

Reinterpreting Mediation Success: Partial Agreements as Outcome-Based Justice in Divorce Cases at the Langsa Sharia Court

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Abstract: The success of divorce mediation in Indonesia has traditionally been measured by the achievement of full reconciliation between the disputing parties. Although Supreme Court Regulation No. 1 of 2016 recognizes the possibility of partial agreements (*kesepakatan sebagian*) during mediation, the administrative case-reporting system of the Religious Courts, namely the Case Tracking Information System (Sistem Informasi Penelusuran Perkara/SIPP), continues to treat full reconciliation as the primary indicator of mediation success. Consequently, partial agreements that substantively resolve the parties' post-divorce rights and obligations are not proportionately reflected in the evaluation of mediation performance. This research employs an empirical juridical method using a legal sociology approach based on Eugen Ehrlich's theory of living law. The study explores the interaction between normative legal provisions and mediation practices that develop within judicial institutions. Data were collected through interviews, document analysis, and the examination of relevant legal regulations and academic literature. The analysis focuses on agreements concerning *iddah* maintenance, *mut'ah*, past maintenance (*madhiyah*), child custody (*hadhanah*), and child support. The findings indicate that partial agreements provide legal certainty regarding the rights and obligations of the parties and significantly reduce the potential for post-divorce conflict. Although such agreements do not result in reconciliation, they demonstrate the substantive function of mediation in resolving disputes and ensuring fairness. From the perspective of living law, these practices reflect a broader understanding of mediation success beyond the formal objective of preserving marriage. The findings indicate that, although partial agreements are recognized under Supreme Court Regulation No. 1 of 2016, they remain insufficiently reflected in administrative measures of mediation success. This study argues that mediation effectiveness should therefore be assessed not only by marital reconciliation but also by substantive legal outcomes that protect post-divorce rights and promote outcome-based justice.

Kata Kunci:

Mediasi Perceraian, Partial Agreement, Islah, Sharia Court.

Abstrak: Keberhasilan mediasi perceraian di Indonesia selama ini umumnya diukur berdasarkan tercapainya rekonsiliasi antara para pihak. Meskipun Peraturan Mahkamah Agung Nomor 1 Tahun 2016 mengakui tercapainya kesepakatan sebagian dalam proses mediasi, sistem pelaporan administrasi perkara pada Sistem Informasi Penelusuran Perkara (SIPP) masih menempatkan rekonsiliasi penuh sebagai indikator utama keberhasilan mediasi. Akibatnya, kesepakatan sebagian yang secara substantif menyelesaikan hak dan kewajiban pascaperceraian belum tercermin secara proporsional dalam penilaian keberhasilan mediasi. Penelitian ini bertujuan menganalisis apakah kesepakatan parsial dapat dipahami sebagai bentuk keberhasilan mediasi dalam perkara perceraian di Mahkamah Syar'iyah Langsa. Kajian ini menempatkan praktik mediasi dalam perspektif hukum keluarga Islam, khususnya melalui prinsip islah, yang menekankan penyelesaian sengketa secara damai dan berkeadilan. Metode yang digunakan adalah yuridis empiris dengan pendekatan sosio-legal, didukung oleh analisis terhadap peraturan perundang-undangan dan literatur yang relevan. Hasil penelitian menunjukkan bahwa kesepakatan sebagian memberikan kepastian hukum mengenai hak dan kewajiban para pihak serta secara signifikan mengurangi potensi konflik pascaperceraian. Meskipun tidak menghasilkan rekonsiliasi, kesepakatan tersebut mencerminkan fungsi substantif mediasi sebagai mekanisme penyelesaian sengketa yang menjamin keadilan. Dari perspektif living law, praktik ini menunjukkan berkembangnya pemahaman yang lebih luas mengenai keberhasilan mediasi, yang tidak lagi terbatas pada tujuan formal mempertahankan perkawinan. Meskipun kesepakatan sebagian telah diakui dalam Peraturan Mahkamah Agung Nomor 1 Tahun 2016, keberadaannya masih belum tercermin secara memadai dalam indikator administratif keberhasilan mediasi. Oleh karena itu, efektivitas mediasi seharusnya dinilai tidak hanya berdasarkan tercapainya rekonsiliasi, tetapi juga berdasarkan hasil hukum substantif yang melindungi hak-hak pascaperceraian serta mewujudkan keadilan berbasis hasil (outcome-based justice).

INTRODUCTION

Dispute resolution through mediation constitutes an essential component of the modern justice system, including within Indonesia's Religious Courts. Internationally,¹ contemporary family mediation has increasingly shifted from viewing reconciliation as the sole indicator of success toward emphasizing durable post-divorce arrangements

¹ I. A. Trofimets, "The Principles of International Family Mediation," *Lex Russica* 75, no. 10 (2022), <https://doi.org/10.17803/1729-5920.2022.191.10.033-040>.

that protect the rights and welfare of family members, particularly children.² In divorce cases,³ mediation serves not only as a mandatory procedural requirement before adjudication but also as an instrument for encouraging peaceful settlement,⁴ protecting the rights of the parties,⁵ and minimizing the social consequences of marital dissolution.⁶ However, the effectiveness of mediation in preserving marriages remains relatively low because many couples have already reached an irreversible decision to divorce before entering the judicial process.

Previous studies on court-annexed mediation have primarily focused on the effectiveness of mediation in achieving full settlement or reconciliation. Siagian et al. explain that mediation often fails despite initially positive negotiations because of unrealistic expectations, unclear agreements, external intervention, and mediator limitations.⁷ Likewise, Rendi emphasizes that the success of mediation is largely determined by the parties' good faith, psychological readiness, and the mediator's competence.⁸ Jayadi et al. further argue that mediation effectiveness depends on constructive dialogue, mediator skills, and active participation of disputing parties,⁹ while Nurfalah et al. examine mediation mainly from the perspective of procedural

² Ketua Mahkamah Agung Republik, "Peraturan Mahkamah Agung (PERMA) Nomor 1 Tahun 2016 Tentang Prosedur Mediasi Di Pengadilan," 2016, 1–30, <https://doi.org/10.1017/CBO9781107415324.004>.

