reduces the effectiveness of online mediation. (Hidayati Afsari & Andini, 2019)

The use of mediation in divorce is important because the breakdown of a divorce relationship not only affects both parties (husband and wife) but also involves children, family and joint property. As stipulated in Article 130 HIR and/or Article 154 Rbg, mediation is a step to practically interpret the embodiment of the provisions of the

judge's obligation to reconcile the disputing parties. The policy of the Supreme Court of the Republic of Indonesia to implement mediation in the court process is expected to expand access for the parties to obtain a sense of justice. (Sartika, Sultan, & Fatmawati, 2023)

The basic principle in mediation is to reach a solution that is beneficial to all parties in dispute, so that both parties feel treated fairly without anyone losing or feeling defeated. When both parties have the same commitment to resolving the dispute well and understand everything offered by the other party including the mediator as a mediator, the mediation process can produce an optimal solution. A mediator is not only obliged to determine an effective resolution strategy and structure but also to resolve it with full attention and in accordance with the main principles of Islam which prioritize the values of justice, brotherhood and peace, so that the decisions and agreements taken do not conflict with religious values to achieve a fair solution in accordance with the teachings of Islam. (Hanif & Ulya, 2023)

Basically the purpose of the existence of Sharia is to achieve the benefit of Muslims, both in this world and in the hereafter. This is reflected through the laws contained in the Al-Quran and Hadith, where many legal provisions are formulated with the aim of bringing benefits to the people, both in creating good and avoiding damage. The principle is one of the origins of Maqasid Al-Syariah, which is a guide in ijтиhad to create sharia law that is relevant to the conditions of modern society. (Izzah & Pradikta, 2022)

Maqasid Al-Syariah emphasizes that the main objective of Islamic law is to maintain the validity of every rule imposed on humans and to create sustainable welfare, not only for the present but also for the future. Therefore, in determining sharia law, it is important to ensure that it is in accordance with Maqasid Al-Syariah in order to create a broad understanding among Islamic legal experts. Maqasid Al-Syariah is closely related to the theory of Imam Al-Syatibi who is known as the first pioneer and the founder of the science of Maqashid Syariah. Although the concept of Maqasid Al-Syariah existed before Imam Al-Syatibi, but more precisely Imam Al-Syatibi was the first to systematically compile it in his book, Al-Muwafaqat. Therefore, this study develop a strategy for implementing electronic mediation that is more effective and in accordance with principles that prioritize moral aspects and the benefit of the people (Maqasid Al-Syariah) based on the development of Jasser Auda's thoughts from Imam Al-Syatibi in the Book of Al-Muwafaqah.

Method

This research uses qualitative research methods with a normative and juridical approach. The normative approach emphasizes the study of applicable legal rules, while the juridical approach refers to the legal analysis of a phenomenon. Thus, this research aims to understand a legal event based on existing regulations and relate it to field practices. The research location was at the Probolinggo City Religious Court, where

direct observation of the research object was conducted to obtain more comprehensive data.

In this research, the data sources consist of primary data and secondary data. Primary data is obtained directly from observations at the Probolinggo City Religious Court, including interactions and legal processes occurring within it. In addition, primary sources also include legislation relevant to the research. Meanwhile, secondary data comes from various legal literature, such as books, scientific journals, court decisions, and academic documents that support the analysis of the legal phenomena being studied. (Bastomi & Paramita, 2021) Data collection techniques were carried out through literature study, direct observation, and documentation. Library research is used to examine legislation, court decisions, and various relevant academic sources. In addition, direct observation was conducted to understand how legal norms are applied in practice at the Probolinggo City Religious Court. Documentation techniques were also used to collect various official documents related to the research object to strengthen the analysis conducted.

The data obtained were analyzed qualitatively descriptively, with stages including data reduction, data presentation, and conclusion drawing. In the data reduction stage, the collected information is selected and focused on aspects relevant to the research. Next, the selected data is organized in narrative form to make it easier to understand. Finally, the conclusion is drawn by interpreting the data based on normative and juridical approaches, so that this research can provide a deep understanding of the legal phenomenon being studied and its normative implications.

