

USING CASE BROKER INSTEAD OF MEDIATOR IN TRIBUNAL PROCESS: CASE STUDY IN MARRIAGE LAW

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Abstract: A divorce broker is a person who provides services to process a divorce certificate in a religious court until it is finalised without even the presence of the plaintiff or defendant and is usually absent in tribunal process called *verstek*. This causes mediation, which is mandatory in religious courts, to become dysfunctional because one of the parties is not in good faith. This research is an empirical legal research study with a sociological approach. The data collection method is obtained by interview and observation. While the data analysis used is descriptive analytical. The results of this study are as follows; 1) The factors behind the use of divorce broker services are the distance from the religious court, the lack of understanding of the law, the plaintiff working abroad, and the less-than-optimal role of mediation that takes place in the family and community. 2) The number of divorce case brokers that affect the mediation process in Satjipto Rahardjo's responsive law perspective does not reflect the eastern culture that always prioritises the values of brotherhood, humanity and deliberation. 3) The solution to minimise the rise of divorce case brokers is to optimise the role of the Office of Religious Affairs which is closer to the community so that it becomes a place for families to complain and optimise advocacy for marriage law.

However, the role of divorce case brokers is still considered important if these factors have not been resolved, but mediation needs to be optimised as a first step.

Keywords: Divorce Broker, Tribunal Process, Marriage Law

Abstrak: Makelar kasus perceraian merupakan orang yang menyediakan jasa pengurusan akta perceraian di pengadilan agama sampai jadi tanpa kehadiran penggugat maupun tergugat sekalipun dan biasanya bersifat *verstek*. Hal ini menyebabkan mediasi yang menjadi keharusan di pengadilan agama menjadi tidak berfungsi karena salah satu pihak tidak beritikad baik. Penelitian ini merupakan penelitian hukum empiris dengan pendekatan sosiologi. Adapun metode pengumpulan data diperoleh dengan wawancara dan observasi. Sedangkan analisis data yang digunakan ialah deskriptif analitis. Hasil dari penelitian ini ialah sebagai berikut; 1) Faktor yang melatarbelakangi banyaknya penggunaan jasa makelar kasus perceraian ini ialah jarak yang jauh dari pengadilan agama, kurangnya tingkat pemahaman tentang hukum, penggugat bekerja di luar negeri, dan masih kurang optimalnya peran mediasi yang berlangsung di lingkungan keluarga maupun masyarakat. 2) Banyaknya makelar kasus perceraian yang berpengaruh pada proses mediasi ini dalam perspektif hukum responsif Satjipto Rahardjo tidak mencerminkan budaya ketimuran yang selalu mengedepankan nilai-nilai persaudaraan, kemanusiaan, dan musyawarah. 3) Solusi guna meminimalisir maraknya makelar kasus perceraian tersebut ialah mengoptimalkan peran Kantor Urusan Agama yang lebih dekat dengan masyarakat sehingga menjadi tempat keluarga untuk berkeluh kesah dan optimalisasi advokasi hukum perkawinan. Namun, peran jasa makelar kasus perceraian ini masih dianggap penting jika faktor-faktor tersebut belum terselesaikan, tetapi perlu dioptimalkan terlebih dahulu mediasi sebagai langkah awal.

Kata Kunci: Perantara Perceraian, Proses Pengadilan, Hukum Perkawinan

INTRODUCTION

Satjipto Rahardjo said that the goal of law that is always coveted by Eastern (Asian) people is happiness. The happiness he meant would be realized if the implementation of dealing with conflicts between individuals or groups always upholds traditional resolution alternatives that strongly uphold a sense of brotherhood.¹ However, lately, the role of mediation as an alternative to Eastern-Style dispute resolution that strongly upholds harmony between parties has been increasingly abandoned. In the field of marriage, this is evidenced by the rise of divorce case brokers who offer divorce services with a divorce certificate that is immediately finished without involving the plaintiff and defendant in court. These divorce case brokers then completely hand over the divorce case to a known advocate and take care of it until the divorce certificate is issued. These divorce case brokers are rampant in villages that are far from urban areas, making it difficult to access the law at legal aid organizations or legal academics, so they do not receive legal services. Even these divorce case brokers also offer their services to families that they indicate will soon end due to prolonged conflict.

The problem with using the services of divorce case brokers is that these brokers only find one advocate to represent the plaintiff's side and do not find another advocate to represent the defendant. Therefore, the cases faced by these divorce case brokers are divorce cases filed by

1 Satjipto Rahardjo, *Penegakan Hukum Progresif* (Jakarta: PT Kompas Media Nusantara, 2010), p. 38-42; Erika Rackley and Rosemary Auchmuty, "The Case for Feminist Legal History," *Oxford Journal of Legal Studies* 40, no. 4 (December 21, 2020): 878-904, <https://doi.org/10.1093/ojls/gqaa023>; Kelly Chong Yan Chan and Edward Lui, "Citizenship, Charges And Common Law Constitutional Rights," *The Cambridge Law Journal* 81, no. 2 (2022): 225-28, <https://doi.org/DOI:10.1017/S0008197322000289>; Bertrand Chopard and Marie Obidzinski, "Public Law Enforcement under Ambiguity," *International Review of Law and Economics* 66 (June 2021): 105977, <https://doi.org/10.1016/j.irle.2021.105977>.

the plaintiff without the presence of the defendant / his legal representative, which in the end are decided by the judge *verstek*. Thus, the mediation process, which should be an obligation, cannot be carried out because the defendant is not in good faith as stated in Article 32 Paragraph (2) letter c of the Regulation of the Supreme Court of the Republic of Indonesia (PERMA RI) Number 1 of 2016 concerning Mediation Procedures in Court. In other words, the more *verstek* cases, the less the implementation of the alternative dispute resolution process aimed at reconciling the two litigants.

In addition, the actions of divorce case brokers who want to make a profit by offering services to families who are indicated to be going through divorce have also indirectly indicated the increasingly fertile principle of capitalism. This principle of capitalism has affected the legal field with the practice of law being traded.² This principle is very contrary to the principles of Pancasila, which always prioritizes humanity/brotherhood (second principle) and deliberation (fourth principle).³ Marriage, which is essentially a sacred relationship, is increasingly worthless with the practice of buying and selling cases for purely formal matters that are sheltered behind the word "providing convenience". The essence of the establishment of mediation services in the Religious Courts is not only to provide simple, fast, and low-cost justice but also to show that marriage in Indonesia is something that must be strong and not easily broken (*mītsāqan ghalidzā*).⁴

It can be said that these divorce case brokers not only influence the role of mediation in the Court, but also influence the legal culture in the community to have a Western-like capitalist mindset that is manifested in the form of buying and selling cases, causing the loss of traditional culture that is rich in the principles of humanity, brotherhood, and deliberation.⁵ Mediation that takes place in court may be less effective because psychologically, emotionally the two parties have reached a climax, but if mediation within the scope of the family or community has been abandoned and prefers the instant route through the services of a divorce case broker, then the original identity of Indonesian society, which is Eastern people who highly uphold humanism, is lost. Therefore, empirical research to find out the causes of the number of divorce case brokers

- 2 Legal positivism and capitalism are closely related, capitalism is the cause of the formation of legal positivism which emphasizes dogma. Modern industrialized life in the 18-19th century, characterized by the recognition of personal rights protected from other groups and the search for greater market profits, meant that all transactions had to be in writing and rationally predictable. In addition, the state also had to be present as a tool to protect the rights of the technocrats or bourgeois in the business sector. This led to contracts and laws only being recognized in written form and the emergence of legal professionals who catered to the cases of the technocrats or bourgeoisie. Legal knowledge in this case is narrowed down to only be understood by a certain group. These legal professionals also practiced buying and selling cases like a business. See Dylan Riley, Rebecca Jean Emigh, and Patricia Ahmed, "The Social Foundations of Positivism: The Case of Late-Nineteenth-Century Italy," *Social Science History* 45, no. 1 (2021): 813–42, <https://doi.org/https://doi.org/10.1017/ssh.2021.22>. Margot E. Salomon, "Emancipating Human Rights: Capitalism and The Common Good," *Leiden Journal of International Law* 36, no. 4 (2023): 857–77, <https://doi.org/https://doi.org/10.1017/S0922156523000316>. Anna Pekarska, "Challenging The Rule of Law Universalism: Why Marxist Legal Thought Still Matters," *Law and Critique* 34, no. 2 (2023): 270–85, <https://doi.org/10.1007/s10978-022-09338-x>.
- 3 Agus Salim et al., "History and Implementation of Pancasila Economic Education in Indonesia," *Riwayat Educational Journal of History and Humanities* 6, no. 1 (2023): 13–22, <https://doi.org/https://doi.org/10.24815/jr.v6i1.29078>.
- 4 Pahruraji Suhastra, "Mediation Procedure in Religious Courts in Indonesia in The Perspective of Thought Wahbah Al-Zuhaily," *Mahkamah: Jurnal Kajian Ilmu Hukum Dan Hukum Islam* 8, no. 1 (2023): 97–108, <https://doi.org/https://doi.org/10.25217/jm.v8i1.3486>.
- 5 Yogi Prasetyo, "Social Reality as Legal (Criticism of Bad Positive Laws in Legislation)," *Fiat Justitia: Jurnal Ilmu Hukum* 15, no. 3 (2021): 255–68, <https://doi.org/https://doi.org/10.25041/fiatjustisia.v15no3.2194>. Joxerramon Bengoetxea, "Legal Institutions and Comparison of Legal Cultures," *Oñati Socio-Legal Series* 12, no. 6 (2022): 1647–73, <https://doi.org/https://doi.org/10.35295/osls.iisl/0000-0000-0000-1361>.

