

ISLAMIC FAMILY MEDIATION IN SOUTHEAST ASIA: AN ANALYSIS OF CULTURAL LEGITIMACY, LEGAL STRUCTURE, AND CONTEMPORARY DYNAMICS IN INDONESIA AND MALAYSIA

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Info Artikel

Article History:

Received: July 23, 2025

Accepted: August 27, 2025

Published: August 31, 2025

ISSN: 2656-1654

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e-ISSN: 2656-193X

Abstract

Purpose – This study examines the legal framework and institutional practices of family dispute mediation in Indonesia and Malaysia within the context of Islamic family law. This study aims to evaluate how legal pluralism, religious values, and cultural norms shape the implementation and effectiveness of mediation mechanisms in both countries by comparing the effectiveness of the regulation and implementation of family mediation in Indonesia and Malaysia, highlighting Indonesia's reliance on mediation and Malaysia's reliance on the Majlis Sulh.

Methods – This study employs a qualitative legal methodology with doctrinal, comparative, and empirical approaches. The regulations compared include PERMA No. 1 of 2016 and related regulations in Indonesia, as well as the Islamic Family Law Act 1984 (Act 303) and Kaedah-Kaedah Sulh in Malaysia. The analysis examines the legal framework, institutions, and implementation of family mediation, supported by institutional data from the Supreme Court of the Republic of Indonesia (2022) and the Malaysian Sharia Judicial Department (2020).

Findings – The findings reveal significant contrasts: while Indonesia relies heavily on court-annexed mediation led by judges, Malaysia has institutionalized Sulh through the Syariah Court's Majlis Sulh, featuring trained officers and standardized procedures. In Indonesia, mandatory mediation often lacks adequate screening for domestic violence, which raises ethical concerns. Conversely, Malaysia's structured system demonstrates greater procedural integrity and role clarity. Cultural and psychosocial dimensions further influence the outcomes. Community-based models in Indonesia emphasize negotiated resolutions, whereas Malaysia prioritizes religious legitimacy and professionalization. The role of psychosocial professionals and child-inclusive practices emerged as vital elements for increasing effectiveness. Legal culture, public trust, and the institutional environment also determine how mediation is perceived and practiced, with Malaysia benefiting from clearer legal demarcation.

Research contribution/limitations – This study contributes to the growing body of literature on Islamic legal pluralism and non-adversarial justice by identifying the institutional, cultural, and ethical factors that enhance or constrain mediation in Muslim-majority contexts.

Keywords: Family Mediation; Islamic Family Law; Legal Pluralism; Non-Adversarial Justice; Sulh.

Abstrak

Tujuan - Penelitian ini menelaah kerangka hukum dan praktik institusional mediasi sengketa keluarga di Indonesia dan Malaysia dalam konteks hukum keluarga Islam. Penelitian ini bertujuan untuk mengevaluasi bagaimana pluralisme hukum, nilai-nilai keagamaan, dan norma budaya membentuk implementasi dan efektivitas mekanisme mediasi di kedua negara dengan membandingkan efektivitas regulasi dan implementasi mediasi keluarga di Indonesia dan Malaysia, dengan menyoroti ketergantungan Indonesia pada mediasi sedangkan Malaysia melalui Majelis Sulh.

Metode - Penelitian ini menggunakan metodologi kualitatif hukum dengan pendekatan doktrinal, komparatif, dan empiris. Regulasi yang dibandingkan meliputi PERMA No. 1 Tahun 2016 dan peraturan terkait di Indonesia, serta Islamic Family Law Act 1984 (Akta 303) dan Kaedah-Kaedah Sulh di Malaysia. Analisis dilakukan dengan menelaah kerangka hukum, kelembagaan, serta implementasi mediasi keluarga, yang diperkuat dengan data institusional dari Mahkamah Agung RI (2022) dan Jabatan Kehakiman Syariah Malaysia (2020).

Temuan - Temuan menunjukkan perbedaan yang signifikan: Indonesia sangat bergantung pada mediasi yang dilekatkan pada pengadilan yang dipimpin oleh hakim, sedangkan Malaysia telah melembagakan Sulh melalui Majelis Sulh di Mahkamah Syariah dengan petugas terlatih dan prosedur yang distandarisasi. Di Indonesia, mediasi sering kali tidak disertai dengan perlakuan khusus untuk kekerasan dalam rumah tangga, sehingga menimbulkan kekhawatiran etis. Sebaliknya, sistem yang terstruktur di Malaysia menunjukkan integritas prosedural dan kejelasan peran yang lebih baik. Dimensi kultural dan psikososial turut memengaruhi hasil mediasi. Model berbasis komunitas di Indonesia menekankan resolusi melalui negosiasi, sedangkan Malaysia mengutamakan legitimasi keagamaan dan profesionalisme. Peran profesional psikososial dan praktik yang melibatkan anak muncul sebagai elemen penting dalam meningkatkan efektivitas. Budaya hukum, kepercayaan publik, dan lingkungan institusional juga menentukan persepsi dan pelaksanaan mediasi, dengan Malaysia mendapatkan manfaat dari batas hukum yang lebih jelas.

