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Creating Peaceful Divorce: Mediators' Roles and Strategies in Negotiating Family Conflict at Islamic Courts in Indonesia

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Abstract

This study examines how mediators in Religious Courts facilitate amicable divorce settlements in marital cases where the relationship has irretrievably broken down and reconciliation is no longer realistic. Employing a socio-legal qualitative approach, the research draws on field studies conducted at Religious Courts in the Special Region of Yogyakarta and three regencies in Central Java. Data were collected through in-depth interviews with six mediators, judges, and court staff, field observations, and an analysis of relevant legal documents. The findings reveal that divorce does not necessarily indicate mediation failure; rather, it can constitute an amicable resolution through three mechanisms: shifting mediation's orientation from preserving marriage to ensuring a fair separation; facilitating negotiations concerning post-divorce rights and obligations to provide legal certainty and protect the parties' interests; and maintaining relational balance to ensure that agreements and consent are reached voluntarily and with an adequate understanding of their legal consequences. Mediators fulfil this role by identifying potentially neglected rights, explaining legal implications, and employing caucus sessions and reality testing to encourage realistic decision-making and protect vulnerable parties. Accordingly, mediation success should be assessed not merely by marital reconciliation but also by its capacity to achieve fair and amicable divorce settlements through substantive effectiveness, preventing domination, rights violations, and recurrent post-divorce conflicts.

Abstrak

Penelitian ini mengkaji bagaimana mediator di Pengadilan Agama melakukan penyelesaian perceraian secara damai pada perkara-perkara perkawinan yang telah retak secara serius dan di mana rekonsiliasi tidak lagi menjadi pilihan realistis. Menggunakan pendekatan kualitatif sosio-legal melalui studi lapangan di Pengadilan Agama Daerah Istimewa Yogyakarta dan tiga kabupaten di Jawa Tengah, penelitian ini didasarkan pada wawancara mendalam dengan enam mediator, hakim, dan staf pengadilan, observasi lapangan, dan telaah terhadap dokumen hukum yang relevan. Penelitian menunjukkan bahwa perceraian tidak selalu mencerminkan kegagalan mediasi, tetapi sebaliknya menjadi bentuk penyelesaian damai yang dibangun melalui tiga mekanisme; menggeser orientasi mediasi dari upaya mempertahankan perkawinan menuju pengelolaan proses perpisahan secara adil, memfasilitasi perundingan mengenai hak dan kewajiban para pihak paska perceraian untuk kepastian hukum dan perlindungan kepentingan para pihak, dan menjaga keseimbangan relasi supaya kesepakatan dan persetujuan tercapai secara sadar dan berdasarkan pada pemahaman yang utuh terkait konsekuensi hukumnya. Dalam menjalankan peran tersebut, mediator mengidentifikasi hak-hak yang berpotensi terabaikan, menjelaskan implikasi hukum, menggunakan *caucus* dan *reality testing* untuk pertimbangan alternatif secara realistis dan perlindungan terhadap pihak rentan. Keberhasilan mediasi tidak hanya diukur dari dipertahankannya perkawinan, tetapi juga dari terciptanya perceraian yang adil dan damai melalui efektivitas mediasi secara substantif, guna mencegah dominasi, pelanggaran hak, dan konflik berulang pascaputusan.

Keywords:
Peaceful Divorce; Indonesian Islamic Courts; Divorce Mediation; Substantive Efficacy

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Introduction

Divorce cases hold the highest position, or represent the largest portion, of family dispute resolution lawsuits in Indonesian Islamic Courts. In 2024, for instance, 394,608 divorce cases were filed, including 308,956 judicial divorces and 85,652 talaq, or husband-initiated unilateral divorces (Lazuardi, 2025). The statistic shows the large number of Muslim families that proceed through the judicial process each year to dissolve their marriages. The volume of these cases has placed the Islamic Court in an important position, as court-granted divorces carry legal and social consequences that persist even after the marriage ends.

The legal consequences of divorce include '*iddah* maintenance, overdue financial responsibilities, *mut'ah* obligations, child support, joint property, custody rights, visiting rights, education, healthcare, and arrangements for parental responsibilities (Admin Badilag, 2022). Because of its legal implications, divorce restructures the family. The marital relationship may end through a decree, while the parent-child relationship, financial obligations, and parenting duties continue. Research on post-divorce family adaptation shows that the quality of the relationship between former partners, co-parenting patterns, financial support, parenting stability, and the child's psycho-social condition all significantly affect family life after divorce (Corral et al., 2026). As a result, determining the legal status of divorce does not conclude the issue. How the consequences are managed determines whether the separation proceeds smoothly or leads to new conflicts.

At the institutional level, the Islamic Court has the authority to examine, render decisions, and resolve family cases for the Muslim community under Law Number 7 of 1989 concerning Islamic Courts and its amendments (Republik Indonesia, 2006, 2009). In civil cases, Supreme Court Regulation (PERMA) Number 1 of 2016 requires the parties to engage in mediation before proceeding with the examination (Mahkamah Agung Republik Indonesia, 2016). This obligation aligns with Article 82 of the Islamic Courts Law and the Indonesian Marriage Law, both of which emphasize reconciliation efforts before concluding a divorce (Republik Indonesia, 1974, 1989). This normative framework allows couples to review their decisions and seek resolution through negotiation with the assistance of a mediator.

Because peaceful efforts in divorce cases are generally associated with attempts to maintain the marriage, reconciliation often becomes an easy measure of mediation success. In this case, the mediation process is considered successful if the couple reconciles, withdraws the lawsuit, or does not pursue the case. This orientation may apply when both parties remain committed to restoring the relationship and can still resolve the source of the conflict. The situation is different when couples come to court after long-standing conflicts, severed communication, damaged trust, or an emotionally established decision to separate (Research Team, 2026). In fact, cases with such circumstances dominate divorce issues in the Islamic Court (Nurlaelawati, 2010, 2013, 2022). In such circumstances, the possibility of reconciliation is very limited, while the various consequences of divorce may not be adequately understood or discussed.

