

THE ROLE OF THE MALAY CUSTOMARY INSTITUTION IN OFF-COURT DIVORCE MEDIATION: A Case Study in Rantau Pandan, Jambi

Zainal Azwar, Firdaus & Muhammad Nafis

State Islamic University of Imam Bonjol Padang, Indonesia

25153 M. Yunus Lubuk Lintah, Indonesia

email: zainalazwar@uinib.ac.id

DOI: 10.30631/al-risalah.v20i1.561

Submitted: March 19, 2020; Revised: April 22, 2020; Accepted: April 23, 2020

Abstract: In general, the concept of mediation in fiqh literature concerns merely with pre-divorce conflicts. In contrast, the Malay Customary Institution in Rantau Pandan, Jambi also concerns with restoring household integrity after divorce. This paper aims at describing and analyzing the role of the Malay Customary Institution in restoring post-divorce households in Rantau Pandan. The field research was conducted where the data taken from in-depth interviews and documentation. This paper concludes that there are two forms of mediation process practiced by the Malay Customary Institution in Rantau Pandan: the mediation that is prompted by the initial request of the involving parties and that is without the precondition of reconciliation. The success of the Customary Institution in mediating familial conflicts is supported by several factors, such as; the competence of the mediators, kinship relations, and the goodwill of the respective parties. The mediation practiced of the Customary Institution works in line with the guidance of the Qur'ān and the principle of mediation in Islam. Additionally, this institution has developed the concept of mediation outside the court, both in terms of form and task.

Keywords: Malay Customary Institution, Divorce, Mediation, Rantau Pandan

Abstrak: Konsep mediasi di dalam kitab-kitab fikih, secara umum, hanya berperan pada konflik pra perceraian. Berbeda dengan itu, Lembaga Adat Melayu di Rantau Pandan, Jambi juga berperan mengembalikan keutuhan rumah tangga pasca perceraian. Tulisan ini bertujuan mendiskripsikan dan menganalisis dari sisi hukum Islam tentang peran Lembaga Adat Melayu dalam mengembalikan keutuhan rumah tangga pasca perceraian di Rantau Pandan. Tulisan ini merupakan penelitian lapangan. Data dikumpulkan melalui wawancara dan studi dokumentasi. Tulisan ini menyimpulkan bahwa proses mediasi yang diperankan Lembaga Adat Melayu di Rantau Pandan terbagi menjadi dua bentuk; proses yang didahului adanya keinginan rujuk dan proses tanpa didahului keinginan rujuk. Keberhasilan Peran Lembaga Adat tersebut didukung oleh beberapa faktor;

Kemampuan mediator, hubungan kekerabatan, dan i'tikad baik para pihak. Peran Lembaga Adat ini sejalan dengan tuntunan al-Quran dan prinsip mediasi dalam Islam. Lembaga ini telah berperan melakukan pengembangan konsep mediasi di luar Pengadilan, baik dari segi bentuk maupun tugasnya.

Kata Kunci: Lembaga Adat Melayu, Perceraian, Mediasi, Rantau Pandan

Introduction

Conflict resolution through mediation often occurs in a community. In Rantau Pandan, Muaro Bungo Regency, Jambi Province, for instance, mediation is undertaken by a particular customary institution formed by the local community. This institution plays an essential role in reuniting post-divorce households. A household can be put back together following the reconciliation between the former husband and wife so that each of them does not choose to marry someone else. This tradition is unique to Rantau Pandan Customary Institution. It is hardly found a similar mediation model in other places. On the other hand, Islamic law does not explicitly regulate mediation steps of reuniting post-divorce marriage. The Qur'an only regulates mediation in the case of *shiqāq*, and even then, it is undertaken by the *hakam* individually. The idea is to prevent prolonged household conflicts that lead to divorce. Accordingly, mediation in the case of *shiqāq* only regulates divorce prevention and does not explicitly regulate post-divorce mediation.

Against this backdrop, this study is an in-depth discussion upon the unique role of the Rantau Pandan Customary Institution in an attempt to reunite post-divorce households to prevent the parties from marrying with others but instead reconcile to the bond of marriage with the original partner. The research questions are the following: 1). how is the mediation process undertaken by the Malay Customary Institution in Rantau Pandan in restoring post-divorce household integrity; 2). what factors support the success of mediation undertaken by the institution;

and 3). what does Islamic law say about the role of the Malay Customary Institution in Rantau Pandan?

Mediation is not a new topic. There have been several studies on mediation. Irwanto (2014) in his article entitled *Efektivitas Mediasi sebagai Upaya Damai dalam Menyelesaikan Perkara Perceraian di Pengadilan Agama Sungai Penuh (The Effectiveness of Mediation as a Peace Effort in Settling Divorce Cases in the Sungai Penuh Religious Court)* found that the implementation of mediation at the Sungai Penuh Religious Court in general works under the Supreme Court Regulation No. 1 of 2008. Nevertheless, there are some deviations; for example, the judge does not explain the mediation procedure and the inadequacy of the mediation site. All the obtained data proves the mediation carried out in Sungai Penuh Religious Court to be not effective.¹

Rahadi Wasi Bintoro (2014) studies the implementation of mediation in the eradication of the jurisdiction of the Purwokerto District Court and the factors that influenced it. In this article, he suggests that the implementation of the mediation of the investigation in Purwokerto District Court follows the Supreme Court Regulation no. 1 of 2008. The most influential factors in the success of mediation are society and culture.² Shinta Dewi Rismawati et al. (2012), in an article *Hakim*

1 Irwanto, 'Efektivitas Mediasi sebagai Upaya Damai dalam Menyelesaikan Perkara Perceraian di Pengadilan Agama Sungai Penuh', (Master Theses of PPs IAIN Imam Bonjol Padang, 2014), p. 114

