

## DIVORCE MEDIATION IN MINANGKABAU SOCIETY OF AL-AZHAR TAFSIR PERSPECTIVE

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### **Abstact**

This article examined the practice of mediation in resolving divorce disputes within Minangkabau society through the lens of Tafsir Al-Azhar by Buya Hamka. In this context, mediation is understood not merely as a formal legal procedure, but as a process that integrates religious values and local customs as the foundation for resolving domestic conflicts. This study employs a qualitative approach using the library research method. The primary data source is Tafsir Al-Azhar, while the secondary data consist of relevant legal regulations, books, journal articles, and previous research on Islamic family law and Minangkabau culture. Using descriptive-analytical methods, the study finds that the mediation practices in Minangkabau society carried out through the barundiang mechanism and involving the central role of the mamak share functional similarities with the concept of shura (consultation) as conducted by the hakam in Tafsir Al-Azhar. Hamka interprets that the resolution of syiqaq (marital discord) must involve family representatives as mediators who uphold the principles of deliberation, justice, and social responsibility. This alignment demonstrates that Minangkabau's customary mediation practices represent a harmonious integration of local tradition, Islamic principles, and national legal norms

**Keywords:** Divorce, Mediation, Minangkabau, Al-Azhar Tafsir

### **Abstrak**

*Artikel ini membahas praktik mediasi dalam penyelesaian sengketa perceraian di masyarakat Minangkabau melalui perspektif Tafsir Al-Azhar karya Buya Hamka. Mediasi dalam konteks ini dipahami tidak hanya sebagai prosedur hukum formal, tetapi sebagai proses yang mengintegrasikan nilai-nilai agama dan adat sebagai fondasi penyelesaian konflik rumah tangga. Penelitian ini merupakan penelitian kualitatif dengan metode studi pustaka (library research). Data primer yang digunakan adalah Tafsir Al-Azhar, sementara data sekunder meliputi regulasi hukum, buku, artikel jurnal, serta hasil penelitian sebelumnya yang relevan mengenai hukum keluarga Islam dan budaya Minangkabau. Dengan metode deskriptif analitis, penelitian ini menemukan bahwa praktik mediasi dalam masyarakat Minangkabau yang dijalankan melalui mekanisme barundiang dan melibatkan peran sentral mamak memiliki kesamaan dengan konsep syura yang dijalankan oleh hakam dalam Tafsir Al-Azhar. Hamka menafsirkan bahwa penyelesaian konflik (syiqaq) dalam rumah tangga harus melibatkan pihak keluarga sebagai juru damai dengan mengedepankan prinsip musyawarah, keadilan, dan tanggung jawab sosial. Kesamaan ini menunjukkan bahwa praktik mediasi Minangkabau merupakan bentuk harmonisasi antara adat, prinsip Islam, dan hukum negara.*

**Kata Kunci:** Perceraian, Mediasi, Minangkabau, Tafsir Al-Azhar

## A. INTRODUCTION

According to data presented by the Central Statistics Agency (BPS) in 2023, there have been at least 408,347 divorce cases in Indonesia. Thus, 816,694 people have become widows and widowers. Looking at the distribution of cases across 38 provinces, the regions with the highest divorce rates are, in descending order: West Java, East Java, Central Java, North Sumatra, DKI Jakarta, Banten, Lampung, South Sulawesi, South Sumatra, Riau, West Sumatra, West Nusa Tenggara, East Kalimantan, South Kalimantan, Aceh, DI Yogyakarta, West Kalimantan, and Jambi.<sup>1</sup>

The inclusion of West Sumatra among the provinces with the highest divorce rates in Indonesia is a unique fact. This is because West Sumatra, where almost the entire region is inhabited by the Minangkabau ethnic group with its matrilineal descent and communal principles, tends to view divorce as taboo. In line with this, Law No. 1 of 1974 on Marriage (Law No. 1 of 1974) in Article 39 paragraph (1) also emphasizes that divorce can only be carried out before a court hearing, after the court has attempted and failed to reach an amicable agreement between the two parties.

A peaceful settlement attempted by the court is also known as mediation. The obligation to pursue mediation is also explicitly regulated in Article 17 paragraph (1) of Supreme Court Regulation No. 1 of 2016 concerning Mediation Processes in Court (PERMA No. 1 of 2016), which states that judges are required to order the parties to the case to undergo mediation on the appointed day of the hearing. Mediation involves three parties: the two parties to the dispute and a mediator. The mediator plays a central role in controlling the mediation process and is tasked with facilitating the achievement of an

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<sup>1</sup> Nashir Wahyudi et al., "Statistik Indonesia 2024" (Jakarta, 2024), <https://webapi.bps.go.id/download.php?f=c2wKozvDCFZ2bXrxThSWxL85sS9VdM4beH/4y95SjibXS4hohs9h7kGbjssK4yG3NwZLFLKsce9dzLKdZ/f+G7sEWEQICwWld7YOVm7xRNCKCYGlaayniIKiQLa4Hq6m0yMR3rkIX8GqK6h4RIRZgGnmM6Ktah971T4BShz+OysIWQF3IWV+iE6U5ATyzZfOPOSWi1kARadzfYG60e600Mc>.

amicable agreement between the parties, as explained in Article 14 of PERMA No. 1 of 2016.