must be carried out so that the mediation process can be effective as an Eastern cultural heritage before being transferred to the Court and to uphold that marriage is a strong bond (*mītsāqan ghalidzā*).⁶

The focus of this research is to find the causes of the rise of divorce case brokers in the implementation of mediation. As for the sample of this research, it is limited to users of divorce case brokers' services in Kedungsalam Village, Donomulyo District, Malang Regency, East Java. The purpose of this research is to find a solution to the rise of divorce case brokers who provide direct divorce certificate services with a divorce verdict in the form of *verstek* (without the presence of the defendant). It is hoped that Indonesia in the future will always preserve the Eastern culture by conducting alternative dispute resolution first to create a win-win solution so that the parties are equally satisfied and further strengthen the bond of brotherhood. The benefit of this research is for Indonesian society in general and Muslim society in particular to continue to preserve the culture of alternative dispute resolution that upholds a sense of brotherhood, deliberation, and peace, as well as the creation of the principle of a strong marital bond (*mītsāqan ghalidzā*).

As a continuation of the previous research, it is necessary to discuss some previous research that discusses the mafia in court. First, research conducted by Hamdan Zoelva discusses the causes of the judicial mafia which is caused by collusion and corruption behavior by stakeholders in the Court, and the impact of this judicial mafia is that it causes a lack of justice and the law is only a tool for those who have power.⁷ Second, research conducted by Mardalena Hanifah and Meidana Pascadinianti discusses the causes of the success of non-judge mediation that took place in the Religious Court, namely the skills of non-judge mediators and the awareness of the litigants in repairing their households again.⁸ Third, research conducted by Rini Maryam and Sulistyowati Irianto discusses the causes of the low success of mediation that

- 6 The term *mītsāqan ghalidzā* is found in surah An-Nisa' which means a strong agreement which means the nature of marriage is sacred. In Thoshihiko Izutsu's semantic analysis, this term has the same position as the covenant of the Prophet Ulul Azmi with Allah SWT. and the covenant of Allah SWT. with the Children of Israel. See Toyyibatul Qomariyah and Afifullah, "Term Misaqan Ghalidza Dalam QS. An-Nisa': 21 (Analisis Semantik Toshihiko Izutsu)," *Maghza: Jurnal Ilmu Al-Qur'an Dan Tafsir* 8, no. 1 (2023): 50–74, <https://doi.org/https://doi.org/10.24090/maghza.v8i1.7884>.
- 7 Hamdan Zoelva, "The Threat of Judicial Mafia in Indonesia in Discrediting the Principle of the Rule of Law," *International Journal of Criminology and Sociology* 10, no. 1 (2021): 839–44, <https://doi.org/https://doi.org/10.6000/1929-4409.2021.10.99>; Muhammad Siddiq. et all Armia, "Post Amendment of Judicial Review in Indonesia: Has Judicial Power Distributed Fairly?," *JILS* 7 (2022): 525; Muhammad Siddiq Armia, "Ultra Petita and The Threat to Constitutional Justice: The Indonesian Experience," *Intellectual Discourse* 26, no. 2 (2018): 1–23.
- 8 Mardalena Hanifah and Meidana Pascadinianti, "Function of Non-Judge Mediators in Divorce Settlement Through Religious Courts," *Unnes Law Journal* 9, no. 2 (2023): 377–418, <https://doi.org/https://doi.org/10.15294/ulj.v9i2.75611q>; Al Khanif, "Women, Islam, and Modern Family Construction in the Perspectives of Legal Pluralism in Indonesia," *Petita : Jurnal Kajian Ilmu Hukum Dan Syariah* Vol.4, no. No.2 (2019), <https://doi.org/https://doi.org/10.22373/petita.v4i2.24>; Heti, "Pemenuhan Hak Nafkah Sebagai Salah Satu Pola Terhadap Perlindungan Anak: Analisis Pemikiran A. Hamid Sarong," *Petita: Jurnal Kajian Ilmu Hukum Dan Syariah* 2, no. 1 (April 1, 2017), <https://doi.org/10.22373/petita.v2i1.61>; A Hamid Sarong & Nur A Fadhil Lubis, "The Child Rights In Islamic Law With A Special Focus On Aceh," *Petita : Jurnal Kajian Ilmu Hukum Dan Syariah* Volume 4, no. Nomor 1 (2019); Muharrani et al., "Children's Rights In A Quasi Broken Home Perspective Of Islamic Law And Law Number 35 Of 2014 Concerning Child Protection," *Petita: Jurnal Kajian Ilmu Hukum Dan Syariah* 9, no. 1 (March 2, 2024), <https://doi.org/10.22373/petita.v9i1.284>; Mansari, "Pertimbangan Hakim Memberikan Hak Asuh Anak Kepada Ayah: Suatu Kajian Empiris Di Mahkamah Syar'iyah Banda Aceh," *Petita: Jurnal Kajian Ilmu Hukum Dan Syariah* 1, no. 1 (April 1, 2016), <https://doi.org/10.22373/petita.v1i1.80>; Kudrat, "Status Anak Di Luar Nikah Dalam Perspektif Sejarah Sosial," *Petita: Jurnal Kajian Ilmu Hukum Dan Syariah* 1, no. 1 (April 1, 2016), <https://doi.org/10.22373/petita.v1i1.78>.

occurred in the Religious Courts in Jakarta.⁹ Several previous studies discuss the effects. The focus of this research that distinguishes the three studies is on analyzing the causes of the rise of divorce case brokers which resulted in the dysfunction of mediation.

Methods

The research is included in empirical legal research with a sociological approach conducted by directly examining the factors and consequences of the rise of divorce case brokers who hinder the efficiency of mediation.¹⁰ In addition, this research is also included in qualitative research whose data sources are details about the data obtained through interviews and observations.¹¹ In this study, the researcher participated directly in collecting data by interviewing informants.

The subjects of this research were plaintiffs in divorce cases in Malang Regency who used the services of divorce case brokers. The source of data was obtained through interviews with 10 people who have divorced with the services of a divorce case broker who lives in Kedungsalam Village, Donomulyo District, Malang Regency, East Java, and one of the divorce case brokers in the village. The object of this research is the causes of people using the services of divorce case brokers.

The data sources used in this research are primary data sources and secondary data sources. Primary data sources in this case were obtained through interviews with 10 people who had divorced with the services of a divorce case broker domiciled in Kedungsalam Village, Donomulyo District, Malang Regency, East Java, and one of the divorce case brokers in the village. Secondary data sources were obtained through in-depth searches of the literature. In testing the validity of the data, in-depth interviews were used with open-ended questions and synchronization between what was reported by the informants and the social reality that occurred in the community. The data analysis technique used is descriptive analytical by describing the data that has been obtained through interviews.

Results and Discussions

The Relationship between Divorce Case Brokers in Malang District and the Dysfunctioning Role of Mediation

Mediation is an alternative dispute resolution between two disputing parties with the mediator as a referee whose task is to reconcile the two so that a win-win solution is realized.¹² Mediation is divided into two, namely in-court mediation and out-of-court mediation.¹³ The existence and authority of mediation in court is regulated by PERMA Number 1 of 2016 concerning Mediation Procedures in Court. According to Article 3 paragraphs (2) and (3) of PERMA Number 1 of 2016, it is explained that the mediation process in court is mandatory before proceeding to the evidentiary stage and if the judge does not order mediation, then he is considered to have