2 Rahadi Wasi Bintoro, 'Implementasi Mediasi Litigasi di Lingkungan Yurisdiksi Pengadilan Negeri Purwokerto', *Jurnal Dinamika Hukum*, (2014), p. 22

dan Mediasi; Pemaknaan Hakim terhadap Mediasi Perkara Perdata di PN Pekalongan - (Judges and Mediation; The Meaning of Judges on Mediation of Civil Cases in Pekalongan District Court) suggest that the judge's interpretation of mediation is shaped by the interaction of the judge with the text and the mediation context. The implementation of mediation tends to be pragmatic because of internal and external factors.³ Furthermore, Agus Raharjo (2008) writes about *Mediasi sebagai Basis dalam Penyelesaian Perkara Pidana (Mediation as a Base in Settlement of Criminal Cases)*, in which he concludes that the use of non-litigation procedure must be selective and can only be done on cases that meet the six principles. The model of criminal case settlement through non-litigation can reduce the tangled thread in the criminal justice system by deciding criminal cases through the methods used in civil law.⁴

Although there have been several studies related to mediation, they are different from this article. No specific report illustrates the role of Malay customary institution in divorce mediation out of the court procedures. Thus, this paper describes divorce mediation, both before and after divorce, in and out of the court procedures.

The composition of the study in this article consists of; Introduction, the theory of mediation, the Jambi Malay Customary Institution of Rantau Pandan, the role of Rantau Pandan Customary Institution in divorce mediation, household conflict, the mediation process, supporting factors, an overview of Islamic Law, and Conclusion.

³ Shinta Dewi Rismawati, Saif Askari, and M. Muslih Husein, 'Hakim dan Mediasi: Pemaknaan Hakim terhadap Mediasi Perkara Perdata di Pengadilan Negeri Pekalongan', *Jurnal Penelitian*, 9.2 (2013), p. 262

⁴ Agus Raharjo, 'Mediasi sebagai Basis dalam Penyelesaian Perkara Pidana', *Jurnal Mimbar Hukum*, 20.1 (2008), p. 108

A Theoretical Overview of Mediation

The peaceful settlement upon disputes through mediation has a great opportunity to develop in Indonesia. The community, in general, prioritizes maintaining good relationships with families or business partners over the potential instant profits in case of a dispute. Resolving disputes in the court might yield enormous profits for the winner, nevertheless, it could damage the relationships. Reputation is generally considered important in Eastern countries to the extent that its position exceeds other motives during a dispute resolution, and Indonesia is not an exception.⁵ The definition of mediation itself contains at least three essential elements. *First*, mediation is the process of resolving disputes that occur between two or more parties. *Second*, the parties undertaking the dispute resolution should come from the outside the disputing parties. *Finally*, the parties undertaking the dispute resolution act as advisors and do not have any authority in decision making.⁶

The dispute resolution can be carried out through two kinds of procedures: litigation in court and non-litigation outside the court. The litigation process produces adversarial agreements (hostilities) that are often unable to embrace common interests, tends to cause new problems, is slow to settle, expensive and unresponsive. The out-of-court process, on the other hand, could produce a win-win solution, guarantee the confidentiality of the parties involving in the disputes, avoid delays caused by procedural and administrative matters, resolve issues comprehensively in togetherness and still maintain the good relationship of the involving parties. The settlement of disputes outside the court is commonly referred to as alternative dispute

⁵ Fatahillah A Syukur, *Mediasi Yudisial di Indonesia: Peluang dan Tantangan dalam Memajukan Sistem Peradilan*, (Bandung: Mandar Maju, 2012), p. 4

⁶ Abdul Halim Talli, 'Mediasi dalam Perma Nomor 1 Tahun 2008', *Jurnal Al-Qadāu*, (2015), p. 79

resolution (ADR). In its application, the role of customary institutions is essential.⁷ As such, In Indonesia, the conflict resolution model through ADR is not by any means new because it has been entrenched in the community and long practiced in dispute resolutions.⁸

Some litigants prefer settlement through negotiation and mediation. There are two reasons why disputing parties choose a settlement through negotiation and mediation. *First*, it has a strong connection to culture. To solve a societal problem through an approach familiar to a community would be more appealing because it works under the shared perspective of their lives. *Second*, the mediation process of this kind is grounded on the power of the involving parties. Power in this context is relatively balanced, not because someone feels compassion for the opposing party or because it is bound to cultural values or spiritual values, but because of the need for cooperation from the opposing party in order to achieve the desired goals and interests. The ability to stop, interfere, and fight the opposing side in achieving its goals is power. CW Moore believes that if the parties share asymmetrical and balanced power, they tend to negotiate and be more effective.⁹

On the other hand, Islamic law also regulates the settlement of domestic conflicts, such as Q.S. al-Nisā' (4): 35 regarding *Shiqāq*. This verse requires the participation of a third party, i.e., someone who helps the re-

spective husband or wife as the *hakam* (mediator). *Hakam* is a person who is appointed directly by the husband and wife and comes from their respective families.

As a trusted mediator and a neutral party, the main task of a *hakam* is to improve the relationship between the two conflicting parties in a fair and impartial manner, so that they do not dissolve into a prolonged conflict.¹⁰ The problem would be as much possible resolved by non-litigation mediation (kinship). Settlement through justice would only be needed when there is no recourse to *iṣlāḥ* from both parties.¹¹ Therefore, the role of a mediator is required to make a major contribution to provide satisfaction for the respective parties.¹² Takdir Rahmadi views the mediator as having several functions: catalyst, educator, translator, resource person, bad news person, an agent of reality, and as a scapegoat.¹³ This confirms that as a mediator, in addition to playing a neutral third party, a *hakam* must also have negotiation skills to embrace the two parties to make peace.

