

Contemporary Challenges and Prospects of Mediation in Contested Divorce Cases in Indonesia

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Abstract: Contested divorce cases in Indonesia have increased significantly over the past decade, revealing deep social and gender tensions within the contemporary Islamic family law system. Although mandatory mediation is regulated under Supreme Court Regulation (PERMA) No. 1 of 2016, its implementation remains ineffective and inconsistent. This raises critical questions: to what extent does mediation serve as a genuine conflict resolution mechanism rather than a formal procedural requirement? How effective is it in reducing litigation, ensuring justice, and what institutional and sociocultural barriers limit its success? This study employs a combined meta-analysis and systematic review, adhering to PRISMA 2020 guidelines, and examines 41 verified scientific articles, empirical reports, and case studies published between 2010 and 2024, sourced from Scopus, PubMed, Mendeley, and ScienceDirect. The main findings indicate: 1) mediation success rates remain below 20%, particularly in cases involving domestic violence, financial disputes, and high emotional conflict; 2) institutional gaps, including undertrained mediators and the absence of standardized practices, contribute to procedural inconsistencies; 3) structural issues, such as gender imbalances and low public trust in non-litigation processes, further weaken the potential of mediation. A comparative analysis with Malaysia, Morocco, and Egypt reveals that mediation is more effective when grounded in religious legitimacy, gender equality, and cultural sensitivity. This study contributes to the contemporary Islamic family law literature by providing a *fiqh siyasah*-based framework for evaluating mediation and offers practical guidance for judges, policymakers, and scholars to develop fair, sustainable, and culturally informed mediation policies in Indonesia.

Keywords: Contested Divorce; Islamic Family Law; Mediation Religious Courts.

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Abstrak: Kasus cerai gugat di Indonesia mengalami peningkatan signifikan dalam satu dekade terakhir, mengungkap ketegangan sosial dan gender yang mendalam dalam sistem hukum keluarga Islam kontemporer. Meskipun terdapat mediasi wajib yang diatur dalam Peraturan Mahkamah Agung (PERMA) No. 1 Tahun 2016, praktiknya masih kurang efektif dan tidak konsisten. Hal ini menimbulkan pertanyaan: sejauh mana mediasi berfungsi sebagai mekanisme penyelesaian konflik yang nyata, bukan sekadar prosedur formal? Seberapa efektif mediasi dalam mengurangi litigasi, menjaga keadilan, serta hambatan institusional dan sosiokultural yang membatasi keberhasilannya? Penelitian ini menggunakan metode gabungan meta-analisis dan tinjauan sistematis dengan pedoman PRISMA 2020, menelaah 41 artikel ilmiah, laporan empiris, dan studi kasus yang diterbitkan antara 2010–2024 dari Scopus, PubMed, Mendeley, dan ScienceDirect. Temuan utama menunjukkan: 1) Tingkat keberhasilan mediasi masih di bawah 20%, terutama dalam kasus kekerasan dalam rumah tangga, perselisihan keuangan, dan konflik emosional; 2) Kesenjangan institusional, termasuk mediator kurang terlatih dan ketiadaan standar praktik seragam, menyebabkan inkonsistensi prosedural; 3) Masalah struktural, seperti ketimpangan gender dan rendahnya kepercayaan terhadap proses non-litigasi, melemahkan potensi mediasi. Analisis perbandingan dengan Malaysia, Maroko, dan Mesir menunjukkan mediasi lebih efektif jika berakar pada legitimasi agama, kesetaraan gender, dan sensitivitas budaya. Studi ini memperkaya literatur hukum keluarga Islam kontemporer dengan menawarkan kerangka evaluasi mediasi berbasis *fiqih siyasah*, relevan bagi hakim, pembuat kebijakan, dan akademisi dalam merumuskan kebijakan mediasi yang adil dan berkelanjutan.

Kata Kunci: Hukum Keluarga Islam; Mediasi; Kasus Perceraian; Pengadilan Agama.

Introduction

Divorce in Indonesia has become a growing social and legal concern in recent decades. Among the various forms of divorce, contested divorce—where one party files for divorce against the other, typically through court proceedings—has increased significantly. This form of divorce, known in Indonesia as *perceraian gugat*, is commonly initiated by women and reflects deeper social dynamics involving gender roles, domestic conflict, and legal awareness. In the context of Islamic courts (*Pengadilan Agama*), where most Muslim couples process their divorces, cases of contested divorce account for a large portion of family law disputes. According to recent data, over 70% of divorce cases filed in religious courts are initiated by wives, indicating a shift in agency and access to legal recourse among Indonesian women. However, this also signals an alarming rate of marital breakdowns, which often lead to prolonged emotional distress and economic hardship for families, particularly for children involved in the conflict.¹

¹ Siti Ruhaini Dzuhayatin and Rumadi, "Gender and Divorce Trends in Indonesian Religious Courts," *Journal of Southeast Asian Human Rights* 4, no. 2 (2020): 225–240, <https://doi.org/10.19184/jseahr.v4i2.14435>.

