





Community, Court, and Conciliation: Designing a Hybrid Mediation Model for Islamic Divorce Adjudication

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Abstract

The appointment of a *hakam*, an individual who mediates disputes, in divorce proceedings constitutes a crucial mechanism for advancing justice and reconciliation within both Islamic law and the Indonesian judicial system. This study offers a comparative analysis of two predominant *hakam* models in Jember Regency: the formal-institutional approach utilized by the Religious Court and the communal-cultural approach practiced by community leaders or local religious figures (Kiai). Employing a qualitative case study methodology, the research draws on data collected through in-depth interviews with ten purposively selected participants, including judges, mediators, religious leaders, community elders, and divorced individuals, supplemented by direct observation and document analysis. The findings reveal that the formal-institutional model ensures legal certainty through standardized mediation procedures; however, it often overlooks the social and cultural dimensions of marital conflict. Conversely, the communal-cultural model emphasizes empathy, religious authority, and contextual harmony but lacks binding legal authority and enforceability. This study underscores the potential for synergy between formal legal mechanisms and socio-cultural practices. It contributes to the literature by proposing a hybrid *hakam* framework that integrates procedural justice with cultural responsiveness, demonstrating how the convergence of legal formalism and communal concern can enhance the effectiveness, fairness, and cultural relevance of Islamic divorce resolution in Indonesia.

Keywords

Islamic Divorce;
Hybrid Mediation;
Hakam; Court–
Community
Relations; Legal
Pluralism

Introduction

Divorce constitutes a significant socio-legal issue within contemporary Muslim societies, encompassing not only legal disputes but also deeply rooted cultural, moral, and emotional factors. In Indonesia, divorce cases are adjudicated by the Pengadilan Agama (Religious Court), which upholds procedural justice and legal certainty in accordance with Law No. 7 of 1989 (as amended by Law No. 3 of 2006) and the Compilation of Islamic Law (Kompilasi Hukum Islam, KHI). Nonetheless, empirical data reveal that numerous couples, especially those residing in rural and semi-urban areas, tend to favor informal or community-based mediation prior to, or in lieu of, formal court proceedings. A local survey conducted by the Jember Religious Court (2024) indicated that approximately 38% of divorce petitions were preceded by informal family mediation



facilitated by religious leaders (Kiai) or village elders.¹ These findings are corroborated by Nafisah, who noted that informal mechanisms remain the predominant method for early conflict resolution in East Java before cases are formally registered with the court.²

The coexistence of formal and communal mediation underscores a persistent divergence between institutional legal frameworks and lived cultural practices. This duality is particularly pronounced in Jember Regency, the focus of this study, where diverse socio-geographical contexts reveal distinct mediation dynamics.³ The district encompasses rural subdistricts such as Sumberbaru, characterized by close kinship networks and strong religious leadership, as well as semi-urban areas like Wuluhan, where modernization and increased mobility have begun to reshape social relations, although traditional authority remains significant. In this context, rural areas are defined by communities in which social cohesion and informal authority—particularly that of religious leaders—predominate in dispute resolution processes. Conversely, semi-urban settings exhibit transitional features, maintaining communal ties while progressively engaging with formal legal institutions.⁴ This interplay forms the basis of a hybrid model of divorce mediation in Jember, one that negotiates the interface between state law and local customary wisdom.

This study addresses the gap by situating the analysis within the dual social ecology of Jember, where Kiai and village elders coexist alongside judges and certified mediators, to explore how their interactions generate both tension and synergy in the resolution of divorce cases. Empirically, Sumberbaru and Wuluhan Districts serve as rich field sites for this inquiry. Both districts exhibit high divorce rates relative to other areas in Jember; according to 2024 data from the Religious Court, 512 divorce cases were filed in Sumberbaru and 438 in Wuluhan, with approximately one-third of these cases initially undergoing informal mediation. These statistics underscore the importance of examining the coexistence of formal and informal approaches within a single region. Accordingly, this research aims to analyze the dynamics, effectiveness, and implications of *hakam* mechanisms across these dual contexts. By comparing institutional and cultural frameworks, the study seeks to identify not only their differences but also potential points of convergence that may facilitate the development of a hybrid model of divorce mediation that is both culturally grounded and legally legitimate. The novelty of this study lies in its empirical and comparative demonstration of how integrating legal formalism with communal ethics can foster a more substantive and culturally responsive vision of Islamic family justice in Indonesia.

Literature Review

Previous research has examined various aspects of *hakam* and mediation within Islamic family law; however, most studies have treated formal judicial mediation and communal mediation systems as separate phenomena. One line of inquiry addresses the procedural rigidity characteristic of court-

¹ Nuzliyati Amin et al., “Revitalizing Religious-Based Mediation in Peripheral Indonesia: An Empirical Assessment of BP4’s Role in Family Conflict Resolution,” *Antmind Review: Journal of Sharia and Legal Ethics* 2, no. 1 (2025): 56–76, <https://doi.org/10.63077/zaxhpt24>.

² Ratu Durotun Nafisah and Yassar Aulia, “Abusive Judicial Review and the Indonesian Presidential Age Limit Case,” *Australian Journal of Asian Law* 26, no. 2 (2025): 17–34.

³ Ardhi Khair and Farid Ahmad Abidin, “Influence of Religion on Resolving Social Conflicts: A Multi-Faceted Analysis,” *Jurnal Ilmu Pendidikan Dan Humaniora* 13, no. 1 (2024): 53–64, <https://journals.ristek.or.id/index.php/jiph/article/view/72>.