The lack of opportunities for reconciliation raises an important issue in the study of family mediation. If achievement is measured only by the longevity of marriage, mediation that does not result in reconciliation will inevitably be categorized as a failure. This judgment overlooks the reality that a disorganized divorce can escalate into disputes over alimony, custody battles, restrictions on access to children, conflicts over shared property, neglect of economic responsibilities, or family conflict. A divorce verdict may dissolve the main case, but it does not automatically resolve the issues arising from changes in family relations. In this context, mediation can still play an important role at this stage, even if the final decision is not to restore the marriage (Maryam & Irianto, 2023).

Mediation can become more complicated when it takes place in social relations that are not always equal. The parties, men and women or husbands and wives, may or often do have

different financial capabilities, legal knowledge, access to documents, family support, and negotiation skills. Women, in reality, often face financial dependency, social stigma, childcare burdens, family pressure, or limited knowledge regarding their rights. As a vulnerable party, children are legally placed as parties who are unable to be present and are incapable of speaking directly, even though their lives are greatly influenced by arrangements for maintenance, housing, education, relationships with parents, and parenting patterns after divorce (Warnis et al., 2026). Such imbalances can lead to formal agreements that lack sufficient understanding, freedom of will, or a fair and equal distribution of responsibilities.

In this context, the mediator's role becomes especially important. Mediators do not have the authority to rule like judges and do not serve as advocates for either party. PERMA Number 1 of 2016 specifies the mediator as an impartial third party who assists the parties in seeking a possible resolution (Mahkamah Agung Republik Indonesia, 2016). This role creates its own challenges when the mediator handles a marriage that is difficult to reconcile. On one hand, it carries a peace mandate that normatively relates to reconciliation efforts; on the other, it must address the consequences of divorce, the imbalance in the parties' positions, the child's interests, and the risk of injustice after the decision. Current research and literature have not yet adequately explained how mediators understand and fulfill their role in such situations.

Studies on mediation in Indonesian Islamic Courts have so far developed within various frameworks. Some studies discuss the implementation of Supreme Court Regulation Number 1 of 2016, the efficacy of mediation, the success in decreasing the number of cases, the competence of mediators, the goodwill and commitment of the parties, as well as the impact of the community's legal norms (Alviansah et al., 2022; Anugrah et al., 2025; Saifullah, 2014; Tama & Wahdini, 2022; Turatmiyah & Emirzon, 2022). Other research highlights the unique characteristics of mediation in Islamic Courts through the use of religious counsel, family-based approaches, counseling, moral considerations, and reframing techniques (A'la et al., 2017; Alya Nabila, 2025; Fadili & Sidiq, 2019; Musawwamah, 2014; Noviza, 2017; Rahmawati, 2016). The literature offers important insights into mediation implementation, procedural obstacles, and approaches used to reconcile couples. Nonetheless, current studies continue to rely heavily on reconciliation, lawsuit withdrawal, or agreement formation as key indicators. That focus has not specifically explained what happens when a marriage no longer has a sufficient foundation to be restored. Some studies have slightly leaned toward examining how mediators are trying to move beyond merely playing a role in reconciliation (Pranawati, 2017). However, studies do not specifically provide in-depth attention to the shifts in mediation orientation among mediators and how they try to arrange the rights and obligations of the parties.

This study highlights peaceful divorce as an analytical issue in family mediation. The term 'peaceful divorce' is used to examine the prospective role of mediation when reconciliation is no longer realistic, without first establishing its form or measure of achievement. This research examines how mediators understand mediation goals, shape the process, manage post-divorce consequences, and address imbalances that may affect negotiations. This perspective is essential to assess whether the concept of mediation success, which is based on reconciliation or the decision to maintain the marriage, is still adequate for cases where the marital relationship has suffered severe fractures.

Based on the above discussion, this study poses the primary question of how mediators in the Islamic Court construct and establish a peaceful divorce when marital reconciliation is no longer realistically feasible. It emphasizes an analysis of mediators' experiences and practices in handling post-divorce conflict and injustice. Furthermore, this research seeks to advance academic discussion of family law in three dimensions. *First*, this study expands the discussion of standards for successful mediation outcomes, particularly in cases long assumed to have no viable possibility of reconciliation. *Second,* this research strengthens the study of

Islamic Courts in Indonesia by analyzing the role of mediators as socio-legal actors in resolving family conflicts. *Third*, this research incorporates divorce mediation with discussions of post-divorce responsibilities, power relations, women's rights to protection, and the best interests of the child. Furthermore, with these three dimensions of contribution, this research is expected to encourage a better understanding of the purposes of mediation and the role of mediators in familial disputes, particularly when preserving the marriage is no longer a viable alternative.

Method

This research employs a qualitative empirical methodology and a socio-legal approach to investigate how mediators at Islamic Courts in Indonesia interpret and implement divorce mediation, especially when marital reconciliation is no longer realistically feasible. The fieldwork was conducted as part of a series of participatory observations at Islamic Courts in the Special Region of Yogyakarta and three regencies in Central Java: Klaten, Magelang, and Boyolali. Primary data were obtained through in-depth interviews with informants purposively selected for their involvement in and expertise in mediation, family dispute resolution, and the legal consequences of divorce. The informants of this research are stakeholders consisting of several categories, including the head of the Magelang Islamic Court (HW), the vice head of the Magelang Islamic Court (AE), two mediators from the Klaten Islamic Court (AN and CR), a non-judge mediator from the Boyolali Islamic Court (BA), and a judge from the Boyolali Islamic Court (JMD).

