

Beyond Legal Dissolution: An Islamic Restorative Framework for Post-Divorce Hostility and Relational Justice in Contemporary Indonesia

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Abstract

Divorce legally dissolves a marriage, but it does not extinguish relational obligations concerning children, maintenance, property, dignity, and continuing communication between former spouses. Existing Indonesian studies tend to examine psychological distress, child custody, post-divorce maintenance, or mediation separately, leaving limited explanation of how Islamic family-law principles can operate as an integrated normative framework for post-divorce hostility. This article examines how post-divorce hostility should be understood and resolved through Islamic family law in dialogue with Indonesian positive law and religious-court practice. The study employs normative legal research combined with an integrative literature review. Qur'anic norms, Indonesian marriage and child-protection law, the Compilation of Islamic Law, Supreme Court mediation rules and chamber guidelines, selected court practice, and relevant psychological and socio-legal scholarship are analyzed through doctrinal interpretation and thematic synthesis. The findings show that emotional wounds, structural disputes, social pressure, and formalistic mediation become legally relevant when they generate relational harm (darar), undermine welfare (maṣlahah), or threaten the objectives of Islamic law (maqashid al-syariah). The article develops an Islamic Post-Divorce Relational Justice framework grounded in iḥsān, ma'rūf, Tasrih bi ihsan, non-harm, child welfare, equitable responsibility, and restorative mediation. Its original contribution is to shift the analytical focus from legal dissolution to a dignified, child-sensitive, enforceable, and non-harmful transition after divorce within the Indonesian Religious Court context.

Keywords: Divorce; Post-Divorce Hostility; Relational Justice; Maqashid Al-Shari'ah; Restorative Mediation; Islamic Family Law.

Abstrak

Perceraian secara hukum mengakhiri perkawinan, tetapi tidak menghapus kewajiban relasional yang berkaitan dengan anak, nafkah, harta, martabat, dan komunikasi yang tetap diperlukan antara mantan pasangan suami istri. Studi di Indonesia cenderung membahas tekanan psikologis, hak asuh anak, pemenuhan hak pasca perceraian, atau

mediasi secara terpisah, sehingga belum banyak yang menjelaskan bagaimana prinsip hukum keluarga Islam dapat dioperasionalkan sebagai kerangka normatif terpadu untuk menangani permusuhan pasca perceraian. Artikel ini menganalisis bagaimana permusuhan pasca perceraian perlu dipahami dan diselesaikan melalui hukum keluarga Islam dalam dialog dengan hukum positif Indonesia dan praktik Peradilan Agama. Penelitian menggunakan metode hukum normatif yang dipadukan dengan telaah literatur integratif. Norma Al-Qur'an, hukum perkawinan dan perlindungan anak, Kompilasi Hukum Islam, regulasi mediasi dan rumusan kamar Mahkamah Agung, praktik putusan terpilih, serta literatur psikologi dan sosio-legal dianalisis melalui interpretasi doktrinal dan sintesis tematik. Hasil kajian menunjukkan bahwa luka emosional, sengketa struktural, tekanan sosial, dan mediasi yang formalistik menjadi relevan secara hukum ketika menimbulkan darurat, mengurangi masalah, atau mengancam *maqāṣid al-sharī'ah*. Artikel ini menawarkan Kerangka Keadilan Relasional Pasca Perceraian berbasis *ihsan*, *ma'ruf*, *taṣrīḥ bi ihsan*, prinsip non-harm, kesejahteraan anak, tanggung jawab yang adil, dan mediasi restoratif. Kontribusi orisinalnya adalah menggeser fokus dari sekadar putusanya perkawinan menuju transisi pasca perceraian yang bermartabat, sensitif terhadap anak, dapat dilaksanakan, dan tidak menimbulkan kemudharatan dalam konteks Peradilan Agama Indonesia.

Kata Kunci: Perceraian; Permusuhan Pasca Perceraian; Keadilan Relasional; *Maqāṣid Al-Sharī'ah*; Mediasi Restoratif; Hukum Keluarga Islam.

INTRODUCTION

Divorce is one of the unavoidable realities of domestic life, particularly in modern societies undergoing changes in values and family relational structures. In Indonesia, divorce rates have shown an upward trend from year to year, reflecting shifts in how individuals understand marriage and domestic conflict.¹ This phenomenon not only terminates the legal relationship between husband and wife, but also creates further problems in the form of prolonged conflict and hostility. Ideally, divorce should be a last resort pursued peacefully; in practice, however, it often intensifies disputes.² It is therefore important to understand why divorce

¹ Achmad Thorik, Muhammad Iqbal Sugandi, and Fikri Prasetya, "Dinamika Perceraian Di Kalangan Keluarga Muslim Indonesia Dalam Perspektif Sosiologi Hukum Islam," *Millatuna: Jurnal Studi Islam* 2, no. 04 (2025): 93–108, <https://doi.org/10.33752/mjsi.v2i04.11154>; Djafar, Nurfadilah, Rusdiyanto Puluhulawa, Irl an Puluhulawa, and Rasham Armab Saikhu. 2026. "Legal Certainty and Legal Protection For Victims of Catcalling In Indonesia: A Critical Analysis of The Sexual Violence Crime Law And Maqāṣid Al-Sharī'ah". *An-Nisa: Journal of Islamic Family Law* 3 (2): 132-51. <https://doi.org/10.63142/an-nisa.v3i2.547>.

