



SYURA: JOURNAL OF LAW

<https://ejournal.staiduba.ac.id/index.php/syura>

E-ISSN: 2986-5670

Mediation of Divorce Disputes by the Village Government: The Perspective of Progressive Legal Theory and Maqasid Syariah Jasser Auda

Mawardi

Universitas Islam Negeri Maulana Malik Ibrahim Malang, Indonesia
240201310002@student.uin-malang.ac.id

Roibin

Universitas Islam Negeri Maulana Malik Ibrahim Malang, Indonesia
roibinuin@gmail.com

Musleh Harry

Universitas Islam Negeri Maulana Malik Ibrahim Malang, Indonesia
el.moehy77@syariah.uin-malang.ac.id

Abstract

Keywords: Village Mediation, Divorce, Progressive Law, Maqasid Al-Sharia, Local Wisdom	The increasing rate of divorce in Indonesia indicates that marital conflicts are no longer merely private matters but have evolved into broader social issues affecting community stability. In addition to litigation through religious courts, community-based alternative dispute resolution mechanisms emphasizing deliberation and local wisdom have developed, one of which is mediation conducted by village governments. This study aims to analyze the effectiveness of divorce dispute mediation carried out by the Village Government of Banra'as, Sumenep Regency, and to examine the practice from the perspectives of progressive legal theory and maqasid al-sharia as proposed by Jasser Auda. This research employs an empirical legal method with a qualitative approach. Data were collected through field observations, interviews with village officials and relevant stakeholders, as well as documentation studies, and were analyzed using descriptive-analytical techniques. The findings reveal that village mediation plays a significant role in reducing domestic conflicts and encouraging reconciliation between spouses before cases are brought to the religious court. From the perspective
--	---

of progressive law, this practice reflects a humanistic, flexible, and substantively just legal approach. Meanwhile, from the perspective of maqasid al-sharia, village mediation represents an effort to preserve family welfare (hifz al-nasl), maintain social stability, and promote holistic societal well-being. Therefore, mediation conducted by village governments can be regarded as an effective and contextual dispute resolution model that aligns with both legal values and socio-religious norms.

Abstrak

Kata Kunci: *Meningkatnya angka perceraian di Indonesia menunjukkan bahwa konflik Mediasi Desa, rumah tangga tidak lagi bersifat privat, melainkan telah berkembang Perceraian, menjadi persoalan sosial yang berdampak luas terhadap stabilitas Hukum masyarakat. Selain penyelesaian melalui jalur litigasi di pengadilan Progresif, berkembang pula mekanisme alternatif berbasis masyarakat yang Maqasid Al- mengedepankan musyawarah dan kearifan lokal, salah satunya adalah Syariah, Kearifan mediasi oleh pemerintah desa. Penelitian ini bertujuan untuk Lokal menganalisis efektivitas mediasi sengketa perceraian yang dilakukan oleh Pemerintah Desa Banra'as, Kabupaten Sumenep, serta mengkaji praktik tersebut dalam perspektif teori hukum progresif dan maqasid al-syariah menurut Jasser Auda. Penelitian ini menggunakan metode hukum empiris dengan pendekatan kualitatif. Data diperoleh melalui observasi lapangan, wawancara dengan aparat desa dan pihak terkait, serta studi dokumentasi, yang kemudian dianalisis secara deskriptif-analitis. Hasil penelitian menunjukkan bahwa mediasi desa berperan signifikan dalam mereduksi konflik rumah tangga dan mendorong rekonsiliasi pasangan sebelum perkara diajukan ke pengadilan agama. Dari perspektif hukum progresif, praktik ini mencerminkan pendekatan hukum yang humanis, fleksibel, dan berorientasi pada keadilan substantif. Sementara itu, dalam perspektif maqasid al-syariah, mediasi desa merupakan upaya menjaga kemaslahatan keluarga (hifz al-nasl), stabilitas sosial, serta kesejahteraan masyarakat secara holistik. Dengan demikian, mediasi oleh pemerintah desa dapat dipandang sebagai model penyelesaian sengketa yang efektif, kontekstual, dan selaras dengan nilai hukum serta norma sosial-keagamaan.*

Received: 26-01-2026, Revised: 08-03-2026, Accepted: 04-04-2026

© Syura: Journal of Law
Sekolah Tinggi Agama Islam Darul Ulum
Banyuanyar Pamekasan, Indonesia

Doi: <https://doi.org/10.58223/syura.v4i1.793>



This is an open access article under
licensed [Creative Commons Attribution
NonCommercial 4.0 International License](https://creativecommons.org/licenses/by-nc/4.0/)

Introduction

Divorce has increasingly become a significant social phenomenon in Indonesia, reflecting shifts not only in private family life but also in broader societal dynamics. Statistical data published by Badan Pusat Statistik indicate a consistent rise in divorce rates between 2019 and 2022, while marriage rates have shown a declining trend. This pattern suggests a growing instability within family institutions that warrants serious attention.

This trend is further supported by findings from Badan Riset dan Inovasi Nasional, which reported that approximately 408,347 divorce cases were recorded in Indonesia, with around 78% initiated by wives (BRIN, 2025). These figures highlight not only the scale of the issue but also a shift in gender dynamics, where women are increasingly asserting their legal rights within marital relationships.