- 9 Rini Maryam and Sulistyowati Irianto, "Exploring Efficacy: A Study of Simple and Complex Approaches to Divorce Mediation," *Lentera Hukum* 10, no. 3 (2023): 331–64, <https://doi.org/https://doi.org/10.19184/ejlh.v10i3.43726>.
- 10 Muhaimin, *Metodologi Penelitian Hukum* (Mataram: Mataram University Press, 2020), h. 80.
- 11 David Hizkia Tobing et al., *Metode Penelitian Kualitatif* (Denpasar: Udayana University Press, 2016), p. 10.
- 12 Bambang Sutiyo, "Implementation of Mediation as Online Dispute Resolution (ODR) in Civil Jurisdiction," *Ijesss: International Journal of Environmental Sustainability and Social Science* 4, no. 1 (2023): 297–308, <https://doi.org/https://doi.org/10.38142/ijesss.v4i1.487>. Rusli Subrata, "Mechanism of Alternative Dispute Resolution in Conflict and Dispute Resolution in Indonesia," *Jurnal Litigasi* 24, no. 1 (2023): 151–64, <https://doi.org/https://doi.org/10.23969/litigasi.v24i1.7198>.
- 13 Indriati Amaarini, "Court Connected Mediation: Civil Dispute with a Local Society Cultural Approach," *Jurnal Dinamika Hukum* 20, no. 1 (2020): 256–73, <https://doi.org/http://dx.doi.org/10.20884/1.jdh.2020.20.1.2599>; Zendy Wulan Ayu Widhi Prameswari and Erni Agustin, "Indonesian Marriage Law Reform: The Way To Strengthen The Protection of Children's Rights Against Child Marriage," *Journal of Southeast Asian Human Rights* 2, no. 1 (June 30, 2018): 286, <https://doi.org/10.19184/jseahr.v2i1.5353>.

violated the statutory provisions governing mediation. The purpose of requiring mediation in court is to implement the principles of simplicity, speed, and low cost because every year the number of cases entering the Court increases which causes the burden on judges to increase.¹⁴ In addition, the existence of mediation is also a means for the community to achieve justice that grows in the community and is most by the Eastern (Asian) culture which is famous for its high sense of humanity and brotherhood.¹⁵

Mediation in divorce cases cannot be carried out if the lawsuit is filed by the plaintiff/legal representative without the presence of the defendant/legal representative as explained in Article 4 paragraph (2) letter b and Article 32 paragraph (2) letter c of PERMA Number 1 Year 2016. The Religious Court in this case immediately decides with a verdict *verstek* which will be legally binding if no opposition case (*verzet*) is filed. This is exacerbated by the fact that many villagers who are far from the Religious Court are reluctant to take care of their divorce cases at the Religious Court so only one of the aggrieved parties tries to contact a divorce case broker to proceed until the divorce certificate is issued. This situation is a loophole for divorce case brokers to offer divorce management services through their acquaintance advocates and a client only receives a divorce certificate without being present at the Religious Court. In this case, mediation, which seeks to reconcile the two litigants so that they return to a strong marital bond (*mītsāqan ghalidzā*), becomes completely absent, resulting in more divorces.¹⁶ Although there is no denying that many studies consider court mediation to be ineffective because many are unsuccessful, at least the mediation efforts can be said to be an endeavor by the two parties to reunite.¹⁷

Divorce case brokers in this case act as intermediaries for advocates to get clients who then share the results between the two. This is to circumvent Article 8 letters (b) and (f) of the Indonesian Advocate Code of Ethics (KEAI) which prohibits an advocate from promoting the sale and purchase of services. Establishing relationships with community leaders to help people who are unfamiliar with the law can be justified as a form of creativity in finding clients,¹⁸ but

- 14 Husni Ingratubun and Fitri Ingratubun, "Implementation of Mediation Effort for Settlement at The Class Ia Religious Court in Jayapura," *Sasi* 29, no. 4 (2023): 717–39, <https://doi.org/https://doi.org/10.47268/sasi.v29i4.1708>.
- 15 Shaofeng Zheng et al., "Cultural Differences in Social Support Seeking: The Mediating Role of Empathic Concern," *Plos One* 16, no. 2 (2021): 1–21, <https://doi.org/https://doi.org/10.1371/journal.pone.0262001>. Jianwei Zheng and Wenjun Fan, "Art, Trade, and Cultural Mediation in Asia, 1600-1950," *Critical Arts: South-North Cultural and Media Studies* 34, no. 2 (2020): 108–10, <https://doi.org/https://doi.org/10.1080/02560046.2020.1750447>. Hilman Syahril Haq et al., "Community Mediation-Based Legal Culture in Resolving Social Conflicts of Communities Affected by The Covid-19 Pandemic in West Nusa Tenggara, Indonesia," *Studi Iuridica Lublinensia* 31, no. 2 (2022): 11–32, <https://doi.org/http://dx.doi.org/10.17951/sil.2022.31.2.11-32>.
- 16 Muhammad Salahudin et al., "Practice of Interfaith Marriages in Indonesia on Islamic Jurisprudence," *International Journal of Social Science and Religion (IJSSR)* 4, no. 3 (2023): 477–90, <https://doi.org/http://dx.doi.org/10.53639/ijssr.v4i3.205>.
- 17 Research conducted by Yasin, Faradila Hasan, and Fikri Amiruddin stated that the effectiveness of successful mediation of divorce cases at the Gorontalo Religious Court in 2019 was only 3.87%, while in 2020 it was only 2.79%. See Yasin, Faradila Hasan, and Fikri Amiruddin, "Mediation in Marriage Disputes and Divorce (Analytical Study on The Application of Mediation in The Gorontalo Religious Court)," *Innovatia: Journal for Religious Innovation Studies* 21, no. 2 (2021): 99–111, <https://doi.org/https://doi.org/10.30631/innovatio.v21i2.123>. In addition, research conducted by Rezcky Aditya and Evalina Alissa stated that the number of successful divorce case mediations at the Jambi City Religious Court in 2020 was only 5/943, in 2021 only 9/1033, and in 2022 only 10/1100. See Rezcky Aditya and Evalina Alissa, "Efektivitas Mediasi Dalam Meminimalisir Angka Perceraian Di Pengadilan Agama Kota Jambi," *Zaaken: Journal of Civil and Business Law* 4, no. 2 (2023): 332–46, <https://doi.org/https://doi.org/10.22437/zaaken.v4i2.24067>.
- 18 Farouq Ahmad Faleh Al-Azzam and Mueen Fandi Nhar Al-Shunnaq, "Formation of Creative Thinking of Lawyer in Modern Condition of Development Including The Influence of Covid-19

the role of mediation must also be considered as an effort to repair relationships that have been on the edge. The role of a mediator with expertise in psychology, psychiatry, psychotherapy and spirituality is very important as the first remedy for disharmonious family relationships.¹⁹ It needs to be recognized that the role of the divorce case broker who mediates the advocate as the plaintiff's legal representative is very important considering that there are still many Indonesians who are unfamiliar with the law or are constrained by problems that make it impossible to attend the trial, but the mediation process in this divorce case is no less important because it is to affirm the strong/sacred nature of marriage (*mītsāqan ghalidzā*). Therefore, in-depth research is needed so that there is no antinomy between the easy access to legal services by advocates through the intermediary of divorce case brokers and the nature of marriage as *mītsāqan ghalidzā*.

Results of Interviews with 10 Kedungsalam Village Residents who Used the Services of a Divorce Case Broker

The following are the results of interviews with 10 residents of Kedungsalam Village who have used the services of divorce case brokers as research samples by mentioning initials for the protection of their names:

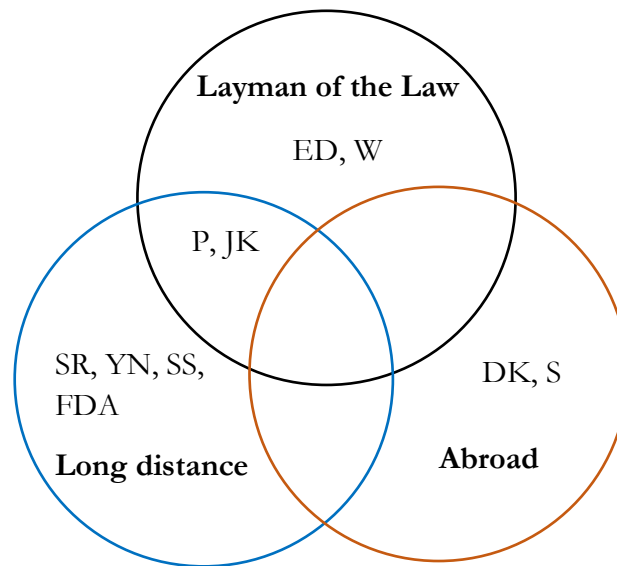
Table 3.1. Causes of people using the services of divorce case brokers.

