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Partial Mediation and Substantive Justice in Islamic Family Law: Protecting Women's and Children's Rights after Divorce

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ABSTRACT

Partial mediation in the Religious Courts presents an academic problem because divorce may still be granted while agreements concerning maintenance, caregiving, and post-divorce rights are recorded as successful outcomes. This study aims to analyze the meaning of success in partial mediation, the management of power imbalances, the protection of the best interests of the child, and the integration of agreements into judicial decisions. The study employs a qualitative approach based on library research, doctrinal legal research, and an integrative literature review of regulations, judgments, institutional reports, and scholarly literature. The data are analyzed through content analysis and thematic analysis using the categories of substantive justice, procedural equality, child protection, legal certainty, and enforceability of rights. The findings show that partial mediation constitutes a hybrid practice that combines adjudication and consensus, yet its success cannot be measured solely by whether an agreement is reached. The quality of protection is determined by equal participation, adequate information, operational formulation of rights, judicial scrutiny, and implementation mechanisms. Success must therefore be assessed through procedural, distributive, juridical, child-protection, and implementation dimensions so that agreements do not remain merely formal recognition without actual fulfillment. The study concludes that partial mediation is just only when it produces real, certain, and sustainable protection for women and children after divorce.

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INTRODUCTION

Mediation in divorce cases before the Religious Courts presents a contradiction between the dissolution of marriage and the achievement of agreements concerning its legal consequences. (Peraturan Mahkamah Agung Republik Indonesia Nomor 1 Tahun 2016 Tentang Prosedur Mediasi Di Pengadilan, 2016) permits partial settlement agreements, allows proceedings to continue with respect to claims that remain unresolved, and requires judges to incorporate the agreement into the judgment. The Supreme Court Annual Report recorded 401,948 contested divorce cases and 115,649 divorce applications filed in 2025; among all Religious Court cases subjected to mediation, 36,977 of 61,858 cases were recorded as successful, representing 59.78%. Practice at the Kisaran Religious Court shows that divorce proceedings may continue even when past maintenance, mut'ah, and housing rights have been agreed upon. These facts raise an academic question regarding the meaning of "success" when the objective of preserving the marriage is not achieved, yet post-divorce rights may still be protected. This study examines how partial success is constructed in legal documents, how unequal bargaining positions and children's interests are assessed in the literature, and how agreements should be incorporated into judicial decisions. (Peraturan Mahkamah Agung Republik Indonesia Nomor 1 Tahun 2016 Tentang Prosedur Mediasi Di Pengadilan, 2016); (Agama, 2024).

Recent literature indicates that family mediation should not be assessed solely by its success in preserving marriage, but also by its capacity to reduce adversarialism, produce sustainable post-divorce arrangements, and safeguard children's interests. Studies of court-connected mediation demonstrate that process quality, the durability of agreements, and the parties' capacity to manage conflict after divorce are more substantive indicators than the mere achievement of formal settlement. In the context of Indonesia's Religious Courts, mediation effectiveness is also influenced by mediator competence, the parties' preparedness, and the ability of the mediation process to accommodate the protection needs

of women and children. Accordingly, the success of partial mediation should be situated within the framework of post-divorce family transition rather than within a simple success–failure dichotomy based on withdrawal of the case. (Crampton, 2022); (Majid et al., 2024); (Quek Anderson et al., 2022); (Yazid, 2026).

Critical perspectives caution that voluntary agreement is not automatically synonymous with substantive justice. In divorce mediation, economic inequality, disparities in legal knowledge, experiences of violence, and control over resources may affect the parties' ability to negotiate on equal terms. Research on court-connected mediation in Indonesia shows that gender and power relations shape the negotiation process, while international studies emphasize the importance of violence-risk screening and safety management before and during mediation. Therefore, mediator neutrality should be understood as active impartiality: the mediator does not determine the outcome, but ensures that each party has sufficient capacity, information, and space to make decisions. (Rossi et al., 2022); (Sixsmith & Blakey, 2025); (Abdul Syukur & Bagshaw, 2020).

These vulnerabilities are particularly significant because normative recognition of post-divorce rights does not always lead to their actual fulfillment. Studies of Religious Court judgments reveal a persistent gap between the recognition of women's and children's rights and their implementation, particularly with respect to maintenance, caregiving arrangements, and economic obligations after divorce. More recent research also shows that the obstacles lie not only in the substance of the law, but also in legal awareness, compliance culture, enforcement mechanisms, and institutional support. Therefore, the quality of protection must be assessed from the negotiation process through to the point at which rights can actually be claimed and received by their beneficiaries. (Fadil et al., 2024); (Nasution & Muchtar, 2020); (Rahmawati et al., 2025); (Syukrawati et al., 2024).

