

Between Peace and Gender Justice: Islamic Court Mediators' Perspectives in Divorce Mediation in West Sumatra

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Abstract

This article examines mediators' perspectives on efforts to achieve gender justice in divorce cases within Islamic courts. This topic is significant given the strategic role of mediators in facilitating reconciliation while simultaneously protecting the rights of the parties involved. Utilizing a gender-based approach, this study explains how mediators understand and implement the concept of gender justice during the mediation process in six Islamic courts in West Sumatra. Based on field research conducted from July to October 2023, this study involved interviews with five judge mediators and three non-judge mediators. The research findings indicate that although mediators generally do not oppose the importance of justice, for them, justice is not the ultimate goal of mediation. Mediation is considered more focused on achieving peace. This assumption is subsequently followed by gender-biased stigmas that affect the gender sensitivity of the mediators. Nevertheless, some mediators have made efforts to realize gender justice, yet this depends more on individual and technical gender sensitivity and skills. These findings indicate that mediators are often caught between peace as the goal of mediation and justice as a moral standard, which results in limited protection for women during the mediation process.

[Artikel ini mengkaji perspektif para mediator terhadap upaya mewujudkan keadilan gender dalam kasus perceraian di Pengadilan Agama. Topik ini menjadi penting mengingat peran strategis mediator dalam memfasilitasi perdamaian sekaligus melindungi hak-hak para pihak yang terlibat. Dengan menggunakan pendekatan berbasis gender, studi ini menjelaskan bagaimana para mediator memahami dan mengimplementasikan konsep keadilan gender dalam proses mediasi di enam pengadilan agama di Sumatera Barat. Berdasarkan penelitian lapangan yang dilakukan dari Juli sampai Oktober 2023, penelitian ini melibatkan wawancara dengan lima mediator hakim maupun tiga mediator non-hakim. Temuan penelitian menunjukkan bahwa meskipun secara umum para mediator tidak menolak pentingnya keadilan, bagi para mediator, keadilan bukan menjadi tujuan utama dalam mediasi. Mediasi dianggap lebih bertujuan untuk mewujudkan perdamaian. Asumsi ini, kemudian juga diikuti oleh adanya stigma bias gender yang mempengaruhi sensitivitas gender para mediator. Meskipun demikian, beberapa mediator sudah berupaya mewujudkan keadilan gender, namun lebih bergantung kepada keahlian dan sensitivitas gender individual. Temuan ini mengindikasikan bahwa para mediator kerap terjebak antara perdamaian sebagai tujuan mediasi dan keadilan sebagai standar moral, yang berdampak pada terbatasnya perlindungan terhadap perempuan dalam proses mediasi.]

Keywords: Divorce Mediation, Gender Equality, Islamic Court, Mediator, West Sumatra.

Introduction

Gender justice has been a fundamental issue in Islamic Family Law in Muslim countries in the twentieth century, especially in protecting women's rights.¹ This issue emerges from efforts to create protections for women aligned with the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which, by 1981, was ratified by all Muslim countries except Iran, Sudan, and Somalia.² Radical reforms followed in Turkey and Tunisia, though with differing approaches: Turkey codified women's rights by adopting the Swiss Legal Code, while Tunisia reinterpreted classical Islamic jurisprudence (*fiqh*).³ In contrast, the majority of Muslim countries remain influenced by classical sharia, though certain administrative reforms regarding marriage have been implemented.⁴ In addition to classical *fiqh*, the understanding of gender equality is shaped by the traditional laws embraced by each country.⁵ This issue presents challenges across many Muslim nations, as the application of gender equality principles contained within human rights frameworks often clashes with the plural legal systems in these countries.

Amid this legal plurality, Indonesia issued the Marriage Law No. 1 of 1974 to standardize family law and promote social equality, notably elevating the status of women.⁶ However, this effort encountered tensions between modernist groups advocating for women's rights within marriage law and traditionalist groups who opposed such reforms. The modernist perspective ultimately prevailed, leading to the enactment of a marriage law that modified several *fiqh* norms.⁷ Following the legal codification phase, challenges to gender justice shifted to judicial practices, with judges playing a key role in implementing reforms in family law. Furthermore, since 2016, the role of mediators has also become essential; they were introduced to facilitate the resolution of disputes brought to the Islamic courts (*pengadilan agama*), as specified in Supreme Court Regulation No. 1 of 2016, which formalized mediation procedures in these courts. The problems relate not only to the effectiveness of mediation but also to the competence of mediators in resolving conflicts,⁸ particularly

¹ 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), 19.

² Ziba Mir-Hosseini et al., eds., *Gender and Equality in Muslim Family Law: Justice and Ethics in the Islamic Legal Tradition*, Library of Islamic Law 5 (I.B. Tauris, 2013), 1.

³ Amel Grami, "Gender Equality in Tunisia," *British Journal of Middle Eastern Studies* 35, no. 3, (2008): 352; Zulfikar Ismail and Maisyarah Rahmi Hasan, "Islamic Legal Modernism and Women's Emancipation in Tunisia," *Mazahib* 19, no. 2 (2020): 281–314.

⁴ Jan Michiel Otto, ed., *Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present* (Amsterdam University Press, 2010), 631.

⁵ Liv Tønnessen, "Gendered Citizenship in Sudan: Competing Debates on Family Laws among Northern and Southern Elites in Khartoum," *The Journal of North African Studies* 13, no. 4 (2008): 455–69; Fulera Issaka-Toure and Ousseina D. Alidou, "Introduction: Current Perspectives on Islamic Family Law in Africa," *Islamic Africa* 11, no. 2 (2021): 158–59.

⁶ Mark Cammack et al., "Legislating Social Change in an Islamic Society-Indonesia's Marriage Law," *The American Journal of Comparative Law* 44, no. 1 (1996): 53.

⁷ Mark Cammack, "Islamic Law in Indonesia's New Order," *The International and Comparative Law Quarterly* 38, no. 1 (1989): 53.

⁸ Any Ismayawati et al., "Family Conflict Resolution through Mediation in Indonesia and Malaysia: A Sociological Study of Islamic Law," *Jurnal Hukum Islam* 22, no. 2 (2024): 489.

regarding gender justice. However, some studies emphasize that mediators handling domestic violence cases should be properly trained to ensure gender justice.⁹

Regarding gender-related disputes, scholars have long scrutinized them in Islamic courts. Previous research has examined various aspects of gender justice within Indonesia's religious judicial system, with a particular focus on how judges incorporate gender justice into their rulings. Other studies have examined judges' sensitivity to the rights of the parties involved in disputes.¹⁰ Judges have consistently been highlighted as key actors in achieving justice in litigation processes within Islamic courts, covering issues such as divorce, joint property, polygamy,¹¹ marriage dispensations,¹² and maintenance. These studies reveal that upholding women's rights remains challenging within marital disputes. For example, in polygamy cases, Wirastri and Van Huis found ambivalence in the enforcement of state laws amid Indonesia's legal pluralism.¹³

While existing literature heavily focuses on judicial rulings, challenges to women's rights in Indonesia are also evident in some research studies about mediation. Most scholars agree that mediation as an alternative dispute resolution mechanism is fundamental. However, they hold different views regarding the effectiveness of mediation within the litigation process. In this regard, studies on court-annexed mediation within the Indonesian Islamic courts can be classified into two main types. The first group focuses on the competence of mediators. Sebyar et al. argue that the provided curriculum of training was considered not to adequately address essential issues related to the protection of women and children.¹⁴ Similarly, Syukur and Bagshaw suggest that mediators should receive training in cultural sensitivity in mediation to enhance the effectiveness of mediation.¹⁵ In addition, the mediation practice also needs to be supported by cultural aspects or local wisdom, either

⁹ Fatahillah Abdul Syukur and Dale Margaret Bagshaw, "When Home Is No Longer 'Sweet': Family Violence and Sharia Court-Annexed Mediation in Indonesia," *Conflict Resolution Quarterly* 30, no. 3 (2013): 289.

¹⁰ Euis Nurlaelawati and Arskal Salim, "Gendering the Islamic Judiciary: Female Judges in the Religious Courts of Indonesia," *Al-Jami'ah: Journal of Islamic Studies* 51, no. 2 (2013): 247; Euis Nurlaelawati, "Muslim Women in Indonesian Religious Courts," *Islamic Law and Society* 20, no. 3 (2013): 251; Euis Nurlaelawati, "Expansive Legal Interpretation and Muslim Judges' Approach to Polygamy in Indonesia," *Hanwa* 18, nos. 2-3 (2020): 295-324.