Results and Discussion

Electronic Mediation Strategy in State Religious Courts

In deciding a divorce case, there are many processes that are carried out, one of which is mediation. Mediation is a mandatory thing to do, if one of the parties or the parties do not have good intentions such as not being present after being summoned or not attending the next mediation meeting, the lawsuit cannot be accepted by the Case Examining Judge. Then by carrying out indirect mediation which means postponing the divorce. The State Religious Court implements the principles of justice, namely simple, fast and low cost one of them is by conducting electronic mediation. The implementation of electronic mediation itself refers to PERMA Number 1 of 2016 article 5 paragraph (3) before further explanation regarding Electronic Mediation in PERMA Number 3 of 2022, this is in accordance with the jargon of the State Religious Court "KEREN" namely Creative, Effective, Responsive, Energetic, Neutral, No Corruption, No Gratification which means that the State Religious Court has generally succeeded in maximizing technology in an effective manner. (PutraAdi, 2022)

Mediation has long been known as a process for resolving civil disputes in the court environment, this has been regulated in article 130 HIR in conjunction with article 154 Rbg in conjunction with article 31 RV and several regulations, namely in the Circular of the Supreme Court of the Republic of Indonesia Number 1 of 2002 concerning Empowerment of Peace Institutions (SEMA No. 1/2002); Regulation of the

Supreme Court of the Republic of Indonesia Number 2 of 2003 concerning Mediation Procedures in Court (PERMA No. 2/2003); Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2008 concerning Mediation Procedures in Court (PERMA No. 1/2008); and Law of the Republic of Indonesia Number 30 of 1999 concerning Alternative Dispute Resolution (Law No. 30/1999). The legal basis for implementing mediation that is currently still in effect is PERMA No. 1/2016. PERMA No. 1/2016 which replaces and improves PERMA Number 1 of 2008. (Rizqi, 2022)

The significant difference between PERMA Number 1 of 2008 and PERMA Number 1 of 2016 is in Article 5 paragraph (3) and Article 6 paragraph (2) which in essence state that the parties must be present in person or with remote audio visual, so in the sense that Mediation is the most important part that cannot be separated even though the parties cannot be present in person in the civil dispute resolution process in Court.

Electronic mediation is still relatively new so that its implementation is still only in certain cases such as divorce cases. The urgency in implementing electronic mediation at the Probolinggo City State Religious Court is still done voluntarily or implemented by agreement of both parties, so in this case if one party does not agree to use electronic mediation then the mediation uses a face-to-face method. The Supreme Court and the courts are aware that there are many things that make this online mediation urgent and must be implemented, such as one example in the case at the Probolinggo City State Religious Court, the parties could not carry out the mediation stages because one party was in detention due to a law. In this case the implementation of mediation is delayed while according to Law Number 16 of 2016 Article 22 paragraph 1 it is stated that if mediation is not carried out or attended at the first meeting or subsequent meetings it will result in the rejection of the lawsuit or being declared unacceptable by the Case Examining Judge and the plaintiff is required to pay mediation fees. Therefore, the implementation of electronic mediation is an urgency to overcome situations like this and the mediator ensures that the mediation process can run smoothly even in special conditions. (Simatupang, Siregar, & Harahap, 2023)

The involvement of the mediator plays an important role in guiding the parties from the early stages of the settlement of the case. Before starting electronic mediation, the parties will go through a pre-mediation process to discuss agreements related to the implementation of electronic mediation. This stage provides an opportunity for the parties to align their goals and complete the requirements for the electronic mediation to be held. In the implementation of electronic pre-mediation, supporting devices are needed so that the mediation can run smoothly and does not have the potential for bias towards one of the parties in accordance with the code of ethics and guidelines for the behavior of judges so that such matters must be regulated to align and facilitate the electronic mediation process. However, in PERMA Number 3 of 2022 which regulates the process and procedures for electronic mediation, there is no mention of any rules that specifically require requires the use of a specific application or platform determined by the Supreme Court, such as in the implementation of E-Court which has

a special trial platform. So in this case the mediator can submit or propose the use of an application or platform that will be used in the implementation of electronic mediation. Then the parties can fill out a form containing information about the electronic tools to be used and determine the time for the implementation of mediation. The decision in selecting the application and determining the time must consider aspects of effectiveness, efficiency, and ease of use so that the mediation process can run well and meet the needs of all parties involved without violating the previously agreed time. After completing the pre-mediation stage, the mediator and the parties will enter the mediation process stage which is the next step in the case resolution process. At this stage, the mediator will actively try to reach an agreement between the parties involved. (SUTIYOSO, 2023)