No	Inisial Penggugat	Status of final judgement	Reasons for Using a Divorce Case Broker
1	P	<i>Verstek</i>	Long distances and multiple hearings, resulting in high costs and legal unfamiliarity.
2	DK	<i>Verstek</i>	Becoming a migrant worker abroad
3	SR	<i>Verstek</i>	Long distances and multiple hearings resulting in high costs
4	ED	<i>Verstek</i>	Legal layman and better left to legal professionals
5	YN	<i>Verstek</i>	Long distances and multiple hearings resulting in high costs
6	SS	<i>Verstek</i>	Long distances and multiple hearings resulting in high costs
7	JK	<i>Verstek</i>	The long distances and multiple hearings resulted in high costs and a lack of legal knowledge.
8	W	<i>Verstek</i>	Legal layman and better left to legal professionals
9	S	<i>Verstek</i>	Becoming a migrant worker abroad
10	FDA	<i>Verstek</i>	Long distances and multiple hearings resulting in high costs

From the data obtained, the number of status of *verstek* decisions with permanent legal force from the 10 samples is 100%. This means that there was no presence of the defendant even once, nor any opposition (*verzet*) to the *verstek* decision by the defendant. This further indicates that the mediation that took place in the family or internal environment was

- Pandemic," *Vilnius Tech: Vilnius Gedimias Technical University* 16, no. 1 (2023): 315–27, <https://doi.org/http://dx.doi.org/10.3846/cs.2023.16117>. Fauzi Triputra and Marissa Grace Haque, "Analisis Strategi Pemasaran Kantor Konsultan Hukum Di Bawah Kode Etik Advokat Indonesia: Studi Pada Firma Hukum Di Jakarta," *Jurnal Ekonomi Efektif* 4, no. 4 (2022): 657–69, <https://doi.org/https://doi.org/10.32493/JEE.v4i4.22033>.
- 19 Karmawan, "Mediation in The Religious Court of Indonesia," *Ahkam: Jurnal Ilmu Syariah* 20, no. 1 (2020): 79–96, <https://doi.org/https://doi.org/10.15408/ajis.v20i1.13249>; Barmawi, "Marriage Of Underage Couples Due To Khalwat According To Islamic Law," *JURISTA: Jurnal Hukum Dan Keadilan* 2, no. 1 (July 1, 2018): 89–111, <https://doi.org/10.22373/jurista.v2i1.49>.

unsuccessful so that the two had reached a determination to divorce. Meanwhile, the factors causing the use of divorce broker services will be displayed in a Venn diagram as follows:



From the explanation of the Venn diagram above, it can be determined the acquisition of the factors causing using the services of a divorce case broker as follows:

- 1) The plaintiff factor who is unfamiliar with the law = 2 (20%)
- 2) The factor of long distance from the religious court = 4 (40%)
- 3) The factor of being a migrant worker who is working abroad = 2 (20%)
- 4) Factors of long distance and legal unfamiliarity = 2 (20%)

Interview Results with a Divorce Case Broker in Kedungsalam Village

Interviews with divorce case brokers are important to find out the motives for doing this work and how it contributes. The divorce case broker interviewed here is a resident of Kedungsalam Village, Donomulyo Sub-district, Malang Regency, East Java. The initial name of the broker is "K". Based on an interview with him, K has been working as a divorce case broker since 2015 by cooperating with an advocate in Kepanjen who specializes in handling Islamic civil cases at the Kepanjen Religious Court. The reason he does this work is as a form of mutual assistance to his neighbours who want to divorce, this is because the divorce procedure in the Religious Court has been considered complicated with several hearings, especially since the distance between Donomulyo Sub-district and the Malang District Religious Court in Kepanjen Sub-district is also quite far (approximately 35 km). In addition, he said that the villagers were all law-abiding, and did not even know the documents that had to be prepared if they filed a divorce suit at the Religious Court. Therefore, he thought it would be a pity if the plaintiff had no knowledge of the law and became a confused person in court.

Then when interviewed about statements from some residents that he sometimes offers divorce case services to conflict-stricken couples, he said that he occasionally does so although accompanied by jokes and hopes that it will be resolved with the extended family first. In addition, when asked about revenue sharing with advocates of his acquaintance, he said that it was uncertain, if the case was only divorce, then he only took a profit of one million above the normal wage per advocate case in divorce cases. However, if the case is accompanied by a *hadhanah* lawsuit, then he will take a profit of more than one million. According to him, it is very inhumane if a divorce case broker seeks unreasonable income because it is as if he is happy with the suffering of a client who has just divorced. Thus, the point is that the services he offers to his villagers are none other than to help smooth the procedure of divorce.

The Culture of Alternative Dispute Resolution Practised by Kedungsalam Villagers

Alternative dispute resolution such as mediation that runs in the family and community environment in Kedungsalam Village is carried out only based on the values that live in the area,

such as Javanese culture and Islamic religious teachings. However, most of the mediation conducted by these people still do not know the fields of psychology, psychiatry, and psychotherapy so that the implementation is not optimal. In addition, a mediation forum with certified mediators still does not exist in Kedungsalam Village, even in several sub-districts in Malang Regency. In addition, additional information from the results of an interview with Erfaniah Zuhriah who works as a Mediator at the Malang City Religious Court revealed that the reason for the ineffective role of mediation in the Religious Court even with this certified mediator is because in general if the parties have carried out their will in the Religious Court, then psychologically they have reached their climax.²⁰ So it is very difficult for mediators in religious courts to reconcile the two because the emotions of the parties are already high and have reached a determination to divorce. The absence of mediation institutions with certified mediators in remote villages and the ease with which divorce certificates can be processed only through an advocate's representative with a verdict of *verstek* have resulted in the use of divorce case brokers becoming something that cannot be abandoned by the community. Therefore, there must be mediation institutions with certified mediators close to the community so that the emergence of seeds of domestic conflict can be minimized.

Analysis of Factors in the High Usage of Divorce Case Services in Kedungsalam Village

The explanation above, it can be explained the factors that influence the reasons the parties who want to divorce to use the services of a divorce case broker it cause the lack of functioning of mediation. These factors are as follows:

1. Great distance from the Religious Courts

Malang Regency is the second largest regency in East Java after Banyuwangi Regency with an area of 3,531 km² with the regency capital in Kepanjen District. Therefore, all administrative services are located in Kecamatan Kepanjen. With such a large area, it is difficult for residents who live in the most remote areas of the sub-district to access these administrative services, especially if the process is not only completed once but several times. Of course, this results in residents being drained of their energy, money and time. In divorce cases in the Religious Courts, the decision is not immediately issued at the first hearing, it takes a process such as the obligation to mediate several meetings with the mediator, reading the lawsuit, the defendant's answer, replication, duplicates, evidence, conclusions by the plaintiff and defendant, until the judge's decision is issued. Although nowadays mediation can be conducted through online media as a development of e-courts, it is still less efficient than in-person meetings because the parties' cases can be presented.²¹

2. Lack of Legal Knowledge by the Community

This lack of legal knowledge by the public and only by legal professionals is a result of the influence of legal positivism that still occurs today. The legal positivism paradigm was born as a result of industrialization that continued to develop from the 18th-19th century when two social classes were born, namely the bourgeoisie or capital owners and the proletariat or factory workers. The bourgeoisie who wanted to retain their property then wanted a written contract and written law so that their rights could be recognised and there was a sense of security. Then

20 Erfaniah Zuhriah, Interview, (Malang, 18 Maret 2024). See Syaikh, Sabarudin Ahmad, and Muhammad Luthfi Setiarno Putera, "Judicial Mediation: Is Reconciliation Impossible in Divorce Cases?," *Al-Manhaj: Journal of Indonesian Islamic Family Law* 5, no. 2 (2023): 120–47, <https://doi.org/https://doi.org/10.19105/al-manhaj.v5i2.11887>; Siti Maimunah Binti Mohd Rijal and Rukiah Muhammad Ali, "Efektivitas Pelaksanaan Sanksi Talak Di Luar Mahkamah Rendah Syariah," *Petita: Jurnal Kajian Ilmu Hukum Dan Syariah* 3, no. 1 (January 23, 2018), <https://doi.org/10.22373/petita.v3i1.141>; Iman Jauhari et al., "Legal Analysis Of Unregistered Marriage Viewed From Ulama's Perspective In Aceh Province," *PETITA: Jurnal Kajian Ilmu Hukum Dan Syari'ah* 8, no. 2 (October 15, 2023), <https://doi.org/10.22373/petita.v8i2.196>.

21 Juliana Paramitha Yoesuf et al., "Strengthening the Implementation of E-Court-Based Judiciary as a Legal Protection in the Implementation of E-Litigation-Based Trials," *Jurnal Hukum Dan Peradilan* 12, no. 2 (2023): 293–318, <https://doi.org/http://dx.doi.org/10.25216/jhp.12.2.2023.293-318>.

it also became the forerunner of the paradigm that something is not called law if it is not formalized in a written text. The existence of this increasingly formalized and structured law has led to the law being less understood by the public, it is only understood by legal professionals who are involved in the legal world every day. With the paradigm of legal positivism that is still developing, namely the science of law is only understood by law faculty scholars, it is natural that many ordinary people are very legally illiterate. This situation makes them when facing events related to the law prefer to submit directly to legal professionals.²² However, this situation can be minimized if the government regularly conducts legal education in remote areas.