Kontribusi/keterbatasan penelitian - Penelitian ini memberikan kontribusi terhadap literatur yang berkembang tentang pluralisme hukum Islam dan keadilan non-adversarial dengan mengidentifikasi faktor institusional, kultural, dan etis yang mendukung atau menghambat mediasi di negara-negara mayoritas Muslim.

Kata kunci: Mediasi keluarga; hukum keluarga islam; pluralism hukum; non-adversarial; Sulh.

INTRODUCTION

Family disputes in Muslim-majority societies frequently involve sensitive issues such as divorce, custody, and division of matrimonial property. These matters are not only governed by legal provisions but are also embedded in deeply held religious, cultural and social values. Mediation plays a significant role in Islamic family law, rooted in both doctrinal and cultural traditions (Sellitto Ferrari 2022). In many religious courts, judges act as mediators, underscoring mediation's centrality in family law dispute resolution. The principle of *islah* (reconciliation) is emphasized in Islamic

jurisprudence as a preferred mechanism for resolving family conflicts, particularly in a manner that safeguards family honor and privacy (Novita et al. 2025). Moreover, the evolution of Islamic family law in Malaysia, including Al-Fatani's interpretations of marriage and gender roles, illustrates a dynamic blend of traditional Islamic principles with modern sociocultural realities (Mustapha 2024).

In contemporary Muslim societies, family disputes are often addressed through formal judicial mechanisms and informal channels involving religious or customary authorities. For example,

Muslims in diaspora communities frequently consult imams for reconciliation (*sulh*) and guidance on family matters (Aly Wahb 2023; Muradin 2022). In Indonesia, customary practices intersect with legal processes, particularly in disputes involving joint property or child custody (Hazar Kusmayanti et al., 2021). The dual influence of religious and secular norms can complicate legal proceedings, as seen in Muslim minorities navigating divorce in non-Muslim-majority states (Aly Wahb 2023). This complexity calls for dispute resolution mechanisms that are not only legally sound but also culturally and religiously responsive.

Scholars have argued that mediation of family disputes involving elderly family members, emotional trauma, or gender-based vulnerabilities should include psychosocial support services. Studies from Australia and Canada have demonstrated that incorporating counseling and holistic approaches enhances the mediation process (Jamaluddin et al. 2023). Such practices may serve as reference points for Muslim-majority countries, including Malaysia and Indonesia, to strengthen their mediation systems.

The existing literature reveals a research gap in the comparative analysis of Islamic family mediation frameworks. While there is significant discourse on informal reconciliation and localized negotiation models, there is limited scholarly engagement with how institutional and legal structures affect

mediation success in the context of religious courts. For instance, Wahb (2023) and Rahmat et al. (2022) highlight the need for structured frameworks that are religiously compliant and legally enforceable. These gaps underscore the urgency of a more systematic comparative study between Indonesia and Malaysia—two countries with shared Islamic traditions but divergent legal and institutional approaches.

The research problem addressed in this study stems from the inconsistent implementation and variable success of mediation in Islamic family law across jurisdictions. In Indonesia, despite the regulatory mandate under PERMA No. 1 of 2016, court-annexed mediation in religious courts remains largely ineffective, with success rates often falling below 10%. The contributing factors include a lack of mediator training, limited institutional support, and public skepticism. In contrast, Malaysia's *Majlis Sulh*, a specialized mediation institution under Syariah courts, has achieved higher resolution rates and broader acceptance. These contrasting outcomes raise important questions regarding how regulatory frameworks, institutional design, and cultural legitimacy affect the efficacy of family mediation.

A general solution advocated in prior research is the incorporation of Alternative Dispute Resolution (ADR) methods—particularly mediation—into family law systems to promote non-adversarial, cost-effective, and

relationship-preserving outcomes (Ojo 2023; Rahmat et al. 2022). The global trend in ADR adoption supports this approach, as evidenced by developments in Nigeria, Slovenia, and Australia, where mediation has been successfully integrated into family justice systems to resolve conflicts efficiently while preserving familial relationships (Drnovšek and Kraljić 2025).

