

## Legal Consciousness and Living Legal Reasoning: *Penghulus* and Mediation in Resolving Marital Disputes at the Religious Affairs Office of East Pontianak

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### Abstract

The increasing reliance on non-litigation mechanisms to resolve marital disputes, particularly mediation at the Religious Affairs Office (KUA), reflects a significant shift in contemporary practice in Islamic family law in Indonesia. Within this institutional setting, *penghulus* serve simultaneously as state officials and religious authorities who interpret and apply legal norms within dynamic social contexts. This article provides a socio-legal analysis of mediation practices at the KUA of East Pontianak, with particular attention to the legal reasoning employed by *penghulus* in addressing marital conflicts. Drawing on qualitative methods, including in-depth interviews and institutional document analysis, the study finds that marital disputes typically arise from complex interactions involving fragile communication, gendered role asymmetries, and economic pressures—factors that significantly shape mediation dynamics. The mediation process unfolds through systematic yet flexible stages (pre-mediation, core mediation, and post-mediation), enabling *penghulus* to tailor their strategies to the emotional, social, and moral circumstances of the disputing parties. The findings demonstrate that *penghulus* employ an integrative form of legal reasoning that synthesizes Islamic legal norms, state law, local cultural values, and psychosocial considerations to construct persuasive arguments and facilitate reconciliation. This article argues that these practices constitute a form of living legal reasoning that reflects the mediators' legal consciousness, wherein multiple legal and social norms are renegotiated to produce mutually agreed, restorative, and welfare-oriented outcomes.

*[Meningkatnya penggunaan mekanisme non-litigasi dalam penyelesaian sengketa perkawinan, khususnya mediasi di Kantor Urusan Agama (KUA), mencerminkan pergeseran penting dalam praktik hukum keluarga Islam*



*kontemporer di Indonesia. Dalam konteks kelembagaan tersebut, para penghulu berperan ganda sebagai aktor negara sekaligus otoritas keagamaan yang menafsirkan dan menerapkan norma hukum dalam situasi sosial yang dinamis. Artikel ini menyajikan analisis sosio-legal terhadap praktik mediasi di KUA Kecamatan Pontianak Timur, dengan fokus pada bentuk penalaran hukum yang digunakan oleh para penghulu ketika menangani sengketa rumah tangga. Dengan menggunakan metode kualitatif melalui wawancara mendalam dan analisis dokumen kelembagaan, penelitian ini menemukan bahwa sengketa perkawinan umumnya muncul dari interaksi berlapis antara kerentanan komunikasi, ketidakseimbangan peran gender, dan tekanan ekonomi, sejumlah faktor yang membentuk dinamika mediasi secara signifikan. Proses mediasi berlangsung melalui tahapan pra-mediasi, inti mediasi, dan pasca-mediasi yang sistematis namun fleksibel, sehingga memungkinkan para penghulu menyesuaikan strategi dengan kondisi emosional, sosial, dan moral para pihak yang berselisih. Selain itu, temuan penelitian juga menunjukkan bahwa para penghulu menerapkan model penalaran hukum integratif yang menggabungkan norma hukum Islam, hukum negara, nilai budaya lokal, serta pertimbangan psikososial untuk membangun argumentasi hukum dan memfasilitasi rekonsiliasi. Artikel ini berargumen bahwa praktik mediasi tersebut merupakan bentuk penalaran hukum hidup yang mencerminkan kesadaran hukum para mediator, di mana beragam norma hukum dan sosial dinegosiasikan kembali untuk menghasilkan kesepakatan yang restoratif, disepakati bersama, dan berorientasi pada kemaslahatan.]*

**Keywords:** Legal Reasoning, Marital Dispute Resolution, Mediation, *Penghulu*, Religious Affairs Office.

## Introduction

Over the past two decades, Alternative Dispute Resolution (ADR) mechanisms, such as arbitration, mediation, and conciliation, have played a significant role in shaping emerging legal cultures within religious communities worldwide.<sup>1</sup> Although mediation is frequently regarded as more effective, cost-efficient, and confidential than formal adjudication,<sup>2</sup> its success is largely contingent on the substantive legal framework, institutional structures, and prevailing legal culture of each jurisdiction.<sup>3</sup> For example, in Ukraine, the legislative frameworks governing mediation continue to exhibit deficiencies that impede its effective implementation.<sup>4</sup> In Russia, mediation has been employed in various family disputes; however, its effectiveness is substantially influenced by the consistent adherence to fundamental mediation

<sup>1</sup> Samia Bano, *Gender and Justice in Family Law Disputes: Women, Mediation, and Religious Arbitration*, ed. Samia Bano (Brandeis University Press, 2017), 1–22.

<sup>2</sup> See: María Elisabet Barreiro Morales, “Tradition and Modernity: Mediation in Roman Law and Popular Mediation in China,” *Cadernos de Dereito Actual* 2025, no. 27 (2025): 58–74; KR Mononyane, “The Role of Mediation in Present Day Practice: Illustrations from Case Studies,” *Southern African Journal of Anaesthesia and Analgesia* 26, no. 2 (2020): 102–5.

<sup>3</sup> Eneng Nuraeni and Ramdani Wahyu Sururi, “Mediation in Household Dispute Reconciliation: Prospects and Challenge,” *Khazanah Hukum* 4, no. 2 (2022): 120–8.

<sup>4</sup> Olga Tymoshenko and Iryna Petrova, “Features of Mediation as an Alternative Method of Settlement of Family Disputes: Legal Provision and Practice in Ukraine and EU Countries,” *Revista Eletronica de Direito Processual* 26, no. 2 (2025): 564–85.

principles throughout the process.<sup>5</sup> In Southeast Asia, particularly in Indonesia and Malaysia, mediation has been incorporated into the family court system. However, its implementation remains limited by the scarcity of certified mediators, inadequate interpersonal skills, and the disputing parties' low commitment to participating in mediation sessions.<sup>6</sup> This global trend highlights that mediation's efficacy is determined not only by regulatory frameworks but also by mediators' capabilities and the socio-cultural contexts in which it is practiced.

