

## IMPLEMENTATION OF MEDIATION AS A MEANS OF PREVENTING DIVORCE (STUDY AT THE OFFICE OF RELIGIOUS AFFAIRS, IDI RAYEUK DISTRICT)

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### Abstrak

Perkawinan sebagai *misaqan galizan*, yaitu suatu perjanjian besar antara laki-laki dan perempuan untuk hidup bersama dengan landasan taqwa. Sehingga, dengan pernikahan, terciptalah kasih sayang di antara suami dan istri, kehidupan yang penuh kedamaian dan ketentraman. Keluarga merupakan pondasi awal dari bangunan masyarakat dan bangsa. Oleh karenanya, keselamatan dan kemurnian rumah tangga adalah faktor penentu bagi keselamatan dan kemurnian masyarakat serta sebagai penentu kekuatan, kekokohan, dan keselamatan dari bangunan negara. Konsekuensi logisnya apabila bangunan sebuah rumah tangga hancur, maka masyarakat dan negara bisa dipastikan ikut hancur pula, oleh karena itu penyelesaian melalui mediasi oleh Lembaga Adat *Gampong* sebagai upaya pencegahan perceraian perlu dilakukan. Penelitian ini menggunakan pendekatan penelitian lapangan yang menggunakan wawancara sebagai salah satu sumber data penelitian. Adapun hasil penelitian didapati bahwa faktor yang mempengaruhi jalannya mediasi oleh Lembaga Adat *Gampong* terhadap pencegahan perceraian di Kecamatan Idi Rayeuk adalah faktor sarana dan prasarana serta faktor tekak yang kuat dari pasangan suami istri dalam mempertahankan keutuhan rumah tangganya. Kemudian langkah yang dapat ditempuh oleh Lembaga Adat *Gampong* adalah menerima dan mempelajari pengaduan, memerintahkan perangkat desa atau kepala dusun untuk menyelidiki perkara dengan menghubungi para pihak yang bersangkutan, mengatur dan menetapkan waktu persidangan serta menyiapkan persidangan di balai desa, mengundang para sesepuh desa yang akan mendampingi kepala desa untuk memimpin persidangan, mengundang para pihak yang berselisih, para saksi untuk didengar keterangannya, membuka persidangan dan menawarkan perdamaian di antara kedua belah pihak, memeriksa perkara, mendengar keterangan saksi pendapat para sesepuh dan penghulu dan mempertimbangkan dan menetapkan keputusan berdasarkan kesepakatan kedua belah pihak.

**Kata Kunci:** Mediasi; Pencegahan; Perceraian.

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## Abstract

Marriage as a *galizān* mass, that is, a great covenant between a man and a woman to live together on the basis of *taqwa*. Thus, with marriage, affection is created between husband and wife, a life full of peace and tranquility. The family is the initial foundation of the building of society and the nation. Therefore, the safety and purity of the household is the determining factor for the safety and purity of society and as a determinant of the strength, sturdiness, and safety of state buildings. The logical consequence is that if the building of a household is destroyed, then the community and the state can be ensured to be destroyed as well, therefore a settlement through mediation by the *Gampong* Customary Institution as an effort to prevent divorce needs to be carried out. This research uses a field research approach that uses interviews as one of the sources of research data. The results of the study found that the factors that affect the course of mediation by the *Gampoeng* Customary Institution towards the prevention of divorce in *idi Rayeuk* District are factors of facilities and infrastructure as well as strong puzzle factors of married couples in maintaining the integrity of their households. Then the steps that can be taken by the *gampong* traditional institution are to receive and Study Complaints, order the Village Apparatus or hamlet head to investigate the case by contacting the parties concerned, arranging and setting the time for the trial and preparing the trial at the village hall, inviting village elders who will accompany the village head to preside over the trial, inviting the parties to the dispute, witnesses to be censured, open the trial and offer peace between the two sides, examine the case, hear the testimony of witnesses and elders and elders and consider and determine decisions based on the agreement of both parties.

**Keywords:** Mediation; Prevention; Divorce.

## INTRODUCTION

Marriage as a *mass ofzan*, that is, a great covenant between men and women to live together on the foundation of *taqwa*. Thus, with marriage, affection is created between husband and wife, a life full of peace and tranquility. Allah says in the Qur'an Ar-Rum (30): 21 which reads:

وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً  
 إِنَّ فِي ذَلِكَ لَآيَاتٍ لِقَوْمٍ يَتَفَكَّرُونَ ۝

Means:

“And among the signs of His dominion is that He created for you wives of your own kind, that you might be inclined and feel at peace with him, and made him among

you a sense of love and affection. Indeed, in such a one there are really signs for the thinking". (QS. Ar-Rum [30]: 21).