Through Chapter 1 paragraph (2) PERMA No. 1 of 2016, it is explained that a mediator is a judge or other party who has obtained mediator certification and acts as a neutral party to assist the parties in the negotiation process. Given the provisions of Article 39 of Law No. 1 of 1974, which states that divorce can only be carried out before a court, mediators are positioned as parties with great responsibility in efforts to reduce divorce rates. The success of mediation itself will also depend on the mediator's experience, professionalism, and ability to analyze and design various effective preventative measures to respond to sources of conflict between the parties. On the other hand, mediators also play a controlling role in ensuring the smooth running of the mediation process.<sup>2</sup>

Mediators as arbitrators, have a role similar to that of hakam in Islam. Hakam, which means peacemaker, is an individual sent by both the man and woman to negotiate as representatives of each party to the dispute.<sup>3</sup> Hamka explained that when a dispute (*syiqaq*) arises between husband and wife, if there is no intervention from other parties, the conflict can drag on. Therefore, it is imperative that families from both sides, or the surrounding community, including the government, immediately intervene to resolve the issue.<sup>4</sup>

In the context of Indonesia's multicultural society, conflict resolution through non-litigation channels such as traditional mediation is a highly relevant alternative. One form of mediation based on traditional concepts can be found in the mediation practices of the Minangkabau people. Mediation in the Minangkabau tradition not only reflects the values of deliberation and

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<sup>2</sup> Nurul Azizah, Lomba Sultan, dan Azni Azra, "Efforts to Prevent Divorce by Judges at the Barru Religious Court (Perma Analysis Number 1 of 2016 Concerning Mediation Procedures in Courts) Perspective of Islamic Law," *International Journal of Islamic Studies* 1, no. 2 (2021): 104–17, <https://doi.org/10.24252/ijis.v1i2.32046>.

<sup>3</sup> Misbahul Munir dan Muhammad Holid, "Konsep Mediasi Konflik Suami Istri Menurut Tafsir Surah an-Nisa' Ayat 35," *Asa* 3, no. 2 (2021): 15–27, <https://doi.org/10.58293/asa.v3i2.28>.

<sup>4</sup> Hamka, *Tafsir Al-Azhar Jilid 2* (Singapore: Kerjaya Printing Industries Pte Ltd, 2001), 1203.

consensus, but also contains complex religious, ethical, and social dimensions.<sup>5</sup> In addition, the Minangkabau people always consider marriage to be the responsibility of relatives, family, and community (kaum), rather than a personal matter.<sup>6</sup> causing personal problems or domestic conflicts experienced by married couples cannot be separated from joint affairs.<sup>7</sup>

Research conducted by Sihabudin Mukhlis (2020), Ach Rois (2023), and Ahmad Rizal (2023) explains that obstacles to successful mediation are inseparable from contemporary challenges such as egoism, society's closed attitude towards domestic conflicts that are considered shameful, and the tendency to seek individual solutions without involving traditional structures, the state, or even religion.<sup>8</sup> Meanwhile, based on research by Anisah Hasibuan, et al (2022), Nofiardi (2018), and Muhammad Habibi (2021), it shows that cultural-based problem solving plays an important role in the social life of the community.<sup>9</sup> In line with this, Dri Santoso (2022) explains that harmonizing

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<sup>5</sup> Nurus Shalihin, *Demokrasi di Nagarnya Para Tuan*, ed. oleh Muhammad Sholihin (Padang: Imam Bonjol Press, 2014), 16.

<sup>6</sup> Asmaniar, "Perkawinan Adat Minangkabau," *Binamulia Hukum* 7, no. 2 (2018): 131–40, <https://doi.org/10.37893/jbh.v7i2.23>.

<sup>7</sup> Ali Akbar Navis, *Alam Terkembang Jadi Guru Adat dan Kebudayaan Minangkabau* (Padang: PT Grafika Jaya Sumbar, 2015), 193.

<sup>8</sup> Sihabudin Mukhlis, "Peran Mediasi dalam Rekonsiliasi Rumah Tangga dari Perspektif Gender," *Krtha* Bhayangkara 14, no. 2 (7 Desember 2020): 221–35, <https://doi.org/10.31599/krtha.v14i2.282>; Ach Rois dan Galuh Widitya Qomaro, "Tren Keberhasilan Mediasi di Pengadilan Agama Wilayah Madura dan Faktor-faktor yang Memengaruhinya," *Bustanul Fuqaha: Jurnal Bidang Hukum Islam* 4, no. 3 (2023): 424–39, <https://doi.org/10.36701/bustanul.v4i3.1116>; Ahmad Rizal Lubis dan Syapar Alim Siregar, "Peran Tokoh Agama Mediasi Pertikaian Perkawinan," *Jurnal El-Thawalib* 2, no. 6 (2021): 733–43, <https://doi.org/10.24952/el-thawalib.v2i6.4792>; Arifki Budia Warman et al., "From communal to individual: Shifting authorities of family dispute resolution in Minangkabau society," *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* 23, no. 2 (2023): 161–83, <https://doi.org/10.18326/ijtihad.v23i2.161-183>.

<sup>9</sup> Anisah Hasibuan, Mhd Syahminan, dan Nabila Yasmin, "Tradisi Markobar Dalam Kajian Komunikasi Antar Budaya Di Kabupaten Mandailing Natal," *SIWAYANG Journal: Publikasi Ilmiah Bidang Pariwisata, Kebudayaan, dan Antropologi* 1, no. 3 (2022): 131–40, <https://doi.org/10.54443/siwayang.v1i3.391>; Nofiardi, "Perkawinan dan Baganyi: Analisis Sosiologis Kultural dalam Penyelesaian Perselisihan di Kecamatan Banuhampu Kabupaten Agam," *Al-Ihkam: Jurnal Hukum dan Pranata Sosial* 13, no. 1 (2018): 49–72, <https://doi.org/10.19105/al-lhkam.v13i1.1613>; Muhammad Habibi Miftakhul Marwa, "Model Penyelesaian Perselisihan Perkawinan Perspektif Hukum Adat Dan Hukum Islam," *Jurnal Usm Law Review* 4, no. 2 (2021): 777, <https://doi.org/10.26623/julr.v4i2.4059>.

religious values with culture is an important step in achieving domestic happiness.<sup>10</sup>

Based on previous studies, this research offers something new by examining divorce mediation based on the Indonesian legal system, exploring customary mediation practices carried out by the Minangkabau people, and analyzing them through the perspective of Hamka's Tafsir Al-Azhar, which emphasizes the values of deliberation, justice, and moral exemplarity. This approach provided a synthesis between legal norms, local wisdom, and spiritual values, which have not been widely addressed in previous studies.