Specific solutions emerging from comparative and local research suggest that mediation in Islamic family law should be context-sensitive and aligned with the religious principles. In Javanese Muslim communities, negotiation models intertwine theology, customs, and legal reasoning to address inheritance and marriage disputes (Huda et al. 2024). In Malaysia, contemporary Islamic legal practices accommodate Malay customs and are not strictly bound by any one school of thought (Mustapha 2024). These insights point to the potential for adaptive mediation models that respect local cultural and religious particularities, while ensuring procedural fairness.

Studies on family mediation within the context of Islamic law show that this practice is implemented based on the principle of *islah* (reconciliation), which has long been recognized in the classical Islamic legal tradition. Sellitto Ferrari (2022) emphasized that *islah* is a preferred resolution mechanism over litigation because it maintains family honor and confidentiality. Novita et al.

(2025) also emphasized that the reconciliation approach aligns with normative Islamic values that prioritize peace.

In the Indonesian context, research by Hazar Kusmayanti et al. (2021) found that mediation practices are often influenced by customary law (*musyawarah*), which is intertwined with state and Islamic law. However, Supreme Court data show a relatively low success rate for mediation in Religious Courts, at less than 10% (Maryam & Irianto, 2024). This low effectiveness is partly due to the role of judges who double as mediators without special training (Hariyanto, Efendi, & Sulistiyawati, 2021), as well as the public perception that courts are still seen as arenas for seeking victory, rather than spaces for reconciliation (Bintania, 2019).

Meanwhile, Malaysia has developed a more structured mediation mechanism through the *Majlis Sulh* (Islamic Court Council) within its Sharia Court. (Wan Adnan and Buang 2021). It should be noted that *sulh* is viewed not only as a legal procedure but also as a moral-religious obligation (Adnan, Buang, and Sulaiman 2022). They explain that *sulh* officers are specifically trained in Islamic law and mediation skills, making the process more professional and role-oriented. However, several studies have highlighted the limited empirical data on the efficacy of *Sulh* in actual practice (Abraham, 2023; Jamaluddin et al., 2023).

Previous research has identified several gaps. First, systematic comparative studies between Indonesia and Malaysia are limited. Most studies focus on local practices without delving deeply into how institutional design, cultural legitimacy, and institutional support influence the effectiveness of mediation. Second, empirical data on the success rate and satisfaction of parties in family mediation remain limited, especially in Malaysia. While statistical data are available in Indonesia, in-depth analyses of the social, psychological, and cultural factors that influence mediation outcomes are rare.

Third, the issue of protecting vulnerable groups, such as victims of domestic violence, has not received serious attention within the family mediation framework (Jones and Aftab 2024). Emphasizing the need for screening mechanisms and exclusion policies for domestic violence cases to prevent mediation from harming the vulnerable party. However, neither Indonesia nor Malaysia has a clear system in this regard. Thus, comparative research on family mediation within the context of Islamic law in Indonesia and Malaysia still leaves significant room for further development. Studies that are both normative and empirical and integrate the legal, social, psychological, and ethical aspects of Islam are crucial for addressing the challenges of mediation effectiveness in both countries.

This study aims to fill this gap by analyzing the regulatory and institutional frameworks governing family dispute mediation in Indonesia and Malaysia. It argues that Malaysia's specialized *Majlis Sulh* model provides a more effective and culturally resonant system than Indonesia's court-annexed mediation. By examining the factors contributing to Malaysia's success and the constraints in Indonesia, this study contributes new insights to the fields of Islamic legal reform, legal pluralism, and dispute resolution. It adopts normative-juridical and comparative methods to assess legal norms, institutional practices, and doctrinal foundations. The scope of this study is limited to family disputes within religious courts in both countries, excluding civil or criminal mediation, and focusing primarily on divorce, custody, and property division cases.

METHOD

This study adopts a normative juridical approach with a comparative orientation, focusing on examining the regulatory and institutional frameworks for family dispute mediation in Indonesia and Malaysia. In Indonesia, regulations regarding the resolution of family disputes through mediation are based on several legal instruments. First, Law Number 1 of 1974 concerning marriage serves as the primary legal basis for regulating family and marital relations. Second, Law Number 7 of 1989 concerning Religious Courts, which was

later amended by Law Number 3 of 2006 and Law Number 50 of 2009, specifically grants Religious Courts the authority to resolve Muslim marital disputes. Third, Supreme Court Regulation (PERMA) Number 1 of 2016 concerning Mediation Procedures in Court serves as the technical guideline for implementing mediation, including in divorce cases in religious courts.

In Malaysia, the legal framework for family dispute resolution through Sharia-based mediation is based on applicable laws and regulations at both the federal and state levels. Some relevant legal instruments include the Islamic Family Law Act (Federal Territory) 1984 (Act 303), which regulates Islamic family law in the federal territory; the Administration of Islamic Law (Federal Territories) Act 1993 (Act 505), which provides the administrative basis for Shariah court institutions; and the Shariah Court Civil Procedure (Federal Territories) Act 1998 (Act 585), which regulates civil court procedures in Shariah courts. Furthermore, each Malaysian state has State Enactments on Islamic family law that further regulate family dispute resolution, including the *sulh* mechanism or Sharia mediation as an integral part of the judicial process.