3. Working Overseas

Until now Indonesia has not been able to get out of unemployment, even reported by the Central Statistics Agency (BPS) reported that the open unemployment rate (TPT) in Indonesia in February 2024 was 4.82%.²³ This figure is relatively large for Indonesia with a population of more than 250 million. To get out of unemployment, many Indonesians migrate abroad to find high-paying jobs to avoid poverty. However, efforts to improve the quality of the economy by becoming a worker abroad are still also hit by other problems in the form of domestic rifts that lead to divorce. According to Sutaji as a judge of the Malang Regency Religious Court, most of the plaintiffs of divorce cases entered in the Malang Regency Religious Court are women who work as Female Workers (TKW) abroad. The reasons they sue their husbands who live in Indonesia can vary, such as cheating, wasteful behavior, and others.²⁴ Although divorce lawsuits with advocate representation, because the plaintiffs work abroad are exempted from the mediation obligation as stipulated in Article 6 paragraph (4) letter c, it would be better to carry out mediation outside the court online first as a form of the first effort to maintain marital ties.

4. Lack of Effective Mediation by the Family and Community

Based on an interview with a divorce case broker, he said that although he sometimes looks for cases from couples who are indicated to have domestic conflicts, he hopes that it will be discussed first with mediation that brings together family members from each couple. However, mediation carried out within the scope of the family and the community does not have much success, as evidenced by the fact that there are still many users of the services of divorce case brokers, even though divorce rate at the Malang Regency Religious Court is still high. This concludes that the role of the family and society as the earliest guardians in maintaining the balance of marital relations is said to be still not optimal. The reason why mediation by the family and the community is not optimal is because they still do not know psychology, psychiatry, and psychotherapy. Even though these three sciences are very important in understanding and protecting a person's psychology or psychiatry.

Satjipto Rahardjo's Progressive Legal Thought

Etymologically, the word "progress" comes from English which means progress. As for progressive law in terminology, it is a law that can follow and answer all the problems of the times with all the basics in it to serve the interests of society by relying on the morality aspect of

22 In fact, according to Spence as quoted by Satjipto Rahardjo, basically since law students in the United States entered the lecture theatre, they were deprived of their humanity. Legal education in the United States does not encourage them to become human beings who love and care for others. This is due to the development of legal aid in the United States which is like a "legal industry" so that legal professionals more or less only run legal aid as a business rather than loving people in distress. This is what is currently happening in Indonesia, where there are still many professionals who are only looking for cases for business purposes. See Rahardjo, *Penegakan Hukum Progresif*, p. 181-182.

23 <https://www.bps.go.id/id/pressrelease/2024/05/06/2372/tingkat-pengangguran-terbuka--tpt--sebesar-4-82-persen-dan-rata-rata-upah-buruh-sebesar-3-04-juta-rupiah-per-bulan.html>, diakses 9 Mei 2024

24 Sutiaji, Interview, (Malang, 1 April 2024).

human resources as law enforcers themselves.²⁵ The term progressive law was first conveyed by him in a Kompas article on 15 June 2002 with the title "Indonesia Needs Progressive Law Enforcement". After that, the term progressive was used as the title of his books such as "Dissecting Progressive Law" published in 2006, "Progressive Law: A Synthesis of Indonesian Law" which was published in 2009. The term progressive law emerged as a form of his concern over the situation that occurred in Indonesia, which since the reign of President Soeharto until the beginning of the reformation, the laws created have not been able to prosper the people and make the people happy. It has only become a political game without direction, often violating the human rights of citizens, and experiencing a downturn.²⁶

He believes that modern law, which prioritizes legality and rationality²⁷, is less effective in solving various problems that arise in society.²⁸ This is because the written law is flawed since it was born. The lawmakers only think of solutions when problems arise. Therefore, the rapid development of society with all the new problems in the future will cause unsynchronised if applied rigidly by the old written law. Therefore, according to him, progressive law was born as a correction to the legalistic modern law by changing the way of law to not always follow the status quo model, but to look for creative things that can find benefits for society. This cannot be separated from the core of his teaching that law is not dominant in society, but society is the dominant one, thus creating the phrase "law for society". The existence of progressive thinking is expected to break the deadlock caused by the inconsistency of modern legalistic law with new problematics and morality that develop in society.²⁹

He proposes progressive law as the type of law that can serve justice deeply and prosper the people. It is no longer just a tool of state legitimacy that is very vulnerable to the suppression of human rights. In his thinking about progressive law, he places human behavior and humanity as *primus* in law enforcement, therefore the concept that is built in his thinking is about the pattern of relations between law and humans. So according to him, the law must serve humans, not humans for the law. With such a paradigm, according to him, if there is a problem with the law, it is the law that needs to be changed, not humans who are forced to enter the legal scheme. With such a relationship pattern, the law is not a sterile institution, but as part of society. In addition, according to him, in starting to build a common life, the step that is built is not the legal system first, but building a society first. This is because the law if there is a society based on the postulate *ubi societas ibi ius*. Therefore, what needs to be built first is the behavior of the community.³⁰

According to Satjipto Rahardjo, progressive law is not something that has been finalized, but only the beginning, because it is the legal behavior of law enforcers and society that most determine the running of the law in the future. Therefore, according to him, it is not allowed to read rigidly the written legal text as befits the mouthpiece of the law but must live the law substantially, namely reading the reality of justice values that live in society. Therefore, in progressive law, interpretation or contextualization of the reality that occurs in society

25 Abintoro Prakoso, *Teori Hukum*, p. 320-321.

26 Rahardjo, *Penegakan Hukum Progresif*, p. 12.

27 Satjipto Rahardjo, *Membedah Hukum Progresif* (Jakarta: PT Kompas Media Nusantara, 2008), p. 10-12.

28 Akhmad Khalimy et al., "The Intersection of the Progressive Law Theory and the Self-Declaration Concept of MSEs Halal Certification," *JILS (Journal of Indonesian Legal Studies)* 8, no. 1 (2023): 159-99, <https://doi.org/https://doi.org/10.15294/jils.v8i1.66087>.

29 Satjipto Rahardjo, *Sisi-Sisi Lain Dari Hukum Di Indonesia* (Jakarta: Penerbit Buku Kompas, 2003), p. 193. Muhammad Zulfa Aulia et al., "The Use of Progressive Law Phrase in Constitutional Court Decisions: Context, Meaning, and Implication," *Jurnal Konstitusi* 20, no. 3 (2023): 423-50, <https://doi.org/https://doi.org/10.31078/jk2034>. Hyrominus Rhiti, "Landasan Hukum Progresif," *Justitia et Pax* 32, no. 1 (2016): 1-19, <https://doi.org/https://doi.org/10.24002/jep.v32i1.760>.

30 Lili Rasyidi & Ira Rasyidi, *Pengantar Filsafat Dan Teori Hukum* (Bandung: PT Citra Adhya Bakti, 2001), p. 13-15.

inseparable in "grounding" the law. Therefore, law is not something that wants to regulate humans monopolistically, but only one part of society that regulates humans, it must go hand in hand with the values that live in society.³¹

With his thoughts on law that are never separated from the values that live in this society, then in law enforcement does not have to feature state institutions as the main party in solving legal problems. The natural way that lives in the community is very necessary to uphold considering that it is included in the values that live in the community. He gave the example of Japan and South Korea which when problems occur always prioritize traditional alternative dispute resolution, not directly using litigation. He emphasized to Indonesians as Easterners that they should not forget their own legal culture, even though they have adopted modern law. He emphasized the importance of a culture of shame when dealing with the Court as the Japanese and Koreans do. The use of litigation in Japan is proof that it cannot maintain the image of kinship.³²

The In-Demand Use of Divorce Case Brokers from Satjipto Rahardjo's Progressive Law Perspective
As explained in the sub-chapter above, the philosophical basis of Perma No. 1 of 2016 Mediation Procedures in Court is aimed at reducing the number of cases entered in the Religious Courts. This solely also implies the spirit to reduce the increasing number of divorces.³³ However, these efforts have not yet been realized with the large number of cases that occur in the Religious Courts and the small percentage of successful mediation in the Religious Courts. The types of factors causing the lack of effectiveness of mediation in the Religious Courts are divided into 2, namely internal factors and external factors. This internal factor is caused by the lack of suitability of mediation conducted in the Religious Courts. Psychologically, the emotional level of the person who wants to file for divorce has reached a climax and he is determined to divorce. Therefore, the mediation process in the Religious Court cannot do much to reconcile the two parties.³⁴ The external factors relate to the reluctance of the community to carry out procedural legal procedures in the Religious Courts. Examples of these external factors are; 1) the distance from the court, which is closely related to the community's dissatisfaction with the procedural law of the Religious Courts which does not display the principle of "simple, fast and light costs". 2) the level of legal knowledge, both material and formal law in the Religious Courts. 3) the plaintiff is working overseas. 4) unsuccessful mediation conducted by family or community leaders against a couple. Both internal and external factors greatly influence the number of people who are reluctant to litigate in the Religious Courts and prefer to broker divorce cases.