This research is qualitative in nature and involves library research. The study focuses on exploring the concept of divorce mediation in the context of Minangkabau society based on the perspective of Tafsir Al-Azhar. In this study, verses related to mediation in resolving domestic conflicts in Tafsir Al-Azhar are contextualized with the mediation practices of the Minangkabau community. The primary data source for this study is Tafsir Al-Azhar, while the secondary data includes relevant literature such as books, journal articles, and previous research on Islamic family law and Minangkabau culture. Data analysis was conducted using a descriptive analytical method, namely by identifying and describing the main themes related to mediation, which were then analyzed in depth using Tafsir Al-Azhar.

## **B. DISCUSSION**

### **1. The Concept of Divorce Mediation in Indonesian Positive Law**

Etymologically, mediation means “in the middle,” because mediators are in a position that does not favor either party when mediating between disputing parties. Laurence Boule, as quoted by D.Y. Witanto in his book, defines mediation as a decision-making process that involves the assistance of a third party, known as a mediator. The mediator plays a role in facilitating the decision-making

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<sup>10</sup> Dri Santoso et al., “Harmony of religion and culture: fiqh munākahat perspective on the Gayo marriage custom,” *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* 22, no. 2 (5 Desember 2022): 199–218, <https://doi.org/10.18326/ijtihad.v22i2.199-218>.

process and helping the disputing parties reach a mutual agreement that is acceptable to all.<sup>11</sup>

Christopher W. Moore describes mediation as an intervention by a third party accepted by both parties in a conflict or negotiation, without the authority to make a final decision.<sup>12</sup> A mediator will act as a dispute resolution practitioner, who will assist the parties in identifying the issues in dispute, and also assist in developing options or alternative resolutions that are satisfactory to all parties.

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Mediation aims to reconcile disputing parties through a dialogue process facilitated by a mediator. Unlike judges who make binding decisions, mediators act as neutral intermediaries without imposing certain views or decisions. The primary role of a mediator is to empower the disputing parties so that they can independently find solutions and reach mutually beneficial agreements, so that the results of mediation reflect their common interests.

The mediation process is a mandatory stage in the settlement of disputes in court. Article 2 of PERMA No. 1 of 2016 states that all civil disputes filed in court, including cases of *verzet* (opposition) to *verstek* (default) judgments, opposition from the litigating party (*partij verzet*), or opposition from a third party (*derden verzet*) against the enforcement of a final and binding decision, must first be resolved through the mediation process.

Then, in Article 3 paragraphs (1) and (3) of PERMA No. 1 of 2016, it is also emphasized that judges, mediators, disputing parties, and/or legal representatives are required to follow mediation procedures. Paragraph (3) further states that judges who do not order the parties to undergo mediation,

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<sup>11</sup> D.Y. Witanto, *Hukum Acara Mediasi: dalam Perkara Perdata di Lingkungan Peradilan Umum dan Peradilan Agama: Menurut PERMA No. 1 Tahun 2008 Tentang Prosedur Mediasi di Pengadilan* (Bandung: Alfabeta, 2012), 17.

<sup>12</sup> Rachmadi Usman, *Pilihan Penyelesaian Sengketa di Luar Pengadilan* (Bandung: Citra Aditya Bakti, 2003), 23.

<sup>13</sup> Agus Hermanto, Iman Nur Hidayat, dan Syeh Sarip Hadaiyatullah, "Peran dan Kedudukan Mediasi di Pengadilan Agama," *As-Siyasi : Journal of Constitutional Law* 1, no. 2 (2021): 34–59, <https://doi.org/10.24042/as-siyasi.v1i2.11292>.

thereby preventing mediation from taking place, are considered to have violated the provisions of laws and regulations governing mediation in court.

Mediation has become an integral part of the entire judicial process, including divorce cases. The mediation process is generally carried out by several parties, namely the plaintiff and the defendant,<sup>14</sup> furthermore, mediators represented by individuals or independent institutions that are neutral and impartial.<sup>15</sup>

Mediation as an alternative dispute resolution method has principles that are not only scientific in nature, but must also be applied in practice. These principles are as follows:<sup>16</sup>

#### 1) The Principle of Voluntariness

This principle emphasizes that mediation must be conducted based on the willingness and consent of the disputing parties. This process must not be conducted under pressure from any party, including mediators, judges, or third parties. This principle of voluntariness is based on the assumption that the disputing parties will come to the mediation venue of their own accord to negotiate a solution to the problem or dispute they are facing.

#### 2) The Principle of Confidentiality

Confidentiality is one of the advantages of the mediation process, whereby the privacy of the parties will be protected and concealed. This principle states that everything that occurs during the mediation process is confidential and must not be disclosed to the public. The mediator, as the intermediary, will destroy any records related to the mediated case once the case has been resolved.

#### 3) The Principle of Independency, neutrality, and impartiality of mediator

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<sup>14</sup> Nurbaya Nurbaya, Muh. Arfah Pattenreng, dan Yulia A. Hasan, "Efektivitas Pembagian Harta Bersama Terhadap Perceraian Di Pengadilan Agama Sungguminasa Kelas Ib," *Indonesian Journal of Legality of Law* 4, no. 1 (2021): 88–92, <https://doi.org/10.35965/ijlf.v4i1.1212>.