The scope of mediation covers many aspects – in fact, it covers all aspects relevant to any conflict. Conflicts that occur in the society have a reasonably broad dimension and scope and can occur in public and private areas. The conflicts that occur in the public domain are closely related to the public interests, for which the state is responsible. While that occurs in the private area is closely related to issues between individuals.¹⁴

⁷ Selvia Berlian, Tri Andrisman, and Damanhuri Warganegara, 'Mediasi Penal Melalui Lembaga Adat dalam Penyelesaian Kasus Perzinaan', *Journal of Chemical Information and Modeling*, (2019), p. 3

⁸ Netty Herawati, 'Implikasi Mediasi dalam Perkara Perdata di Pengadilan Negeri terhadap Asas Peradilan Sederhana, Cepat, dan Biaya Ringan', *Perspektif*, (2011), p. 229

⁹ Takdir Rahmadi, *Mediasi Penyelesaian Sengketa Melalui Pendekatan Mufakat*, (Jakarta: Rajawali Pers, 2017), p. 44

¹⁰ Aḥmad Mustafā al-Marāghī, *Tafsir Al-Maraghi*, Ed. K. Anshori Umar, (Semarang: Toha Putra, 1988), p. 221

¹¹ M Lohot Hasibuan, 'Penyelesaian Sengketa Perbankan Syariah Di Pengadilan Agama', *Al-Risalah*, (2018), p. 121

¹² Connie J. A. Beck and Bruce D. Sales, 'A Critical Reappraisal of Divorce Mediation Research and Policy.', *Psychology, Public Policy, and Law*, (2000), p. 989

¹³ Rahmadi, *Mediasi*, p. 14

¹⁴ Robert A. Baruch Bush and Sally Ganong Pope, 'Changing the Quality of Conflict Interaction: The

Mediation as a form of dispute resolution occupies a significant scope in the private (civil) life. Civil disputes in family, inheritance, contractual, banking, business, and environmental issues and various other types of civil disputes can be resolved through mediation. Dispute resolution through mediation can be reached in the court or outside the court. Mediation carried out in the Court is part of the formal legal process. On the other hand, mediation outside the court is a separate part that does not follow the formal procedure of court protocols. Thus, the scope of off-court mediation can only occur in the private area.¹⁵ Whereas in the public area, the opportunity of negotiation does not exist because it is closely related to the public interest that must be resolved through a trial in court.

According to Syahrizal Abbas, there are four models of resolution through mediation. They are;¹⁶ *settlement mediation* also known as compromise mediation, *facilitative mediation* also known as interest-based mediation and *problem solving, transformative mediation* also known as reconciliation mediation, and *evaluative mediation* also known as normative mediation.

Furthermore, Syahrizal Abbas explains that the mediation process consists of three stages: the pre-mediation stage, the stage of implementing the mediation, and the mediation results.¹⁷ According to Takdir Rahmadi, the scope of mediation is the scope of indigenous peoples. Accordingly, customary functionaries play a function as an intermediary in resolving disputes in indigenous peo-

ples.¹⁸ The settlement of conflicts involving indigenous peoples in regions with significant influence of Islamic law such as Aceh, West Sumatera and Java is often influenced by Islamic law, through which the resolution for conflicts are often sought.¹⁹

The Jambi Malay Customary Institution of Rantau Pandan

Since the Jambi Province was a part of the territory of the kingdom of Pagaruyung, the customs prevailing in Rantau Pandan, Bungo, Jambi Province was originated from the Minangkabau custom. This can be seen from the *seluko* (proverb), "*adat nan dari Minangkabau, teliti nan dari Jambi* (custom comes from the Minangkabau, intellectuals comes from Jambi).²⁰

As people who regard culture highly, the inhabitants of Jambi are known for their determination to embrace their religion and customs. Islamic customs and religion in Jambi are two unseparated affairs from each other; only religion has a certain emphasis over custom. It is said "*adat yang bersendikan syara' dan syara' yang bersendikan Kitābullāh, Syara' mengato, Adat memakai* (custom is based on shara' and shara' is based on Kitābullāh, Shara' speaks, Adat applies).²¹ This customary proverb is exactly the same as the customary philosophy that applies to the Minangkabau people. It is evident that the adat prevailing in Jambi Province (including the Bungo District in it) originates from the Minangkabau

Principles and Practice of Transformative Mediation', *Pepperdine Dispute Resolution Law Journal*, 3.1 (2012), p. 67

¹⁵ Lisa B. Bingham, 'Employment Dispute Resolution: The Case for Mediation', *Conflict Resolution Quarterly*, (2004), p. 145

¹⁶ Syahrizal Abbas, *Mediasi dalam Hukum Syariah, Hukum Adat, dan Hukum Nasional* (Jakarta: Kencana, 2011), p. 31

¹⁷ *Ibid.*, p. 36

¹⁸ Rahmadi, *Mediasi*, p. 71

¹⁹ Trisno Raharjo, 'Mediasi Pidana dalam Ketentuan Hukum Pidana Adat', *Jurnal Hukum IUS QUIA IUSTUM*, 17.3, (2015), p. 493

²⁰ Rahmat Fauzi and Faisal, 'Efektifitas Mediasi dalam Menyelesaikan Sengketa Perceraian (Study di Pengadilan Agama Bukittinggi dan Pengadilan Agama Payakumbuh Tahun 2015-2017)', *Soumatera Law Review*, (2018), p. 324

²¹ Tim Penulis Buku Pedoman Adat Bungo, *Buku Pedoman Adat Bungo; Lembaga Adat Kabupaten Bungo*, (Bungo: tp., 2004), p. 23

custom. Thus, it can be said that the Rantau Pandan Customary Institution has a strong relationship with the Minangkabau custom. The aforementioned Institution is called the Malay Customary Institution of Rantau Pandan District. The structure of the management of this institution is not set forth in the form of a decree. Administrators and members of the institution are the representatives of traditional, religious, and intellectuals from each village. These elements consist of the Customary Law, (the chief of the village and his staff), *Adat (nenek mamak)*, *Shara'* (*alim ulama*) and *teliti* (cleverness).²²

The officials at the Customary Institutions are chosen and appointed through a consensus with certain criteria and conditions. As for the structure of leadership in the Customary law community in Rantau Pandan District includes:

1. *Tengganai*

Tengganai is a brother of a husband and wife; there are two kinds of *tengganai*: 1) *tengganai dalam* or *Perboseo*, which is a brother on the wife's side and 2) *tengganai luar* or *Perbuali*, the husband's brother.