31 Rahardjo, *Penegakan Hukum Progresif*, p. 61-62.

32 Rahardjo, *Penegakan Hukum Progresif*, p. 214.

33 Karmawan, "Mediation in The Religious Court of Indonesia"; Muhammad Siddiq Armia et al., "Criticizing the Verdict of 18/JN/2016/MS.MBO of Mahkamah Syar'iyah Meulaboh Aceh on Sexual Abuse against Children from the Perspective of Restorative Justice," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 17, no. 1 (June 29, 2022): 113-35, <https://doi.org/10.19105/al-lhkam.v17i1.4987>; Muhammad Siddiq Armia, "Public Caning: Should It Be Maintained or Eliminated? (A Reflection of Implementation Sharia Law in Indonesia)," *Qudus International Journal of Islamic Studies*, 2019, <https://doi.org/10.21043/qijis.v7i2.4974>; Muhammad Siddiq Armia and Muhammad Syauqi Bin-Armia, "Introduction: Maintaining the Constitutional Rights to Create a Better Society," *Petita : Jurnal Kajian Ilmu Hukum Dan Syariah* 8, no. 1 (2023): 69-71; Muhammad Siddiq Armia and Muhammad Syauqi Bin-Armia, "Introduction: Form Over Substance, Achieving Objectives While Preserving Values," *Petita : Jurnal Kajian Ilmu Hukum Dan Syariah* 8, no. 2 (2023): i-iii; Muhammad Siddiq Armia et al., "Introduction: Measuring Environmental Impacts And Judiciary Environments," *Petita : Jurnal Kajian Ilmu Hukum Dan Syariah* 9, no. 1 (April 1, 2024): i-vi, <https://doi.org/https://doi.org/10.22373/petita.v9i1>.

34 Masrur Ridwan, Aryani Witasari, and Ahmad Hadi Prayitno, "Perspective Of Mediation Effectiveness Theory As Main Options In Order To Lower Divorce Rate," *Jurnal Pembaharuan Hukum* 8, no. 2 (July 17, 2021): 184, <https://doi.org/10.26532/jph.v8i2.16065>.

The incompatibility of the mediation process carried out in the Religious Courts with the emotional level of the parties resulting in unsuccessful reconciliation is closely related to the lack of effectiveness of State services for the benefit of the community. The philosophical basis for the creation of Perma No. 1 Year 2016 is very noble, namely to reduce the number of cases and reduce the divorce rate in order to realize a strong marital bond (*mītsāqan ghalidzā*) and a prosperous family as in Article 1 of Law No. 1 Year 1974 concerning Marriage. In other words, the philosophical basis of Perma No. 2016 in practice has never been achieved due to technical errors in its regulation. Judges in this case certainly cannot take progressive steps because after all, philosophically, the Court still needs rules to run smoothly. The most highlighted thing in this case is the law maker, it seems that the making of Perma No. 1 of 2016 is only concerned with rationality in the form of ideas alone without looking at the perspective of other auxiliary sciences such as psychology. By looking at the community's access to the Court, the lawmakers should have thought of the best steps to make the mediation process easily accessible to the community by their psychological state.

In addition, the low level of legal knowledge in the community is also problematic, resulting in an increased need for professionals. Assistance by legal professionals (advocates) is permissible and will be even better. However, this lack of knowledge about the importance of mediation and marriage as a strong bond (*mītsāqan ghalidzā*) will only exacerbate the increase in divorce in Indonesia. Moreover, the mediation process carried out in the family and community environment is not equipped with mediators who are knowledgeable in the fields of psychology, psychiatry, and psychotherapy so it also has minimal success. In this case, the community only considers mediation as a mere formality and prioritizes the speed of execution of the decision, especially if the decision is *verstek*. Of course, this will affect the legal culture of the community, which prefers formality without thinking about the benefits of the continuity of marriage. In this problem, it is time for legal advocacy to be upheld to build a legal culture of society that highly upholds justice and the philosophical nature of ties or agreements.³⁵

In addition, the principles of Pancasila explain that Indonesia is a country that highly values brotherhood, humanity, and deliberation.³⁶ However, the reality is that these values are not necessarily used in everyday life. This can be seen by the lack of optimal alternative dispute resolution in the Eastern style and currently many tend to choose practical convenience through direct litigation. Especially in divorce cases, there are more and more divorce case brokers who make it easy for someone to lead through litigation. Of course, this situation further eliminates the characteristics of the values that live in society as described by Satjipto Rahardjo. It is acknowledged that in this day and age Indonesia is very difficult to get rid of the influence of modernization and adopt modern laws, but Indonesia should not abandon its traditional culture, because it is the identity of the nation, even clearly stated in the constitution. Therefore, it is very important to emulate the culture of dispute resolution behavior that occurs in Japan and South Korea, which highly uphold traditional settlement.

To optimize the culture of alternative traditional dispute resolution, a problem-solving analysis of the factors outlined above is required. Firstly, it is very necessary to establish a professional mediation role with certified mediators in remote villages, in this case it does not have to take the form of building a mediation institution in every village or sub-district, but this can also be taken by the local Religious Affairs Office which tries to optimize the role of mediation and serve the community when experiencing household conflicts, so not only services in pre-marriage. This is because mediation conducted in the Religious Court is very unlikely to succeed.

35 Muhammad Syauqi Bin-Armia, Muhammad Siddiq Armia, and Muhammad Fazlurrahman Syarif, "Economical Rights versus God's Rights: Criticising of the Implementation Shariah Economic in Indonesia," *International Journal of Islamic and Middle Eastern Finance and Management* ahead-of-print, no. ahead-of-print (January 1, 2024), <https://doi.org/10.1108/IMEFM-01-2024-0054>.

36 Muhammad Syauqi Bin-Armia, "From Constitutional-Court To Court Of Cartel: A Comparative Study Of Indonesia And Other Countries," *PETITA: Jurnal Kajian Ilmu Hukum Dan Syari'ah* 9, no. 2 (2024).

Psychologically the emotional level of the parties has reached a climax and reached a determination to divorce. So the role of the Religious Affairs Office in protecting the community in mediation since the seeds of this conflict need to be minimized early. Secondly, the mediation case broker service is unlikely to be abandoned if the level of human resources in the community is still low, especially in legal knowledge. Therefore, it would be nice if the divorce case broker service is taken as a community helper if the mediation method carried out in the family or community environment is completely unsuccessful. However, regular education on understanding the basics of the law, especially those related to daily life such as marriage law, is also important, both by village officials and regular events from the Office of Religious Affairs.

The following table analysis the use of divorce case broker services from the perspective of Satjipto Rahardjo's progressive law:

Table 3.4. Analysis the use of divorce case broker services from the perspective of Satjipto Rahardjo's progressive law.

No	Satjipto Rahardjo's Progressive Legal Thought	Analysis
1	The law is for society.	Perma No. 1/2016 on Court Mediation, for the Indonesian people in general.
2	The purpose of law is for the happiness and welfare of society.	The philosophical foundation of Perma No. 1 Year 2016 is to reduce the number of cases in the Religious Courts and reduce divorce, but in reality this has not been realized.
3	Law is not final, but will evolve through the behavior of law enforcers and society.	The philosophical foundation of Perma No. 1/2016 has never been achieved due to the behavior of the people who are still ignorant of the nature of mediation and prefer to use the services of divorce case brokers who are quick and painless.
4	It is not a dogmatic legalistic way of doing law, but a creative way of adapting to morality and the interests of society.	People still like to use litigation settlement rather than alternative dispute resolution because of the ease of reaching a decision. The principles of kinship and peace that have been upheld by Indonesian Eastern culture have been largely forgotten.
5	Emphasis on Indonesia's indigenous character in law, such as the culture of shame, kinship, unity, and others.	There is no culture of shame as evidenced by the increasing number of divorce suits in the Religious Courts.

Conclusion

From the explanation above, the following results can be concluded; 1) This divorce case broker is a sale and purchase of divorce certificate management services until it is completed without the presence of the plaintiff or defendant even though it distorts the role of mediation in the Religious Court. 2) Factors causing the use of divorce case brokers include long distances, lack of understanding of legal science, plaintiffs abroad, and the lack of functioning of mediation that is applied naturally in the family and community environment. 3) How to overcome the role of alternative dispute resolution (mediation) as a form of preserving culture and traditional values can be done by optimizing the role of the Office of Religious Affairs in terms of consultation, mediation and conciliation. The Office of Religious Affairs in this case was chosen because it is an institution that is very close to the community. The second way is through regular education

on understanding the basics of law, especially laws that are closely related to daily life, such as marriage law by village officials and the Office of Religious Affairs. However, it must still be noted that the divorce case broker service still needs to exist because of its very helpful role if the community is really burdened by these factors.