³ Ramadhani Islami Putri and Musleh Harry, "The Effectiveness of Mediation through Problem Solving in the Case of Infidelity Perspective Analysis on Islamic Family Law," *Jurnal Mahkamah : Kajian Ilmu Hukum Dan Hukum Islam*, 2025, <https://doi.org/10.25217/jm.v10i2.7005>; Nur Mohamad Kasim and Fibriyanti Karim, "The Impact of Mediation on the Settlement of Divorce Cases in Religious Courts," *Jurnal Ius Constituendum* 10, no. 1 (2025), <https://doi.org/10.26623/jic.v10i1.10912>; Muhammad Rudi Syahputra, Muksalmina, and Sari Yulis, "The The Principles and Implemetation of Case Settlement Through Aceh Customary Courts Process," *Justitia Jurnal Hukum* 8, no. 2 (2024): 146–163, <https://doi.org/10.30651/justitia.v8i2.23750>; Achmad Kadarisman, Alfarid Fedro, and Zainal Arifin, "Best Interest Of The Child In Islamic Family Law: Integrating Maqāṣid Al-Sharī'Ah And Double Movement Theory In Ḥaḍānah Cases," *Jurnal Al-Dustur* 8, no. 2 (2025), <https://doi.org/10.30863/aldustur.v8i2.10459>.

⁴ John Lee Candelaria, "Mediating Civil Conflicts in Southeast Asia: Lessons from Aceh and Mindanao," *Journal of ASEAN Studies* 8, no. 2 (2020): 111–127, <https://doi.org/10.21512/jas.v8i2.6622>.

⁵ Lahmuddin Lubis and Syawaluddin Nasution, "Islamic Communication Strategies of Mediators at the Mahkamah Syar'iyah in Mediating Divorce Cases" 10, no. 2 (2025): 239–262. <https://doi.org/10.21580/icj.2025.10.2.28381>

⁶ Andika Catur Prastyo, "The Application of Maslahah Mursalah in A Mediation Process Between Disputant Parties," *Journal of Islamic Economic Laws*, 2025, <https://doi.org/10.23917/jisel.v3i1.9756>.

⁷ Christian Lasro Berto Siagian, Mulida Hayati, and Nuraliah Ali, "A Legal Review of Mediations That Appear to Be Successful But End in Failure," *Eduvest - Journal of Universal Studies* 5, no. 1 (2025): 56–65, <https://doi.org/10.59188/eduvest.v5i1.43694>.

⁸ Muhammad Rendi, "Determining Factors of Mediator'S Success in Metro Religious Courts," *Jurnal Multidisiplin Sahombu* 1, no. 02 (2022): 47–51, <https://doi.org/10.58471/jms.v1i02.111>.

⁹ Hendri Jayadi et al., "Analysis of The Efficiency of Mediation Methods in Handling Conflicts," *Journal of Law and Sustainable Development* 12, no. 1 (2024): 3101, <https://doi.org/10.55908/sdgs.v12i1.3101>.

effectiveness under Supreme Court Regulation No. 1 of 2016.¹⁰ Collectively, these studies evaluate mediation success using procedural or reconciliation-based indicators, leaving limited attention to the legal significance of partial agreements produced during unsuccessful divorce mediation.

This limitation may be explained through Eugen Ehrlich's concept of *living law*,¹¹ which argues that law should be understood not merely through statutory provisions but also through legal practices and social realities. Although Supreme Court Regulation No. 1 of 2016 expressly recognizes the possibility of partial agreements (*kesepakatan sebagian*) during mediation, the administrative reporting system used by the Religious Courts (SIPP) continues to classify mediation success primarily on the basis of full reconciliation.¹² From the perspective of living law, these practical outcomes deserve recognition as substantive indicators of mediation success.

This phenomenon is reflected in judicial practice at the Langsa Sharia Court. Court records indicate that in 2024 only two out of 288 divorce cases achieved full reconciliation, while seven cases resulted in partial agreements and the remainder proceeded without settlement.¹³ Similarly, in 2025 only one out of 226 cases resulted in reconciliation, whereas four cases produced partial agreements.¹⁴ Although these figures demonstrate the limited success of mediation in preserving marriages, they also reveal that mediation consistently generates agreements concerning *iddah* maintenance, *mut'ah*, past maintenance (*madhiyah*), child custody (*ḥaḍānah*), and child support. These agreements reduce the potential for post-divorce disputes and provide legal certainty regarding the rights and obligations of both parties.

Although Supreme Court Regulation No. 1 of 2016 recognizes partial agreements as a legitimate mediation outcome, the administrative reporting system of the Religious Courts (SIPP) continues to emphasize full reconciliation as the principal indicator of mediation success. Consequently, partial agreements that effectively resolve post-divorce rights are not proportionally reflected in official mediation performance statistics, creating a discrepancy between administrative indicators and actual mediation outcomes.¹⁵ Consequently, a discrepancy remains between the normative conception of mediation success and the empirical realities observed in judicial practice.

¹⁰ Dini Nurfalah, Lia Amaliya, and Muhamad Abas, "The Effectiveness of Mediation in Inheritance Law Disputes Is Linked to Perma No. 1 of 2016 at the Karawang Religious Court," *Journal of Law, Politic and Humanities* 4, no. 4 (2024): 1043–1051, <https://doi.org/10.38035/jlph.v4i4.450>.

¹¹ Eugen Ehrlich, *Living Law* (German: Munich dan Leipzig, 1913).

¹² Mahkamah and Republik, "Peraturan Mahkamah Agung (PERMA) Nomor 1 Tahun 2016 Tentang Prosedur Mediasi Di Pengadilan."

¹³ Data Base Mahkamah Syar'iyah Langsa, 2024.

¹⁴ Data Base Mahkamah Syar'iyah Langsa, 2025.

¹⁵ Mahkamah and Republik, "Peraturan Mahkamah Agung (PERMA) Nomor 1 Tahun 2016 Tentang Prosedur Mediasi Di Pengadilan."

As a result, mediation may successfully resolve important issues concerning maintenance, child custody, and other post-divorce rights without those outcomes being adequately represented in institutional performance indicators. The persistence of partial agreements indicates that mediation performs broader functions than preserving marriage alone by facilitating substantive dispute resolution and safeguarding post-divorce rights. Nevertheless, this phenomenon has received limited scholarly attention, particularly from the perspective of *living law*.