The main purpose of marriage is to obtain a happy life, tranquility (ةنيكس), love (ةدوم) and affection (ةمحر). Marriage is a meeting between a man and a woman, which then turns the concern between the two into peace or sakīnah which according to the Language of the Qur'an surah Ar-Rum (30):21. Sakinah is linguistically derived from the word sa-ka-na which means calm. Sakinah is also taken from the word sikkin which means knife. It is called a knife because it is a slaughter tool that makes the slaughtered animal will calm down.

The family is the initial foundation of the building of society and the nation. Therefore, the safety and purity of the household is the determining factor for the safety and purity of society and as a determinant of the strength, sturdiness, and safety of state buildings. The logical consequence is that if the building of a household is destroyed, then the community and the state can be ensured to be destroyed as well.<sup>1</sup>

Mediation is one of the dispute resolution processes that is considered faster and cheaper, and can provide the widest possible access to the parties to the dispute to obtain justice.<sup>2</sup> Mediation is a way of resolving disputes through a negotiating process to obtain agreement between the parties with the help of someone who has expertise in their field or better known as a mediator.<sup>3</sup> A mediator is a neutral party who helps the parties find various possible settlements without resorting to means of disconnecting or imposing a settlement.<sup>4</sup>

The way that can be offered through mediation is dispute resolution assisted by an impartial moderator and the process is confidential and the final result is the agreement of the parties. The mediation process begins with a lawsuit from the victim to the Shari'a Court, before the Shari'a Court decides the case. The Shari'a Court is required to reconcile the parties to the dispute with the mediation process with the moderator intermediary.<sup>5</sup> It is different for acehnese people in general, because the mediation process among the

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<sup>1</sup>Beni Ahmad Saebani Budi Abdullah, *Perkawinan dan Perceraian* (Bandung: Pustaka Setia, 2013).

<sup>2</sup>John. M. Echlos and Hasan Shadily, "Kamus Inggris Indonesia dan Indonesia Inggris" 8 (1996): 138.

<sup>3</sup>Nurmaningsih Amriani, *Mediasi Alternatif Penyelesaian Sengketa Perdata di Pengadilan* (Jakarta: Raja Grafindo Persada, 2012).

<sup>4</sup>Nurmaningsih Amriani, *Mediasi Alternatif Penyelesaian Sengketa Perdata di Pengadilan* (Jakarta: Raja Grafindo Persada, 2012).

<sup>5</sup>Nurmaningsih Amriani. *Mediasi Alternatif...*

acehnese people has been carried out more than a few years ago. Acehnese people argue that disputes should not be spread everywhere because they make the name of the village polluted. This is the background of the Acehnese people regarding mediation, so that the creation of harmony in the village is maintained. Not only the marriage problem was mediated by the Aceh Elder, but the problem of fighting, gambling, and inheritance was also mediated by the Aceh Elder.<sup>6</sup>

In the mediation process in Aceh, it begins with the report of neighbors or close family of the husband or wife who quarreled, immediately reporting to the *Gampong* Traditional Elders, after the Aceh Elders received reports from the reporting parties and then called the husband and wife, with the intention that the reports received by the *Gampong* Traditional Elders were true and not made with certain intentions. After that, the complainant and the perpetrator were brought together in one place. They were told to explain the real incident and as mediators the Traditional Elders of *Gampong* and kua officers (Penghulu) would enlighten the problems of the two.

The troubled husband and wife will tell in detail the problems that have experienced, as well as other problems that occur in the family. After the problem was clearly explained by the husband and wife, the *Gampong* Traditional Elders and KUA Officers (Penghulu) who became the mediators found solutions and offered. Quarrels in the family are the beginning of the creation of a harmonious family, because by quarreling, disputes in the family can be resolved on the condition that they do not commit violence. Expressing each other's grievances between husband and wife makes for a family that is open, caring, and respectful of each other.