The interview focused on the informant's understanding of the purpose of mediation, the structure of the process, the handling of post-divorce rights and responsibilities, the power relations between the parties, the protection of women and children, and the boundaries of the mediator's intervention. Meanwhile, observations captured the institutional context, communication practices, how family issues are framed, and the role of mediation in the dispute resolution process. Primary data are complemented by a review of regulations, especially the Islamic Courts Law and its amendments, the Marriage Law and its amendments, Supreme Court Regulation (PERMA) Number 1 of 2016, publications from the Directorate General of Islamic Courts, and scholarly articles on family mediation. To protect confidentiality and focus the analysis on the substance of their professional experiences, the study anonymized informants' identities through coding. We need to inform that these confidentiality measures formed part of the study's broader ethical safeguards, which followed the institutional ethical clearance protocols approved by the Research Ethics Committee of the State Islamic University (UIN) Sunan Kalijaga Yogyakarta. Prior to data collection, all informants provided informed consent after being informed of the research objectives, procedures, and potential implications. Although some participants expressed their willingness to be identified, anonymity was maintained throughout the research transcripts and publications, considering the sensitive nature of the inquiry and the potential risks associated with disclosing participants' identities. These safeguards also informed the subsequent handling and analysis of the research material.

Thematic analysis involved reviewing interview notes, observation notes, legal documents, and other supporting literature. The first step was carried out by grouping the data based on issues directly related to the research questions, including the interpretation of mediation goals, assessment of reconciliation possibilities, management of divorce consequences, the position of financial and custody rights, the disparity of the parties' positions, the interests of the child, the implementation of legal and cultural norms, and safety considerations in the negotiation process. Data from different informants and across locations/Islamic Courts are then compared to identify similarities, differences, and contexts that explain each actor's practices. Empirical findings are examined using triangulation of

sources by comparing the statements of mediators, judges, court officials, observation findings, legal provisions, and previous studies. The analysis was conducted sequentially, moving between field data and the socio-legal framework to keep interpretation grounded in informants' experiences, in accordance with the normative parameters of family law and mediation procedures in the Islamic Court.

Reorienting Mediation: From Reconciliation to Peaceful Divorce

Mediation in divorce cases at the Islamic Court is based on a mandate to advocate for reconciliation and preserve the marriage. This obligation is inherent in the Islamic Court's role in resolving family-related issues and is formalized under Supreme Court Regulation Number 1 of 2016 (Mahkamah Agung Republik Indonesia, 2016). This framework prioritizes reconciliation as the initial goal, allowing the parties to reconsider their decisions before the case proceeds to the examination stage. The issue is that this normative mandate confronts a wide variety of family circumstances. Some couples keep the possibility of repairing their relationship open, while others enter mediation after a long-standing conflict, communication breakdown, loss of trust, or a settled decision to separate (Maryam & Irianto, 2023). In these cases, pressure to reconcile can distance mediation from the parties' expectations and ignore the risk that conflict may remain after the decision.

Determining Relationship Recovery or Arranging Separation

Fieldwork evidence shows that mediators first assess the level of marital breakdown. This assessment determines whether the process should remain directed toward relationship recovery or shift toward arranging a separation. The mediators do not immediately accept divorce as the final decision, but they also do not force reconciliation when the relationship has lost its foundation of trust and safety. The approach implemented by BA from the Boyolali Islamic Court and the experiences shared by AN and CR from the Klaten Islamic Court show that reconciliation is treated as a possibility that must be tested based on relevant circumstances, not as a result that has to be enforced in all cases (AN, Mediator at the Klaten Islamic Court, 2026; BA, Non-Judge Mediator at the Boyolali Islamic Court, 2026; CR, Mediator at the Klaten Islamic Court, 2026). This attitude fosters a more realistic orientation toward mediation. The success of the process no longer depends solely on the continuation or termination of the marriage, but on the mediator's ability to navigate the conflict toward a resolution that does not escalate hostility.

The initial stage of the reorientation initiative for mediation involved re-explaining mediation's purpose and the mediator's role. Many parties enter the mediation room assuming the process is merely an administrative step in the court proceedings. Their expectations of marital failure have already formed before the conversation in the mediation room begins. In such a situation, a discussion that directly leads to domestic disputes could repeat the ongoing pattern of mutual blame. In this case, BA opened the process by explaining the purpose of mediation, the limits of the mediator's authority, and the differences between their role and that of a judge or lawyer (BA, Non-Judge Mediator at the Boyolali Islamic Court, 2026). This explanation changes the way the parties perceive the mediation space. The mediator is not present to determine who is right, to favor one party, or to force the couple to live with one another and reconcile. It provides a negotiation space so the parties can assess the state of the marriage more clearly and determine what form of resolution they can pursue after the legal process is completed.

This reorientation effort in mediation is crucial because divorces are often brought to court in an atmosphere of conflict and high emotional tension. The parties usually arrive with

narratives already shaped to strengthen their respective positions. Lawsuits tend to frame family experiences as legal arguments, while parts of the conflict that are considered sensitive, embarrassing, or detrimental to legal tactics can be kept secret. Therefore, effective listening serves as a diagnostic tool. In this case, the mediator is motivated to distinguish between complaints that directly triggered the case and issues that have long-term damaged the relationship structure. AN's experience shows that the parties tend to focus the conversation on the reasons for ending the marriage. At the same time, other issues that may shape the relationship pattern after divorce may not be revealed (AN, Mediator at the Klaten Islamic Court, 2026). CR also found that sensitive reasons, including religious conversion and family pressure, can emerge after the mediator establishes a more open conversation (CR, Mediator at the Klaten Islamic Court, 2026). In this context, he stressed that listening helps the mediator assess the depth of the conflict, the remaining space for dialogue, and the appropriate direction for intervention.

Therefore, in this context of mediation reorientation and mediators' attitude, i.e., that mediation requires flexibility between preserving the marriage and facilitating a peaceful divorce, a small number of cases demonstrate that reconciliation remains possible when the underlying dispute is manageable and the parties are willing to make adjustments. The adjustment of one party and the manageable dispute as well as the flexibility of the mediators' attitude is illustrated by an observed case in which a wife filed for divorce because her husband had changed his style of dress to conform to what she perceived as a Salafi style. The mediator recognized that the disagreement concerned the husband's appearance rather than a more fundamental incompatibility that necessarily precluded the continuation of the marriage. In attempting to reconcile the couple, the mediator emphasized that a particular style of dress was not, in itself, the most significant consideration in the life of a pious Muslim. At the same time, he acknowledged that the husband's change in appearance had caused his wife discomfort. Although the mediator also encouraged the wife to exercise tolerance, he appeared to recognize that asking her to tolerate the situation would not, by itself, resolve the underlying disagreement. He therefore directed greater attention to the husband's attitude and encouraged him to reconsider his choice of dress in light of its effect on his wife and their marital relationship. Under such this mediation's style, the petition was withdrawn as the husband promised to change the dressing style back (Research Team, 2026).