¹¹ Nurlaelawati, "Expansive Legal Interpretation and Muslim Judges' Approach to Polygamy in Indonesia"; Theresia Dyah Wirastri and Stijn Cornelis van Huis, "The Second Wife: Ambivalences towards State Regulation of Polygamy in Indonesia," *The Journal of Legal Pluralism and Unofficial Law* 53, no. 2 (2021): 246-68; Nina Nurmila, "Polygamous Marriages in Indonesia and Their Impacts on Women's Access to Income and Property," *Al-Jami'ah: Journal of Islamic Studies* 54, no. 2 (2016): 434-37; Nina Nurmila, *Women, Islam and Everyday Life* (Routledge, 2009), 56; Nina Nurmila and Linda Rae Bennet, "The Sexual Politics of Polygamy in Indonesian Marriages," in *Sex and Sexualities in Contemporary Indonesia: Sexual Politics, Health, Diversity, and Representations*, Sexuality, Culture and Health (Routledge, 2014), 83-84.

¹² Hoko Horii, "Legal Reasoning for Legitimation of Child Marriage in West Java: Accommodation of Local Norms at Islamic Courts and the Paradox of Child Protection," *Journal of Human Rights Practice* 12, no. 3 (2021): 501-23.

¹³ Wirastri and van Huis, "The Second Wife," 19.

¹⁴ Muhamad Hasan Sebyar et al., "Divorce Mediation at Panyabungan Religious Court: Transforming the Desire for Divorce into Reconciliation through Cultural Values in Contemporary Islamic Jurisprudence," *Al-Manahij: Jurnal Kajian Hukum Islam* 19, no. 1 (2025): 81-100.

¹⁵ Fatahillah Abdul Syukur and Dale Bagshaw, "Gender, Power, and Court-annexed Mediation in Indonesia," *Conflict Resolution Quarterly* 37, no. 4 (2020): 277-88.

through the involvement of local leaders or by adopting culturally sensitive approaches in mediator training.¹⁶

Beyond focusing solely on mediator competence, the second group of arguments contends that mediation should not be applied in certain cases, such as domestic violence, as it may potentially hinder the realization of gender justice. For instance, Jones and Aftab argued that in such cases, mediation should not be compulsory in an Islamic court to safeguard the victims' rights.¹⁷ Similar arguments were made by Syukur and Bagshaw, who stated that the nature of mediation and domestic violence potentially disempowers women's rights.¹⁸ Existing studies have primarily focused on mediator competence and issues of gender justice. However, an in-depth exploration of mediators' perspectives on achieving gender justice in Islamic courts remains limited. This study emphasizes mediators' perspectives on realizing gender justice within the specific context of marriage and divorce mediation, thereby addressing the gap in understanding how mediators navigate the tension between legal mandates and the practical pursuit of gender equity.

Research Methodology

This article is based on field research conducted from July to October 2023 in selected Islamic courts in West Sumatra, an area chosen due to its pluralistic legal system influenced by Minangkabau culture.¹⁹ I selected several Islamic courts with the highest rates of divorce cases in West Sumatra, taking into consideration where Minangkabau values remain strongly upheld. Data were collected from judge and non-judge mediators of diverse backgrounds through interviews with eight mediators who regularly conduct mediation sessions. Three of them were non-judge mediators practicing in Padang and Bukittinggi Islamic Courts, while the remaining five were judge-mediators practicing in Bukittinggi, Batusangkar, Payakumbuh, Pariaman, and Painan Islamic Courts (see Table 1). In addition to interview data, the study is supported by field observations and the collection of relevant documents via Islamic courts' official websites.

This study employs a qualitative approach, utilizing a three-stage coding process. The first stage, open coding, is used to identify patterns that indicate dilemmas related to gender justice. These dilemmas are then categorized through axial coding to locate specific excerpts concerning peace and gender justice. The final stage involves selective coding to explain the conceptualization of mediators being caught between the two poles of peace and justice. This tension is analyzed using the framework of gender justice, not through normative assessment, but inductively based on the interview data. Accordingly, this research applies a partial grounded theory approach.²⁰ The concept of gender justice in this regard signifies a

¹⁶ Rosdalina Bukido et al., "Reconciling Traditions: The Role of Local Wisdom in Mediating Divorce in Indonesia's Religious Courts," *Khazanah Sosial* 6, no. 2 (2024): 307.

¹⁷ 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 (2024): 222.

¹⁸ Syukur and Bagshaw, "When Home Is No Longer 'Sweet,'" 284.

¹⁹ Franz Von Benda-Beckmann, *Property in Social Continuity* (Springer Netherlands, 1979), 113.

²⁰ John W. Creswell and J. David Creswell, *Research Design: Qualitative, Quantitative, and Mixed Methods Approaches*, Sixth edition (SAGE, 2023), 228.

mechanism to protect vulnerable groups within Islamic legal interpretations that are deeply intertwined with social, cultural, and state contexts.²¹

Table 1
Profile of Mediators by Court, Gender, and Type

Mediators Name	Islamic Courts	Gender	Mediators Type
R1	Padang Islamic Court	Women	Non-Judge Mediator
R2	Padang Islamic Court	Women	Non-Judge Mediator
R3	Payakumbuh Islamic Court	Men	Judge Mediator
R4	Bukittinggi Islamic Court	Men	Judge Mediator
R5	Batusangkar Islamic Court	Men	Judge Mediator
R6	Pariaman Islamic Court	Women	Judge Mediator
R7	Padang Islamic Court	Women	Non-Judge Mediator
R8	Painan Islamic Court	Men	Judge Mediator

From Customary Institutions to Courtrooms: Mediation Practices and Gender Justice in Indonesia

Historically, mediation emerged as an effort to resolve disputes within communities influenced by religious teachings and local cultural traditions. As a result, the form of mediation varied across times and locations. In the context of Islam, for example, mediation is known as *sulh* (peaceful settlement), a practice embraced by Muslim communities from the Middle East to Indonesia, where it has been significantly shaped by Islamic values. This practice has also evolved in line with local traditions. In Turkey, it is called *musalaha*; in Malaysia, it remains known as *sulh*,²² and in Indonesia, it is referred to as *musyawarah mufakat*.²³ All these terms point to a method of resolving disputes by reaching a mutual agreement between parties, generally facilitated by a mediator. This definition is also adopted in Supreme Court Regulation No. 1 of 2016, which describes mediation as an effort to resolve cases through a negotiation process facilitated by a mediator.²⁴

The practice of mediation has been present in Indonesia since the pre-independence era, when dispute resolution was conducted based on customary law. Such practices were observed from the period of British presence in Indonesia to the Dutch colonial era. During the Dutch period, disputes were often resolved by customary leaders acting as mediators between parties, independent of the formal legal system.²⁵ These customary approaches vary significantly across Indonesia's diverse communities, blending local traditions with conflict resolution techniques. In Minangkabau society, for instance, traditional mediation is deeply rooted in family structures. A leader within a particular family or *paruik* is known as the *mamak*. At the clan level (*suku*), leadership is held by a *pangulu* or *datuak*. In the context of

²¹ Mir-Hosseini et al., *Gender and Equality in Muslim Family Law*, 5.

²² Michael G. Peletz, *Sharia Transformations: Cultural Politics and the Rebranding of an Islamic Judiciary* (University of California Press, 2020), 101–3.

²³ Christopher W. Moore, *The Mediation Process*, 4th ed. (Jossey-Bass, 2014), 57.

²⁴ “Supreme Court Regulation No. 1 of 2016 on Mediation Procedures in Courts,” February 3, 2016, Article 1(1).