⁴ Jeremie Gilbert et al., “Understanding the Rights of Nature: Working Together across and beyond Disciplines,” *Human Ecology* 51, no. 3 (2023): 363–77, <https://doi.org/10.1007/s10745-023-00420-1>.



based mediation,⁵ while others emphasize the cultural and emotional dimensions of divorce that extend beyond legal frameworks.⁶ Nonetheless, the interaction between these two approaches—specifically how they coexist, conflict, or complement one another—remains insufficiently explored. A thorough review of the literature reveals two primary research trajectories. The first pertains to the predominance of legal positivism within the Religious Court (Pengadilan Agama), which prioritizes procedural compliance and codification, often at the expense of cultural sensitivity. Scholars contend that mediation in Religious Court frequently operates as an administrative formality rather than a genuine effort at reconciliation.⁷ The second body of literature focuses on community-based mediation led by religious or customary figures, emphasizing empathy, moral authority, and social harmony. This research indicates that local leaders act as custodians of *maqāṣid al-sharī‘ah*, promoting reconciliation in alignment with communal ethics.⁸

Despite the existence of prior research, few empirical studies have conducted comparative analyses within specific local contexts characterized by both institutional and communal structures, such as Jember Regency. Most existing investigations focus exclusively on either the judicial system or community-based mediation,⁹ without examining the interaction between these two approaches in practice. Research on divorce mediation within Islamic legal contexts has predominantly concentrated on the institutional role of the Religious Court in enforcing the concept of *hakam*. These studies typically underscore the significance of legal certainty, procedural structure, and judicial accountability.¹⁰ However, they also indicate that court-based mediation frequently encounters challenges in fostering reconciliation, as it tends to be formal and procedural rather than emotional and transformative. The majority of this scholarship frames *hakam* primarily as a legal obligation within the framework of Islamic family law, rather than as a social mechanism influenced by cultural or community values.¹¹

In numerous regions of Indonesia, local religious leaders (Kiai), village elders, and esteemed

⁵ Salman Salman, “Implementation of Mediation and Hakam in Divorce Case in Religious Court,” *International Journal of Nusantara Islam* 8, no. 2 (2020): 274–81, <https://doi.org/10.15575/ijni.v8i2.12407>; 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): 217–31, <https://doi.org/10.1093/ojlr/rwad015>.

⁶ Azher Hameed Qamar and Hafiza Faiza Faizan, “Reasons, Impact, and Post-Divorce Adjustment: Lived Experience of Divorced Women in Pakistan,” *Journal of Divorce & Remarriage* 62, no. 5 (2021): 349–73, <https://doi.org/10.1080/10502556.2021.1871840>; Tran Thi Minh Thi, “Complex Transformation of Divorce in Vietnam under the Forces of Modernization and Individualism,” *International Journal of Asian Studies* 18, no. 2 (2021): 225–45, <https://doi.org/10.1017/S1479591421000024>.

⁷ Emad H. Atiq, “Legal Positivism and the Moral Origins of Legal Systems,” *Canadian Journal of Law & Jurisprudence* 36, no. 1 (2023): 37–64, <https://doi.org/10.1017/cjlj.2022.17>; Ahmad Haris, Edy Lisdiyono, and Setiyowati, “The Reconstruction of Religious Court Decision Execution on the Fulfilment of Children’s Rights Post-Divorce in Indonesia,” *Revista de Gestão Social e Ambiental* 18, no. 7 (2024): 1–26, <https://doi.org/10.24857/rgsa.v18n7-035>.

⁸ Muhaimin, “The Interrelation between Islamic Law and Regional Regulations in Jember: Examining the Maqāṣid Al-Sharī‘ah-Based Reasoning in Istinbāt Al-Aḥkām,” *AHKAM: Jurnal Ilmu Syariah* 20, no. 2 (2020), <https://doi.org/10.15408/ajis.v20i2.18330>.

⁹ Russell S. Harrison, “Community-Based Mediation Programs: A Case Study and Comparison,” *International Journal of Public Administration* 25, no. 11 (2002): 1427–57, <https://doi.org/10.1081/PAD-120013353>.

¹⁰ Achmad Dodi Haryadi, Hartiwiningsih Hartiwiningsih, and Arief Hidayat, “Consistency of Constitutional Court Decisions in Realizing Fair Legal Certainty,” *Proceedings of the International Conference on Cultural Policy and Sustainable Development (ICPSD 2024)*, Springer Nature, 2024, https://doi.org/10.2991/978-2-38476-315-3_32.

¹¹ Hisam Ahyani and António José Pereira Figueiredo, “Integrating Shariah Principles in Modern Family and Economic Life for Social Well-Being and Justice,” *Munakahat: Journal of Islamic Family Law* 1, no. 1 (2024): 94–107, <https://ejournal.kampusalazhar.ac.id/index.php/jmk/article/view/25>.

community figures assume pivotal roles in mediating marital disputes outside formal institutional frameworks. Their authority stems from moral credibility, personal familiarity, and the cultural emphasis on social harmony. Although these informal systems tend to be more empathetic and persuasive, they lack official recognition and legal enforceability. To address this deficiency, the present study examines the *hakam* institution in Jember Regency, where judicial and communal mechanisms operate concurrently. This research elucidates how the Religious Court and community mediators engage in reciprocal adaptation, resulting in a hybrid model that integrates procedural justice with cultural wisdom. By analyzing these interactions within actual divorce cases, the study contributes to advancing a more progressive understanding of Islamic family law—one that values not only adherence to legal norms but also moral restoration, empathy, and social harmony within the community.

Method

This study utilizes a qualitative methodology with a case study design, grounded in the theoretical frameworks of legal pluralism and progressive Islamic legal thought.¹² It draws upon William Twining's concept of law in context, which posits that law should not be understood solely as a codified system but as a dynamic practice shaped by social and cultural realities.¹³ Additionally, the research incorporates Lawrence Rosen's notion of the justice of Islam, which conceptualizes Islamic law as embedded within community life and interpretive traditions.¹⁴ These theoretical perspectives underpin the analysis of how formal-institutional and communal-cultural approaches to divorce resolution coexist and interact within a plural legal environment. Furthermore, they provide the rationale for the comparative framework employed in this study, which aims to understand the role of *hakam* not merely as a legal actor but as a socio-cultural institution.