2. *Tuo Tengganai*

Tuo Tengganai are parents of a tribe of *Tengganai* in the family or the *Kalbu* of village.

3. *Nenek mamak*

Nenek Mamak is a combination of *Tuo-tuo Tengganai* of the areas existed in the village.²³

The Role of Rantau Pandan Customary Institution in Divorce Mediation

1. Household Conflict

There are several forms of community household conflicts in Rantau Pandan. According to the Chairperson of the Rantau Pandan Customary Institute, H. Hasan, those conflicts are locally termed as the following. *First, kusut bulu ayam* (lit. tangly chicken feathers) is a problem between husband and wife that is not too complicated, and they can solve themselves without the need for help from others to find a solution. *Second, kusut rambut* (tangly hair) is a problem between husband and wife that is complicated enough to require someone else or a third party to mediate. In this case, both parties need the *nenek mamak* to take part in solving their problems. *Third, kusut sarang burung pintau* (tangly bird's nest) is a problem of husband and wife that cannot be solved by both parties with the help of *nenek mamak* alone because of the degree of its complication (e.g., the one involving adultery, criminal acts, etc.). In this case, all the customary elements in the region, i.e., the officials, polices, and the District Customary Institution, participate in solving the problem of such level. This latter form often leads to divorce.

The terms mentioned above resemble, with a slight difference, that of the Minangkabau culture in West Sumatra. The Minangkabau recognizes (a) *Kusuik bulu ayam, jo paruah manyalasaan* (lit. tangly chicken feathers, with a beak it gets solved), (b) *Kusuik banang, dicari ujuangnyo untuak manyalasaan* (lit. tangly yarn, finding its end to unravel) and (c) *Kusuik sarang tampuo, parun jo api mako salasai* (tangly bird's nest, burning with fire it gets destroyed).²⁴

²² Yasb, *Adat Lamo Pusako Usang*, (Rantau Pandan: tp, 2004), p. 31

²³ Kemas Arsyad Somad, *Mengenal Adat Jambi dalam Perspektif Modern*, (Jambi: Dinas Pendidikan Provinsi Jambi, 2003), p. 135-136

²⁴ A A Nafis, *Alam Takambang Jadi Guru: Adat Dan Kebudayaan Minangkabau*, Cetakan I (Jakarta: Temprint, 1984), p. 116

Kusuik bulu ayam is a conflict that occurs between two people or between two groups of people with a low level of complication. Conflicts at this level are generally caused by minor cases and can usually be resolved by the respective parties. In this case, there is no need for the assistance of other parties, which in the Minangkabau term is called *jo paruah manyalasaan*. The conflict at the level of *kusuik bulu ayam* is common among families or relatives, i.e., between siblings, parents and children, and husband and wife. Even if they need other parties to get involved, it is usually the members of the relatives themselves, which in this case, is the *mamak* who usually takes place. *Kusuik banang* is a conflict that occurs between two people or between two groups of people at a moderate level. This level is referred to as a metaphor of a tangly yarn whose end and base are not easily identified, yet still have hopes of riddling out. To solve it, one needs to find the cause or the base of the problem, indicated by *dicari ujuangnyo untuak manyalasaan*. After knowing the causes of the conflict and both parties have understood and realized them, the solution would easily be found. *Kusuik sarang tampuo* is the extreme end of the conflict; that nature of the case can no longer be identified, and the possibility of peaceful solution is highly minimum. Upon this issue, extraordinary action is needed, as reflected in *parun jo api mako salasai*.

In conclusion, in Minangkabau cultural concept, any attempt at resolving conflict should prioritize peaceful solution, as reflected in a proverb: "*bagai maelo rambuik dalam tapuang, rambuik ndak putuih, tapuang ndak taserak*" (like pulling the hair out of the flour, the hair does not break off, the flour does not spill out). It means that the decision-making process must be conducted carefully and wisely so that no party would be injured, and it would not cause new problems.²⁵

²⁵ Ibid.

2. The Mediation Process

According to Mahmud Abbas (an employee of *shara'*), the mediation process is straightforward. It typically starts with a desire of one of the divorced parties to return to the marriage bond (reconciliation) but not the other one. The first party verbally asks for assistance from the Customary Institution. The Customary Institution explores all necessary information related to the personal data of both parties. This data becomes the ground for the members of the Customary Institution to be appointed as the mediator; the mediator is usually the member of the Customary Institution that has a closer kinship to the given parties.²⁶ Only one person is appointed to be the mediator, but the process of mediation can involve others. Furthermore, the mediator from the Customary Institution summons the respective parties and then ask the party that is willing to reunite to express his/her wishes directly in front of the other party. After that, the mediator addresses both parties with some advice and words of wisdom, especially one that does not want to reunite. If the latter party does not grant the first parties proposal, the mediator would give them time to think about it thoroughly for a week. During this period, the mediator maintains his approach to the respective parties in the hope that they are open to a reconciliation. Once both parties reach an understanding and are willing to reconcile, they are required to make a written commitment to foster and maintain their household so that the second divorce does not occur.²⁷ In addition, Karim²⁸ and Syafaruddin,²⁹ the members of the Rantau

²⁶ Andrew J. Bickerdike and Lyn Littlefield, 'Divorce Adjustment and Mediation: Theoretically Grounded Process Research', *Mediation Quarterly*, (2000), p. 189

²⁷ Usman, 'Interview with Researchers', 2019

²⁸ Ahmad Karim, 'Interview with Researchers', May 25, 2019

²⁹ Syafaruddin, 'Interview with Researchers', May 25, 2019

Pandan Customary Institution, describe the similar line of procedure.

