The Juridical Impact of Mediation Procedural Defects on the Validity of Divorce (Talak): Perspectives of the Shafi'i School and the Compilation of Islamic Law (KHI)

Muhammad Ainur Rofiq
Universitas Islam Negeri K.H. Abdurrahman Wahid Pekalongan, Indonesia
E-mail: *mainurrofiq@mhs.uingusdur.ac.id*

Abstract

Mediation practices in Religious Courts play a crucial role as an instrument of peace to reduce divorce rates. However, in its implementation, fundamental procedural challenges are frequently encountered, one of which is the erroneous application of mediation by judges during the court session for the execution of the divorce pledge (ikrar talak). This error generally occurs when a case has been decided and has acquired permanent legal force (inkracht van gewijsde), yet the mediator judge still enforces a repeated mediation process that is formally defective under procedural law. This study aims to analyze in depth the juridical impact of such procedurally defective mediation practices on the validity of talak, utilizing a comparative analysis between the jurisprudential perspective of the Shafi'i school and the formal provisions in the Compilation of Islamic Law (KHI). The research method employed is normative-juridical (doctrinal legal research) with a statutory approach, a conceptual approach, and a comparative law approach. Secondary data consisting of authoritative books of the Shafi'i school, the legal text of the KHI, and the Supreme Court Regulation (PERMA) Number 1 of 2016 were analyzed qualitatively using content analysis. The results conclude two main findings. First, in classical Islamic law conceptualization according to the Shafi'i school, the validity of pronouncing talak rests entirely on the substantial fulfillment of pillars (rukun) and conditions (syarat), particularly the independence aspect of the talak utterance (sighat) by a husband of sound mind without coercion. The Shafi'i school does not depend the validity of talak on judicial bureaucratic formalities; thus, a procedurally defective mediation by a judge does not ruin or invalidate the sharia validity of talak (diniyyan). Second, within the framework of Indonesian positive law represented by the KHI and the Religious Judicature Law, talak is interpreted as a legal act that is only valid and possesses binding legal force if it is pledged before a Religious Court session after undergoing valid mediation procedures. Procedural defects in the implementation of mediation at the final stage directly imply a formal defect (legal defect) in the judge's decree or decision. This results in the loss of executorial power over the divorce pledge, which potentially triggers legal uncertainty regarding the marital status and the civil rights of the former wife. This study demonstrates the existence of dualism and tension between state law formalities and the material validity of Islamic law (living law). The recommendations of this study encourage the Supreme Court to reconstruct procedural law through technical regulations that clarify the boundaries and timeline of mediation so as not to obscure the crucial stage of executing the divorce pledge in Religious Courts.

Keywords: *Procedurally Defective Mediation; Validity of Talak; Shafi'i School; Compilation of Islamic Law; Executorial Power.*

Introduction

Divorce is one of the most frequent types of cases handled by Religious Courts. The large volume of these cases prompted the Supreme Court to institutionalize mediation through PERMA Number 1 of 2016, which mandates that every civil case, including divorce, must be attempted for amicable settlement through mediation before the merits of the case are examined (Rahmadi, 2011; Marluki, 2020). This obligation aligns with Article 65 of Law Number 7 of 1989 concerning Religious Judicature, which emphasizes that divorce can only be conducted before a court session after the court has endeavored and failed to reconcile the parties (Manan, 2018).

However, the practice of mediation does not always align with the framework of procedural law. One of the emerging issues is the erroneous application of mediation at the stage of the divorce pledge execution session, namely when a case has been decided and has acquired permanent legal force (inkracht van gewijsde), yet the mediator judge still enforces repeated mediation that is formally defective under procedural law (Khairunisa, 2022). This practice raises a fundamental question regarding its consequences on the validity of the subsequent talak pledged. Such repeated mediation lacks a clear baseline in PERMA Number 1 of 2016, as the regulation places mediation prior to the examination of the merits of the case (Article 4 paragraph (1)) and only regulates peace at the legal remedy stage in a limited manner (Article 31), not at the judgment execution stage (Makinudin, 2021). This practice can be assessed as a procedural defect in mediation, specifically conducting mediation outside the stage and authority designated by procedural law. The problem does not stop at procedural errors.