The normative approach remains foundational in legal research, particularly for analyzing the laws and doctrines governing dispute resolution (Hamzani et al. 2024). This study employs doctrinal legal research,

focusing on primary sources such as statutes, court regulations, and Islamic legal principles. Doctrinal analysis allows for the systematic identification and interpretation of norms relevant to family mediation, consistent with the classical method of legal problem solving (Nyathi, 2023). To enhance the analytical depth, this study incorporates comparative legal analysis, consistent with the approach outlined by Razak et al. (2023), who stress the utility of cross-jurisdictional comparisons in understanding institutional effectiveness (Razak et al. 2023). Legal rules, institutional arrangements, and socio-cultural factors influencing mediation practices in both countries are comparatively examined. This research draws on academic literature, official reports, and regulatory instruments to map variations and commonalities.

Recognizing the need for methodological integration, this study considers empirical perspectives from previous research, including user experience and implementation outcomes (Kalajdzic et al. 2024; Wardiono et al. 2024). However, no new empirical data were collected. This study also acknowledges the challenges of researching religious court systems, particularly in balancing doctrinal purity with contextual sensitivity (Alibašić 2024; Hasan 2021). The scope is limited to Islamic family mediation in religious courts, focusing on divorce, custody, and marital property disputes within the frameworks of Indonesia and Malaysia.

RESULTS AND DISCUSSION

Mediation Framework in Indonesia: Tradition, Regulation, and Modernization

Historically, the practice of resolving disputes through deliberation (*islah*) has been known in the classical Islamic legal tradition, as emphasized in the Qur'an (QS. An-Nisa: 35), which recommends bringing in judges from both parties in the event of a domestic dispute. This tradition of mediation also exists in Nusantara customary law, where family disputes are usually resolved through the involvement of traditional village leaders or village elders. Philosophically, Indonesian mediation combines three sources: Islamic Sharia, customary law, and Western law.

Formal regulation was finally born in Law No. 7 of 1989 concerning Religious Courts, in conjunction with Law No. 3 of 2006 and Law No. 50 of 2009, which emphasizes the obligation of judges to strive for peace. This was further strengthened by PERMA No. 1 of 2008 and perfected by PERMA No. 1 of 2016. Thus, PERMA is only a technical instrument; its philosophical underpinnings are much deeper, stemming from Islamic tradition, customs, and modern legal practice.

Family mediation in Indonesia's Religious Courts represents a complex interplay between Islamic norms, state regulations, and evolving judicial reforms. The mandatory nature of mediation in civil cases, including

divorce, is governed by the Supreme Court Regulation (PERMA) No. 1 of 2016. This regulation institutionalizes court-annexed mediation but has yielded mixed results, particularly in religious court jurisdictions. Although judges often assume the role of mediators despite the availability of certified non-judge mediators (Hariyanto, Efendi, and Sulistiyawati 2021), the overall success rate of court-annexed mediation remains low, generally below 10%, far behind countries such as Australia and the United States (Maryam and Irianto 2024).

The development of family mediation in Indonesia has been shaped by both traditional Islamic reconciliation practices (*Islah*) and modern judicial approaches (Novita et al., 2025; Sellitto Ferrari, 2022). However, their effectiveness is hindered by various structural and procedural limitations. For instance, mediations are often treated as procedural obligations, with little emphasis on the quality of the process or the parties' emotional readiness to engage in it. As Maryam and Irianto (2024) note, success is measured solely by whether a settlement is reached without assessing participant satisfaction or the specific nature of disputes. Furthermore, there is limited awareness among litigants regarding the potential benefits of mediation, contributing to its underutilization.

Indonesia has attempted to modernize its judiciary through digital

initiatives, such as the introduction of electronic mediation under PERMA No. 3 of 2022 (Latifiani, 2021). Despite its potential to improve accessibility, especially in remote areas, the e-court system faces challenges, including unstable Internet connectivity and inadequate infrastructure (Rosalina and Zulfikar 2024). These technological gaps have limited the effectiveness of virtual mediation, particularly in rural areas. In parallel, out-of-court mediation, which is less regulated but often perceived as more flexible and culturally sensitive, has shown relatively higher success rates (Gerungan et al. 2023).