Examining the Grounds of Divorce and Shifting the Spousal Consequences

The findings confirm that the mediator's step of redirecting mediation was not an immediate decision to end the need for reconciliation. In this case, the mediator first examines whether the decision to separate arises from a temporary emotional outburst, an issue that can still be negotiated, or a long-standing conflict. The language and approach also adjust to the case context. BA uses religious principles to encourage couples to reconsider their decision when the relationship still shows a possibility of recovery. In cases involving children, the conversation centers on maintaining parental roles so the end of the marital relationship does not discharge responsibility for care-giving (BA, Non-Judge Mediator at the Boyolali Islamic Court, 2026). This shift is in line with Article 41(a) of the Marriage Law, which outlines the obligations of parents toward their children after divorce (Undang-Undang Republik Indonesia Nomor 1 Tahun 1974 Tentang Perkawinan, 1974; Undang-Undang Republik Indonesia Nomor 16 Tahun 2019 Tentang Perubahan Atas Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan, 2019). Mediation then focuses on two distinct relationship levels that must be clearly distinguished: the marital relationship may terminate, while the parental relationship continues.

The discourse of peaceful divorce emerges as an alternative outcome of mediation, alongside reconciliation or the decision to maintain the marriage, which is also a key finding in this study. Peace is not identical to the couple's reconciliation to marriage. In cases involving couples that have gone through a severe marital breakdown, reconciliation refers to the change in the way the parties understand and navigate the separation. The legal process is not used to seek revenge, humiliate the partner, or escalate the argument. The parties are directed to accept that a marriage can end without turning the divorce into a series of new conflicts. Partial agreements on the consequences of divorce, known in judicial practice, show that divorce cases can still be resolved while addressing previously disputed issues (Admin Badilag, 2022). In this framework, peace shifts from restoring marital status to managing the impacts of post-divorce conflict.

This approach is illustrated by a case observed in the Islamic Court of Purworejo in which a wife repeatedly blamed her husband for staying away from the marital home for several months and pressuring her to engage in sexual intimacy. She also maintained that she, advised by the ‘ulama around her, was already divorced because her husband had left for an extended period and had repeatedly pronounced divorce through WhatsApp. Recognizing that the wife was determined to pursue divorce, the mediator sought to move the discussion away from the parties' competing legal arguments toward the more consequential issues of the children's welfare and the family's future. This intervention illustrates how mediation can redirect attention from past grievances and disputes over marital status toward the parties' responsibilities to their children and the need to prevent conflict from escalating after separation (Research Team, 2026).

The experiences shared by informants from the group of judges and court leaders reinforce the need to shift mediation's orientation. HW, the head of the Magelang Islamic Court, sees that the community is increasingly open to bringing various family issues to court, including divorce, custody, joint property, polygamy, and child lineage matters (HW, the head of the Magelang Islamic Court, 2026). AE, who is the vice head of the Magelang Islamic Court, emphasized that every family case can involve legal considerations that go beyond the status of the husband-wife relationship, especially when the life and status of the child are also affected by the decision (AE, the vice head of the Magelang Islamic Court, 2026). This perspective shows that divorce is a turning point in the family structure, not a legal event that ends with a lawsuit decision or the granting of a divorce agreement. In reality, the court will continue to face the consequences of that decision after the marriage is officially dissolved.

At the same time, the adjudication space has constraints in capturing the entire dimensions of family conflicts. JMD, a judge at the Boyolali Islamic Court, described how caseloads and demands for administrative resolution may lead judges to follow routine patterns in handling cases (JMD, Judge at the Boyolali Islamic Court, 2026). The verdict must be composed based on arguments, evidence, and relevant legal norms, while the personal experiences of the parties involved are much broader than the evidence included in the case file. Mediation occupies a different position because it lets the parties explain the conflict in their own words before the case is settled. This space allows the mediator to capture expectations not evident in documents and to guide the parties to think about life after the court process ends. The difference between standard and function makes mediation important for handling family conflicts, especially when reconciliation no longer has a solid foundation.

These findings shift the focus from short-term procedural outcomes to longer-term relational consequences. Withdrawing a case does not necessarily lead to a healthy family relationship. In contrast, a peacefully resolved divorce can have more controlled impacts when mediation reduces conflict intensity and builds more responsible interaction patterns. Therefore, the reorientation of mediation from reconciliation to peaceful divorce represents, as also stressed by Pranawati, a shift in the standard of success evaluation. The evaluation is not

limited to the continuing state of the marriage, but also considers the direction of the conflict after the parties leave the court. The mediator continues to test whether the couple can change their expectations and judgments, then shifts the direction and goals when restoring the marriage is no longer realistic. At that stage, mediation stops the pattern of mutual punishment, separates the couple's conflict from maintaining the stability of the family relationship, and lays the foundation for a more peaceful separation. In this study, peaceful divorce refers to the outcome of that reorientation process: the marriage ends, while the conflict is not allowed to grow into prolonged hostility.

Mediator Strategies in Establishing Rights & Responsibilities After Divorce

The findings also show that mediators structure the consequences of divorce through three interconnected procedures. *First*, the mediator maps out rights and obligations that remain undetermined in the lawsuit. *Second*, the mediator renders legal norms into consequences that the parties can understand. *Third*, the mediator helps establish post-divorce responsibilities in a specific, realistic, and feasible way. These three practices transform mediation from a discussion of the desire to separate into negotiations about the family's life arrangements after the marriage ends. The focus includes alimony, joint property, custody, parent-child relationships, and mechanisms for fulfilling long-term obligations (BA, Non-Judge Mediator at the Boyolali Islamic Court, 2026).