The reason that has become very common in perpetrators of divorce lawsuits is disputes or *syiqāq*. In 2014 divorce applications submitted to the Shari'a Court (MS) throughout Aceh reached 4,801 cases. This figure increased to 5,300 in 2015. In the same year, couples who built household *mahligai* in Aceh recorded 40,616 pairs. However, more than 13% of Acehnese couples in that year chose to end their marriage. Meanwhile, in Idi Rayeuk Subdistrict during the years 2018 to 2019 there were 719 couples who built or built

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<sup>6</sup>T. Muhammad Hay Harist, "Peran Lembaga Adat Gampong Terhadap Mediasi Perselisihan Rumah Tangga (Studi Kasus Dd Desa Pango Deah Kec.Ulee Kareng)" (Universitas Islam Negeri Ar-Raniry, 2018).

new household mahligai, while researchers did not find the number of couples who divorced, so it attracted the authors to conduct further research.

Based on the data and exposure of the description above, that is the reason why the author conducted this study, namely to find out the Implementation of Mediation as a Means of Preventing Divorce (Study in Idi Rayeuk).

## RESEARCH METHODS

The writing of this scientific paper the compiler uses the *field research method (field research)*,<sup>7</sup> namely research conducted by means of *interviews with gampoeng* traditional elders who are mediators. This research is descriptive-comparative analytic, that is, a method that aims to provide a description regarding the subject of the study based on data and variables obtained from the group of subjects under study and is not intended for hypothesis testing.<sup>8</sup> After collecting all the data, the compiler described the application of mediation carried out in Idi Rayeuk and the mediation process carried out then analyzed the case and compared it between Islamic law and Acehnese customary law.

The research used is a normative and comparative approach. The normative approach is an approach that is carried out to find out the relationship between one regulation and another and its application in practice.<sup>9</sup> This approach is to understand the mediation applied by the Gampoeng Traditional Elders in Idi Rayeuk based on Aceh Regional Regulation 7 of 2007 that the implementation of Customary law is then connected with Islamic law based on the Qur'ân and the Al-Hadith. Traditional elders argue that divorce is a disgrace to the village so prevention is needed. For this reason, mediation is held so that married couples do not divorce. Comparative approach, is an approach taken to compare one legal theory with another and in its practical application. An approach based on *toeri hakam* and *islah* in Islam. The application of mediation is also known in Islam, namely *islah*, where people in dispute can *salaing* forgiveness with the intermediary of the mediator. While in Islam this method is included in the *hakam*

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<sup>7</sup>Sri Suntari, *Metode Penelitian Sosial*, ed. Kementerian Pendidikan dan Kebudayaan (Jakarta: Kementerian Pendidikan dan Kebudayaan, 2016).

<sup>8</sup>M. Syamsuddin, *Operasionalisasi Penelitian Hukum*, (Jakarta: Raja Grafindo Persada, 2007).

<sup>9</sup>Ahmad Zuhdi Muhdlor, "Perkembangan Metodologi Penelitian Hukum," *Jurnal Hukum dan Peradilan* 1, No. 2 (2012): 189-206.

method. Hakam is a third party who is considered capable of helping to solve the problems of the people in dispute.<sup>10</sup>

The data collection technique used in this study was sourced from primary data, namely data obtained directly from the subjects studied, in the form of interviews with Aceh Elders, namely Tuha Peut, *Geuchik* or village head, *Imuem Gampong* (Village Imam) Head of Lorong, and *Imuem Meunasah* (meunasah priest) who became the mediator. Meanwhile, secondary data, namely data obtained from documents and archives related to mediation in Idi Rayeuk. After all the data is collected, it is then qualitatively analyzed which is developed with deductive thinking patterns. That is a general data analysis method to then draw specific conclusions. In this case, there are arguments, theories and nash related to mediation that can corroborate the analysis of the role of Indigenous parents in dealing with divorce through mediation.<sup>11</sup>Induktive,<sup>12</sup> is a method of analyzing data of a special nature in the form of mediation data carried out in Idi Rayeuk District to then draw general conclusions and correlate with the Aceh Customary Law (Qanun Aceh) and Islamic law. These data are in the form of divorce mediation data carried out by traditional elders in Idi Rayeuk District. The data was analyzed and conclusions drawn, thus providing information in the form of the role of Indigenous elders in educating married couples who want to divorce.