In Indonesia, marital disputes may be resolved through mediation both within and outside the judicial system. Notably, the success rate of out-of-court mediation tends to surpass that of court-annexed mediation, which often fails to achieve a settlement.<sup>7</sup> Consistent with this pattern, mediation conducted by *penghulus*, state-appointed Islamic leaders who have jurisdiction over marital affairs, at the Religious Affairs Office (*Kantor Urusan Agama*, KUA) of East Pontianak has demonstrated relatively high success rates.<sup>8</sup> As state officials under the Ministry of Religious Affairs, *penghulus* serve in strategic roles as marriage counselors and family welfare advisors. Of the 31 marital cases managed between late 2021 and early 2025, 24 were successfully resolved through amicable settlement.<sup>9</sup> Although the mediator role is not explicitly defined in state regulations, this practice substantively aligns with the *penghulus*' mandate to foster harmonious family life.<sup>10</sup> Therefore, this study is pertinent for examining these mediation practices and investigating how *penghulus* construct legal reasoning in resolving marital disputes at the grassroots level.

Previous research on out-of-court mediation in family disputes can generally be categorized into two primary typologies. The first typology emphasizes the role of customary institutions and local leaders who possess social legitimacy in resolving household conflicts.<sup>11</sup> For instance, Sainul et al. demonstrate that the *seimbangan* tradition serves as a kinship-based mechanism for dispute

<sup>5</sup> Lilia A. Sungatullina et al., "Mediation as Alternative Dispute Resolution: Legal Analysis, Foreign Practice, and Perspectives in Russia," *Humanities & Social Sciences Reviews* 7, no. 6 (2019): 826–9.

<sup>6</sup> See: Any Ismayawati et al., "Family Conflict Resolution through Mediation in Indonesia and Malaysia: A Sociological Study of Islamic Law," *Jurnal Hukum Islam* 22, no. 2 (2024): 467–98; Rini Maryam and Sulistyowati Irianto, "Exploring Efficacy: A Study of Simple and Complex Approaches to Divorce Mediation," *Lentera Hukum* 10, no. 3 (2024): 331–64.

<sup>7</sup> See: Ermi Suhasti Syafei and Siti Djazimah, "Mediation In Settlement of Joint Marital Property Disputes: Study at Tanjung Karang Religious Court, Lampung," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 5, no. 2 (2021): 867–91; Subhan M.A. Rachman and Hapzi Ali, "Divorce Without In-Between: An Empirical Study on the Failure of Mediation in the Religious Court of Sengeti Jambi Province," *Man in India* 96, no. 11 (2016): 4209–24.

<sup>8</sup> Mardi, "Interview with a *Penghulu* at the Religious Affairs Office of East Pontianak," May 2025.

<sup>9</sup> "Casebook of Mediation," The Religious Affairs Office of East Pontianak District, n.d.

<sup>10</sup> "Regulation of the Minister for Administrative Reform No. PER/62/M.PAN/6/2005 on the Functional Position of *Penghulu* and Its Credit Points," Supreme Court of Indonesia, June 3, 2005, Article 4.

<sup>11</sup> See: Zainal Azwar et al., "The Role of the Malay Customary Institution in Off-Court Divorce Mediation: A Case Study in Rantau Pandan, Jambi," *Al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan* 20, no. 1 (2020): 59–73; Siti Zubaidah et al., "Integrating Tradition into Legal Reform: Reconstructing the Role of Reconciliatory Customary Judge in Diversion Processes," *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi dan Keagamaan* 12, no. 2 (2025): 447–61; Munadi Usman et al., "The Role of Customary Law in Family Resilience and Divorce Prevention: Phenomenological Studies in Indonesia," *Al-Istinbath: Jurnal Hukum Islam* 9, no. 2 (2024): 823–40.

resolution.<sup>12</sup> Other scholars underscore that customary mediation preserves social cohesion by operating within the normative frameworks of culture, religion, and communal identity.<sup>13</sup> Additionally, Kamaruddin et al. highlight the significance of customary law in promoting social harmony and preventing broader conflicts.<sup>14</sup> The second typology encompasses studies that examine mediation conducted by religious leaders and service institutions,<sup>15</sup> including those addressing domestic violence. International scholarship widely contends that mandatory mediation is unethical or inappropriate in cases involving domestic violence, as it places victims in vulnerable positions.<sup>16</sup> In contrast to the existing literature, this article focuses on the mediation practices of *penghulus*—state actors endowed with religious authority—at the KUA, with particular attention to the legal reasoning they employ in mediating marital disputes. This article argues that these practices exemplify living, contextual legal reasoning, in which Islamic norms, state law, and psychosocial dynamics are renegotiated to produce consensual, context-sensitive resolutions.

This article is grounded in field research employing a socio-legal approach. The study was conducted at the KUA of East Pontianak Subdistrict in May 2025. Data collection involved in-depth interviews with three key informants: the Head of the Office and two *penghulus* actively engaged in mediating marital disputes. Supplementary documentary materials—including case records, institutional profiles, pertinent legislation and its derivatives, as well as classical *fiqh* (Islamic jurisprudence) sources—were utilized to enhance the analysis. The data were analyzed qualitatively through the theoretical lens of legal consciousness as conceptualized by Patricia Ewick and Susan S. Silbey. This framework facilitates an understanding of the *penghulus*' legal consciousness as mediators, specifically how they experience, comprehend, interpret, and apply the law in resolving everyday

<sup>12</sup> Sainul et al., “Legal Reform and Mediation in Non-Litigation Dispute Resolution: A Case Study of Seimbangan Tradition,” *Journal of Law and Legal Reform* 6, no. 2 (2025): 1047–78.

<sup>13</sup> See: Didik Sukriono et al., “Local Wisdom as Legal Dispute Settlement: How Indonesia's Communities Acknowledge Alternative Dispute Resolution?,” *Legality: Jurnal Ilmiah Hukum* 33, no. 1 (2025): 261–85; Ermi Suhasti Syafei et al., “Mediation in Social Conflict Resolution at Tanjungpinang Malay Customary Institution, Riau Islands,” *Al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan* 23, no. 2 (2023): 198–214; Sayful Mujab and Nabila Luthvita Rahma, “Authority of the Chief of Village in the Customary Mediation of Marriage Disputes: Phenomenon in Madura, Indonesia,” *De Jure: Jurnal Hukum dan Syar'iah* 14, no. 2 (2022): 304–16.