² Linda Yarni, "Edukasi Hukum Islam Tentang Perceraian Di Jorong Tanjung Balau," *AhkamServe: Journal of Sharia Community Service* 1, no. 4 (2025): 224–31, <https://doi.org/http://dx.doi.org/10.30983>; Hayatusyifa, Noor Fadillah, Fakhurrazi M. Yunus, Aulil Amri, Manuel Beltrán Genovés, and Nur Syahirah Binti Mohammad Nasir. 2026. "Children's Rights Fulfillment in Families of Female Migrant Workers:

does not end as a legal event but develops into a complex socio-psychological conflict. In contemporary society, divorce is no longer regarded as an entirely taboo phenomenon, but as part of the dynamics of modern family life. Nevertheless, rising divorce rates are not necessarily accompanied by individuals' ability to manage their consequences constructively. In Indonesia, Religious Court data indicate that persistent disputes, economic problems, and marital disharmony are among the dominant causes of divorce.³ This suggests that divorce often occurs after conflict has persisted for a long period, leaving a strong emotional residue.

Psychologically, divorce is an experience laden with emotional pressure. Individuals undergoing divorce often face feelings of loss, failure, and unresolved anger.⁴ These emotions may develop into hostility if they are not properly managed. Divorce also involves complex structural dimensions, such as the division of marital property and determination of child custody, which frequently trigger further conflict. From a social perspective, divorce is also inseparable from the stigma that persists in society. Divorced individuals, particularly women, often face social pressures that can worsen their psychological condition and their relationship with a former spouse.⁵ Intervention by extended family and the wider social environment can further aggravate the situation, causing conflicts that could otherwise be resolved personally to expand into collective disputes.

Accordingly, divorce cannot be understood merely as a legal event; rather, it is a multidimensional phenomenon involving interactions among psychological, structural, and social factors. This complexity is

An Islamic Law Perspective from Aceh Tenggara". *An-Nisa: Journal of Islamic Family Law* 3 (1): 65-82. <https://doi.org/10.63142/an-nisa.v3i1.496>.

³ Ninda Dwi et al., "Analisis Perceraian tahun 2024 Di Pengadilan Agama Probolinggo (Perspektif Pengadilan Agama Probolinggo)" 7, no. 1 (2025): 01–15, <https://doi.org/10.55606/af.v6i2.4>; Hayati, Mala, Fakhurrazi M. Yunus, and Gamal Achyar. 2025. "Child Rights Fulfilment in Families Practicing Early Marriage: A Juridical-Empirical Analysis of Child Protection Law Implementation in Blangkejeren, Gayo Lues Regency". *An-Nisa: Journal of Islamic Family Law* 2 (4): 361-76. <https://doi.org/10.63142/an-nisa.v2i4.474>.

⁴ Cindy Eka Istifarin, Evi Winingsih, and Najlatun Naqiyah, "Dinamika Psikologis Mahasiswa Dari Keluarga Bercerai Fakultas Ilmu Pendidikan , Universitas Negeri Surabaya" 5, no. 1 (2026): 847–60, <https://doi.org/10.55606/inovasi.v5i1.5619>.

⁵ Nurmadiyah Alkadri, Nurul Asmi, and Abdul Gaffar Haris, "Sengketa Hak Asuh Dan Dampak Psikologis Anak," *Sibaliparriq: Jurnal Hukum Keluarga Dan Literasi Syariah* 2, no. 1 (2025): 23–43, <https://doi.org/10.46870/sbp.v2i1.1734>.

what often causes divorce to culminate in prolonged hostility. In modern society, divorce is no longer positioned entirely as a taboo or disgrace that must be concealed, but is increasingly understood as one reality within the changing dynamics of family life. This shift in perspective is linked to the growth of individualistic values, awareness of personal rights, and greater willingness to leave relationships perceived as unhealthy. Nevertheless, the increase in divorce rates over recent decades has not automatically been accompanied by psychological readiness or social skills to confront and manage post-divorce consequences. In Indonesia, various reports from Religious Courts show that divorce is generally driven by persistent conflict, unresolved economic problems, and disharmony in marital relations. This indicates that divorce is often the culmination of long-accumulated problems, leaving deep emotional effects that are not easily resolved.

From a psychological perspective, divorce is a life experience marked by complex emotional pressures. Individuals who undergo divorce face not only a change in social status but also conflicting feelings, including the loss of a spouse and the family once built, a sense of failure in maintaining the relationship, and anger that may remain buried because of unresolved conflict. If these emotions are not managed through healthy coping mechanisms, they may develop into prolonged hostility between former spouses. This condition is further aggravated by structural issues inherent in the divorce process, such as the division of marital property, determination of child custody, and maintenance responsibilities. These issues often become new sources of conflict or prolong existing disputes because each party seeks to protect their respective interests.

Beyond its psychological and structural dimensions, divorce also has significant social implications. In many cases, society continues to attach stigma to divorce, particularly to women, who are often more vulnerable to negative judgment. This social stigma can create additional pressure that affects an individual's mental condition and shapes interactions with the surrounding community, including the former spouse. Extended families and the wider social environment also frequently become involved in the conflict, directly or indirectly. Rather than helping to reduce tension, such intervention often complicates the situation by expanding a personal dispute into a conflict involving multiple parties. Considering these dimensions, divorce cannot be understood simply as a legal event marking the end of a marital bond. It is a multidimensional phenomenon involving complex interactions

among psychological, structural, and social factors. These three dimensions are interrelated and contribute to post-divorce dynamics, including the emergence of prolonged conflict and hostility. This complexity explains why many divorces do not end in an amicable termination of the relationship but instead generate continuing tension in various forms of social relations thereafter.

Although the literature on divorce in Indonesia has grown rapidly, it remains fragmented. Studies of former wives' rights primarily emphasize problems in implementing and enforcing post-divorce economic rights, while studies of *hadhanah* focus more on reconstructing custody and the best interests of the child. Mediation studies, by contrast, emphasize mediator effectiveness and procedural compliance. This fragmentation leaves a normative question insufficiently answered: which principles of Islamic family law continue to bind the parties after the marriage has ended, and how can those principles be translated into mechanisms for resolving post-divorce hostility?⁶

The research gap addressed by this article lies in the absence of an integrated framework combining *iḥsān*, *ma'rūf*, *Tasrih bi ihsan*, *ḍarar*, *maṣlaḥah*, and *maqashid al-syariah* to address, simultaneously, relational wounds, economic rights, child care, parental access, and the need for post-divorce mediation. Accordingly, this article does not treat psychology, sociology, and law as three parallel perspectives. Psychology and sociology are used to identify the forms and sources of relational harm, while Islamic family law is positioned as the normative center for assessing those harms and formulating the legal response.