Mapping Spousal Rights & Obligations

Mapping rights is the first step because a divorce lawsuit does not always reflect all of the consequences that occur after the verdict. Case documents are prepared based on arguments that support the legal claims, while the family's post-divorce needs may fall outside that arrangement. AN, a mediator at the Klaten Islamic Court, noted that parties often focus on the reasons for divorce and overlook issues such as child custody for non-mumayyiz children, child support, and overdue alimony (AN, Mediator at the Klaten Islamic Court, 2026). These issues may be absent from the lawsuit because of limited legal knowledge, an inability to formulate legal demands, or the assumption that these matters can be resolved independently after divorce.

CR's approach at the Klaten Islamic Court reinforces AN's stance above, showing that mapping these rights requires an understanding that goes beyond the lawsuit's text. Divorce can be based on various reasons, such as ongoing disputes, economic instability or unmet economic needs, conversion to another religion, or other reasons not explicitly stated in the *posita* or grounds for the lawsuit (CR, Mediator at the Klaten Islamic Court, 2026). He noted that unrevealed reasons or facts may affect custody, relationships with extended family, how assets are handled, and how the parties communicate after the verdict. Therefore, the mediator develops a conflict map based on two layers of information, namely the demands recorded in documents and the needs that emerge from the conversation. This mapping helps the mediator identify the issues that must be agreed upon before the legal marriage relationship terminates.

Re-framing & Conveying Legal Norms to The Parties: Issue of Custody

Once the mediator identifies the problem, they convey legal norms to the parties. Reality testing is a common approach mediators use to help parties examine the picture they have drawn of their position, rights, and responsibilities. This helps parties stay flexible and open-minded in the mediation process, especially when they show evidence of cognitive biases. BA, a non-judge mediator at the Boyolali Islamic Court, notes that it is important to explain to

the parties the financial implications following a divorce, especially '*iddah, māḍiyah, and mut'ah* maintenance, child support, as well as the division of joint properties (BA, Non-Judge Mediator at the Boyolali Islamic Court, 2026). These terms are often understood narrowly as additional demands in the case. The mediator associates them with the real necessities after the divorce. '*Iddah* maintenance is related to providing support during the period of transition, *māḍiyah* maintenance concerns obligations that were not fulfilled during the marriage, *mut'ah* is related to compensation due to the dissolution of the marriage, and child maintenance involves ongoing support for the development of the child that does not end with the dissolution of the parents' marriage.

Supreme Court Regulation Number 1 of 2016 provides space for the parties to formulate a resolution through an agreement, including reconciliation over part of the disputed object (Mahkamah Agung Republik Indonesia, 2016). That space allows the mediator to transform general statements into operational commitments. The mediator breaks down the statement 'the father will support the child' into the amount, payment time frame, payment method, and responsibility for expenses beyond routine necessities. The mediator clarifies the statement 'the mother will have custody' to include arrangements for the father's access, the exchange of information about education and health, and decision-making methods when the child faces serious situations. This level of detail is directed by the mediator to determine whether the agreement serves as a guideline for post-divorce relationships or remains merely a promise dependent on the emotional circumstances of the parties involved.

The division of parental responsibilities plays a key role, as divorce terminates only the marital relationship and does not eliminate the parenting relationship. Article 41(a) of the Marriage Law states that both father and mother have an obligation to care for and support their child in their best interests (Undang-Undang Republik Indonesia Nomor 1 Tahun 1974 Tentang Perkawinan, 1974; Undang-Undang Republik Indonesia Nomor 16 Tahun 2019 Tentang Perubahan Atas Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan, 2019). The mediators apply this norm by separating the husband-wife conflict from the parenting responsibilities. In most cases, as they argued, marital wounds cannot be used to terminate alimony, restrict the child's relationship with one parent, or place the entire burden of parenting on the party living with the child. Such arrangements of post-divorce responsibilities focus on the continuity of parental roles after parents no longer live in the same house, but in a different arrangement.

Mediation discussions about children focus, as BA initiated, on the need to maintain physical and emotional support from both parents (BA, Non-Judge Mediator at the Boyolali Islamic Court, 2026). This approach shifts parenting from child custody to the division of parental roles and responsibilities. 'Custody' generally determines the place of residence and care, while parental 'responsibility' involves a broader scope, including maintenance, education, health, communication, emotional involvement, and safety access. The separation of these two concepts, i.e., custody and responsibility, is important because the individual who has no custody may consider their obligation fulfilled after paying alimony, while the party with custody may interpret the judge's ruling as a basis for cutting off the child's relationship with the other party. The mediator seeks to prevent both interpretations by establishing arrangements that place the child as a subject with dynamic needs.

Custodial and financial rights cannot be negotiated separately. The child's residence affects the cost of living, school distance, healthcare services, and transportation needs. Visitation arrangements relate to the educational schedule, holidays, geographic factors, and the parents' ability to provide a safe environment. The division of property can affect the child's housing availability and the primary caregiver's financial stability. Therefore, an experienced mediator examines the relationships among these issues before helping the parties draft an

agreement. They understand that resolving one right may create new issues if the consequences for other obligations are not considered.

The above notion given by AN about children's rights, which tend to be absent in lawsuits, highlights the importance of changing the orientation of divorce mediation (AN, Mediator at the Klaten Islamic Court, 2026). The mediator felt a need to redirect negotiations away from immediate needs and toward predictable changes. Child-rearing expenses increase with age and education level. The parents' living arrangements or jobs may change, and their health condition may also change at any time. Parents' meeting arrangements, adjusted to the child's condition in early childhood, may not suit the child when they enter school age. A good agreement is therefore considered to be made to provide certainty while also opening mechanisms for adjustments. Without space for evaluation and adjustment, the mediators believed that the agreement can lose relevance and trigger new disputes when family circumstances change.