Accordingly, this study addresses the identified gap by examining partial agreements through Eugen Ehrlich's theory of *living law* and the Islamic principles of *iṣlāḥ* and *tasrīḥun bi iḥsān*.¹⁶ It argues that partial agreements should be recognized as a legitimate indicator of mediation success because they embody substantive justice, protect post-divorce rights, and reflect legal norms that have evolved through consistent judicial practice. By distinguishing between formal regulatory recognition and administrative performance measurement, this study demonstrates that mediation success should be assessed not only by marital reconciliation but also by its substantive legal outcomes. Such an approach provides a more comprehensive framework for evaluating mediation effectiveness within Indonesia's Religious Courts and contributes to the continuing development of Islamic family law scholarship.

RESEARCH METHOD

This study employs an empirical juridical method using a socio-legal approach¹⁷ grounded in Eugen Ehrlich's theory of *living law*.¹⁸ This approach examines the interaction between formal legal norms governing divorce mediation and the legal practices that develop within judicial institutions. According to Ehrlich, law is not confined to statutory provisions but also encompasses norms that emerge and function through social practice. Accordingly, this study analyzes the relationship between the formal provisions of Supreme Court Regulation No. 1 of 2016 concerning court-annexed mediation and the implementation of mediation through partial agreements in divorce cases at the Langsa Sharia Court.

The research was conducted at the Langsa Sharia Court, Aceh. Primary data were collected through semi-structured interviews with three certified non-judge mediators who actively conduct divorce mediation at the court. At the time of the research, the Langsa Sharia Court had six certified non-judge mediators. Three mediators were selected purposively because they handled the largest number of divorce mediation cases and possessed the most extensive experience in facilitating divorce disputes and negotiating partial agreements. Data collection was concluded after the interviews reached theoretical saturation, as no substantially new themes emerged from the final interview. Primary data were supported by documentary

¹⁶ Wahbah Al-Zuhaili, *Al-Fiqh Al-Islami Wa Adillatuhu*, Jilid. X (Damaskus: Dar al-Fikr, 1989).

¹⁷ Supratman, *Metode Penelitian Hukum* (Malang: Alfabeta Cv, 2015).

¹⁸ Ehrlich, *Living Law*.

evidence, including mediation reports, mediation registers, court decisions, and statistical records of divorce cases from 2024 - 2025. Secondary data were obtained from legislation, particularly Supreme Court Regulation No. 1 of 2016, the Compilation of Islamic Law, scholarly books, journal articles, and previous studies relevant to mediation and Islamic family law.

Data were collected through in-depth interviews, document analysis, and literature review. Interview transcripts were analyzed using thematic analysis, involving data reduction, coding, categorization, interpretation, and conclusion drawing.¹⁹ The findings from the interviews were then compared with documentary evidence through source triangulation to enhance the credibility and validity of the research findings.

Within the socio-legal framework, Eugen Ehrlich's theory of *living law* was operationalized by examining whether the practice of recognizing partial agreements has evolved into a legal norm within judicial practice despite not being explicitly recognized as an indicator of successful mediation under Supreme Court Regulation No. 1 of 2016. Accordingly, this study examines how the gap between *law in books* and *law in action* is reflected in mediation practice, where partial agreements are repeatedly accepted by mediators and litigants despite not being fully recognized as indicators of mediation success under the existing procedural framework. This analytical framework enables the study to distinguish between formal legal regulation and the practical norms developed by mediators in resolving divorce disputes.

This socio-legal perspective enables the study to examine the interaction between formal legal norms and the social practices that develop within mediation, particularly where repeated judicial practice recognizes partial agreements despite their limited formal recognition under Supreme Court Regulation No. 1 of 2016. The findings are further interpreted using the Islamic principles of *iṣlāḥ* and *tasrīḥun bi iḥsān*,²⁰ with *maqāṣid al-sharī'ah* serving as the analytical lens to evaluate whether partial agreements contribute to the protection of essential rights (*ḥifẓ al-māl* and *ḥifẓ al-nasl*), substantive justice, legal certainty, and the reduction of post-divorce conflicts.²¹

RESULT AND DISCUSSION

Dynamics of Partial Agreements in Divorce Mediation

The empirical findings indicate that mediation at the Langsa Sharia Court rarely results in full reconciliation between disputing spouses. Court records show that in 2024 only two out of 288 divorce cases were successfully reconciled through mediation, while seven cases resulted in partial agreements. Similarly, in 2025, only one out of 226 divorce cases achieved full reconciliation, whereas four cases produced

¹⁹ Muhaimin, *Metode Penelitian Hukum* (Mataram: Mataram University, 2020).

²⁰ Dinaryati Rahim, "The Dialectic of Iṣlāḥ Principle: Contextualizing Reconciliation on the Dominant Factors of Divorce," *SIGN Jurnal Hukum* 7, no. 1 (2025), <https://doi.org/10.37276/sjh.v7i1.484>.

²¹ Wahbah Al-Zuhaili, *Al-Fiqh Al-Islamiyyah Wa Adillahtuh*, Juz 8 (Damaskus: Dar al-Fikr, 1989).

partial agreements. Although these figures demonstrate a low reconciliation rate, they also reveal that mediation continues to generate agreements concerning specific legal issues despite the continuation of divorce proceedings.

The documentary analysis shows that partial agreements primarily concern post-divorce rights and obligations rather than the continuation of the marital relationship. The most common issues agreed upon during mediation include iddah maintenance, *mut'ah*, past maintenance (*madhiyah*), child custody (*hadhanah*), and child support. These agreements are recorded in the mediation report and subsequently become part of the judicial process, providing legal certainty regarding the rights and obligations of both parties.