The factors contributing to divorce are multifaceted, including economic pressures, lack of spousal responsibility, emotional

dissatisfaction, infidelity, domestic violence, and increased legal awareness among women. In addition, broader social transformations such as urbanization, economic restructuring, and changing attitudes among younger generations toward marriage have further influenced the stability of family life.

From the perspective of Islamic law, divorce is legally permissible; however, it is strongly discouraged when the possibility of maintaining marital harmony still exists. Islam regards marriage as a sacred institution aimed at creating a harmonious family characterized by affection, compassion, and mutual protection between spouses. Consequently, divorce is considered a last resort after all reconciliation efforts have been attempted. Islamic teachings also encourage the involvement of third parties through mediation or *tahkim* to reconcile couples experiencing marital disputes (Hasnidar, H., Purnamayanti, I., & Haniru, 2025).

In Indonesia, formal divorce proceedings for Muslim citizens are handled through the religious courts. This mechanism is regulated under several legal frameworks, including Law Number 1 of 1974 concerning Marriage and the Compilation of Islamic Law, which serves as a primary guideline for resolving family law cases among Muslims. Furthermore, the Supreme Court has established mediation procedures through Supreme Court Regulation Number 1 of 2016 concerning Court-Annexed Mediation. This regulation stipulates that civil disputes submitted to the court must first undergo a mediation process as an effort to promote peaceful settlement between disputing parties (Khalali, M., Irawati, A. C., & Yuliawan, 2025).

Nevertheless, within Indonesian society, family conflicts are not always immediately resolved through formal legal institutions. Many individuals prefer to seek community-based solutions by involving religious leaders, community figures, or village authorities before pursuing litigation.

The long-standing tradition of deliberation, which is deeply embedded in Indonesian culture, encourages families to resolve disputes amicably before they escalate into formal legal conflicts (Maulana, A. A., & Harry, 2025).

The involvement of village governments in resolving social disputes is supported by a relatively strong legal foundation within Indonesia's governance system. Law Number 6 of 2014 concerning Villages grants village administrations the authority to manage local governance and maintain social order within their jurisdiction. In this context, village heads and other village officials frequently act as mediators in various types of social conflicts, including family disputes that may potentially lead to divorce (Febby Ansah Tri Pamungkas, 2025).

In practice, mediation conducted by village authorities is often perceived as more effective than litigation-based dispute resolution. One of the primary reasons is the close social relationship between

village officials and community members, which facilitates more open communication and informal dialogue. Additionally, local communities generally place a high level of trust in village leaders or respected community figures who are regarded as possessing moral authority in resolving disputes (Pertiwi, D., Sahbudi, S., & Muhlizar, 2025).

This phenomenon can also be observed in Banra'as Village, located in Sumenep Regency, East Java. The village represents a community that continues to maintain the tradition of deliberation as a means of resolving various social conflicts, including marital disputes. In many instances, couples experiencing domestic conflict first seek assistance from village authorities or community leaders to mediate their disagreements before deciding to file for divorce through the religious court.

The mediation process conducted by the village government generally involves several parties, such as the village head, religious

leaders, family members from both sides, and other village officials. Mediation meetings are usually held informally through deliberative forums aimed at identifying mutually acceptable solutions for the parties involved. During these sessions, mediators not only function as neutral facilitators but also serve as advisors who provide moral and social guidance to couples facing marital difficulties.

Community-based mediation practices such as those found in Banra'as Village can be examined through several theoretical legal perspectives. One relevant framework for understanding this phenomenon is the theory of progressive law developed by Satjipto Rahardjo. Progressive law emphasizes that legal systems should function as instruments for achieving substantive justice within society. According to this perspective, law should not be interpreted rigidly as a set of written regulations but should be adaptable to the evolving social dynamics of the community (Puri, 2017).

Satjipto Rahardjo argued that law should not position individuals merely as objects of rigid legal rules but rather as the central focus of legal existence. Therefore, legal practices that emerge organically within society, including deliberation-based dispute resolution mechanisms, may be considered part of the “living law.” This approach provides space for more flexible and humane methods of conflict resolution that prioritize social harmony (Putri et al., 2025).

In addition to progressive legal theory, village mediation practices can also be analyzed through the contemporary perspective of maqasid al-sharia developed by Jasser Auda. The concept of maqasid al-sharia emphasizes that the ultimate objective of Islamic law is to promote human welfare and prevent harm in social life. In the development of modern Islamic legal thought, Jasser Auda introduced a systemic approach to interpreting maqasid al-sharia, which is more responsive to the realities of contemporary society.

Auda’s systems approach highlights six fundamental characteristics: openness, wholeness, hierarchy of values, multidimensionality, purposefulness, and cognition. Through this framework, Islamic law is not understood solely through textual interpretation but must also be analyzed within a broader social context to ensure that its implementation contributes to the welfare of society (REPALIS, 2025).