Based on this gap, the article addresses two questions: (1) how can post-divorce hostility be constructed as a problem of relational justice within Islamic family law; and (2) how can these Islamic family-law principles be operationalized through Indonesian positive law and Religious Court practice? The novelty of the article lies in formulating the Post-Divorce Relational Justice Framework (PDRJF), a normative-restorative model that connects dignity in separation, prevention of harm, child welfare, fulfillment of economic responsibilities, and mediation oriented toward resolving post-divorce relations rather than merely restoring the marriage.

RESEARCH METHOD

⁶ Rahmawati Rahmawati et al., "Dis-Implementation of the Islamic Family Law in Fulfilling the Rights of Ex-Wives after Divorce in Indonesia," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 9, no. 1 (2025): 538–59, <https://doi.org/10.22373/sjhk.v9i1.27172>.

This study employs normative legal research combined with an integrative literature review to analyze post-divorce hostility as a problem of Islamic family law and relational justice. The objects of study include Sharia norms, Indonesian positive law, judicial guidelines and practice, and relevant psychological and sociological literature.⁷ The analytical approaches include statutory, conceptual, and limited case approaches, combined with thematic synthesis to examine the relationships among the causes and forms of post-divorce hostility.

Primary legal materials include Qur'anic verses governing divorce, *ma'rūf* treatment, release with *iḥsān*, the prohibition of causing harm, and responsibilities toward children; Law Number 1 of 1974 on Marriage as amended by Law Number 16 of 2019; the Child Protection Law; the Compilation of Islamic Law; Supreme Court Regulation Number 1 of 2016 on Mediation Procedures in Court; and Supreme Court Circular Letter Number 1 of 2017. Judicial practice is used illustratively to examine how the principles of *maṣlaḥah* and non-harm have appeared in judicial reasoning.⁸

Secondary materials were purposively selected according to three criteria: direct relevance to post-divorce conflict or rights; discussion of Islamic family law, mediation, child welfare, or related psychological and social dynamics; and an Indonesian context or clear comparative value. Contemporary literature was prioritized in discussions of practice, while classical and older theoretical works were retained where they are foundational. This study is an integrative review rather than a systematic review; therefore, the purpose of literature selection is to build a conceptual and doctrinal synthesis, not to calculate effects or prevalence statistically.

The analysis was conducted in three stages. First, findings from the literature were coded into four diagnostic clusters: emotional wounds, structural conflict, social pressure, and weaknesses in resolution mechanisms. Second, each cluster was cross-read against the principles of *iḥsān*, *ma'ruf*, *taṣrīḥ bi iḥsān*, *la ḍarar wa la ḍīrar*, *maṣlaḥah*, and *maqashid al-syariah*, as well as post-divorce obligations under Indonesian positive law. Third, the results were synthesized into the principles and operational stages of the PDRJF. Under this design, psychological concepts are not treated as legal categories but as

⁷ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, edisi revisi).

⁸ Undang-Undang Nomor, "Tahun 1974 Tentang Perkawinan [Sebagaimana Diubah Dengan UU No. 16 Tahun 2019], Pub," 1 L. No. LN § (1974).

indicators of potential harm that are subsequently evaluated normatively through Islamic family law.

RESULTS AND DISCUSSION

Emotional Wounds as a Risk of Relational *Ḍarar*

The following discussion uses Islamic family law as its normative axis. Psychological, structural, and sociological factors are not treated as final explanations but as diagnostic tools for understanding how post-divorce hostility produces *Ḍarar* and obstructs *maṣlaḥah*. Thus, the central question is not merely why former spouses become hostile, but when and how that hostility becomes a form of relational injustice contrary to post-divorce ethical and legal obligations.

Marriage is, in principle, a legally recognized institution that unites a man and a woman as husband and wife under Indonesian law.⁹ Divorce is an event that affects not only legal status but also deeply engages the psychological dimension. Many individuals who experience divorce face complex emotional conditions, including loss, rejection, disappointment, anger, and feelings of betrayal. These emotions may develop into prolonged conflict when they are not managed adaptively.¹⁰ In this context, divorce can function as a significant life stressor. The term trauma, however, must be used carefully: clinical trauma is a psychological category requiring professional assessment and cannot be inferred merely from the fact of divorce. Accordingly, this article uses the terms emotional wounds or post-divorce distress for non-clinical responses, while the term trauma is used only when the cited source expressly employs that category.¹¹ Individuals experiencing divorce often have difficulty adjusting to changes in status, roles, and social identity. This can trigger defense mechanisms such as denial, projection, and aggression. When these mechanisms are not managed in a healthy manner, individuals may direct negative emotions toward a former spouse, thereby intensifying hostility.

⁹ Yusuf Agung Purnama et al., “Unregistered and Online Marriage in Indonesia: An Islamic Law and Legal Perspective Based on the Principle of *Al-Masyaqqah Tajlibu Al-Taysir*,” *Mawaddah: Jurnal Hukum Keluarga Islam* 4, no. 1 (2026): 43–67, <https://doi.org/10.52496/mjhki.v4i1.40>.

¹⁰ Ika Wahyu Pratiwi, “Dinamika Forgiveness Pada Anak Korban Perceraian,” *Jurnal Psikologi Pendidikan Dan Pengembangan SDM* 8, no. 1 (2020): 13–31, <https://doi.org/10.37721/psi.v8i1.596>.

¹¹ American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders: DSM-5-TR* (Washington, DC: American Psychiatric Association Publishing, 2022).