²⁵ Muhammad Amrullah Drs Nasrul et al., “A Comprehensive Comparative Analysis of Mediation Practices in Indonesia and Malaysia,” *Khazanah Hukum* 6, no. 1 (2024): 66.

marriage-related conflicts, the Minangkabau community recognizes two stages of conflict resolution: *biliak ketek* and *biliak gadang*. *Biliak ketek* refers to an initial, private discussion in which only certain individuals are allowed to participate, such as *mamak*. At this stage, sensitive marital issues are discussed discreetly so that the problem can be resolved without becoming widely known. If the issue cannot be resolved at the *biliak ketek* level, the process proceeds to *biliak gadang*, which involves the extended family and a broader circle of participants in order to resolve the conflict.²⁶

This practice persisted throughout the decades but was only formally recognized during the era of judicial reform, reaffirmed in Supreme Court Circular Letter No. 1 of 2002, which was later replaced by Supreme Court Regulation No. 1 of 2003. To further refine the regulatory framework for mediation, Supreme Court Regulation No. 1 of 2008 was introduced, followed by the latest revision, Supreme Court Regulation No. 1 of 2016.²⁷ Previously, mediation existed only as a value within the judicial process, as embodied in Marriage Law No. 1 of 1974 and the Compilation of Islamic Law (*Kompilasi Hukum Islam*, KHI). The 2016 regulation became the primary reference for mediators working within the jurisdiction of the Supreme Court, including the Islamic courts. According to this regulation, mediation within courts under the Supreme Court is mandatory, as stated in Article 4, Paragraph (1) of Supreme Court Regulation No. 1 of 2016, which requires that all civil cases must first go through mediation. This form of mandatory mediation applies to civil cases across Indonesia, including those filed in the Islamic courts. As a result, every case brought before the Islamic courts, including divorce proceedings, must first attempt to be resolved through mediation.²⁸

Divorce constitutes the majority of cases brought before the Islamic courts.²⁹ Mediation in divorce proceedings was initially intended to reconcile couples seeking separation, a process often called marital mediation. However, over time, the role of mediation evolved beyond preserving marriages that could still be saved. The concept of mediation came to encompass divorce mediation, focusing on reaching agreements about post-divorce rights and obligations between the parties.³⁰ In Indonesia, post-divorce rights generally favor women over men. As a result, the ideal of justice becomes embedded within the mediation process, even if it operates differently from formal litigation. The presence of mediation within the judicial system allows it to be an effective mechanism for resolving disputes and offers certain benefits over the formal court process. Not only does it benefit the parties directly involved, but it also serves the interests of the court by reducing case

²⁶ Livia Holden, ed., *Cultural Expertise, Law, and Rights: A Comprehensive Guide* (Routledge, 2023), 333.

²⁷ M. Natsir Asnawi, "Urgensitas Pendekatan Psikologi dalam Pelaksanaan Mediasi di Pengadilan," *Jurnal Hukum dan Peradilan* 6, no. 3 (2017): 454.

²⁸ Article 4(2) of Supreme Court Regulation No. 1 of 2016 outlines several exceptions to this provision, including civil cases with a prescribed time limit for resolution; disputes in which one party fails to appear; counterclaims and interventions; cases involving the prevention, refusal, annulment, or legalization of marriage; and disputes that have already undergone mediation outside the court with a certified mediator.

²⁹ Mahkamah Agung, *Putusan Perceraian*, <https://putusan3.mahkamahagung.go.id/direktori/index/kategori/perceraian.html>. This website indicates that divorce cases constitute the majority of the caseload in all Islamic courts across Indonesia.

³⁰ Rini Maryam and Sulistyowati Irianto, "Exploring Efficacy," *Lentera Hukum* 10, no. 3 (2024): 341.

backlog and expediting proceedings.³¹ In the Islamic courts, nine types of cases fall within its jurisdiction based on Law No. 3 of 2006: marriage, inheritance, wills (*wasīyyah*), grants (*hibah*), endowments (*waqf*), obligatory almsgiving (*ṣakāt*), *sadaqah* (voluntary charity), *infāq* (charitable spending), and Shariah-based economic disputes.³²

Mediation allows these cases to be resolved more quickly, making it advantageous for both the court and the parties involved by providing a more efficient and cost-effective means of obtaining justice.³³ Moreover, mediation provides benefits for the parties' relationships. Unlike litigation, where outcomes are framed in terms of winners and losers, mediation allows both parties to arrive at an agreement based on their own needs and interests. Whereas litigation is defined by the judge's decision, mediation allows parties to retain agency, ensuring a collaborative approach to dispute resolution.³⁴ In this context, the mediator serves as a neutral and impartial facilitator, acting as an external party (outsider) who assists both sides in reaching an agreement.³⁵ Unlike an arbitrator, the mediator has no authoritative role to impose decisions upon the parties. Yet, this does not imply that the mediator has no influence. The agreements arising from the mediation process can carry significant implications for the realization of justice between the parties.

However, this process has been criticized from a gender justice standpoint. Feminist scholars such as Semple have argued that mediation, unlike litigation, does not guarantee the certainty afforded by formal legal proceedings, as its neutral and private nature can obscure the unequal dynamics of power that often arise in heterosexual relationships. This imbalance, shaped by differences in socioeconomic status, psychological vulnerability, or gender-based norms, can result in women accepting outcomes that do not fully protect their rights.³⁶ Lichtenstein similarly finds that gender-based imbalances occur within mediation, especially in child custody cases, where joint custody arrangements can disadvantage women due to unequal access to resources and control.³⁷ As stated in the introduction, the status of women is a central concern in the reform of family law in Indonesia. In this context, an important question emerges: To what extent can mediation effectively protect women's rights? The answer to this depends largely on the role and approach of the mediator, who is central to the process. In the Islamic courts, mediators comprise both judges and non-judge professionals. According to Article 2, Paragraph (1) of Supreme Court Regulation No. 1 of

³¹ Shahla F. Ali, *Court Mediation Reform: Efficiency, Confidence and Perceptions of Justice* (Edward Elgar Publishing, 2018), 25–6.

³² "Beban Kerja Hakim Agama Terlalu Berat?," accessed April 16, 2025, <https://www.hukumonline.com/berita/a/beban-kerja-hakim-agama-terlalu-berat-hol17379>.

³³ Thomas J. Stipanowich, "ADR and the 'Vanishing Trial': The Growth and Impact of 'Alternative Dispute Resolution,'" *Journal of Empirical Legal Studies* 1, no. 3 (2004): 911.

³⁴ Noel Semple, "Mandatory Family Mediation and the Settlement Mission: A Feminist Critique," *Canadian Journal of Women and the Law* 24, no. 1 (2012): 209.

³⁵ Sayed Sikander Shah, "Mediation in Marital Discord in Islamic Law: Legislative Foundation and Contemporary Application," *Arab Law Quarterly* 23, no. 3 (2009): 330; Ermi Suhasti Syafei and Siti Djazimah, "Mediation In Settlement of Joint Marital Property Disputes: Study At Tanjung Karang Religious Court, Lampung," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 5, no. 2 (2021): 871; Ratno Lukito, "Religious ADR: Mediation in Islamic Family Law Tradition," *Al-Jami'ah: Journal of Islamic Studies* 44, no. 2 (2006): 392.

³⁶ Semple, "Mandatory Family Mediation and the Settlement Mission," 212–16.

³⁷ Marsha Lichtenstein, "Mediation and Feminism: Common Values and Challenges," *Mediation Quarterly* 18, no. 1 (2000): 20.

2016, any mediator holding a certificate recognized by the Supreme Court can be appointed to facilitate the process.³⁸ In this sense, the mediator's position is akin to that of a judge, despite their differing roles and responsibilities. The institutionalization of mediation within the judicial process makes it crucial for mediators to incorporate a sense of gender justice when facilitating negotiations, especially in cases where divorce is inevitable.³⁹ In such instances, the mediator's role is vital in ensuring that post-divorce rights and obligations are settled fairly and justly.⁴⁰

This spirit of gender justice is also reflected in other regulations issued by the Supreme Court. Supreme Court Regulation No. 3 of 2017, for example, provides special attention to gender equality for women appearing before the courts. This regulation clearly defines gender equality as a state of balance between men and women, ensuring equal access to rights and participation across all areas of life.⁴¹ Similarly, in its definition of gender justice, the regulation emphasizes that gender justice is a process aimed at achieving fairness for both men and women.⁴² It goes beyond a one-sided approach, seeking protection and equity for both parties. This attention to gender justice has evolved in court practice. In 2011, a decision was issued stating that if a husband failed to fulfill his financial obligations and the wife became the primary earner, she was entitled to a larger share of the marital assets upon divorce. Likewise, Supreme Court Circular Letter No. 3 of 2018 required judges to consider gender equity when determining post-divorce financial arrangements, including maintenance for wives and children. The guiding standard is the husband's financial ability and the wife's and children's needs. However, this standard remains relatively ambiguous and has been criticized for its inconsistency when applied in practice, despite its stated purpose of refining earlier provisions, such as Supreme Court Circular Letter No. 7 of 2012. Thus, despite significant advances, the plurality of legal norms and standards in Indonesia still presents a challenge for achieving gender justice.⁴³

The Practice of Mediation within Islamic Courts in West Sumatera

The litigation process in the Islamic court system in Indonesia is quite similar across all courts, including those in West Sumatera. This similarity occurs because there is a standard procedure that each Islamic court adopts based on regulations provided by the state. All

³⁸ "Kenali 23 Lembaga Sertifikasi Mediator Nonhakim yang Diakui Mahkamah Agung," accessed October 27, 2023, <https://www.hukumonline.com/berita/a/kenali-23-lembaga-sertifikasi-mediator-nonhakim-yang-diakui-mahkamah-agung-lt62ff0e1b4d1d1/>. Meanwhile, the Supreme Court's website lists 25 institutions authorized to issue mediator certificates. This information is available at: *Data Lembaga Penyelenggara Sertifikasi Mediator Non Hakim Terakreditasi*, n.d., <https://www.mahkamahagung.go.id/media/11440>.