In the study of procedural law, M. Yahya Harahap emphasizes that procedural law is compelling (dwingend recht) and aims to ensure certainty in the litigation process (Harahap, 2017). Violations of procedural law need to be assessed according to their type and consequences, and do not automatically invalidate subsequent legal actions (Mertokusumo, 2013). From a theoretical standpoint, Radbruch places legal certainty alongside justice and utility as the basic values of law (Radbruch, 1950), while the principle of maslahah in Islamic law demands that the application of rules should not cause harm (dharar) to the parties (Al-Shatibi, n.d.; Al-Zuhayli, 1985).

Based on a literature review, studies on divorce mediation generally focus on the effectiveness of mediation before a case is decided. For instance, research at the Jombang Religious Court assessed the effectiveness of mediation in reducing divorce cases based on PERMA Number 1 of 2016 and identified factors rendering it less effective (Syarifudin et al., 2022; Iyasha, 2024). Meanwhile, studies on the validity of talak focus more on talak pronounced outside the court, including talak via WhatsApp (Putri & Mukdin, 2024; Ropei & Sururie, 2021), as well as efforts for itsbat talak (confirmation of divorce) as a solution to extra-judicial divorce (Wahyudi, 2022). A study that specifically examines forced mediation at the stage of executing the divorce pledge after a judgment has permanent legal force—let alone linking its juridical consequences to the validity of talak in two legal systems simultaneously (the Shafi'i School and the Compilation of Islamic Law)—has never been conducted. Yet, the PERMA places mediation at the stage prior to case examination, so mediation at the stage of the divorce pledge creates an unanswered legal standing issue.

Based on this background, this study focuses on the juridical impact of mediation procedural defects at the stage of the divorce pledge execution session on the validity of talak,

comparing the jurisprudential framework of the Shafi'i school and the formal provisions of the KHI. The objectives are: (1) to analyze the position and limits of applying mediation in the execution stage of the divorce pledge after a judgment obtains permanent legal force; (2) to analyze the influence of mediation procedural defects on the validity of talak according to the Shafi'i school and the KHI; and (3) to outline its legal consequences on legal certainty, the legal force of executing the divorce pledge, and the protection of the civil rights of the parties.

Methods

This study is a normative-juridical legal research. A statutory approach is used to interpret the relationship between the Marriage Law, the Religious Judicature Law along with its amendments, the KHI, and PERMA Number 1 of 2016. A conceptual approach is applied to distinguish between mediation, judgments with permanent legal force, the execution of the divorce pledge, and the validity of talak. A comparative approach is utilized to juxtapose the jurisprudential framework of the Shafi'i school with Indonesian positive law without assuming both possess entirely identical legal categories.

Research Design

The study utilizes a qualitative-normative design with descriptive-analytical and prescriptive characteristics. The descriptive-analytical nature is used to outline mediation regulations, the stages of a divorce case (cerai talak), and the concept of talak validity according to the Shafi'i school and Indonesian positive law. The prescriptive analysis is employed to formulate legal assessments regarding the conformity of a procedural action with prevailing norms and its possible legal consequences. The comparison is conducted functionally, noting that the validity of talak according to fiqh and the legal consequences of talak within the state judicial system represent two interrelated yet not fully identical categories of analysis.

Research Approaches

First, the statutory approach (statute approach) is used to examine provisions regulating marriage, the jurisdiction of the Religious Judicature, the Compilation of Islamic Law, and court mediation procedures, particularly Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019, Law Number 7 of 1989 concerning Religious Judicature along with its amendments, Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law, and PERMA Number 1 of 2016 concerning Mediation Procedures in Courts. These provisions are read systematically and within their respective scopes of regulation.

Second, the conceptual approach (conceptual approach) is used to explain the concepts of mediation, judgments with permanent legal force, the execution of the divorce pledge, the pillars and conditions of talak, as well as legal certainty and the protection of the parties' civil rights. Third, the comparative law approach is used to contrast the Shafi'i school's view on the validity of talak with the regulations of Indonesian positive law, especially regarding the relationship between the substantial aspects of talak and judicial procedures.

Third, the comparative approach is utilized to bring together the jurisprudential framework of the Shafi'i school with Indonesian positive law without assuming both possess entirely identical legal categories.