<sup>14</sup> Kamaruddin Kamaruddin et al., “Justice, Mediation, and Kalosara Custom of the Tolaki Community in Southeast Sulawesi from the Perspective of Islamic Law,” *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 7, no. 2 (2023): 1077–96.

<sup>15</sup> See: Sukendar Sukendar et al., “Women's Access to Justice: Mediation for the Victims of Domestic Violence in Central Java, Indonesia,” *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 7, no. 1 (2023): 602–28; S Suprpto, “Religious Leaders And Peace Building: The Role of Tuan Guru and Pedanda in Conflict Resolution in Lombok – Indonesia,” *Al-Jami'ah: Journal of Islamic Studies* 53, no. 1 (2015): 225–50.

<sup>16</sup> See: Connie J. A. Beck et al., “Mediator Assessment, Documentation, and Disposition of Child Custody Cases Involving Intimate Partner Abuse: A Naturalistic Evaluation of One County's Practices,” *Law and Human Behavior* 34, no. 3 (2010): 227–40; Balawyn Jones and Amira Aftab, “Inside Indonesia's Religious Courts: An Argument for Domestic and Family Violence Screening and Exemption from Compulsory Mediation,” *Oxford Journal of Law and Religion* 12, no. 2 (2024): 217–31.

marital disputes, and how these processes intersect with the broader social, cultural, and institutional contexts.<sup>17</sup>

### ***Penghulus* as Informal Mediators within the Indonesian State Legal Order**

The institutional status of the *penghulu* within Indonesia's state legal system is firmly established through two primary regulations: the Regulation of the Minister for Administrative and Bureaucratic Reform No. 9 of 2021 on the Functional Position of Religious Counselors and the Regulation of the Minister of Religious Affairs No. 20 of 2019 on Marriage Registration. These regulations designate *penghulus* as civil servants responsible for officiating *nikāh* (marriage) and *rujū'* (revocation of a revocable divorce) ceremonies, thereby reinforcing the administrative institution of advisory services and providing religious guidance to Muslim communities.<sup>18</sup> This legal framework demonstrates that the *penghulu's* responsibilities extend beyond administrative duties to include both preventive and remedial functions aimed at fostering harmonious Muslim families.<sup>19</sup> Consequently, the *penghulu* occupies a strategic role in addressing domestic issues within the community and, in cases of conflict, is regarded not only as a state official but also as a moral and religious authority vested with the legitimacy to mediate disputes.<sup>20</sup>

Within the framework of state law, mediation conducted by *penghulus* does not qualify as formal mediation as defined by Supreme Court Regulation No. 1 of 2008 and No. 1 of 2016 on Court-Annexed Mediation Procedures. These regulations require mediators to be certified, registered with the judiciary, and mandate that mediation be a compulsory stage in civil proceedings, culminating in a legally binding settlement agreement.<sup>21</sup> *Penghulus* do not meet these criteria; they lack judicial authority, are not formally certified, and do not operate within the court system. Consequently, their mediation practices are classified as informal, community-based mediation, grounded in their social legitimacy, religious authority, and integration within the local Muslim community. Rather than serving as a preliminary step to litigation, this form of mediation functions as a deliberative, norm-based approach to conflict resolution, rooted in Islamic ethical principles and local socio-cultural norms.

Although mediation is not explicitly delineated within the official job description of the *penghulu*, empirical data from the KUA of East Pontianak

<sup>17</sup> Patricia Ewick and Susan S. Silbey, *The Common Place of Law: Stories from Everyday Life* (University of Chicago Press, 1998), 53–4.

<sup>18</sup> "Regulation of the Minister of Religious Affairs No. 20 of 2019 on Marriage Registration," Supreme Court of Indonesia, September 30, 2019, Article 2.

<sup>19</sup> "Regulation of the Minister for Administrative and Bureaucratic Reform No. 9 of 2021 on the Functional Position of Religious Counselors," Supreme Court of Indonesia, March 17, 2021, Article 1.

<sup>20</sup> See: Ibnu Akbar Maliki et al., "A Gender-Based Maqashid Sharia Study of Penghulu in Indonesia (A Study of Jasser Auda's Views)," *Nurani: Jurnal Kajian Syari'ah dan Masyarakat* 23, no. 1 (2023): 53–7; Muhammad Latif Fauzi, "Registering Muslim Marriages: Penghulu, Modin, and the Struggles for Influence," *Al-Jami'ah: Journal of Islamic Studies* 57, no. 2 (2019): 397–424.

<sup>21</sup> See: "Supreme Court Regulation No. 1 of 2008 on Court-Annexed Mediation Procedures," Supreme Court of Indonesia, July 31, 2008; "Supreme Court Regulation No. 1 of 2016 on Court-Annexed Mediation Procedures," Supreme Court of Indonesia, February 3, 2016.

demonstrate that mediation operates as an inherent extension of the *penghulu's* advisory and family-guidance duties. In this capacity, *penghulus* function as preventive legal actors who seek to resolve or contain disputes before they escalate into formal judicial proceedings. Their approach is integrative, incorporating Islamic law, state law, cultural values on family life, and the particularities of each case. The procedural flexibility characteristic of informal mediation enables *penghulus* to adapt their strategies to the parties' social context and emotional needs, in contrast to the more rigid structure of court-affiliated mediation. Through an informal, cost-free, and socially embedded process, *penghulus* facilitate restorative and contextually grounded resolutions. Therefore, despite lacking formal recognition as mediators under state law, they play a vital role in bridging Sharia-based norms, national legal standards, and community-based dispute-resolution mechanisms at the grassroots level.<sup>22</sup>

### Typology of Factors Driving Marital Conflict in the East Pontianak District

Based on interviews with informants at the KUA of East Pontianak, marital conflicts submitted for mediation by the *penghulu* do not stem from a single cause. Instead, they emerge from complex interactions among internal communication patterns, role configurations, and socio-economic pressures that influence family dynamics. These conflicts typically evolve through a gradual process: initial communication breakdowns generate emotional tension, which is further exacerbated by role imbalances, and subsequently, economic stress intensifies the dispute to a more severe level. This pattern indicates that marital problems are not solely interpersonal issues but also reflect how spouses interpret moral obligations, negotiate authority, and respond to the social expectations associated with the institution of marriage.<sup>23</sup>