The case, identified as Case No. 93/Pdt.G/2025/PA.Sal, where the husband (T) filed for divorce from his wife (TA), illustrates the efforts of adjustment and agreement of the parties. During mediation, facilitated by NJ, the parties agreed to divorce, grant child custody to the wife, and require the husband to pay child support of IDR 7 million per month, excluding education and healthcare expenses. Given the husband's average monthly salary of IDR 46,056,023.69, the judge adopted the agreement, granting the wife custody while preserving the father's access rights and ordering a 10% annual increase in child support until the child reaches adulthood or the age of 21, or marries (Nurlaelawati et al., 2025: 91–92).

In this context, the language choices is also significant, as it influence the parties' acceptance of their rights and responsibilities. BA, for instance, uses a religious approach when the parties are responsive to spiritual values. In contrast, positive legal arguments dominate when the parties need legal certainty (BA, Non-Judge Mediator at the Boyolali Islamic Court, 2026). In cases involving children, the mediator uses a psychological approach to language and communication to explain important issues, such as the possibility of reduced or severed communication with their parents. This adjustment is made without changing the substance of the obligations. The mediator solely seeks the right way of communication that can make the agreement on rights and obligations understood as a valid responsibility, not a demand from an opponent that needs to be rejected. The mediator referred to Quran 65:7 (Surah At-Talaq), which stipulates and underscores that child maintenance should be determined according to the father's financial capacity: "Let the man of wealth spend according to his means, and the one whose provision is restricted, let him spend from what Allah has given him" (Quran 65:7).

The approach mediators use is to re-frame and convey legal norms to the parties remains bound by applicable norms. The mediator cannot promise results contrary to the law or create statuses beyond the court's authority. AE, Vice Head of the Magelang Islamic Court, notes that child protection goals and normative constraints in child paternity cases must be framed within the available legal framework (AE, Vice Head of the Magelang Islamic Court, 2026). The mediator needs to explain the difference between family expectations, private agreements, and legal consequences the court may recognize. Accurate information at the mediation stage prevents the parties from reaching an unenforceable agreement or developing a false perception of their rights.

Sorting Out Issues for Facile Arrangement

Complexity becomes increasingly relevant when the community brings various family issues to the Islamic Court, showing growing legal awareness. HW, the head of the Magelang Islamic Court, noted an increase in cases involving divorce, joint property, custody, polygamy, inheritance, and child paternity (HW, the head of the Magelang Islamic Court, 2026). These

diverse issues show that a single divorce case may involve several legal issues at once. Mediators then sorted out issues that can be resolved in mediation, identify interconnections between rights, and guide the parties toward non-conflicting formulations. They have been aware that communication skills without an understanding of family law can lead to vague agreements, while knowledge of legal norms without the ability to interpret them can make mediation resemble a one-sided legal consultation.

Studies on family mediation generally highlight the clarity of post-divorce responsibilities as an important element for maintaining the stability of parent-child relationships (Emery et al., 2005; McIntosh & Tan, 2017). Based on these experiences in divorce mediation, mediators can be defined as managers of family law transitions. Mediators play an important role in mapping the rights of overlooked parties, explaining the relationship between norms and concrete needs, and helping the parties formulate implementation. The validity of the identified issues may assess mediation effectiveness at this stage, as well as the clarity of the formulated responsibilities, compliance with the law, and the feasibility of implementation. Such arrangements provide a basis for a more structured separation as the sources of post-divorce conflict have been identified and discussed before the case is concluded.

Rebalancing Power Dynamics & Mitigating Post-Divorce Conflict

Clarity of rights and responsibilities does not necessarily ensure that a mediation agreement will result in a fair and peaceful settlement. The parties may identify the issues that need to be resolved and then agree to arrangements that maintain the inequalities found during the marriage. Agreements on very low maintenance, restrictions on contact with children, dismissal of property claims, or placing the burden of custody on one party may appear valid because the parties agreed to them with a mediator's guidance. The quality of the agreement must be assessed based on its formation process, including whether the parties understand its legal consequences, can express their will freely, have access to sufficient information, and accept responsibilities that match their real capacities. Formal consent without these conditions may carry the injustice from the marital relationship into post-divorce life.

Three Forms of Inequality Tackled

The data from this research shows three forms of inequality that the mediator have anticipated. *First*, the information-based inequality that arises when one party has a better understanding of the law, controls family documents, or has a more complete knowledge of the household's financial standing. *Second*, resource inequality is evident in differences in income, asset ownership, family support, and the ability to finance legal processes. *Third*, relational inequality can arise from dependency, fear, communication dominance, moral pressure, experiences of violence, or psychological exhaustion that limits a person's ability to express rejection (Research Team, 2026). These three forms of inequality occurred simultaneously. One party may be present, speak, and express agreement, while the decision conveyed has been shaped by imbalanced circumstances long before mediation began.

Therefore, managing power relations begins with assessing the parties' ability to participate equally in the mediation process. The mediator is not assigned to determine equal financial capabilities or decide the mediation outcome based on their own judgment. The mediator's task is to ensure that differences in ability and power do not unfairly determine the dominant position of the negotiation process. This includes the mediator's ability to understand information, convey the parties' interests, challenge presumptions, offer options, and anticipate

the consequences of each agreement. When one of these elements is problematic, the mediators then adjusted the approach before continuing the discussion on the substance of the resolution.

Caucus' Significance

Caucus is one instrument for creating a safer space for open discussion. It is known as one of the most tactically significant approaches in the contemporary system of mediation. Caucus is a confidential, separate meeting between a mediator and one of the disputing parties (or one side in a multi-party dispute). This study indicates that mediators in Islamic courts do not invoke the caucus at random. Specific circumstances justify private sessions, such as when joint-session communication escalates into personal attacks or visible distress. The experience of BA, a non-judge mediator from the Boyolali Islamic Court, illustrates the usefulness of this technique in family cases that show the dominance of one party, in this case, the husband. In the polygamy application, BA separated the two parties into two independent sessions to allow the wife to express her objections without direct pressure from the husband. He then examines the husband's claims about his ability to be fair by asking direct questions about maintenance, time allocation, commitment, property acquired during the marriage, and the future of the children (BA, Non-Judge Mediator at the Boyolali Islamic Court, 2026). This method is relevant for divorce mediation because the agreement reached in a joint meeting does not necessarily reflect free will. Caucus allows the mediator to distinguish acceptance arising from conscious consideration from yielding due to fear, reluctance, or economic dependence.