Legal Materials

Primary legal materials include relevant laws and regulations, including Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019, Law Number 7 of 1989

concerning Religious Judicature along with its amendments, the Compilation of Islamic Law, and PERMA Number 1 of 2016 concerning Mediation Procedures in Courts. Primary materials from the perspective of the Shafi'i school discuss talak, its pillars and conditions, and the effect of coercion on the validity of talak. Secondary legal materials comprise scientific books, journal articles, research findings, and expert opinions discussing marriage law, procedural law of the Religious Judicature, mediation, and the fiqh of talak.

Technique of Gathering Legal Materials

Legal materials were gathered through library research by identifying, tracking, reading, and annotating relevant regulations, books, and scientific articles aligned with the problem formulation. Collection was targeted based on keywords, such as mediation procedure, cerai talak, divorce pledge (ikrar talak), permanent legal force, Shafi'i school, and the Compilation of Islamic Law. Discovered materials were then classified according to type and grouped based on the issues discussed.

Research Procedure

The research was executed through four stages. First, identifying the problem and limiting the object of study to the position and limits of applying mediation in divorce cases, the influence of mediation procedural defects on the validity of talak, and its legal consequences for legal certainty and the rights of the parties. Second, inventorying and classifying primary and secondary legal materials. Third, interpreting legal materials by paying attention to the hierarchy of regulations, relationships between norms, regulatory contexts, and relevant fiqh concepts. Fourth, comparing the interpretations of positive law with the views of the Shafi'i school, then formulating answers to each problem statement. In this stage, the study also distinguishes mediation at the case examination stage from the execution stage of the divorce pledge, so that procedural obligations are not generalized without a clear baseline of norms.

Technique of Legal Material Analysis

Legal materials were qualitatively analyzed through the interpretation of relevant norms, followed by conceptual analysis and comparative law. Content analysis was used to identify core regulations, principles, and argumentations within regulations, fiqh literature, and scientific works. Furthermore, legal reasoning was applied to assess whether an alleged procedural defect truly contradicts prevailing provisions and what consequences can be drawn based on those norms. The analysis does not immediately conclude that every procedural defect in mediation automatically invalidates the divorce pledge or eliminates its legal force; such consequences must be determined based on the violated norm, the stage of the case, and available legal mechanisms.

Results

The Position and Limits of Applying Mediation at the Divorce Pledge Execution Stage

PERMA Number 1 of 2016 positions mediation as an integrative part of the civil dispute resolution process submitted to courts (court-connected mediation). Article 3 of PERMA No. 1/2016 explicitly regulates the obligation of the trial judge to pursue mediation procedures, while Article 4 paragraph (1) establishes the scope of cases mandated for mediation and their exceptions (Rahmadi, 2011; Marluki, 2020). This normative structure shows that formal mediation is closely tied to the stage of dispute examination by the court. In divorce cases (cerai

talak), mediation at the examination stage aims to reconcile the parties before the dispute is decided by the panel of judges (Manan, 2018).

Conversely, once the judgment granting permission for the divorce pledge has permanent legal force (inkracht van gewijsde), the court is no longer at the dispute examination stage; rather, it enters the stage of administering the session to witness the divorce pledge based on Law Number 7 of 1989 concerning Religious Judicature and the Compilation of Islamic Law (KHI) (Harahap, 2017). Doctrinally, this stage is not a reopening (heropening) of the merits of the same case. In civil procedural law, a judgment that has permanent legal force embodies the principle of res judicata pro veritate habetur (what is decided by a judge must be deemed correct) and binds both parties (Mertokusumo, 2013).

Table 1. Stages of Divorce Cases and the Position of Mediation

No	Stage	Baseline Norm	Position of Mediation
1	Submission of divorce petition	Law No. 7 of 1989 and its amendments	No mediation yet
2	Mediation	PERMA No. 1 of 2016	Mandatory before the merits of the case are examined
3	Case examination, judgment, or decree of divorce pledge permission	Law No. 7 of 1989; KHI Article 115	Reconciliation efforts by the panel of judges
4	Judgment with permanent legal force	Procedural law of Religious Judicature	Not designated as a mediation stage
5	Divorce pledge execution session	Law No. 7 of 1989 (Article 70); KHI Article 131	Repeated mediation in the studied practice; formal defect according to procedural law

In this regard, no baseline explicitly renders mediation under PERMA 1/2016 as a new mandatory stage in every execution of the divorce pledge. This conclusion is limited to a systematic reading of the discussed rules, rather than a statement that judges are prohibited from facilitating amicable communication under all circumstances.