The first dominant factor is fragile communication and limited emotional openness between spouses. In numerous instances, partners perceive conversations not as opportunities for problem-solving but as arenas for defending their positions or asserting dominance. This dynamic is particularly apparent in recurrent disputes arising from seemingly minor issues, such as feelings of underappreciation, unsubstantiated suspicions, or dissatisfaction with everyday behaviors.<sup>24</sup> According to reports from the *penghulu*, many spouses are hesitant to express their grievances directly, leading to a buildup of tension that ultimately escalates into conflict. As noted by Mardi, a *penghulu*, "*Many couples are not open with each other, which leads to disputes and neglect of their respective rights and obligations.*"<sup>25</sup> This

<sup>22</sup> See: Maliki et al., "A Gender-Based Maqashid Sharia Study of Penghulu in Indonesia (A Study of Jasser Auda's Views)," 53–7; Fauzi, "Registering Muslim Marriages," 397–424.

<sup>23</sup> See: Marion W. Carter, "Gender and Community Context: An Analysis of Husbands' Household Authority in Rural Guatemala," *Sociological Forum* 19, no. 4 (2004): 633–52; Jess K. Alberts et al., "An Integrative Theory of the Division of Domestic Labor: Threshold Level, Social Organizing and Sensemaking," *Journal of Family Communication* 11, no. 1 (2011): 21–38.

<sup>24</sup> "Casebook of Mediation."

<sup>25</sup> Mardi, "Interview with a *Penghulu* at the Religious Affairs Office of East Pontianak," May 2025.

phenomenon is also evident in cases characterized by repeated minor quarrels and emotional disharmony, often described as conflicts “without a clear reason.”<sup>26</sup>

**Figure 1**  
Case Record Book Documenting Marital Problems

KEMENTERIAN	FAKTA	NAMA	PORT.	SOLUSI	Tgl./Bln/Th	ALAMAT	NO WA
		6. Dora M. Jumi	Hutan	1. POKT 2. POKT 3. HUKUM gono-dina	1. Buat Surat Pernyataan bersama atau kita KIRING 2. Berkonsultasi Jember untuk maksud agar bisa lebih 3. Menentukan waktu dan tempat pertemuan	22 Januari 2022	2. Tanjung Raya 3 dan lain-lain
		7. Andriana	Fera	1. Poligami yang bertambah 2. menjaga diri 3. suami berpacaran	1. minta ketegasan kepada suami jika aku tidak dia jika tidak dia cerai jika tidak dia cerai 2. jangan berpacaran 3. jangan berpacaran dengan rumah tangga	14 Februari 2022	Panglima aini Seruni
		8. M. Yoni	Mudi Hama	1. Suami omah 2. Minta Cerai	1. Mengingat masalah rumah tangga omah 2. Meminta pindah ke keluarga suami 3. Status dirumah bisa di tanya 2. lakukan perceraian di pengadilan agama	5 April 2022	J. Yam Sabran
		9. Marsini	Seruni	1. Suami Sering 2. Suami menyalah untuk mengulangi cerai ditanya ke PA	1. menindak lanjutinya di pengadilan 2. menagur perceraian ke pengadilan agama	27 April 2022	Jl. Panglima aini Seruni
		10. Sucianda	Tui Utri	1. Menjual tanah 2. Suami sudah mentak 3. Istri 4. Suami sering mialak Istri menuntun uang	1. Selesa utas perceraian untuk memperkalian dari menentukan kepada hakim tentang perilaku suaminya 4. Suban mentak dirumah	5 Mei 2022	2. Tanjung Raya 1
		11. Nurwanth	Rosa Helonia	1. Krisis rumah tangga 2. Suami tidak jujur 3. Suami memilih cerai	1. Suami harus terbuka kepada istri 2. Suami harus jujur 3. Suami harus menyampaikan kepada istri 4. Suami harus menyampaikan kepada istri	23 Mei 2022	Perum 3 081350757595

Source: Documentation obtained from Ahmad, May 2025.

The second factor pertains to imbalances in roles and responsibilities that arise when the expectations of husbands and wives do not align with everyday realities. Tensions frequently stem from ambiguous divisions of domestic and economic duties<sup>27</sup>—for example, when a husband fails to provide financial support or when a wife must assume the role of primary breadwinner due to the husband’s refusal to work or engagement in detrimental behaviors such as substance abuse. Cases of mild to moderate domestic violence addressed by *penghulu* reveal a recurring pattern: the husband’s inability to fulfill his primary economic role is often accompanied by unrealistic demands placed on the wife, which subsequently exacerbate conflicts and physical violence. In some instances, these tensions arise from premarital agreements, such as when wives perceive the financial support provided by their husbands as significantly less than initially promised.<sup>28</sup> These dynamics suggest that familial role relations are not merely technical arrangements but also involve each party’s perceptions of justice, self-worth, and moral legitimacy.<sup>29</sup>

<sup>26</sup> Ahmad, “Interview with a *Penghulu* at the Religious Affairs Office of East Pontianak,” May 2025.  
<sup>27</sup> Miriam Trübner, “Conflicts Over the Division of Domestic Work: A Matter of Gender-Specific Expectations and Needs,” *Journal of Social and Personal Relationships* 39, no. 9 (2022): 2825–46.  
<sup>28</sup> “Casebook of Mediation.”  
<sup>29</sup> See: Lina Nur Anisa, “The Psychological Well-Being in Building Resilience of Indonesian Muslim Families: A Study of Hussein Muhammad’s Thought,” *De Jure: Jurnal Hukum dan Syariah* 15, no. 1 (2023): 163–77; Sonia Akter and Andrew Francis-Tan, “Partners or Rivals? Exploring the Relationship between Men’s and Women’s Empowerment in Bangladesh,” *The Journal of Development Studies* 57, no. 6 (2021): 906–29; Siti Nurjanah et al., “Al-Mubâdalah fi Mafhûmi Fiqhi al-Mar’ah al-Mu’âshirah bi Indûnisiyâ,” *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 17, no. 1 (2022): 189–215.