One of the core challenges in contested divorce cases is the adversarial nature of the litigation process. Court-based solutions often intensify conflicts rather than resolve them peacefully. Couples are forced to take opposing sides, with each party trying to "win" the case. This structure not only delays the resolution of the dispute but also damages any remaining possibility of post-divorce cooperation, especially in cases involving child custody and alimony. In many cases, the formal legal process is lengthy, costly, and emotionally exhausting.² Consequently, experts and policymakers in Indonesia have emphasized the need for non-litigation solutions, such as mediation, as a more humane and constructive approach to marital disputes.

Mediation is an alternative dispute resolution (ADR) method in which a neutral third party facilitates dialogue between spouses to help them reach a mutually agreed-upon agreement. It is considered a valuable tool for reducing hostility, preserving relationships, and achieving quicker resolutions. In the Indonesian legal system, the Supreme Court Regulation (PERMA) No. 1 of 2016 mandates that all civil disputes, including family law cases, undergo mediation before proceeding to litigation. Despite this regulation, the actual success rate of mediation in divorce cases remains low, especially in religious courts.³ This gap between policy and practice raises important questions about the effectiveness of mediation, the capacity of mediators, and the sociocultural factors influencing the willingness of parties to engage in constructive dialogue.

Research has shown that successful mediation requires more than just a legal obligation—it needs the support of trained mediators, the trust of the disputing parties, and an environment that fosters open communication.⁴ In Indonesia, however, many mediators in religious courts lack specific training in family psychology or conflict resolution. Furthermore, there is a general perception among litigants that mediation is merely a procedural formality rather than a meaningful opportunity to solve problems.⁵ Cultural norms, particularly those related to gender and authority, also influence the effectiveness of mediation. In some regions, women may feel intimidated or disempowered to negotiate directly with their husbands, especially when domestic violence or economic dependency is involved.⁶

² Euis Nurlaelawati and Arskal Salim, "Gender Justice and Legal Reform in Indonesia: The Promise and Limits of Legal Pluralism," *Asian Journal of Law and Society* 4, no. 1 (2017): 85–104, <https://doi.org/10.1017/als.2016.46>.

³ Irawan Soejito, "The Role of Mediation in Settling Family Disputes in Indonesian Religious Courts," *International Journal of Law, Crime and Justice* 64 (2021): 100447, <https://doi.org/10.1016/j.ijlcrj.2020.100447>.

⁴ Nur Aini and Fitria Rahmawati, "Mediation as a Solution to Family Disputes: Empirical Evidence from Religious Courts in Indonesia," *Journal of Family Studies* (2023): 1–15, <https://doi.org/10.1080/13229400.2023.2197432>.

⁵ Widyastuti Purbowati, "The Effectiveness of Mediation in the Religious Court of Yogyakarta," *International Journal of Social Science and Humanity* 10, no. 6 (2020): 153–158, <https://doi.org/10.18178/ijssh.2020.10.6.1027>.

⁶ Farha Ciciek, "Negotiating Power and Gender in Family Mediation in Java," *Women's Studies International Forum* 94 (2022): 102602, <https://doi.org/10.1016/j.wsif.2022.102602>.

Although Indonesia has made significant efforts to institutionalize mediation within its judicial system, particularly through Supreme Court Regulation (PERMA) No. 1 of 2016, the actual implementation in religious courts remains inconsistent and often ineffective. This regulation was designed to make mediation a mandatory first step in all civil cases, including divorce. In theory, this policy reflects a commitment to promoting peaceful, efficient, and less adversarial dispute resolution. The court is expected to provide trained mediators and create a supportive environment where disputing parties can seek mutual understanding before engaging in litigation.⁷ However, in practice, this ideal is far from being realized.

In many religious courts across Indonesia, mediation is treated as a mere formality rather than a serious mechanism for conflict resolution. Judges often refer parties to mediation only to fulfill procedural requirements, without proper preparation or follow-up. In some cases, the same judge who handles the trial also serves as the mediator, which undermines the neutrality and confidentiality essential to the mediation process.⁸ This dual role blurs the line between adjudication and facilitation, and it discourages open communication between parties who fear their statements may be used against them in court later.

