# Fusion Approach in Indonesia's Islamic Courts: Blending Islamic Principles with Asian Family-Mediation Practices in Divorce Cases

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## Abstract

This study explores the role of mediators in Indonesia's Islamic Courts, focusing on their unique integration of Islamic principles with Asian family mediation practices in divorce cases. Unlike the theoretical model of mediation, which emphasizes mediators as neutral facilitators without providing advice, mediators in Indonesia's Islamic Courts adopt a distinctive approach. They incorporate Islamic values, often offering moral and religious guidance, while also drawing on Asian family-court traditions that prioritize familial harmony and community involvement. This study uses the qualitative framework to analyze divorce mediation approach in court and its dynamics in divorce cases. Moreover, observation and interview are methods that applied to get comprehensive picture in the mediation process such as the individual experiences of each party, the dynamics of the relationships between the parties and between the parties and the mediator, and the mediator's perspective on the case, the parties, and the resolution of the case. In-depth interviews were conducted with non-judge mediators and the disputing parties at the South Jakarta Religious Court. This paper highlights how these mediators navigate cultural, religious, and legal dimensions to address divorce disputes. The findings reveal a fusion mediation model that challenges conventional Western

approach offering insights into culturally sensitive dispute resolution in Islamic legal contexts.

**Keywords**: Asian Family Mediation, Divorce Cases, Fusion Approach, Islamic Courts, Islamic Principles.

## Introduction

Mediation, as a form of alternative dispute resolution (ADR), has emerged as a cornerstone of conflict resolution in family disputes worldwide, offering a less adversarial approach than litigation. In Indonesia, the Religious Courts (*Pengadilan Agama*), which operate under Islamic legal principles, have institutionalized mediation as a mandatory step in divorce proceedings, as mandated by the Supreme Court Regulation/PERMA No. 1/2016.[1] This regulation requires mediators, often judges themselves, to facilitate reconciliation or amicable settlement before cases proceed to trial.

Data from the Supreme Court Annual Report (2016–2023) shows an increasing trend in divorce cases in Indonesia, with 496,407 cases in 2022, of which 75.21% were filed by wives.[2] The provinces with the highest number of cases are West Java, East Java, and Central Java, reflecting the population density and socio-economic dynamics in these regions. The primary causes of divorce are disputes (63.41%), followed by economic problems, domestic violence (DV), and polygamy. However, only 1% of cases involved child support and 2% involved child custody, indicating a lack of attention to the interests of children post-divorce. These statistics underscore the complexity of divorce cases, which involve not only conflict between spouses but also broader family dynamics, including children.

These statistics underscore the critical role of mediation in addressing the rising tide of marital dissolution within Indonesia's Islamic legal framework. However, what sets mediation apart in Indonesia's Religious Courts is not merely its procedural significance, but the unique role mediators play in blending Islamic principles with Asian family-mediation traditions, challenging the conventional Western models of mediation.

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[1] Supreme Court Regulation/PERMA Number 1 of 2016 concerning mediation procedures in court, abbreviated as PERMA No. 1 of 2016, contains provisions that require mediation as a procedure in every civil case in court before the main case examination is carried out. If mediation is not carried out or the parties do not act in good faith, the decision can be declared null and void or the lawsuit declared inadmissible, and the party who does not act in good faith can be subject to sanctions in the form of an obligation to pay mediation costs. Supreme Court Regulations on Court Mediation Procedures, No. 1 (2016).

[2] Rini Maryam, "Dinamika Relasi Konflik pada Mediasi Perceraian di Pengadilan Agama di Jakarta Selatan dan Berbagai Permasalahannya: Studi Hukum Feminis Terhadap Realitas dan Keadilan Perempuan" (Doctoral Dissertation, Universitas Indonesia, 2024).

There is a research gap in the existing literature on mediation. The theoretical framework of mediation, as articulated by scholars such as Bush and Folger in *The Promise of Mediation*, emphasizes the mediator's role as a neutral facilitator who empowers parties to reach their own agreements without imposing advice or judgment.[3] This model, rooted in Western conflict resolution paradigms, such as the Harvard Negotiation Project,[4] prioritizes impartiality and non-directive facilitation. In contrast, mediators in Indonesia's Religious Courts adopt a markedly different approach. They often assume an active, normative role, offering moral and religious guidance grounded in Islamic teachings, such as those derived from the Qur'an. For example, Qur'an Surah An-Nisa 4:35 explicitly encourages reconciliation in marital disputes by appointing arbitrators from both parties' families, a principle that mediators in Religious Courts frequently invoke to urge reconciliation.[5] This practice aligns with Islamic concepts of *nasehat* (advice) and *islah* (reconciliation), which prioritize restoring harmony over strict neutrality.[6]

Beyond Islamic influences, mediators in Indonesia's Religious Courts also draw on Asian family mediation traditions, emphasizing familial harmony and community involvement. Unlike Western models that focus on individual autonomy, Asian mediation practices, as observed in countries such as Japan and China, often prioritize collective well-being and social cohesion.[7] In Indonesia, mediators incorporate these values through *musyawarah* (deliberative consensus), a culturally embedded practice that encourages dialogue and mutual understanding among disputing parties and their extended families. This approach aligns with the broader Asian ethos of preserving familial and communal harmony, as seen in Singapore's family courts or Japan's mediation practices, where mediators actively guide parties toward reconciliation to maintain social stability.[8] The fusion of Islamic principles and Asian mediation traditions creates a hybrid model that diverges significantly from the neutral, non-directive stance of Western mediation. This study seeks to address the primary research

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[3] Robert A. Baruch Bush and Joseph P. Folger, *The Promise of Mediation: The Transformative Approach to Conflict*, Rev. ed (Jossey-Bass, 2005).

[4] Roger Fisher et al., eds., *Getting to Yes: Negotiating Agreement without Giving In*, 3., rev. ed (Penguin Books, 2011).

[5] Ministry of Religion, *Al-Qur'an dan tafsirnya*, Ed. yang disempurnakan (Lentera Abadi, 2010).

[6] Dwi Novita et al., "Family Conflict Disclosure on Social Media in Islamic Law: Islah as a Reconciliation Mechanism," *Al-Istinbath: Journal Hukum Islam* 10, no. 1 (2025): 443–58, https://doi.org/10.29240/jhi.v10i1.12658.

[7] Kevin Avruch, *Culture & Conflict Resolution* (United States Institute of Peace Press, 1998).

[8] Arskal Salim, *Contemporary Islamic Law in Indonesia: Sharia and Legal Pluralism*, Exploring Muslim Contexts EMC (Edinburgh University Press, 2022), https://doi.org/10.1515/9780748693481.

question: how does the fusion approach in Indonesia's Islamic courts blend Islamic principles with Asian family-mediation practices in divorce cases?

This study aims to analyze how mediators blend Islamic principles with Asian family-mediation practices in divorce cases and to conceptualize the resulting "fusion" model. The urgency of this study lies in its contribution to the growing literature on Islamic law and ADR, particularly in the context of culturally sensitive dispute resolution. Chowdhury emphasizes that culturally resonant mediation in Asia,[9] including Islamic societies, must account for ingrained cultural values, such as high-power distance and collective harmony, which shape dispute resolution practices and expectations. Mukhlis and Mukhlis & Saidah study a growing scholarly interest in understanding how muslim women experience divorce mediation, as their perspectives often reveal critical insights into the intersection of gender, law, and religion.[10] [11]This research builds on these insights, enriching the discourse on culturally grounded mediation and offering valuable perspectives for scholars and practitioners in Islamic and Asian jurisdictions.