<sup>15</sup> Yusna Zaidah, *Penyelesaian Sengketa Melalui Peradilan dan Arbitrase Syari'ah di Indonesia*, ed. oleh Anwar Hafidzi, Cetak II (Yogyakarta: Aswaja Pressindo, 2015), 29.

<sup>16</sup> Fitriyah Alkaff Ritonga, A. Husein A. A. Miftah, *Mediasi dalam Penyelesaian Perkara Perceraian*, ed. oleh Sumarto (Bengkulu: Penerbit Buku Literasiologi, 2020), 31–34.

This principle emphasizes that mediators in all mediation processes must always remain independent and cannot be influenced by any party. Mediators do not act as judges who will gather information that ends in victory or defeat for one of the parties. Instead, they are tasked with facilitating a conducive dialogue between the disputing parties using various strategies, with the aim of helping them see the problem as a shared problem and resolve it together.

Mediators are required to always maintain their neutrality by not taking sides, and they must guarantee fairness in their services, which should be objective, constructive, and comprehensive. Mediators must also be careful and maintain their neutrality in mediation so as not to offend the personal feelings of either party to the dispute, either socially or financially.

#### 4) Principle of Equality and Cooperation between the parties

Mediators must be able to facilitate the disputing parties so that they both contribute to decision-making or provide views that are beneficial to both sides. At this point, the parties must have equal rights to express their opinions, without discrimination. This will increase the likelihood that the parties will be honest and open, which will help the mediation process run smoothly and create good cooperation.

Mediation as a pre-divorce component is a very common procedure found in the judicial environment. Mediation is positioned as a platform or forum used to consider the possibility of creating peace between conflicting parties, and it is reasonable for parties who wish to divorce to seek peace through mediation so that they can return to living in harmony. One of the objectives of mediation is, of course, for the parties involved in the case to officially withdraw their legal claims and petitions.

If mediation fails to reach a peaceful agreement, the case will be returned to court and become the responsibility of the judge. This causes the scope of peace, especially in divorce cases, to become even narrower. Conceptually,

however, almost all problems can be resolved through mediation, including domestic issues.<sup>17</sup>

The practice of mediation in divorce proceedings naturally seeks to achieve peace between the parties. With peace established between the couple, it will increase the likelihood of reducing the divorce rate. Then, in the implementation of mediation, PERMA No. 1 of 2016 mentions several ways that mediators can maximize the function of mediation, namely:

First, Article 11 paragraph (1) states that mediation can be conducted in a court mediation room or at another location outside the court that has been agreed upon by all parties involved. Second, Article 14 letter (e) allows mediators to meet with one party without the presence of the other party, which is known as a caucus. Third, Article 14 letter (i) allows mediators to identify problems and determine the priorities for discussion. Fourth, Article 26 paragraph (1) allows mediators to invite experts, community leaders, religious leaders, or traditional leaders with the consent of all parties involved or their legal representatives.

## **2. Divorce Mediation in Minangkabau Society**

Cultural-based or local wisdom-based dispute resolution can be found in various regions, such as among the Banjar people with their Badamai custom. Badamai refers to a deliberative process aimed at reaching an agreement between disputing parties. Badamai is carried out by the community so that the current problem does not endanger the social order in the future. Resolution through the Badamai custom accommodates criminal and civil cases faced by the community.<sup>18</sup>

Hudson, in his work entitled *Padju Epat*, states that conflicts faced by communities in the interior of Kalimantan are resolved by traditional elders.<sup>19</sup>

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<sup>17</sup> Hermanto, Hidayat, dan Hadaiyatullah, "Peran dan Kedudukan Mediasi di Pengadilan Agama."

<sup>18</sup> Sanusi, M. Irpan, dan Syahrial Shaddiq, "Badamai Culture Communication: Character Development of National Law," *Journal of Humanities and Social Sciences Studies* 5, no. 6 (2023): 15–31, <https://doi.org/10.32996/jhsss.2023.5.6.3>.

<sup>19</sup> A. B. Hudson, *Padju Epat: The Ma'anyan of Indonesian Borneo* (New York: Holt, Rinehart and Winston, 1972), 46.

In the Toraja region, around Rantepao and Ma'kele, there is an institution called the Dewan Hadat, which is a traditional Toraja institution that has long functioned to resolve disputes. Similarly, dispute resolution based on customs is also carried out by the Minangkabau community through the barundiang custom. The Minangkabau are also known as a group with unique customs.<sup>20</sup> Culturally, the Minangkabau people have always used adat as the foundation for building their lives. Adat is considered a local pattern of behavior that regulates social relationships between individuals in the community, and for them, adat encompasses a variety of complex customs, norms, beliefs, and ethics.<sup>21</sup>

The characteristics of the Minangkabau people are evident in their kinship system and family lines, where the Minangkabau people adhere to a matrilineal family system.<sup>22</sup> This kinship system differs from most kinship systems adopted by other tribes in Indonesia. Through this matrilineal kinship system, children born into the family will follow their mother's lineage and, according to custom, will become the responsibility of their mother's brothers (mamak), rather than their father.<sup>23</sup>

The matrilineal system adopted by the Minangkabau people places the mamak as the leader of his nephews and nieces (*kemenakan*). In Minang terms, "*Mamak ibaraik baringin di tengah kota, batangnyo tampek basanda, daunnyo tampek balinduang, ureknyo tampek baselo, kok pai tampek batanyo*, and when they return, it is a place to tell stories" (*mamak* is like a banyan tree in the middle of the city, its trunk is useful as a place to lean on, its leaves are a place of shelter,

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<sup>20</sup> Akhyar Hanif et al., "Sociological Studies Minangkabau Traditional Mariage," *Melayu Arts and Performance Journal* 6, no. 1 (2023): 96, <https://doi.org/10.26887/mapj.v6i1.3739>.