The mediator will provide convenience in exchanging views, arguments, and proposed solutions in order to reach a settlement that is acceptable to all parties. In every implementation of electronic mediation, the parties get many conveniences in resolving the case. One of the advantages is the freedom to choose the mediation platform and location that best suits the needs and convenience of the parties. This choice provides flexibility that facilitates the process and provides a more efficient and effective case resolution experience for all parties involved. However, in reality, the public is less interested or enthusiastic in using electronic mediation. The lack of interest in electronic mediation is partly due to the lack of solemnity in each mediation process. This shows that some parties feel uncomfortable or imperfect in the involvement and implementation of electronic mediation, thus affecting the level of interest or enthusiasm of the parties towards this case resolution method. (Lidinillah & Aufa, 2023)

The lack of interest in electronic mediation can be seen in PERMA No. 1 of 2016, an article that discusses mediation using audio visuals, but in fact it has only been implemented in the last 3 years after the issuance of PERMA No. 3 of 2022 concerning procedures for electronic mediation. One of the reasons for the issuance of PERMA No. 3 of 2022 is the backlog of cases due to the implementation of restrictions on community activities so that mediation cannot run normally.

Although electronic mediation is faced with obstacles such as lack of solemnity and other general problems in the implementation of electronic mediation, in accordance with the provisions contained in Law No. 1 of 2016 concerning the Mediation Process in Court, the mediator plays an important role as an intermediary who has a fundamental responsibility to guide the parties in finding a solution or way out of the conflict faced. This means that the success of this electronic mediation is very dependent on the policies and strategies implemented by the mediator in organizing dispute resolution. In addition, the mediator also invites the parties to actively participate, because mediation is not only the responsibility of the mediator. Although the mediator has a significant role in reaching an agreement, the success of mediation is very dependent on the participation and cooperation of the parties involved. The mediator functions as a facilitator and mediator, but the core of the main role of

mediation lies in the contribution and commitment of the parties who have interest in resolving the case. Thus, good collaboration between the mediator and the parties is the main key to achieving the desired solution. (Zaidah & Normas, 2022)

The electronic mediation process begins with the submission of an application by one party to the designated mediation institution or platform. After the application is received, the organizing party will review the eligibility of the dispute to be resolved through electronic mediation. If they meet the criteria, the parties will be granted access to a secure and reliable online mediation platform. After the parties agree to continue mediation, the next step is the appointment of a mediator with expertise in the relevant field. The mediator's role is to facilitate the discussion and help the parties find a fair solution that is acceptable to all. All communication is conducted virtually, whether through online meetings (video conferences), chat rooms, or the exchange of electronic documents.

In the electronic mediation process, the mediator will guide the discussion in a neutral and objective manner. The parties are given the opportunity to present arguments, submit evidence, and express their hopes and desires in resolving the dispute. If necessary, the mediator can also hold separate sessions with each party to clarify their positions and find common ground that allows for an agreement. After going through the negotiation and deliberation stages, if the parties successfully reach an agreement, the mediation results will be documented in an agreement document that has legal force. This document can be signed electronically in accordance with applicable regulations, thus having the same legitimacy as an agreement made in a face-to-face meeting. However, if mediation does not result in an agreement, the parties may choose to continue resolving the dispute through other legal avenues, such as arbitration or court.

In reality, mediators often face various challenges and complex situations that can be obstacles in carrying out their duties. These challenges involve a number of complex aspects, require in-depth understanding, and often require creative solutions to overcome the difficulties that arise. The implementation of mediation at the Probolinggo City State Religious Court was not entirely successful, but in this case the Probolinggo City State Religious Court has tried to apply strategic concepts in electronic mediation so that mediation runs smoothly. So in this case the author conducted a study by directly interviewing the judges and mediators of the Probolinggo City State Religious Court which aims to find out how efforts are made to apply the concept of electronic mediation strategy so that electronic mediation runs smoothly and achieves mediation goals, with the following method efforts:

Creating trust in the mediator

Electronic mediation has brought various advantages in dispute resolution efforts but it is not without its drawbacks that need to be considered. One of the drawbacks in electronic mediation is the lack of trust in the mediator. Distrust arises due to The entire mediation process is carried out electronically so that the parties assume that they are worried that the mediator will tend to lean towards one party. So

to overcome the lack of trust in the electronic mediation process, the mediator must build trust evenly with all parties involved in the dispute so that the parties are free to tell the main problem and other related matters. In this phase, the mediator must be able to feel what the parties are experiencing by empathizing. This empathy can be shown through facial expressions, tone of voice and choice of words used. This is an important aspect in the success of the mediation process, because the parties who are mediating feel appreciated and cared for so that it will foster trust in the mediator, which will ultimately help reach a better agreement.