³⁹ Dessy Sunarsi et al., "Mediation Implementations in the Religious Courts of Indonesia," *International Journal of Innovation* 10, no. 3 (2019): 58.

⁴⁰ Asep Saepudin Jahar, "Bureaucratizing Sharia in Modern Indonesia: The Case of Zakat, Waqf and Family Law," *Studia Islamika* 26, no. 2 (2019): 229.

⁴¹ "Supreme Court Regulation No. 1 of 2019 on Electronic Case Administration and Court Proceedings," August 6, 2019, Article 1(4).

⁴² "Supreme Court Regulation No. 3 of 2017 on Guidelines for Adjudicating Cases Involving Women Facing the Law," August 4, 2017, Article 1(6).

⁴³ Stijn Cornelis van Huis, "The Shadow of Legal Pluralism in Indonesian Islamic Courts: Child and Spousal Maintenance," *Legal Studies* 4, no. 1 (2024): 21.

Islamic courts conduct the litigation process based on Article 82 of Law No. 7 of 1989.⁴⁴ Each case is initiated by filing a lawsuit in the Islamic court. This first step is followed by the summoning of litigants by the court. In the first meeting, there is fundamentally an effort by judges to reconcile the litigants' marriage. Regarding divorce cases, for instance, judges attempt to persuade the husband and wife to remember their happy memories and forget about their conflict. This effort varies depending on the judge, who technically uses psychological aspects to approach the litigants. Nurlaelawati observes that the judicial inclination is often geared toward reconciliation, with judges frequently favoring the continuation of the marriage over the legal granting of a divorce.⁴⁵ However, in most divorce cases, this first endeavor usually fails to achieve reconciliation.

Consequently, mediation becomes significant as it allows the court to take reconciliation more seriously by involving a mediator to reconcile the disputing parties based on the *musyawarah* principle.⁴⁶ This alternative dispute resolution method is generally conducted in Islamic courts during the second meeting of the litigation process for litigants. This mediation is compulsory as mandated by Article 3, paragraph (1) of Supreme Court Regulation No. 2 of 2003. If this mediation does not work, the case will be examined by judges back in the courtroom. This procedure is regulated in Article 132a HIR (*Herziene Inlandsch Reglement*) and 158 R.bg (*Rechtreglement voor de Buitengewesten*), which explain that if mediation is unsuccessful, the examination of the case shall proceed with the reading of the statement of claim, such as a divorce petition, and so on. In several Islamic courts in West Sumatera, most of the mediators said that the mediation could be successful, partially successful, or failed. However, they could not provide the settlement agreement to anyone because it was destroyed after the mediation ended.⁴⁷

In my field research, it was challenging to obtain permission to enter the mediation room to observe due to the sensitivity of the problem.⁴⁸ However, I managed to interview the mediators about the particular process they performed. Generally, in the first stage, a mediator is appointed either by the litigants or the judges. This phase is known as the pre-mediation process, where the mediators obtain documents about the case. In this step, mediators are permitted to perform a caucus (*kaukus*) as a method to comprehend the problem better before the mediation is conducted. Caucus is a method regulated by Supreme Court Regulation No. 1 of 2016, which allows mediators to communicate with each litigant separately. Several mediators whom I interviewed use this method to investigate the real problem occurring between the litigants. During the mediation, mediators begin by giving an introduction explaining the procedure to the litigants and giving them the opportunity to negotiate and dialogue. This process can take up to thirty days, with a possible extension to

⁴⁴ Article 82(1) of Islamic Court Law No. 7 of 1989 stipulates that, at the first hearing of a divorce lawsuit, the judge must endeavor to reconcile the parties.

⁴⁵ Nurlaelawati, "Muslim Women in Indonesian Religious Courts," 262.

⁴⁶ Fatahillah Abdul Syukur and Dale Margaret Bagshaw, "Court-Annexed Mediation in Indonesia: Does Culture Matter?" *Conflict Resolution Quarterly* 30, no. 3 (2013): 370.

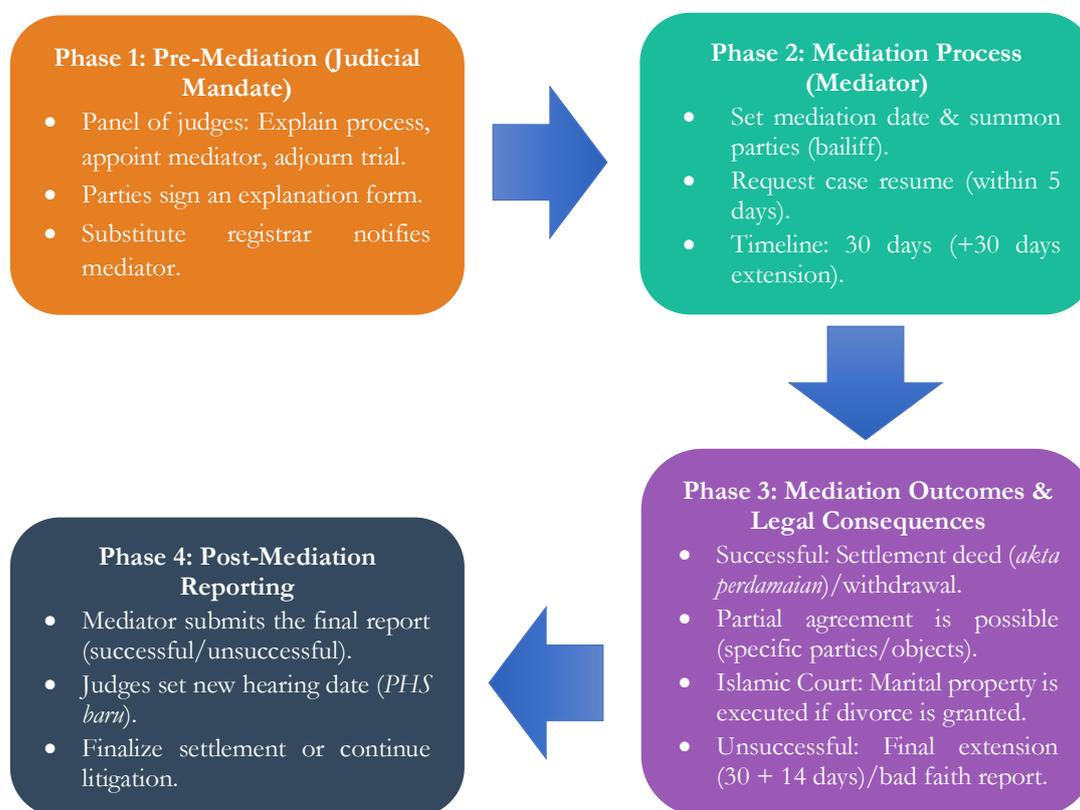
⁴⁷ R4, "Mediator," September 20, 2023.

⁴⁸ Klerman and Klerman state that mediation cases are inherently private matters, which makes it difficult to find empirical studies on the subject. See: Daniel Klerman and Lisa Klerman, "Inside the Caucus: An Empirical Analysis of Mediation from Within," *Journal of Empirical Legal Studies* 12, no. 4 (2015): 686.

sixty days. The process ends with a settlement agreement containing the terms of the settlement.