The third and most significant factor contributing to the escalation of conflict is economic instability. Financial strain not only impairs a family's capacity to satisfy basic needs but also influences psychological well-being and the manner in which spouses perceive themselves and one another.<sup>30</sup> Interview data reveal that the majority of disputes presented to the KUA—including those involving domestic violence, infidelity, and recurrent quarrels—originate from economic stress.<sup>31</sup> In instances where the husband is unemployed and the wife assumes the role of primary breadwinner, conflicts frequently intensify into violence when the husband's demands remain unmet. Additionally, low or unstable income often engenders disappointment among the wife, particularly when economic conditions diverge markedly from expectations established at the time of marriage. As highlighted by Mardi, "*Economic problems do not only affect material aspects. They also strongly influence the psychological and emotional condition of spouses.*"<sup>32</sup> Economic pressure also emerges as a principal catalyst in cases where husbands resort to violence due to their inability to fulfill financial responsibilities, or where wives begin to question their husbands' commitment to the family's future.

Collectively, these three factors function as intersecting structures of pressure: ineffective communication impedes constructive problem-solving; role imbalances impose a moral burden on emerging tensions; and economic stress reduces spouses' emotional tolerance, thereby increasing the likelihood that conflicts will escalate into serious disputes or even violence. Consequently, marital conflicts in East Pontianak should be conceptualized as the result of a social process in which couples renegotiate their roles, obligations, and identities within the context of religious values, social norms, and prevailing economic conditions. These findings suggest that the effectiveness of *penghulu*-led mediation depends not only on their capacity to facilitate verbal negotiation but also on their ability to interpret the social dynamics that shape couples' understanding of family relationships.<sup>33</sup> Effective mediation thus requires an understanding of the underlying meanings behind behaviors, rather than merely addressing the overt issues.<sup>34</sup>

### Mediation Procedural Stages and the Role of the *Penghulus*

The mediation practices carried out by *penghulus* in resolving marital conflicts at the KUA of East Pontianak involve three interconnected stages: pre-mediation, core

<sup>30</sup> See: Deborah E. Ward et al., "For the Love of Money: The Role of Financially Contingent Self-Worth in Romantic Relationships," *Journal of Social and Personal Relationships* 38, no. 4 (2021): 1303–28; Johanna Peetz et al., "When Love and Money Collide: The Role of Financially Focused Self-Concept in Relationships," *Personal Relationships* 32, no. 4 (2025): e70032.

<sup>31</sup> Khairi, "Interview with a *Penghulu* at the Religious Affairs Office of East Pontianak," May 2025.

<sup>32</sup> Mardi, "Interview with a *Penghulu* at the Religious Affairs Office of East Pontianak," May 2025.

<sup>33</sup> See: Emily Rothkin, "How to Create a Better Mediation: Using Divorce Mediation Outcomes to Assess Gender's Effect on Mediation," *Boston University Law Review* 102, no. 2 (2022): 631–74; Noel Semple, "Mandatory Family Mediation and the Settlement Mission: A Feminist Critique," *Canadian Journal of Women and the Law* 24, no. 1 (2012): 207–39.

<sup>34</sup> Brian Jarrett, "Making Mediation Work: A Sociological View of Human Conflict," in *40th Anniversary of Studies in Symbolic Interaction*, ed. Norman K. Denzin (Emerald Group Publishing Limited, 2013), 40:395–421.

mediation, and post-mediation. These stages function not only as procedural steps but also as socio-legal mechanisms that integrate Islamic normative values, moral reasoning, and interpersonal strategies employed by the *penghulu* as mediator. The findings of this study indicate that the success of mediation largely depends on the *penghulu's* ability to interpret the dispute's context, manage the couple's emotional dynamics, and align conflict resolution with Islamic principles of *maṣlahah* (public interest), justice, and household harmony. Thus, mediation conducted by *penghulus* transcends a formal procedural sequence, operating as a practice of social reconciliation that reconfigures family relationships, roles, and commitments within the local Muslim community.<sup>35</sup>

The initial phase, referred to as pre-mediation, begins with the receipt of the complaint and is followed by administrative documentation and the identification of the primary issues. Administrative records are maintained in the case register, which includes the parties' identities, ages, addresses, dates, contact information, marital problems, and the solutions recommended by the *penghulu* (see Figure 1). This phase serves as a preliminary assessment to determine the appropriate type of intervention, whether the *penghulu* can resolve the matter, whether the Head of the KUA is required, or whether it falls outside the institution's jurisdiction. Ahmad, a *penghulu*, provided a detailed account of this stage: "*The mediation process commences when one party, either the husband or the wife, submits a formal request. Subsequently, they are instructed to provide their information in the mediation request register. Following this, the applicant is allowed to discuss the issue, which is then analyzed to assess its nature and severity.*"<sup>36</sup> It suggests that pre-mediation extends beyond administrative tasks, serving as a preliminary risk assessment that informs the overall trajectory of the mediation process.<sup>37</sup>

Furthermore, pre-mediation serves to determine whether the reported issue falls within the scope of family mediation, rather than criminal matters that require alternative legal procedures. As Khairi explains, "*The initial phase of mediation involves identifying the problem. We typically inquire whether the issue pertains to any serious criminal offenses, as it is essential to confirm that the case falls within our jurisdiction. Nonetheless, we remain receptive to hearing the account of the reporting party.*"<sup>38</sup> Additionally, the *penghulu* evaluates the emotional readiness and sincerity (Indonesian: *itikad baik*) of both parties, which are considered essential prerequisites. As emphasized by Mardi, a critical factor is that "*Both spouses must be present, willing, and possess good intentions to communicate openly.*"<sup>39</sup> Pre-

<sup>35</sup> See: Muhamad Hasan Sebyar et al., "Divorce Mediation at Panyabungan Religious Court: Transforming the Desire for Divorce into Reconciliation through Cultural Values in Contemporary Islamic Jurisprudence," *Al-Manahij: Jurnal Kajian Hukum Islam* 19, no. 1 (2025): 81–100; Joko Budi Darmawan et al., "Incorporating Islah Principles into Restorative Justice: Bridging Contemporary Legal Practice and Islamic Values," *MILRev: Metro Islamic Law Review* 4, no. 1 (2025): 269–94.

<sup>36</sup> Ahmad, "Interview with a *Penghulu* at the Religious Affairs Office of East Pontianak," May 2025.