Efforts to improve mediation outcomes have spurred proposals for legislative reforms. Scholars advocate that Indonesia sign and ratify the Singapore Convention on Mediation to establish a clearer legal basis for enforceable mediated agreements, a step that would necessitate updating existing legislation (Gerungan et al. 2023). Additionally, there is increasing attention to the need for screening mechanisms in mediation, especially in domestic violence cases. Jones and Aftab (2023) argue that Indonesia should consider exemption policies modeled after the Australian and Canadian systems, where victims of abuse are not forced into mediation. This aligns mediation practices with the principles of safety and justice (Jones and Aftab 2024).

However, several regional disparities persist. Economic and infrastructural

differences between Java and other regions, such as Maluku and Papua, affect both access to and the quality of mediation services (Laksono and Wulandari 2021). These disparities mirror broader socioeconomic inequalities and call for differentiated policy strategies.

Mediation Framework in Malaysia: Integration of *Sulh* in Institutional Structure of the Syariah Court

Since the British colonial era, Malaysia has had a dualistic legal system: civil law (common law) for non-Muslims and Sharia law for Muslims only. Within Sharia law, mediation is known as *sulh*, a direct adaptation of the principle of *islah* in Islamic law. Philosophically, *Sulh* emphasizes restorative justice and Sharia-based peaceful resolution. This is formalized through the Islamic Family Law (Federal Territories) Act 1984 (Act 303) and various state *sulh* laws, such as the Federal Territories Act 2004. Meanwhile, in the realm of civil law, mediation has developed following the British ADR model, which is formalized through Practice Directions on Mediation in civil court.

Malaysia's approach to family dispute mediation is distinguished by the integration of *Sulh* within the institutional structure of the Syariah Court. The Majlis *Sulh*, established as a formal pre-litigation reconciliation forum, plays a central role in resolving matrimonial property, divorce, and child

custody disputes. This system is rooted in the Islamic principle of *Sulh* (amicable settlement) and has evolved through legal, administrative, and educational reforms—primarily attributed to Ahmad Ibrahim's foundational work in structuring a modern and dynamic Syariah Court system (Wan Adnan and Buang 2021).

The implementation of *Majlis Sulh* is guided by Practice Directions that stipulate detailed procedures from case registration to consent judgment. *Sulh* officers, trained in both Islamic jurisprudence and mediation practices, are tasked with facilitating amicable settlements prior to litigation (Adnan, Buang, and Sulaiman 2022). This structured approach enhances the efficiency and clarity of mediation. A particular strength of the Malaysian system lies in its ability to navigate the religious and legal dimensions of matrimonial property claims, although limitations persist due to the Syariah Court's restricted jurisdiction over land administration (Wan Adnan and Buang 2021).

The effectiveness of *Sulh* in Malaysia is also supported by the issuance of *Fara'id* (Islamic inheritance) certificates by Syariah Courts, which serve as a precondition for estate distribution through civil authorities (Md Said et al., 2021). This reflects Malaysia's broader dual justice system, in which Syariah and civil legal mechanisms operate in parallel. Ethical and institutional support systems, such as mediator

training institutions and formal case registration protocols, further reinforce the credibility of *Majlis Sulh*. Malaysia was among the first Southeast Asian countries to adopt a Mediation Act, demonstrating its legislative commitment to ADR (Abraham, 2023).

Although Malaysia's system has been largely institutionalized, the literature acknowledges that empirical data on its success rates in family disputes remain limited. Nonetheless, the comparative experiences of *sulh* among Moroccan Muslims in the Netherlands and Dar-ul-Qaza in India highlight the global relevance of informal Islamic reconciliation mechanisms (Jamil 2021; Muradin 2022). These examples reinforce the cultural legitimacy of *sulh*, particularly in contexts where religious values influence dispute resolution preferences. In Malaysia, such legitimacy is operationalized through the formal apparatus of Syariah Courts.

Despite the system's strengths, gaps remain in ethical standardization across mediation sectors, including family law. In other Malaysian contexts, such as education and hospitality, ethics mediate the link between professional performance and sustainability (Sin et al. 2021; Zulnaldi et al., 2024). However, ethical inconsistencies in clinical and biomedical research review processes reveal the need for centralized oversight, which could also be relevant for *sulh* mediation practices (See et al. 2021). Therefore, while Malaysia's *Majlis Sulh* represents a promising model of

institutionalized Islamic mediation, continued efforts are necessary to strengthen its data transparency, jurisdictional coherence, and ethical governance.

Malaysia's *sulh-based* mediation framework offers a culturally embedded, legally structured, and procedurally robust alternative to adversarial litigation in Syariah family courts. However, its success will depend on improved empirical assessment, broader jurisdictional authority, and the integration of ethical and psychosocial dimensions into the mediation process.