In the context of family dispute resolution, maqasid al-sharia places the protection of family as one of the central objectives of Islamic law. The principle of *hifz al-nasl* (protection of lineage) represents an essential component of the Sharia’s objectives, aiming to preserve family continuity and harmony. Therefore, efforts to maintain marital stability, including mediation processes, may be viewed as practical manifestations of these objectives (Yehezkiel et al., 2023).

When examined from this perspective, mediation practices carried out by village authorities possess not only social significance

but also strong relevance to the broader objectives of Islamic law. Village mediation provides couples experiencing marital conflict with an opportunity to seek peaceful solutions without immediately resorting to divorce, which could potentially produce broader social consequences.

Furthermore, village mediation reflects a more humane and participatory model of dispute resolution. Deliberative processes involving family members and community leaders create a space for open dialogue in which parties can express their concerns honestly and constructively. Such conditions are often difficult to achieve within formal court proceedings, which tend to be procedural and adversarial in nature (Triyono, 2025).

Thus, village mediation may be understood as a form of social innovation in family dispute resolution that integrates legal norms, religious values, and local cultural traditions. This approach does not merely focus on formal conflict resolution but also seeks to maintain

social harmony within the community.

Based on the background described above, this study aims to analyze the practice of divorce dispute mediation conducted by the Village Government of Banra'as in Sumenep Regency. The research also seeks to examine the practice through the perspectives of progressive legal theory and the maqasid al-sharia framework developed by Jasser Auda. By applying these two theoretical frameworks, this study is expected to provide a more comprehensive understanding of the role of village mediation in resolving family conflicts and its contribution to the development of community-based dispute resolution systems in Indonesia.

Method

This study employs an empirical legal research approach, which examines how law operates in practice within social settings rather than merely as a set of written norms (Suyanto, 2023). Through this approach, the research not only

analyzes the normative framework of mediation but also investigates its actual implementation in resolving divorce disputes at the village level.

A qualitative method with a descriptive-analytical design is adopted, as it enables an in-depth exploration of social phenomena, particularly the mediation practices carried out by village authorities. This approach allows the researcher to capture the underlying values, meanings, and socio-cultural considerations influencing the mediation process, while systematically analyzing it through the perspectives of progressive legal theory and Jasser Auda's *maqasid al-sharia* framework.

The research was conducted in Banra'as Village, Sumenep Regency, East Java, which was purposively selected due to its active role in facilitating mediation for family disputes. The study involved eight informants, consisting of the village head, village officials involved in mediation, community leaders, and individuals who had previously participated in divorce mediation

processes. These informants were selected using purposive sampling, based on the criteria that they had direct involvement in mediation practices, possessed relevant knowledge of dispute resolution processes, and were willing to provide detailed information.

Primary data were collected through semi-structured interviews, direct observation, and documentation. Interviews were conducted in person at the research site over a period of approximately January to March 2025, with each session lasting between 45 and 60 minutes. This format allowed flexibility while ensuring that key research topics were consistently addressed. In addition, field observations were carried out to obtain a contextual understanding of how mediation is conducted, including the interaction between mediators and disputing parties, as well as the influence of local norms and cultural values.

Secondary data were obtained through a review of relevant literature, including academic books,

journal articles, legal regulations, and prior studies related to mediation, family dispute resolution, progressive law, and maqasid al-sharia. These sources were used to strengthen the theoretical framework and support the analysis.

The data were analyzed using a qualitative descriptive approach involving several stages. First, data reduction was conducted by selecting and focusing on information relevant to the research objectives. Second, open coding was applied to identify initial patterns and themes emerging from the data. Third, these codes were organized into broader categories, such as the effectiveness of mediation, the role of village authorities, and the factors influencing divorce. Finally, conclusions were drawn through an inductive process based on the interpretation of the categorized data. To ensure the credibility of the findings, this study employed source triangulation, by comparing information obtained from different informants, observations, and documentary evidence.

Result and Discussion

The Effectiveness of Divorce Dispute Mediation by the Banra'as Village Government

The settlement of divorce disputes through mediation facilitated by the village government in Banra'as Village, Sumenep Regency, reflects a community-based approach to resolving family conflicts. This mechanism has developed in response to the need for a faster and more accessible process, allowing disputes to be addressed without immediately resorting to formal litigation in the Religious Court. In rural settings, where interpersonal relationships remain relatively close, such informal mechanisms are often perceived as more practical and socially acceptable (Isa & Aziz, 2024).

In practice, couples experiencing marital problems typically report their cases first to neighborhood heads, community leaders, or directly to village authorities before filing for divorce. This preference is influenced by the accessibility of local actors and their

familiarity with the social background of the disputing parties. Compared to formal judicial procedures, village-level mediation is also viewed as less rigid and more adaptive to the needs of the parties.

The mediation process is generally conducted through structured meetings involving both disputing parties, the husband and the wife, and occasionally members of their families. Village officials or respected community figures act as mediators, facilitating dialogue and guiding the discussion toward problem identification and resolution. The process usually includes several stages: initial clarification of the dispute, exploration of underlying issues, negotiation of possible solutions, and formulation of an agreement. Beyond resolving the immediate conflict, mediation also aims to re-establish communication between the parties.

In certain cases, mediators incorporate moral and social considerations to encourage reflection on family responsibilities. These interventions are often framed

within locally accepted values, making them more persuasive for the parties involved. As a result, mediation at the village level not only addresses disputes but also functions as an informal counseling mechanism.