<sup>37</sup> Nilsiton Rodrigues Andrade de Aragao, "Practical Aspects About the Mediation Process in the Judicial Scope: A Rational Path Towards Self-Composition," *Revista Eletronica de Direito Processual* 26, no. 2 (2025): 542–63.

<sup>38</sup> Khairi, "Interview with a *Penghulu* at the Religious Affairs Office of East Pontianak," May 2025.

<sup>39</sup> Mardi, "Interview with a *Penghulu* at the Religious Affairs Office of East Pontianak," May 2025.

mediation is thus fundamental in establishing the rhythm, direction, and legitimacy of the entire mediation process.<sup>40</sup>

**Figure 2**  
**Core Stages of Mediation at the KUA of East Pontianak**



Source: Documentation provided by Ahmad, May 2025.

The second stage, referred to as core mediation, constitutes a critical phase in which the conflict is reinterpreted, further examined, and negotiated under the guidance of the *penghulu*. The mediator assists the couple in openly expressing their respective narratives, managing emotional tensions, and identifying areas of mutual interest (see Figure 2). In practice, *penghulus* adopt a persuasive, familial, and Sharia-based approach. As Mardi noted, “*Our approach to mediation is familial and persuasive, consistently grounded in Sharia principles. The primary objective is for both parties to achieve mutual understanding and identify the most suitable solution for all involved.*”<sup>41</sup> It highlights that the mediator’s role encompasses both technical and normative aspects. The *penghulu* facilitates the discussion to ensure it aligns with the Islamic principles of *islāh* (reconciliation) and family justice.<sup>42</sup>

Furthermore, core mediation serves as an educational framework that reminds couples of their rights, responsibilities, and marital patterns in accordance with Islamic teachings. Ahmad emphasized this educational dimension, stating: “*The method employed is adaptable, depending on the specific circumstances of the couple. At times, an educational approach is adopted, wherein the rights and obligations of husband and wife, as defined by religious principles, are explained.*”

<sup>40</sup> See: Lifang Ma, “Design and Implementation of Pre-Litigation Mediation Platform Under Web Technology,” *2025 6th International Conference on Computer Engineering and Application (ICCEA)*, IEEE, April 25, 2025, 1-4; Brian L. Heisterkamp, “Encouraging Effectiveness through Communication Competence in Community Mediation,” in *The Mediation Handbook*, 1st ed., ed. Alexia Georgakopoulos (Routledge, 2017), 226-34.

<sup>41</sup> Mardi, “Interview with a *Penghulu* at the Religious Affairs Office of East Pontianak,” May 2025.

<sup>42</sup> Joko Budi Darmawan et al., “Incorporating Islah Principles into Restorative Justice,” 269-94.

*The objective is not to favor either party but to assist them in making informed decisions while preventing the initiation of further conflicts.*<sup>43</sup> Khairi introduced a more substantive aspect related to Islamic law: *“As a penghulu, I apply Islamic legal methodologies grounded in fiqh principles that prioritize maṣlaḥah. In this role, we carefully evaluate potential harms and benefits to determine the most appropriate course of action.”*<sup>44</sup> Thus, core mediation functions not merely as a technical negotiation process but also as a platform for reconstructing family roles and relationships, grounded in religious principles and social utility.

The third stage, post-mediation, entails formalizing the negotiated outcome by preparing an *islāḥ* agreement, which serves as written evidence, a legal foundation, and a moral commitment. The *penghulu*'s duties include drafting the document, clarifying the terms of the agreement, and reinforcing the parties' obligations. Mardi explained, *“Once mediation is successful and both parties reach an agreement, we promptly draft the islāḥ agreement as written documentation of the reconciliation. The agreement is then signed and stamped to confer legal validity.”*<sup>45</sup> Ahmad highlighted the necessity of precision regarding the agreement's details: *“The drafting of the settlement agreement is a critical step following mediation. All aspects of the deliberations must be comprehensively documented to avoid ambiguous interpretations and to ensure effective implementation.”*<sup>46</sup> Khairi emphasized the moral dimension arising from this formalization: *“The signing of the agreement provides assurance to us as mediators that the outcome will be respected and implemented by both parties.”*<sup>47</sup> Therefore, the post-mediation stage functions as a mechanism that reinforces the agreement by integrating legal legitimacy, administrative clarity, and public moral accountability.<sup>48</sup>

The findings collectively demonstrate that mediation conducted by *penghulus* constitutes a socio-legal process that integrates administrative, normative, and social functions in resolving marital disputes. The pre-mediation phase functions as an initial assessment and legitimacy-building stage; the core mediation phase provides a forum for negotiating meaning, reconstructing relationships, and interpreting Sharia; and the post-mediation phase transforms negotiated outcomes into binding legal and moral commitments. Throughout these stages, the *penghulu* serves not only as a procedural mediator but also as a moral agent, emotional facilitator, and interpreter of Islamic law, thereby ensuring that conflict resolution extends beyond practical compromise to achieve substantive relational

<sup>43</sup> Ahmad, “Interview with a *Penghulu* at the Religious Affairs Office of East Pontianak,” May 2025.

<sup>44</sup> Khairi, “Interview with a *Penghulu* at the Religious Affairs Office of East Pontianak,” May 2025.

<sup>45</sup> Mardi, “Interview with a *Penghulu* at the Religious Affairs Office of East Pontianak,” May 2025.

<sup>46</sup> Ahmad, “Interview with a *Penghulu* at the Religious Affairs Office of East Pontianak,” May 2025.

<sup>47</sup> Khairi, “Interview with a *Penghulu* at the Religious Affairs Office of East Pontianak,” May 2025.