Meanwhile, H. Hasan explains that sometimes the mediation process conducted by the Rantau Pandan Customary Institution is not prompted by the request of one of the conflicting parties, but rather from the initiative of the institution.³⁰ The procedure starts around one month after the divorce has taken place. The customary institution immediately approaches both parties (husband and wife) to understand whether there is a possibility of reconciliation before the *'idda* period of the wife ends. The institution sent two members as mediators, each of which has a familial relationship with the respective parties. Each mediator has the duty to negotiate with their respective relative as well as educate them on the benefit of the reconciliation. Additionally, the mediator would also picture the pressure of having a stepfather or stepmother that their children would encounter if they decide to marry someone else. This effort often involves other parties that are considered to be able to make the reconciliation succeed, such as parents, children, and the closest *nenek mamak*. In this context, the mediator invites the presence of the children, parents and *nenek mamak* before both parties to boost the effectiveness of the delivered advice; their presence is expected to encourage and motivate reconciliation. Furthermore, the mediator would give them one week for contemplation. After that, the two parties are summoned to the office of the Rantau Pandan Customary Institution, and the mediators are ready to hear what the former husband and wife wish. The mediation could run three times until both parties eventually open up the option of reconciliation. Once they wish to reconcile, they make a written commitment to maintain the integrity and harmony of the household so that divorce does not occur a second time. The

same information was also conveyed by H. Usman.³¹

In sum, the mediation process through this institution is divided into two forms; the process started by the desire to reconcile and that without the precondition of reconciliation. The procedure of the first mediation process is as follows:

1. The party that wishes a reconciliation conveys his/her wishes to the Rantau Pandan Customary Institution either orally or in writing;
2. The Institution explores information about the parties themselves;
3. The Institution shall appoint a mediator based on the closeness of the kinship with the mediated party;
4. Providing advice separately;
5. Calling both parties for consultation session;
6. Giving time for contemplation;
7. Implementation of reconciliation;
8. Commitment making.

The procedure of the second mediation process is as follows:

1. The appointment of two mediators by Customary institution, Rantau Pandan District;
2. Both mediators approach respective parties;
3. Providing advice separately;
4. Summoning both parties to the Customary Institution office;
5. Counseling simultaneously;
6. Giving time for contemplation;
7. Implementation of reconciliation;
8. Making a commitment in writing.

In general, the mediation process conducted by Malay Customary Institution in Rantau Pandan follows the existing theories. Takdir Rahmadi stressed that the core of the mediation process outside the court was deliberation and consensus. According to

³⁰ Ibid.

³¹ Usman, 'Interview with Researchers', May 25, 2019

Moore, as quoted by Sri Mamudji, there are twelve stages of mediation:

1. The stage of establishing a relationship with the disputing parties;
2. The stage of choosing a strategy to guide the mediation process;
3. The stage of collecting and analyzing background information dispute;
4. The stage of preparing a mediation plan;
5. The stage of building trust and cooperation between the parties;
6. The stage of starting a mediation session;
7. The stage of formulating the problem and setting the agenda;
8. The stage of revealing the hidden interests of the parties;
9. The stage of raising a choice of dispute resolution;
10. The stage of analyzing the choice of dispute resolution;
11. The bargaining stage;
12. The formal completion stage.³²

3. Supporting Factors

Several experts put forwards different theories about supporting factors leading to the success of mediation upon social conflicts. According to Soerjono Soekanto, the effectiveness of mediation is largely determined by five factors, namely, judiciary, mediator, supporting facility, community, and cultural factors.³³ Arum Kusumaningrum *et al.* state that four factors are supporting the success of mediation, i.e., the ability of mediators (mastery of mediation techniques), sociological and psychological factors, moral and spirituality, and good faith the parties to make peace.³⁴ Meanwhile, Sri Mamudji em-

phasizes that the success of mediation is determined by the ability of a mediator. Therefore, the mediator must master a variety of skills and techniques.³⁵

The supporting factors for the success of the role of the Malay Customary Institution in Rantau Pandan are the following:

1. The Mediator Competence
 - a. Sufficient experience and technical mastery

Members of the Rantau Pandan District Customary Institution of Bungo Regency, Jambi, who are appointed as mediators, are generally 50 (fifty) years of age or above. Not only are they seniors in terms of age, but they also have sufficient experience in resolving household conflicts. As the mediators, the members of the Customary Institution have played their role for at least ten years.³⁶

In carrying out their duties, the Customary Institutions mediators encounter a large variety of household problems. To deal with these issues, mediators always develop methods of resolving conflicts. They take persuasive and advisory approaches wisely. These approaches include a psychological approach in the form of an approach to the psychological state of the parties and a religious approach by applying religious teachings such as patience, sincerity, gratitude, and others. Besides, they would also use a social approach that is reminiscent of the social consequences caused after divorce. The interesting thing is that each of the mediators in the Rantau Pandan Subdistrict Institution of Bungo Regency has their own techniques in conducting mediation.³⁷

³² Sri Mamudji, 'Mediasi sebagai Alternatif Penyelesaian Sengketa di Luar Pengadilan', *Jurnal Hukum & Pembangunan*, (2017), p. 206

³³ Soerjono Soekanto, *Faktor-Faktor Yang Mempengaruhi Penegakan Hukum*, (Jakarta: PT Raja Grafindo Persada, 2011), p. 7

³⁴ Arum Kusumaningrum, Yunanto, and Benny Riyanto, 'Efektivitas Mediasi dalam Perkara

Perceraian di Pengadilan Negeri Semarang', *Diponegoro Law Journal*, (2017), p. 7

³⁵ Dian Mustika, 'Efektivitas Mediasi Dalam Penyelesaian Perkara Perceraian Di Pengadilan Agama Jambi', *Al-Risalah*, (2018), p. 299

³⁶ Hasan, 'Interview with Researchers', April 22, 2019

³⁷ Usman, 'Interview with Researchers'

b. Extensive religious knowledge

The mediators are people who generally have excellent and in-depth religious knowledge, which they get not only through formal educational institutions but also non-formal one. Although not all mediators of the institutions come from among the ulama—some are the adat figures and the intellectuals—they generally have good religious knowledge. At this point, it is sometimes difficult to identify whether the mediators is a traditional figure, a scholar, or religious authority because two competencies unite in them.³⁸

The breadth and depth of religious knowledge possessed by the mediators are one of the success factors in the efforts to resolve household conflicts, especially in the context of restoring household integrity. This enables them to integrate religious advice derived from the Qur'ān and ḥadīths to convince the post-divorce couples to reunite. Accordingly, more often than not, every piece of advice contains allusions to a particular Qur'ānic verse or prophetic tradition. It is not uncommon for the mediated parties and the people of Rantau Pandan District to easily receive direction and advice from the mediator.³⁹ So the steps taken by the mediators in restoring household integrity and resolving community conflicts are part of the religious act of *al-'amr bi al-ma'rūf wa al-nahy 'an al-munkar*.