The empathy shown by the mediator must be done naturally and not excessively so as not to appear to be just pretending. The mediator must try to remain neutral and impartial when showing empathy to the parties in the case. In this process, the mediator still needs to ask relevant questions to understand the problem that occurs. The mediator must also encourage the parties to more actively tell in detail the background of the dispute. The mediator can also provide a clear understanding to the parties to the case about the benefits and advantages of resolving disputes through electronic mediation, as well as the risks and losses that may arise if the dispute is not resolved. The delivery of this information has a very important purpose, namely to encourage the parties to be seriously involved and make serious efforts in the electronic mediation process. It is important to remember that the initial response from the plaintiff and defendant has a significant impact on the direction and strategy that will be taken by the mediator in the next stage of mediation.

Positive language choices

Basically, electronic mediation is a process that has very different characteristics compared to trials, where trials tend to prioritize the use of firm and clear language. However, in carrying out mediation, the choice of language used must be a subtle language, especially when the parties agree to conduct mediation through an electronic platform with limited communication that only uses voice without involving facial expressions. This can be more difficult in understand and resolve conflicts effectively, because nonverbal communication such as eye contact, facial expressions, gestures and proximity are very much needed and can provide important additional information in communication. So in this situation, choosing a language and tone that is smooth, positive, but still clear and understandable to all parties is very important. This is because the accuracy in choosing the wrong language and tone, even the slightest, can have a big impact on the mediation atmosphere, especially when the parties are in an emotional state. (Made Emay Andayani Citra, 2021)

As in the example of a case carried out through electronic mediation by the Probolinggo City State Religious Court with one of the Religious Courts in Lampung Province, there will potentially be differences in communication styles due to different tones and accents due to the large geographical distance between the two locations. Therefore, the mediator's task in choosing language and intonation is very important. The mediator must act as a mediator who is able to choose clear and straightforward words and language, with the aim of calming the atmosphere and creating a conducive

environment for each party and it is also advisable to use humorous comments, which can help reduce tension in mediation situation. The goal of this approach is that when emotions have subsided and the parties are willing to talk without excessive pressure, the psychological barriers in the dialogue process can be overcome.

Focus on the things being done

The role of a mediator is not only limited to efforts to lighten the atmosphere to make it more comfortable and conducive. The mediator also has various other important responsibilities that must be carried out during the mediation process. In carrying out their duties, the mediator must pay attention to a number of crucial aspects. One important aspect that must be mastered by a mediator is the skill in offering various alternative dispute resolutions. The mediator must be able to guide and invite the disputing parties to see the problem from various different perspectives, including discussing the dispute from a legal perspective with the aim that each party understands each other's strengths and weaknesses.

From there, rationality arises which will help the dispute resolution process. In discussing the problem from a general perspective, the mediator understands that each party involved in the dispute must have different interests and desires. Not infrequently, these parties demand that their desires be fulfilled absolutely by the other party, without considering compromise. This situation can cause a deadlock in dispute resolution. Therefore, the mediator must have the ability to invite the disputing parties to see the problem from various different perspectives. In this way, the parties can better understand the situation from a broader perspective and not only focus on their own views. The mediator must also encourage the parties to focus on positive possibilities.