The research was conducted from April to June 2025 in Jember Regency, East Java, focusing on two subdistricts: Sumberbaru, representing rural settings, and Wuluhan, representing semi-urban settings. The selection of Jember as the research site is grounded in several scientifically justified considerations. First, Jember exemplifies Indonesia's legal pluralism, where the Pengadilan Agama (Religious Court) operates alongside robust community-based religious and cultural mediation practices. Second, the region exhibits a distinctive socio-legal dynamic, with religious leaders (Kiai) playing central roles in resolving domestic conflicts, and many couples engaging in informal mediation prior to court proceedings. Third, Jember's location at the Madura-Javanese cultural interface provides a unique context for examining the coexistence of Islamic law, local customs, and state institutions. This context is particularly pertinent to the research objective of identifying hybrid patterns between formal and communal approaches. In contrast, although the Minangkabau region of West Sumatra is well known for its strong cultural mechanisms of conflict resolution rooted in *Adat Basandi Syarak* and *Syarak Basandi Kitabullah*,¹⁵ it has been extensively studied in previous research, and its matrilineal socio-legal structure fundamentally differs from

¹² Joseph A. Maxwell, "Designing a Qualitative Study," in *The SAGE Handbook of Applied Social Research Methods* (Sage Publications, 2008).

¹³ William Lawrence Twining, *General Jurisprudence: Understanding Law from a Global Perspective* (Cambridge University Press, 2009), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1490104.

¹⁴ Lawrence Rosen, *The Justice of Islam: Comparative Perspectives on Islamic Law and Society* (Oxford University Press, 2000).

¹⁵ Inoki Ulma Tiara et al., "History of Conflict Resolution Education in Minangkabau," *Proceedings of the 1st International Conference on Economic and Education (ICON 2021)*, European Alliance for Innovation, 2022, <http://dx.doi.org/10.4108/eai.14-12-2021.2318302>.



the patriarchal, Pesantren-based context of Jember. Therefore, selecting Jember enables the study to offer new insights from a region that has received limited scholarly attention despite its high divorce rates and rich tradition of Kiai-led mediation.

Data collection methods included in-depth interviews, document analysis, and participant observation, with the objective of capturing perspectives from both institutional and community contexts. Ten key informants were purposively selected based on their active involvement in divorce resolution processes. These informants comprised judges, certified mediators, religious leaders, community elders, and individuals with direct experience in both court-based and customary mediation. This purposive sampling strategy was employed to ensure representation across diverse socio-legal roles pertinent to the *hakam* mechanism, thereby facilitating a balanced comparison between formal institutional and communal cultural approaches. Table 1 presents an overview of the informants, their institutional affiliations, and the rationale for their inclusion.

Table 1. Summary of Informant Data.

No.	Code	Position/Role	Reason for Selection
1	MN	Judge, Jember Religious Court	Possesses extensive experience in adjudicating divorce cases and implementing mediation protocols within formal court settings
2	LS	Certified Mediator, Religious Court	Actively engaged in court-mandated mediation, offering valuable insights into the implementation of procedural processes
3	ASA	Religious Leader, Sumberbaru Village	Frequently facilitates the resolution of marital disputes by applying local customs and Islamic ethical principles
4	ZN	Head of Wringin Lor Hamlet	Recognized for mediating family conflicts within the community by applying customary principles
5	SR	Former spouse who resolved divorce via Religious Court	Represents the user's perspective on the formal judicial mechanism
6	AS	Former spouse who resolved conflict through customary mediation	Offers a first-hand account of practices related to communal and cultural mediation
7	MH	Member of <i>Majelis Ta'lim</i> and family counselor	Engages in pre-litigation counseling and initiatives aimed at reconciliation grounded in faith-based principles
8	HB	Community Leader, Wuluhan	Represents a semi-urban context in which hybrid mediation practices are emerging
9	NA	Officer, Women and Children Protection Service (P3A), Jember	Provides a policy perspective on the management and protection related to family conflict
10	MR	Neighborhood Head (RT), Urban Area	Contends perspectives from semi-urban households engaged in informal mediation

The inclusion of multiple informant categories enhanced the depth and reliability of the data by enabling the researchers to triangulate insights from both institutional and communal perspectives. Data validity was ensured through source triangulation and member checking, while consultations with experts in Islamic family law and cultural studies were undertaken to improve

interpretive credibility. Data analysis adhered to Miles and Huberman’s interactive model, encompassing data reduction, data display, and conclusion drawing/verification, which were conducted iteratively throughout the research process. This analytic approach allowed the researchers to elucidate the dynamic relationship between law and culture, emphasizing both the tensions and potential synergies involved in the application of *hakam* within formal and communal contexts.

Result

The Role of Hakam in Formal and Informal Divorce Processes

This study presents a novel analytical perspective on the *hakam* mechanism by investigating the contextual transformations of its meaning and function within the hybrid socio-legal environment of Jember Regency. Whereas prior research has predominantly offered descriptive comparisons between formal and informal mediation, the present study contributes original insights by demonstrating the reciprocal adaptation and influence between these systems through shared actors, intersecting moral norms, and evolving institutional practices. The originality of this research lies in conceptualizing *hakam* as a dynamic and adaptive institution that transcends the boundaries between judicial settings and community contexts, thereby establishing a distinctive hybrid *hakam* model rooted in local culture and Islamic jurisprudence.