2. Kinship between the Mediator and the Parties

Following the three types of mediators as propose by CW Moore, i.e. social network, authoritative, and independent mediator,⁴⁰ the type of mediator in Rantau Pandan can be categorized as a social network mediator. The mediator in this context is appointed by

the parties since they know well and believe that the people they choose are able to help to resolve the dispute. Social network mediators are known in family disputes, business partners, or between friends. The parties usually elect religious, community, or customary leaders, or people close to them. The appointment of a customary institution mediator is determined by the closeness of the kinship between the mediator and his or her client. Thus, they are able to understand each other in solving the problem. In other words, it is easy to carry out the mediation process.⁴¹

A mediator's kinship with the disputing party is one of the factors determining the effectiveness of the mediation. It is so because the close relationship between the respective parties and the mediator they appoint creates complete trust, ensuring the communication on the issue runs well. Conversely, a mediator is also easier to reprimand and provide input to both parties so that the advice given by the mediator is easily accepted.

3. The Good Intentions of Both Parties to Make Peace

The interviews with several members of the Malay Customary Institution in Rantau Pandan show that sometimes there is a good intention between one of or all two parties (husband and wife) to reconcile—yet it is totally absent in some other cases. The good intention of the parties to make peace certainly boosts the mediation process. Here, the good intention of the parties becomes one of the supporting factors for the success of mediation. On the other hand, the mediation process in which the initial intention of the parties is absent would become an arduous task to carry out. To deal with this issue, the first factor (the ability of the mediator in terms of experience, technical mastery, as well as extensive religious knowledge) and

³⁸ Usman, 'Interview with Researchers'

³⁹ Hasanudin, 'Interview with Researchers', May 5, 2019

⁴⁰ Mamudji, *Mediasi*, p. 205

⁴¹ Abbas, 'Interview with Researchers'

the second factor (kinship) are the determining factors for the success of mediation. Therefore, this study suggests that the three factors mentioned above work together as supporting factors that determine the success of mediation played by the Malay Customary Institution in Rantau Pandan.

4. An Overview of Islamic Law

Islam provides guidelines for resolving conflicts peacefully, that an effort for reconciliation requires the involvement of the third party (mediators). With regards to household conflicts, Q.S. al-Nisā' verse 35 says as follows:

وَإِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَابْعَثُوا حَكَمًا مِّنْ أَهْلِهِ
وَحَكَمًا مِّنْ أَهْلِهَا إِنْ يُرِيدَا إِصْلَاحًا يُوَفِّقِ اللَّهُ بَيْنَهُمَا
إِنَّ اللَّهَ كَانَ عَلِيمًا حَكِيمًا

And if you fear dissension between the two, send an arbitrator from his people and an arbitrator from her people. If they both desire reconciliation, Allah will cause it between them. Indeed, Allah is ever Knowing and Acquainted [with all things]. (QS. al-Nisā': 35).

The word *hakam* in the verse could be translated as a peacemaker. This verse suggests that the peacemaker in resolving domestic conflicts consists of two people; one peacemaker as the representative of the husband (*hakam min 'ahlih*) and another one represents the wife (*hakam min 'ahlihā*). Accordingly, the *hakam* in the verse is a peace agent sent by both parties (husband and wife) if there is a dispute between the two, without knowing the condition of who is right and who is wrong.⁴²

Regarding the instruction of *fab'athū*, Sayyid Qutub suggests that the nature of instruction is *farḍ 'ain*. When family members

from both parties know that there is a domestic conflict in their relatives' marriage, they are obliged to help to resolve them by sending a peacemaker who is deemed capable. Nevertheless, if the families of both parties are unable to provide help, the affair should move to Court's responsibility.⁴³

Al-Sha'bī and Ibn 'Abbās, as quoted by 'Abd al-Raḥmān al-Jazīrī, appointed peacemakers (mediators) to the adjudge over a conflict in order to avoid acts of persecution between husband and wife. As for the formulation of *hakamain* (two peacemakers) in the verse, the literal (*zāhir*) verse asserts that the mediators must come from the family representatives of husband and wife (*hakam min 'ahlih wa hakam min 'ahlihā*). Some scholars view the verse provides a suggestion instead of a binding instruction. The mediator, however, could also come from non-familial relatives to the husband or wife. Nevertheless, considering that the peacekeeper's goal was to trace the real root of the problem while at the same time find the best solution, the closest relatives of the respective parties are generally assumed to have understood better and have more motivation for the reconciliation than others.⁴⁴

The procedures that can be taken by the judge in dealing with the case of *shiqāq*, according to Amir Syarifuddin, start with judge's investigation upon the causes of *shiqāq*. If the ground of the *shidāq* is the wife's *nushūz*, he would then proceed with *nushūz* measures. If it, on the other hand, comes from the husband's *nushūz*, the judge seeks a man that the husband respect to advising him to treat his wife better. If it comes from both of them that both see each other negatively and insist on it, the judge would look for an authoritative person to advise both. If

⁴² Tihami and Sohari Sahrani, *Fikih Munakahat: Kajian Fikih Nikah Lengkap*, (Jakarta: Rajawali Pers, 2009), p. 189