The research landscape reveals three main tendencies. First, studies of mediation in the Religious Courts have predominantly assessed process effectiveness, the role of mediators, and settlement success rates. Second, studies of post-divorce protection have generally examined maintenance, women's rights, access to justice, and judgment enforcement as separate issues. Third, research on gender in mediation emphasizes the importance of addressing power imbalances but has not systematically connected them with the quality of settlement clauses and the enforceability of rights after judgment. (Fadil et al., 2024); (Majid et al., 2024); (Nasution & Muchtar, 2020); (Yazid, 2026) In contrast to these tendencies, this study proposes a five-dimensional evaluation framework—procedural, distributive, child-protection, juridical, and implementation dimensions—that links the quality of negotiation, the substance of rights, judicial scrutiny of the child's best interests, integration of agreements into the operative part of judgments, and the realization of obligations. The novelty of this study therefore lies not in the discovery of new empirical facts, but in a conceptual synthesis that integrates the mediation and post-judgment stages within a single framework for evaluating substantive protection.

RESEARCH METHOD

This study is a qualitative, descriptive-analytical, and critical library-based study that combines doctrinal legal research with an integrative literature review. The doctrinal approach is used to interpret the legal norms governing partial mediation and the protection of post-divorce rights, while the integrative review brings together legal sources, empirical studies, and theoretical literature employing different research designs. Primary sources include Supreme Court Regulation No. 1 of 2016, official publications of the Supreme Court and the Directorate General of Religious Courts, and court decisions or judicial practices cited in the analyzed sources. Secondary sources comprise journal articles relevant to divorce mediation, power imbalances, women's rights, the best interests of the child, and the enforceability of judgments. Recent literature from 2017–2026 is prioritized, while institutional sources are used to explain the normative framework and official practice. This approach is consistent with an integrative literature review aimed at developing a conceptual synthesis across different types of sources rather than producing statistical generalizations. (Snyder, 2019)

The literature was selected purposively based on four criteria: direct relevance to mediation or the legal consequences of divorce; relevance to the protection of women and children; clarity of the methodology or legal sources employed; and verifiability of publication metadata. The analysis involved repeated reading and deductive coding based on substantive justice, procedural equality, the best interests of the child, legal certainty, and enforceability, followed by reflexive thematic

development. Thematic analysis was used to identify patterns of argumentation and relationships among concepts rather than to calculate the frequency of findings. (Braun & Clarke, 2021) To maintain traceability, each major argument was compared with regulations, institutional publications, or more than one scholarly study where available. Because the source manuscript does not retain a complete log of the number of documents screened, the dates of each search, or a comprehensive list of decisions, this study limits its claims to normative-conceptual synthesis and does not claim empirical representativeness.

RESULTS AND DISCUSSION

Thematic Findings: Partial Mediation as a Hybrid Practice

Content analysis and thematic analysis of regulations, institutional publications, and the family mediation literature generated five main themes: the hybridity of dispute resolution, shifts in the measure of success, power imbalances, representation of children's interests, and gaps in enforceability. These themes demonstrate that partial mediation cannot be understood merely as mediation that failed to preserve the marriage. It constitutes a hybrid form of dispute resolution because marital status continues to be determined through adjudication, while some of its legal consequences are resolved by consensus. Supreme Court Regulation No. 1 of 2016 provides a legal basis for partial settlement and requires any agreement reached to be taken into account in subsequent proceedings. This construction creates a space between win–lose adjudication and full reconciliation, allowing mediation to reduce the scope of conflict without eliminating the need for a judicial decision (Peraturan Mahkamah Agung Republik Indonesia Nomor 1 Tahun 2016 Tentang Prosedur Mediasi Di Pengadilan, 2016)

This hybridity is illustrated by a practice reported by the Directorate General of Religious Courts concerning a divorce application at the Kisaran Religious Court. The divorce continued to be processed, while past maintenance, mut'ah, and housing were successfully agreed upon through partial mediation. This demonstrates that the object of mediation success shifts from preserving the marriage to regulating the consequences of divorce. Such a shift is consistent with developments in family mediation that regard the quality of decision-making, the reduction of adversarialism, and the sustainability of post-divorce parenting relationships as objectives that are as important as reconciliation. Partial mediation therefore performs a transitional function: it separates conflict over the continuation of marriage from obligations that remain after the marriage ends. (Agama, 2024)