All of this process can be confirmed by visiting the website provided by Islamic courts in Indonesia. Every single Islamic court has its own method of providing information about the litigation procedure on their website. This information is displayed on the office walls, specifically at the information desk, as well as online.⁴⁹ Generally, the Islamic courts provide information about how the procedure operates, from submitting the case until the decision is made by the judges, including mediation. For instance, the Bukittinggi Islamic Court provided information based on Supreme Court Regulation No. 1 of 2016 in Figure 1.⁵⁰ The information includes pre-mediation, the mediation process, terms and conditions if mediation is successful or fails, and post-mediation reporting. In every phase, there are certain efforts and conditions that can determine the subsequent phases until the case is decided by the judge. This structured litigation and mediation process finds its primary application in divorce proceedings, which consistently represent the highest volume of cases in the Indonesian Islamic judicial system.

Figure 1
Mediation Procedure Scheme



Source: Adapted from the Bukittinggi Islamic Court mediation procedures (2021).⁵¹

⁴⁹ “Observations at Six Islamic Courts in West Sumatra,” October 2023.

⁵⁰ Several provisions related to this process are outlined in Articles 17, 20, 22, 24, 26, 27, 32, 33, 34, and 35 of Supreme Court Regulation No. 1 of 2016.

⁵¹ Bukittinggi Islamic Court, “Mediation Procedures,” May 5, 2021, <https://pa-bukittinggi.go.id/prosedur-mediasi/>.

In Indonesia, divorce constitutes the vast majority of cases adjudicated by the Islamic courts. According to data from the Supreme Court Directory, divorce rates consistently rank the highest among all Islamic civil matters.⁵² This high prevalence suggests that gender-based conflicts, inherent in the dynamics of husband-wife relations, form the core of the court's caseload. Consequently, the mandatory mediation process for divorce has become an integral part of the judicial system, making it the most frequently mediated case type across Indonesia. This research focuses on several Islamic courts with significant divorce rates, notably the Padang Islamic Court, which has recorded the highest number of divorces over the last five years.⁵³ Generally, divorce cases are followed by ancillary disputes such as alimony (*nafkah*), joint property division, and child custody. According to mediators, these post-divorce disputes are more likely to be resolved through mediation, which is considered a more efficient and less adversarial alternative to litigation. While mediation is often deemed less effective in terms of reconciliation, statistical data from the Padang Islamic Court illustrate this trend: out of 1,715 cases adjudicated, 1,227 ended in divorce.⁵⁴ However, even when mediation fails to reconcile the parties, litigants frequently reach agreements regarding post-divorce consequences, such as alimony, custody, and property division. Mediators categorize these outcomes as “partially successful.” This shift in focus, from saving the marriage to settling its aftermath, is now considered a fundamental and vital aspect of the mediation process within the Indonesian Islamic court system.

Factors Hindering Gender Justice: Mediators' Perceptions in Islamic Courts

As significant actors in mediation, each mediator has a unique understanding of gender justice. This understanding is clearly reflected in the mediators' perspectives on the relationship between men and women in the mediation process. This research identified two factors that potentially hinder the realization of gender justice in mediation: the principle of neutrality and gender stigma, both of which underlie the mediators' methods of resolving conflicts.

Neutrality and the Limits of Intervention

The legal understanding of judges and mediators is equally vital to the realization of gender justice.⁵⁵ However, in the understanding of mediators in the Islamic courts in West Sumatra, a tension arises between gender-based justice and the very goal of mediation itself. On the one hand, justice is deemed significant, yet on the other, mediators reveal that it is not necessarily a priority in the implementation of mediation. This dilemma occurs because mediators perceive mediation and justice as two distinct concepts. Mediators are considered

⁵² See: <https://putusan3.mahkamahagung.go.id/direktori/index/kategori/perceraian.html>

⁵³ BPS-Statistics of West Sumatra Province. See: <https://sumbar.bps.go.id/id/statistics-table/3/VkhwVUszTXJPVmq2ZFRKamNIZG9RMVo2VEdsbVVUMDkjMw==/nikah-dan-cerai-menurut-kabupaten-kota-di-provinsi-sumatera-barat--2023.html?year=2024>

⁵⁴ According to the Supreme Court Directory, 1,715 cases were registered in 2014, and BPS data indicate that 1,227 of these cases resulted in divorce decrees. See: <https://putusan3.mahkamahagung.go.id/direktori/index/pengadilan/padang/kategori/perceraian/tahunjenis/regis/tahun/2024.html>

⁵⁵ One possible cause of mediation failure is the mediator's limited understanding of legal matters within the Islamic court. See: Sunarsi et al., “Mediation Implementations in the Religious Courts of Indonesia,” 61.

actors who should not focus on justice. According to R5, for example, justice is not within the mediator's domain. Rather, in R5's view, justice is the realm of judges. Thus, in mediation, the outcome is not meant to be justice but a peace agreement achieved by both parties. Once peace has been established through the mediation process, the mediator's role is considered complete. R5 stated emphatically, "*A mediator never delivers justice, and this is important to understand.*"⁵⁶ This statement confirms that mediation, by its nature, is an endeavor for peace and is not intended to intervene in matters of justice.

A similar understanding emerges from the view of R3, a judge-mediator at the Payakumbuh Islamic Court. In an interview, he stated, "*The mediator is not an adjudicator, only a guide; one cannot measure or claim to deliver justice.*" From this, it can be inferred that mediators adhere to the principle of neutrality as a professional ethical standard, which was criticized by Lichtensein.⁵⁷ Yet, neutrality itself becomes problematic when viewed in light of efforts to protect the rights of the parties. According to existing regulations, women have certain post-divorce rights. However, to maintain neutrality, mediators often refrain from emphasizing these rights too strongly for fear of being perceived as partial. In this regard, R3 stated, "*We cannot press too hard on women's rights because it might be seen as a breach of neutrality.*"⁵⁸ Here, the mediator chooses neutrality despite witnessing unequal dynamics in the distribution of rights. As a result, the mediator refrains from intervention, considering such action a violation of mediation principles.

Refraining from intervention also occurs in the context of agreements. Agreement becomes the mediator's primary focus, leading to passivity regarding certain aspects of gender justice. Ideally, mediation should operate within a more transformative framework, where mediators act proactively to ensure justice. However, from some mediators' perspectives, passivity remains evident. This passivity is apparent in the mediator's attitude of not wishing to intervene in the husband's fulfillment of his wife's living expenses. For example, R4 stated that a mediator may refrain from pursuing a wife's rights if she has already consented to relinquish them: "*We inform the wife about her rights, but if the husband refuses to provide iddah maintenance and she consents, the mediator accepts this. It is called an agreement.*"⁵⁹

Similar remarks surfaced from other mediators, suggesting that women's rights are treated primarily as procedural formalities, in line with court regulations, rather than as empirical realities. R1, a mediator in the Padang Islamic Court, stated that women often have little understanding of their rights, and as a mediator, she provides information only when asked.⁶⁰ In this sense, R1's understanding is totally focused on the nature of mediation, which is also aimed at providing an agreement. R4, a judge-mediator in the Bukittinggi Islamic Court, similarly stated that her role is limited to informing both parties about their rights.⁶¹ This view is quite similar to R1's understanding regarding the provision of information about

⁵⁶ R5, "Mediator," August 28, 2023.

⁵⁷ From a feminist critique perspective, the principle of neutrality risks overlooking the gender imbalances inherent in mediation practices. See: Lichtenstein, "Mediation and Feminism: Common Values and Challenges," 20.

⁵⁸ R3, "Mediator," August 30, 2023.

⁵⁹ R4, "Mediator," September 20, 2023.

⁶⁰ R1, "Mediator," October 14, 2023.

⁶¹ R4, "Mediator," September 20, 2023.

women's rights under particular conditions. Meanwhile, R3 explained that openly discussing women's rights can complicate the mediation process, as men are often reluctant to fulfill their obligations.⁶² This reluctance is further exacerbated by the fact that the Compilation of Islamic Law legitimizes such behavior by stipulating that post-divorce maintenance depends on the husband's financial capacity.⁶³ Consequently, mediators use this as a reason to avoid structural or transformative approaches to addressing these unequal dynamics.