Interviews with non-judge mediators further demonstrate that the mediation process has gradually shifted from prioritizing marital reconciliation to facilitating practical solutions that can still be accepted by both parties. One mediator explained:

*"Most couples who come to mediation have already made a firm decision to divorce. Under such circumstances, persuading them to reconcile is extremely difficult. Therefore, mediation is directed toward helping the parties reach agreements on their post-divorce rights and obligations so that future disputes can be avoided."*²²

A similar view was expressed by another mediator:

*"Even when divorce cannot be prevented, mediation still has value because it enables the parties to voluntarily determine matters such as iddah maintenance, mut'ah, child custody, and child support. These agreements usually make the litigation process easier and reduce conflict after the judgment."*²³

Another mediator emphasized that agreements are generally easier to achieve when the discussion focuses on practical matters rather than on persuading the parties to continue the marriage:

*"Our experience shows that parties are generally unwilling to reconsider divorce, but they are more willing to negotiate responsibilities after divorce, particularly those concerning children and financial obligations."*²⁴

These interview findings may also be understood through the perspective of *maqāṣid al-sharī'ah*. The mediators' emphasis on agreements concerning financial obligations and child welfare demonstrates that mediation seeks to protect the essential interests (*maqāṣid*) of the parties after divorce. Agreements relating to 'iddah maintenance, *mut'ah*, and outstanding maintenance (*māḍiyah*) contribute to the realization of *ḥifẓ al-māl* by safeguarding the financial rights of divorced women. Likewise, agreements concerning child custody (*ḥaḍānah*) and child support realize

²² Wawancara Pribadi dengan Iqbal, (Mediator Non-Hakim Mahkamah Syar'iyah Langsa) Langsa, (2025).

²³ Wawancara Pribadi dengan Dayu Pratiwi, (Mediator Non-Hakim Mahkamah Syar'iyah Langsa) Langsa, (2025).

²⁴ Wawancara Pribadi dengan Irwansyah, (Mediator Non-Hakim Mahkamah Syar'iyah Langsa) Langsa, (2025).

hifz al-nasl by protecting children's welfare, continuity of care, and parental responsibility.²⁵ Thus, although mediation does not always preserve the marital relationship, it continues to achieve the higher objectives of Islamic law through the protection of rights and the prevention of future harm.

After examining the mediation records and interview data, it becomes evident that the emergence of partial agreements is closely related to the characteristics of divorce disputes themselves. Unlike commercial or civil disputes, divorce mediation involves interpersonal relationships that have often deteriorated long before litigation begins. This pattern is also consistent with contemporary principles of international family mediation, which increasingly emphasize the achievement of durable and fair post-divorce arrangements rather than viewing reconciliation as the sole indicator of mediation success. As Trofimets argues, modern family mediation seeks to protect the rights and interests of family members, particularly children, while promoting sustainable agreements following marital breakdown.²⁶ Consequently, many parties enter mediation not with the intention of preserving the marriage but with the expectation of obtaining certainty regarding their respective rights and obligations after divorce.²⁷ This condition explains why negotiations concerning financial support,

²⁵ Jasser Auda, *Maqasid Al-Shariah As Philosophy Of Islamic Law : A System Approach* (London: Washington, 2008).

²⁶ Trofimets, "The Principles of International Family Mediation"; Md Mizanur Rahman et al., "Work to Family, Family to Work Conflicts and Work Family Balance as Predictors of Job Satisfaction of Malaysian Academic Community," *Journal of Enterprising Communities* 14, no. 4 (2020), <https://doi.org/10.1108/JEC-05-2020-0098>; Ahmet Temel, "The Prospective Contributions of the Med-Arb Model in Islamic Family Law to Family Mediation in Turkey," *Darulfunun Ilahiyat*, 2019, <https://doi.org/10.26650/di.2019.30.2.0035>; María Elisabet Barreiro Morales, "Tradition and Modernity: Mediation in Roman Law and Popular Mediation in China," *Cadernos de Dereito Actual* 2025, no. 27 (2025); Mehdi Ghasemi et al., "The Mediation Effect of Rural Women Empowerment between Social Factors and Environment Conservation (Combination of Empowerment and Ecofeminist Theories)," *Environment, Development and Sustainability* 23, no. 9 (2021), <https://doi.org/10.1007/s10668-021-01237-y>; Adnan Ahmed sarwar and Dr. Muhammad Rizwan Safdar, "Role of Social Support in Mitigating Child Rearing Strain, Among Parents of Differently Abled Children: A Chain Mediation of Family Sense of Coherence and Family External Resources," *Contemporary Issues in Social Sciences and Management Practices* 2, no. 3 (2023), <https://doi.org/10.61503/cissmp.v2i3.49>.

²⁷ Joseph Krislov and Christopher W. Moore, "The Mediation Process: Practical Strategies for Resolving Conflict," *Industrial and Labor Relations Review* 40, no. 2 (1987), <https://doi.org/10.2307/2523299>; Sonia Páez de la Torre and Miquel Úbeda, "Can the Youth Gang Speak? A Review of the Limits and the Consequences of Mediation Processes in Ecuador," *European Journal of Social Work* 28, no. 1 (2025), <https://doi.org/10.1080/13691457.2024.2366404>; Kristine D. O'Laughlin, Monica J. Martin, and Emilio Ferrer, "Cross-Sectional Analysis of Longitudinal Mediation Processes," *Multivariate Behavioral Research* 53, no. 3 (2018), <https://doi.org/10.1080/00273171.2018.1454822>; Mikheil Bichia, "Confidentiality of the Mediation Process and Ethical Dilemmas," *Alternative Dispute Resolution Yearbook* 12, no. 1 (2023), <https://doi.org/10.60131/adr.1.2023.7081>; Fahri Latukau, Nam Rumkel, and Suwarti Suwarti, "Mediators Optimization of Civil Disputes Mediation Process at Post-Perma Court No. 1 of 2016," *Journal of Social Science* 3, no. 4 (2022), <https://doi.org/10.46799/jss.v3i4.382>; Hasmawati Hasmawati and

child custody, and parental responsibilities are generally more productive than efforts to persuade the parties to reconcile.²⁸

This pattern also reflects the practical adaptation adopted by non-judge mediators at the Langsa Sharia Court. Rather than insisting on reconciliation as the only desirable outcome, mediators tend to facilitate dialogue on issues that remain negotiable, particularly those relating to post-divorce welfare.²⁹ Such an approach enables mediation to continue functioning as a dispute resolution mechanism even when the principal conflict—the continuation of the marriage—can no longer be resolved.³⁰ Accordingly, mediation shifts from a reconciliation-oriented process toward a problem-solving process that emphasizes practical legal arrangements acceptable to both parties.³¹

The dominance of agreements concerning financial obligations and children's rights further demonstrates that mediation contributes to the realization of procedural efficiency within judicial proceedings.³² When parties voluntarily agree on matters such as *'iddah* maintenance, *mut'ah*, child custody (*ḥaḍānah*), or child support, the scope of judicial examination becomes narrower because several disputed issues have already been resolved consensually.³³ This situation not only reduces the potential for future litigation but also strengthens legal certainty by clearly defining the parties' post-divorce responsibilities before the court renders its final judgment.³⁴

Muhammad Akbar Fhad Syahril, "The Effectiveness of Mediation Process to Press Divorce Rates," *Amsir Law Journal* 1, no. 2 (2020), <https://doi.org/10.36746/alj.v1i2.26>.