In the process of offering various alternative dispute resolutions, the Mediator is not allowed to express opinions or take a stance as is usually done by a judge by determining what is right and what is wrong, measuring the strength or weakness of the evidence presented, or guessing who will win and lose if the dispute continues to the trial stage. Instead, the role of the mediator is to act as a neutral party and try to find a middle solution that is acceptable to all parties involved in the dispute. When the mediator encourages the disputing parties to play an active role, the parties will have a deeper understanding of the legal concepts underlying their case. The parties will also better understand each other's legal position. This will greatly help the parties to better evaluate the situation and make wise decisions, as well as help the parties in making more appropriate decisions in the dispute resolution process. With the hope that the result of this mediation process is a settlement that is acceptable to all parties involved. However, if the parties find it difficult to determine an agreement or common opinion because no one is willing to give in, the mediator is allowed to invite community leaders or traditional leaders or religious leaders who have an important role in regulating community life who are heard and respected by both parties to help resolve the dispute that arises, but the mediator still tries to reach an agreement without interference from a third party. (Ningtyas, 2021)

Review of Maqashid As-Syariah on electronic mediation of divorce cases at the Probolinggo City State Religious Court

The reality of married life is often accompanied by conflict as an unavoidable part of the relationship. These emotional dynamics can give rise to various dramatic situations or events that cause conflict between couples. This conflict can arise as a result of differences in views, needs, or expectations between husband and wife so that it can create deep conflict that ultimately has serious impacts including the difficult decision to end the marriage bond through divorce. When a husband or wife wants to end the marriage, the first step that must be taken is to carry out the divorce process before a District Court or Religious Court in accordance with Law No. 1 of 1974 Article 39 Paragraph 1 concerning divorce in Court. (Ardiansyah & Nurjannah, 2022)

The Religious Court has the authority to handle divorce cases filed by a husband or wife. A husband or wife who files for divorce is not immediately granted by the Court. Divorce is only permitted if there are strong reasons that prevent the husband and wife from living in harmony as a married couple. However, by first holding a deliberation. Deliberation and mediation have the same goal of maintaining equality of rights and obligations and upholding justice. The main difference between mediation lies in a mediator or third party as a neutral mediator. The mediator has a responsibility to avoid perceptions of injustice that can trigger conflict, such as the inability to think objectively and focus on resolution. Mediation and deliberation are both important because they are both ways to resolve problems, and can help to reach a fair agreement and avoid greater conflict and improve relations between fellow Muslims.

Through deliberation or mediation, the parties are encouraged to view divorce as the last option taken after deliberation and conflict resolution efforts are deemed unsuccessful. because when a husband or wife decides to end a marriage, the decision has a significant impact involving various aspects. This decision includes changes in rights and obligations that will affect both parties. In addition to changing the status of marriage and the dynamics of family relationships legally, this separation also has social implications that cannot be ignored. These social consequences create new dynamics in interactions with the surrounding community, which can ultimately affect the well-being of individuals and families involved in the divorce process.

Therefore, it is important to understand and evaluate all aspects of the consequences that arise, both legally and socially, when a couple decides to divorce. Thus, the divorce process in Islam is based on the principle of deliberation, peace efforts, and considering the harmony of the husband and wife relationship, thus emphasizing the importance of finding a solution that is full of consideration and wisdom. (Paryadi, 2021)

The court provides a convenient option for the parties involved in the settlement of the case by providing a mediation facility, where the parties are given the freedom to choose between face-to-face mediation or electronic mediation. The development of technology that also has an effect in the legal field has a major influence on the discovery or development of Islamic law and provides changes that were

previously conventional to digitalization. Electronic mediation is an alternative that can be chosen, and allows the parties to conduct mediation online through the chosen electronic communication platform or tool. Along with the development of technology, the rules, principles, and principles in the law, and creating a more adaptive to changing times. Technology in Islam must pay attention to all that is prohibited and what must be obeyed in Islamic teachings so that no mistakes occur where what is actually wrong becomes right and right becomes wrong. (Sunarsi, Yuherman, & Sumiyati, 2018)

One of the main impacts of electronic mediation is the increased accessibility and efficiency in the divorce process. In the conventional legal system, the mediation process often requires the physical presence of the parties at the court or a specific mediation location. This can be a hindrance for couples who have mobility limitations or are located far apart. With the presence of electronic mediation, couples undergoing divorce proceedings can participate in mediation sessions from a comfortable location without having to face greater emotional pressure due to direct meetings with the opposing party. This also reduces the risk of physical and emotional conflicts that could worsen the situation.