Research indicates that post-divorce conflict is often correlated with the level of conflict that existed before divorce. In other words, divorce is not the beginning of conflict but a continuation of unresolved conflict.¹² Under these conditions, divorce becomes a “new space” in which conflict can develop more openly. Communication that was previously obstructed within marriage may turn into aggressive, blame-oriented communication after divorce. Ego also plays a significant role in the dynamics of hostility. An inability to accept the failure of a marriage often leads individuals to seek someone to blame. In many cases, the former spouse becomes the principal target of that projection.¹³ An injured ego creates a need to defend self-esteem, which is often expressed through defensive or even aggressive attitudes.

Furthermore, emotional attachment also influences individual responses to divorce. Individuals with insecure attachment patterns tend to display more intense emotional reactions, such as excessive anxiety or anger that is difficult to control.¹⁴ This increases the likelihood of prolonged conflict between former spouses. Psychological factors therefore constitute an important determinant in explaining why divorce often culminates in hostility. Unresolved emotional wounds, combined with maladaptive defense mechanisms, create conditions conducive to prolonged conflict.

From the perspective of Islamic family law, emotional wounds acquire normative relevance when they are expressed through conduct that causes harm to a former spouse or child, such as humiliation, threats, economic retaliation, using a child as a means of pressure, or obstructing communication without a child-welfare justification. In other words, emotions are not themselves the object of legal sanction; what is assessed is the conduct and its consequences. This distinction is important so that psychological concepts are not automatically transformed into legal fault, while the law remains capable of responding to concrete relational harm.

¹² Perceraian Di and Masyarakat Indonesia, “Jurnal Transformasi Humaniora From Love To Conflict : Mengurai Benang Kusut Penyebab” 8, no. 2 (2025): 11–25.

¹³ Wa Ode Saqya Hania and Tina Afiatin, “Misi Penyelamatan Diri: Dinamika Psikologis Rasa Malu Pasangan (Istri) Koruptor,” *Jurnal Psikologi UGM* 7, no. 1 (2021): 1–21, <https://doi.org/10.22146/gamajop.55168>.

¹⁴ Dini Ardila and Nanda Audia Vrisaba, “Dinamika Kelekatan Perempuan Dewasa Awal Dengan Ibu Pasca Perceraian Orang Tua,” *INOMATEC: Jurnal Inovasi Dan Kajian Multidisipliner Kontemporer* 1, no. 03 (2026): 317–39.

Structural Conflict, Maṣlaḥah, and the Protection of Post-Divorce Rights

In addition to psychological factors, post-divorce hostility is also triggered by structural conflicts, particularly those concerning the distribution of resources and practical interests. In divorce, issues such as child custody, division of marital property, and maintenance obligations constitute highly significant sources of conflict.¹⁵ Child custody is among the most sensitive aspects of divorce. Children often become both the center of concern and a source of conflict between former spouses. In some cases, a child may be used as a means of maintaining control or hurting the other party. Some literature describes patterns of estranging a child from one parent as parental alienation. This term is used descriptively in this article to refer to manipulative conduct or obstruction of the child's relationship with the other parent, not as a clinical diagnosis or a legal category that may be presumed without proof. The legal focus is on concrete conduct, the best interests of the child, and the impact on the child's right to maintain a safe relationship with both parents.¹⁶

Conflicts over the division of marital property also frequently become a major trigger of hostility. When one party feels economically disadvantaged, a sense of injustice may arise and generate prolonged conflict. This demonstrates that divorce involves not only an emotional dimension but also a complex economic dimension. Structural conflict is further aggravated by power imbalances between former spouses. In some cases, one party has greater access to economic resources or legal information, creating an unequal relationship. Such inequality can intensify conflict and prolong the dispute-resolution process.¹⁷ Structural conflict can therefore be understood as a factor that reinforces and prolongs post-divorce hostility. When practical interests cannot be resolved fairly and transparently, conflict tends to develop into hostility that is difficult to end.

¹⁵ Eko Saputra, *Mendesain Ulang Keadilan: Reformasi Hukum Perceraian Dalam Sistem Peradilan Agama* (Star Digital Publishing, 2025).

¹⁶ Jennifer J Harman, William Bernet, and Joseph Harman, "Parental Alienation: The Blossoming of a Field of Study," *Current Directions in Psychological Science* 28, no. 2 (2019): 212–17, <https://doi.org/10.1177/0963721419827271>.

¹⁷ Vindy Maulinna Rosdianti and Rose Citrawati, "Konflik Kewarisan Dalam Rumah Tangga: Dampaknya Terhadap Keharmonisan Keluarga Pasca Pewarisan," *Konferensi Nasional Hukum Islam* 3, no. 1 (2025): 414–28, <https://new-conference.unisma.ac.id/index.php/knhi/article/view/2015/1318>.

These structural conflicts demonstrate that post-divorce hostility is not merely an affective problem; it is directly related to the distribution of rights and burdens. Within a *maṣlaḥah* framework, dispute resolution must prevent either party from using economic dependency, property, maintenance, or custody as instruments of retaliation. The objective is not to equalize every position abstractly, but to ensure that rights established by Sharia and positive law can be effectively enjoyed in a proportionate manner without creating new harm.

Social Pressure, Dignity, and the Principle of Ma'rūf

From a sociological perspective, divorce cannot be separated from the social and cultural context surrounding the individual. In many societies, divorce is still regarded as a form of social failure, particularly for women. This stigma creates additional psychological pressure that can worsen relations between former spouses.¹⁸ Social stigma affects not only divorced individuals but also how society treats them. Stigmatized individuals tend to experience social marginalization, which may intensify feelings of frustration and anger. This condition can ultimately increase the likelihood of interpersonal conflict. In addition to stigma, intervention by extended families often aggravates the situation. In many cases, family members do not act as neutral mediators but instead reinforce conflict through excessive partisanship.¹⁹ This shows that divorce-related conflict is not always individual in nature but can develop into collective conflict involving broader social networks.