The findings indicate that a significant number of disputes handled through village mediation are resolved without escalation to the Religious Court. This outcome demonstrates its practical contribution to reducing litigation. Effectiveness can be observed through several indicators, including the achievement of mutual agreements, the willingness of parties to withdraw legal intentions, and improvements in post-mediation communication.

The success of this mechanism is influenced by the social structure of rural communities, particularly the strong interpersonal ties and the preference for collective problem-solving. A non-adversarial approach allows disputing parties to engage in dialogue without the pressure

commonly associated with court proceedings(YUNETTA, 2025).

Another important factor is the mediator's social proximity to the community. Mediators who share similar social and cultural backgrounds with the disputing parties are often better positioned to understand the context of the conflict. Their social legitimacy also strengthens the acceptance of proposed solutions, encouraging more open communication during the mediation process.

Trust in village mediators further enhances the effectiveness of mediation. Individuals tend to feel more comfortable discussing sensitive family issues with familiar figures, which creates a more open environment for dialogue. This condition enables mediators to identify core problems more accurately and propose solutions that are relevant to the parties' circumstances.

Despite these strengths, several challenges remain. One key limitation is the varying capacity of village mediators in handling complex

disputes. Not all mediators possess sufficient training or experience in conflict resolution, which may affect the quality of outcomes(Abbas, 2009). Strengthening mediator capacity through training and institutional support is therefore essential.

Additionally, agreements reached through village mediation generally lack formal legal enforceability. Unlike court decisions, these agreements rely primarily on voluntary compliance. This can create difficulties if one party fails to uphold the terms. However, within the local social context, such agreements are often respected due to existing social norms and informal pressures.

Analysis of Village Mediation from the Perspective of Progressive Legal Theory

Progressive legal theory represents an approach within legal studies that views law as a tool for achieving substantive justice and promoting social welfare. This concept was introduced by Satjipto Rahardjo, who argued that law should not be understood merely as a rigid collection of formal rules, but

rather as an instrument designed to serve human interests and realize social justice. Within this framework, law must remain dynamic and capable of adapting to social developments and the realities faced by society (Adiem et al., 2022).

One of the core principles of progressive legal thought is the idea that law must prioritize human interests. The application of law, therefore, should not focus exclusively on formal legal certainty, but must also consider humanitarian values, morality, and substantive justice. In this sense, progressive legal theory rejects overly rigid legalistic approaches and encourages innovation in legal practices that can produce tangible benefits for society (Aswim et al., 2022).

In the context of family dispute resolution, the progressive legal perspective opens opportunities for the development of non-litigation mechanisms for resolving conflicts, including community-based mediation practices such as those carried out by the village government in Banra'as Village, Sumenep

Regency. The mediation practice implemented at the village level can be interpreted as a form of social innovation in conflict resolution that prioritizes humanitarian considerations and the preservation of family harmony.

Mediation conducted by the village government reflects the spirit of progressive law because it seeks to resolve conflicts peacefully through dialogue and deliberation. Rather than focusing on determining which party is legally right or wrong, the process emphasizes the search for mutually acceptable solutions. In this way, village mediation not only resolves disputes formally but also attempts to restore social relationships between spouses experiencing marital conflict (Daulay, 2025).

The approach used in village mediation further demonstrates that legal practices can evolve from the social realities and cultural values that exist within society. From the perspective of progressive law, legal norms do not always originate solely from formal statutory regulations,

but can also develop from social norms and values that live within the community. This perspective aligns with the concept of living law, which suggests that effective law is law that reflects and corresponds with the values embraced by the society in which it operates.

In the mediation practices observed in Banra'as Village, social values such as deliberation, kinship, and mutual cooperation serve as the primary foundations of the dispute resolution process. The village government acts as a mediator that facilitates open dialogue between the disputing parties and assists them in finding the most appropriate solution for their family situation. This approach illustrates that dispute resolution does not always need to occur through formal litigation processes but can also take place through more flexible and humane social mechanisms.

Progressive legal theory also emphasizes the importance of courage among legal actors to pursue breakthroughs that enable justice to be achieved. Within the context of

village mediation, village officials may be viewed as social actors who contribute to the development of innovative conflict resolution practices within the community. Although they do not possess judicial authority comparable to judges, village authorities are capable of facilitating mediation processes that effectively resolve family disputes. This situation demonstrates that legal practices are not confined exclusively to formal state institutions, but can also develop through the participation of social actors within the community.

The existence of village mediation can also be interpreted as an effort to reduce the burden of cases handled by courts, particularly divorce cases, which have continued to increase each year. By providing a conflict resolution mechanism at the village level, couples experiencing marital conflict are given an opportunity to resolve their problems peacefully before bringing the matter before the Religious Court. This aligns with the principles of progressive law, which encourage the

search for solutions that are both more effective and more humane in resolving disputes.

Furthermore, village mediation creates space for the application of restorative justice in addressing family conflicts. Restorative justice focuses on restoring social relationships and resolving disputes through dialogue and mutual agreement. In the context of marital disputes, this approach is particularly significant because divorce affects not only the husband and wife but also their children and extended family members.

