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

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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’ân 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


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 ḥakam 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

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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. 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.

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 involved 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

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

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 respective husband or wife as the *ḥakam* (mediator). *Ḥakam* 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 *ḥakam* 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 *ḥakam* 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.\(^14\)

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\(^13\) 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. 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; 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. According to Takdir Rahmadi, the scope of mediation is the scope of indigenous peoples. Consequently, customary functionaries play a function as an intermediary in resolving disputes in indigenous peoples. 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.

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 come from Jambi).

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). 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

16 Syahrizal Abbas, Mediasi dalam Hukum Syariah, Hukum Adat, dan Hukum Nasional (Jakarta: Kencana, 2011), p. 31
17 Ibid., p. 36
18 Rahmidi, Mediasi, p. 71
21 Tim Penulis Buku Pedoman Adat Bungo, Buku Pedoman Adat Bungo; Lembaga Adat Kabupaten Bungo, (Bungo: tp., 2004), p. 23
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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’ (al-im ulama) and teliti (cleverness).

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.

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 manyalasaian (lit. tangly chicken feathers, with a beak it gets solved), (b) Kusuik banang, dicari ujuangnyo untuak manyalasaian (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).

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22 Yasb, Adat Lamo Pusako Usang, (Rantau Pandan: tp, 2004), p. 31
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 paruih manyalasai. 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 be 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 ujuangno untuak manyalasai. 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 rambui dua lam tapuah, tampaik 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.\(^\text{25}\)

\(^{25}\) 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 asks 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 party’s 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, Karim\(^{28}\) and Syafaruddin,\(^{29}\) the members of the Rantanu


\(^{27}\) Usman, ‘Interview with Researchers’, 2019

\(^{28}\) Ahmad Karim, ‘Interview with Researchers’, May 25, 2019

\(^{29}\) Syafaruddin, ‘Interview with Researchers’, May 25, 2019
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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. 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 emphasizes 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

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33 Soerjono Soekanto, Faktor-Faktor Yang Mempengaruhi Penegakan Hukum, (Jakarta: PT Raja Grafindo Persada, 2011), p. 7
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 hadiths 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.\(^{39}\)

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 خَافَتُمْ شِقَاقَ بَيْنِهِمَا فَابْعَثُوا حَاكِمًا مِّنْ أَهْلِهِ إِنْ يُرِيدُآ إِصْلَاحًا يُوفِّيُ اللَّهُ بَيْنَهُمَا إِنَّ اللَّهَ كَانَ عَلِيْمًا خَبِيرًا

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 Quṭb suggests that the nature of instruction is fard ‘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 ‘Abbād al-Rahmān 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

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 *talāq*. As for the post-divorce mediation, it is hardly found any discussion, as if, when the *talāq* 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 (*sidāq*). After the divorce has taken place (as the first or the second *talāq*), the concept of *ḥakam* does not seem to be relevant any longer. As for the mediation of this Customary Institution, aside from being a preventive effort, it also plays a role in returning divorced parties (in *talāq* 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.

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 sakinah, 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 developed in order to maintain the integrity of the households in Rantau Pandan.

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