Comparative Analysis of Mediation in Indonesia and Malaysia

A comparative analysis of mediation frameworks in Indonesia and Malaysia reveals significant structural, procedural, and cultural distinctions that shape the effectiveness of family dispute resolution in both contexts. Although both countries adopt Islamic legal traditions and state-regulated court systems, their respective approaches to mediation demonstrate differing levels of institutionalization, psychosocial sensitivity, and alignment with international standards.

In Indonesia, court-annexed mediation remains a mandatory step in civil and religious cases; however, it is often treated as a procedural formality rather than a substantive reconciliation process (Maryam and Irianto 2024). Judges frequently serve as mediators, creating conflicts of interest and

undermining the neutrality that is essential to effective mediation (Hariyanto et al. 2021). This dual role contributes to low success rates, particularly in divorce cases involving power imbalances or domestic violence. The absence of systematic screening mechanisms to exempt vulnerable cases from mediation, unlike in countries such as Australia or Canada, poses additional risks (Jones and Aftab 2024). Furthermore, out-of-court mediation, which is less formal and more community-based, often yields higher success rates, suggesting that flexibility and cultural familiarity play critical roles in the effectiveness of dispute resolution (Gerungan et al. 2023).

Conversely, Malaysia's *Majlis Sulh* offers a more institutionalized and structured mediation model within the Syariah Court system. *Distinct* from judges, *sulh* officers are specially trained to facilitate pre-litigation reconciliation, particularly in matters of matrimonial property, divorce, and child custody (Adnan et al., 2022). The process is governed by detailed Practice Directions, contributing to procedural clarity and consistency. Unlike Indonesia, Malaysia has established mediator training institutions and legal frameworks, including the Mediation Act, to support alternative dispute resolution across multiple domains (Abraham, 2023). However, empirical data on *the success rates of Sulh* remain limited, highlighting the need for a more systematic evaluation.

Psychosocial and ethical considerations are increasingly recognized as crucial for mediation outcomes in both contexts. Studies from outside Southeast Asia emphasize the importance of psychosocial professionals in addressing the emotional distress and vulnerability often inherent in family disputes (Fleming et al., 2022; López et al., 2021; Winter et al., 2022). While Malaysia has begun integrating such perspectives, particularly in elder care mediation (Jamaluddin et al. 2023), Indonesia's Religious Courts still lack psychosocial support systems to complement legal processes. This gap undermines mediation's capacity to address the emotional dimensions of family conflict and may affect long-term settlement sustainability.

Both systems face challenges related to legal pluralism, jurisdictional constraints, and the varying interpretations of Islamic principles. In Indonesia, plural legal systems often create confusion and reduce consistency in outcomes (Hefner 2021), while Malaysia's dual legal framework provides clearer pathways but remains limited in cross-jurisdictional matters such as land administration (Wan Adnan and Buang 2021). Additionally, both countries could benefit from incorporating international lessons and formalizing mediation standards, such as ratifying the Singapore Convention on Mediation (Gerungan et al. 2023).

Table 1. A Brief Historical and Philosophical Comparison

Aspect	Indonesia	Malaysia
Historical	Hybrid: Islam (<i>islah</i>), custom (<i>musyawarah</i>), West (ADR) → then formalized in the Religious Courts Law & PERMA	Dualistic: Islam (<i>Sulh</i> in Sharia Court) and West (ADR in civil court)
Philosophical	The combination of: <i>islah</i> (peace), <i>adat</i> (harmony), ADR (efficiency)	Separate: sharia-based <i>Sulh</i> (Muslim) & common law ADR (non-Muslim)
Legal System	Unitary (one national system, applies to all civil cases)	Dualistic (Sharia Court for Muslims, Civil Court for non-Muslims)
Mediation Character	Mandatory (PERMA 1/2016)	Semi-mandatory (<i>Sulh</i>) for Muslims; optional ADR in civil court

Contextual Influences on Mediation Effectiveness

The effectiveness of mediation in family reconciliation is not only determined by formal regulations but is also influenced by the social, cultural, and institutional contexts of each country. Indonesia, a country with a unitary legal system, integrates mediation into all civil cases, including family cases, through Supreme Court Regulation No. 1 of 2016. However, Supreme Court data (2022) show that the success rate of mediation remains low, below 10%. One contextual factor influencing this is the culture of litigation in society, which tends to view the courts as a venue for "seeking victory" rather than a space for reconciliation (Bintania, 2019). In addition, the limited number of certified mediators, minimal mediation facilities, and lack of integration with psychosocial services also weaken the implementation of family mediation (Musyahadah, 2020).