<sup>21</sup> Shalihin, *Demokrasi di Nagarnya Para Tuan*, 16.

<sup>22</sup> Matrilineal adalah garis keturunan yang diambil dari nasab ibu, baca Jeffrey Hadler, *Sengketa Tiada Putus: Matriarkat, Reformisme Agama, dan Kolonialisme di Minangkabau*, ed. oleh Samsudin Berlian (Jakarta: Freedom Institute, 2010), 8.

<sup>23</sup> Muhammad Taufiq, "Antropologi Minang dalam Perspektif Al-Qur'an: Kajian Sistem Keturunan Materilinal," *Al-Kauniah* 3, no. 2 (2022): 96, <https://doi.org/10.56874/alkauniah.v3i2.1129>.

its roots are a place to rest, and when you want to leave, it is a place to ask questions, and when you return, it is a place to tell stories).<sup>24</sup>

*Mamak* is not only a father figure in her family, but also a leader for her nieces and nephews. On the other hand, *mamak* also functions as a social control,<sup>25</sup> who is responsible for guiding his nephew in religious matters, including morals, worship, and faith, as well as responsible for nurturing his nephew in the areas of customs, education, and so on.<sup>26</sup> In fact, in matters of marriage, in order for the marriage to take place, the couple who wish to marry must first obtain permission from their *mamak* or as a representative of a clan.<sup>27</sup>

The existence of a strong kinship system in Minangkabau society can also be seen in their marriage ceremonies. Marriage is considered a matter for relatives, family, and even the community (*kaum*), not just a private matter between individuals.<sup>28</sup> Therefore, marital responsibilities for the Minangkabau people are part of shared responsibilities, so that personal problems faced by husbands and wives cannot be separated from shared problems.

Hence, marital responsibilities for the Minangkabau community are part of shared responsibilities, so that personal issues faced by husbands and wives cannot be separated from shared issues.<sup>29</sup>

Conflict within the household, which then become a shared responsibility, are a consequence of the culture itself. The Minangkabau society, with its matrilineal kinship system, has given its people ample space to participate in

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<sup>24</sup> Sultani Yahya Samin, Zaiful Anwar, Yondri, *Peran Mamak Terhadap Kemenakan dalam Kebudayaan Minangkabau Masa Kini*, ed. oleh Maryetti (Padang: Departemen Pendidikan dan Kebudayaan, 1996), 40.

<sup>25</sup> Muhammad Chairul Umar dan Yulfira Riza, "Peran Ninik Mamak, Mamak dan Kamanakan di Minangkabau," *Jurnal Budaya Nusantara* 5, no. 3 (2022): 174, <https://doi.org/10.36456/b.nusantara.vol5.no3.a5733>.

<sup>26</sup> M. Fauzan dan Rengga Satria, "Peran Mamak dalam Pembinaan Akhlak Kemenakan di Nagari Salibutan Kecamatan Lubuk Alung Kabupaten Padang Pariaman," *Journal on Education* 5, no. 4 (2023): 16573, <https://doi.org/10.31004/joe.v5i4.2825>.

<sup>27</sup> Armi Agustar, "Otoritas Ninik Mamak Sebagai Syarat Perkawinan di Desa Pangkalan Baru," *Jurnal Ilmiah Ahwal Syakhshiyah (JAS)* 4, no. 1 (2022): 25-42, <https://doi.org/10.33474/jas.v4i1.16138>.

<sup>28</sup> Asmaniar, "Perkawinan Adat Minangkabau."

<sup>29</sup> Navis, *Alam Terkembang Jadi Guru Adat dan Kebudayaan Minangkabau*, 193.

various aspects of life. This is because the family, as the smallest unit in Minangkabau society, does not only consist of a father, mother, and children, but is understood by the term *saparuik*, which is formed according to descent from the mother's line.

Members of the *saparuik* are referred to as (brothers and sisters because they are descendants from the beginning of time until the end of time), and this extensive relationship gives rise to a strong sense of solidarity. Another practice of *badunsanak sahulu samuaro* togetherness can be seen in the *manjapuik marapulai* (husband picking) procession in Minangkabau marriage customs. The *manjapuik* custom is usually carried out after the marriage contract has been completed, and if the *manjapuik* has not been carried out, the husband is not allowed to stay at his wife's residence. The *manjapuik* itself is usually carried out by the *mamak* from the wife's family.<sup>30</sup>

Through this sequence of stages, it is evident that the marriage process carried out by the Minangkabau community requires the involvement of various parties, and *Manjapuik*, as part of the marriage procession, is a manifestation of the communal life system of the Minangkabau community. Another example of extended family relationships is when a dispute arises between husband and wife, causing the husband to leave his wife's house (*baganyi*). As in the marriage procession, the husband can only return to his wife's house after going through the process of being picked up by his wife's family.

*Baganyi* is usually carried out by the husband, due to disharmony in the household, and can also be caused by infidelity and various other reasons. This practice of *baganyi* is carried out by the husband because in Minangkabau, the husband is the one who comes and stays in his wife's house. The position of a husband in Minangkabau is very vulnerable, and he can easily be removed from

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<sup>30</sup> S Tanjung et al., "The Tradition of *Manjapuik Marapulai* in Minangkabau Culture," *KnE Social Sciences* 3, no. 4 (2018): 878, <https://doi.org/10.18502/kss.v3i4.1994>.

his wife's house. In the Minang language, a husband is likened to ash on a stump (*bak abu di ateh tunggua*), which is easily blown away by the wind.<sup>31</sup>

The practice of matrilocality after marriage (living in the mother's house) in Minangkabau causes the male party to move to his wife's place. Because this practice privileges women as owners of land and houses, the house will be oriented towards the mother and her daughters.<sup>32</sup> This is the reason why domestic conflicts arise, it is the husband who leaves the house.