These findings correct evaluative approaches that distinguish successful from unsuccessful mediation solely on the basis of whether the case is withdrawn. Recent research shows that mediation may retain value even when the marriage is not preserved, particularly when it produces arrangements that are more resistant to renewed conflict, clarifies parenting responsibilities, and reduces the need for further litigation. Administrative indicators therefore remain useful for case management, but they are insufficient to assess the quality of the protection produced. Within the framework of this study, partial mediation acquires substantive meaning when the agreement reduces vulnerability, converts abstract claims into operational obligations, and provides an accountable basis for addressing non-compliance. (Crampton, 2022); (Poitras et al., 2021); (Quek Anderson et al., 2022)

Reconstructing the Meaning of Success in Partial Mediation

The synthesis reveals a definitional paradox in the term "partially successful." The word "successful" refers to the achievement of consensus on certain issues, while "partial" indicates that proceedings continue with respect to unresolved issues. The problem is that recording a process as successful may obscure a more important question: whether the consensus was formed on equal terms and whether the agreed rights can actually be implemented. Studies on the effectiveness of mediation in the Religious Courts and on mediators' perspectives concerning gender justice both indicate that mediator quality and process quality influence the meaning of success. Accordingly, partial success should be understood as conditional success rather than as a final label that automatically signifies the achievement of justice. (Majid et al., 2024); (Yazid, 2026)

The reconstruction of success requires distinguishing at least three levels. Procedural success is achieved when the parties participate without intimidation and possess adequate information. Juridical success arises when the agreement is clearly formulated and incorporated into the judgment. Substantive success is realized only when the rights are actually received and provide benefits to women and children after divorce. This distinction is important because recent studies identify a gap between

protective norms, the content of judgments, and the actual fulfillment of women's rights. Thus, the parties' signatures do not constitute final proof of success; they are merely an initial stage that must be followed by operational drafting and implementation mechanisms. ((Fadil et al., 2024); (Rahmawati et al., 2025).

A tiered model of success is also consistent with the concept of access to justice. Access does not end with the ability to file a case, but includes the capacity to obtain outcomes that are responsive, comprehensible, and enforceable. Findings on women's and children's access to justice in the Religious Courts indicate that the design of claims and the construction of obligations in judgments affect the protection received. Recent comparative studies also show that the effectiveness of post-divorce protection is strongly influenced by institutional support for enforcing obligations after judgment. Partial mediation therefore expands access to justice only when the consensual process is not used to normalize the waiver of rights by the weaker party. (Akram et al., 2023); (Basri et al., 2025); (Nasution & Muchtar, 2020).

Power Imbalances and the Protection of Women's Rights

The third theme demonstrates that formal voluntariness is not always synonymous with fair consent. Negotiations may take place within relationships shaped by economic dependence, disparities in legal knowledge, control over assets, family pressure, or experiences of violence. Studies of court-connected mediation in Indonesia show that the distribution of power and gender norms influence the parties' bargaining space. International research on family mediation likewise confirms that violence screening and risk assessment are essential prerequisites for ensuring that participation is not merely formally voluntary. Accordingly, acceptance of a low maintenance amount or waiver of particular rights cannot always be interpreted as a free choice without examining the surrounding context. (Rossi et al., 2022); (Sixsmith & Blakey, 2025); (Abdul Syukur & Bagshaw, 2020)

The role of the mediator therefore cannot be understood merely as that of a passive guardian of communication. Impartiality must be exercised through process management that enables each party to understand the consequences of available choices, articulate their interests, and realistically assess the proposals presented. Studies of advice-giving practices in mediation show that the way mediators provide information can remain consistent with neutrality when it is directed toward process quality rather than determining who should prevail. In the context of the Religious Courts, such sensitivity must be combined with an understanding of iddah maintenance, mut'ah, child maintenance, caregiving arrangements, and other economic rights under negotiation. (Garcia, 2021); (Yazid, 2026)

Judges' ex officio authority provides a corrective layer when negotiated outcomes or claims do not adequately reflect appropriate protection. Research on the application of ex officio rights based on gender justice shows that judges may exercise their authority to ensure that women's rights are not lost merely because of weaknesses in the formulation of claims. Other findings concerning the fulfillment of women's post-divorce rights indicate that progressive norms do not automatically become effective without responsive interpretation and implementation. The relationship between mediator and judge is therefore complementary: the mediator safeguards the quality of dialogue and the adequacy of information, while the judge reviews the legality, propriety, and enforceability of the outcome before incorporating it into the judgment. (Azizah et al., 2023); (Fadil et al., 2024)