Criteria for the Validity of Talak According to the Shafi‘i School and KHI

In the fiqh of the Shafi‘i school, talak is constructed as an independent legal act (tasharruf iradi) whose validity depends on the fulfillment of internal pillars and conditions of pronouncing talak. Sharaf al-Din al-Nawawi asserts that the pillars of talak include five fundamental elements: husband (zauj), wife (zaujah), expression (sighat), authority/domain (wilayah), and intent (qashad) (Al-Nawawi, n.d.). The Shafi‘i school scrutinizes the capacity of the subject (ahliyyah), the clarity of the utterance (whether in the form of sharih or kinayah

which requires intention), and the absence of coercion that invalidates free will (ikrah) (Al-Zuhayli, 1985). In this classical Islamic law perspective, the validity of talak centers on the fulfillment of these essential-sharia aspects. Therefore, non-compliance with judicial procedures—such as administrative defects in conducting repeated mediation—does not automatically invalidate or negate the validity of the talak pledged diniyyan (as long as its jurisprudential pillars and conditions are met).

Conversely, within the Indonesian positive law system, the Compilation of Islamic Law (KHI) integrates the material requirements of fiqh into the formalities of procedural law (juridical-administrative). Article 115 of the KHI emphasizes that divorce can only be carried out before a Religious Court session after the court has endeavored and failed to reconcile both parties (Manan, 2018). This principle is reinforced in Article 117 of the KHI, which defines talak as a husband's pledge before a Religious Court session that becomes one of the causes for the dissolution of marriage, through mechanisms regulated in Articles 129, 130, and 131 of the KHI. Article 129 of the KHI determines that a petition to pronounce talak is submitted to the court, where court approval (permission for the divorce pledge) is an absolute condition for the talak to be recognized under state law (qadha'an) (Makinudin, 2021). Thus, a fundamental difference exists: the Shafi'i school emphasizes substantial-theological validity, while the KHI demands procedural-constitutive validity for the sake of legal certainty.

Table 2. Comparison of Talak Validity According to the Shafi'i School and KHI

No	Aspect	Shafi'i School	KHI and Religious Judicature Law
1	Baseline of validity	Substantial-theological fulfillment of the pillars and conditions of talak.	Talak must be pledged before a Religious Court session.
2	Main element	Sighat talak from a husband of sound mind (mukallaf) without coercion.	Pledge in a judicial forum after going through valid procedural law mechanisms.
3	Role of judicial formalities	Validity of talak is not dependent on judicial bureaucratic formalities.	Judicial formalities become a valid and binding condition under state law (constitutive).
4	Impact of procedurally defective mediation	Does not ruin or invalidate the validity of talak in sharia (diniyyan).	Causes a formal defect in the decree/judgment of the divorce pledge execution (qadha'an).

The results of the comparison indicate a two-layered assessment. Fiqh evaluates the elements of talak substantively according to school doctrine, whereas state law mandates court procedures. Both share similarities but possess their respective principles; irregularities in mediation do not automatically prove the non-fulfillment of the pillars or conditions of talak according to fiqh, and a fiqh assessment alone does not replace state-mandated procedures.

Juridical Implications of Mediation Procedural Defects on Legal Certainty and Civil Rights

Within the framework of Indonesian positive law, enforcing formal mediation at the stage of the divorce pledge session—after a case has been decided and possesses permanent legal force (inkracht van gewijsde)—directly implies the emergence of a formal defect (procedural defect) in the resulting legal product. The secondary consequence is the loss of executorial power over the execution of the divorce pledge, threatening the legal certainty of marital status, and leaving the civil rights of the former wife unprotected (Harahap, 2017). Overall, these findings reveal real tension and dualism between state law formalities and the material validity of Islamic law (living law). A recapitulation of the juridical implications of these mediation procedural defects is presented in Table 3 below:

Table 3. Identification of Procedural Defects and Legal Consequences

No	Juridical Aspect	Findings and Legal Implications
1	Judge's decree/judgment	Suffers from a formal defect (legally defective/null and void).
2	Executorial power of the divorce pledge	Lost or cannot be validly executed according to procedural law.
3	Marital status of the parties	Creates legal uncertainty regarding the status of the divorce.
4	Civil rights of the former wife	Creates uncertainty in the disbursement of mut'ah, iddah, and post-divorce rights.
5	Relationship between State & Islamic Law	Generates dualism and tension between formal-procedural and material-sharia aspects.