Another impact of the practice of *baganyi* is the unclear status of the wife, where she is *digantung indak batali* (hanged without a rope). This term refers to the position of a wife who is given no certainty by her husband; she is not divorced but is also not provided for. This is the situation of a wife who has been abandoned by her husband as a result of *baganyi*. *Baganyi*, as a social phenomenon in Minangkabau society, is usually resolved through a traditional process.

The settlement is carried out in almost the same way as the *manjapuik* process after the marriage contract has been signed, but what distinguishes this *manjapuik* process is that the *mamak* from the wife's side will visit the *mamak* from the husband's side for *barundiang* (deliberation). The consultation between the *mamaks* will be held with the agenda of seeking peace in order to maintain the integrity of their nephew's household.

Based on the culture of the Minangkabau people, deliberation to reach consensus, known as *barundiang*, is an important aspect that cannot be overlooked. The importance of deliberation is also reflected in the following Minangkabau proverb: *basilang kayu dalam tungku mangko api ka hiduik* (wood that crosses each other in the stove causes the fire to burn) This proverb means that cooperation and mutual support between individuals or groups will result in

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<sup>31</sup> Zainal Arifin, "Bundo Kandung: (hanya) Pemimpin di Rumah (Gadang)," in *Antropologi Indonesia, Indonesian Journal of Social & Cultural Anthropology Indonesia Vol. 34 No. 2 2013* (Depok: Departemen Antropologi Fakultas Ilmu Sosial dan Ilmu Politik Universitas Indonesia, 2013), 125.

<sup>32</sup> Evelyn Blackwood, "Big houses and small houses: Doing matriliney in West Sumatra," *Ethnos* 64, no. 1 (1999): 32-56, <https://doi.org/10.1080/00141844.1999.9981589>.

success or progress. Wood that crosses each other in the stove allows the fire to burn well, illustrating the importance of collaboration and synergy to achieve the desired results.<sup>33</sup>

In every deliberation conducted by the Minangkabau community, issues are resolved based on the nature and magnitude of the problem itself, in accordance with the Minangkabau proverb *bajanjang naiak, batanggo turun* (ascend step by step, descend step by step). This means that issues are resolved by selecting who can be involved and who cannot, in accordance with the issue to be resolved.

These deliberations in Minangkabau are also known as *babiliak gadang* and *babiliak ketek*. As a system for resolving disputes between parties, deliberations can be held anywhere, and when they are held in a *rumah gadang* (traditional house) or a specific place with more participants, this method is called *babiliak gadang*. then when the discussion is limited to only certain parties, either to explore the issue or find a solution to the problem, this method is called *babiliak ketek*.<sup>34</sup>

The similarity between mediation as it is known in Indonesia and the practice of *baraundiang* in Minangkabau can be seen in the deliberation process, where *barundiang* is synonymous with mediation, and *babiliak gadang* is synonymous with mediation involving several parties in a joint session between the defendant and the plaintiff, facilitated by a mediator. Then, when the discussion is limited to only certain parties, this practice is synonymous with caucus.

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<sup>33</sup> Undri, "Orang Minangkabau dan Budaya Berdemokrasi," *Suluh* 14, no. 18 (2014): 29–41.

<sup>34</sup> Mochammad Sodik Mohammad Noor, "Mediasi Perceraian Berbasis Kearifan Lokal dalam Praktek Pengadilan Agama di Sumatera Barat," in *Nilai-Nilai Budaya dan Keadilan bagi Perempuan di Pengadilan Agama Indonesia: Praktik Terbaik*, ed. oleh Euis Nurlaelawati Livia Holden (Yogyakarta: SUKA-Press, 2022), 137, <https://hal.archives-ouvertes.fr/hal-03602231>.

### 3. Divorce Mediation in Minangkabau Society from the Perspective of Al Azhar Interpretation

As discussed earlier, efforts to maintain harmony in the household, especially in traditional indigenous communities, are often carried out through dispute resolution by deliberation. This is influenced by the culture of indigenous peoples, which emphasizes the principles of togetherness, sacrifice, justice, and supernatural values. Consultation is seen as the best way to resolve conflicts because it is in line with the collective values and local wisdom that they hold dear.<sup>35</sup>

Deliberation is the best way for communities to resolve issues with the aim of reaching an agreement, so that problems do not drag on and can be resolved appropriately. Especially in Minangkabau society, where conflicts within the household are common, deliberation is used as a means of resolution, and such deliberations are usually conducted by *mamak* as representatives of each party. The presence of *mamak* in this deliberation is a manifestation of *mamak*'s responsibility to their nieces and nephews. The responsibility of a *mamak* cannot be separated and is inherent, and will continue to be carried throughout their lives. This is in accordance with the Minangkabau proverb which states that;

*“Kemanakan barajo ka mamak, mamak barajo ka pangulu, pangulu barajo ka mufakaik, mufakaik barajo ka alua patuik, alua patuik barajo ka nan bana, nan bana sasuai dengan ajaran Islam”* (“The nephew will rely on his uncle, the uncle will rely on the village chief, the village chief will rely on consensus, consensus will rely on propriety, propriety will rely on truth, and truth will rely on Islamic teachings”).<sup>36</sup>

Islam has also taught that when conflicts arise within the household, there are several steps that can be taken in accordance with Surah An-Nisa verse 34, as follows;

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<sup>35</sup> Syahrizal Abbas, *Mediasi : Dalam Perspektif Hukum Syariah, Hukum Adat, dan Hukum Nasional*, Ed.1 (Jakarta: Kencana Prenada Group, 2009), 243.