The Best Interests of the Child in Post-Divorce Agreements

The fourth theme shows that children are often present as objects of discussion rather than as interests that are independently assessed. Recent family mediation literature emphasizes that incorporating the child's perspective does not mean transferring decision-making authority to the child; rather, it requires ensuring that developmental needs, safety, routines, and caregiving relationships become genuine components of the process. This approach is important because disputes involving children are at risk of returning to litigation when parenting needs are not formulated with sufficient clarity. Partial mediation should therefore not stop at determining who holds hadhanah, but should also assess continuity of education, healthcare, safe contact, and the allocation of parental responsibilities. (Brzobohatý, 2024); (Poitras et al., 2021)

The best interests of the child must be translated into specific and enforceable clauses. Maintenance agreements should ideally specify the amount or basis of calculation, payment schedule, transfer mechanism, education and healthcare components, and procedures for adjustment when the

child's needs change. Parenting and contact arrangements should likewise take into account age, schooling, distance, safety, and the potential for conflict. Evidence from Indonesia indicates that recognition of children's rights in judgments is not always followed by actual fulfillment; partial mediation should therefore be used to clarify obligations rather than leave them to informal post-judgment arrangements. (Nasution & Muchtar, 2020); (Syukrawati et al., 2024)

Child protection also requires separating conflict between former spouses from the child's rights. Parenting disputes should not be used to pressure the payment of maintenance, and failure to provide maintenance does not automatically eliminate the child's need to maintain a safe relationship with a parent. Findings on family mediation practice show that arrangements oriented toward post-divorce relationships are more sustainable when parental responsibilities are clearly formulated and not conflated with marital conflict that has already ended. From the child's perspective, partial success is therefore measured by continuity of care and fulfillment of needs, rather than merely by the termination of disagreement in the mediation room. (Brzobohatý, 2024); (Crampton, 2022)

Integration of Agreements into Judgments and the Problem of Enforceability

The fifth theme concerns the transformation of private agreements into legal obligations. Supreme Court Regulation No. 1 of 2016 provides a basis for partial settlement, but the quality of protection depends on how mediation outcomes are translated into judicial decisions. Research on post-divorce maintenance shows that the effectiveness of rights depends substantially on clarity regarding payment timing, the form of the obligation, and the existence of mechanisms that prevent obligations from remaining abstract norms. Accordingly, a well-drafted operative order should identify the obligated party, the beneficiary, the amount or basis of calculation, the time and method of payment, and any other elements necessary to make the obligation enforceable. (Aziz et al., 2024); (Jannah & Roibin, 2023); (Peraturan Mahkamah Agung Republik Indonesia Nomor 1 Tahun 2016 Tentang Prosedur Mediasi Di Pengadilan, 2016)

Enforceability becomes most critical when economic obligations are periodic and long-term. Obstacles may arise from changes in economic circumstances, low levels of compliance, limited information regarding enforcement procedures, and the costs or complexity of execution. Research in Indonesia and comparative studies show that the existence of protective norms is insufficient without institutional support that assists rights-holders in enforcing obligations. Mediation agreements should therefore be formulated in a specific, measurable, realistic, relevant, and time-bound manner; transfer receipts and payment documentation can strengthen traceability without creating mechanisms outside the existing legal framework. (Basri et al., 2025); (Rahmawati et al., 2025)

Payment of certain entitlements before the final stage of divorce proceedings may function as a practical safeguard when consistent with procedural law and the parties' circumstances. However, protection should not be reduced to a single payment technique. More important is ensuring access to implementation information, documentation of obligations, and legal remedies when violations occur. Studies on the protection of women and children demonstrate that post-divorce access to justice requires a stronger connection between the determination of rights, the formulation of operative orders, and implementation support. Accordingly, partial mediation that is disconnected from enforceability risks merely shifting the dispute from the determination of rights to the collection of those rights. (Akram et al., 2023); (Rahmawati et al., 2025); (Syukrawati et al., 2024),

A Substantive-Protection-Based Model of Partial Mediation

The synthesis of all themes produces a model of partial mediation based on substantive protection. The model consists of five interrelated dimensions. The procedural dimension assesses voluntariness, opportunities to speak, adequacy of information, and the absence of intimidation. The distributive dimension assesses the proportionality of maintenance, caregiving arrangements, housing, education, and healthcare. The child-protection dimension assesses continuity of care and fulfillment of developmental needs. The juridical dimension evaluates the clarity with which the agreement is integrated into the operative part of the judgment. The implementation dimension assesses compliance, payment traceability, and the availability of remedies when obligations are breached. Together, these five dimensions transform partial mediation from a case-disposition indicator into a mechanism for managing family transition. The model also explains that consensus is not an end in itself, but an instrument for achieving safer and more accountable post-divorce conditions.