Beyond legal regulations, the lack of an advocacy orientation within mediation is also influenced by mediators' understanding of religious norms.⁶⁴ In many instances, mediators appeal to religious tenets to emphasize reconciliation rather than focus on the gendered injustices that arise within marriages. The hadith "divorce is the most detested of lawful acts" (*abghad al-halal 'inda Allah al-talaq*) is often invoked as a reason for women to remain in marriages despite trauma caused by the husband's behavior. In such instances, normative reasoning complicates efforts to investigate the fundamental issues underlying the marital relationship. Similarly, perceptions of divorce as an undesirable outcome are reflected in mediators' remarks, which draw upon religious norms as a reason for advising wives to remain patient despite financial or emotional neglect. For instance, R6 stated, "*The wife said that her husband was an alcoholic and failed to provide for the family. But I responded, 'Be patient; Allah will provide.'*"⁶⁵ In this sense, the call for patience is treated as a safeguard for the marriage, regardless of its underlying injustices.

This approach can jeopardize women's rights, particularly in cases of domestic violence. Scholars argue that a lack of skill and understanding among mediators regarding the relatively powerless position of women has negatively influenced the realization of gender justice. For instance, Syukur and Bagshaw argue that it is dangerous if a mediator's religious preferences are based on patriarchal norms that work against women as victims.⁶⁶ Their findings suggest that, in terms of domestic violence, for example, mediators need more sensitivity towards gender justice; otherwise, mediators will put women in danger instead of protecting them. In this regard, it is understandable that women's positions in particular conflicts, especially when they tend to be victims, should get more attention from mediators rather than receiving Islamic teachings on patience. The *islāh* (reconciliation) principle, in this case, can be problematic, as maintaining their relationship in marriage may not be the best solution for women in particular cases.

Gender Stigma and Mediator Bias

Gender stigma refers to assumptions constructed by mediators that place men or women in a disadvantageous position, or in other words, "sexism", which refers to gender-based prejudicial views.⁶⁷ Such assumptions are evident in several statements made by the

⁶² R3, "Mediator," August 30, 2023.

⁶³ "Presidential Instruction No. 1 of 1991 on the Compilation of Islamic Law," Article 160.

⁶⁴ Nurlaelawati, "Expansive Legal Interpretation and Muslim Judges' Approach to Polygamy in Indonesia," 215–16.

⁶⁵ R6, "Mediator," October 7, 2023.

⁶⁶ Syukur and Bagshaw, "When Home Is No Longer 'Sweet,'" 289.

⁶⁷ Iim Halimatusa'diyah and Windy Triana, "Sexism and Women's Access to Justice: Feminist Judging in Indonesian Islamic Judiciary," *Women's Studies International Forum* 103 (March 2024): 102883.

mediators. Among these assertions are that women are difficult to reconcile, the restriction of custody rights for women, and biased legal understanding. The stigma that women are difficult to reconcile emerged from several mediators.⁶⁸ This notion is based on the assumption that women are not easily persuaded and are considered more stubborn than men. This assumption is evident in the statement from R2, who asserted that reconciling the parties is easier if the husband files the lawsuit (*cerai talak*), but it is difficult if the wife files it (*cerai gugat*). R2 implies that contested divorce cases (*cerai gugat*) are harder to reconcile than divorce petitions (*cerai talak*), as women are perceived as more stubborn than men, making mediation difficult.⁶⁹ Similarly, R6 emphasized that women have higher egos than men, even stating that women find it easier to find a new husband, while it is difficult for a husband to find a new wife.⁷⁰ This perception directly impacts the mediator's approach, often leading them to exert less effort in reconciliation when dealing with female petitioners, thereby limiting the potential for mediation to achieve a mutually beneficial outcome.

Regarding child custody, mediators often hold the view that women may be denied custody under certain conditions. Among the reasons cited by mediators are infidelity and financial capacity. Women's infidelity is presented by mediators as a barrier to obtaining custody.⁷¹ Conversely, various studies indicate that judges do not rely on a single factor to determine custody.⁷² Judges consider multiple aspects, as custody is fundamentally granted to the mother if the child is under 12 years old. Beyond infidelity, women are also deemed ineligible for custody due to a lack of financial capability. Similarly, R4 explained that a child under the age of 12 may be granted to the father when the mother is unemployed or deemed incapable of providing for the child.⁷³ In such instances, financial ability becomes a pivotal and contested factor in determining custody, especially when women are economically reliant on their spouses. This perspective highlights how mediators often overlook the legal preference for mothers in custody cases, instead prioritizing economic status, which directly disadvantages women who may have been financially dependent during the marriage.

Furthermore, mediators exhibit biased legal understanding towards women, exemplified by the stigma surrounding women as objects of polygamy. In the mediators' view, bias persists regarding the relationship between men and women in the context of polygamy.⁷⁴ For instance, Mediator R3 stated that while infidelity cases might still be reconcilable, cases involving unregistered (*nikah siri*) polygamous marriages are more difficult. R3 remarked, "*In cases of infidelity, there is still some room for possibility. However, when it comes to an unregistered marriage, women tend to be more willing to accept being cheated on than to accept polygamy. What is ironic nowadays is that they are unwilling to be in a polygamous marriage, yet they can*

⁶⁸ In the context of mediation effectiveness, it has been suggested that women who file for divorce may hinder the success of the process. See: Yangto et al., "Contemporary Challenges and Prospects of Mediation in Contested Divorce Cases in Indonesia," *NUSANTARA: Journal of Law Studies* 4, no. 1 (2025): 44–59.

⁶⁹ R2, "Mediator," July 20, 2025.

⁷⁰ R6, "Mediator," October 7, 2023.

⁷¹ R2, "Mediator," July 20, 2025.

⁷² Euis Nurlaelawati, "Women's Financial Rights after Divorce in Indonesia," in *Women and Property Rights in Indonesian Islamic Legal Contexts* (Brill, 2018), 89–106.

⁷³ R4, "Mediator," September 20, 2023.

⁷⁴ The understanding of polygamy in Indonesia remains closely intertwined with Islamic law, customary law, and state law. See: Wirastri and van Huis, "The Second Wife," 15.

forgive infidelity. I do not really know what influences this way of thinking, but I have seen many cases like this."⁷⁵ This statement reveals a tendency among mediators to prioritize the maintenance of the marital bond over the eradication of injustices, often blaming the woman's subjective psychological state for the difficulty in reaching a reconciliation, rather than addressing the structural problem of polygamy itself.⁷⁶ Overall, the primary factors hindering the realization of gender justice are the inherent nature of mediation, which prioritizes reconciliation, and the persistent gender stigma embedded in mediators' understanding. These two factors pose significant challenges for mediators striving to achieve transformative justice for all parties, particularly for women.

Advancing Gender Equality through Mediation: Approaches and Techniques

Although several factors may hinder the realization of gender justice, mediators believe that the rights of the parties can be guaranteed through certain strategies: caucuses, compensation, and the accumulation of divorce suits with post-divorce rights claims.

The Caucus Method: Addressing Intimidation and Hidden Interests

As mentioned previously, the caucus is a method authorized by the Supreme Court that allows mediators to hold meetings with one party in the absence of the other.⁷⁷ These separate meetings aim to investigate the parties' issues more deeply, and mediators technically utilize this method when deemed necessary. In this regard, we found that mediators interpret the caucus as a way to promote gender justice. Generally, the caucus is used to address post-divorce rights, eliminate intimidation, uncover hidden secrets, and calm emotional tensions.

Regarding the elimination of intimidation, some mediators stated that they use this method during pre-mediation sessions. In this phase, they utilize caucuses to understand the litigants' problems clearly. From their perspective, the caucus allows the mediator to comprehend situations where one party might be under pressure. R5 explained, "*If I see that one party is being pressured, I always use the caucus method. I don't have them face each other. Especially when it is a woman who is intimidated; she may be frightened, even shaking, unable to speak authentically.*"⁷⁸ This statement suggests that R5 strives to ensure that justice for both parties is achieved. The caucus method is deemed to allow the mediator to obtain genuine and accurate information, especially when unequal power dynamics may impede a fair agreement.⁷⁹ R5 gave an example where a wife was unable to openly state her needs because the husband refused to divide marital assets, despite having contributed to earning them. Through the caucus process, the wife can express her interests and aspirations, making it possible for a more equitable distribution of marital property.