<sup>36</sup> Umar dan Riza, “Peran Ninik Mamak, Mamak dan Kamanakan di Minangkabau.”

الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ بِمَا فَضَّلَ اللَّهُ بَعْضَهُمْ عَلَى بَعْضٍ وَبِمَا أَنْفَقُوا مِنْ أَمْوَالِهِمْ قَالِ الصَّالِحَاتُ قَانِتَاتٌ حَافِظَاتٌ لِّلْغَيْبِ بِمَا حَفِظَ اللَّهُ ۗ وَاللَّاتِي تَخَافُونَ نُشُوزَهُنَّ فَعِظُوهُنَّ وَاهْجُرُوهُنَّ فِي الْمَضَاجِعِ وَاضْرِبُوهُنَّ ۚ فَإِنِ أَطَعْتَكُمْ فَلَا تَبْغُوا عَلَيْهِنَّ سَبِيلًا ۗ إِنَّ اللَّهَ كَانَ عَلِيمًا كَبِيرًا

Meaning:

"Men are the leaders of women, because Allah has made some of them (men) superior to others (women), and because they (men) spend some of their wealth. So righteous women are those who are obedient and guard themselves when (their husbands) are absent, because Allah has guarded them. As for those women from whom you fear disobedience, admonish them, separate from them in bed, and strike them. Then if they obey you, do not seek a way against them. Indeed, Allah is Ever-Exalted and Ever-Great."

Hamka explained these stages as follows: first, teach them. The Islamic principle regarding the role of men as leaders of women requires men to be the ones who guide women. Then, in the process of teaching wives, it is important to do so in a kind manner, full of love, and without hurting their feelings.<sup>37</sup>

*Second*, separate from them in bed. Sleeping separately can be done as a way to encourage the husband or wife to reflect on themselves; according to Ibn Abbas' interpretation, sleeping separately means no longer having intimate relations, not sleeping near each other, or turning away when going to sleep (being indifferent). As-Suddi, Adh-Dhahhak, and Ikrimah also added that one should not speak or reprimand one's wife first at this time.<sup>38</sup>

*Third*, the last method that can be used is physical punishment in the form of beating. This is only permitted in certain situations and against those who are deemed deserving of it. In a hadith narrated by Abu Daud, it is explained that if this action is taken, the face must be avoided and the use of degrading words is not permitted. Furthermore, the Prophet Muhammad SAW gave a stern warning through his words: "Is it appropriate for one of you to hit his wife like a slave, then have sexual relations with her at night?" (narrated by Bukhari and Muslim from the account of Abdullah bin Zam'ah). Then Ummi Kaltsum bint as-Shiddiq

<sup>37</sup> Hamka, *Tafsir Al-Azhar Jilid 2*, 1197.

<sup>38</sup> Hamka, 1198.

(Aisha's sister) conveyed that the Prophet only permitted hitting one's wife in urgent and extremely necessary circumstances, because the Prophet once said;

لَنْ يَضْرِبَ خِيَارَكُمْ وَ

Meaning:

“The best among you are those who do not beat their wives” (HR Al-Hakim). Ibn Abbas also interpreted that if you must beat her, do not cause her pain, such as by hitting her with a siwak.<sup>39</sup>

Through the Al-Azhar interpretation, Hamka further elaborated on several principles of the mediation stages, including: first, deliberation as an important point in the conflict resolution process, in accordance with the understanding of the sentence;

وَأْمُرُهُمْ شُورَى

Meaning:

“Their affairs are decided by mutual consultation among themselves.” (Asy-Syura; 38).

Deliberation as an effort to resolve conflicts will also place common interests on the agenda, especially when there are differences of opinion. Deliberation itself is a democratic process. Second, the principle of mutual understanding. Mutual understanding is one of the principles that must be considered. Hamka described a time when he was asked to lead the dawn prayer at a mosque in Makassar. Before becoming the imam, Hamka first asked the congregation whether they usually prayed using qunut or not. If they used qunut, Hamka would also use qunut, and if not, Hamka would also adjust to their customs.

The concept of mutual understanding described by Hamka is a step in maintaining brotherhood and understanding what others want. According to Hamka, differences of opinion that prioritize personal desires over the common good will only lead to prolonged conflict and hostility. With mutual understanding and compassion, hostility will turn into peace and love.<sup>40</sup>

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<sup>39</sup> Hamka, 1201.

<sup>40</sup> Hamka, 7300.

*Third*, avoiding prejudice, which is also one of the principles explained by Hamka. Prejudice is considered an unfounded and baseless accusation, which is essentially a sin. By avoiding prejudice, good relationships between individuals will be maintained, and this allows each party to view issues objectively.

Through the mediation process, Hamka also mentions that there are several stages that must be considered, namely: first, striving hard and sincerely to achieve peace is a wise action. This call for peace is followed by in-depth learning, and if that does not work, then good messages are conveyed as advice to the parties in conflict.<sup>41</sup>

Through the mediation process, Hamka also mentioned that there are several stages that must be considered, namely: first, striving hard and sincerely to achieve peace is a wise action. This call for peace is followed by in-depth learning, and if that does not produce results, then good messages are conveyed as advice to the parties in conflict.<sup>42</sup>

*Second*, requesting clarification and seeking consideration from the disputing parties is an important step. Each party must provide an explanation of the issue at hand. This clarification then becomes material for the mediator to consider in order to find an appropriate solution.<sup>43</sup> *Third*, reflection and evaluation are important after the problem has been clearly identified. The mediator encourages the disputing parties to consider the issue and conduct a joint evaluation to reach a mutually beneficial agreement. This is because getting caught up in negative emotions will only harm all parties.<sup>44</sup>

*Fourth*, intervention from other parties. The other parties referred to by Hamka are peacemakers (hakam), whereby sending peacemakers from each of

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<sup>41</sup> Hamka, 6831–32.