This model extends previous research in three directions. Studies of mediation effectiveness primarily assess mediator capacity and procedural settlement success, while gender-justice scholarship highlights the parties' bargaining positions. By contrast, research on post-divorce rights focuses on the substance of maintenance, access to justice, or implementation failures. (Fadil et al., 2024; Majid et al., 2024; Rahmawati et al., 2025; Yazid, 2026) The five-dimensional framework proposed in this study integrates these three strands into a single sequence: negotiation quality determines the legitimacy of consensus; substantive quality determines the adequacy of protection; scrutiny of the child's best interests prevents rights from being reduced to parental compromise; juridical integration provides legal certainty; and the implementation dimension tests whether rights can actually be realized. Its conceptual contribution lies in shifting the unit of evaluation from 'whether mediation produces an agreement' to 'whether the agreement produces protection that is equal, certain, and enforceable.'

The practical implications of this framework include the need to standardize assessments of power imbalances, provide guidance for drafting operational clauses, and strengthen coordination between mediators and judicial panels. Mediators require instruments to assess safety, economic dependence, adequacy of information, and decision-making capacity; judges require checklists to ensure that agreements do not diminish women's rights or children's interests and can be translated into operational judicial orders. Findings on mediation, risk screening, and rights enforcement indicate that substantive protection requires continuity between the process and the post-judgment stage. (Majid et al., 2024; Rossi et al., 2022; Sixsmith & Blakey, 2025) The five-dimensional framework remains an analytical proposal; its value lies in its capacity to organize the evaluation of partial mediation more comprehensively, not in a claim that its effectiveness has already been empirically tested.

Research Limitations and Future Agenda

This study has limitations that must constrain the interpretation of its findings. It does not use interviews, does not measure actual post-judgment compliance, and does not employ a systematically documented sample of judgments that would support generalization. In addition, the source manuscript does not retain a complete search log or the number of documents at each selection stage. Accordingly, the five-dimensional framework is positioned as a normative-conceptual synthesis that should be tested in future research through more systematic judgment analysis, interviews with mediators and judges, and examination of post-judgment fulfillment of rights. These limitations do not negate the study's conceptual contribution, but they define the boundaries of the claims that can be made from the available data.

CONCLUSION

administrative success toward substantive protection. The fact that a divorce is ultimately granted does not in itself render mediation devoid of value; the value of mediation lies in the quality of agreements concerning the legal consequences of divorce. The five-dimensional framework—procedural, distributive, child-protection, juridical, and implementation dimensions—offers a more comprehensive standard for assessing whether consensus is formed on equal terms, contains adequate substantive rights, protects the best interests of the child, gains certainty through the judgment, and enables rights to be fulfilled in practice. With respect to power relations, the protection of women requires mediators who are not passive in the face of informational, economic, or safety-related inequalities, while judges retain the role of reviewing the legality and propriety of agreements. With respect to child protection, agreements must translate the best-interests principle into specific parenting and maintenance clauses. With respect to enforceability, success is complete only when obligations can be traced, enforced, and remedied in the event of breach. Thus, the objectives, findings, and contribution of the study converge on one argument: partial mediation can be regarded as substantively successful only when consensus produces protection that is equal, certain, operational, and sustainable.

In practical terms, the Religious Courts need to strengthen mediator competence in identifying power imbalances, provide guidance for drafting operational clauses, and reinforce continuity between mediation outcomes and the operative part of judicial decisions. Future research is required to test the five-dimensional framework using systematic samples of judgments and post-judgment implementation data. These recommendations are presented as an agenda for empirical testing rather than as a claim that the model's effectiveness has already been established in this study.

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AUTHOR CONTRIBUTION STATEMENT

SSH was responsible for conceptualizing the study, conducting the literature review, analyzing the relevant legal framework, developing the conceptual analysis, and drafting and revising the manuscript. The author reviewed and approved the final version of the manuscript and takes responsibility for its content.

AI DISCLOSURE STATEMENT

The author used ChatGPT (OpenAI) during the preparation of this manuscript to assist with academic language refinement, editorial improvements, and the organization of written content. After using the tool, the author thoroughly reviewed and edited the content as necessary and takes full responsibility for the accuracy, originality, and integrity of the publication.

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