²⁸ Elif Kübra Türkmen, "A Model of Family Mediation Developed Based on Experiences From Morocco," *Darulfunun Ilahiyat* 35, no. 2 (2024), <https://doi.org/10.26650/di.2024.35.1536921>; Büşra Gülşah Akbaba, "Family Mediation: A Critical Tool for Enhancing Women's Access to Justice in Turkish Family Law," *Women's Studies International Forum* 110 (2025), <https://doi.org/10.1016/j.wsif.2025.103091>; Lovise Grape, Gry Mette Dalseng Haugen, and Renee Thørnblad, "Adolescents' Narratives about Parents' Separation Processes and Participation in Mandatory Family Mediation: Exercising Agency through Managing Privacy Boundaries," *Childhood* 31, no. 4 (2024), <https://doi.org/10.1177/09075682241261169>.

²⁹ Jennifer F. Wood, "The Mediation Process: Practical Strategies for Resolving Conflict (4th Edition) by Christopher W. Moore," *Mediation Theory and Practice* 2, no. 1 (2017), <https://doi.org/10.1558/mtp.33140>; Krislov and Moore, "The Mediation Process: Practical Strategies for Resolving Conflict."

³⁰ Christine Mattl, "Christopher W. Moore The Mediation Process. Practical Strategies for Resolving Conflict.," *Perspektive Mediation* 3, no. 2 (2006), <https://doi.org/10.33196/pm200602010503>; Mahkamah and Republik, "Peraturan Mahkamah Agung (PERMA) Nomor 1 Tahun 2016 Tentang Prosedur Mediasi Di Pengadilan."

³¹ Ogaro Davis Nyaoko, Ichuloi Anthony, and Ochieng Ojwang', "Mechanisms for Intra-Ecclesial Conflict Transformation for Christian Unity in South East Kenya Field of Seventh-Day Adventists," *East African Journal of Traditions, Culture and Religion* 8, no. 1 (2025), <https://doi.org/10.37284/eajtr.8.1.3447>.

³² Misran Ramli et al., "State, Custom, and Islamic Law in Aceh: Minor Dispute Resolution in the Perspective of Legal Pluralism," *Samarah* 8, no. 2 (2024), <https://doi.org/10.22373/sjkh.v8i2.15924>.

³³ Tim Redaksi Nuansa Aulia, *Kompilasi Hukum Islam* (Bandung: Cv. Nuansa Aulia, 2020).

³⁴ Try Widiyono and Md Zubair Kasem Khan, "Legal Certainty in Land Rights Acquisition in Indonesia's National Land Law," *Law Reform: Jurnal Pembaharuan Hukum* 19, no. 1 (2023),

Nevertheless, a distinction should be made between the substantive legal recognition of partial agreements and their administrative classification. Under Supreme Court Regulation No. 1 of 2016,³⁵ agreements reached on specific issues during mediation may be incorporated into the mediation report and subsequently become part of the court proceedings, thereby producing legal consequences for the parties. However, within the Religious Courts' Case Tracking Information System (SIPP),³⁶ mediation is generally recorded as successful only when full reconciliation is achieved. Consequently, cases resulting solely in partial agreements remain administratively classified as unsuccessful mediation despite producing legally enforceable outcomes. This discrepancy illustrates the gap between the substantive function of mediation and its institutional performance indicators.

Table 1. Outcomes of Divorce Mediation at the Langsa Sharia Court (2024–2025)

Year	Divorce Cases	Full Reconciliation	Partial Agreements	Unsuccessful Mediation
2024	288	2	7	279
2025	226	1	4	221
Total	514	3	11	500

Source: Mediation Register of the Langsa Sharia Court (2024–2025).

As shown in Table 1, only three out of 514 divorce cases resulted in full reconciliation during 2024–2025, representing less than one percent of all mediated divorce cases. Nevertheless, eleven cases produced partial agreements despite the continuation of divorce proceedings. These findings indicate that while reconciliation remains uncommon, mediation continues to generate legally meaningful outcomes through agreements concerning post-divorce rights and obligations. This empirical pattern is not unique to the Langsa Sharia Court. Similar studies conducted in other Religious Courts in Indonesia likewise report that complete reconciliation in divorce mediation remains relatively uncommon, whereas mediation frequently succeeds in facilitating agreements concerning financial obligations, child custody, and post-divorce rights. This broader pattern suggests that the emergence of partial agreements reflects a wider development in mediation practice rather than merely a local

<https://doi.org/10.14710/lr.v19i1.48393>; Mahkamah and Republik, “Peraturan Mahkamah Agung (PERMA) Nomor 1 Tahun 2016 Tentang Prosedur Mediasi Di Pengadilan.”

³⁵ Mahkamah and Republik, “Peraturan Mahkamah Agung (PERMA) Nomor 1 Tahun 2016 Tentang Prosedur Mediasi Di Pengadilan.”

³⁶ Mahkamah Syar'iyah Langsa, *Data Mediasi*, SIPP Mahkamah Syar'iyah Langsa, 2024-2025.

phenomenon, thereby reinforcing the argument that mediation success should be assessed beyond the conventional indicator of marital reconciliation.³⁷

Table 2. Types of Partial Agreements Achieved During Divorce Mediation

Type of Agreement	Description	Legal Function
<i>Iddah</i> Maintenance	Financial support during the <i>iddah</i> period	Protection of wife's post-divorce rights
<i>Mut'ah</i>	Consolatory payment	Fairness and compensation
<i>Madhiyah</i>	Outstanding maintenance	Fulfilment of previous obligations
<i>Hadhanah</i>	Child custody	Protection of the child's best interests
Child Support	Financial support for children	Ensuring child welfare