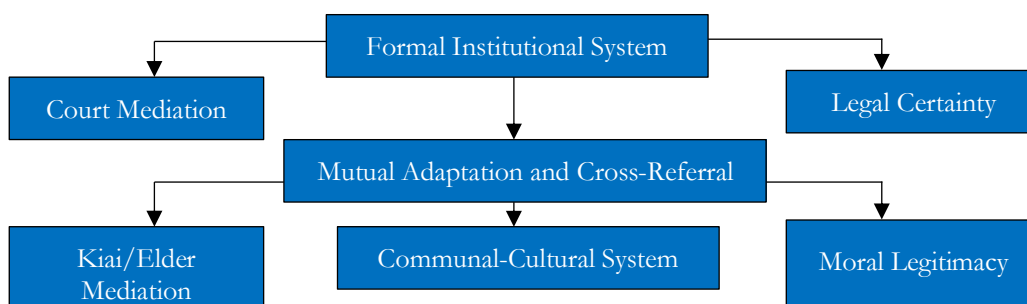
Empirical evidence indicates that within the Religious Court, the concept of *hakam* has been partially institutionalized through the procedural roles assigned to certified mediators or judges. Although the term *hakam* is infrequently used explicitly, its fundamental function—promoting reconciliation and maintaining family harmony—is operationalized through mediation procedures mandated by Supreme Court Regulation (PERMA) No. 1 of 2016. Judges and mediators in Jember acknowledged that, while this framework offers legal certainty and standardization, it often neglects the emotional and cultural aspects of marital conflict. As LS observed, “In court, we are bound by procedure. We try to mediate, but most couples come already determined to separate.” Consequently, the *hakam* function within the institutional system has become formalized and procedural, emphasizing adherence to legal norms rather than the socio-emotional restoration of relationships.

In contrast, within the communal-cultural context, *hakam* functions as a relational and moral authority embodied by Kiai, village elders, and family figures who mediate through trust, empathy, and shared religious ethics. Observations conducted in Sumberbaru and Wuluhan reveal that these figures engage in informal mediation processes grounded in the principles of *maqāṣid al-sharī‘ah*, aiming not solely at legal reconciliation but at moral and social restoration. These sessions typically occur in familiar domestic settings, often accompanied by family discussions and prayer gatherings, thereby reflecting the enduring cultural legitimacy of Kiai-led mediation. As ASA articulated, “We do not use the word *hakam*, but we fulfill its spirit. We advise, remind, and pray that their hearts return to peace.” The distinctive contribution of this study lies in identifying the intersectional space between these two spheres, wherein court mediators increasingly incorporate cultural values into formal procedures, while Kiai begin to adopt certain documentation practices inspired by court mediation.

This phenomenon exemplifies the emergence of a “hybrid *hakam* model,” a mutually reinforcing system in which formal law acquires cultural legitimacy and community mediation attains procedural recognition. Several empirical examples demonstrate this hybridization. For

example, MN as a judge in Jember have reported that unresolved cases are occasionally referred to respected Kiai for supplementary mediation prior to the issuance of verdicts. Additionally, ZN as a community leader have begun documenting mediation outcomes in written records modeled after formal court agreements. This reciprocal adaptation exemplifies the dynamic interdependence between institutional and communal systems, thereby challenging earlier assumptions that regarded these systems as mutually exclusive. Figure 1 illustrates how the hybrid model functions across social and institutional boundaries.

Figure 1. Hybrid *Hakam* Model.



Source: Authors' elaboration

In summary, this study contributes to the discourse on *hakam* by transcending the traditional dichotomy between formal and informal mediation. It conceptualizes *hakam* as a hybrid socio-legal mechanism that integrates state law with local customary wisdom. This hybridization enhances procedural justice and accessibility while simultaneously reinforcing cultural legitimacy and community trust in the resolution of divorce cases. The model derived from the Jember case provides a contextually grounded theoretical framework that is applicable to broader Muslim societies characterized by the dynamic interplay of law and culture.

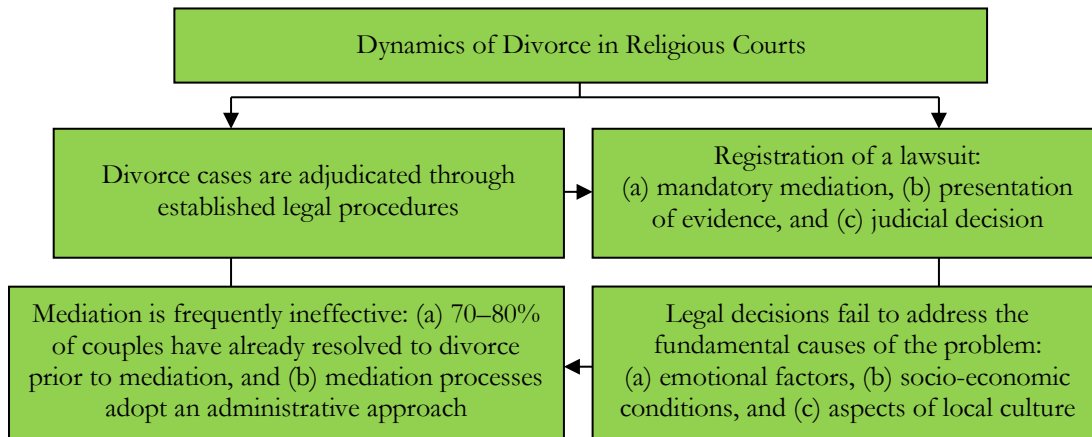
Divorce Dynamics in the Religious Court

The findings of this study extend beyond the general patterns previously documented in Indonesian Religious Courts by elucidating how local cultural dynamics influence and reshape formal mediation processes in Jember. While prior research has highlighted the procedural rigidity and limited effectiveness of court-mandated mediation, this study reveals a distinctive adaptive behavior among mediators and judges who endeavor to reconcile the legalistic framework with the moral expectations of the local community. Empirical data from the Jember Religious Court indicate that approximately 70–80% of divorce cases proceed to litigation with couples already resolved to separate. MN noted, “Most litigants come with their minds made up; reconciliation is unlikely, but we still try to bring in moral reflection.” This observation corroborates existing findings regarding the administrative nature of mediation. However, what distinguishes the Jember context is that mediators frequently reinterpret their procedural responsibilities as opportunities for moral engagement, incorporating local idioms, Qur’anic reminders, and references to Kiai authority into otherwise standardized sessions. This subtle practice demonstrates the cultural infiltration into judicial routines, a dimension that has not been explicitly identified in prior scholarship.