Discussion

Procedural Law Analysis of Mediation Limits and the Execution of the Divorce Pledge

Statutory positioning demonstrates that mediation and the divorce pledge perform different functions. Mediation is a dispute resolution mechanism utilizing a neutral mediator (court-connected mediation) at the pre-adjudication stage (Rahmadi, 2011; Marluki, 2020). Meanwhile, the divorce pledge is an action within the judicial process that follows and implements a judgment permitting divorce that has obtained permanent legal force (inkracht van gewijsde) (Manan, 2018). A judgment with permanent legal force creates the procedural baseline (legal base) for the next stage, but the issuance of such a judgment does not mean that the sighat talak has been uttered by the husband either in sharia or positive law. Therefore, the three stages—namely (1) dispute mediation, (2) final judgment, and (3) execution of the divorce pledge—must be carefully and rigidly distinguished in judicial practice (Harahap, 2017).

Article 4 paragraph (1) of PERMA Number 1 of 2016 encompasses civil disputes submitted to courts, including certain types of opposition cases (verzet or derdenverzet) against judgment execution. However, these opposition provisions cannot be read or interpreted analogously (argumentum per analogiam) as a mandate to re-mediate every judgment execution action

(Mertokusumo, 2013). Opposition constitutes a new case or dispute officially submitted by related parties, whereas the divorce pledge session is a specific stage (sui generis) explicitly regulated by Article 70 of Law No. 7 of 1989 in conjunction with Article 131 of the Compilation of Islamic Law. This distinction prevents unilateral expansion of PERMA norms through analogies that obscure procedural certainty and violate the nature of dwingend recht (compelling procedural law) (Makinudin, 2021).

However, not every effort at communication or reconciliation facilitation at the post-judgment stage is automatically prohibited. What needs to be tested is its form and consequence: whether the action constitutes a formal mediation based on PERMA, voluntary communication, or a procedural step specifically regulated under divorce procedural law. A mediator cannot replace a judge in exercising judicial authority, and a judge should not create new conditions that delay the execution of a judgment without a legal baseline. If the parties reconcile or the husband no longer intends to pledge the talak, the available avenues must be pursued through legal mechanisms that regulate such circumstances. This approach aligns with the principle of legal certainty; procedures must be predictable, but they must also not close the room for choices recognized by law.

The Validity of Talak from the Perspective of the Shafi'i School

In the doctrine of the Shafi'i school, the validity of talak is not assessed merely through administrative judicial labels or formalities, but through the fulfillment of material elements and relevant legal conditions (syurūṭ al-ṣiḥḥah). Al-Nawawi, in his primary work Minhāj al-Ṭālibīn, discusses talak within a jurisprudential framework that strictly identifies the subject authorized to pronounce talak (zauj/mukallaf), the form of expression (ṣīghah), and the state of the perpetrator's will (Al-Nawawi, n.d.).

The Shafi'i school explicitly distinguishes between ṣarīḥ (explicit) and kināyah (implicit/allusive) expressions. The use of a ṣarīḥ expression directly executes talak without requiring proof of intent, whereas in a kināyah expression, intent (niyyah) serves as an absolute determining factor (Al-Zuhayli, 1985). Likewise, the capacity to act legally (ahliyyah) and the presence of coercion (ikrāk) must be objectively assessed based on standard fiqh criteria, rather than a mere abstract assumption that the court mediation process did not proceed according to statutory procedures (Makinudin, 2021).

The element of free will (al-irādah al-ḥurrah) in pronouncing talak requires separate juridical attention. In the fiqh literature of the Syafi'iyyah, coercion (ikrāk) that invalidates the validity of talak is not limited to social pressure, inconvenience, or procedural encouragement from judicial authorities. The assessment of the existence of ikrāk is measured through real criteria: the nature of threats endangering life/limb, the actual capacity of the threatening party to execute it, the firm conviction of the coerced party, and the absence of other realistic choices for the subject (Al-Nawawi, n.d.; Putri & Mukdin, 2024). Because these doctrinal details are highly strict, determining that a divorce pledge was uttered under coercion requires a proper examination of legal facts (feitelijke) before a court session.