The uniqueness of mediation in Indonesia's Religious Courts lies in its departure from the theoretical ideal of mediator neutrality. While Western models caution against mediators imposing their values, as outlined in 'Getting to Yes',[12] Indonesian mediators actively draw on Islamic ethical frameworks and Asian cultural norms to guide disputants. For example, mediators may reference religious texts to counsel couples on the sanctity of marriage or involve extended family members to reinforce communal support. These practices reflect both Islamic injunctions and Asian collectivist values. This approach raises critical questions about the balance between directive guidance and impartiality, as well as the effectiveness of such a model in achieving equitable and sustainable resolutions. By exploring these dynamics, this study aims to bridge the gap between theoretical mediation frameworks and context-specific practices, offering a nuanced perspective on how mediators navigate complex socio-religious landscapes.

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[9] Jamila A. Chowdhury, "Cultural Repercussion on Mediation: Exploring A Culturally Resonant Mediation Approach Germane to Asia," *Journal of Malaysian and Comparative Law* 42, no. 1 (2015): 43–66.

[10] L. Mukhlis, "A Phenomenological Study of Personal Spiritual Experiences in Navigating Religious Pluralism within Interfaith Communities," Irfana: Journal of Religious Studies, 1(6), 212–220 in Siti Tazkya Awalia, Rizki Nur Fadilah, "Muslim Women's Lived Experiences in Divorce Mediation at Islamic Religious Courts," Hukmuna: Journal of Law and Policy, Vol.1, No.10, 2025, 406-416.

[11] L. Mukhlis, & Saidah, Y. Dynamics of Nature-Based learning in Developing Children's Motoricic Skills: Teacher and Parent Perspectives" in Siti Tazkya Awalia, Rizki Nur Fadilah, "Muslim Women's Lived Experiences in Divorce Mediation at Islamic Religious Courts," Hukmuna: Journal of Law and Policy, Vol.1, No.10, 2025, 406-416.

[12] Fisher et al., *Getting to Yes.*

To investigate these issues, this article employs a qualitative methodology, combining with documentary research, observation[13] and interview[14] on mediation session. Legal texts and document that is used such as Supreme Court Regulation /PERMA No.1 of 2016), Marriage Law,[15] and court mediation report. In depth interviews with mediators and judges in Religious Courts in South Jakarta.[16] That region was selected for their diverse socio-cultural contexts, which influence mediation practices. The analysis focuses on identifying patterns in mediators' roles, such as their use of religious advice and family-oriented strategies, and compares these with Western mediation principles. The findings are discussed in light of their implications for both theory and practice, particularly in terms of how culturally informed mediation can enhance or challenge dispute-resolution outcomes.

Based on the analysis above, this paper aims to describe the unique role of mediators in religious courts in Indonesia, which is not only oriented towards reaching an agreement between the parties but also ensuring the fulfillment of Islamic religious values in every decision made by the parties. The focus on

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[13] Observations and interviews were conducted on ten cases based on the following criteria: power imbalance relations, domestic violence (physical, psychological, sexual, or economic), and the presence of a gender-biased mediator in the mediation process. The ten mediated cases demonstrated the dynamics between the mediator and the parties and between the parties. These ten cases were selected from 50 cases that submitted mediation requests from 2020 to 2021, then inventoried and categorized based on divorce case criteria. From these 50 cases, 10 cases were selected that met these criteria. Maryam, "Dinamika Relasi Konflik pada Mediasi Perceraian di Pengadilan Agama di Jakarta Selatan dan Berbagai Permasalahannya: Studi Hukum Feminis Terhadap Realitas dan Keadilan Perempuan."

[14] Interviews were conducted with five non-judge mediators that each holding a mediator certificate. These mediators were appointed by the Chief Justice of the South Jakarta Religious Court. This study found that mediators at the South Jakarta Religious Court were still dominated by mediators with legal education backgrounds or legal practitioners, although one individual had a background in human resources education and worked as a marriage counselor. The mediators' ages varied between 52 and 78 years, with work experience ranging from 2 to 13 years. Long experience as a divorce mediator does not necessarily mean a mediator has good competence. However, it cannot be denied that mediators who have been mediating for a decade appear to be more experienced and have their own mediation style, which they have learned over many years. Maryam, Maryam, "Dinamika Relasi Konflik pada Mediasi Perceraian di Pengadilan Agama di Jakarta Selatan dan Berbagai Permasalahannya: Studi Hukum Feminis Terhadap Realitas dan Keadilan Perempuan."

[15] The Indonesian Marriage Law Number 1 of 1974 defines marriage as a legally recognized union between a man and a woman and regulates its requirements, spousal rights and obligations, marital property, and the status of children. Divorce is permitted only through court proceedings after reconciliation efforts and must be based on lawful grounds. Indonesian Marriage Law, No.1 (1974).

[16] At the time of this research, the South Jakarta Religious Court had received 5,227 cases, consisting of 4,257 lawsuit cases, one simple lawsuit case, and 969 petition cases in 2023. The number of cases received by the South Jakarta Religious Court that could be mediated was 583 cases. The number of cases that could be mediated was 142 (24.35%) successful cases, the remaining 441 (75.65%) unsuccessful cases.

fulfilling religious values means that mediators in religious courts are not neutral because they have a bias towards certain values in a particular issue, but they remain independent and do not take the side of either party. This approach creates a balance between fulfilling the interests of the parties, which is characteristic of mediation in European countries, and the collectivity that is a principle of family life in Asia.

The article is structured as follows: the Literature Review surveys existing scholarship on mediation, Islamic law, and Asian family-dispute resolution, establishing the theoretical framework for the study. The Methodology section details the qualitative approach, including data sources and analytical methods. The Findings and Discussion section presents empirical insights into mediators' roles and analyzes their integration of Islamic and Asian practices, with comparisons to Western models. Finally, the Conclusion summarizes key findings, outlines contributions to the field, and offers recommendations for practice and future research. By examining the interplay of religion, culture, and law in Indonesia's Religious Courts, this study contributes to a deeper understanding of mediation as a dynamic and context-specific process.

## Discussion

This section elaborates conceptual and model of conventional mediation in western, Asia, and Islamic tradition and with the empirical findings of mediation practices from Indonesia and other Asia countries.

## Mediation: its Concept & Models

Conventional mediation, rooted in Western tradition, emphasizes the principles of mediator neutrality, non-directive facilitation, and a focus on the common interests of the parties. Bush and Folger (2005), in *The Promise of Mediation,* developed a transformative mediation model, which aims not only to resolve conflicts but also to develop relationships between parties through empathy and recognition.[17] This approach differs from evaluative mediation, which is more focused on formal legal resolution, offering space for parties to reach voluntary agreements. However, Western models often overlook the influence of religion and culture, which are central elements in Islamic societies, such as Indonesia. There is, therefore, an urgent need for integration with Sharia principles, as a fundamental of Islamic Law, to adapt this approach to local values.