An additional noteworthy observation pertains to the pre-litigation impact of community mediation on the court’s caseload. MN, LS, and MR reported that numerous divorce petitions are submitted to the court only after several unsuccessful attempts at informal reconciliation.

Consequently, court officials acknowledge the moral authority of Kiai and local elders within the conflict resolution process, despite their efforts occurring outside the formal legal framework. This interaction illustrates that the judicial process in Jember does not function in isolation but is embedded within a continuum of social mediation, wherein formal adjudication serves as the final, rather than the initial, stage of dispute resolution.

Figure 2. Divorce Dynamics in the Religious Court.



Source: Authors' elaboration

Furthermore, the study reveals a gradual transformation in judicial attitudes toward cultural inclusion. Mediators increasingly utilize culturally resonant narratives, such as harmonious family (*keluarga sakinah*) and *ukhuwah keluarga* (family relationship), to mitigate the rigidity of legal proceedings. Additionally, as LS provides that some judges engage in informal consultations with local religious leaders to assess community responses prior to finalizing certain decisions, demonstrating an emerging form of cultural sensitivity within the state legal apparatus. These findings offer a theoretical contribution to the discourse on legal pluralism and progressive Islamic legal thought.

The case of Jember exemplifies how institutional law adapts to its socio-cultural context without compromising its formal authority. Rather than perceiving the Religious Court as an isolated bureaucratic entity, this study conceptualizes it as a negotiated space where legal rationality and cultural ethics converge. This nuanced perspective enhances the understanding of the implementation of Islamic family law in Indonesia, emphasizing that procedural uniformity coexists with localized ethical adaptation. Figure 2 illustrates that divorce proceedings in the Religious Court adhere to a formal legal process; however, mediation often proves unsuccessful because couples have typically already resolved to separate. This process tends to neglect the emotional, social, and cultural aspects of marital conflict. Although it ensures legal certainty, the approach frequently fails to address the underlying causes of family dissolution.

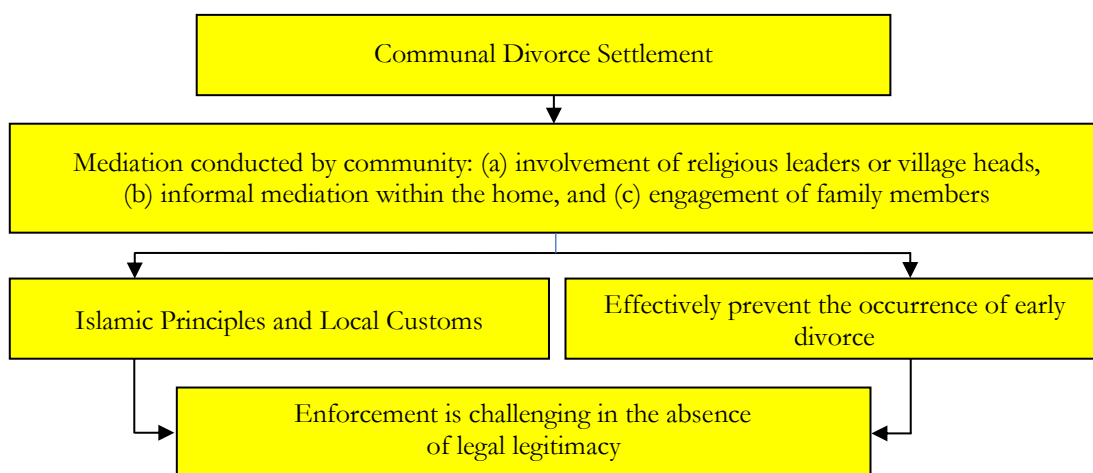
Communal-Cultural Practices in Divorce Resolution

Field research reveals that the communal-cultural approach is demonstrably effective in preventing early-stage divorce, especially within rural and semi-urban communities characterized by strong social cohesion and influential religious leadership. Data collected through interviews and documentation from the Sumberbaru and Wuluhan subdistricts indicate that approximately 41% of couples who initially sought mediation from local religious leaders ultimately chose to postpone

or withdraw their divorce petitions.¹⁶ Among the 27 informal mediation cases observed or reported during the study period (April–June 2025), 11 resulted in reconciliation, 6 proceeded to formal legal proceedings, and the remaining cases involved separation by mutual consent without formal registration.¹⁷

These findings substantiate the argument that community-based mediation frequently succeeds due to its operation within familiar social and moral frameworks. Local Kiai and village elders utilize their intimate knowledge of the couple’s backgrounds, family relationships, and social networks to facilitate the restoration of communication and trust. ASA stated, “We know their family history and problems. Before divorce, we remind them of their vows and of how children will suffer. Many then choose to reconcile.” This profound relational awareness, which is often lacking in institutional settings, enables mediators to address emotional and ethical dimensions that lie beyond the scope of formal court procedures. The efficacy of this approach is further enhanced by collective moral pressure. Community members, neighbors, and extended family frequently observe the mediation process, fostering a shared sense of responsibility for maintaining household stability (see Figure 3). As noted by HB, “If the Kiai advises reconciliation, it is rarely rejected. People here still hold on to his words.” Such communal endorsement reinforces adherence to the mediation outcome, even in the absence of legal enforceability.

Figure 3. Community Services Addressing Divorce-Related Issues.



Source: Authors' elaboration

The study also revealed that not all cases mediated informally achieve successful outcomes. According to NA, approximately 22% of couples who reconciled through community mediation subsequently returned to court within six months, often due to unresolved financial or trust-related issues. The lack of formal documentation complicates the enforcement of agreements when disputes reemerge. This limitation highlights the necessity for institutional recognition of communal mediation outcomes, such as incorporating community reports into pre-litigation processes.

In summary, the communal-cultural approach in Jember is particularly effective in delaying or de-escalating divorce during its early stages, facilitating reconciliation in nearly half of the cases observed. Its effectiveness stems from relational trust, moral authority, and localized understanding rather than procedural formalities. However, its long-term sustainability is

¹⁶ Researchers, “Field Data from Interviews with Kiai and Community Mediators,” 2025.