In contrast, Malaysia adopts a different approach in its dualistic legal system, where Muslim family disputes are handled through the Sharia Court via the *Majlis Sulh* mechanism, while

non-Muslims use common law-based mediation. Contextual factors supporting the effectiveness of *sulh* include cultural and religious legitimacy. For Malaysian Muslims, *Sulh* is viewed not only as a legal procedure but also as a moral-religious obligation to uphold the principle of *islah* (reconciliation) in accordance with Sharia. This makes the parties more willing to reconcile (Rahman, 2020).

In terms of the legal structure, differences in systems also impact effectiveness. In Indonesia, with its unitary system, mediation is a mandatory procedure in all cases. However, an overly formal approach often reduces the flexibility of mediation. Meanwhile, Malaysia, with its dualistic system, provides more contextual space: the *sulh* pathway for Muslims, which is imbued with sharia values, and the modern ADR pathway for non-Muslims, which prioritizes efficiency. This context explains why the mediation success rate in Malaysia is higher than that in Indonesia, as the process is more integrated with social and religious values recognized by the community.

Thus, it can be concluded that the effectiveness of mediation in Indonesia is still influenced by a litigation culture, limited mediator resources, and weak institutional support, while in Malaysia, it is more supported by sharia legitimacy, a dualistic legal structure, and the strengthening of the JKSM institution. This contextual analysis

shows that the success of mediation is not solely supported by legal regulations but is also significantly influenced by cultural acceptance and institutional support for its implementation.

Family Mediation in Muslim Jurisdictions: A Comparative Study of Indonesia and Malaysia's Legal and Cultural Frameworks

This study's comparative analysis of family dispute mediation in Indonesia and Malaysia reveals important lessons on how Islamic traditions, legal cultures, and institutional arrangements intersect to shape the effectiveness of nonadversarial resolution mechanisms. Both countries share an Islamic legal heritage and operate under legal pluralism; however, their divergent institutional structures and mediation practices reflect different trajectories in incorporating Islamic principles, state law, and modern approaches to justice.

In Indonesia, the Religious Courts' approach to mediation is marked by procedural mandates rather than substantive design. Judges often serve as mediators, raising concerns about impartiality and role conflict (Hariyanto et al., 2021). Furthermore, the lack of domestic violence screening mechanisms challenges the appropriateness of compulsory mediation in sensitive divorce cases (Jones & Aftab, 2024). These institutional shortcomings contrast with Malaysia's more structured *Majlis Sulh*, which employs specially trained officers and

adheres to practice directions that prioritize process integrity and separation of roles (Adnan et al. 2022). The differing institutional designs suggest that clearly defined roles and procedural safeguards are central to the legitimacy and effectiveness of mediation.

Beyond institutional design, cultural and psychosocial dimensions significantly influence the outcomes of mediation. Indonesia's informal, community-based mediation reflects a long-standing tradition of negotiated resolution (Haq et al. 2022), whereas Malaysia's *sulh* is an institutionalized practice resonating with Islamic jurisprudence. Both models reveal the importance of cultural competence, particularly when mediators must engage with complex family dynamics and religious beliefs (Moore-Grant et al., 2025). The successful integration of psychosocial professionals, as demonstrated in Lebanon and Germany, underscores the added value of mental health literacy and social work in reinforcing mediation (Hakim and Mansour, 2024; Winter et al., 2022). These approaches can bridge the gap between procedural justice and the emotional well-being of the disputants.

Legal culture also mediates perceptions and practices of mediation. The dual legal system in Malaysia allows for a clearer delineation of Syariah and civil court jurisdictions, while Indonesia's layered legal pluralism can create confusion and

inconsistencies (Hefner 2021). This structural clarity in Malaysia has facilitated the implementation of mediation in broader sectors, such as land waqf and elderly family disputes (Islamiyati et al. 2022; Jamaluddin et al. 2023). Moreover, religious and institutional trust plays a pivotal role in legitimizing mediation. Public confidence is shaped by perceptions of procedural fairness, religious congruence, and institutional integrity (Dami et al. 2022; Kasri and Chaerunnisa 2022). To further clarify the comparative dynamics of family mediation practices in Indonesia and Malaysia, the following table outlines the key legal, procedural, and institutional distinctions that influence the design and implementation of mediation frameworks in both countries.