In Islamic law, mediation has a strong theological foundation rooted in the Qur'an, Hadith, and *fiqh* literature. One key verse is Surah An-Nisa (4:35),

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[17] Bush and Folger, *The Promise of Mediation.*

which states: "And if you fear a breach between them, appoint an arbiter from his family and an arbiter from her family."[18]

This verse forms the basis of *tahkim*, a formal mediation process involving arbitrators from both sides to seek a peaceful solution before divorce is finalized. Classical scholars, such as Imam Al-Ghazali in *Al-Mustasfa,* emphasize that *tahkim* aims to protect the welfare of the family, which is an integral part of *maqasid al-syari'ah*—the objectives of Islamic law to achieve the good life for the community.

*Maqasid al-syari'ah*, according to Satria Effendi M. Zein, reflects the objectives of Allah and His Messenger in formulating the law, which can be traced through the verses of the Qur'an and Hadith as logical reasons oriented towards the common good.[19] Abdul Wahab Khallaf adds that *maqasid al-syari'ah* serves as a tool to resolve conflict and to establish laws for cases not explicitly addressed in primary texts.[20]

Islamic law, as explained by Adiwarman A. Karim, was revealed for the benefit of humanity,[21] with commands or prohibitions that reflect benefits or harm to life.[22] One manifestation of this benefit is the command of *islah* (reconciliation), supported by Surah Al-Hujurat (49:9): "And if two groups of believers fight, then make peace between them... then make peace between them with justice".[23] Sayyid Sabiq, in *Fikih Sunnah,* emphasizes that reconciliation is an exhortation based on the Qur'an, Sunnah, and *ijma'*, aimed at preventing social harm resulting from divorce.[24]

The concepts of advice (*nushuh*) and consultation (*musyawarah*) also form the pillars of mediation in Islam. Counseling is emphasized in the Hadith narrated by Tirmidzi, where the Prophet Muhammad encouraged the resolution of disputes through wise dialogue. Consultation, as in Surah Asy-Syura (42:38), reflects the democratic values of Islam that promote mutual agreement.[25] This approach demonstrates that mediation in Islam is not merely a technical procedure but also has a spiritual dimension aimed at preserving family unity as part of sharia.

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[18] Ministry of Religion, *Al-Qur'an dan tafsirnya*.

[19] Satria Effendi M. Zein, *Ushul fiqh* (Kencana, 2005).

[20] Abdul Wahab Khallaf, *Ilmu usul fikih*, Cet.5 (Rineka Cipta, 2005).

[21] Adiwarman Karim, *Ekonomi mikro Islami*, Edisi Keempat (PT Raja Grafindo Persada, 2012).

[22] Mohammad Hashim Kamali, *Prinsip dan teori-teori hukum Islam: (usul al-fiqh)* (Pustaka Pelajar, 1996).

[23] Ministry of Religion, *Al-Qur'an dan tafsirnya*.

[24] Sayyid Sabiq, *Fiqih Sunnah* (Pena Pundi Aksara, 2006).

[25] Abdul Hamid Ismail al-Anshari, *al-Syu>ra> wa Atsaruha> fi al-Dimuqra>t}iyyah: Dira>sah Muqa>ranah*, (Beirut: Maktabah al-Misriyah, s.a.)

family.'[26] This verse forms the basis of *tahkim*, a formal mediation process involving arbitrators from both sides to seek a peaceful solution before divorce is finalized. The juridical authority and role of these arbitrators (*hakam*) in resolving marital disputes (*syiqaq*) has been extensively analyzed in classical exegesis, including by Fakhruddin al-Razi who emphasizes their function as mediators empowered to investigate and recommend solutions.[27]

Furthermore, family mediation shows rich variations based on cultural contexts in the Asian model. In Japan, mediators emphasize social harmony (*wa*), where the mediation process is more oriented toward restoring relationships than merely resolving legal issues.[28] This approach is similar to the Islamic value of *islah*, although without a religious basis.[29] In China, the role of the local community, such as village elders, is central to mediation, reflecting Confucian values that uphold hierarchy and collectivism.[30] Meanwhile, Singapore has adopted a hybrid approach in family courts, combining Western elements with Asian values, such as respect for the family.[31] These three models offer valuable insights for the Islamic context, particularly in terms of integrating cultural values with formal mediation processes.

Based on the description above, the three mediation models have different paradigms in each model. These differences arise because the perspectives in viewing the parties and objects differ between models in each case. Cultural influences play an important role in determining the perspective of each model in carrying out the mediation process. This condition means that mediation, as an alternative dispute resolution concept, has different approaches towards reaching an agreement between the parties, as can be seen in the following table:

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[26] Jarnawi Arni, Syamsiah Nasution, Dahlia Yuliana Ma'ali, Jamaluddin Jamaluddin, and Arip Firdaus Chandra, "Reframing Nusyuz in Islamic Family Law: A Maqasid-Based Reading of Ibn Asyur on Quran 4:34 and 4:128," *Jurnal Ilmiah Al-Mu'ashirah* 22, no. 2 (2025): 240, DOI: 10.22373/jim.v22i2.30527.

[27] Saifullah Ishak, Ahmed Nidal, Ali Abubakar, and Fadi Nusir, "The Legal Status and Juridical Authority of the Hakam in the Islamic Law: An Analysis of Syiqaq Cases in the Exegesis of Fakhruddin al-Razi," *El-Usrah: Jurnal Hukum Keluarga* 8, no. 1 (2025): 262

[28] John Owen Haley, *The Spirit of Japanese Law*, Paperback ed, The Spirit of the Laws (Univ. of Georgia Press, 2006).

[29] R. A. Solihin and I. Fauzi, "Community, Court, and Conciliation: Designing a Hybrid Mediation Model for Islamic Divorce Adjudication," *Asy-Syir'ah: Jurnal Ilmu Syari'ah dan Hukum* 59, no. 2 (2025): 214, DOI: 10.14421/ajish.v59i2.1619.

[30] Margaret Y. K. Woo and Mary Elizabeth Gallagher, *Chinese Justice: Civil Dispute Resolution in Contemporary China* (Cambridge University Press, 2011).

[31] Dorcas Quek Anderson et al., "To Negotiate, Mediate or Litigate? Examining the Durability of Divorce Outcomes in the Singapore Family Courts," *Family Court Review* 60, no. 3 (2022): 434–57, https://doi.org/10.1111/fcre.12661.

Table 1. Paradigm and resolution model on three models of mediation

| Indicator | Western | Asian | Islamic |
|---|---|---|---|
| **Paradigm** | Non – Directive (Each Party's Interest) | Social Harmony | Based on the religion belief |
| **Resolution Model** | Transformative Model | Transformative Model | Evaluative Model |

These three mediation models influence mediation practices in Religious Courts in Indonesia. In Indonesia, such mediation has a long history influenced by Islamic law and local culture. Since the Dutch colonial era, religious courts have applied the principle of *musyawarah* (deliberation) to resolve family disputes, later reinforced by the issuance of PERMA No. 1 of 2016 on Mediation in Courts. Religious judges play a dual role as law enforcers and mediators, often involving third parties, such as counselors or family members, to facilitate reconciliation.[32] This process reflects *tahkim* as stipulated in Surah An-Nisa (4:35). The values of mutual cooperation and deliberation, which are part of Javanese cultural heritage and other traditional customs, enrich mediation practices. A study by Nurlaelawati shows that mediation in Religious Courts has successfully reduced the rate of impulsive divorces, with over 40% of cases reconciled in 2020, according to data from the Ministry of Religion.[33] However, its effectiveness varies depending on the mediators' skills and the local context.