Through village mediation, the disputing parties are provided with an opportunity to express their feelings, expectations, and grievances openly within an informal and non-intimidating environment. The village mediator facilitates this process by helping each party understand the perspectives of the other, thereby encouraging the emergence of wiser and more balanced solutions. Agreements reached through such dialogue tend to be more sustainable because they

are based on mutual awareness and voluntary consent rather than external coercion.

Nevertheless, the implementation of progressive legal principles within village mediation also faces several challenges. One of the main issues relates to the limited capacity of village officials to perform mediation roles in a professional manner. Not all village mediators possess sufficient knowledge or technical expertise regarding mediation techniques or the dynamics of family conflicts. Consequently, capacity-building initiatives, such as mediation training and institutional support, are necessary to ensure that the mediation process can operate effectively and fairly.

On the other hand, village mediation also requires support from the national legal system in order to function more optimally. Although it operates informally, village mediation has the potential to become an integral part of alternative dispute resolution mechanisms that complement the formal judicial

system. With appropriate regulatory support and institutional strengthening, village-based mediation could develop into a sustainable and effective model for resolving family disputes in Indonesia.

Analysis of Divorce Mediation from the Perspective of Maqasid al-Shariah according to Jasser Auda

The concept of maqasid al-shariah represents a fundamental approach in understanding the objectives and underlying wisdom of Islamic law. In general, maqasid al-shariah refers to the primary goals of the Sharia that aim to promote human welfare (maslahah) and prevent harm or social disorder. Classical Islamic scholars such as Al-Ghazali and Al-Shatibi explained that the essential purpose of Islamic law is to safeguard five fundamental aspects of human life: the protection of religion (hifz al-din), life (hifz al-nafs), intellect (hifz al-'aql), lineage (hifz al-nasl), and property (hifz al-mal). These five principles serve as the foundational framework for understanding how Islamic law functions to protect

human interests comprehensively (Fadlillah et al., 2025).

In contemporary Islamic legal thought, the concept of maqasid al-shariah has expanded through broader and more contextual interpretations. One of the prominent scholars who significantly contributed to this development is Jasser Auda. He introduced a systems-based approach to maqasid al-shariah, emphasizing that Islamic law should be understood dynamically by considering various social, cultural, and humanitarian dimensions within society. According to Auda, the ultimate aim of Islamic law is to achieve public welfare and social justice through a flexible framework that is responsive to societal changes.

From the perspective of Jasser Auda's maqasid al-shariah, family conflicts including divorce disputes should not be viewed solely as legal matters but also as social and moral issues that carry broader implications for community life. Divorce can generate various consequences, such

as destabilizing family structures, causing psychological impacts on children, and potentially creating tensions within the surrounding community. Therefore, efforts to prevent divorce through mediation mechanisms can be interpreted as attempts to protect the welfare of both families and society.

The practice of divorce mediation conducted by the village government in Banra'as Village, Sumenep Regency, can be examined through the lens of *maqasid al-shariah* as an effort to preserve the fundamental objectives of Islamic law. One of the key objectives reflected in this practice is the protection of lineage (*hifz al-nasl*). In Islamic teachings, the family is regarded as an essential social institution responsible for maintaining generational continuity and shaping the moral character of individuals. Consequently, initiatives aimed at preserving family unity through mediation can be understood as efforts to maintain family stability and safeguard the well-being of

children born within the marriage (Ferdiansyah et al., 2025).

Furthermore, village mediation contributes to the protection of human well-being and emotional stability (*hifz al-nafs*) among the disputing parties. Prolonged marital conflicts often generate significant emotional and psychological stress for both spouses as well as other family members. Through mediation processes characterized by dialogue and persuasive communication, individuals are given the opportunity to express their grievances and emotions openly. This environment enables conflicts to be addressed in a more peaceful and constructive manner. Such an approach aligns with the objectives of *maqasid al-shariah*, which emphasize the importance of maintaining psychological and emotional well-being (Harry & Nasrulloh, 2026).

The mediation process at the village level also reflects an effort to safeguard social harmony within the broader community. According to Jasser Auda's interpretation of *maqasid al-shariah*, Islamic law does

not solely focus on individual interests but also considers the welfare of society as a whole. Unresolved domestic conflicts may lead to broader social tensions, including disputes between extended families or disruptions to community relationships. In this context, mediation facilitated by village authorities serves as a preventive measure to maintain social harmony and avoid the escalation of conflicts within the community.

Auda's systems-based approach further emphasizes that legal issues should be understood through the interaction of multiple interconnected social elements. Within the context of village mediation, dispute resolution involves not only the husband and wife but also extended family members, community leaders, and village officials acting as mediators. The involvement of these various actors demonstrates that family conflict resolution is inherently a social process that encompasses multiple dimensions of community life. Therefore, the practice of village

mediation can be interpreted as a practical implementation of the systemic approach within *maqasid al-shariah*, which highlights the importance of collective participation in achieving shared welfare.