From a legal perspective, electronic mediation provides flexibility in conducting mediation procedures that are more adaptive to the times. The legislation governing mediation has provided space for technology to support the resolution of disputes efficiently and transparently. With the presence of electronic mediation, the principles of justice can still be upheld, where a neutral mediator continues to perform their function to ensure that the agreement reached is fair and does not harm either party. In addition, electronic mediation also allows for more systematic documentation, such as recordings of conversations and the results of agreements, which can be used as evidence in further processes if necessary.

From a psychological aspect, electronic mediation plays an important role in reducing the emotional pressure experienced by couples undergoing the divorce process. Physical presence in the mediation room can trigger excessive negative emotions, especially if the couple's relationship is already in a very tense state. In some cases, direct meetings can provoke verbal or physical violence, which actually worsens the situation. With electronic mediation, interactions can be conducted in a more controlled manner, thereby minimizing the possibility of larger conflicts. Additionally, couples can focus more on the substance of the issues that need to be resolved rather than getting caught up in unproductive emotional dynamics.

Another implication is the protection of children during the divorce process. Divorce often has a significant impact on a child's psychology, especially if they are directly involved in their parents' conflict. In the conventional mediation system, children sometimes attend mediation sessions, either directly or indirectly. The involvement of children in the divorce process can increase their emotional stress and cause prolonged trauma. With the presence of electronic mediation, children can be better protected from exposure to parental conflict, as communication can be

conducted without involving them in situations that could harm their mental and emotional development. Thus, electronic mediation can become a more child-friendly solution in resolving household conflicts.

In reality, the principles of Maqasid Al-Syariah are in line with the changing times that emphasize the benefits or importance of protecting community activities and providing solutions that are in line with Shariah values in the context of modern law. The application of Maqasid Al-Syariah in its level can change from time to time and is not static depending on the specific issues or problems faced, especially in divorce matters. So in order to achieve that goal, it is necessary to fulfill the basic elements that form the basis for the application of Islamic law. By paying attention to and applying these basic elements, it is expected can achieve the desired benefits especially in electronic mediation. The main elements in Maqasid Al-Syariah that are related to electronic mediation include taking care of the soul (hifdz al-nafs); taking care of descendants (hifdz an-nasl); keeping property (hifdz maal); preserving reason (hifz 'aql).

Protecting the Soul (hifdz al-nafs)

Every individual has a responsibility to maintain the safety of themselves and others, so that no action causes injury or even threatens the lives of fellow human beings. The concept of protecting the soul covers several aspects, including providing guarantees for the safety of life, maintaining the integrity of body parts, and ensuring that human honor and dignity are maintained. The Qur'an also encourages humanity to protect and preserve the soul. Islam encourages its followers to avoid all forms of harm that can threaten life, even though emotional nature is human nature. In certain cases, the State Religious Court has made every effort to prevent quarrels/conflicts in the work unit environment, but does not allow quarrels between principals. Violent behavior has serious impacts on victims, including psychological impacts such as depression, feelings of trauma, and feelings of being threatened. In addition, violence can also cause mental damage, physical injury, and even death to victims. The impact of violence on victims does not stop at the psychological level, but also has an impact on various aspects of daily life. For example, victims may have difficulty in carrying out daily activities, including their work. In addition, violence can also affect the victim's social relationships, such as maintaining relationships with family and friends. Health impacts are also a concern, as victims of violence may experience physical and mental health problems that require specialized care.

The existence of physical and mental violence means that a problem must be resolved immediately in accordance with the principle of "the safety of the people is the highest law" (salus populi suprema lex esto), then mediation Online is suitable for use and is very helpful for parties who, if they meet in person, may commit violence and even cause injury, especially when the relationship between the parties in dispute in a previous family dispute was not harmonious or they reacted negatively when they met in person, such as behaving violently.

Protecting Offspring (hifdz an-nasl)

The development of a child's soul and personality goes through various different stages during their growth period, the environment is what determines the child's growth. The family, school and community environments are environments that can shape a child's character. These three environments have an important role in the development of a child's character and personality. However, among the three environmental influences, the strongest influence comes from the family. Education and values given by the family are very dominant in shaping a child's personality.

In Islamic teachings it is stated that every child is born in a state of fitrah or purity. Parents as the first educators of children have an important role in determining the direction of their child's education and development. So in the family a harmonious relationship is needed between parents and children, because harmony in the household greatly affects the development and education of children. But in reality not all families have a harmonious relationship. An inharmonious relationship can cause various problems. As when parents decide to divorce.