¹⁷ Researchers, “Observation Log and Interview Documentation,” 2025.

constrained by the absence of legal recognition, indicating a need for hybrid mechanisms that integrate cultural legitimacy with institutional enforceability.

Tensions and Synergies between Islamic Law and Indigenous Knowledge Systems

The initial source of tension arises from the procedural rigidity inherent in the court system, which frequently conflicts with the moral and relational flexibility characteristic of local mediation practices. Mediators within the Religious Court are required to comply with stringent timelines and documentation standards as stipulated by Supreme Court Regulation (PERMA) No. 1 of 2016, thereby limiting opportunities for prolonged or emotionally nuanced engagement. As LS noted, “We are bound by procedure. A mediation session cannot exceed the scheduled limit, even if the couple still needs time.” In contrast, community-based Kiai perceive reconciliation as a moral journey rather than a procedural obligation. Their approach may involve multiple sessions over several weeks or months, often incorporating family visits, religious preaching (*pengajian*), or spiritual counseling. According to MH, this divergence engenders practical tension when informal mediation efforts coincide with ongoing court proceedings. ASA acknowledged, “Sometimes the court calls the same couple we are still guiding. We feel ignored, as if our efforts don’t count.”

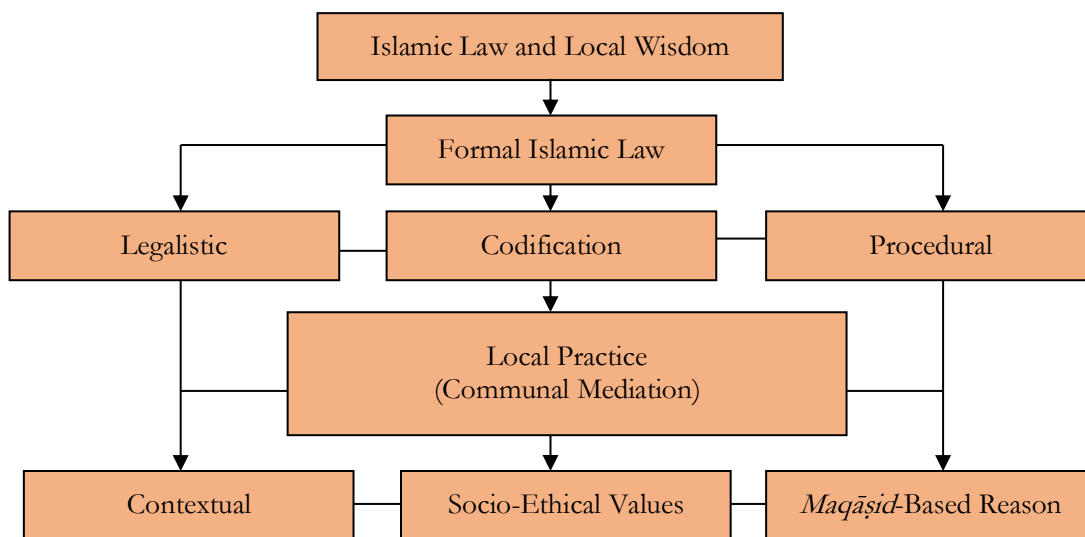
An additional source of tension emerges from conflicts of authority between institutional and cultural legitimacy. Judges occasionally question the reliability of community mediation outcomes due to the absence of formal documentation, whereas Kiai criticize the courts for being “too mechanical” and “less humane.” These perceptions reflect an ongoing struggle for recognition between two parallel systems, each claiming to represent Islamic justice but grounded in different epistemic foundations. Another dimension of tension arises in gender-related issues. Within community mediation, as stated by SR, women sometimes experience pressure to reconcile for the sake of social harmony, even in cases involving domestic violence or emotional abuse. This situation creates an ethical dilemma wherein local harmony may take precedence over individual rights—a challenge that formal legal institutions are better equipped to address.

Despite existing tensions, the study identifies areas of synergy wherein both systems mutually reinforce one another. First, there is an increasing reciprocal recognition: mediators within the Religious Court increasingly acknowledge the preparatory role of Kiai-led mediation, while community leaders encourage disputing couples to seek legal resolution when reconciliation efforts fail. This collaboration expedites the court process and alleviates the emotional burden on litigants. Second, synergy is evident through knowledge transfer and procedural adaptation. Some Kiai have begun employing written documentation of their mediation outcomes, modeled after court templates, which facilitates formal institutions’ assessment of prior reconciliation attempts. Similarly, judges in Jember have incorporated culturally resonant narratives, such as references to *rukun keluarga* (family harmony) and *ukhuwah istri-suami* (husband-wife relationship), into their mediation discourse.¹⁸ These modest yet significant modifications reflect an evolving hybridization of legal and moral reasoning. Third, both systems share a common ethical foundation rooted in Islamic values, particularly the principle of *ṣulh* (reconciliation) and the pursuit of *maslahah* (public good). This shared foundation functions as a bridge, transforming competition into collaboration. As MN observed, “The spirit of *hakam* is the same, whether in court or at home it’s about healing relationships, not winning disputes.”

¹⁸ Researcher, “Observation Log and Interview Documentation.”



Figure 4. Tensions and Potential Synergies between Islamic Law and Local Wisdom.



Source: Authors' elaboration

Overall, the data indicate that tensions primarily stem from differences in procedure, authority, and gender ethics, whereas synergies arise through mutual adaptation, shared values, and complementary legitimacy (see Figure 4). Rather than functioning as opposing forces, Islamic law and local wisdom in Jember operate as interdependent elements within a pluralistic legal ecosystem, capable of evolving toward a more culturally grounded model of family justice.