## RESULTS AND DISCUSSION

In the implementation of mediation of domestic dispute cases, there are many factors that support the implementation of the role of the *gampong* customary institution, including:

### 1. Facilities and infrastructure factors

Without facilities and infrastructure, it is impossible for the *gampong* customary institution to carry out the mediation process. These facilities and infrastructure, among others, include educated and skilled human resources, good organization, adequate equipment, and so on.

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<sup>10</sup>Ahmad Zuhdi Muhdlor, "Perkembangan...."

<sup>11</sup>Muhdlor, "Perkembangan Metodologi Penelitian Hukum."

<sup>12</sup>Azwar, *Metode Penelitian....*

## 2. Husband and wife determination factors

The strong determination of the lukewarm couple who want to remain united is one of the factors that strongly supports the role of the *gampong* customary institution, so that divorce cases do not need to occur. Given that the impact of divorce is greater than reconciling. One of the factors that support the role of the *gampong* customary institution in the mediation of domestic dispute cases in Idi Rayeuk is the intention of married couples to undergo mediation before divorce.

While *Geuchik Gampong* Tanoeh Anoe stated that the supporting factors for the role of the *gampong* customary institution in divorce mediation are: the existence of a familial relationship between the warring parties and the personnel of the *gampong* customary institution, the number of advisors such as *imum gampong*, *Geuchik* and the people who are aged, as well as the role of the family who can be advisors for the divorce case.

The results of the author's interview with *imum gampong*, said that every year divorce cases arise with different problems. However, he suggested that divorce should not occur, it should be resolved in the family or traditional institutions of *gampong*.

In addition to the above, the factor of involvement of the role of the *gampong* customary institution in the mediation of divorce cases in Idi Rayeuk is because the *gampong* customary institution has the authority as a judicial institution in enforcing the law in its territory, this shows that various conflict problems arising from the Acehnese people are resolved based on where the source of the conflict arises.

The settlement of mediation through the *gampong* customary institution in cases of domestic disputes follows the right mechanism, so that the mediation process can run well. Settlement through the *gampong* custom is carried out if requested by the disputing residents (there is a complaint), so that the *gampong* customary institution can hold a village court (*dorpjustitie*) located in the *Gampong* hall.<sup>13</sup> Then the steps that can be taken by the *gampong* customary institutions are:

1. Receiving and Studying Complaints.
2. Order the Village Apparatus or the head of the hamlet to investigate the case by contacting the parties concerned.

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<sup>13</sup>Badruzzaman Ismail, *Sistem Budaya Adat Aceh dalam Membangun Kesejahteraan* (Banda Aceh: Boebon Jaya, 2002).

3. Arrange and set the time for the trial and prepare the trial in the village hall.
4. Invite the village elders who will accompany the village chief to preside over the trial.
5. Invite the parties to the dispute, the witnesses to be jerked off their testimony.
6. Opening the trial and offering peace between the two sides.
7. Examining the case, hearing the testimony of witnesses of the opinions of elders and elders.
8. Consider and establish decisions based on the agreement of both parties.<sup>14</sup>

According to *Geuchik Gampong Tanoeh Anoe* that any dispute or dispute that occurs within indigenous peoples is essentially always sought to be resolved amicably as the essence of the mediation process between the parties to the dispute. If at this stage an agreement has not been reached, a settlement can be requested to the head of the custom as a mediator to make a statement to the parties to find the root of the problem that occurred. The approach to the parties can be done through several meetings, given the complexity of the problem or even with the consent of both parties to the dispute, the customary head can ask for help from other neutral indigenous figures to speed up the mediation process.

Furthermore, if the parties have led to an alternative dispute resolution, the customary head can discuss the agreed form of peaceful settlement through the customary language as well as the language of the religion that is the belief of both parties to the dispute. The peaceful settlement agreed upon through the mediation process is strengthened by the implementation of traditional ceremonies or processions. This means that the outcome of the mediation is firmly binding on both parties to the dispute to have a good faith as soon as possible to implement the results of the mediation.<sup>15</sup>

The implementation of the results of mediation in indigenous peoples is not only the responsibility of the parties to the dispute, but also the responsibility of indigenous leaders as mediators. The family or relatives of the parties to the dispute, act as a driver of bribery so that the mediation agreement can be implemented as well as possible. On the other hand, the role of other indigenous peoples is also very important as a control over the implementation of the results of mediation.<sup>16</sup>

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<sup>14</sup>Badruzzaman Ismail, *Pedoman Paradilan Adat di Aceh* (Banda Aceh: Majelis Adat Aceh, 2008).