⁴³ Sayyid Qutb, *Tafsir Fi Zhilalil Qur'an: Di Bawah Naungan Al-Qur'an*, (Jakarta: Gema Insani Perss, 2003), p. 353

⁴⁴ Muḥammad 'Alī Al-Sais, *Tafsir Āyāt Al-Aḥkām*, (Cairo: Maktabah al-Azhariyyah, 1373 H), p. 324

this step fails to meet the desired result, or even more makes the argument between the two parties get worsen, the judge appoints a mediator from the husband's side and one from the wife's side to complete the *shiqāq*. The idea is to unite the conflicting spouse, but if this step fails, it is entirely up to both to decide whether to reunite or to get a divorce.⁴⁵

The concept of mediation explained in the classical Jurisprudence literature and its implementation, especially in the courts, generally concerns with necessary efforts to resolve domestic conflicts in order to avoid *ṭalāq*. As for the post-divorce mediation, it is hardly found any discussion, as if, when the *ṭalāq* has occurred, the task of the mediator has finished.

At this point, we can see differences between mediation concept and practice mentioned in classical literature and that conducted in Rantau Pandan, Bungo Regency:

First, in classical fiqh, the concept of mediation is in the form of individuals and only exists when requested by both parties to the conflict (*shiqāq*). As for the mediation in Rantau Pandan, it is established as a particular Customary institution. Unlike the concept of *ḥakam* as explained in the classical fiqh literature, the mediation undertaken through an institution enables the establishment of a clear management and membership structure and has an office as a secretariat. Strictly speaking, the mediation of the Rantau Pandan Customary Institution is continuous and not temporal.

Second, in the classical fiqh, the concept of *ḥakam* concerns more with preventive effort upon the potential divorce due to conflict (*ṣidāq*). After the divorce has taken place (as the first or the second *ṭalāq*), the concept of *ḥakam* does not seem to be relevant any longer. As for the mediation of this Custom-

ary Institution, aside from being a preventive effort, it also plays a role in returning divorced parties (in *ṭalāq* one and two) into the original marriage ties.

Accordingly, the mediation concept practiced in Rantau Pandan Customary Institution introduced two areas of development of the classical *ḥakam* concept. First, this institution transforms the individual concept of *ḥakam* into an established and well-structured institution. Second, the institution introduces new tasks of mediators; not only are they concerned with the preventive acts of potential divorce, they should also restore the integrity of the household after divorce.

The practice of mediation practiced in the Customary Institution is local wisdom of the local Muslim community who actualizes and develops the concept of mediation outside the court properly. Although this institution is not specifically a mediation institution, its role in the mediations seeking to restore the integrity of the local community households after divorce is evident. The role played by the institution exceeds the conventional mediators known in the court – not only does it mediate potential divorce conflict, but it also works for post-divorce mediation. Up to this day, this institution has carried out successful mediations that reunite divorced spouses. This brings benefits to the household life of the community in Rantau Pandan, including; saving the public from the expenses associated with court trials, including expensive transportation costs, and turning conflictual households in the community to harmony. In addition, this institution has also succeeded in saving children from having a stepfather or stepmother, and in establishing a synergy between the *nenek mamak* and the nephew in the returning family after the divorce. This situation, thus, shows the better role and function of *nenek mamak* in guiding and directing the life of his niece's household.

⁴⁵ Amir Syarifuddin, *Hukum Perkawinan Islam Di Indonesia*, (Jakarta: Kencana, 2006), pp. 195-196

The mediation efforts undertaken by the Customary Institution of Rantau Pandan works under the principles of the al-Qur'ān in order to the realization of domestic welfare and the achievement of the familial life goal of establishing a *sakīnah*, *mawaddah*, and *rahmah* marriage. This institution has done the best for the community and saved them from domestic conflicts with all the consequences.

To enhance its role and duties, this study recommends that the Bungo District Religious Court to work integratively with this Institute. This institution would assist the Religious Courts in conducting the mediation. If this is possible, the Institute will further enhance its role and duties in the community, especially in Rantau Pandan.

Conclusion

This study concludes that the mediation process conducted by Malay Customary Institution in Rantau Pandan, Jambi is divided into two forms: one that started from the request of one of the involving parties and one that run without the precondition of reconciliation. This study also finds that the factors leading to the success of the mediation are the mediators' competence—built upon the sufficient experience, mastery of mediation techniques, and extensive religious knowledge—kinship relations, and the goodwill of the parties.

The role of Malay Customary Institutions in Rantau Pandan with regards to reconciliation upon divorced spouses works under the guidance of the Qur'ān and the principle of mediation in Islam. Therefore, this institution has played a role in developing the concept of mediation outside the court, both in terms of form and task. The existence of the Malay Customary Institution becomes a representative of the Religious Court and local wisdom that should be preserved and devel-

oped in order to maintain the integrity of the households in Rantau Pandan.

Bibliography

Journals

- Beck, Connie JA, and Bruce D. Sales. "A Critical Reappraisal of Divorce Mediation Research and Policy." *Psychology, Public Policy, and Law* 6, no. 4 (2000): 989. <https://doi.org/10.1037//1076-8971.6.4.989>
- Berlian, Selvia. "Mediasi Penal Melalui Lembaga Adat Dalam Penyelesaian Kasus Perzinaan." *Journal of Chemical Information and Modeling*, (2019). <https://doi.org/10.1017/CBO9781107415324.004>.
- Bickerdike, Andrew J., and Lyn Littlefield. "Divorce Adjustment and Mediation: Theoretically Grounded Process Research." *Mediation Quarterly* 18, no. 2 (2000): 181–201. <https://doi.org/10.1002/crq.3890180207>.
- Bingham, Lisa B. "Employment Dispute Resolution: The Case for Mediation." *Conflict Resol. Q.* 22 (2004): 145. <https://doi.org/10.1002/crq.96>
- Bintoro, Rahadi Wasi. "Implementasi Mediasi Litigasi Di Lingkungan Yurisdiksi Pengadilan Negeri Purwokerto." *Jurnal Dinamika Hukum*, 2014. <https://doi.org/http://dinamikahukum.fh.unsoed.ac.id/index.php/JDH/article/view/273>.
- Bush, Robert A. Baruch, and Sally Ganong Pope. "Changing the Quality of Conflict Interaction: The Principles and Practice of Transformative Mediation." *Pepperdine Dispute Resolution Law Journal* 3, no. 1 (2012): 4.
- Fauzi, Rahmat, and Faisal Faisal. "Efektifitas Mediasi Dalam Menyelesaikan Sengketa Perceraian (Study Di Pengadilan Agama Bukittinggi Dan Pengadilan Agama