Moreover, village mediation embodies the Islamic principle of *islah*, which refers to reconciliation and the restoration of harmonious relationships. The Qur'an encourages efforts to reconcile disputing parties because such actions help repair social relationships and maintain community stability. This principle of reconciliation provides a strong ethical foundation for mediation practices in resolving family disputes, including divorce-related conflicts. Consequently, village mediation not only carries a social function but also reflects deeply rooted religious values within Muslim communities.

Nevertheless, from the perspective of *maqasid al-shariah*, divorce remains a permissible solution within Islamic law when marital conflicts can no longer be resolved. For this reason, village mediation is not intended to force

couples to remain in unhealthy or harmful marriages. Instead, the mediation process provides an opportunity for both parties to reconsider their decisions carefully and reflect on the potential consequences of divorce. If, after undergoing mediation, the couple still decides to separate, such a decision can be accepted as a final option taken after sincere reconciliation efforts have been undertaken.

Integration of Progressive Law and Maqasid al-Sharia in the Village Mediation Model

The settlement of divorce disputes through mediation conducted by the village government in Banra'as Village, Sumenep Regency, reflects a legal practice that does not rely solely on formal legal norms but also incorporates social and religious values embedded within the community. In this regard, the perspectives of progressive law and maqasid al-sharia can be viewed as complementary theoretical frameworks for understanding the relevance of village mediation as a

family dispute resolution mechanism oriented toward public welfare(Almaidah, R, 2025).

Progressive legal theory emphasizes that law should serve human interests and should not be confined to rigid formalistic rules. According to Satjipto Rahardjo, law must be capable of responding to the social problems faced by society, even if addressing such problems requires creative solutions beyond conventional legal procedures. Within this framework, the practice of village mediation may be interpreted as a form of social innovation that arises from the community's need for a quicker, simpler, and more conciliatory method of resolving family conflicts.

On the other hand, the concept of maqasid al-sharia, as developed by Jasser Auda, highlights that the primary objective of Islamic law is to promote human welfare through a systemic and contextual approach(Auda, 2008). This perspective does not focus solely on the textual dimension of law but also considers the broader social realities

and the needs of society in its implementation. Consequently, the framework of maqasid al-sharia provides a normative foundation for conflict resolution efforts that aim to preserve family unity and social harmony as part of fulfilling the objectives of Islamic law.

The integration of progressive law and maqasid al-sharia can be clearly observed in the mediation practices used to resolve divorce disputes in Banra'as Village. From the perspective of progressive law, village mediation demonstrates an attempt to develop a more humane and responsive legal approach that addresses the real needs of society. The use of dialogue, deliberation, and kinship-based approaches in resolving disputes illustrates that legal solutions do not always have to rely on formal judicial procedures but can also emerge through flexible social mechanisms(Kamali, 2010).

From the viewpoint of maqasid al-sharia, village mediation may be interpreted as an effort to safeguard the fundamental objectives of Islamic law, particularly the protection of

family and lineage (hifz al-nasl). Attempts to reconcile married couples before they decide to divorce represent an effort to maintain family stability while protecting the interests of children who may be affected by marital separation(Rahardjo, 2009). In this context, village mediation functions not merely as a dispute resolution mechanism but also as a means of promoting broader social welfare within the community.

The integration of these two perspectives is also evident in the role played by village mediators. Rather than acting solely as facilitators of discussion, mediators often serve as moral figures who provide advice and guidance to the disputing parties. This approach highlights that resolving family conflicts requires not only legal solutions but also moral and social engagement that can help individuals understand the potential consequences of their decisions.

Furthermore, the convergence of progressive law and maqasid al-sharia is reflected in the orientation of dispute resolution that prioritizes substantive justice and collective

welfare. Progressive law encourages the legal system to go beyond the mechanical application of rules and instead focus on achieving meaningful justice for society. Similarly, the concept of maqasid al-sharia stresses that legal decisions should consider their broader impact on the well-being of both individuals and the community. Both perspectives therefore place human welfare at the center of legal practice.

The mediation practices carried out in Banra'as Village also illustrate that the interaction between state law and local values can operate harmoniously. Although formal jurisdiction over divorce cases lies within the authority of the Religious Courts, village mediation serves as an initial mechanism that offers married couples an opportunity to resolve their disputes peacefully before entering formal litigation. This mechanism can be considered a form of alternative dispute resolution that complements the formal judicial system (Yuneta, 2025).

Moreover, village mediation has the potential to strengthen the

functioning of the religious court system in Indonesia. By facilitating dispute resolution at the village level, many domestic conflicts can be addressed earlier without being brought before the courts. This not only helps reduce the caseload of the courts but also allows couples to reconsider their decisions in a more conducive and less confrontational environment.

Nevertheless, in order for the village mediation model to develop more effectively, support from multiple stakeholders including the government and judicial institutions is necessary. Such support may include improving the mediation capacity of village officials, establishing community-based mediation guidelines, and integrating village mediation mechanisms into broader dispute resolution frameworks. Through these efforts, village mediation can evolve from an informal social practice into a recognized and effective component of the dispute resolution system within society.