<sup>15</sup>Badruzzaman Ismail, *Pedoman....*

<sup>16</sup>Badruzzaman Ismail, *Mesjid dan Adat Aceh Menasah Sebagai Sumber Energi Budaya Aceh* (Banda Aceh: Majelis Adat Aceh, 2007).



Regarding the role of the KUA in the mediation process in divorce cases, it is said that it is "not optimal", due to the lack of problems and limited personnel. Furthermore, the role of KUA in reducing the divorce rate in Idi Rayeuk District is only limited to mediation. Meanwhile, the role of *Geuchik* in reducing the divorce rate goes through several stages, namely: holding regular recitations every Wednesday to mothers in Pango Deah Village while for fathers on Monday nights in the nearby village, namely Pango Raya zikir ratep seribee, and in Tanoeh Anoe Village also holds a ratep seribee every first week and the third week in every Friday night in every month, giving advice, conducting mediation.

From the results of the author's research, there were two divorce cases in *Gampong* Tanoeh Anoe that were successfully resolved traditionally so that they did not reach the KUA level. Meanwhile, from within 2019, KUA had mediated 3 divorce cases and from all of these cases, it was successfully resolved through mediation protocolized by KUA.

There are several stages that must be passed by a married couple who want to divorce, including:

1. Both married couples conduct private mediation from each of the conjugal parties.
2. If the two couples do not find a way out, they ask for advice from the married couple to take the family route of each of the warring family parties.
3. If the family mediation case is deadlocked, the two married couples report their *kasu* to the *gampong* traditional institution starting from *Imuem* Meunasah, *Geuchik*.
4. The last path if the mediation case cannot be resolved by the *gampong* customary institution of both parties or one of them reports to the KUA.

In addition to the above mechanism, there are also married couples who do not go the mediation route through the *gampong* custom, but directly to the KUA. After the author conducted an interview with 'village secretary', he revealed the reason why the married couple did not take the traditional *gampong* mediation route, it was feared that the husband and wife case would spread.

As an *imuem* in *gampong*, the role of *imuem gampong* is needed to provide solutions to find solutions to every problem that occurs. To avoid divorce, the role of *imuem gampong* not only functions to manage mosque affairs, but as a mediator in various cases that occur in *gampong* including divorce cases.

Meanwhile, for civil servants who want to divorce, mediation to the agency where they work, after from the traditional institution of *gampong*. Then in the agency, guidance is given to the husband and wife so that there is no divorce and can maintain their household, but if the agency is deadlocked, the civil service agency can provide recommendations to continue the divorce case to a higher level, namely to the KUA. After mediation of divorce at the level of kua did not also find satisfactory results, the divorce case was resolved by the Court to decide what the best way whether to remain divorced or to be resolved amicably.

## CONCLUSION

The factors causing indigenous institutions and KUA to be involved in mediation in cases of domestic disputes are two factors, namely internal factors and external factors. Internally, the factors causing the traditional institution of *gampong* are involved in the mediation of domestic disputes because: avoiding shame, because it is feared that it will be known by others widely, avoiding the large number of divorce cases, making peace by family means, the existence of a strong desire of each married couple to reconcile. While the external factors are: there is no widespread conflict between the two warring parties, the path taken through mediation does not require much cost, does not take a long time and drags on in divorce cases, does not enter the influence of third persons both from the wife's family side and from the husband's family side, cost-effective, respects the path of deliberation.

The role of the *gampong* customary institutions and kua in the mediation process in cases of domestic disputes is as parents, as mediators, as advisors, and as facilitators. As a parent or who is old in *gampong*, the *gampong* traditional institution places himself as a parent for members of the community he leads whoever is fighting the *gampong* customary institution still plays an important role in reducing every conflict that occurs in *gampong*. The *gampong* traditional institution is also a mediator where all complaints of members of their community complain to be able to live peacefully and comfortably from all disturbances from anywhere. The traditional institution of *gampong* also acts as an advisor in any disputes that occur in the families of its community members. In giving advice the

traditional institution *Gampong* Pango Deah was very fair, not siding with any of the warring members so that the result could be accepted by both parties.

As a facilitator of the *Gampong* customary institution, it provides the widest possible facilities to the warring parties in the event of domestic violence (KDRT) the *Gampong* customary institution provides facilities to maintain security and comfort if at any time there is a heated conflict from the two sides of the war.

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