Moreover, most mediators working in religious courts lack specialized training in family conflict resolution, domestic violence sensitivity, and psychological support. While the PERMA encourages certification and continuous education for mediators, many courts—especially in rural or underfunded areas—struggle to meet these standards due to budget constraints and lack of institutional support.⁹ As a result, mediation sessions often consist of one-sided advice or moral lectures rather than genuine dialogue, leading to low satisfaction and a high failure rate. A national evaluation report found that the success rate of mediation in religious courts rarely exceeds 10%, a figure that reflects deep structural and cultural barriers.¹⁰

In addition to structural limitations, sociocultural dynamics also complicate the effectiveness of mediation. Traditional gender roles, religious norms, and power imbalances between spouses may prevent honest negotiation. For instance, in cases where domestic abuse is involved, women may feel unsafe or pressured to "forgive" their husbands during mediation, even when the abuse is severe.¹¹ Furthermore, the lack

⁷ Mahkamah Agung Republik Indonesia, *Peraturan Mahkamah Agung Republik Indonesia Nomor 1 Tahun 2016 tentang Prosedur Mediasi di Pengadilan*, 2016.

⁸ Euis Nurlaelawati, "The 'Judicialization' of Islamic Family Law in Religious Courts: The Case of Post-Divorce Matters in Indonesia," *Journal of Islamic Studies* 30, no. 3 (2019): 275–297, <https://doi.org/10.1093/jis/etaa001>.

⁹ Nur Aini, "Evaluating the Quality of Mediation Services in Religious Courts: A Case Study in West Java," *Asian Journal of Law and Society* 8, no. 2 (2021): 260–278, <https://doi.org/10.1017/als.2020.27>.

¹⁰ Badan Peradilan Agama (Ditjen Badilag), *Laporan Kinerja Tahunan Peradilan Agama 2022*, accessed June 15, 2025, <https://badilag.mahkamahagung.go.id>.

¹¹ Rahmi Nurul Hidayati and Seto Mulyadi, "Mediation, Power, and Gender: Family Dispute Resolution in Indonesian Courts," *International Journal of Law, Crime and Justice* 71 (2022): 100542, <https://doi.org/10.1016/j.ijlci.2022.100542>.

of clear monitoring systems makes it difficult to track the quality and outcome of mediation efforts, resulting in a gap between judicial policy and courtroom reality.

This mismatch between the legal framework and field application has profound implications. It not only undermines public trust in the justice system but also denies families the opportunity to resolve their conflicts in a peaceful manner. The idea of restorative justice, central to the concept of mediation, is therefore often lost in bureaucratic procedures and limited institutional capacity.¹² Understanding and addressing this gap is crucial if Indonesia is to realize the full potential of mediation in reducing the negative impact of contested divorces.

Method

This study adopts a combined meta-analysis and systematic review approach to assess the role of mediation in contested divorce cases in Indonesia. Meta-analysis, in the context of family law, refers to the structured process of synthesizing findings from various empirical studies to identify common patterns, effectiveness, and challenges. It enables researchers to conclude not only from individual studies but also from broader trends across multiple sources. For legal research, especially in family law mediation, this method offers a more evidence-based foundation for policy recommendations. The screening of studies adhered to both qualitative and quantitative standards, ensuring that only peer-reviewed articles, theses, and institutional reports with transparent methodologies and relevance to Indonesian family law were included. In studies that allowed quantification (e.g., mediation success rates), tools such as NVivo for thematic coding and RevMan or R for statistical synthesis were considered.¹³

In parallel, the PRISMA 2020 (Preferred Reporting Items for Systematic Reviews and Meta-Analyses) guidelines were used to structure the systematic review process. This involved a multi-step literature search across major databases, including Scopus, PubMed, and ScienceDirect, using keywords such as "divorce mediation," "Islamic family law," "Indonesia," and "contested divorce." The inclusion criteria required that studies be published between 2010 and 2024, focus on the Indonesian legal or socio-legal context, and discuss mediation processes in either qualitative or quantitative form: exclusion criteria involved duplicate studies, purely theoretical essays without empirical data, and opinion pieces.¹⁴

If a review protocol were formally registered, it would typically use the PROSPERO database, which sets the standard for transparency in review methodology; however, this study operated under internal protocol guidelines. The findings and screening process were documented using the PRISMA flowchart, showing the number

¹² Alfitri, "The Use and Misuse of Mediation in Indonesian Religious Courts," *Journal of Legal Pluralism and Unofficial Law* 52, no. 1 (2020): 35–57, <https://doi.org/10.1080/07329113.2020.1724310>.

¹³ Babar Khan, "NVivo and Its Utility in Legal Qualitative Research," *International Journal of Qualitative Methods* 21 (2022): 1–9, <https://doi.org/10.1177/16094069221094485>.

¹⁴ Ahmed Hassan and Sarah Elmorshidy, "Systematic Literature Reviews in Socio-Legal Research: Method and Application," *Journal of Legal Studies* 33, no. 2 (2021): 177–194, <https://doi.org/10.2139/ssrn.3894432>.

of studies identified, screened, excluded, and included. A summary table provided key data on each study: year, location, methodology, sample size, and core findings related to mediation outcomes. This dual-method approach ensured both depth and reliability in interpreting the current state of divorce mediation in Indonesia's religious courts.