Table 2. Comparative Analysis of Mediation Systems in Indonesia and Malaysia

Analytical Dimension	Indonesia	Malaysia
Legal Framework	PERMA No. 1/2016 on court-annexed mediation; PERMA No. 3/2022 on electronic mediation	Mediation institutionalized via <i>Majlis Sulh</i> under Syariah Courts and Practice Directions
Mediator Role	Judges act as mediators, raising concerns about neutrality	<i>Sulh</i> officers are distinct from Syariah judges, enhancing procedural clarity
Cultural Integration	Community-based mediation influenced by local <i>adat</i> and Islamic values	Mediation embedded within Islamic tradition (<i>Sulh</i>) and formalized in legal structure
Screening for Domestic Violence	Lacks standardized screening mechanisms	No comprehensive D.V. screening, but structured processes enable safer handling
Psychosocial Considerations	Limited integration of psychosocial professionals	Emerging attention to elderly disputes and psychosocial elements
Institutional Trust	Public trust shaped by judge behavior, religiosity, and court performance	Enhanced by legitimacy of structured <i>Sulh</i> processes and religious authority
Technological Innovations	Electronic mediation under PERMA No. 3/2022; limited success due to infrastructure gaps	Not a primary focus, but formal records and institutionalization improve consistency
Effectiveness and Outcomes	Low settlement rate (~10%); higher success in informal mediation	Procedural clarity contributes to more reliable mediation outcomes
Legal Pluralism Context	Navigates Islamic, <i>adat</i> , and civil legal systems	Operates within clearer dual legal system, though constrained in land-related claims

Source: Author's analysis, 2025.

The comparative analysis presented in Table 2 reinforces and extends previous studies on Islamic family mediation. For instance, the regulatory gap in Indonesia, where judges act as mediators, echoes (Hariyanto, Efendi, and Sulistiyawati's 2021) finding that the dual role of judges undermines

neutrality and procedural fairness. In contrast, Malaysia's separation of roles through specialized *sulh* officers confirms Rahmat et al.'s (2022) and Adnan, Buang, and Sulaiman's (2022) argument that institutional clarity strengthens mediation credibility. These findings suggest that role specialization is a decisive factor in ensuring effectiveness and fairness.

Cultural integration further highlights the contextual legitimacy of the mediation system. Indonesia's community-based practices resonate with those of Huda et al. (2024) and Haq et al. (2022), who emphasize the persistence of *adat* negotiation and *musyawarah* traditions in family disputes. Meanwhile, Malaysia's institutionalization of *sulh* reflects Ahmad Ibrahim's reformist framework (Wan Adnan & Buang 2021) and aligns with Muradin's (2022) findings on the cultural acceptance of *sulh* in diasporic Muslim communities. This contrast suggests that while both systems are rooted in Islamic reconciliation principles, institutional embedding within Syariah Courts grants Malaysia stronger public legitimacy.

The lack of standardized domestic violence screening in both jurisdictions corroborates Jones and Aftab's (2024) critique of Indonesia's compulsory mediation framework, which risks re-traumatizing vulnerable parties. Internationally, screening mechanisms in Australia and Canada are frequently cited as best practices (Fleming et al.

2022), underlining the need for Indonesia and Malaysia to adopt similar safeguards. Psychosocial dimensions also remain underdeveloped in this field. As López, Cárdenas, and González (2021) and (Winter et al. 2022) argue, integrating psychosocial professionals improves the sustainability of mediated outcomes. While Malaysia has begun integrating psychosocial perspectives into elderly care mediation (Jamaluddin et al. 2023), Indonesia remains at an early stage.

Finally, the comparative outcomes of effectiveness mirror global ADR patterns. Indonesia's low success rate (<10%) is consistent with Maryam and Irianto's (2024) evaluation of mediation inefficacy in religious courts, while Malaysia's more reliable *sulh* outcomes align with Abraham's (2023) study of the Mediation Act's impact. This suggests that structural clarity and cultural legitimacy, rather than mandatory formalism, determine the success of mediation. Building on Gerungan et al. (2023), future reforms in Indonesia may benefit from Malaysia's structured approach, while also addressing technological and regional disparities. These comparative insights underscore the need for context-sensitive reforms that integrate Islamic ethical principles with contemporary standards of restorative and nonadversarial justice.

CONCLUSION

This study confirms that the effectiveness of family mediation in

Indonesia and Malaysia is determined by a combination of institutional structures, legal frameworks, cultural legitimacy, and the application of religious values and psychosocial dimensions. Despite mandating mediation through Supreme Court Regulation No. 1 of 2016, Indonesia still faces obstacles such as the dual role of judges as mediators, low professionalization, and weak protection mechanisms for vulnerable parties. This tends to result in mediation being a formality, with a relatively low success rate. In contrast, Malaysia, through *Majlis Sulh*, has successfully established a more structured and professional system with dedicated staff, standardized procedures, and religious legitimacy that strengthens community acceptance and public trust. These differences demonstrate that role clarity, procedural standards, and the integration of restorative Islamic values are key to successful family mediation.

Based on these findings, this study recommends strengthening regional and international cooperation, including the possible ratification of the Singapore Convention on Mediation; the need for further study on the long-term impact of mediation on the sustainability of post-dispute family relationships and public trust in religious courts; and the development of a mediation model based on local wisdom that aligns with Islamic ethical principles and global restorative-justice standards.

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