The distribution of agreements presented in Table 2 demonstrates that mediation primarily functions to protect vulnerable legal interests following divorce. Financial support for former spouses and children consistently becomes the principal subject of negotiation because these matters directly affect the parties' economic security after the dissolution of marriage. This finding suggests that mediators strategically prioritize issues capable of producing immediate legal certainty, thereby reducing the likelihood of subsequent disputes concerning the implementation of court judgments.⁴

The empirical pattern presented in Table 2 may also be interpreted from the perspective of *maqāṣid al-sharī'ah*. These agreements contribute directly to the realization of the objectives of Islamic family law by protecting the essential interests of divorced spouses and their children. From the perspective of *maqāṣid al-sharī'ah*, these patterns indicate that partial agreements contribute directly to the realization of the objectives of Islamic family law. Agreements concerning child custody (*ḥaḍānah*) and child support primarily protect *ḥifẓ al-nasl* by safeguarding the welfare and continuity of children's upbringing, while agreements relating to *iddah* maintenance, *mut'ah*, and outstanding maintenance (*māḍiyah*) protect *ḥifẓ al-māl* by ensuring the

³⁷ Kasim and Karim, "The Impact of Mediation on the Settlement of Divorce Cases in Religious Courts"; Hasmawati and Syahril, "The Effectiveness of Mediation Process to Press Divorce Rates"; Latukau, Rumkel, and Suwanti, "Mediators Optimization of Civil Disputes Mediation Process at Post-Perma Court No. 1 of 2016"; Dini Nurfalih, Amaliya, and Abas, "The Effectiveness of Mediation in Inheritance Law Disputes Is Linked to Perma No. 1 of 2016 at the Karawang Religious Court."

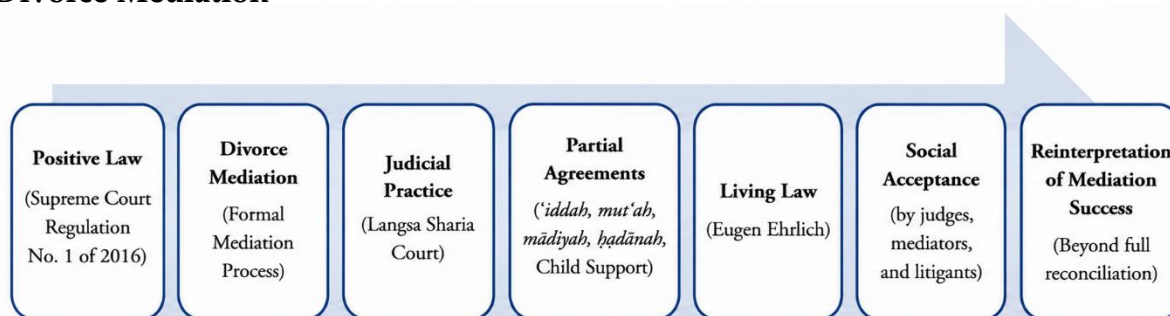
financial rights of divorced women.³⁸ Accordingly, the agreements summarized in Table 2 should not merely be understood as procedural settlements but also as substantive mechanisms for achieving the higher objectives (*maqāṣid*) of justice, protection, and public benefit within Islamic law.

Partial Agreements as Living Law: An Analysis of Eugen Ehrlich's Theory

Eugen Ehrlich argues that the center of gravity of legal development lies not merely in legislation or judicial decisions but in the norms that emerge and operate within society.³⁹ According to the theory of *living law*, legal rules become effective when they are accepted and continuously practiced by members of a legal community.⁴⁰ Therefore, the effectiveness of law should not be measured solely by its formal provisions but also by its implementation in everyday legal practice.⁴¹

This perspective provides an appropriate analytical framework for understanding the phenomenon of partial agreements in divorce mediation at the Langsa Sharia Court. Formally, Supreme Court Regulation No. 1 of 2016 measures mediation success primarily through the achievement of full reconciliation between disputing parties.⁴² Under this normative framework, mediation is considered successful only when the dispute is entirely resolved and litigation becomes unnecessary.⁴³ Consequently, divorce mediation that ends with the continuation of judicial proceedings is generally categorized as unsuccessful.⁴⁴

Figure 2. Analytical Framework of Partial Agreements as Living Law in Divorce Mediation



³⁸ Al-Zuhaili, *Al-Fiqh Al-Islami Wa Adillatuhu*; Auda, *Maqasid Al-Shariah As Philosophy Of Islamic Law : A System Approach*.

³⁹ Ehrlich, *Living Law*.

⁴⁰ Ehrlich.

⁴¹ Ehrlich.

⁴² Mahkamah Agung, *Peraturan Mahkamah Agung Nomor 1 Tahun 2016, Badilag Mahkamah Agung*, vol. 84, 2016.

⁴³ Agung.

⁴⁴ Agung.

Figure 2 illustrates the analytical framework employed in this study. It demonstrates that the formal legal framework governing mediation under Supreme Court Regulation No. 1 of 2016 is implemented through judicial practice at the Langsa Sharia Court. In practice, mediation frequently produces partial agreements concerning post-divorce rights and obligations. Through repeated application and acceptance by mediators, litigants, and the court, these agreements evolve into a form of *living law* as conceptualized by Eugen Ehrlich. Consequently, mediation success should be understood not only through full reconciliation but also through substantive legal outcomes that provide legal certainty and reduce post-divorce disputes.

However, the empirical findings of this study demonstrate a different reality. Although only a small proportion of divorce cases resulted in full reconciliation, mediation consistently produced partial agreements concerning *iddah* maintenance, *mut'ah*, *madhiyah*, child custody (*hadhanah*), and child support. These agreements were voluntarily accepted by the parties, formally documented by the mediators, and subsequently recognized by the court during the adjudication process. This recurring practice indicates that partial agreements have acquired practical legitimacy within divorce mediation, despite not being formally recognized as indicators of mediation success.

To enhance the credibility of the interview findings, responses from the non-judge mediators were comparatively analyzed to identify recurring patterns regarding the objectives of mediation, the causes of unsuccessful reconciliation, and the role of partial agreements in resolving post-divorce disputes. The quotations presented below illustrate the dominant views consistently expressed by the mediators and were subsequently compared with documentary evidence from mediation records.⁴⁵ The interviews with non-judge mediators reinforce this conclusion. One mediator explained that reconciliation is often unrealistic because most parties have already decided to end their marriage before entering mediation.⁴⁶ Consequently, mediators shift their focus from preserving the marital relationship to facilitating agreements on post-divorce rights and obligations. Another mediator emphasized that voluntary agreements concerning financial responsibilities and child welfare substantially reduce the likelihood of future disputes,⁴⁷ even though the divorce itself proceeds.⁴⁸

⁴⁵ Muhaimin, *Metode Penelitian Hukum*.