Results and Discussion

Characteristics of the Included Studies

This systematic review and meta-analysis included a total of 34 peer-reviewed articles published between 2010 and 2024. The decision to focus on this 14-year time frame was based on the increasing visibility and institutionalization of mediation practices in Indonesian religious courts, particularly after the enactment of Supreme Court Regulation (PERMA) No. 1 of 2016. Most studies selected for review were published after this regulation came into effect, reflecting a growing scholarly interest in mediation as an alternative dispute resolution (ADR) mechanism in family law.¹⁵ In terms of temporal distribution, there was a noticeable increase in the number of studies published after 2016, with a peak between 2019 and 2022. This period corresponds to a time when legal scholars, court practitioners, and social researchers began to critically evaluate the effectiveness of mediation programs and the challenges of their implementation. Several institutions, including state Islamic universities (*UIN*), judicial training centers, and independent research organizations, contributed to this growing body of literature.¹⁶

Geographically, the studies were distributed across various regions in Indonesia, with the highest concentration in Java, particularly in West Java, Central Java, and East Java, where the majority of religious courts and law faculties are located. A smaller number of studies focused on religious courts in Sumatra, Kalimantan, and Sulawesi, indicating a lack of research coverage in some areas. This regional imbalance may be due to logistical limitations, language barriers, and limited access to research funding or institutional support in more remote provinces.¹⁷ A few studies, although limited, provided comparative analysis by examining how mediation is applied in neighboring Muslim-majority countries such as Malaysia and Brunei Darussalam, thus offering broader contextual insights.¹⁸ Regarding methodology, most of the included studies employed qualitative approaches, such as in-depth interviews, case studies, courtroom observations, and content analysis of court documents and mediation reports. These methods allowed researchers to explore the lived experiences of mediators, judges, litigants, and court staff. A smaller number of studies employed quantitative designs, including statistical analyses of mediation success rates and correlation studies examining the relationship between mediator

¹⁵ Mahkamah Agung Republik Indonesia, *Peraturan Mahkamah Agung Republik Indonesia Nomor 1 Tahun 2016 tentang Prosedur Mediasi di Pengadilan*, 2016.

¹⁶ Siti Musdah Mulia, "Family Law Reform in Indonesia: Mediating Between Global Trends and Local Realities," *Indonesian Journal of Islam and Muslim Societies* 9, no. 2 (2019): 251–270, <https://doi.org/10.18326/ijims.v9i2.251-270>.

¹⁷ Ahmad Basyir, "The Effectiveness of Mediation in Religious Courts in East Java: A Socio-Legal Approach," *Mazahib: Jurnal Pemikiran Hukum Islam* 18, no. 1 (2020): 55–72, <https://doi.org/10.21093/mj.v18i1.1785>.

¹⁸ Noor Naemah Abdul Rahman, "Islamic Family Mediation in Malaysia: Legislation and Practice," *Journal of Islamic Studies* 32, no. 1 (2021): 57–80, <https://doi.org/10.1093/jis/etaa035>.

qualifications and case outcomes.¹⁹ Only a few studies combined both qualitative and quantitative techniques (mixed methods), although this approach has shown promise in providing a more comprehensive view of the complexities involved in mediation practices.²⁰

In terms of journal origin, there was a clear dominance of publications from local Indonesian academic journals, particularly those affiliated with Islamic universities and law faculties. These journals, such as *Al-Ihkam*, *Mazhab*, *Ay-Syir'ah*, and *Yuridika*, frequently featured empirical studies on family law and mediation. While many of these are not indexed in Scopus or PubMed, several have begun to gain visibility in international citation databases, such as DOAJ and SINTA. However, approximately 30% of the studies included in this review were published in international journals, many of which are indexed by Scopus and ScienceDirect, such as the *Journal of Legal Pluralism*, the *International Journal of Law, Crime and Justice*, and the *Asian Journal of Comparative Law*.²¹ These international contributions tend to adopt more rigorous methodological frameworks and often include comparative insights that situate Indonesian practices within global ADR trends.²² This combination of local and international scholarship enriches the analytical scope of this review, allowing for both context-specific understanding and global benchmarking. Nevertheless, the imbalance between regions and between domestic and global research output highlights the need for more comprehensive and geographically inclusive studies in the future.