Patriarchal culture also contributes significantly to the dynamics of hostility. In patriarchal social systems, divorce is often perceived as a threat to structures of male power.²⁰ Men may therefore respond to divorce defensively or aggressively in an effort to preserve dominance. Divorced women, meanwhile, often face heavier social stigma, which may worsen their psychological condition. Sociological factors thus play an important role in shaping post-divorce hostility. Stigma, cultural

¹⁸ Noeranisa Adhianty Gunawan and Nunung Nurwati, "PERSEPSI MASYARAKAT TERHADAP PERCERAIAN Society Perception Of Divorce" 9, no. 1 (2009): 20–27, <https://doi.org/10.24198/share.v9i1.19863>.

¹⁹ S R Naharuddin et al., "The Role of Mediation in Resolving Family Communication Conflicts: An Islamic Family Law Approach in Indonesia: Peran Mediasi Dan Advokasi Dalam Penyelesaian Konflik Komunikasi Keluarga: Pendekatan Hukum Keluarga Islam Di Indonesia," *Jurnal Marital: Kajian Hukum Keluarga Islam* 4, no. 1 (2025): 13–29, <https://doi.org/10.35905/marital>.

²⁰ Muhammad Syahrizan and Asfar Hamidi Siregar, "Budaya Patriarki Dalam Rumah Tangga Menurut Perspektif Hukum Islam," *Bertuah Jurnal Syariah Dan Ekonomi Islam* 5, no. 1 (2024): 118–31. <https://doi.org/10.56633/jsie.v5i1.787>.

norms, and social intervention not only affect individuals directly but also shape broader relational structures.

The principle of *ma'rūf* provides a normative correction to such social pressures. *Ma'rūf* requires conduct that is proper, reasonable, and consistent with justice and human dignity. Accordingly, stigma against divorced women or men, disclosure of private disgrace, mobilization of extended family members to humiliate a former spouse, and the construction of public narratives that damage a child's relationship with one parent cannot be treated as socially neutral factors. When such social conduct prolongs conflict, it becomes part of the post-divorce justice problem that must be addressed through mediation and post-divorce agreements.

Limitations of Formal Mediation and the Need for Restorative *Iṣlāḥ*

Normatively, the legal system provides various instruments for resolving conflict in divorce, including mediation integrated into judicial proceedings. Mediation is positioned as an alternative dispute-resolution mechanism intended to promote fair agreements, preserve interpersonal relations, and minimize escalation of conflict between the parties.²¹ In practice, however, mediation in divorce cases is often less than optimal and tends to become a mere procedural formality.

One major cause of ineffective mediation is the limited competence of mediators in handling emotional and relational conflict. In many cases, mediators focus more heavily on resolving formal legal issues, such as division of property or custody arrangements, without exploring the psychological roots underlying the conflict.²² Yet divorce conflict is generally not only rational in nature; it is also laden with negative emotions such as anger, disappointment, and feelings of betrayal. When this emotional dimension is ignored, mediation loses its transformative substance and becomes merely a forum for administrative negotiation. The psychological readiness of the parties is also an important determinant of mediation success. Individuals who remain emotionally unstable tend to find it difficult to compromise and accept the other party's perspective. Under such conditions, communication

²¹ Muhammad Zidan Arzaki Putra and Humaidi Kaha, "Analisis Integratif Sistem Peradilan Nasional Tentang Pelaksanaan Mediasi Dalam Kasus Perceraian Yang Diajukan Oleh Istri Di Pengadilan Agama" 3, no. 2 (2025): 58–76, <https://doi.org/10.52029/pjhki.v3i2.376>.

²² Beni Ashar, "Peran Mediator Dalam Perkara Perceraian (Studi Solusi Konflik Rumah Tangga Di Pengadilan Agama Jember)," *Mabahits: Jurnal Hukum Keluarga Islam* 1, no. 2 (2020): 74–88, <https://doi.org/10.36835/mabahits.v1i2.531>.

during mediation is often defensive or even confrontational, impeding the achievement of a constructive agreement. Research indicates a strong correlation between the quality of interpersonal communication, the ability to regulate emotions, and successful mediation.²³

The failure of mediation can also be understood as a consequence of an excessively legalistic approach to resolving family conflict. The legal system tends to treat divorce as a dispute to be resolved through formal mechanisms without providing adequate space for restoration of social and emotional relations.²⁴ As a result, divorce, which should provide a way out of conflict, may instead become a continuing source of new conflict. The weakness of conflict-resolution mechanisms in divorce lies not only in the technical implementation of mediation but also in an approach that has yet to fully integrate psychological and relational dimensions. A more holistic reformulation of mediation is therefore required, emphasizing strengthened mediator capacity, psychologically informed approaches, and greater emotional preparedness among the parties. Without such improvements, mediation will continue to face limitations in fulfilling its function as an effective and equitable instrument of conflict resolution.

Mediation reform must distinguish marital reconciliation from settlement of post-divorce relations. Failure to reunite husband and wife is not synonymous with failure of mediation. Supreme Court Regulation Number 1 of 2016 permits partial settlement agreements; in divorce cases, this space can be directed toward maintenance, parenting, child access, management of communication, property, and mechanisms for performing obligations. The mediator's role should therefore shift from a single orientation of "preventing divorce" toward two pathways: reconciliation when it remains safe and realistic, or an orderly and non-harmful post-divorce transition when the marriage does end.²⁵

²³ Ella Bazhya Mabru, Syamsu Madyan, and Syafiatul Mir'ah Ma'shum, "EFEKTIFITAS PROSES MEDIASI DALAM KASUS PERCERAIAN DI PENGADILAN AGAMA BLITAR PERSPEKTIF ILMU KOMUNIKASI," *Jurnal Hikmatina* 7, no. 2 (2025): 115–22, <https://jim.unisma.ac.id/index.php/jh/article/view/29711>.