The practices in the three models make the proposed theoretical framework an adaptation of Bush and Folger's transformative mediation model with a sharia and culture-based approach.[34] This model includes three main elements: (1) transformation of relationships through empathy, aligning with *islah* in Islam; (2) utilization of the values of consultation and mutual cooperation to strengthen the mediation process; and (3) orientation toward the welfare of the community as the primary goal, in accordance with *maqasid al-syari'ah*.[35] This approach can be tested through case studies in Religious Courts, focusing on the role of mediators in creating fair and sustainable solutions, in line with the commands of the Qur'an and Sunnah.

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[32] Fikri, F., Bedong, M. A. R., Salim, M., Muthalib, S. A., & Abubakar, A. (2023). Transformation of Maqāṣid Shari 'āh in Divorce Mediation in Religious Courts: Revitalization of the Bugis-Mandar Customs, Indonesia. *Samarah: Jurnal Hukum Keluarga dan Hukum Islam*, *7*(1), 431-454.

[33] Euis Nurlaelawati, *Modernization, Tradition and Identity: The Kompilasi Hukum Islam and Legal Practice in the Indonesian Religious Courts*, ICAS Publications Series 4 (Amsterdam University Press, 2010).

[34] Bush and Folger, *The Promise of Mediation*.

[35] Khallaf, *Ilmu usul fikih*.

## Comparison of Divorce Mediation Practices in Indonesia with Other Asian Countries

Divorce mediation in Indonesian Religious Courts reflects Asian cultural characteristics that emphasize family harmony, collectivism, and religious values, particularly Islam, as regulated in PERMA No. 1/2016. This approach differs from Western mediation models that emphasize neutrality and individual autonomy, such as the Harvard model.[36] To understand the uniqueness of the Indonesian approach, a comparison with other Asian countries, such as Singapore, Malaysia, and China, can provide insights into how Asian values influence divorce mediation, as well as the challenges faced by women in the process.[37]

In Indonesia, mediation in Religious Courts integrates Islamic principles, such as *nasehat* (religious-based advice) and *islah* (reconciliation), which refer to the Qur'an, particularly Surah An-Nisa 4:35, which encourages the resolution of family conflicts through arbitration. Mediators, often judges, play an active role in providing moral advice to encourage reconciliation, reflecting Asian values of family harmony. However, as found in Maryam's (2024) research, this approach often replicates patriarchal narratives, where pressure to maintain marriage can be detrimental to women, especially in cases of domestic violence (DV).[38] [39] The success rate of mediation in Indonesia is also low – below 40%[40] – due to a focus on formal agreements rather than empowerment processes.

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[36] Fisher et al., *Getting to Yes.*

[37] Lee and Teh's work emphasizes that Asian mediation is shaped by cultural variables—high power distance, interpersonal relationships, respect for authority—that influence mediator roles, expectations, and process dynamics. Studying these four countries allows the research to capture a spectrum of these cultural dynamics, providing a broader empirical foundation for assessing how religious and cultural norms intersect with ADR practices. These countries reflect the diverse ways Asian cultural values influence mediation practices and have actively developed mediation systems that reflect this Asian perspective—whether through formal legal frameworks (e.g., Singapore's courts, China's community mediation, Malaysia's Syariah tribunals, or Indonesia's Religious Courts). Their inclusion therefore grounds the study in contexts where mediation is both socially embedded and institutionally significant. Joel Lee and Hwee Hwee Teh, *An Asian Perspective on Mediation*, Monograph Series (Academy Publ. [u.a.], 2009).

[38] Maryam, "The Dynamics of Relational Conflict in Divorce Mediation in Religious Courts and Its Various Issues: A Feminist Legal Study."

[39] Victims of domestic and family violence are more likely to file for divorce in Religious Courts than to report the abuse to the police. Mediation should therefore not be mandatory for such victims seeking divorce under state family law, particularly as many have already undergone community-level mediation with limited benefit. Moreover, mediation processes pose well-documented risks to victims in situations involving domestic violence. Balawyn Jones and Amira Aftab, "Inside Indonesia's Religious Courts: An Argument for Domestic and Family Violence Screening and Exemption from Compulsory Mediation," Oxford Journal of Law and Religion, 2023, 12, 217-231.

[40] Directorate General of Religious Courts Supreme Court, *Annual Report of Religious Courts 2023* (Jakarta, 2024).

In contrast, in Singapore, divorce mediation in Family Justice Courts adopts a more structured approach while still reflecting Asian values of harmony and collectivism. Mediators, regulated by the Mediation Act 2017, in Singapore often involve family or community members to support resolution, similar to the practice of deliberation in Indonesia. However, Singapore has more rigorous mediator training, with an emphasis on gender sensitivity and domestic-violence screening, which helps reduce the risk of patriarchal bias.[41] The success rate of mediation in Singapore is higher, reaching around 70% for family cases.[42] This approach demonstrates that Asian values of harmony can be effective when supported by mediator training that is sensitive to gender dynamics, an aspect still lacking in Indonesia.

In Malaysia, which also has a sharia court system, mediation (*sulh*) in divorce is heavily influenced by Islamic law in the same way as Indonesia. *Sulh* mediators use a *sharia-based a*pproach to encourage reconciliation, referring to principles such as *maslahah* (public interest) and *maqasid syariah* (sharia objectives). However, Malaysia has integrated modern elements, such as mediator training, to address domestic violence and gender inequality, which has improved the effectiveness of mediation.[43]

According to Rahma, in Malaysia, mediation is effective largely due to cultural and religious legitimacy. For Malaysian Muslims, *sulh* is seen not only as a legal process but also as a moral-religious duty to uphold *islah* (reconciliation) under Sharia, making parties more inclined to reconcile.[44] Nevertheless, research shows that women in Malaysia still face social pressure to maintain their marriages, echoing the challenges in Indonesia.[45] In China, divorce mediation reflects Confucian values that emphasize social harmony and family responsibility. Mediators in China often act as moral advisors, similar to Indonesia, but the process is more informal and often conducted outside of court by community committees. This approach allows for flexibility but often fails to protect women from power imbalances, especially in an economic context.[46] With an unbalanced and patronizing approach, mediation in Chinese courts has a low success rate in resolving disputes, reaching only 31% in 2021. Unlike Indonesia,

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[41] Joel Lee and Hwee Hwee Teh, *An Asian Perspective on Mediation.*

[42] Singapore Family Justice Courts, *Annual Report 2022* (Singapore Supreme Court, 2022).

[43] Novita et al., "Family Conflict Disclosure on Social Media in Islamic Law."

[44] Rahma Khofifah Khoirun Umah, Nur Fadhilah, dan M. Darin Arif Mu'allifin, "Islamic Family Mediation in Southeast Asia: An Analysis of Cultural Legitimacy, Legal Structure, and Contemporary Dynamics in Indonesia and Malaysia," *Al-Mawarid: Jurnal Syariah dan Hukum*, Vol.7 (2) August 2025, 281-300, https://doi.org/10.20885/mawarid.vol7.iss2.art5.