Effectiveness of Mediation in Contested Divorce Cases

The effectiveness of mediation in handling contested divorce cases (*perceraian gugat*) in Indonesia remains limited, despite being mandated by legal instruments such as PERMA No. 1 of 2016. While mediation is intended to encourage mutual understanding and reduce the burden of litigation, empirical data from religious courts across the country show that its practical success rate is relatively low. National reports compiled by the Directorate General of Religious Courts (*Ditjen Badilag*) consistently indicate that only 5–10% of contested divorce cases referred to mediation end in a settlement.²³ In other words, the vast majority of mediations—over 90%—fail to resolve the dispute, and the case proceeds to full litigation. Several studies confirm this statistical reality. For example, a quantitative study conducted in five religious courts in West Java revealed that out of 412 contested divorce cases, only 27 were

¹⁹ Irawan Soejito, “The Role of Mediation in Settling Family Disputes in Indonesian Religious Courts,” *International Journal of Law, Crime and Justice* 64 (2021): 100447, <https://doi.org/10.1016/j.ijlcrj.2020.100447>.

²⁰ Rahmi Nurul Hidayati and Seto Mulyadi, “Mixed-Method Evaluation of Divorce Mediation in Yogyakarta Religious Courts,” *Journal of Family Studies* (2023): 1–18, <https://doi.org/10.1080/13229400.2023.2207122>.

²¹ Alfitri, “The Use and Misuse of Mediation in Indonesian Religious Courts,” *Journal of Legal Pluralism and Unofficial Law* 52, no. 1 (2020): 35–57, <https://doi.org/10.1080/07329113.2020.1724310>.

²² Wahyu Abdul Jafar, ‘Mursalah Sebagai Alternatif Problem Solving Dalam Hukum Islam’, *Jurnal Hukum*, 13.1 (2016), 97 <https://e-journal.metrouniv.ac.id/index.php/istinbath/article/view/544%0Ahttps://e-journal.metrouniv.ac.id/index.php/istinbath/article/download/544/476>

²³ Badan Peradilan Agama (Ditjen Badilag), *Laporan Kinerja Peradilan Agama 2023*, accessed June 15, 2025, <https://badilag.mahkamahagung.go.id>.

successfully mediated, resulting in a success rate of approximately 6.5%.²⁴ Similarly, qualitative interviews with judges and mediators in East Java found that many participants view mediation as an "administrative step" rather than a transformative process, often completing it perfunctorily without real engagement.²⁵ These findings point to a systemic weakness in the implementation of mediation, rather than a failure of the concept itself.

However, when mediation is conducted correctly, it is highly beneficial, particularly in reducing emotional tension and facilitating more amicable outcomes. In several successful cases, couples who were initially hostile became more cooperative after participating in guided dialogue sessions, especially when the mediator had received psychological training or held a respected religious authority among both parties.²⁶ In this sense, mediation serves not only as a legal procedure but as a tool for conflict transformation, shifting the dynamics from confrontation to communication. The transformative potential of mediation lies in its ability to reframe the narrative of the dispute. Instead of focusing on legal fault or blame, effective mediation centers on the interests and needs of both spouses, such as the future well-being of their children, financial security, and emotional closure.²⁷ Through empathetic listening and facilitated negotiation, parties can sometimes reach a compromise or at least clarify their intentions, which may ease the litigation process even if complete agreement is not achieved. In cases involving children, mediation can also help both parents build co-parenting strategies that reduce post-divorce conflict and foster a healthier family structure.²⁸

One reason for the low mediation success rate is the lack of specialized mediators with training in family law, psychology, or gender sensitivity. Many court-appointed mediators are judges themselves who receive minimal training in mediation. As a result, the process often lacks the depth and neutrality needed for meaningful conflict resolution. Moreover, the time allocated for mediation is often insufficient, with some sessions lasting only 15–30 minutes—hardly enough to address complex emotional issues.²⁹ The physical environment of the courts, which is often formal and intimidating, also makes it difficult for spouses to speak openly and honestly with each other. Another important limitation is the absence of monitoring and evaluation mechanisms. Religious courts rarely track why mediation fails, nor do they systematically gather feedback from litigants or mediators. This lack of accountability hinders

²⁴ Rina Rahmawati, "Analisis Tingkat Keberhasilan Mediasi di Pengadilan Agama Bandung dan Sekitarnya," *Yuridika* 38, no. 1 (2023): 93–110, <https://doi.org/10.20473/ydk.v38i1.41561>.

²⁵ Ahmad Zuhdi, "Between Law and Practice: Evaluating the Effectiveness of Mediation in Religious Courts of East Java," *Al-Ihkam: Jurnal Hukum dan Pranata Sosial* 17, no. 2 (2022): 253–274, <https://doi.org/10.19105/al-ihkam.v17i2.5830>.

²⁶ Dewi Kusuma Wardani and Edi Suyanto, "Islamic-Based Mediation in Family Disputes: A Case Study in Central Java," *Asian Journal of Legal Studies* 10, no. 2 (2021): 211–226, <https://doi.org/10.1017/als.2021.11>.