⁴⁶ "Wawancara Pribadi dengan Iqbal..."

⁴⁷ "Wawancara Pribadi dengan Pratiwi..."

⁴⁸ "Wawancara Pribadi dengan Irwansyahon..."

These findings suggest that mediation has evolved from a reconciliation-oriented process into a mechanism for securing substantive legal outcomes.

From Ehrlich's perspective, this evolution reflects the operation of *living law*.⁴⁹ The practice of recognizing partial agreements has developed through repeated judicial experience rather than through explicit statutory regulation. Mediators, litigants, and the court have collectively accepted these agreements as meaningful legal outcomes because they provide legal certainty, clarify post-divorce obligations, and reduce the potential for future conflict. In other words, the practical norm emerging from mediation no longer equates success exclusively with reconciliation but also with the achievement of enforceable agreements that protect the rights of the parties.

This finding demonstrates a discrepancy between the formal legal conception of mediation and its actual implementation. While the statutory framework continues to emphasize reconciliation as the sole indicator of success, judicial practice reveals a broader understanding in which mediation also functions to facilitate consensual settlements on specific legal issues. Such practice illustrates Ehrlich's proposition that law develops through social and institutional practice before it is formally recognized by legislation.⁵⁰

Accordingly, partial agreements should not be viewed merely as procedural by-products of unsuccessful mediation. Instead, they represent a form of *living law* that has emerged within the institutional practice of divorce mediation at the Langsa Sharia Court. Recognizing this development allows mediation success to be interpreted more substantively by considering not only the preservation of marriage but also the legal certainty, fairness, and conflict reduction achieved through negotiated agreements. This reinterpretation bridges the gap between the normative objectives of mediation and the practical realities of dispute resolution within Indonesia's Religious Courts.

Partial Agreements as the Realization of Iṣlāḥ and Outcome-Based Justice

The empirical findings indicate that although divorce mediation at the Langsa Sharia Court rarely preserves the marital relationship, it consistently produces agreements concerning post-divorce rights and obligations. These agreements demonstrate that mediation continues to fulfill its essential function of resolving disputes peacefully, even when reconciliation is no longer achievable. From the perspective of Islamic law, such outcomes should not be viewed as mediation failure but rather as the practical

⁴⁹ Ehrlich, *Living Law*; Brian Z. Tamanaha, *A General Jurisprudence of Law and Society, A General Jurisprudence of Law and Society*, 2010, <https://doi.org/10.1093/acprof:oso/9780199244676.001.0001>.

⁵⁰ Ehrlich, *Living Law*.

realization of the principle of *islāh*, which emphasizes peaceful settlement, justice, and the prevention of harm.⁵¹

The Qur'an explicitly encourages reconciliation in family disputes. Allah states:

وَأِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَابْعَثُوا حَكَمًا مِّنْ أَهْلِهِ وَحَكَمًا مِّنْ أَهْلِهَا^{٥١} إِنْ يُرِيدَا إِصْلَاحًا يُوَفِّقِ اللَّهُ بَيْنَهُمَا^{٥٢} إِنَّ اللَّهَ كَانَ عَلِيمًا حَكِيمًا

"And if you fear dissension between the two, appoint an arbiter from his family and an arbiter from her family. If they both desire reconciliation (*islāh*), Allah will cause it between them." (Qur'an 4:35).

This verse demonstrates that the objective of mediation is not merely the preservation of marriage but the attainment of a fair and peaceful resolution. Likewise, the Qur'an recognizes reconciliation in situations where marital continuity is no longer possible:

وَإِنْ امْرَأَةٌ خَافَتْ مِنْ بَعْلِهَا نُشُورًا أَوْ إِعْرَاضًا فَلَا جُنَاحَ عَلَيْهِمَا أَنْ يُصْلِحَا بَيْنَهُمَا صُلْحًا وَالصُّلْحُ خَيْرٌ وَأُحْضِرَتِ الْأَنْفُسُ الشُّحَّ وَإِنْ تُحْسِنُوا وَتَتَّقُوا فَإِنَّ اللَّهَ كَانَ بِمَا تَعْمَلُونَ خَبِيرًا

"If a woman is worried that her husband will be *nusyuz* or will be indifferent, the two of them can make real peace. Peace is better (for them), even though humans are stingy by nature. If you do good and protect yourself (from *nusyuz* and indifference) verily Allah is Most Careful in what you do."

These verses indicate that Islamic law places greater emphasis on achieving justice and mutual agreement than on maintaining a marital relationship at all costs. Consequently, when reconciliation cannot realistically be achieved, agreements concerning post-divorce rights remain consistent with the spirit of *islāh*. Beyond the principle of *islāh*, the Qur'an also introduces the concept of *tasrīhun bi ihsān* as an ethical framework governing divorce. Allah commands:

فَأَمْسَاكِ بِمَعْرُوفٍ أَوْ تَسْرِيحِي بِإِحْسَانٍ

"...then either retain [her] according to what is acceptable or release [her] with good treatment." (Qur'an 2:229).

This verse demonstrates that when reconciliation is no longer attainable, Islamic law does not merely permit divorce but requires that it be carried out with justice, dignity, and responsibility. Therefore, mediation that produces agreements concerning *'iddah* maintenance, *mut'ah*, *mādiyah*, *ḥaḍānah*, and child support reflects the practical implementation of *tasrīhun bi ihsān*. Rather than viewing divorce as mediation failure, these agreements ensure that the termination of marriage remains consistent with Islamic ethical values by protecting the rights of both spouses and children.

⁵¹ Al-Zuhaili, *Al-Fiqh Al-Islami Wa Adillatuhu*.