The mediator's assessment of the parties' fairness and ability does not turn them into a judge who determines the substance of the agreement. Mediators remain obligated to respect the parties' autonomy, even though it requires knowledge, freedom, and the ability to choose. Questions about the basis for determining alimony amounts, payment ability, children's needs, asset control, or reasons for restricting access serve as reality testing. In fact, our observations reveal that the relevant parties are invited to consider whether their proposals can be implemented and how they will affect the family's life after the decision. Mediators do not determine alimony amounts or impose specific rights and forms of child custody. They ensure the agreement is built on sound considerations, not because the weaker party loses the power to negotiate.

In this context, neutrality does not mean maintaining distance from every statement the parties make without considering their circumstances and strengths. Such an attitude can benefit the party that already has greater power control. Substantive neutrality focuses on protecting the process. We observed that the mediator provides adequate communication opportunities, offers balanced legal information, prevents intimidation, tests the fairness of proposed solutions, and avoids using moral and religious advice to pressure one party. They do not take sides with any particular individual, but ensure that the process is not controlled by fear, ignorance, or dependency. This understanding is also held by mediators of courts of other countries, as found by Samia Bano and Lisa Webley, who emphasize that mediators' neutrality in family conflicts must maintain process balance, especially when power, knowledge, and social and religious norms create imbalances (Bano & Webley, 2024).

The Neutrality of Mediators

Studies highlight the dilemma of using religious advice in mediation, especially in divorce cases. In some cases, religious norms about the importance of maintaining a strong marriage are translated into an obligation to endure dangerous relationships (Chowdhury, 2023). In this regard, mediators need to reconsider the function of each piece of religious advice in the mediation process, as it might expand the parties' ability to understand their

responsibilities but also narrow their freedom of choice. With this perspective, this boundary keeps religious values functioning as a source of responsibility, not as a tool for controlling the more vulnerable parties.

In this context, the mediator's tendency to direct the parties to continue or remain in the marriage bond may increase risks in the future course of the marriage. The risk may grow more serious in cases involving domestic violence issues. BA's experience shows that a written commitment not to perpetuate violence may appear in mediation when the parties are still considering the sustainability of the relationship (BA, Non-Judge Mediator at the Boyolali Islamic Court, 2026). Referring to the concept of violence, such a commitment cannot be taken as the sole evidence that the risk of violence will no longer exist. With an awareness of this concept, mediators have striven to distinguish situational conflicts from patterns of violence characterized by intimidation, threats, economic control, surveillance, or repeated assaults. They understand that the victim's safety is the primary boundary. To achieve this goal, they conduct an initial screening, hold separate meetings, provide assistance, and consider terminating mediation when free participation cannot be established. As many other mediators, those in Islamic courts also assess that an agreement lacks substantive legitimacy if one party agrees to it to avoid a threat (Association of Family and Conciliation Courts & American Bar Association Section of Family Law, 2025; BA, Non-Judge Mediator at the Boyolali Islamic Court, 2026; Cleak et al., 2018).

Establishing Substantive Justice or Peace Through Validation of Agreement

In the context of establishing substantive justice, the issue of children becomes important. As has been widely revealed, the interests of children create another form of inequality, because besides being the most affected party, children do not have enough legal space to be present in negotiations. Father and mother bring their respective positions, while the child's needs can be incorporated into the battle over custody, maintenance, access, or property. For that reason, the mediator's role is very important, even though they do not take over the parents' role or act as the child's legal representative. However, they can ensure that each recommendation is tested against its consequences for the child's safety, development, and relationship with both parents. BA's approach, which shifts the couple's focus from the damage of marriage to the child's well-being, demonstrates this purpose (BA, Non-Judge Mediator at the Boyolali Islamic Court, 2026). Thus, in mediation, mediators seek to prevent children from being used as bargaining instruments, messengers, sources of emotional pressure, or means to punish former partners.

Regarding child protection, the power dynamics between former partners have a substantial impact. Typically, the party who controls the family's finances used alimony as a means of control, and the party living with the child can use access in response to unresolved conflicts. Likewise, the party with more experience with legal procedures has sought to reach agreements with terms that benefit their position. A well-experienced mediator understands these issues and strives to separate the child's needs from the parents' interpersonal conflicts. They direct the conversation toward safety and continuity of relationships, not compensation or compliance from the ex-partner. They also view alimony as a legal obligation to the child, not as a tool to impose control over custody.

This can be seen from the perspective of AE, the deputy chairperson of the Magelang Islamic Court, regarding the judiciary's commitment to the protection of women and children, which emphasizes that the resolution of family issues must operate within the legal boundaries that protect vulnerable parties (AE, the vice head of the Magelang Islamic Court, 2026). This point of view matters for mediators because parties' autonomy should not justify agreements that eliminate legal obligations, deny children's rights, or place one party in an increasingly

unsafe condition. For officials at Islamic Courts, like AE, mediators must distinguish between negotiable interests and rights protected by principles that should not be diminished by negotiation pressure. Furthermore, they view an agreement as valuable when it complies with the law, is freely formed, and does not create new vulnerabilities.