[45] Nursyahbani Katjasungkana, "The Indonesian Family as a Contested Site of Women's Rights," *International Institute for Asian Studies*, 2014.

[46] James A. Wall and Michael Blum, "Community Mediation in the People's Republic of China," *Journal of Conflict Resolution* 35, no. 1 (1991): 3–20, https://doi.org/10.1177/0022002791035001001.

China does not have formal regulations, which can lead to inconsistencies in mediation practices.

This comparison shows that Asian characteristics, such as family harmony and collectivism, are at the core of divorce mediation in Indonesia, Singapore, Malaysia, and China. However, Indonesia lags behind in terms of mediator training and protection for women, as highlighted in a feminist legal perspective.[47] Singapore and Malaysia offer valuable lessons on the importance of gender-sensitive training and domestic-violence screening to balance Asian values with gender justice. To enhance the effectiveness of mediation in Indonesia, reforms are needed to integrate Islamic principles and Asian culture with a more women-centered approach, such as training mediators to recognize gender bias and domestic violence screening mechanisms prior to mediation.[48] [49] Thus, mediation in Religious Courts can be more aligned with the goals *of self-determination* and women's *empowerment* without sacrificing Asian cultural values.

Due to these different characteristics, each Asian country has technical features reflecting the use of Asian characteristics that prioritize family ties in general. Details of these alternative variations are illustrated in the following table:

Table 2. Comparison of Divorce Mediation Practices in Indonesia with Other Asian Countries[50]

| Indicator | Indonesia | Malaysia | Singapore | China |
|---|---|---|---|---|
| **Legal Basis** | Law (PERMA 1/2016) | Shariahs Principle, not the Specific Law | Law (Mediation Act 2017) | Jurisprudence, not the Specific Law |
| **Asian Values Enforcement Mechanisms** | Patriarchal Perspectives which Pressures Women | Balance perspective on gender bias | Involving family members, but with the balance perspective | Confucian values by outside the court which pressures women |

[47] Maryam, "Dinamika Relasi Konflik pada Mediasi Perceraian di Pengadilan Agama di Jakarta Selatan dan Berbagai Permasalahannya: Studi Hukum Feminis Terhadap Realitas dan Keadilan Perempuan."

[48] Tirtawening T and Rini Maryam, "The Urgency of Applying Domestic Violence Screening Mechanism for Divorce Mediation in Religious Court," *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada* 30, no. 1 (2018): 138, https://doi.org/10.22146/jmh.28713.

[49] Balawyn Jones and Amira Aftab, "Inside Indonesia's Religious Courts: An Argument for Domestic and Family Violence Screening and Exemption from Compulsory Mediation," *Oxford Journal of Law and Religion* 12, no. 2 (2023): 217, https://doi.org/10.1093/ojlr/rwad015.

[50] Maryam, "Dinamika Relasi Konflik pada Mediasi Perceraian di Pengadilan Agama di Jakarta Selatan dan Berbagai Permasalahannya: Studi Hukum Feminis Terhadap Realitas dan Keadilan Perempuan."

| Success Rate | Low (30%) | High (64%) | High (70%) | Low (31%) |
|---|---|---|---|---|

## The Differences Between Asian and Western Mediation

According to Sean Izor, there are differences in characteristics between Western and Eastern cultures.[51] The approach to dispute resolution in the West is called the interest-based model, which can be broken down into three core themes: individual excellence, direct and open communication, and a constructive approach to maintaining beneficial/mutually beneficial relationships.[52][53] In Asia, mediation is based on four desires: the desire to avoid conflict, the desire to maintain hierarchical structures, the desire to maintain relationships, and the desire to save face. The general characteristics of Asians in dispute resolution can be grouped into three core themes: Confucianism, collectivism, and the prevalence of face issues.[54] The following is a description of the differences between Asian and Western mediation styles.

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[51] Sean Izor, "Selling Mediation in the East, Is There an Asia Way?" *Asian Journal on Mediation*, 2013, 1-13 in Lee and Teh, *An Asian Perspective on Mediation*. **In Western cultures**, dispute resolution is typically interest-based and emphasizes: individualism and autonomy – individuals advocate for their own rights and interests, direct communication – open, explicit discussion of disagreements is encouraged, neutral facilitation – mediators remain impartial and focus on helping parties reach mutually beneficial ("win–win") solutions. In contrast, **Eastern cultures** tend to prioritize collectivism – decisions consider family and community impact, indirect communication and face-saving – maintaining dignity and avoiding public confrontation are important, and harmony-oriented resolution – mediators may take a more active or advisory role to restore social balance. Izor's distinction highlights that mediation practices are culturally embedded, and Western neutrality-based models may not fully align with harmony-centered Eastern approaches.

[52] Boulle, Laurence. *Mediation: Principles Process Practice*. Australia: Lexis Nexis  Butter Worths, 2005.

[53] Moore, Christopher W. *The Mediation Process Practical Strategies for Resolving Conflict*. Ed.3. San Fransisco: Jossey Bass A WileyImprint, 2003.

[54]According to Lee and The, **Confucianism** emphasizes hierarchy, moral cultivation, respect for authority, and social harmony. As a result, mediators in many Asian contexts may adopt a more directive or advisory role, consistent with expectations that authority figures provide guidance rather than remain strictly neutral facilitators. **Collectivism** as a defining feature of Asian societies, where maintaining group cohesion particularly family and community harmony often takes precedence over individual autonomy. Dispute resolution is therefore oriented toward restoring relationships rather than merely settling legal claims. **The prevalence of face issues** as he need to preserve dignity, reputation, and social standing. Mediation becomes a preferred mechanism because it allows parties to resolve disputes privately, avoid public embarrassment, and maintain social equilibrium. However, concern for face may also lead to indirect communication styles and reluctance to express grievances openly. Lee and Teh, *An Asian Perspective on Mediation*.

Table 3. Differences in Asian and Western Mediation Styles[55]

| Asian Mediation Style | Western Mediation Style |
|---|---|
| Avoiding conflict/disagreement | Interest-based: Individual advantage, direct communication, and relationship-preserving approach |
| Tendency to maintain hierarchical structures, requiring an authoritative mediator. However, many Asians also prefer clear and established processes through litigation. | Focus on expectations, autonomy, and personal desires. |
| Desire to maintain relationships. Although similar to the West, the motivation to maintain relationships differs, not only for future benefits but also to prevent relationships from deteriorating or breaking down. | Conflict resolution is seen as a process of individual satisfaction to maximize personal interests. |
| A tendency to preserve "face" (not being humiliated in front of others). | Communication is conducted directly and openly. |
| | The goal is to maintain the relationship if it provides benefits. |

## Technical Issues Regarding Divorce Mediation

### 1.  Specifics of Divorce Mediation

Maryam study identified several issues in divorce mediation.[56] **First,** the arrangements and procedures for divorce mediation do not accommodate the characteristics of divorce cases, which are different from other civil cases. Divorce cases tend to be emotionally charged due to the intimate personal relationship between husband and wife. Additionally, there is an imbalance of power between husbands and wives, a lack of knowledge and gender perspective among mediators, and the vulnerability of women as victims of domestic violence (DV), which often leads to divorce. Conflicts in marriage require harmonious resolution because divorce changes the relationship between husband and wife into a parental relationship after divorce if the couple has children. Divorce has implications for the relationship between parents and children regarding the best interests of the child. The following is an explanation of the differences in the characteristics of mediation, the outcomes of mediation in general, and the characteristics of divorce cases (Table 4).