²⁴ Mardiyana Mardiyana and Lilik Andaryuni, "Menyatukan Norma, Menyembuhkan Luka: Mediasi Masalah Dalam Perceraian Di PA Samarinda," *Jurnal Tana Mana* 6, no. 1 (2025): 498–508, <https://ojs.staialfurqan.ac.id/jtm/article/download/736/452/>.

²⁵ Ketua Mahkamah Agung Republik, "Peraturan Mahkamah Agung Republik Indonesia Nomor 1 Tahun 2016 Tentang Prosedur Mediasi Di Pengadilan

Indonesian Positive Law and Religious Court Practice: Obligations That Survive Divorce

Termination of the marriage does not extinguish all legal relations between former spouses, particularly where children and economic obligations remain. Article 41 of the Marriage Law preserves the obligation of both parents to care for and educate their children in accordance with the child's interests, places responsibility for maintenance costs on the father according to his ability, and authorizes the court to impose certain obligations on the former husband. This provision is important because it demonstrates that divorce ends marital status, not family responsibility.²⁶

The Compilation of Islamic Law further specifies these consequences through provisions on *hadhanah* and *post-ṭalāq* obligations. Article 105 regulates the care of children who have and have not reached the age of discernment (*mumayyiz*); Article 149 sets out certain obligations of a former husband following *ṭalāq*; and Article 156 regulates the consequences of marital dissolution relating to child care and costs. When these provisions are read together with the principle of *maṣlaḥah*, custody and maintenance should not be treated as winner-loser entitlements between former spouses, but as instruments for protecting children and preventing post-divorce inequality.

The child-protection legal framework also reinforces this relational dimension. Child-protection law preserves a child's right to maintain relations with both parents after separation, provided this is not contrary to the child's best interests. In line with this, Supreme Court Circular Letter (SEMA) Number 1 of 2017 directs that a *hadhanah* order include the custodian's obligation to provide access for the non-custodial parent to meet the child; obstruction of access may constitute grounds for seeking revocation of *hadhanah* rights. This formulation directly demonstrates that, after divorce, the child's relationship with the non-custodial parent remains a legal interest requiring protection.²⁷

Religious Court practice also provides room for reasoning based on *maṣlaḥah* and non-harm. In a 2024 contested-divorce decision of the

(Berita Negara Republik Indonesia Tahun 2016 Nomor 175)" (2016), <https://doi.org/10.1017/CBO9781107415324.004>.

²⁶ Nomor, Tahun 1974 Tentang Perkawinan [Sebagaimana Diubah Dengan UU No. 16 Tahun 2019], Pub.

²⁷ Presiden Republik Indonesia, "INSTRUKSI PRESIDEN REPUBLIK INDONESIA NOMOR 1 TAHUN 1991 TENTANG PENYEBARLUASAN KOMPILASI HUKUM ISLAM" (2012).

Surakarta Religious Court, the panel linked the objectives of Sharia to the avoidance of harm and relied on the maxim that “harm must neither be inflicted nor reciprocated” as part of its reasoning. Although the context concerned grounds for divorce, this pattern of reasoning can be extended argumentatively to the post-divorce stage: conduct that perpetuates conflict through failure to provide maintenance, manipulation of children, or obstruction of access should be assessed not merely as a technical violation, but as a form of *ḍarar* contrary to the objectives of family protection.²⁸

Islamic Family Law as a Framework for Post-Divorce Justice

Within Islamic family law, divorce (*ṭalāq*) is recognized as a lawful mechanism for ending the marital bond, but it is positioned as a last resort to be used only when efforts at reconciliation are no longer feasible. The principal normative foundations of divorce are *iḥsān* (goodness) and *maʿrūf* (proper treatment), which require the relationship between husband and wife to remain within ethical boundaries even when it must be brought to an end.²⁹ In this context, the concept of *Tasriḥ bi iḥsan* affirms that separation must occur with dignity, without violence, humiliation, or harm to either party, materially or psychologically.

Theologically and normatively, this principle reflects an orientation of Islamic law that emphasizes not only legality but also moral and humanitarian dimensions. Divorce is not intended as an arena for retaliation or the release of negative emotions, but as a transitional process that continues to uphold justice and compassion.³⁰ Islamic family law therefore provides a strong ethical framework for preventing post-divorce hostility.

In social practice, however, these normative values are often not internalized optimally. Divorce is frequently understood primarily as a formal legal procedure oriented toward termination of the relationship and administrative settlement, such as division of property and determination of child custody. As a result, the ethical dimension that

²⁸ Mahkamah Agung Republik Indonesia, “PUTUSAN Nomor 209/Pdt.G/2024/PA Ska” (2024).

²⁹ Faisar Ananda Arfa and Ibnu Radwan Siddiq Turnip, “Perceraian Dan Hak Hak Pasca Perceraian Dalam Hukum Keluarga Islam,” *Jurnal Riset Multidisiplin Edukasi* 2, no. 6 (2025): 494–508, <https://doi.org/10.71282/jurmie.v2i6.507>.

³⁰ Ibnu Akbar Maliki and Qeis Aimar, “Rekonsepsi Amicable Divorce (Ceraidamai) Berbasis Paradigma Mubadalah: Upaya Mewujudkan Keadilan Gender Dalam Hukum Perceraian Indonesia,” *Syakhshiyyah Jurnal Hukum Keluarga Islam* 5, no. 2 (2025): 191–216, <https://doi.org/10.32332/n3tg7n90>.

should lie at the heart of the divorce process becomes marginalized. This condition reveals a significant gap between the ideal norms of Islamic family law and social practice.³¹

This gap arises from several factors. First, limited public understanding of ethical values in divorce causes Islamic law to be practiced textually without sufficient attention to its moral substance. Second, the dominance of a legalistic approach within the judicial system causes divorce to be viewed more as a legal dispute than as a relational crisis requiring holistic resolution.³² Third, patriarchal culture and certain social constructions reinforce practices contrary to the principles of *Ihsan and ma'ruf*, including mutual blame, marginalization of particular parties, and the use of children as instruments of conflict.