In post-divorce conflict prevention, the mediator's ability to validate the agreement before the process concludes is highly significant. Hypothetically, the testing procedure does not duplicate the technical formulation of the amount, time, or method of implementation discussed in the previous subsection. The focus is on how long the agreement will remain binding as circumstances change. For that reason, the mediator then proposed other scenarios that could serve as preventive measures, such as delays in child support payments, job changes, living arrangements, increased educational needs, children's rejection of visiting schedules, or one party remarrying. The parties then were asked to determine their communication method, review the arrangements, and resolve differences without immediately returning to court. This process is, as emphasized by Schepard, understood to help transform the agreement from a temporary negotiation outcome into a framework for managing relationships after divorce (Schepard et al., 1984) for substantive peace. Here, we noted that substantive peace comprises four elements: voluntary participation, informed agreement, fair distribution of responsibilities, and mechanisms for addressing future changes. These do not require identical outcomes but rather proportionality, achievable obligations, protection of basic needs, and freedom from intimidation. Mediators are crucial in negotiating divorce-related consequences to prevent future conflicts.

Studies, as noted above, highlight the implementation of mediation following the enactment of Supreme Court Regulation Number 1 of 2016, especially its effectiveness in reducing divorce rates and the significance of the mediation process in resolving divorce cases. This study expands the scope of effectiveness variables into areas not extensively examined, particularly the quality of agreements and the ability of settlements to prevent the reproduction of inequalities after divorce. Broadening this scope matters because mediation may be declared administratively successful when the parties reach an agreement, even when the subject matter arises from an unequal bargaining position. Evaluating success solely by the number of agreements or case withdrawals misses the point. Therefore, achievement needs to encompass the quality of participation, freedom of expression, child protection, and the feasibility of agreed responsibilities.

Mediators' Comprehension of the Cases Involving Violence

Studies highlight the correlation between a mediator's competence and integrity and the success of the mediation process (Reskiani et al., 2016). This study's findings provide further insight into the competencies required when the parties have different levels of power, as expressed in violence-based conflicts, which include not only physical but also mental violence. Mediators stated that they have hold competencies which include identifying power dynamics, assessing negotiation capacity, using caucuses, conducting reality testing, managing moral pressure, and recognizing when mediation is not safe to proceed. Several innovative steps taken by mediators reinforce the understanding that mediators in the Islamic Courts often perform roles beyond their main capacities. This research provides a normative boundary on the extent to which mediators' innovative efforts can be legitimately justified. They viewed that mediator's intervention will be justified when it improves the quality of participation and broadens the parties' understanding. However, the mediator's intervention, they realized, loses legitimacy when they direct outcomes based on their biases or use moral and religious values to pressure certain parties.

This research further underlines that identifying power relations and how the mediation process may confront power dynamics among parties is a primary condition for preventing post-divorce conflicts. The data show that mediators cannot guarantee that differences of view and conflicts will be resolved once an agreement is reached. In divorce cases involving domestic violence, studies, such as by Johnson, highlight the potential failure of the mediation process in identifying forms and patterns of violence and providing protection to the victim, especially the child (Johnson et al., 2005). In this context, the parties' safety boundaries require further discussion. Mediation in situations where the victim feels unsafe tends to make it difficult to reach substantive peace, regardless of how many agreements are reached.

Therefore, one of the actions that were taken, as emphasized in the findings, is the mediator's commitment to create a safe condition so that the possibility for subsequent conflicts after the deal is reached is not escalated through power domination, neglect of rights, the use of children as tools to pressure each other, or even the recurrence of violence. For an example, in Decision No. 130/Pdt.G/2025/PA.Prob, the Probolinggo Islamic Court examined a divorce case involving allegations of domestic violence against the wife and child. Mediation failed to reconcile the couple but produced an agreement granting custody to the mother and visitation rights to the father. The court granted the divorce, illustrating the role and limitations of mediation in cases involving domestic violence. In this context of divorce, the mediator maintained, however, that peace is not a synonym for agreement; rather, it is the quality of resolving long-term disputes without allowing injustices resulted in the violent actions of one party to persist in a family relationship that has already been dissolved.

Conclusion

The findings of this study demonstrate how divorce mediators at Islamic Courts in Indonesia have shifted their approach to mediation when they determined that marital reconciliation is no longer realistically feasible. The reorientation begins with an assessment of the severity of the ongoing dispute, the prospect of sustaining trust, the presence or absence of a sense of security, the parties' ability to communicate, and both parties' commitment to resolving their household issues. In situations where the marital relationship has reached a stage of fracture that is too difficult to restore, mediation efforts were directed from trying to maintain the marital status to anticipating and managing the more serious implications and consequences of divorce, especially the impact on children. This reorientation creates broader space in the mediation process to promote a peaceful divorce as an alternative to the difficult-to-reach goal of reconciliation. Peaceful divorce in this context refers to the dissolution of the husband-wife relationship without allowing the wounds and adverse consequences of the marriage to develop into prolonged disputes pertaining to several issues, such as alimony, custody disputes, constraints on interactions with children, conflicts over joint property, neglect of responsibilities, or hostility between families. In this context, peace is measured by the mediation's ability to break the cycle of mutual punishment and establish a new foundation for a more stable family relationship after divorce.

Peaceful divorce initiatives have been implemented through three interconnected procedures. *First*, the mediator mapped out unresolved rights and obligations in the lawsuit. *Second*, the mediator translates legal norms into consequences that the parties can understand. *Third*, the mediator helped establish post-divorce responsibilities in a specific, realistic, and feasible way. These three steps have turned mediation from a discussion of the desire to separate into negotiations about the family's life arrangements after the marriage ends. The focus included alimony, joint property, custody, parent-child relationships, and mechanisms for fulfilling long-term obligations. In pursuing a peaceful divorce, the mediator oversees the family law transition by mapping overlooked rights, translating norms into concrete

consequences, using caucuses and reality testing, and prioritizing the safety of vulnerable parties and the interests of children. The results of this study further expand standards for measuring mediation success from procedural efficiency to substantive efficacy. It examines divorce alongside discussions of post-divorce duties and responsibilities, power dynamics, women's rights to protection, and the best interests of the child, aiming to understand better the role of mediators in family disputes, particularly when preserving the marriage is no longer a viable alternative.

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Declaration of Competing Interest

The authors report no known competing financial interests or personal relationships that could have influenced the work presented in this paper.

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