Divorce not only affects the husband and wife, but also affects the social and family environment, especially their children. Basically, when carrying out the mediation process, it is confidential so that it can only be attended by the principal. However, in certain cases, with the approval of all the principals, the mediation process can be attended by other people, including children. So that on several occasions conventional mediation in the State Religious Court often includes their children who are still not capable/teenagers in the mediation process and other processes in court. According to article 1330 of the Civil Code, one of the criteria for incompetence is not being old enough or still a minor. This is also stated in article 1 paragraph (1) of Law No. 35 of 2014 concerning Child Protection, namely:

"A child is someone who is not yet 18 (eighteen) years old, including a child who is still in the womb."

Children who are not yet old enough should be protected and kept away from situations that confuse and burden them emotionally. Parents are allowed to use children as an excuse to reconsider the decision or to find the best solution for the good of the child. However, it is important to keep children protected from the legal process of divorce between both parents. The divorce process, which requires a lot of time and consideration to reach a resolution until the end, can have a major impact on children. Children's mental health can be affected because children participate in the divorce process of both parents. When children participate in the divorce process, fear will arise if their parents decide not to be together anymore. Feelings of fear arise because they are uncomfortable with the changes in their parents' relationship. Discomfort causes trauma and can have a deeper effect, affecting emotional stress that can have a negative impact on their development in the future. (Ari Wijaya & Shihab, 2022)

Children's participation in the court process can be minimized by parents choosing to conduct the divorce process electronically, such as using electronic mediation. Electronic mediation allows parents to communicate and resolve their

disputes calmly without having to be physically present in court and is flexible in arranging meeting times so that parents can still focus on taking care of their children without disturbed by the obligation to attend the mediation session. Thus the best interests of the child will be protected.

Safeguarding Wealth (hifdz maal)

The implementation of online law in the current digital era is an innovation that has emerged as a result of technological advances, allowing for the creation of a more efficient and low-cost justice system. This principle is very much in accordance with the principle of justice that prioritizes a simple, fast, and low-cost process. Online mediation is a real example of the implementation of the principle of justice, namely low cost. The benefits can be seen from the reduction in travel costs to court, because the parties can complete the mediation session from a place of their choice without having to be physically present. In addition to the reduction in travel costs, other costs such as the cost of mediator services if the mediator is a non-judge or non-court employee, the cost of summons services charged based on the agreement of the parties. As stated in article 10 of PERMA No. 1 of 2016 concerning Mediation Procedures in Court:

"Other costs outside the Mediator's service fees as referred to in Article 8 and the costs of summoning the Parties as referred to in referred to in Article 9 shall be charged to the Parties based on agreement.

This principle is in line with one of the objectives of Maqasid Syariah, namely hifdz maal which aims to maintain and protect assets from being wasted. Using electronic mediation means reducing unnecessary expenses because costs such as services and calls can be allocated to other more important needs. Therefore, it can be concluded that online mediation provides great benefits in efforts to protect assets (hifdz maal).

Maintaining reason (hifdz 'aql)

One of the advantages of humans compared to other creatures is having reason. In addition to being a dimension of thinking, reason also gives meaning to the nobility of humans. With reason, humans can distinguish between good and bad. One of the main objectives of Maqasid Syariah is to protect human reason. In order to achieve this goal, Islam emphasizes that the perfection of a person's life can only be achieved if reason is used in accordance with the Shari'a. Disputes and quarrels in a family will certainly cause great discomfort and stress. This can disrupt the well-being of the heart and mind, which greatly affects a person's mental and emotional condition. Therefore, maintaining peace and stability of mind is important. If the conflict between husband and wife is not immediately resolved in a way that right, there is a big possibility that the problem will develop into something more serious and complicated. So in this case to avoid and protect the mind so that it remains healthy and functions well, all things that can damage the health of the mind must be immediately removed. (Salamah, 2013)

Electronic mediation is the right solution in this situation. The disputing parties using electronic mediation can speed up the peace process of the problem. This is very helpful in reducing the mental disturbances and stress of the parties that may be experienced during the conflict. On the other hand, if the peace process is postponed or not implemented immediately, it will result in psychological disorders that make someone lose their ability to think logically and disrupt their emotional and spiritual balance.