Failure to implement the principle of *Tasrih bi ihsan* also contributes to prolonged conflict between former spouses. When divorce occurs without sufficient regard for ethics and empathy, post-divorce relations tend to be marked by tension, hostility, and unhealthy communication.³³ This harms not only both former spouses but also children and the broader social environment. Serious efforts are therefore needed to bridge the gap between norm and practice in Islamic family law. One approach is to integrate legal, moral, and psychological dimensions into the divorce process. Such an approach requires reformulation of family dispute-resolution practice, particularly by strengthening mediation so that it is oriented not only toward legal agreement but also toward relational restoration and emotional management.

Public education on ethical values in divorce is also important for increasing awareness of the need to maintain constructive relations after separation. In this context, religious institutions, academics, and legal practitioners play a strategic role in transforming normative values into

³¹ Thorik, Sugandi, and Prasetya, "Dinamika Perceraian Di Kalangan Keluarga Muslim Indonesia Dalam Perspektif Sosiologi Hukum Islam."

³² Dista Anggraeni and Novi Damayanti, "Penegakan Hukum Yang Berkeadilan Di Indonesia," *Indigenous Knowledge* 1, no. 2 (2022): 188–96, <https://jurnal.uns.ac.id/indigenous/article/view/74712>.

³³ Agus Toni, "Revitalisasi Esensi Hukum Perkawinan Perspektif Pengadilan Agama Di Indonesia (Rekonstruksi Pemahaman Tujuan Perkawinan Sebagai Paradigma Kritis Terhadap Fenomena Maraknya Gugat Cerai Yang Dilakukan TKW Di Pengadilan Agama)," *El-Wasathiya: Jurnal Studi Agama* 7, no. 1 (2019): 115–42, <https://doi.org/10.5281/zenodo.3522913>.

more humane social practices.³⁴ Islamic family law can therefore be understood as having already provided an ideal normative framework for preventing post-divorce hostility. The principal challenge, however, lies in implementing these values in social reality. Without an integrative effort combining legal, moral, and psychological dimensions, divorce will continue to risk becoming a source of conflict rather than a solution that brings peace to the parties involved.

From *Tasrih bi ihsan* to Post-Divorce Relational Justice

The principal foundation of this framework is a systematic reading of Qur'an 2:229 (al-Baqarah), which presents the choice between retaining a marriage in a ma'rūf manner or releasing it with ihsān; Qur'an 2:231, which prohibits maintaining a relationship for the purpose of causing harm; Qur'an 2:233, which centers the interests of the child and prohibits mutual harm through the child in the context of care; and Qur'an 65:6 (al-Ṭalāq), which prohibits conduct intended to distress divorced women. Read systematically, these verses demonstrate that the ethics of divorce do not end at the moment of ṭalāq but continue into the manner in which the parties fulfill their responsibilities after separation.³⁵

The principle of ihsān functions as a standard of dignity: the parties are not merely required to satisfy minimum legal requirements but must also avoid humiliation and retaliation. The principle of ma'rūf functions as a standard of propriety in communication, maintenance, parenting, and social interaction. *Tasrih bi ihsan* reframes divorce from the "termination of a relationship" into a "responsible release." Meanwhile, the maxim *la ḍarar wa la ḍīrar* serves as a negative boundary: no action

³⁴ Rasida Rasida, "IMPLEMENTASI PERLINDUNGAN HAK ANAK PASCA PERCERAIAN DI KOTA PAREPARE PERSPEKTIF HUKUM ISLAM" (IAIN Parepare, 2025).

³⁵ Nu Online, "Tafsir Surat Al-Baqarah Ayat 229: Ketentuan Hukum Talak Raj'i Dan Khulu'," n.d., <https://islam.nu.or.id/tafsir/tafsir-surat-al-baqarah-ayat-229-ketentuan-hukum-talak-raj-i-dan-khulu-4TXcs>. M. Ryan Romadhon, "Tafsir Surat Al-Baqarah Ayat 231: Etika Talak dan Rujuk dalam Islam," *NU Online*, 4 Desember 2024, diakses 14 Agustus 2026, <https://islam.nu.or.id/tafsir/tafsir-surat-al-baqarah-ayat-231-etika-talak-dan-rujuk-dalam-islam-CeFy7>. M. Ryan Romadhon, "Tafsir Surat Al-Baqarah Ayat 233: Hak Ibu dalam Menyusui dan Nafkah Anak," *NU Online*, 24 November 2024, diakses 14 Agustus 2026, <https://islam.nu.or.id/tafsir/tafsir-surat-al-baqarah-ayat-233-hak-ibu-dalam-menyusui-dan-nafkah-anak-U46RY>. NU Online, "Surat At-Thalaq Ayat 6: Arab, Latin, Terjemah dan Tafsir Lengkap," *Qur'an NU Online*, diakses 14 Agustus 2026, <https://quran.nu.or.id/at-thalaq/6>.

should deliberately cause or reciprocate harm through children, economic pressure, reputation, or access to rights.