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[55] Joel Lee and Hwee Hwee T, *An Asian Perspective on Mediation.*
[56] Maryam, "Dinamika Relasi Konflik pada Mediasi Perceraian di Pengadilan Agama di Jakarta Selatan dan Berbagai Permasalahannya: Studi Hukum Feminis Terhadap Realitas dan Keadilan Perempuan."

Table 4. Specificity of Mediation in Divorce Cases[57]

| Characteristics of Mediation | Mediation Outputs General Cases | Mediation Outputs Divorce Cases | Characteristics of Divorce Cases |
|---|---|---|---|
| a. **Closed (attended by mediator and parties)** <br> b. **Confidential** <br> c. **No record of mediation process** <br> d. **No precedent** | Any agreement can result in peace as long as it is agreed upon by the parties and does not violate the law and provisions of the regulations | a. The peace referred to the parties to each other <br> b. The agreement is in the form of reconciliation <br> c. Making divorce more difficult <br> d. Prone to unequal power relations and domestic violence <br> e. Vulnerable to mediator bias <br> f. The marital relationship transforms into a parent-child relationship <br> g. Objective: to maintain good post-divorce relations in the best interests of the child | a. Vulnerable to domestic violence, *control*, *power* <br> b. Emotionally charged <br> c. "Elephant in the room" <br> d. Conflict between "his" and 'her' perspectives <br> e. Differences in perspective between *"the Leaver" and "the Left"* <br> f. Based on *issues*, *needs*, and *interests* |

**Second**, divorce mediation practices generally pay little attention to relationship dynamics. The mediation process often overlooks the dynamics between the parties, and between the parties and the mediator, regarding communication aspects, decision-making, and opportunities for women to be heard and have a voice throughout the mediation process. Divorce mediation should provide a space for women to voice their experiences during marriage, express feelings of injustice, and seek equitable solutions. Conflicts in marital relationships are often the metaphorical "elephant in the room"—an issue so significant and obvious, yet left unspoken or ignored. Tension that continues to escalate, due to broken communication, unmet expectations, or unhealed wounds, creates an emotional distance that is difficult to bridge. When these

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[57] Maryam, "Dinamika Relasi Konflik pada Mediasi Perceraian di Pengadilan Agama di Jakarta Selatan dan Berbagai Permasalahannya: Studi Hukum Feminis Terhadap Realitas dan Keadilan Perempuan."

conflicts are not addressed, they grow into a thick wall that separates the couple, making dialogue feel impossible (Table 4).

This is where the role of a mediator, as a neutral third party, in divorce mediation becomes crucial. Mediation should provide a safe space in which to express difficult feelings, untangle conflicts, and in some cases pave the way for reconciliation. Offering more scope than merely discussing divorce, mediation helps couples recognize and, if possible, forge ways to continue working together as partners and as parents, following divorce, in a healthier way.

***Third****,* there is a dilemma in the implementation of divorce mediation, wherein the success rate remains low (40% in 2023), compared to the success rate of mediation in Australia and the United States, which reaches 95%. However, this data cannot be interpreted as a failure of mediation in Indonesia, given the cultural differences and the application of mediation in the West and Asia. Nationally, based on data from the Supreme Court, the success rate of mediation in Religious Courts has seen a significant increase, rising from 28.33% in 2022 to 39.85% in 2023. This ratio is even higher than the national target of 25%.[58]

This study agreed with result of Maryam study that found other factors contributing to the low success rate of divorce mediation. These factors include the distinctive characteristics of divorce cases compared to other civil cases (see point one) and the parameters used to measure success, which focus on the existence of an agreement *(simple effectiveness)* rather than the success of the process in empowering the parties or their satisfaction (*complex effectiveness*). The success of mediation is often measured by the concept of peace "referral/no divorce" and sometimes neglects to discuss child custody and women's rights after divorce. Success measures based solely on agreement are considered irrelevant and a cause of the ineffectiveness of mediation. This study aims to change the perspective on the concept of peace in divorce mediation. The success of mediation is not only oriented toward outcomes but also the empowering mediation process. It also integrates peace as a reconciliation, as well as a discussion of post-divorce relationships and obligations.[59]

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[58] Amran Suadi, Supreme Court Justice, Chairman of the Religious Chamber from 2017 to 2024, written input to the author, Jakarta, October 18, 2024. According to Amran, the indicators of successful mediation are in line with the predetermined national targets, and it is impossible for mediation to achieve a 100% (one hundred per cent) success rate.

[59] Rini Maryam and Sulistyowati Irianto, "Exploring Efficacy: A Study of Simple and Complex Approaches to Divorce Mediation in Indonesian Religious Courts," *Lentera Hukum* 10, no. 3 (2024): 331, https://doi.org/10.19184/ejlh.v10i3.43726.

## 2. Concept of Family Mediation: Mediating Relationships vs. Mediating Post- Relationship

PERMA mediation has provided a legal framework for mediation procedures, but these provisions are insufficient to ensure the effectiveness of mediation in general and to address the specific differences between divorce mediation and civil mediation. Additionally, the concept of divorce mediation in Indonesia is not the same as the divorce mediation model understood in the West, which is a marriage mediation model aimed at reconciling the parties (Figure 1).[60]

Figure 1. Differences between Marriage Mediation and Divorce Mediation
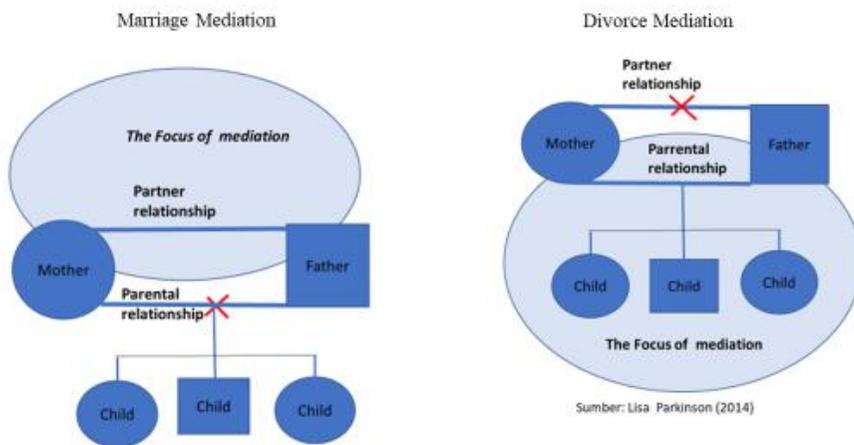


The provisions of the Marriage Law limit mediation in Religious Courts. Divorce must be conducted in court, the mediator reconciles the parties to prevent divorce, and divorce is made difficult in accordance with the principle of efforts to prevent it. Based on this, the mediator strives to reconcile the parties and persuade them against divorcing, enabling them to resume a harmonious life. If the mediated couple agrees to divorce, and if they have children, the mediator may continue by mediating post-divorce rights, such as custody, visitation, child support or custody rights. From a feminist perspective, marriage and divorce are seen as expressions of women's freedom and part of the constitutional right to equality among citizens. Hence, the mindset of making divorce difficult is inappropriate. Issues in divorce are not standalone problems but involve interdisciplinary and intersecting social factors. The PERMA No.1/2016 concept, which prioritizes mediation to restore marital relationships, should be understood

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[60] Lisa Parkinson, *Family Mediation 3rd Edition*, (Lincoln: Family Law 3rd Edition. 2014).

as an integral part of child-rights mediation. The court's role in maintaining family integrity does not end with the marriage but extends to the family after divorce. In this context, the court has made breakthroughs that strengthen family integrity.