Table 1: Integration of Progressive Law and Maqasid al-Sharia in Village Mediation

No	Aspect	Progressive Law Perspective	Maqasid al-Sharia Perspective	Application in Village Mediation
1	Legal Orientation	Law serves human needs and social justice	Law aims to achieve human welfare (maslahah)	Mediation prioritizes reconciliation over litigation
2	Approach to Dispute Resolution	Flexible, non-formal, and adaptive	Contextual and outcome-oriented	Use of dialogue and informal negotiation
3	Role of Mediator	Facilitator and problem-solver	Moral guide promoting ethical values	Mediator provides advice and social guidance
4	Objective	Substantive justice	Protection of essential values (e.g., family, lineage)	Efforts to prevent divorce and maintain family unity (<i>hifz al-nasl</i>)
5	Decision-Making Process	Based on social realities	Based on benefit and harm consideration	Agreements tailored to parties' conditions
6	Social Impact	Responsive to community needs	Promotes collective welfare	Strengthens social cohesion and reduces conflict

The table above illustrates the points of convergence between progressive legal theory and maqasid al-sharia within the practice of village mediation. It demonstrates that although these two frameworks originate from different intellectual traditions, they share a common orientation toward human welfare and socially responsive legal practices.

From the perspective of legal orientation, both frameworks emphasize that law should not merely function as a rigid system of rules but must serve the needs of society. Progressive law highlights the importance of substantive justice, while maqasid al-sharia focuses on achieving *maslahah* (public benefit). In the context of village mediation, this shared orientation is reflected in the prioritization of reconciliation over adversarial litigation.

In terms of approach, progressive law promotes flexibility and adaptability in responding to social problems, whereas maqasid al-sharia emphasizes contextual interpretation based on real-life

conditions. This alignment is evident in the use of dialogue and informal negotiation within village mediation, allowing solutions to be tailored to the specific circumstances of the disputing parties.

The role of mediators also reflects this integration. From a progressive law standpoint, mediators act as facilitators who help parties reach mutually acceptable solutions. Meanwhile, within the framework of maqasid al-sharia, mediators are expected to provide moral guidance that aligns with ethical and social values. In practice, village mediators often combine these roles by facilitating discussion while also offering advice rooted in community norms.

Regarding objectives, both perspectives place strong emphasis on achieving outcomes that benefit individuals and society. Progressive law seeks substantive justice, while maqasid al-sharia aims to protect essential values, including family and lineage (*hifz al-nasl*). This is particularly relevant in divorce mediation, where efforts are made to

prevent unnecessary separation and to preserve family stability whenever possible.

In the decision-making process, both frameworks encourage solutions that are grounded in real conditions and consider potential benefits and harms. Village mediation reflects this principle by producing agreements that are adjusted to the needs and capacities of the parties involved, rather than imposing standardized legal outcomes.

Finally, the social impact of mediation highlights the broader significance of this integration. Progressive law underscores responsiveness to community needs, while maqasid al-sharia emphasizes collective welfare. In practice, village mediation contributes to strengthening social cohesion and reducing conflict within the community.

Conclusion

The findings of this study indicate that divorce dispute mediation conducted by the Banra'as

Village Government plays a crucial role as a community-based conflict resolution mechanism. This approach has proven effective in reducing domestic disputes and preventing cases from escalating to the Religious Court, primarily through deliberative processes, kinship-oriented values, and flexible, persuasive communication.

From the perspective of progressive legal theory, village mediation reflects a legal approach that is humane, adaptive, and oriented toward achieving substantive justice. Meanwhile, within Jasser Auda's maqasid al-sharia framework, this practice aligns with the broader objectives of Islamic law, particularly in preserving family integrity (hifz al-nasl), safeguarding individual well-being, and maintaining social stability.

Therefore, village mediation can be understood as an effective and context-sensitive model of dispute resolution that emphasizes public welfare. In this regard, strengthening the capacity of mediators and

enhancing institutional support are essential steps to ensure the sustainability and broader integration of village mediation within Indonesia's dispute resolution system.

References

- Abbas, S. (2009). *Mediasi Dalam Perspektif Hukum Syariah, Hukum Adat, dan Hukum Nasional CIDA*. Banda Aceh: Dep. Agama Rep. Indonesia.
- Adiem, M., Yaqin, H., Wahib, M., & Islamy, A. (2022). *Dimensi Maqasid Syariah dalam Putusan Hakim Atas Perkara Cerai Gugat di Pengadilan Agama Jayapura*. 20(2), 197–211.
- Almaidah, R. Z. (2025). *Peran Kepala Desa dalam Penyelesaian Perselisihan Pertahanan Masyarakat Berdasarkan Hukum Positif (Studi kasus di Desa Mangliawan Kecamatan Pakis Kabupaten Malang)*.
- Aswim, D., Kasim, A. M., & Florita, M. (2022). *Peran Pemerintah Desa dalam Menyelesaikan Sengketa Kepemilikan Tanah di Desa Ribang Kecamatan Koting Kabupaten Sikka*. 10(1).
- Auda, J. (2008). *Maqasid al-Shariah as philosophy of Islamic law: A systems approach*. International Institute of Islamic Thought (IIIT).
- BRIN. (2025). *Perceraian di Indonesia: Sebuah Fenomena Sosial yang Perlu Diperhatikan*.
- Daulay, N. M. (2025). *Efektivitas bimbingan keluarga oleh hatobangon sebagai upaya mengatasi perceraian di Desa Binabo Julu Kecamatan Barumun Baru Kabupaten Padang Lawas (Doctoral dissertation, UIN Syekh Ali Hasan Ahmad Addary Padangsidempuan)*.
- Fadlillah, M. R., Harry, M., Negeri, I., Malik, M., Negeri, I., & Malik, M. (2025). *Legalitas dan kekuatan hukum hasil mediasi non-litigasi dalam sistem hukum indonesia*. 2(2).
- Febby Ansah Tri Pamungkas, M. H. (2025). *Mediasi Sebagai Pilar Ketahanan Keluarga dalam Penyelesaian Sengketa Rumah Tangga*. 5(2), 1424–1433.