<sup>48</sup> See: Jacqueline Nolan-Haley, “Revisiting Deals and Justice in Court-Connected Mediation,” in *Discussions in Dispute Resolution*, 1st ed., ed. Art Hinshaw et al. (Oxford University Press New York, 2025), 167–72; Jadranka Dabovikj Anastasovska and Marjana Staninova, “The Binding Nature of Mediation Settlements in North Macedonia: Aspects of Validity and Enforcement,” in *Alternative Dispute Resolution in the Western Balkans*, ed. Marc Bungenberg et al., European Union and Its Neighbours in a Globalized World (Springer Nature Switzerland, 2025), 20:209–23.

transformation.<sup>49</sup> In this context, mediation at the KUA serves as a mechanism of social restoration that reaffirms the family's internal structure within the community's living Islamic norms.<sup>50</sup>

### ***Penghulus'* Legal Reasoning in Resolving Marital Disputes: An Integration of Islamic Law, State Law, and Socio-Cultural Norms**

The legal reasoning employed by *penghulus* in mediating marital conflicts extends beyond the mere application of normative rules, constituting a dynamic interpretive practice. In this process, *penghulus* synthesize religious authority, state law, social experience, and the emotional circumstances of the disputing parties to formulate resolutions that are morally, legally, and culturally appropriate. Their reasoning does not function as an abstract concept; rather, it arises from direct interactions with couples—particularly in complex cases involving unemployed husbands, wives compelled to assume the primary breadwinner role, extended periods of non-communication, and recurrent disputes driven by jealousy or infidelity. Within these contexts, *penghulu* reasoning becomes adaptive and reflective, allowing mediation to operate not as a rigid procedural exercise but as a forum in which law is practiced, negotiated, and experienced as a mechanism for relational repair.<sup>51</sup>

In practice, *penghulus* predominantly employ religious norms as the foundational framework through which emotional tensions are mitigated, particularly in instances of emotional outbursts such as minor domestic violence, communication breakdowns, or situations wherein one party seeks to assert pride or dominance. Qur'anic verses function as moral reference points that redirect couples toward core marital values and facilitate conflict de-escalation. For instance, Khairi frequently cites Sūrat al-Nisā' verse 35 as a normative basis for *islāh* and Sūrat al-Baqarah verse 227 to characterize divorce as a legally permissible yet morally discouraged act. As he articulated, “*Islam strongly encourages peaceful settlement before choosing divorce as a last alternative. Divorce is the most*

<sup>49</sup> See: Samia Bano and Lisa Webley, “Family Mediators and Family Mediation: When Norms Collide,” *Oxford Journal of Law and Religion* 12, no. 2 (2024): 162–77; Fatahillah Abdul Syukur and Dale Margaret Bagshaw, “When Home Is No Longer ‘Sweet’: Family Violence and Sharia Court–Annexed Mediation in Indonesia,” *Conflict Resolution Quarterly* 30, no. 3 (2013): 271–94; Faisal Faisal et al., “Divorce Settlement Through Mediation Process in Lhokseumawe Sharia Court,” *Diponegoro Law Review* 9, no. 1 (2024): 153–66.

<sup>50</sup> See: Sebyar et al., “Divorce Mediation at Panyabungan Religious Court,” 81–100; Sharia Walker, “Mediation—Between Religion and Culture in the Saudi Context,” in *Cultural Encounters and Emergent Practices in Conflict Resolution Capacity-Building*, ed. Tamra Pearson d’Estrée and Ruth J. Parsons, Rethinking Peace and Conflict Studies (Springer International Publishing, 2018), 267–301; Sayed Sikander Shah, “Mediation in Marital Discord in Islamic Law: Legislative Foundation and Contemporary Application,” *Arab Law Quarterly* 23, no. 3 (2009): 329–46.

<sup>51</sup> See: Tzofnat Peleg-Baker and Michael Lang, “A Structured Reflection for Improving Third Party Interventions and Mediation Practice: Reconsidering Debrief,” *Conflict Resolution Quarterly* 40, no. 2 (2022): 213–29; Cedric De Coning et al., “Adapting to Uncertainty: What Have We Learned from Mediation and Conflict Resolution in Colombia, Mozambique, the Philippines, and Syria,” in *Adaptive Mediation and Conflict Resolution*, ed. Cedric De Coning et al., Sustainable Development Goals Series (Springer International Publishing, 2022), 165–83; Nuraeni and Sururi, “Mediation in Household Dispute Reconciliation,” 2022, 120–8.

*detested of lawful acts in the sight of God.*<sup>52</sup> In circumstances where couples face the prospect of divorce due to repeated infidelity or chronic mistrust, such religious argumentation often curtails impulsive decisions and fosters moral reflection. Thus, religious discourse functions as an affective regulator, managing emotions and providing ethical guidance during dialogue.<sup>53</sup>

Once the initial emotional tension has diminished and the couple becomes more receptive, the *penghulus* transition to a more formal legal reasoning approach by invoking the Compilation of Islamic Law (*Kompilasi Hukum Islam*, KHI) and Marriage Act No. 1 of 1974. These references to state law are not treated as mere textual citations; instead, they are applied contextually to the specific circumstances of each case. For example, in instances where a husband has failed to provide financial support for several months, or where an unemployed husband forcibly appropriates a wife's income, Ahmad emphasized: "*If there is a neglected obligation, it is already a violation of both Islamic law and state law.*"<sup>54</sup> Such statements demonstrate how legal argumentation reclassifies the conflict into clearer normative categories. Imbalances in roles are no longer framed simply as domestic disagreements but as violations of the legal and religious rules governing spousal rights and obligations. At this stage, law functions as a normative ordering system, restoring relational equilibrium as defined by religious and state authority.<sup>55</sup>

This legal reasoning is particularly salient when mediators are tasked with assessing whether the marital relationship can be feasibly maintained or if alternative resolutions are warranted. In severe instances—such as cases involving drug addiction that led to physical and financial abuse—*penghulus* do not rely solely on moral persuasion. Instead, they invoke state law to safeguard vulnerable parties.<sup>56</sup> Formal legal frameworks, including Law No. 23 of 2004 on the Elimination of Domestic Violence, obligations related to financial support, and child protection statutes, function as regulatory instruments that prevent mediation from endorsing structural harm. As Khairi emphasized, "*If a wife is not supported or there is violence, we clarify the legal basis from the Marriage Law or other state regulations.*"<sup>57</sup> Consequently, mediation transcends being a forum for asymmetric compromise and operates as a mechanism to ensure that fundamental rights are not compromised under the guise of superficial harmony.<sup>58</sup>

<sup>52</sup> Khairi, "Interview with a *Penghulu* at the Religious Affairs Office of East Pontianak," May 2025.