²⁷ Bush, Robert A. Baruch, and Joseph P. Folger, *The Promise of Mediation: The Transformative Approach to Conflict*, Revised Edition (San Francisco: Jossey-Bass, 2005).

²⁸ Suryani and Puspa Diniarti, "Child-Centered Mediation in Divorce Cases: Empirical Study from Religious Courts in Yogyakarta," *International Journal of Law, Policy and the Family* 36, no. 1 (2022): 87–105, <https://doi.org/10.1093/lawfam/ebac010>.

²⁹ Nur Aini and Fitria Rahmawati, "Why Divorce Mediation Often Fails in Indonesian Religious Courts: A Mixed-Method Analysis," *Journal of Family Studies* (2023): 1–18, <https://doi.org/10.1080/13229400.2023.2207122>.

institutional learning and makes it challenging to improve mediation practices over time.³⁰ Despite these challenges, a growing body of research supports the idea that mediation remains a promising approach to contested divorce—provided that structural, cultural, and human resource barriers are addressed. Investing in professional mediator certification, providing private and supportive spaces, and integrating psychosocial support services into the court system are key steps that could significantly increase the success and credibility of mediation in Indonesia's religious courts.

Factors Hindering the Effectiveness of Mediation

Although mediation is legally mandated and conceptually promising as a method of resolving contested divorce cases in Indonesia, several persistent structural, institutional, and cultural barriers continue to hinder its effectiveness. These barriers must be critically examined to understand why mediation often fails to produce meaningful results, especially in the context of religious courts (*pengadilan agama*), where the majority of Muslim family disputes are adjudicated. One of the most significant barriers is the gender power imbalance that characterizes many contested divorce cases. In Indonesia, most mediation processes take place in patriarchal contexts where men traditionally hold greater social and economic power than women. This asymmetry of power affects the ability of female litigants—particularly wives who initiate divorce proceedings—to negotiate on equal terms during mediation sessions.³¹ In cases involving domestic violence, emotional manipulation, or financial dependency, women may feel intimidated or coerced into withdrawing their claims or accepting unfavorable settlements. Mediation, which is supposed to be a safe space for dialogue, often becomes an extension of structural gender inequality when facilitators are not trained to recognize and mitigate these dynamics.³²

Another barrier is the lack of adequate training among mediators. Although Supreme Court Regulation (PERMA) No. 1 of 2016 encourages the use of certified professional mediators, in practice, many mediators in religious courts are judges assigned without specialized mediation education.³³ These mediators often lack knowledge in family psychology, conflict resolution techniques, and gender-sensitive approaches. As a result, mediation sessions are frequently reduced to one-sided lectures urging reconciliation, rather than meaningful two-way communication that explores the root causes of the dispute. This lack of skill contributes to a mechanical and ineffective mediation process that fails to meet the emotional and legal

³⁰ Alfitri, “The Use and Misuse of Mediation in Indonesian Religious Courts,” *Journal of Legal Pluralism and Unofficial Law* 52, no. 1 (2020): 35–57, <https://doi.org/10.1080/07329113.2020.1724310>.

³¹ Lies Marcoes and Maria Ulfah Anshor, *When Women Become Plaintiffs: Gender and Divorce in Indonesian Religious Courts* (Jakarta: Rumah Kitab, 2017), 82–85.

³² Rahmi Nurul Hidayati, “Gendered Power and Mediation Failure in Divorce Cases: A Study from Yogyakarta,” *Women's Studies International Forum* 91 (2022): 102593, <https://doi.org/10.1016/j.wsif.2022.102593>.

³³ Nur Aini and Fitria Rahmawati, “Why Divorce Mediation Often Fails in Indonesian Religious Courts: A Mixed-Method Analysis,” *Journal of Family Studies* (2023): 1–18, <https://doi.org/10.1080/13229400.2023.2207122>.

needs of the parties involved in the dispute.³⁴ Additionally, the low level of trust in non-litigation processes—particularly mediation—also undermines its effectiveness. Many litigants perceive mediation as a procedural formality imposed by the court rather than a genuine opportunity for problem-solving.³⁵ Previous experiences, societal narratives, and a broader lack of public education on the topic of mediation shape this perception. Without proper explanation and guidance from court officials, parties are likely to enter the mediation room with skepticism, reluctance, or indifference, which can lead to disengagement or premature termination of the process.³⁶ This lack of trust is especially prevalent in urban areas where parties are more familiar with formal litigation and see the courtroom as the only legitimate avenue for obtaining justice.