Bibliography

- A Hamid Sarong & Nur A Fadhil Lubis. "The Child Rights In Islamic Law With A Special Focus On Aceh." *Petita : Jurnal Kajian Ilmu Hukum Dan Syariah* Volume 4, no. Nomor 1 (2019).
- Aditya, Rezcky, and Evalina Alissa. "Efektivitas Mediasi Dalam Meminimalisir Angka Perceraian Di Pengadilan Agama Kota Jambi." *Zaaken: Journal of Civil and Business Law* 4, no. 2 (2023): 332–46. <https://doi.org/https://doi.org/10.22437/zaaken.v4i2.24067>.
- Al-Azzam, Farouq Ahmad Faleh, and Mueen Fandi Nhar Al-Shunnaq. "Formation of Creative Thinking of Lawyer in Modern Condition of Development Including The Influence of Covid-19 Pandemic." *Vilnius Tech: Vilnius Gedimias Technical University* 16, no. 1 (2023): 315–27. <https://doi.org/http://dx.doi.org/10.3846/cs.2023.16117>.
- Amaarini, Indriati. "Court Connected Mediation: Civil Dispute with a Local Society Cultural Approach." *Jurnal Dinamika Hukum* 20, no. 1 (2020): 256–73. <https://doi.org/http://dx.doi.org/10.20884/1.jdh.2020.20.1.2599>.
- Armia, Muhammad Siddiq. et all. "Post Amendment of Judicial Review in Indonesia: Has Judicial Power Distributed Fairly?" *JILS* 7 (2022): 525.
- Armia, Muhammad Siddiq. "Public Caning: Should It Be Maintained or Eliminated? (A Reflection of Implementation Sharia Law in Indonesia)." *Qudus International Journal of Islamic Studies*, 2019. <https://doi.org/10.21043/qijis.v7i2.4974>.
- . "Ultra Petita and The Threat to Constitutional Justice: The Indonesian Experience." *Intellectual Discourse* 26, no. 2 (2018): 1–23.
- Armia, Muhammad Siddiq, Huwaida Tengku-Armia, Muhammad Syauqi Bin-Armia, and Robert K. Home. "Introduction: Measuring Environmental Impacts And Judiciary Environments." *Petita : Jurnal Kajian Ilmu Hukum Dan Syariah* 9, no. 1 (April 1, 2024): i–vi. <https://doi.org/https://doi.org/10.22373/petita.v9i1>.
- Armia, Muhammad Siddiq, Zahlul Pasha Karim, A. Hamid Sarong, Muhammad Zulhilmi, and Muhammad Syauqi Bin-Armia. "Criticizing the Verdict of 18/JN/2016/MS.MBO of Mahkamah Syar'iyah Meulaboh Aceh on Sexual Abuse against Children from the Perspective of Restorative Justice." *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 17, no. 1 (June 29, 2022): 113–35. <https://doi.org/10.19105/al-lhkam.v17i1.4987>.
- Aulia, Muhammad Zulfa, Bimo Fajar Hantoro, Wawan Sanjaya, and Mahrus Ali. "The Use of Progressive Law Phrase in Constitutional Court Decisions: Context, Meaning, and Implication." *Jurnal Konstitusi* 20, no. 3 (2023): 423–50. <https://doi.org/https://doi.org/10.31078/jk2034>.

- Barmawi. "Marriage Of Underage Couples Due To Khalwat According To Islamic Law." *JURISTA: Jurnal Hukum Dan Keadilan* 2, no. 1 (July 1, 2018): 89–111. <https://doi.org/10.22373/jurista.v2i1.49>.
- Bengoetxea, Joxerramon. "Legal Institutions and Comparison of Legal Cultures." *Oñati Socio-Legal Series* 12, no. 6 (2022): 1647–73. <https://doi.org/https://doi.org/10.35295/osls.iisl/0000-0000-0000-1361>.
- Bin-Armia, Muhammad Syauqi. "From Constitutional-Court To Court Of Cartel: A Comparative Study Of Indonesia And Other Countries." *PETITA: Jurnal Kajian Ilmu Hukum Dan Syari'ah* 9, no. 2 (2024).
- Bin-Armia, Muhammad Syauqi, Muhammad Siddiq Armia, and Muhammad Fazlurrahman Syarif. "Economical Rights versus God's Rights: Criticising of the Implementation Shariah Economic in Indonesia." *International Journal of Islamic and Middle Eastern Finance and Management* ahead-of-p, no. ahead-of-print (January 1, 2024). <https://doi.org/10.1108/IMEFM-01-2024-0054>.
- Binti Mohd Rijal, Siti Maimunah, and Rukiah Muhammad Ali. "Efektivitas Pelaksanaan Sanksi Talak Di Luar Mahkamah Rendah Syariah." *Petita: Jurnal Kajian Ilmu Hukum Dan Syariah* 3, no. 1 (January 23, 2018). <https://doi.org/10.22373/petita.v3i1.41>.
- Chopard, Bertrand, and Marie Obidzinski. "Public Law Enforcement under Ambiguity." *International Review of Law and Economics* 66 (June 2021): 105977. <https://doi.org/10.1016/j.irle.2021.105977>.
- Hanifah, Mardalena, and Meidana Pascadinianti. "Function of Non-Judge Mediators in Divorce Settlement Through Religious Courts." *Unnes Law Journal* 9, no. 2 (2023): 377–418. <https://doi.org/https://doi.org/10.15294/ulj.v9i2.75611q>.
- Haq, Hilman Syahrial, Achmadi, Sinung Mufti Hangabei, and Arief Budiono. "Community Mediation-Based Legal Culture in Resolving Social Conflicts of Communities Affected by The Covid-19 Pandemic in West Nusa Tenggara, Indonesia." *Studi Iuridica Lublinensia* 31, no. 2 (2022): 11–32. <https://doi.org/http://dx.doi.org/10.17951/sil.2022.31.2.11-32>.
- Heti. "Pemenuhan Hak Nafkah Sebagai Salah Satu Pola Terhadap Perlindungan Anak: Analisis Pemikiran A. Hamid Sarong." *Petita: Jurnal Kajian Ilmu Hukum Dan Syariah* 2, no. 1 (April 1, 2017). <https://doi.org/10.22373/petita.v2i1.61>.
- Ingratubun, Husni, and Fitri Ingratubun. "Implementation of Mediation Effort for Settlement at The Class Ia Religious Court in Jayapura." *Sasi* 29, no. 4 (2023): 717–39. <https://doi.org/https://doi.org/10.47268/sasi.v29i4.1708>.
- Jauhari, Iman, Azhari Yahya, Darmawan Darmawan, Dahlan Dahlan, and Muhammad Nasir. "Legal Analysis Of Unregistered Marriage Viewed From Ulama's Perspective In Aceh Province." *PETITA: Jurnal Kajian Ilmu Hukum Dan Syari'ah* 8, no. 2 (October 15, 2023). <https://doi.org/10.22373/petita.v8i2.196>.
- Karmawan. "Mediation in The Religious Court of Indonesia." *Ahkam: Jurnal Ilmu Syariah*

- 20, no. 1 (2020): 79–96. <https://doi.org/https://doi.org/10.15408/ajis.v20i1.13249>.
- Khalimy, Akhmad, Yusriadi, Ro’fah Setyowati, Syahrudin, and Abdul Muizz Abdul Wadud. “The Intersection of the Progressive Law Theory and the Self-Declaration Concept of MSEs Halal Certification.” *JILS (Journal of Indonesian Legal Studies* 8, no. 1 (2023): 159–99. <https://doi.org/https://doi.org/10.15294/jils.v8i1.66087>.
- Khanif, Al. “Women, Islam, and Modern Family Construction in the Perspectives of Legal Pluralism in Indonesia.” *Petita : Jurnal Kajian Ilmu Hukum Dan Syariah* Vol.4, no. No.2 (2019). <https://doi.org/https://doi.org/10.22373/petita.v4i2.24>.
- Kudrat. “Status Anak Di Luar Nikah Dalam Perspektif Sejarah Sosial.” *Petita: Jurnal Kajian Ilmu Hukum Dan Syariah* 1, no. 1 (April 1, 2016). <https://doi.org/10.22373/petita.v1i1.78>.
- Lili Rasyidi & Ira Rasyidi. *Pengantar Filsafat Dan Teori Hukum*. Bandung: PT Citra Adtya Bakti, 2001.
- Mansari. “Pertimbangan Hakim Memberikan Hak Asuh Anak Kepada Ayah: Suatu Kajian Empiris Di Mahkamah Syar’iyah Banda Aceh.” *Petita: Jurnal Kajian Ilmu Hukum Dan Syariah* 1, no. 1 (April 1, 2016). <https://doi.org/10.22373/petita.v1i1.80>.
- Maryam, Rini, and Sulistyowati Irianto. “Exploring Efficacy: A Study of Simple and Complex Approaches to Divorce Mediation.” *Lentera Hukum* 10, no. 3 (2023): 331–64. <https://doi.org/https://doi.org/10.19184/ejlh.v10i3.43726>.
- Muhaimin. *Metodologi Penelitian Hukum*. Mataram: Mataram University Press, 2020.
- Muhammad Siddiq Armia, and Muhammad Syauqi Bin-Armia. “Introduction: Form Over Substance, Achieving Objectives While Preserving Values.” *Petita : Jurnal Kajian Ilmu Hukum Dan Syariah* 8, no. 2 (2023): i–iii.
- Muhammad Siddiq Armia, and Muhammad Syauqi Bin-Armia. “Introduction: Maintaining the Constitutional Rights to Create a Better Society.” *Petita : Jurnal Kajian Ilmu Hukum Dan Syariah* 8, no. 1 (2023): 69–71.
- Muharrani, Zulkarnain, Miswari, Azwir, and Mawardi. “Children’s Rights In A Quasi Broken Home Perspective Of Islamic Law And Law Number 35 Of 2014 Concerning Child Protection.” *Petita: Jurnal Kajian Ilmu Hukum Dan Syariah* 9, no. 1 (March 2, 2024). <https://doi.org/10.22373/petita.v9i1.284>.
- Pekarska, Anna. “Challenging The Rule of Law Universalism: Why Marxist Legal Thought Still Matters.” *Law and Critique* 34, no. 2 (2023): 270–85. <https://doi.org/10.1007/s10978-022-09338-x>.
- Prakoso, Abintoro. *Teori Hukum*. Yogyakarta: Laksbang Justitia, 2022.
- Prameswari, Zendy Wulan Ayu Widhi, and Erni Agustin. “Indonesian Marriage Law Reform: The Way To Strengthen The Protection of Children’s Rights Against Child Marriage.” *Journal of Southeast Asian Human Rights* 2, no. 1 (June 30, 2018): 286.