Jasser Auda developed the concept of maqashid al-shariah with a more dynamic systems thinking approach compared to the traditional approach. He does not only adhere to the five basic objectives of Sharia as proposed by Al-Syatibi, but also expands them into a broader scope, including human rights, social justice, and public welfare. In the context of electronic mediation, the principles put forth by Jasser Auda are highly relevant. He emphasizes that Islamic law must evolve with the times and should not be understood rigidly. The electronic mediation introduced in PERMA No. 3 of 2022 is a form of legal system adaptation to the development of digital technology to enhance access to justice for the community. This is in line with Auda's idea that maqashid sharia must be understood within an open and interconnected system with social, economic, and technological aspects.

One of the main aspects of Jasser Auda's thought is that maqashid must be applied contextually, not just within the confines of legal texts. Electronic mediation reflects this principle because it aims to provide legal solutions that are faster, more efficient, and accessible to various layers of society. In the perspective of maqashid syariah, electronic mediation can be categorized as a means to achieve more substantial justice, as it provides ease in resolving disputes without having to go through a lengthy and exhausting court process. Moreover, the thinking system developed by Auda emphasizes the importance of the interconnection between various elements within a legal system. In this case, electronic mediation is part of a larger legal system aimed at achieving social justice. With the presence of technology-based mediation mechanisms, the dispute resolution process becomes more inclusive, especially for communities in remote areas or those with limitations in accessing courts physically. This is in line with the maqashid sharia in preserving the welfare of the community, as it provides more equitable legal solutions for all layers of society.

Jasser Auda also emphasized that maqashid must be able to address the challenges of the times and should not be understood narrowly. In the context of electronic mediation, the application of technology in dispute resolution can be viewed as a form of innovation that brings benefits to the wider community. By using digital technology, the community can save time and costs in resolving their legal issues, which aligns with the maqashid principle of preserving wealth (hifz al-mal). In addition, electronic mediation also helps preserve life (hifz al-nafs) by reducing the potential for prolonged conflicts that can arise from conventional trials. Auda's thinking also emphasizes the concept that Islamic law must be dynamic and responsive to the development of knowledge. In this case, electronic mediation is one example of

how the law can evolve by utilizing technology to create more efficient and just solutions. This approach shows that maqashid syariah is not merely a normative theory, but must be applied in actual legal practice to meet the needs of modern society.

Conclusion

Based on the results of the study analyzing Maqāṣid al-Shari‘ah in electronic mediation under PERMA No. 3 of 2022, several conclusions can be drawn. PERMA No. 3 of 2022 represents a significant advancement in providing a legal foundation for implementing electronic mediation in divorce cases at Religious Courts. However, the regulation has notable weaknesses, including the absence of clear and uniform procedural standards across courts, leading to inconsistent implementation nationwide. Furthermore, it lacks detailed technical provisions regarding platform use, data protection, and legal validation of mediation outcomes. The absence of specific guidelines on the mediator's role within digital platforms may undermine the mediation process's effectiveness. Additionally, low public trust persists, partly due to the limitations of nonverbal communication, which diminishes the emotional reconciliation crucial to resolving domestic disputes.

From the perspective of Maqāṣid al-Shari‘ah, electronic mediation aligns well with the principle of maslahah by expanding access to justice, enhancing cost efficiency, and offering greater flexibility to the parties involved. It supports the protection of life (hifz al-nafs) by reducing conflict escalation that might lead to violence and safeguards lineage (hifz al-naṣl) by shielding children from the psychological harm of direct court proceedings. Regarding property protection (hifz al-māl), this approach reduces litigation costs. Nevertheless, its success depends on the readiness of technological infrastructure and the mediator's ability to adapt communication styles consistent with Sharia principles.

To improve the effectiveness of electronic mediation within the regulatory framework, several concrete recommendations are proposed: enhancing PERMA No. 3 of 2022 by incorporating technical standards for platform security, data privacy, and documentation to ensure equivalency with conventional mediation; building mediators' capacity in digital technology and communication skills to maintain empathy and emotional reconciliation during mediation; establishing monitoring and evaluation systems across courts to ensure consistent implementation and identify challenges; conducting public and advocate outreach to increase awareness and trust in electronic mediation; and integrating Maqāṣid al-Shari‘ah principles throughout the mediation process by upholding justice, public welfare, and individual protection at every stage.

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