### 3. The Role of the Mediator in Divorce Mediation

In this sub-paragraph, analysis role of the mediator based on three factors such as mediator interaction, mediator style, and mediator values conflict.

#### a. Mediator Interaction

Two main interactions feature in divorce mediation: namely the mediator and the parties (husband and wife) themselves. The results from observations of nine mediated cases show that the mediator's communication pattern with the parties still follows a linear approach. The mediator becomes the central subject playing a dominant role in controlling the process, while the parties are positioned as passive. From the beginning of the session, the mediator explains the rules. The mediator asks questions of the parties alternately – if one party speaks, the other listens – and sets boundaries regarding when, who, and what should be discussed. When the parties discuss topics outside the mediator's questions, the mediator interrupts or even stops the conversation.

However, in reality, the mediation process is very dynamic, so the agreed mediation rules do not work as they should. The communication that occurs between the husband and wife can be mapped into the mediator's interaction with them (either individually or together) and the communication between the parties. In the marriage mediation process, the parties feel *stuck* with their partner and sometimes no longer communicate with each other, so the mediator's role is necessary to bridge the communication between them.

#### b. Mediator Style

This study found a tendency for mediators to use an evaluative style (evaluating, interpreting, and focusing more on the problem). This can be understood given the mediators' previous work backgrounds as court employees, court clerks, and judges. One mediator was more flexible toward a facilitative style (focusing on relationships, not judging the parties, always using caucuses, helping the parties to understand each other, and providing a sense of comfort). During the observation, it was seen that the facilitative style made the parties who were unfamiliar with

the Religious Court, or were there for the first time, feel more comfortable and the approach alleviated their fears/concerns. Some parties who were already familiar with mediation/court, accompanied by lawyers, were highly educated and understood the purpose of the Religious Court. They tended to be more comfortable with an evaluative mediation style that was straight to the point, according to their needs, so that they could divorce quickly.

This study found that in mediation at the Religious Court, mediators are often positioned as the elder party, perceived as knowledgeable and wise, and possessing the authority to resolve the couple's issues.[61] [62] This is evident in the limited and one-sided nature of interactions between the parties and the mediator. The mediator's style also involves lecturing the parties on their rights and obligations as good husbands and wives.[63] This aligns with Joel Lee's observation that Asian mediation prioritizes harmony and the maintaining of relationships.

c.  **Mediator Value Conflicts**

Mediators use a framework based on Islamic values in accordance with the Quran and Sunnah, which are already accommodated in the Marriage Law and the Compilation of Islamic Law in Religious Courts. However, inevitably, during mediation, the parties have their own stories, known as personal narratives, representing what they each believe, feel, and consider to be their experience. When, during the mediation process, the personal narratives presented by the parties differ from those believed by the mediator, the mediator is likely to disregard or even negate their personal narratives. From the above discussion, it can be concluded that the court, including mediation within it, acts as an agent that legitimizes the dominant narrative and excludes the couple's individual narratives.

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[61] See Rini Maryam and Sulistyowati Irianto, "Exploring Efficacy: A Study of Simple and Complex Approaches to Divorce Mediation in Indonesian Religious Courts" and Maryam, "Dinamika Relasi Konflik pada Mediasi Perceraian di Pengadilan Agama di Jakarta Selatan dan Berbagai Permasalahannya: Studi Hukum Feminis Terhadap Realitas dan Keadilan Perempuan."

[62] The protection of vulnerable groups, particularly victims of domestic violence, has not yet been given adequate attention within the family mediation framework. There is a strong need to implement screening mechanisms and exclusion policies in domestic violence cases to ensure that mediation does not place the vulnerable party at further risk. Balawyn Jones and Amira Aftab, 2024 in Rahma Khofifah Khoirun Umah, Nur Fadhilah, dan M. Darin Arif Mu'allifin, "Islamic Family Mediation in Southeast Asia: An Analysis of Cultural Legitimacy, Legal Structure, and Contemporary Dynamics in Indonesia and Malaysia."

[63] *Ibid.*

**Shifting Role of The Mediator at Religion Courts in Indonesia**

Research on divorce mediation in Indonesian Religious Courts reveals a significant shift in the role of mediators from a traditional function to a more adaptive and contextual role. Traditionally, mediators, especially religious judges, act as neutral arbitrators who facilitate dialogue between couples based on the principle of *tahkim,* as stipulated in Surah An-Nisa (4:35). However, findings indicate that this role has evolved into a combination of facilitator and counselor, influenced by social, legal, and local cultural dynamics. Data from the Ministry of Religion (2020) shows that more than 60% of mediation cases in Religious Courts involve active intervention by mediators, both judges and non-judges, to provide advice, which goes beyond the conventional function of neutrality.

This change is also reflected in mediator training. Since the enactment of Perma No. 1 of 2016, judges and mediators are required to undergo certification that includes counseling skills and an understanding of local culture, such as the values of consultation and mutual cooperation. A case study at the Yogyakarta Religious Court[64] shows that mediators now often take an active role in recommending solutions, such as the division of marital property or child-custody schedules, which were previously left entirely to the disputing parties. This shift is driven by pressure to increase reconciliation rates, which reached 42% in 2021, according to official reports.

Additionally, the role of mediators has been influenced by technology. During the COVID-19 pandemic, virtual mediation became the norm, transforming mediators from physical figures present in courtrooms into online facilitators managing remote communication. Research by Hartong found that mediators must now possess digital skills, such as the ability to use Zoom platforms, to maintain the effectiveness of the process, having previously relied on face-to-face interaction.[65] This shift has created new challenges, including difficulties in reading emotional expressions and building trust, especially in areas with limited internnet access.

The shift in the role of mediators in the context of Islam and Indonesia can be analyzed through the lens of *maqasid al-syari'ah* Abu Ishaq al Syatibi, which emphasizes the welfare of the people as the primary objective of law.[66] Traditionally, mediators in *tahkim* act as neutral parties adhering to the principle of non-directive facilitation, as proposed by Bush and Folger in their transformative mediation model.[67] However, the active intervention of religious

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[64] Nurlaelawati, *Modernization, Tradition and Identity.*

[65] Sigrid Hartong, "Between Assessments, Digital Technologies and Big Data: The Growing Influence of 'Hidden' Data Mediators in Education," *European Educational Research Journal* 15, no. 5 (2016): 523–36, https://doi.org/10.1177/1474904116648966.

[66] Abu Ishak al-Syatibi. *al-Muwa>faqa>t.* Juz 2. Kairo: Darul Ibnu 'Affan, s.a.