Discussion

The concept of hybridity exemplifies the principle of legal pluralism, as articulated by Griffiths, wherein multiple legal orders coexist and interact within a single social field.¹⁹ Contrary to earlier studies that regarded *hakam* either as a formal court mechanism or as a cultural relic, the present research demonstrates that both systems actively negotiate their boundaries through shared actors and overlapping authority. The adaptation of mediators who incorporate Qur’anic references and local idioms into court procedures illustrates how legal formalism can evolve in response to community expectations—an aspect seldom addressed in mainstream Islamic legal studies. In contrast to prior research in Aceh (Nurdin) and Minangkabau (Syarif),²⁰ which emphasized the institutional dominance of religious courts, the case of Jember offers a distinctive portrayal of reciprocal adaptation. Here, Kiai and community leaders not only maintain informal mediation but also shape judicial behavior through cultural and moral authority. The coexistence of these roles reflects a pragmatic synthesis rather than a binary opposition. Theoretically, this supports Bowen’s argument that Islamic law in Indonesia operates through vernacularization, a process whereby universal legal norms are reinterpreted in local moral terms.²¹ Consequently, the Jember experience extends this framework by demonstrating that vernacularization constitutes not merely cultural

¹⁹ Anne Griffiths, “Pursuing Legal Pluralism: The Power of Paradigms in a Global World,” *Journal of Legal Pluralism and Unofficial Law* 43, no. 64 (2011): 173–202, <https://doi.org/10.1080/07329113.2011.10756674>.

²⁰ Abidin Nurdin et al., “The Implementation of Meunasah-Based Sharia in Aceh: A Social Capital and Islamic Law Perspective,” *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 5, no. 2 (2021): 760–79, <https://doi.org/10.22373/sjhk.v5i2.10710>.

²¹ John R. Bowen, *Islam, Law, and Equality in Indonesia: An Anthropology of Public Reasoning* (Cambridge University Press, 2003).

translation but an ongoing negotiation of authority, legitimacy, and trust between formal and informal systems.

This hybrid model holds significant policy implications for enhancing family justice in Indonesia. Recognizing *hakam* as an intermediary between formal legal frameworks and community-based mediation can improve both the accessibility and legitimacy of dispute resolution mechanisms. For example, incorporating community mediators into pre-litigation procedures may alleviate the burden on courts while maintaining cultural sensitivity. From a theological perspective, this approach reaffirms the Islamic principle of *ṣulḥ* (reconciliation) as an active practice embedded within local contexts, rather than being confined solely to courtroom settings. Consequently, in divorce cases in Jember, *hakam* is conceptualized not as a fixed institution but as a dynamic, context-responsive process that balances procedural justice with moral restoration, thereby demonstrating how Islamic law can remain both authoritative and compassionate within a pluralistic society.

The Religious Court functions within a legal positivist framework, prioritizing codified regulations, compulsory mediation, the presentation of evidence, and judicial decisions as the sole legitimate mechanisms for resolving marital disputes. While this approach ensures legal certainty, it frequently neglects the underlying factors contributing to marital dissolution, such as emotional estrangement, socio-economic challenges, or cultural incompatibilities. This study confirms that the majority of litigants approach the Religious Court with a predetermined intention to divorce, rendering mediation largely symbolic and ineffective.²² In contrast, the communal-cultural approach observed in Jember conceptualizes law as a “living reality,” deeply embedded in local customs, religious ethics, and social networks.²³ Within this context, reconciliation is sought through interpersonal dialogue and community solidarity, yielding outcomes that are often more responsive to the emotional and cultural needs of couples. However, these outcomes lack enforceability when disputes reemerge, highlighting the structural limitations inherent in community-based mediation. This epistemological divide between law as text (legal-formal) and law as practice (cultural-communal) exposes the insufficiency of a single-system approach and necessitates integrative frameworks capable of balancing enforceable legality with social legitimacy.

The communal-cultural approach to divorce resolution in Jember exemplifies the enduring presence of living Islamic law (*al-fiqh al-ḥay*), which operates through local wisdom and moral authority rather than formal codified procedures. This observation corroborates Hooker’s assertion that Islamic law in Indonesia persists as a social practice shaped by cultural norms and community leadership.²⁴ Within the Jember context, Kiai and village elders’ function as de facto mediators who interpret Qur’anic principles of *ṣulḥ* (reconciliation) into everyday relational ethics. Their effectiveness in preventing or delaying divorce arises from their personal familiarity with the disputing parties and their embeddedness within communal networks that prioritize social harmony over individual litigation. This moral embeddedness accounts for the fact that nearly half of the couples mediated by Kiai opted for reconciliation prior to court intervention. Nonetheless, the communal-cultural approach reveals structural limitations and ethical challenges. The absence

²² Izhak England, “Law, Religion, and the Rule of Law from a Normative-Positivist Perspective,” *Journal of Law, Religion and State* 5, no. 3 (2017): 175–84, https://brill.com/view/journals/jlrs/5/3/article-p175_175.xml.

²³ Umar Sholahudin, Hotman Siahaan, and Herlambang Perdana Wiratraman, “A Relational Analysis of State Law and Folk Law in the Bongkoran Agrarian Conflicts, Banyuwangi Regency, East Java, Indonesia,” *Society* 8, no. 2 (2020): 419–36, <https://doi.org/10.33019/society.v8i2.195>.

²⁴ Michael Barry Hooker, *Indonesian Syariah: Defining a National School of Islamic Law* (Institute of Southeast Asian Studies, 2008), <https://bookshop.iseas.edu.sg/account/downloads/get/8871>.



of formal documentation undermines the enforceability of agreements, particularly when conflicts reemerge. Furthermore, prevailing gender dynamics may subject women to social pressures to remain in unhealthy marriages to preserve family honor. This tension aligns with Kloos's findings in South Sulawesi, where community mediation fosters harmony but risks marginalizing women's agency.²⁵ In Jember, analogous cases illustrate that although Kiai-led mediation effectively restores relationships, it may simultaneously perpetuate patriarchal norms that emphasize collective stability over individual well-being. Therefore, the communal approach should be understood as a culturally grounded yet normatively ambivalent mechanism—socially efficacious but legally fragile.