This ethical understanding is further reinforced by the framework of *Maqāṣid al-Sharī'ah*, which emphasizes the protection of essential human interests. Agreements concerning *ḥaḍānah* and child support directly realize the objective of *ḥifẓ al-nasl* by safeguarding children's welfare, continuity of parental care, and family stability following divorce. Likewise, agreements concerning *'iddah* maintenance, *mut'ah*, and outstanding maintenance (*māḍiyah*) contribute to *ḥifẓ al-māl*, ensuring that the financial rights of former spouses are protected and minimizing future economic disputes.⁵² Accordingly, partial agreements should not merely be viewed as procedural compromises but as practical mechanisms through which the higher objectives (*maqāṣid*) of Islamic law are fulfilled.

From the perspective of outcome-based justice, the success of mediation should therefore be evaluated not solely by whether the marriage survives but also by whether the mediation process produces fair, enforceable, and mutually accepted agreements. Partial agreements provide legal certainty concerning financial obligations, parental responsibilities, and the protection of children's interests. These outcomes significantly reduce the possibility of subsequent litigation and contribute to a more orderly implementation of judicial decisions.

This normative principle is also reflected in mediation practice. One non-judge mediator explained:

*"When reconciliation is no longer possible, we encourage the parties to agree on their post-divorce rights, particularly regarding 'iddah maintenance, child custody, and child support. Such agreements are more beneficial than allowing the dispute to continue unresolved."*⁵³

This statement illustrates that mediators understand *iṣlāḥ* not merely as preserving marriage but as facilitating equitable agreements that prevent further conflict. Accordingly, mediation continues to fulfill the Qur'anic objective of achieving peaceful settlement even when divorce becomes unavoidable. In practice, when the parties reach partial agreements during mediation, the agreed matters are documented in a partial settlement agreement prepared by the mediator and submitted to the panel of judges as part of the mediation report. The agreement subsequently becomes part of the official court record (*berita acara persidangan*) and serves as one of the considerations in formulating the final judgment. Accordingly, although the divorce proceedings continue because reconciliation is not achieved, the agreed issues receive formal legal recognition within the judicial process, thereby providing legal certainty regarding the parties' post-divorce rights and obligations.

This procedural practice demonstrates that partial agreements possess legal significance beyond informal negotiations. By becoming part of the judicial record and

⁵² Auda, *Maqasid Al-Shariah As Philosophy Of Islamic Law : A System Approach*; Al-Zuhaili, *Al-Fiqh Al-Islami Wa Adillatuhu*; Kadarisman, Fedro, and Arifin, "Best Interest Of The Child In Islamic Family Law: Integrating Maqāṣid al-Sharī' Ah And Double Movement Theory In Ḥaḍānah Cases."

⁵³ "Wawancara pribadi dengan Iqbal, Mediator Non-Hakim Mahkamah Syar'iyah Langsa."

being incorporated into the court's decision, the agreements perform an important legal function in determining the rights and obligations of the parties after divorce. Therefore, mediation produces not only social consensus but also legally recognized outcomes that facilitate the implementation of the final judgment.

This interpretation also complements the concept of *living law* discussed in the previous section.⁵⁴ While Eugen Ehrlich explains how repeated judicial practice allows partial agreements to gain social and institutional legitimacy, the principle of *iṣlāḥ* provides their normative and ethical justification within Islamic law.⁵⁵ The convergence of these two perspectives demonstrates that partial agreements are not merely procedural compromises but represent a legitimate form of dispute resolution that fulfills both sociological and religious objectives.

The convergence of living law and the principle of *iṣlāḥ* demonstrates that legal legitimacy and religious legitimacy operate simultaneously in divorce mediation. Sociologically, partial agreements gain legitimacy because they are repeatedly practiced and accepted by mediators, litigants, and the court. Normatively, these agreements are justified because they realize the Islamic objectives of protecting rights, preventing harm (*mafsadah*), and promoting public benefit (*maṣlahah*). Consequently, mediation success should be understood through both empirical effectiveness and normative justice. In this respect, the principles of *iṣlāḥ* and *tasrīḥun bi iḥsān* complement each other. While *iṣlāḥ* encourages reconciliation whenever possible, *tasrīḥun bi iḥsān* provides an ethical framework for situations in which reconciliation is no longer achievable. Consequently, partial agreements reached through mediation represent not only socially accepted legal practices but also religiously justified mechanisms for ensuring fairness and protecting post-divorce rights.

Accordingly, mediation success in divorce cases should no longer be understood exclusively as the preservation of marriage. Rather, success should also encompass the achievement of substantive justice through agreements that protect the rights of both spouses and children, promote legal certainty, and reduce post-divorce conflict. Although this study is empirically limited to the Langsa Sharia Court, previous studies conducted in several Religious Courts across Indonesia similarly report that mediation frequently produces agreements on post-divorce rights despite the continuation of divorce proceedings. This suggests that the emergence of partial agreements is not merely a local phenomenon but reflects a broader pattern of mediation practice within Indonesia's Religious Courts.⁵⁶ Such an interpretation is

⁵⁴ Ehrlich, *Living Law*.

⁵⁵ Wahbah Zuhaili, *Fiqih Islami Wa Adillatuhu* (Jakarta: Gema Insani, 2011).

⁵⁶ Dini Nurfaiah, Amaliya, and Abas, "The Effectiveness of Mediation in Inheritance Law Disputes Is Linked to Perma No. 1 of 2016 at the Karawang Religious Court"; Hasmawati and Syahril, "The Effectiveness of Mediation Process to Press Divorce Rates"; Latukau, Rumkel, and Suwanti, "Mediators Optimization of Civil Disputes Mediation Process at Post-Perma Court No. 1 of 2016."

more consistent with the objectives of Islamic family law and reflects the realities of mediation practice in Indonesia's Religious Courts.

CONCLUSION

This study demonstrates that mediation success in divorce cases should not be measured solely by the preservation of marriage. Although full reconciliation is uncommon at the Langsa Sharia Court, mediation frequently produces partial agreements that provide legal certainty, protect post-divorce rights, and reduce future disputes. From the perspective of Eugen Ehrlich's theory of *living law*, these agreements have gained practical legitimacy through judicial practice, while the principle of *iṣlāḥ* provides their normative justification within Islamic law. Accordingly, mediation success should be reinterpreted from formal reconciliation toward outcome-based justice. This study contributes to mediation scholarship by proposing partial agreements as an indicator of substantive mediation success and recommends that future mediation policies consider incorporating such outcomes into the evaluation of mediation effectiveness in Indonesia's Religious Courts.

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