<sup>53</sup> See: Jacob Bercovitch and S. Ayse Kadayifci-Orellana, "Religion and Mediation: The Role of Faith-Based Actors in International Conflict Resolution," *International Negotiation* 14, no. 1 (2009): 175–204; Endratno Pilih Swasono et al., "Politeness Strategies in Divorce Mediation Within Indonesian Religious Courts," *Theory and Practice in Language Studies* 15, no. 1 (2025): 166–74.

<sup>54</sup> Ahmad, "Interview with a *Penghulu* at the Religious Affairs Office of East Pontianak," May 2025.

<sup>55</sup> Von Benda-Beckmann Keebet and Franz von Benda-Beckmann, "Beyond the Law–Religion Divide: Law and Religion in West Sumatra," in *Permutations of Order* (Routledge, 2009), 227–46.

<sup>56</sup> Mardi, "Interview with a *Penghulu* at the Religious Affairs Office of East Pontianak," May 2025.

<sup>57</sup> Khairi, "Interview with a *Penghulu* at the Religious Affairs Office of East Pontianak," May 2025.

<sup>58</sup> See: Laura Borges Ricardo and Carlos José Cordeiro, "O Direito Fundamental de Acesso à Justiça e a Efetividade da Mediação Nas Causas de Família No Cejusc Em Uberlândia No Período de Julho/2016 À Maio/2018," *Revista Eletrônica de Direito Processual* 20, no. 1 (2019): 82–107; Beatriz Verdera Izquierdo, "The Importance of Mediation in Current Family Law. With a Special Focus on Marital Crisis Involving Minors," *Actualidad Jurídica Iberoamericana*, no. 16 (2022): 1708–41.

Although *penghulu* legal reasoning is grounded in Islamic norms and positive law, it is also deeply embedded within the Malay cultural context of Pontianak. Values such as family deliberation, the social stigma associated with divorce, and the honor of the extended family often function as forms of social capital<sup>59</sup> that enable *penghulus* to establish legitimacy during mediation. In cases involving young couples seeking divorce over minor disagreements or differences in communication styles, *penghulus* frequently invoke these values to encourage reflection. As Mardi observed, “*Family deliberation values or the sense of shame associated with divorce often make the mediation process easier.*”<sup>60</sup> Concurrently, *penghulus* exercise cultural filtering, particularly in instances where families conceal violence to preserve honor. Ahmad noted, “*If cultural norms are used to hide violence for the sake of family reputation, that is something we cannot tolerate.*”<sup>61</sup> It illustrates that *penghulu* reasoning does not passively conform to cultural expectations but rather selectively engages with them—mobilizing values that advance justice while rejecting those that undermine it.<sup>62</sup>

Collectively, these findings demonstrate that the legal reasoning employed by *penghulus* operates as a form of social technology that regulates behavior, shapes emotional responses, and renegotiates the normative identities of husband and wife. The argumentation utilized does not exclusively emphasize legality; instead, it also fosters relational justice. In this context, justice transcends mere rule enforcement and encompasses the restoration of balance in interpersonal relationships. Consequently, legal reasoning in mediation extends beyond dispute resolution to generate new conceptions of “family” grounded in the moral, legal, and social frameworks of contemporary Muslim society. This model of legal reasoning exemplifies the distinctive interplay among Islamic law, state law, and local culture within Indonesian mediation practices, illustrating how law becomes genuinely “living” through everyday social practice rather than existing solely as written texts.<sup>63</sup>

## Conclusion

The mediation practices carried out by *penghulus* at the Religious Affairs Office (KUA) of East Pontianak constitute a form of living legal reasoning that integrates Islamic legal norms, state law, and psychosocial considerations to resolve marital conflicts. The findings of this study indicate that marital disputes do not originate

<sup>59</sup> Asrizal Saiin et al., “The Domination of Islamic Law in Customary Matrimonial Ceremonies: Islamic Values within the Malay Marriage Tradition in Kepulauan Riau,” *Al-Ahwal: Jurnal Hukum Keluarga Islam* 16, no. 2 (2023): 320–41.

<sup>60</sup> Mardi, “Interview with a *Penghulu* at the Religious Affairs Office of East Pontianak,” May 2025.

<sup>61</sup> Ahmad, “Interview with a *Penghulu* at the Religious Affairs Office of East Pontianak,” May 2025.

<sup>62</sup> Priyanka Babasaheb Shinde and Sharvari Vaidya, “A Study on Cultural and Religious Perspectives on Divorce and Role of Counseling and Mediation in Section 14 Cases,” *MSW Management Journal* 34, no. 2 (2024): 764–75.

<sup>63</sup> See: Karmawan Karmawan, “Mediation in the Religious Courts of Indonesia,” *AHKAM: Jurnal Ilmu Syariah* 20, no. 1 (2020): 79–96; Dessy Sunarsi et al., “Effectiveness of Mediation Implementations in the Religious Courts of Indonesia,” *International Journal of Innovation, Creativity and Change* 10, no. 3 (2019): 49–64.

from a singular cause; rather, they emerge from complex interactions among communication deficiencies, gender role imbalances, and economic pressures, all of which significantly influence the dynamics of conflict. In addressing this complexity, *penghulus* employ a three-stage mediation process (pre-mediation, core mediation, and post-mediation) that is both systematic and adaptable, tailoring their approaches to the emotional, social, and moral contexts of the disputing parties. Their role extends beyond procedural mediation to encompass functions as counselors, moral educators, and religious authorities who interpret the law contextually to promote restorative, consensus-driven reconciliation.

This study contributes to a more nuanced understanding of the functioning of Islamic family law within Indonesia's social context, conceptualizing it not as a fixed textual framework but as a dynamic process in which religiously grounded state actors continuously negotiate legal meanings. The findings have significant implications for enhancing the capacity of *penghulus* as out-of-court mediators and underscore the necessity for mediation guidelines that are more responsive to the psychosocial realities of the communities they serve. Moreover, there is an urgent necessity for explicit state regulations that clearly define the role of *penghulus* as extra-judicial mediators, thereby promoting the institutionalization and consistent application of these practices across all KUAs in Indonesia. However, this study is limited by a small number of informants and its focus on a single district. Future research should consider broadening the geographical scope, increasing the diversity of informants, comparing mediation practices across different KUAs, or employing longitudinal ethnographic methods to capture the dynamics of *penghulu* legal reasoning in practice more comprehensively.

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