- Payakumbuh Tahun 2015-2017)." *Soumatera Law Review* 1, no. 2 (2018): 314-334.
<https://doi.org/10.22216/soumlaw.v1i2.3722>.
- Hasibuan, M Lohot. "Penyelesaian Sengketa Perbankan Syariah Di Pengadilan Agama." *Al-Risalah*, (2018).
<https://doi.org/10.30631/al-risalah.v13i01.444>.
- Herawati, Netty. "Implikasi Mediasi Dalam Perkara Perdata Di Pengadilan Negeri Terhadap Asas Peradilan Sederhana, Cepat, Dan Biaya Ringan." *Perspektif* 16, no. 4 (2011): 227-235.
<https://doi.org/10.30742/perspektif.v16i4.85>.
- Kusumaningrum, Arum, Yunanto, and Benny Riyanto. "Efektivitas Mediasi Dalam Perkara Perceraian di Pengadilan Negeri Semarang." *Diponegoro Law Journal*, (2017).
- Mamudji, Sri. "Mediasi Sebagai Alternatif Penyelesaian Sengketa Di Luar Pengadilan." *Jurnal Hukum & Pembangunan*, 2017.
<https://doi.org/10.21143/jhp.vol34.no3.1440>.
- Mustika, Dian. "Efektivitas Mediasi Dalam Penyelesaian Perkara Perceraian Di Pengadilan Agama Jambi." *Al-Risalah* 15, no. 2 (2015): 297-308.
<https://doi.org/10.30631/al-risalah.v15i02.370>
- Raharjo, Agus. "Mediasi Sebagai Basis Dalam Penyelesaian Perkara Pidana." *Jurnal Mimbar Hukum* 20, no. 1 (2008): 406-49.
<https://doi.org/10.20303/jmh.v20i1.225>.
- Raharjo, Trisno. "Mediasi Pidana Dalam Ketentuan Hukum Pidana Adat." *Jurnal Hukum IUS QUIA IUSTUM* 17, no. 3 (2010): 492-519.
<https://doi.org/10.20303/jmh.v20i1.225>.
- Rismawati, Shinta Dewi, Saif Askari, and M. Muslih Husein. "HAKIM DAN MEDIASI: Pemaknaan Hakim Terhadap Mediasi Perkara Perdata Di Pengadilan Negeri Pekalongan." *Jurnal Penelitian* 9, no. 2 (2013).
<https://doi.org/10.28918/jupe.v9i2.142>.
- Talli, Abdul Halim. "Mediasi Dalam Perma Nomor 1 Tahun 2008." *Jurnal Al-Qadau: Peradilan Dan Hukum Keluarga Islam* 2, no. 1 (2015): 76-93.

Books

- Abbas, Syahrizal. *Mediasi Dalam Hukum Syariah, Hukum Adat, Dan Hukum Nasional*. Jakarta: Kencana, 2011.
- Al-Sais, Muhammad Ali. *Tafsir Āyāt Al-Aḥkām*. Cairo: Maktabah al-Azhariyyah, n.d.
- Amir, Syarifuddin. *Hukum Perkawinan Islam Di Indonesia*. Jakarta: Kencana, 2006.
- Bungo, Tim Penulis Buku Pedoman Adat. *Buku Pedoman Adat Bungo; Lembaga Adat Kabupaten Bungo*. Bungo: tp., 2004.
- Maraghi, Syeikh Ahmad Mustafa. *Tafsir Al-Maraghi*. Semarang: Toha Putra, 1988.
- Nafis, A A. *Alam Takambang Jadi Guru: Adat Dan Kebudayaan Minangkabau*. Cetakan I. Jakarta: Temprint, 1984.
- Quthb, Sayyid. *Tafsir Fi Zhilalil Qur'an (Di Bawah Naungan Al-Qur'an)*. Vol. 1. Jakarta: Gema Insani Perss, 2003.
- Rahmadi, Takdir. *Mediasi: Penyelesaian Sengketa Melalui Pendekatan Mufakat*. Jakarta: Rajawali Press, 2010.
- Soekanto, Soerjono. *Faktor-Faktor Yang Mempengaruhi Penegakan Hukum*. Jakarta: PT Raja Grafindo Persada, 2011.
- Somad, Kemas Arsyad. *Mengenal Adat Jambi Dalam Perspektif Modern*. Jambi: Dinas Pendidikan Provinsi Jambi, 2003.
- Syukur, Fatahillah A. *Mediasi Yudisial Di Indonesia: Peluang Dan Tantangan Dalam Memajukan Sistem Peradilan*. Bandung: Mandar Maju, 2012.
- Tihami, and Sohari Sahrani. *Fikih Munakahat Kajian Fikih Nikah Lengkap*. Jakarta: Rajawali Press, 2009.
- Yasb. *Adat Lamo Pusako Usang*. Rantau

Pandan: tp, 2004.

Theses

Irwanto. "Efektivitas Mediasi sebagai Upaya Damai dalam Menyelesaikan Perkara Perceraian di Pengadilan Agama Sungai Penuh." Master Thesis of IAIN Imam Bonjol Padang, 2014.

Interviews

Hasan. "Interview with Researchers," April 2019.

Hasanudin. "Interview with Researchers," May 2019.

Karim, Ahmad. "Interview with Researchers," May 2019.

Syafaruddin. "Interview with Researchers," May 2019.

Usman. "Interview with Researchers," June 2019.