A mediation procedural defect only possesses relevance to a fiqh assessment if its accompanying facts directly correlate with the material elements of the talak itself—for instance, concrete evidence that the pledge was uttered under coercion meeting the criteria of ikrāk syar'ī or born without a legally recognized will. If the issue is merely an error in mediation summoning or a misapplication of post-judgment judicial administrative procedures, then a causal relationship with the invalidation of the pillars or conditions of talak is not automatically

formed (Harahap, 2017). Therefore, equating non-conformity in mediation procedures with the invalidity of talak syar'ī is a form of logical legal fallacy (legal fallacy).

The Validity of Talak According to the KHI and Indonesian Positive Law

The KHI links talak with a husband's pledge before a Religious Court session and regulates its petition and execution. The Religious Judicature Law, specifically provisions regarding divorce cases (cerai talak), provides a procedural structure for scheduling the pledge session after a judgment permitting talak obtains permanent legal force. These provisions distinguish a judgment permitting talak from the subsequent event of the pledge. This distinction is important to determine when a specific legal act has occurred.

In state law, the validity or legal consequences of divorce must be assessed with regard to the specific applicable procedures, not just the concept of talak in fiqh. However, the principle of procedural legality also demands that the consequences of violations be drawn from the correct norm. PERMA 1/2016 regulates mediation procedures; it does not explicitly state that mediation violations at the post-judgment stage erase the status of a final judgment or invalidate a pledge subsequently performed according to divorce procedural law.

As such, four things must be separated: (a) the validity of talak in fiqh analysis; (b) the fulfillment of pledge procedures according to state law; (c) the evidentiary power and recording of divorce status; and (d) administrative compliance with mediation. Each has its own baseline and consequences which are not always identical. The assessment of concrete cases requires an examination of the case files and rules applicable when the action was performed.

In line with the concept of validity, it must also be separated into two layers. The first is the occurrence of talak in sharia, tested against pillars and conditions. The second is the recognition and binding power of talak according to state law, tested against judicial procedures, because divorce in the KHI is calculated since it is declared before a court session (KHI Article 123). The term executorial power in the findings is understood in the second layer, namely the binding power of the pledge as the baseline for the legal consequences of divorce, rather than forced execution. This separation explains why judges and positive law deem extra-judicial talak invalid without disputing the fiqh view on its occurrence. One condition remains attached to the first layer, namely the absence of coercion (ikrah) against the husband. Procedural errors are not necessarily coercion, but mediation that pressures a husband not to pledge talak can shift in that direction, necessitating a case-by-case distinction.

Legal Consequences, Legal Certainty, and Protection of the Parties' Rights

Legal consequences depend on the category of violation. A lack of mediation documentation might require administrative rectification but does not necessarily affect the act of the pledge. Formal mediation enforced without a clear baseline can be challenged as a procedural impropriety and potentially delay execution, but delays or cancellations must possess a baseline that can be tested. Conversely, if a pledge is not performed according to the requirements designated by law and the KHI, the problem must be analyzed as an alleged defect in the execution of the pledge, rather than a mere mediation defect.

The certainty of marital status impacts the civil rights of the parties, including subsequent marital status, maintenance (nafkah), post-divorce rights, and child arrangements if any. Therefore, it is necessary to see that deeming every procedural deficiency trivial, or assuming every violation automatically invalidates all legal consequences, is inappropriate. Examinations

must be proportional and based on the relationship between the violated rule and the affected right or action.

Mediation must also be conducted with regard to the equality and safety of the parties. Mandating mediation in cases involving domestic violence can pose risks to vulnerable parties. Although this issue differs from the talak pledge stage, its underlying principle is relevant: mediation is not an end that overrides the rights, safety, and free will of the parties.

Conclusion

First, mediation under PERMA Number 1 of 2016 is part of the integrative civil dispute resolution process submitted to courts. After a judgment permitting talak obtains permanent legal force, the execution of the divorce pledge resides within a specific stage regulated by the Religious Judicature Law and KHI. Based on the examined norms, there is no explicit baseline rendering formal mediation a mandatory new stage in every execution of the divorce pledge. The facilitation of reconciliation must be distinguished from formal mediation mandated by regulations.