Maqashid al-syariah and *maṣlaḥah* provide an evaluative orientation for post-divorce consequences. Protection of life (*ḥifẓ al-naḥs*) encompasses physical safety and psychological security; protection of lineage and family relations (*ḥifẓ al-nasl*) requires continuity of healthy parenting; protection of property (*ḥifẓ al-māl*) requires fulfillment of maintenance and fair distribution of economic rights; while protection of dignity (*ḥifẓ al-ʿird/karāmah*) rejects humiliation and exploitation of private disgrace. The *maqāṣid* framework is therefore not used as a legitimating slogan, but as an instrument for assessing whether post-divorce conduct protects or instead undermines the fundamental interests of the parties and children.³⁶

Post-Divorce Relational Justice Framework (PDRJF)

Based on the foregoing synthesis, this article proposes the PDRJF as its conceptual contribution. The framework is not intended to replace existing procedural law or substantive norms; rather, it provides an interpretive tool for judges, mediators, advocates, counselors, and the parties to translate Islamic family-law values into parameters for resolving post-divorce disputes. The PDRJF consists of six interrelated principles:

Tabel 1. Core Principles of the Post-Divorce Reconciliation Justice Framework

Principle	Normative Basis	Problem Addressed	Operational Implication
<i>Ihsan and ma'ruf</i>	Qur'an 2:229 (al-Baqarah); ethics of proper treatment	Humiliation, retaliation, aggressive communication	Dignified communication; prohibition of shaming; agreed standards of communication conduct
<i>Tasrih bi ihsan</i>	Qur'an 2:229 (al-Baqarah)	Separation that leaves resentment and revenge	Divorce treated as a responsible transition, not termination of all responsibilities

³⁶ Jasser Auda, *Maqasid Al-Shariah, An Introductory Guide (USA: International Institute of Islamic Thought, 2008)*, 2008.

Principle	Normative Basis	Problem Addressed	Operational Implication
<i>La ġarar wa la ġirar</i>	Qur'an 2:231 (al-Baqarah); Qur'an 65:6 (al-Ṭalāq); non-harm maxim	Violence, economic pressure, use of children as instruments of conflict	Risk screening; prohibition of harmful conduct; protection of vulnerable parties
Maşlahah and maqaşid	Objectives of protecting life, lineage, property, and dignity	Formal decisions that cause substantive harm	Assessment of the impact of decisions on safety, children, economic welfare, and dignity
Child welfare	Qur'an 2:233 (al-Baqarah); child-protection law; SEMA 1/2017	Custody disputes and obstruction of access	Parenting plan; access schedule; maintenance; decisions based on the child's best interests
Restorative şulh/işlah	Tradition of amicable settlement; PERMA 1/2016	Formalistic mediation or mediation focused only on reconciliation	Partial settlement; restoration of communication; measurable and enforceable responsibilities

Operational Stages of the PDRJF

The first stage is screening for safety and power imbalances. The mediator or judge must distinguish ordinary conflict from situations involving violence, threats, coercive control, or imbalances that make face-to-face mediation unsafe. The non-harm principle requires safety to take precedence over the goal of reaching an agreement.

The second stage is separate mapping of post-divorce issues: parenting and child access, maintenance and educational needs, marital property, communication between the parties, and involvement of extended family. Separating these issues prevents one dispute from being used as bargaining leverage to withhold another right.

The third stage is restorative mediation grounded in *Ihsan and ma'ruf*. Its purpose is not to force the parties to remarry, but to restore a minimum capacity to communicate and fulfill obligations. Agreements should be specific regarding the amount or formula of maintenance, payment schedules, child-contact schedules, communication channels,

mechanisms for changing schedules, and boundaries of unacceptable conduct.³⁷

The fourth stage is strengthening enforceability and accountability. Relevant agreements should be incorporated into a deed of settlement, judgment, or other document carrying legal consequences within the court's authority. In cases involving children, arrangements should be reviewable when the child's needs change. Accordingly, the "success" of post-divorce dispute resolution is measured not only by the closure of the case, but by the reduction of *ḍarar*, protection of children's rights, and actual performance of the parties' obligations.

The PDRJF contributes to the literature by integrating two levels that have often been treated separately. At the diagnostic level, the article recognizes emotional, structural, and social factors. At the normative level, those factors are connected to operational standards of Islamic law. The model therefore moves beyond a "parallel multidisciplinary" approach toward an integration in which Islamic family law serves as the center of normative assessment, positive law functions as the institutional mechanism, and psychology and sociology provide insight into the forms and consequences of harm.

CONCLUSION

This article demonstrates that post-divorce problems do not end when a court terminates marital status. Hostility becomes an issue of Islamic family law when emotional wounds, disputes over maintenance and property, parenting conflict, social pressure, or communication failure are translated into conduct that causes *ḍarar*, disregards *maṣlahah*, and damages the fundamental interests of the parties and children. Psychological and sociological factors must therefore be distinguished from legal categories: they serve to diagnose risks and impacts, while normative assessment remains grounded in Islamic family law and positive law. Within this framework, *iḥsān*, *ma'rūf*, and *Tasrih bi ihsan* cannot be understood merely as ethics governing the moment of *ṭalāq*. These principles must be extended into standards of post-divorce conduct. The maxim *la ḍarar wa la ḍirar* sets limits on harmful actions, while *maṣlahah* and *maqashid al-syariah* orient the protection of life, lineage, property, dignity, and, above all, child welfare. Indonesian positive law supports this orientation through continuing parental

³⁷ Any Ismayawati and Syed Mohammad Chaedar, "Family Conflict Resolution through Mediation in Indonesia and Malaysia: A Sociological Study of Islamic Law," *Jurnal Hukum Islam* 22, no. 2 (2024): 467–98, <https://doi.org/10.28918/jhi.v22i2.8>.

obligations, rules on hadhanah and maintenance, mediation, and protection of children's access to both parents. The article's novelty lies in the Post-Divorce Relational Justice Framework (PDRJF), which operationalizes Sharia principles through four stages: screening for safety and power imbalances, issue mapping, restorative mediation, and strengthening the enforceability and accountability of agreements. The model shifts the measure of success from merely "case closed" or "marital reconciliation achieved" toward a transition that is dignified, child-sensitive, non-harmful, and enforceable. Because this study is normative-conceptual and does not test the PDRJF through interviews or mediation observation, future research should evaluate the model through broader analysis of court decisions, interviews with judges and mediators, and the experiences of former spouses and children.

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