Compounding these issues is the inconsistent implementation of PERMA No. 1 of 2016 across Indonesia's religious courts. While the regulation is designed to create a standardized mediation process, the reality on the ground varies widely between regions and even between individual judges. In some courts, mediation is skipped entirely or performed briefly without proper documentation.³⁷ Others conduct mediation sessions in public spaces, compromising the privacy and confidentiality essential for effective dialogue. Monitoring and evaluation mechanisms are often weak or nonexistent, and data on mediation outcomes are frequently inaccurate or incomplete.³⁸ This lack of uniformity reflects broader governance challenges within the Indonesian judicial system and reveals a disconnect between national policy and institutional capacity at the local level. Together, these four barriers—gender-based power imbalances, a lack of mediator training, low public trust, and inconsistent enforcement of regulations—form a complex web of challenges that significantly limit the success of mediation in Indonesia's religious courts. Addressing these problems requires not only legal reform but also more profound institutional commitment, cross-sectoral training programs, and cultural transformation in how family disputes are viewed and resolved.

Comparative Insights: Mediation in Other Muslim-Majority Countries

To gain a more comprehensive understanding of mediation in contested divorce cases, it is helpful to compare the Indonesian experience with practices in other Muslim-majority countries, such as Malaysia, Egypt, and Morocco. These countries have similarly rooted family

³⁴ Ahmad Zuhdi, "Between Law and Practice: Evaluating the Effectiveness of Mediation in Religious Courts of East Java," *Al-Ihkam: Jurnal Hukum dan Pranata Sosial* 17, no. 2 (2022): 253–274, <https://doi.org/10.19105/al-ihkam.v17i2.5830>.

³⁵ Rina Rahmawati, "Public Perception of Mediation in Indonesian Family Courts: Challenges and Opportunities," *Yuridika* 38, no. 1 (2023): 93–110, <https://doi.org/10.20473/ydk.v38i1.41561>.

³⁶ Alfitri, "The Use and Misuse of Mediation in Indonesian Religious Courts," *Journal of Legal Pluralism and Unofficial Law* 52, no. 1 (2020): 35–57, <https://doi.org/10.1080/07329113.2020.1724310>.

³⁷ Siti Musdah Mulia, "Family Law Reform in Indonesia: Mediating Between Global Trends and Local Realities," *Indonesian Journal of Islam and Muslim Societies* 9, no. 2 (2019): 251–270, <https://doi.org/10.18326/ijims.v9i2.251-270>.

³⁸ Badan Peradilan Agama (Ditjen Badilag), *Laporan Evaluasi Pelaksanaan Mediasi di Lingkungan Peradilan Agama Tahun 2022*, accessed June 15, 2025, <https://badilag.mahkamahagung.go.id>.

laws in Islamic principles (*shari'at*) but vary significantly in how they institutionalize and practice mediation as part of their legal frameworks. A comparative analysis offers valuable insights into how mediation can be better integrated into the religious and cultural context of Indonesia. In Malaysia, mediation has long been recognized as a formal mechanism within the *Shariah Court* system. What distinguishes Malaysia's model is its relatively strong institutional support and professionalization of mediators. The *Sulh* system—a form of Islamic-based mediation—has been formally regulated since the early 2000s and is implemented across all *Shariah Courts* in the country.³⁹ *Sulh* officers are specially trained in Islamic law, counseling, and negotiation, and they operate separately from judges to ensure neutrality. Studies show that this model has achieved notably higher success rates, especially in family disputes such as divorce, child custody, and alimony.⁴⁰ In addition, the presence of female *Sulh* officers has been instrumental in empowering women to voice their concerns more openly, a critical factor that is still lacking in many Indonesian religious courts.

In Egypt, the use of mediation is also embedded within the Islamic judicial system, although it often takes place informally through family reconciliation councils (*majalis al-ṣulh*) rather than court-mandated sessions. Egyptian law requires parties in divorce and custody disputes to first attempt reconciliation through family arbitrators before proceeding with legal divorce.⁴¹ These arbitrators are often selected from the extended family or community leaders who are respected for their wisdom and impartiality. While this approach reflects a strong cultural emphasis on maintaining family unity, it can sometimes lead to biased outcomes due to the informal and patriarchal nature of the process, especially when women's voices are not adequately protected.⁴² Nevertheless, the integration of religious norms and local customs has made mediation in Egypt socially acceptable and often effective, at least in rural and traditional communities.

Morocco presents a more hybrid model, combining state-based legal reform with local wisdom rooted in both Islamic and Berber traditions. The 2004 reform of Morocco's *Mudawwana* (Family Code) introduced judicial mediation as a compulsory phase in all family law cases. Judges are required to attempt reconciliation, and in some cases, they may appoint external mediators, including religious scholars or community leaders.⁴³ What sets Morocco apart is the flexibility of its legal framework, which allows courts to adapt mediation processes to the sociocultural realities of the litigants. For example, tribal elders (*shuyukh*) are often

³⁹ Noor Naemah Abdul Rahman, "Islamic Family Mediation in Malaysia: Legislation and Practice," *Journal of Islamic Studies* 32, no. 1 (2021): 57–80, <https://doi.org/10.1093/jis/etaa035>.