This technique is also used by mediators to uncover secrets held by the parties. Mediators occasionally acknowledge that the issues presented in the lawsuit are not always the actual underlying problems. R8 stated that some couples may only be testing their partner

⁷⁵ R3, "Mediator," August 30, 2023.

⁷⁶ Nurlaelawati, "Expansive Legal Interpretation and Muslim Judges' Approach to Polygamy in Indonesia," 217.

⁷⁷ Supreme Court Regulation No. 1 of 2016, Article 14, paragraph (e),

⁷⁸ R5, "Mediator," August 28, 2023.

⁷⁹ See: Klerman and Klerman, "Inside the Caucus," 691.

by filing for divorce, rather than having a genuine intention to separate. This fact is then investigated through the caucus method.⁸⁰ This approach is considered more effective for identifying the core problem compared to conventional litigation, where the judge only evaluates evidence based on the written lawsuit. In this context, mediators consider this effort to uncover the truth an advantage of mediation, as it cannot be done in litigation procedures for fear of violating the principle of equality before the law. This highlights a fundamental distinction between litigation and mediation.

Furthermore, the caucus is used in the middle of sessions when the egos of the parties cannot be contained. In this regard, mediators view the caucus as a method of persuasion aimed at calming the disputing parties. Mediators believe that cases need to be resolved with a calm heart, as anger can hinder efforts to find a balanced solution for both parties. Therefore, when a man is angry and a woman is fearful, or vice versa, the mediator initiates a caucus. During this process, the mediator approaches the parties with empathy.⁸¹ R4 even stated that she sometimes cries with the parties to demonstrate that the mediator truly feels what they are experiencing. “*Sometimes, if I need to cry, I will cry with the parties so they also feel that the mediator truly feels what the parties are feeling.*”⁸² However, interviews with eight mediators reveal that not all apply this method. Despite being authorized by Supreme Court Regulation, mediation strategies largely depend on the ability and skill of the individual mediator. Some mediators stated that the caucus approach has been highly effective for them, making their mediation more efficient and successful.

Compensation in Marital Property Disputes

Compensation is one of the methods mediators utilize to achieve justice for the parties involved, particularly in cases concerning marital property (*harta bersama*). In Minangkabau, marital property presents a unique challenge when compared to national law. Traditionally, immovable property, such as land in Minangkabau, is inherited through the maternal line (matrilineal system). Such property is not privately owned but is considered ancestral property (*harato pusako*).⁸³ Women who inherit *harato pusako*, such as a plot of land, are prohibited from selling it. Nevertheless, a woman may build a house with her husband on that land. In this context, the purpose of marital property extends beyond agricultural use to include residential purposes. Consequently, in the event of divorce, traditional custom dictates that the man must leave the house. In traditional Minangkabau divorce, the man is said to “*baranti pulang*” (stop returning). This means the man must leave the house because, essentially, the house belongs to the woman or the wife. The husband will not return until there is a customary resolution effort, such as “*bajapuik*” (fetching back), where the wife’s family brings the husband back to the house. This process may involve the *niniak mamak* (clan leader) to resolve the dispute if it remains unsettled between the husband and wife.

⁸⁰ R8, “Mediator,” July 9, 2023.

⁸¹ For further reading on this emotional approach, see: Endratno Pili Swasono et al., “Politeness Strategies in Divorce Mediation Within Indonesian Religious Courts,” *Theory and Practice in Language Studies* 15, no. 1 (2025): 172.

⁸² R4, “Mediator,” September 20, 2023.

⁸³ Afnaini Afnaini and M. Syamsudin, “Changes in the Inheritance System of Pusako Tinggi Assets and Their Impact on the Minangkabau Traditional Inheritance System,” *Prophetic Law Review* 4, no. 2 (2022): 1.

Here lies the mediation process within the customary environment, conducted in a traditional and familial manner.⁸⁴

If a resolution is not achieved at this stage, the case typically proceeds to the Islamic court. According to R1, cases brought to the Court are those that have already been addressed customarily by the *niniak mamak* but failed, subsequently entering the judicial system.⁸⁵ At the court level, conflicts often become more complex due to the influence of customary elements, such as the division of marital property. In mediation practice, dividing marital property involving *harato pusako* is difficult to execute based on state law. If it is not divided, the husband suffers a loss as he receives nothing. This practice remains prevalent in several areas of West Sumatra, such as Padang, Bukittinggi, Payakumbuh, and Batusangkar. Therefore, in divorce cases, mediators strive to realize justice by providing compensation to the man. R5 explained this approach with the following example: “*The husband cannot take the house because it was built on his wife’s communal land. The equitable solution is for the husband to be given cash compensation. For instance, if the house is valued at Rp500 million, the husband takes Rp250 million to buy another home. This is the solution regarding customary law.*”⁸⁶

In addition, compensation is utilized to provide justice for the wife. R3 does not divide marital assets strictly based on the rules of the Compilation of Islamic Law. Instead, R3 reduces the compensation owed to the husband because the husband receives productive assets, such as livestock. Livestock is deemed capable of growing and generating economic benefits over a certain period. R3 stated, “*When dividing marital assets, it is better to seek a practical solution rather than strictly splitting everything fifty-fifty; for example, if the total value is Rp300 million and the husband keeps the car and livestock worth Rp100 million, the wife would mathematically owe him Rp50 million to reach a balanced Rp150 million each. However, to foster a smoother agreement, I advise the wife to offer a lower compensation of Rp25 million, justified by the fact that the husband already possesses the productive assets that can generate income. Ultimately, if the husband agrees to let the wife and children keep the house and accepts lower compensation, the dispute can be resolved without conflict.*”⁸⁷ Thus, compensation serves as a negotiation tool employed by mediators to achieve agreement in the division of marital property, particularly within the Minangkabau context.⁸⁸

Objective Cumulation

Another approach used by mediators to protect women’s rights is objective cumulation, wherein multiple claims within a case are combined. In divorce proceedings, for example, women have rights related to divorce claims, past maintenance (*nafaqah māḍiyah*), post-divorce compensation (*mut’ah*), maintenance during the waiting period (*‘iddah*), child custody, and the division of marital property. According to R5, it is permissible for mediators to discuss these additional rights beyond the core subject of the case. If agreements are reached on other issues, the mediator can direct the plaintiff to incorporate these into the

⁸⁴ Holden, *Cultural Expertise, Law, and Rights*, 333.

⁸⁵ R1, “Mediator,” October 14, 2023.

⁸⁶ R5, “Mediator,” August 28, 2023.

⁸⁷ R3, “Mediator,” August 30, 2023.

⁸⁸ Jayusman argues that the formulation of joint property division is based on *‘urf* (local custom) and *maṣlaḥah* (public interest). See: Jayusman Jayusman, “The Decision on Joint Properties in Bengkulu High Religious Court Jurisdiction,” *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* 21, no. 1 (2021): 107.

formal petition. This allows the judge to decide on the basis of those claims, making the agreement enforceable. Without such inclusion, the judge would be unable to rule on these issues, as the decision must adhere to the petition's contents.⁸⁹

Although other mediators did not explicitly use the term “objective cumulation,” such efforts occur in practice. As mentioned earlier, mediation in Indonesia is no longer confined to marital mediation—it has evolved into divorce mediation as well. When a marriage can no longer be saved, the mediator's role shifts to facilitating a fair agreement about post-divorce rights. In this context, mediation is deemed successful not only when divorce is prevented, but also when an agreement on post-divorce rights can be achieved. As R1 explained, “*When an agreement is reached between husband and wife regarding ‘iddah and mut‘ah maintenance, as well as the division of marital property, this significantly speeds up the proceedings and leads to a more expedient decision.*”⁹⁰ From this account, it is evident that the realization of gender justice from the mediator's perspective is largely strategic and technical. Efforts are made to investigate the root causes and obtain accurate data from the parties before mediation occurs. Another approach involves allowing the plaintiff to consolidate post-divorce rights within their petition.