<sup>42</sup> Hamka, *Tafsir Al-Azhar Jilid 5* (Singapore: Kerjaya Printing Industries Pte Ltd, 2001), 3989.

<sup>43</sup> Hamka, *Tafsir Al-Azhar Jilid 6* (Singapore: Kerjaya Printing Industries Pte Ltd, 2001), 4784.

<sup>44</sup> Hamka, *Tafsir Al-Azhar Jilid 1* (Singapore: Kerjaya Printing Industries Pte Ltd, 2001), 614.

the conflicting parties will increase the chances of peace being achieved, and this is also in accordance with Allah's command in Surah An-Nisa verse 35, as follows;

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

Meaning:

“And if you fear a breach between them (husband and wife), then send an arbitrator from his family and an arbitrator from her family. If the two arbitrators intend to bring about reconciliation, Allah will surely grant them ease in reaching an agreement. Indeed, Allah is All-Knowing and All-Aware.”

This verse provides guidance on the importance of deliberation and consultation in problem solving, especially in the context of husband and wife. This verse also emphasizes the importance of making decisions together and not unilaterally. The message also includes the importance of cooperation, understanding, and the search for fair and wise solutions through dialogue and joint consultation.

When *syiqaq* emerges, both families, the surrounding community, or the government are instructed to immediately intervene in the matter to prevent divorce. The judge representing the husband is responsible for thoroughly investigating the husband's attitude, stance, and perspective, while the judge representing the wife does the same for the wife. This process aims to comprehensively understand the root causes of the problem on both sides.

When the issues they were facing became clear, the arbitrators would meet to discuss a solution to the problems faced by the couple, and peace or reconciliation must be their priority. As long as peace was their priority, Allah would surely grant them success.<sup>45</sup> Mediation as a deliberative process, when viewed from the perspective of the Minangkabau community's customs in resolving issues, particularly in resolving domestic issues, then the concept of mediation according to Hamka in the Al-Azhar interpretation is an appropriate process to use, considering several important points of mediation itself.

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<sup>45</sup> Hamka, *Tafsir Al-Azhar Jilid 2*, 1203.

Hamka considered that resolving *syiqaq* in a household is not only the responsibility of the couple, but also the responsibility of the family, community, and even the government. This concept is also in line with the concept of mediation carried out by the Minangkabau community using the deliberation method to resolve conflicts, for example in resolving *baganyi* issues in a household.

Mohammad Noor and Mochammad Sodik in their study also explained that the cultural approach in the mediation process carried out by a mediator at the Padang Panjang Religious Court succeeded in creating peace between a husband and wife who were about to divorce. Mohammad Noor further explained that during the mediation process, the mediator brought in *mamak* from each party to help maximize the mediation process and seek peace for the parties involved. Mohammad Noor also stated that the use of terms that are familiar or close to a person's understanding can facilitate a more positive response.<sup>46</sup>

Hamka's thoughts in Tafsir Al-Azhar regarding mediation emphasize the importance of the role of *hakam* as peacemakers from each family in resolving domestic conflicts. Hamka stresses that *hakam* must investigate the issue in depth and meet to find common ground in order to achieve reconciliation. In Minangkabau society, a similar role is played by the *mamak*, who is the maternal uncle who is customarily responsible for his nieces and nephews. The *mamak* is not only present as an advisor, but also as a trusted central figure who has the authority to resolve domestic conflicts in the form of *barundiang*.

Involving *mamak* in the mediation process is not only seen as a justification to make mediation appear logical to the Minangkabau community, but also has positive implications for the mediation process itself. The presence of the *mamak* in the mediation process is also a manifestation of the community's concern for the difficulties faced by one of its own members. This is certainly in

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<sup>46</sup> Mohammad Noor, "Mediasi Perceraian Berbasis Kearifan Lokal dalam Praktek Pengadilan Agama di Sumatera Barat," 142.

line with the principles of mediation desired by Hamka in his book of Al-Azhar interpretation. The presence of the *mamak* in the mediation process is also not a violation of existing rules.

### C. CONCLUSION

The concept of mediation in Minangkabau society reflects traditional values that uphold deliberation, solidarity, and collective responsibility. The practice of *barundiang* carried out by *mamak* in resolving domestic issues not only reflects the matrilineal social structure, but also presents a strong cultural approach in responding to domestic conflicts. Mediation in Minangkabau society is not carried out by outside parties, but rather involves internal family figures who have emotional closeness and moral responsibility towards the disputing couple.

In Tafsir Al-Azhar, Hamka explains that when *syiqaq* occurs between a husband and wife, a *hakam* from each family is sent to find a peaceful solution through deliberation and mutual understanding. The role of the *hakam* in this interpretation is functionally in line with the role of the *mamak* in the Minangkabau social structure. Both act as internal peacemakers who understand the background of the parties involved and are oriented towards saving the household.

The similarity of these principles shows that Minangkabau customary mediation practices are not only in line with Islamic values in resolving domestic conflicts, but also represent them. In fact, the Supreme Court, through Article 26 paragraph (1) of PERMA No. 1 of 2016, normatively provides space for the involvement of customary figures such as *mamak* in the mediation process. Therefore, divorce mediation in Minangkabau society is an integrative form of custom, Islamic teachings, and Indonesian positive law that reinforce each other in realizing justice and domestic peace.

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