Theoretically, these dynamics illustrate how local wisdom complements, yet does not supplant, institutional justice. The communal approach embodies *urf* (custom) as a source of Islamic legal reasoning, aligning with the concept of *maqāṣid al-sharīʿah*, which emphasizes social welfare and harmony. However, for long-term stability, integration with formal institutions is necessary to balance cultural legitimacy with legal protection. In this regard, the Jember case presents a model of contextual Islamic mediation, wherein community ethics contribute emotional and moral depth, while formal law ensures procedural fairness. The central insight is that sustainable family justice in Indonesia relies not on replacing one system with another but on interweaving cultural empathy with legal accountability—a synergy distinctly evident in Jember's hybrid mediation framework.

The Religious Court emphasizes procedural uniformity and legal accountability, whereas the communal system led by Kiai prioritizes moral persuasion and social harmony.²⁶ This structural divergence generates tension when both systems address the same dispute with differing expectations. For instance, court mediators are legally constrained by the temporal and documentation requirements stipulated in PERMA No. 1/2016, while community mediators often employ flexible, iterative dialogues informed by spiritual reflection.²⁷ These differences engender procedural tension, as formal law values compliance and efficiency, whereas local culture emphasizes patience and empathy. This tension arises not from theological contradictions but from institutional asymmetry: the state demands standardization, whereas society requires moral adaptability. Beyond procedural issues, tensions regarding authority also emerge. Judges sometimes perceive informal mediators as lacking legal legitimacy, while Kiai contend that courts disregard local moral capital. In several observed cases, community mediators expressed frustration when couples they had guided were subsequently summoned by the court, indicating institutional neglect of communal reconciliation. Conversely, judges express concern about unrecorded agreements that may disadvantage one party, particularly women. These competing concerns reflect an underlying struggle between legal legitimacy and moral legitimacy, a dynamic consistent with Woodman's concept of "interlegality," wherein multiple normative systems coexist and occasionally conflict.²⁸ Thus, the root of this tension lies in the contestation over interpretive authority regarding the definition of Islamic justice in contemporary Indonesian society.

Despite existing tensions, the study identifies clear forms of synergy between the two systems. Both share an ethical foundation rooted in *ṣulḥ* (reconciliation) and *maṣlahah* (public good), which

²⁵ Klouldil Singeo, "(Re)Engaging Indigeneity in Planning: Epistemological Conflicts and Women's Human Rights in Palau" (PhD Thesis, University of Hawaii at Manoa, 2020), <http://hdl.handle.net/10125/70417>.

²⁶ Euis Nurlaelawati, *Modernization, Tradition and Identity: The Kompilasi Hukum Islam and Legal Practice in the Indonesian Religious Courts* (Amsterdam University Press, 2010).

²⁷ Ramadan Ilazi, Bekim Çollaku, and Fisnik Rexhepi, *Negotiating Peace in Kosovo: Local Perspective on European Union Mediation Efforts* (Springer Nature, 2025), <https://link.springer.com/book/10.1007/978-3-031-95389-7>.

²⁸ Gianluigi Palombella, "Interlegality and Justice," SSRN Electronic Journal, 2017, <https://dx.doi.org/10.2139/ssrn.3066001>.

facilitates collaboration through mutual adaptation. Court mediators in Jember increasingly incorporate local idioms, Qur'anic references, and moral guidance traditionally employed by Kiai, while community mediators begin documenting their outcomes in accordance with court templates. These practices exemplify practical synergy, wherein procedural law integrates cultural sensitivity, and communal wisdom acquires administrative structure. The intersection of these systems, termed the Hybrid *Hakam* Model in this study, represents a negotiated equilibrium: formal institutions gain trust through cultural legitimacy, and local mediators achieve recognition through procedural conformity. Fundamentally, tension creates a space for negotiation, while synergy ensures continuity, demonstrating that Islamic law and local wisdom in Jember evolve not as opposing forces but as mutually corrective systems that uphold the moral and social fabric of family justice.

Conclusion

This study concludes that the practice of *hakam* in Jember exemplifies a progressive form of Islamic family law, characterized by its evolution through contextual adaptation rather than strict adherence to textualism. In this context, progressive law denotes a legal orientation that emphasizes substantive justice and social reconciliation over procedural formalism. The case of Jember demonstrates that divorce settlements are not exclusively governed by codified procedures within the Religious Court but are also influenced by local wisdom manifested in Kiai-led mediation. This integration of state law and communal ethics constitutes a hybrid mechanism of *hakam* that embodies the dynamic, pluralistic, and humane spirit of Islamic jurisprudence (*fiqh al-ḥadārah*). Practically, this progressive model is realized through technical and procedural collaboration between court mediators and community leaders. For instance, unresolved cases are occasionally referred from the Religious Court to trusted Kiai for emotional counseling prior to the issuance of verdicts, while Kiai increasingly document their mediation outcomes using simplified written forms that align with court standards. Such coordination illustrates how legal and moral authorities can operate synergistically: formal mediation ensures legal validity and recordkeeping, whereas communal mediation facilitates emotional stability and social harmony. This hybridization not only enhances the legitimacy of divorce resolutions but also operationalizes the principle of *ṣulḥ* (reconciliation) within Indonesia's pluralistic legal framework.

Nevertheless, this study acknowledges several methodological and contextual limitations. The research is limited to selected subdistricts in Jember and primarily relies on qualitative interviews, which may not fully capture the diversity of mediation practices across different regions. Future research should incorporate comparative analyses involving other socio-legal contexts, such as Aceh or West Sumatra, where the interaction between Islamic and customary law differs. Despite these limitations, the findings contribute meaningfully to the broader discourse on progressive Islamic legal reform by illustrating that sustainable family justice arises not from institutional dominance but from collaborative pluralism—a dynamic interplay in which legal formalism and cultural empathy coexist to uphold both procedural justice and moral well-being.

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