[67] Bush and Folger, *The Promise of Mediation.*

judges demonstrates adaptation to contextual needs, whereby the welfare of the family as one of the emergencies of *hifz al-nasl* (protection of offspring) takes priority. Abdul Wahab Khallaf supports this approach by stating that the *maqasid al-syari'ah* (objectives of Islamic law) allow for legal adaptation to cases not explicitly addressed in the text, including a more dynamic role for mediators.[68]

The role of counselors that emerges in mediation practice reflects the influence of Islamic values such as *nasihat* (advice) and *islah* (reconciliation), which are recommended in Surah Al-Hujurat (49:9) and the Hadith narrated by Tirmidzi. Sayyid Sabiq asserts that *islah* aims to prevent social harm, aligning with the modern mediator's function of recommending practical solutions, such as custody arrangements or alimony.[69]

However, this shift raises ethical debates. According to Kamali, excessive intervention may contradict Sharia principles if it disregards the will of the disputing parties, which should be the core of mediation.[70] Therefore, balancing guidance and neutrality is key, requiring more straightforward guidelines in mediator training.

The influence of local culture, such as deliberation and mutual cooperation, also accelerates this shift. In Javanese tradition, for example, mediators are often seen as respected authority figures, similar to village elders in Chinese mediation.[71] This differs from the Western approach which emphasizes individualism, as described by Bush and Folger.[72] A study by Nurlaelawati shows that mediators in Indonesia often utilize these collective values to encourage reconciliation, especially in cases involving social pressure from extended families.[73] This approach is effective in rural contexts but less optimal in urban areas, where individualism is increasingly dominant.

The adoption of technology in virtual mediation adds a new dimension to the role of mediators. Mediators must now master digital communication techniques to maintain trust, which is an important element in Islamic arbitration. However, challenges such as internet access gaps in remote areas can weaken effectiveness, highlighting the need for additional training and better infrastructure. This shift also raises questions about the legitimacy of sharia, as face-to-face interaction is considered more appropriate to traditional practices.[74]

Potential solutions include the development of Sharia guidelines for virtual mediation, which are not yet comprehensively available. Compared to

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[68] Khallaf, *Ilmu usul fikih*.

[69] Sayyid Sabiq, *Fiqih Sunnah*.

[70] Kamali, *Prinsip dan teori-teori hukum Islam*.

[71] Woo and Gallagher, *Chinese Justice*.

[72] Bush and Folger, *The Promise of Mediation*.

[73] Nurlaelawati, *Modernization, Tradition and Identity*.

[74] Sayyid Sabiq, *Fiqih Sunnah*.

practices in other Asian countries, the shifting role of mediators in Indonesia is similar to that in Japan, where mediators emphasize social harmony,[75] and China, where the community plays a significant role.[76] However, Singapore's hybrid approach, which combines Western elements with Asian values,[77] offers valuable lessons. Indonesia can learn from Singapore to integrate technology with Sharia values, although Indonesia's strong cultural and religious context requires further adjustments, such as an emphasis on *islah* and *musyawarah*.

This shift also reflects a response to legal and social pressures. PERMA No. 1 of 2016 mandates mediation before divorce is finalized, encouraging judges to take a more proactive role. However, its effectiveness varies. Data from the Ministry of Religious Affairs (2021) shows that the success rate of mediation is only 42%, indicating the need to evaluate the role of mediators compare to data Supreme Court Report success rate around 40%.[78] Challenges, such as inconsistent training, resistance from disputing parties, and technological limitations are hindering factors. Therefore, developing a training curriculum that includes counseling skills, digital literacy, and an understanding of *maqasid al-syari'ah* is an important step.

Theoretically, this shift can be analyzed through the adaptation of Bush and Folger's transformative model, enhanced with a sharia-based approach.[79] This model emphasizes relationship transformation through empathy, which aligns with *islah*, as well as the utilization of local cultural values to achieve *maslahah*.[80] However, its implementation requires further research to ensure alignment with Sharia principles and practical needs, including empirical testing of the effectiveness of virtual mediation and active intervention.

The shift in the role of mediators from neutral arbitrators to facilitators, counselors, and technology users reflects adaptation to the social and legal context in Indonesia. Although driven by *maqasid al-syari'ah* and cultural values, challenges such as intervention ethics, technological limitations, and consistency in training need to be addressed. Future research is recommended to integrate Islamic

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[75] Haley, *The Spirit of Japanese Law*.

[76] Woo and Gallagher, *Chinese Justice*.

[77] Lee and Teh, *An Asian Perspective on Mediation*.

[78] Differences in mediation success rate data may arise from variations in the institutions that issue the data and the methods used to measure it. The Supreme Court calculates mediation success rates based on tiered reports submitted by first-instance Religious Courts. According to Amran, the indicators of mediation success are aligned with nationally determined targets, and realistically, it is not possible for mediation success rates to reach 100 percent. Amran Suadi, Supreme Court Justice, Head of the Religious Chamber (2017–2024), written submission to the author, Jakarta, 18 October 2024.

[79] Bush and Folger, *The Promise of Mediation*.

[80] Zein, *Ushul fiqh*.

approaches with Asian practices to optimize the role of mediators in divorce mediation, with a focus on developing adaptive Sharia guidelines.

**Conclusion**

Mediators in religious courts have fulfilled their role in resolving divorce disputes by actively seeking to reconcile the parties through an approach based on Islamic principles and *islah* in family relationships. Their role as neutral and formal mediators in the Western concept, as outlined in the Supreme Court's mediator-certification curriculum, has evolved by modifying the transformative mediation model. Mediators in religious courts play an active role in providing moral advice to encourage reconciliation, reflecting Asian values of family harmony.

The shift in the role of mediators in the Islamic and Indonesian contexts, when analyzed from the principles of *maqasid al-syari'ah*, which emphasizes the welfare of the people as the primary objective of law, significantly influences the welfare of the family in the protection of offspring. *Maqasid al-syari'ah* allows for the adaptation of law to cases not explicitly regulated in the text, including a more dynamic role for mediators. The role of counselors emerging in mediation practices at religious courts reflects the influence of Islamic values, such as advice (*nushuh*) and reconciliation (*islah*), affirming that reconciliation aims to prevent social harm, aligning with the modern mediator's function to recommend practical solutions, such as custody arrangements or alimony.

Culture constitutes a significant variable influencing the manner in mediation. Fussion of Islamic and Western mediation emphasize harmony and social cohesion, the approaches adopted by mediators vary considerably across national contexts. The findings underscore the importance of incorporating cultural awareness and contextual sensitivity into the design and conduct of mediation processes.

Therefore, one aspect that can guide the mediation mechanism is the role of the mediator. The mediation approach has proven to have a low success rate when mediators are positioned as advisors who direct what the parties to the dispute should do. This is because the parties to the dispute perceive that the mediator's orientation is to represent a bridge for their interests and not to provide direction on how to resolve the problem.

Additionally, further in-depth study and analysis are required to develop dispute-resolution methods that are uniquely Indonesian, incorporating local cultural influences such as *musyawarah* (consensus-building) and *gotong royong* (mutual cooperation), as well as religious influences in the form of *islah* (reconciliation). The role of mediators as respected authority figures, such as religious and traditional leaders, should be strengthened and optimized by

leveraging collective values to promote reconciliation, especially in cases involving social pressure from extended families.

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