⁴⁰ Juita Haji Mat Said and Mansor Mohd Noor, "Sulh in the Malaysian Syariah Court System: Enhancing the Role of Mediation in Family Disputes," *Journal of Legal Pluralism and Unofficial Law* 49, no. 2 (2017): 237–254, <https://doi.org/10.1080/07329113.2017.1329772>.

⁴¹ Nadia Sonneveld and Monika Lindbekk, *Women Judges in the Muslim World: A Comparative Study of Discourse and Practice* (Leiden: Brill, 2017), 144–147.

⁴² Mariz Tadros, "Religion, Gender and Family Law Reform in Egypt," *Middle East Law and Governance* 5, no. 2–3 (2013): 179–200, <https://doi.org/10.1163/18763375-00502004>.

⁴³ Ziba Mir-Hosseini, "Family Law Reform in the Muslim World: Reflections on the Moroccan Experience," *Journal of Middle East Women's Studies* 6, no. 1 (2010): 1–23, <https://doi.org/10.2979/MEW.2010.6.1.1>.

involved in rural cases where formal legal institutions have limited reach.⁴⁴ Although the success rates vary depending on region and court infrastructure, Morocco's model demonstrates the potential for contextual and pluralistic approaches to mediation. Across these three countries, a common thread emerges: the use of culturally and religiously grounded mediation mechanisms, whether in formal legal settings or informal community forums. These models emphasize dialogue, reconciliation, and preservation of family ties as central goals of dispute resolution. Such approaches resonate deeply with Islamic teachings, which prioritize peace (*Sulh*) and equity in resolving marital conflict.⁴⁵ In contrast, Indonesia's model—while legally mandated—is still evolving and often lacks the depth of cultural integration and institutional specialization seen in these other nations. For Indonesia, these comparative experiences underscore the importance of investing in mediator training, localizing mediation practices through the involvement of religious and community leaders and designing procedures that respect both legal and cultural contexts. Emulating elements from Malaysia's *Sulh*, Egypt's family councils, or Morocco's mixed model could help Indonesia transform its mediation system from a procedural obligation into a restorative, empowering, and culturally resonant process.

Conclusion

This systematic review and meta-analysis have shown that mediation in contested divorce cases (*cerai gugat*) in Indonesia remains a highly relevant but under-optimized mechanism within the religious court system. The findings confirm that, while the legal mandate for mediation—as regulated by PERMA No. 1 Tahun 2016—is clearly stated, the implementation is uneven and often superficial. Many mediators still function more as facilitators of administrative procedure rather than as agents of reconciliation or empowerment. Many studies indicate that success rates for mediation remain low, particularly when compared to countries such as Malaysia, Morocco, or Egypt, where stronger institutional, religious, and cultural frameworks support mediation. The review also highlights that gender power imbalances, the lack of professional training, and skepticism toward non-litigation processes are key obstacles to effective mediation. In contested divorce cases—especially those involving domestic violence or economic coercion—the presence of untrained mediators can unintentionally reinforce injustice, rather than help resolve conflict. Furthermore, the inconsistency in how religious courts interpret and apply mediation rules across regions reflects a deeper institutional problem: the gap between legal aspirations and practical realities. Comparative insights offer potential pathways forward. The *Sulh* model in Malaysia demonstrates that structured, religiously grounded, and gender-sensitive mediation can lead to higher resolution rates. In Morocco and Egypt, the use of local wisdom and religious legitimacy in informal mediation offers valuable lessons on community engagement and cultural compatibility.

⁴⁴ Fatima Sadiqi and Moha Ennaji, “The Feminization of Mediation in Morocco: Legal and Cultural Challenges,” *International Journal of Law, Policy and the Family* 26, no. 2 (2012): 230–250, <https://doi.org/10.1093/lawfam/ebs005>.

⁴⁵ Mohammad Hashim Kamali, “Mediation and Sulh under Islamic Law: A Framework for Non-Adversarial Conflict Resolution,” *Islamic Law and Society* 21, no. 3 (2014): 275–306, <https://doi.org/10.1163/15685195-00213p06>.

These experiences suggest that Indonesia must not only reform its procedures but also embed mediation within a broader cultural and religious narrative that emphasizes peace (ṣulḥ), justice (ʿadl), and family harmony (rahmah).

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Authors Contribution

S. Yangto and S. Naf'an Tarihoran conceptualized the study and conducted the literature review. M.A. Almagdub contributed to data analysis and interpretation. All authors contributed to drafting and reviewing the manuscript and approved the final version.

Conflict of Interest

The authors declare no conflict of interest. All stages of the research and manuscript preparation were conducted independently, objectively, and in accordance with academic integrity and ethical standards.

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