Mediator Dilemmas: Navigating Peace and Gender Justice in Islamic Courts

The findings of this research confirm that mediators have yet to fully grasp the importance of gender justice in mediation. Gender justice is still perceived merely as a compromise that risks being overlooked for the sake of achieving reconciliation. This occurs because mediation is not understood as a vehicle for realizing gender justice.⁹¹ Such an understanding underscores that, in the view of mediators, mediation is not linearly aligned with the goals of family law reform, one of which is to ensure justice for women.⁹² Consequently, mediation cannot be fully relied upon to guarantee women's rights, particularly when mediators are overly focused on peace rather than intervening more deeply to protect the rights of the parties. This remains the case even though some research suggests that mediation is perceived as being more capable of encouraging parties, especially women, to participate actively in negotiating their rights.⁹³

The complexity of utilizing mediation as a vehicle for fulfilling women's rights is further compounded by the patriarchal views held by some mediators. These findings underscore that gender stigmas, particularly classical interpretations of Islamic law that

⁸⁹ R5, “Mediator,” August 28, 2023.

⁹⁰ R1, “Mediator,” October 14, 2023.

⁹¹ Yangto et al., *Contemporary Challenges and Prospects of Mediation in Contested Divorce Cases in Indonesia*, 52.

⁹² Cammack et al., “Legislating Social Change in an Islamic Society-Indonesia's Marriage Law,” 53.

⁹³ See: Fatahillah Abdul Syukur and Dale Margaret Bagshaw, “When Home Is No Longer ‘Sweet’: Family Violence and Sharia Court–Annexed Mediation in Indonesia,” *Conflict Resolution Quarterly* 30, no. 3 (2013): 284. Compare this article with others that propose restorative justice as a solution for domestic violence cases, including those advocating for court-annexed mediation. See: Sukendar Sukendar et al., “Women's Access to Justice: Mediation for the Victims of Domestic Violence in Central Java, Indonesia,” *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 7, no. 1 (2023): 613; Kateryna Buriak et al., “Empirical Analysis of Legal Regulations on Family Violence During Wartime in Ukraine: A Comprehensive Examination,” *Syariah: Jurnal Hukum dan Pemikiran* 23, no. 2 (2023): 267–80; Yuliia Shvets et al., “Administrative Crime and Policing Trends in Ukraine 2019–2024 Under Wartime Disruption Offenses,” *Ascarya: Journal of Islamic Science, Culture, and Social Studies* 5, no. 2 (2025): 153–67.

disadvantage women, remain a significant challenge to the realization of justice within family law practices in Indonesia.⁹⁴ Beyond the issue of neutrality in mediation, biased understandings in specific family law contexts, such as polygamy and child custody, foster a lack of sensitivity among mediators in guaranteeing women's rights. This reflects the urgent need to scrutinize cases involving power imbalances to ensure that resulting agreements do not discriminate against women. If this cannot be achieved, then the mandatory requirement for mediation should not be generalized across all cases regulated by Supreme Court Regulation No. 1 of 2016.⁹⁵

Nevertheless, it must be acknowledged that mediators also strive to realize gender justice through various strategies, such as the use of caucuses, compensation, and the *cumulative objective* (accumulation of claims). However, these methods are practiced only by a small minority of mediators. Such efforts appear to be highly dependent on the individual skill and personal initiative of the mediator rather than on specific institutional guidelines or specialized training. Therefore, if mediation is to remain mandatory across all case types, this research confirms that mediators require specialized training in gender justice.⁹⁶ In Indonesia's pluralistic context, this training should not focus solely on international gender justice standards but must also account for living law within society. Thus, the training curriculum for mediators in Indonesia needs to consider the specific cultural and social backgrounds of the region.⁹⁷

Local values have been applied to a limited extent, as seen in post-divorce marital property disputes in Minangkabau. Despite its limitations, the mediator's ability to understand local norms is considered to have facilitated negotiations that guarantee women's rights. This is evident in the approach taken by R5, where local values are accommodated while simultaneously ensuring the rights of both women and men through compensation. In this regard, the findings of this study reinforce previous research stating that the accommodation of local norms is vital in mediation.⁹⁸ Other research also argues that living law is more contextual and possesses adaptability to social change.⁹⁹ In Minangkabau, for

⁹⁴ In one of my studies, I argue that classical interpretations of Islamic law often regard men as superior to women. However, this perspective does not fully capture the true essence of gender justice. See: Mhd Yazid, "Neglecting Women's Rights: Indonesian YouTube Preachers' Legal Opinion on Polygamy," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 16, no. 1 (2023): 76.

⁹⁵ In situations where a power imbalance exists within the household, such as cases involving domestic violence, divorce, and similar circumstances. See: Jones and Aftab, "Inside Indonesia's Religious Courts," 223; Ulin Na'mah et al., "Reducing the Divorce Rate in the Religious Courts Through Cultivating Egalitarian Relationships," *Khazanah Hukum* 6, no. 1 (2024): 81–97; M. Tahir Maloko et al., "Sompā Tanah in Makassar Bugis Customary Marriages: Legal, Religious, and Cultural Perspectives," *Jurnal Ilmiah Peuradeun* 12, no. 3 (2024): 1213–36.

⁹⁶ Syukur and Bagshaw, "Gender, Power, and Court-annexed Mediation in Indonesia," 277–88.

⁹⁷ Syukur and Bagshaw, "Court-Annexed Mediation in Indonesia," 379; Sebyar et al., "Divorce Mediation at Panyabungan Religious Court," 91.

⁹⁸ Mukarramah Kamaliah and Mhd Yazid, "Legal Consciousness and Living Legal Reasoning: *Penghulus* and Mediation in Resolving Marital Disputes at the Religious Affairs Office of East Pontianak," *Indonesian Journal of Sharia and Socio-Legal Studies* 1, no. 2 (2025): 165; Sebyar et al., "Divorce Mediation at Panyabungan Religious Court," 91; Bukido et al., "Reconciling Traditions," 307.

⁹⁹ Ahmad Sukris et al., "Restorative Justice Principles in Banjar Customary Inheritance Disputes: A Normative Analysis of Out-of-Court Settlement Institutions through Adat Badamai," *El-Maslahah* 15, no. 2 (2025): 429.

instance, involving the extended family in mediation has been found to better anticipate conflict and provide certainty and protection for women against potential future mistreatment by a husband.¹⁰⁰

The application of the cumulative objective remains technical and personal, and it is not yet fully understood as a priority by mediators. Women's rights, for example, are not always fully disclosed during the mediation process, even though they are regulated by state law and Supreme Court regulations, often to maintain neutrality or to ensure that a settlement is reached. Furthermore, there is a tendency for mediators to provide such information only when explicitly asked by the parties. This reflects that mediation efforts present a new challenge in realizing gender justice within Islamic courts. Therefore, the concept of mandatory mediation in Islamic courts must be aligned with the interests of female protection, which is currently a priority agenda for the Supreme Court through the issuance of various Supreme Court regulations and Supreme Court circular letters.¹⁰¹

Conclusion

In this paper, I have investigated mediators' perceptions regarding gender justice in resolving divorce disputes, beginning with an explanation of how mediation entered the judicial system and its implementation in Islamic courts. This section illustrates how mediation is considered a vital component of the Islamic court system in supporting the principle of *islāh* (reconciliation). However, this research identifies several obstacles faced by mediators in realizing gender justice. By examining the factors hindering the realization of justice and the strategies employed by mediators, I find that mediators essentially adhere to the concept of mediation as a means of reconciling parties while attempting to guarantee women's rights through technical methods that depend heavily on individual skill. This reality reflects a persistent dilemma for mediators: the tension between achieving peace and ensuring justice.

Addressing this persistent tension requires more than just technical adjustments; it demands a fundamental re-evaluation of the mediator's role. This study underscores the need for a paradigm shift in mediation practices within Islamic courts. Mediators cannot rely solely on individual initiative; instead, there must be a systematic effort to integrate gender perspectives into the code of conduct or operational guidelines for mediation, particularly in cases related to divorce and post-divorce disputes. Nevertheless, this research has limitations in its geographical scope, as it focuses only on West Sumatra. Future research is encouraged to expand this scope to other regions to compare mediators' perspectives and gender-based mediation practices across diverse social and cultural contexts. Given that Indonesia possesses legal diversity and local standards regarding gender justice, the spirit of mediation aligns with the protection of all parties, particularly women.

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¹⁰⁰ Holden, *Cultural Expertise, Law, and Rights*, 335.

¹⁰¹ Theresia Dyah Wirastris and Stijn Cornelis van Huis, "The State of Indonesia's Marriage Law: 50 Years of Statutory and Judicial Reforms," *AHKAM: Jurnal Ilmu Syariah* 24, no. 2 (2024): 228.

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