Second, according to the perspective of the Shafi‘i school, the validity of talak relates to the capacity of the pronouncing party, the form of utterance, intent in certain expressions, and conditions like coercion according to fiqh criteria. The KHI and Indonesian positive law append a procedural framework mandating that talak be performed through the mechanisms of the Religious Court. A mediation defect does not automatically prove a defect in the pillars or conditions of talak, nor does it automatically prove that pledge procedures have been violated. Third, legal consequences must be determined based on the type of violation, the violated norm, and its influence on the actions or rights of the parties. It is incorrect to conclude that a mediation defect by itself invalidates the talak, final judgment, or its entire legal consequences. However, the legal consequences of a formal defect potentially lead to the loss of executorial power over the divorce pledge, which may trigger legal uncertainty regarding marital status and the civil rights of the former wife. This study indicates the existence of dualism and tension between state law formalities and the material validity of Islamic law (living law).

References

Al-Nawawi, A. Z. Y. (n.d.). Minhaj al-Talibin wa 'Umdat al-Muftin. Dar al-Kutub al-'Ilmiyyah.

Al-Zuhayli, W. (1985). Al-Fiqh al-Islami wa Adillatuh. Dar al-Fikr.

Al-Shatibi, Abu Ishaq. Al-Muwafaqat fi Ushul al-Shari'ah.

Harahap, M. Yahya. (2017). Hukum Acara Perdata: Tentang Gugatan, Persidangan, Penyitaan, Pembuktian, dan Putusan Pengadilan. Jakarta: Sinar Grafika.

Presidential Instruction of the Republic of Indonesia Number 1 of 1991 concerning the Compilation of Islamic Law (KHI).

Iyasha, C. I. (2024). Efektivitas Penerapan PERMA Nomor 1 Tahun 2016 dalam Perkara Perceraian. Jurnal Ilmu Hukum (JIMFH), 5(1).

Khairunisa, T. (2022). Problematika Mediasi Perkara Perceraian dan Implikasi Yuridis Ketidakhadiran Para Pihak. Al-Usroh, 2(2).

Makinudin, M. (2021). Ikrar Talak di Depan Sidang Pengadilan Agama: Analisis Kaidah Usul Fikih dan Hukum Positif Indonesia. Jurnal Al-Hukuma, 4(1).

Manan, Abdul. (2018). Penerapan Hukum Acara Perdata di Lingkungan Peradilan Agama. Jakarta: Kencana.

Marluki, A. T. (2020). Prosedur mediasi di Pengadilan Agama: Antara formalitas hukum acara dan efektivitas perdamaian. Journal of Islamic Law (JIL), 1(2), 125-140.

Mertokusumo, Sudikno. (2013). Hukum Acara Perdata Indonesia. Yogyakarta: Cahaya Atma Pustaka.

Putri, A., & Mukdin, M. (2024). Keabsahan Talak Melalui Media Sosial Menurut Fiqh Mazhab Syafi'i dan Hukum Positif Indonesia. Jurnal Hukum Keluarga Islam, 8(1).

Radbruch, Gustav. (1950). Rechtsphilosophie. Stuttgart: K.F. Koehler Verlag.

Rahmadi, Takdir. (2011). Mediasi: Penyelesaian Sengketa Melalui Pendekatan Mufakat. Jakarta: PT RajaGrafindo Persada.

Ropei, A., & Sururie, R. W. (2021). Analisis Hukum Terhadap Penjatuhan Talak Media Elektronik (WhatsApp). Jurnal Ahwal Al-Syakhsiyyah, 3(2).

Syarifudin, S., et al. (2022). Efektivitas Mediasi dalam Perkara Perceraian Berdasarkan PERMA Nomor 1 Tahun 2016 di Pengadilan Agama Jombang. Jurnal Hukum & Pembangunan / Jurnal Peradilan Agama.

Law of the Republic of Indonesia Number 7 of 1989 concerning Religious Judicature.

Wahyudi, Y. (2022). Upaya Itsbat Talak Sebagai Solusi Perceraian Ekstra-Yudisial: Studi kepastian Hukum dan Keadilan. Al-Ahkam, 32(1).