<https://doi.org/10.19184/jseahr.v2i1.5353>.

Prasetyo, Yogi. "Social Reality as Legal (Criticism of Bad Positive Laws in Legislation)." *Fiat Justitia: Jurnal Ilmu Hukum* 15, no. 3 (2021): 255–68. <https://doi.org/https://doi.org/10.25041/fiatjustisia.v15no3.2194>.

Qomariyah, Toyyibatul, and Afifullah. "Term Misaqan Ghalidza Dalam QS. An-Nisa': 21 (Analisis Semantik Toshihiko Izutsu)." *Maghza: Jurnal Ilmu Al-Qur'an Dan Tafsir* 8, no. 1 (2023): 50–74. <https://doi.org/https://doi.org/10.24090/maghza.v8i1.7884>.

Rackley, Erika, and Rosemary Auchmuty. "The Case for Feminist Legal History." *Oxford Journal of Legal Studies* 40, no. 4 (December 21, 2020): 878–904. <https://doi.org/10.1093/ojls/gqaa023>.

Rahardjo, Satjipto. *Membedah Hukum Progresif*. Jakarta: PT Kompas Media Nusantara, 2008.

———. *Penegakan Hukum Progresif*. Jakarta: PT Kompas Media Nusantara, 2010.

Rhiti, Hyrominus. "Landasan Hukum Progresif." *Justitia et Pax* 32, no. 1 (2016): 1–19. <https://doi.org/https://doi.org/10.24002/jep.v32i1.760>.

Ridwan, Masrur, Aryani Witasari, and Ahmad Hadi Prayitno. "Perspective Of Mediation Effectiveness Theory As Main Options In Order To Lower Divorce Rate." *Jurnal Pembaharuan Hukum* 8, no. 2 (July 17, 2021): 184. <https://doi.org/10.26532/jph.v8i2.16065>.

Riley, Dylan, Rebecca Jean Emigh, and Patricia Ahmed. "The Social Foundations of Positivism: The Case of Late-Nineteenth-Century Italy." *Social Science History* 45, no. 1 (2021): 813–42. <https://doi.org/https://doi.org/10.1017/ssh.2021.22>.

Salahudin, Muhammad, okti Nur Hidayah, Nurul Husnah, and Felia Wati. "Practice of Interfaith Marriages in Indonesia on Islamic Jurisprudence." *International Journal of Social Science and Religion (IJSSR)* 4, no. 3 (2023): 477–90. <https://doi.org/http://dx.doi.org/10.53639/ijssr.v4i3.205>.

Salim, Agus, Suaeb, Ahmad Yani, and Nunuk Suryanti. "History and Implementation of Pancasila Economic Education in Indonesia." *Riwayat Educational Journal of History and Humanities* 6, no. 1 (2023): 13–22. <https://doi.org/https://doi.org/10.24815/jr.v6i1.29078>.

Salomon, Margot E. "Emancipating Human Rights: Capitalism and The Common Good." *Leiden Journal of International Law* 36, no. 4 (2023): 857–77. <https://doi.org/https://doi.org/10.1017/S0922156523000316>.

Satjipto Rahardjo. *Sisi-Sisi Lain Dari Hukum Di Indonesia*. Jakarta: Penerbit Buku Kompas, 2006.

Subrata, Rusli. "Mechanism of Alternative Dispute Resolution in Conflict and Dispute Resolution in Indonesia." *Jurnal Litigasi* 24, no. 1 (2023): 151–64.

<https://doi.org/https://doi.org/10.23969/litigasi.v24i1.7198>.

Suhastra, Pahruroji. "Mediation Procedure in Religious Courts in Indonesia in The Perspective of Thought Wahbah Al-Zuhaily." *Mahkamah: Jurnal Kajian Ilmu Hukum Dan Hukum Islam* 8, no. 1 (2023): 97–108. <https://doi.org/https://doi.org/10.25217/jm.v8i1.3486>.

Sutiyoso, Bambang. "Implementation of Mediation as Online Dispute Resolution (ODR) in Civil Jurisdiction." *Ijesss: International Journal of Environmental Sustainability and Social Science* 4, no. 1 (2023): 297–308. <https://doi.org/https://doi.org/10.38142/ijesss.v4i1.487>.

Syaikh, Sabarudin Ahmad, and Muhammad Luthfi Setiarno Putera. "Judicial Mediation: Is Reconciliation Impossible in Divorce Cases?" *Al-Manhaj: Journal of Indonesian Islamic Family Law* 5, no. 2 (2023): 120–47. <https://doi.org/https://doi.org/10.19105/al-manhaj.v5i2.11887>.

Tobing, David Hizkia, Yohanes Kartika Herdiyanto, Dewi Puri Astiti, and I Made Pustika. *Metode Penelitian Kualitatif*. Denpasar: Udayana University Press, 2016.

Triputra, Fauzi, and Marissa Grace Haque. "Analisis Strategi Pemasaran Kantor Konsultan Hukum Di Bawah Kode Etik Advokat Indonesia: Studi Pada Firma Hukum Di Jakarta." *Jurnal Ekonomi Efektif* 4, no. 4 (2022): 657–69. <https://doi.org/https://doi.org/10.32493/JEE.v4i4.22033>.

Yan Chan, Kelly Chong, and Edward Lui. "Citizenship, Charges And Common Law Constitutional Rights." *The Cambridge Law Journal* 81, no. 2 (2022): 225–28. <https://doi.org/DOI: 10.1017/S0008197322000289>.

Yasin, Faradila Hasan, and Fikri Amiruddin. "Mediation in Marriage Disputes and Divorce (Analytical Study on The Application of Mediation in The Gorontalo Religious Court)." *Innovatia: Journal for Religious Innovation Studies* 21, no. 2 (2021): 99–111. <https://doi.org/https://doi.org/10.30631/innovatio.v21i2.123>.

Yoesuf, Juliana Paramitha, Fery Ramadhansyah, Sinta Elviyanti, and Ade Salamah. "Strengthening the Implementation of E-Court-Based Judiciary as a Legal Protection in the Implementation of E-Litigation-Based Trials." *Jurnal Hukum Dan Peradilan* 12, no. 2 (2023): 293–318. <https://doi.org/http://dx.doi.org/10.25216/jhp.12.2.2023.293-318>.

Zheng, Jianwei, and Wenjun Fan. "Art, Trade, and Cultural Mediation in Asia, 1600–1950." *Critical Arts: South-North Cultural and Media Studies* 34, no. 2 (2020): 108–10. <https://doi.org/https://doi.org/10.1080/02560046.2020.1750447>.

Zheng, Shaofeng, Takahiko Masuda, Masahiro Matsunaga, Yasuki Noguchi, Yohsuke Ohtsubo, Hidenori Yamasue, and Keiko Ishii. "Cultural Differences in Social Support Seeking: The Mediating Role of Empathic Concern." *Plos One* 16, no. 2 (2021): 1–21. <https://doi.org/https://doi.org/10.1371/journal.pone.0262001>.

Zoelva, Hamdan. "The Threat of Judicial Mafia in Indonesia in Discrediting the Principle of the Rule of Law." *International Journal of Criminology and Sociology* 10, no. 1

(2021): 839–44. <https://doi.org/https://doi.org/10.6000/1929-4409.2021.10.99>.