- Ferdiansyah, A., Adityas, B., Wahyono, W., & Harahap, A. (2025). *Efektivitas Mediasi sebagai Alternatif Penyelesaian Sengketa Perdata dalam Meningkatkan Akses Keadilan di Indonesia*. 1(4), 471–480.
- Harry, M., & Nasrulloh, M. (2026). *From Moral Authority to Policy Integration: The Role of Religious Leaders in Marital Mediation in Indonesia and Malaysia*. 18(1), 33–53.
- Hasnidar, H., Purnamayanti, I., & Haniru, R. (2025). KONFLIK DAN PENYELESAIAN WARISAN DALAM MASYARAKAT ADAT DESA BATUATAS TIMUR KECAMATAN BATUATAS KABUPATEN BUTON SELATAN: PENDEKATAN MAQASHID SYARIAH. 4(04), 523–539.
- Isa, M., & Aziz, A. (2024). *Optimalisasi Peran Peradilan Agama dalam Penyelesaian Sengketa Ekonomi Syariah: Perspektif Hukum Progresif*. 1(1).
- Kamali, M. H. (2010). *Maqasid al-Shariah. Ijtihad and Civilization Renewal:(Occasional Paper)(International Institute of Islamic Thought (IIIT), 2012), xx.*
- Khalali, M., Irawati, A. C., & Yuliawan, I. (2025). ANALISIS PERAN PEMERINTAH DESA DALAM PENYELESAIAN KONFLIK MASYARAKAT DI DESA MOGA. 10(September).
- Maulana, A. A., & Harry, M. (2025). *Mediasi Perceraian dalam Perspektif PERMA No. 1 Tahun 2016 dan Maqāshid al-Syari'ah al-Syātibī: Analisis Normatif-Komparatif*. 5(3), 2376–2385.
- Pertiwi, D., Sahbudi, S., & Muhlizar, M. (2025). *Analisis Hukum Peran Kepala Desa Sebagai Mediator Perdamaian Desa dalam Menyelesaikan Sengketa Rumah Tangga (Studi pada Kantor Kepala Desa Deli Muda Hulu)* Legal. 12(2), 276–286.
- Puri, H. (2017). PLURALISME HUKUM SEBAGAI STRATEGI PEMBANGUNAN

- HUKUM PROGRESIF DI BIDANG AGRARIA DI INDONESIA. *April*.
- Putri, R. I., Harry, M., Islam, U., Maulana, N., & Ibrahim, M. (2025). *The Effectiveness of Mediation through Problem Solving in the Case of Infidelity Perspective Analysis on Islamic Family Law*. 10(2). <https://doi.org/10.25217/jm>
- Rahardjo, S. (2009). *Hukum progresif sebagai strategi pembangunan hukum di Indonesia*. *Jurnal Hukum dan Pembangunan*. 39(2), 15–28.
- REPALIS, D. (2025). *Efektivitas mediasi dalam mencegah perkara perceraian study kasus pengadilan agama curup tahun 2023 dan 2024*.
- Suyanto, S. H. (2023). *Metode Penelitian Hukum Pengantar Penelitian Normatif, Empiris Dan Gabungan*. Unigres Press.
- Triyono, N. (2025). *REKONSTRUKSI KEBENARAN SISTEMATIK PUTUSAN PERCERAIAN PENGADILAN AGAMA: PENDEKATAN KLASIFIKASI POHON KEPUTUSAN DAN MAQĀŞID JASSER AUDA*.
- Yehezkiel, P. W., Pangau, V., Wilmar, P., Toloh, Y., & Pangau, V. (2023). *DAN PROSES PENYELESAIAN YANG THE URGENCY OF INDEPENDENT STATE AGENCY TO RESOLVE LAND CONFLICTS AND THE PROCESS OF SETTLEMENT BASED ON PROGRESSIVE LEGAL THEORY*. 119–132.
- Yuneta, A. (2025). *Efektifitas Pelaksanaan Mediasi Dalam Penyelesaian Sengketa Harta Bersama Paska Perceraian Dikota Brebes (Doctoral dissertation, Universitas Islam Sultan Agung Semarang)*.
- YUNETTA, A. (2025). *EFEKTIFITAS PELAKSANAAN MEDIASI DALAM PENYELESAIAN SENGKETA HARTA BERSAMA PASKA PERCERAIAN DIKOTA BREBES (Doctoral dissertation, Universitas Islam Sultan Agung Semarang)*.