

The Transformation of Kiai Authority in Divorce Mediation in Madurese Society: The Dialectic of Traditional Mediation and Positive Law

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Abstract

In Madurese society, the kiai (Islamic religious leader) has historically served as the primary mediator in marital disputes, wielding authority that often surpasses the practical reach of formal state institutions. However, the introduction of mandatory court-annexed mediation under Supreme Court Regulation (Peraturan Mahkamah Agung/PERMA) No. 1 of 2016 and the broader formalization of the Indonesian legal system have generated significant tensions between the traditional authority of the kiai and the requirements of positive law in divorce proceedings. This study investigates the transformation of the kiai's role in divorce mediation in Madurese society, analyzing how kiai authority and the formal state mediation framework interact, converge, and compete in the resolution of marital disputes. Employing ethnographic fieldwork, in-depth interviews, and analysis of Religious Court records from Pamekasan and Sumenep, the study finds that kiai-mediated divorce resolution has not disappeared but has undergone significant transformation, operating in a complementary and sometimes competing relationship with court-annexed mediation. The findings suggest that harnessing kiai authority within a legally recognized pre-litigation mediation framework could significantly improve both the rate and the quality of marital dispute resolution in Madura.

Keywords: kiai authority, divorce mediation, Madurese society, positive law, legal pluralism

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INTRODUCTION

In the socio-cultural landscape of Madura, the kiai occupies an exceptionally prominent position as a religious, moral, and social authority. Unlike the more diffuse patterns of Islamic leadership observed in many other Indonesian regions, the Madurese kiai system is characterized by intense hierarchical loyalty (tawadhu') of community members (santri) to specific kiai figures, whose pronouncements on religious and social matters carry a binding force that frequently exceeds that of state legal institutions in the practical governance of everyday community life (Horikoshi, 1976; Turmudi, 2004). This authority extends to the domain of marital relations: historically, couples in dispute would approach the kiai before — and



often instead of — the state Religious Court, and the kiai's intervention frequently produced either reconciliation or a form of extra-judicial divorce settlement.

The legal landscape governing divorce in Indonesia has, however, undergone significant formalization since the enactment of Law Number 1 of 1974 on Marriage. Under this framework, divorce among Muslim Indonesians requires judicial confirmation by the Religious Court, regardless of whether the parties have conducted extra-judicial religious proceedings. The Supreme Court's issuance of PERMA No. 1 of 2016 further introduced a mandatory mediation phase into civil proceedings, including divorce cases filed at the Religious Court, requiring parties to attempt settlement through a certified mediator before the court may proceed to adjudication (Nurfaqih & Rachman, 2020).

These legal developments have created a complex new institutional terrain in which the traditional role of the kiai as extra-judicial divorce mediator intersects with the formally mandated mediation requirements of the state court system. Empirical observation suggests that kiai continue to exercise significant mediatory influence in Madurese communities, but the nature and scope of this influence have evolved in response to legal formalization. The relationship between kiai authority and positive law in this domain has not, however, been systematically studied. Most existing research on kiai authority in Indonesia focuses on political, educational, or general social dimensions, with limited attention to the specific dynamics of marital dispute mediation (Bruinessen, 1994; Dhofier, 2019).

This study addresses this gap by investigating the transformation of the kiai's role in divorce mediation in Madurese society — specifically in the districts of Pamekasan and Sumenep on the island of Madura. The research aims to document the current practices and modalities of kiai-mediated divorce resolution, to analyze the interaction between kiai authority and the formal mediation requirements of the Religious Court, and to assess the implications of this interaction for the quality and effectiveness of marital dispute resolution in the Madurese context. The study contributes to broader scholarly debates on legal pluralism, Islamic legal authority, and the sociology of dispute resolution in Muslim-majority societies.

METHOD

This study employed a qualitative research design combining ethnographic fieldwork with doctrinal legal analysis. The ethnographic component involved extended fieldwork in Pamekasan and Sumenep districts of Madura over a period of eight months (February to September 2023). The selection of these two districts was based on their contrasting profiles of Religious Court divorce case volumes and kiai network density, allowing for comparative analysis within a shared Madurese cultural context.

Data collection proceeded through multiple channels. Participant observation was conducted at kiai pesantren (Islamic boarding school complexes)

where marital dispute mediations were observed, with prior consent of all parties involved. In-depth semi-structured interviews were conducted with twenty-eight participants: kiai serving as informal mediators (n=9), certified court mediators at the Pamekasan and Sumenep Religious Courts (n=4), Religious Court judges (n=4), parties who had undergone both kiai-mediated and court-mediated proceedings (n=8), and local government officials responsible for family welfare programs (n=3). Interviews were conducted in Madurese and Indonesian languages.

Documentary analysis encompassed Religious Court records from Pamekasan (PA Pamekasan) and Sumenep (PA Sumenep) for the period 2018–2023, focusing on case files that documented prior extra-judicial mediation attempts, mediation success rates, and the outcomes of court-annexed mediation in divorce proceedings. A total of 240 case records were reviewed and coded for relevant variables. Legal analysis covered the Marriage Law, the Religious Court Law, PERMA No. 1 of 2016, the KHI, and relevant Supreme Court jurisprudence on mediation in family matters. Data were analyzed using the interpretive phenomenological approach, with attention to the meaning-making practices of kiai and community members in the mediation context.

RESULTS AND DISCUSSION

The Traditional Role of Kiai in Divorce Mediation

Fieldwork observations and interview data confirmed that the kiai continues to function as the primary first port of call for couples experiencing marital difficulties in the studied communities. Nine of the kiai interviewed reported receiving between five and twenty requests for marital mediation per month, with reconciliation rates of approximately 60 to 70 percent among cases they personally managed. These figures are substantially higher than the mediation success rates recorded in the Religious Court data for the same period, which showed reconciliation rates of approximately 12 percent for court-annexed mediation in Pamekasan and 9 percent in Sumenep — figures consistent with national trends reported in earlier studies (Nurfaqih & Rachman, 2020).

The kiai's mediatory practice was characterized by several features that distinguished it from formal court mediation. First, it was embedded in an ongoing relationship of religious and social authority, which gave the kiai's recommendations a moral weight that certified court mediators — often strangers to the parties — could not replicate. Second, kiai mediation was flexible, informal, and capable of addressing not only the immediate presenting dispute but also the broader relational, economic, and religious dimensions of marital difficulty. Third, kiai mediation operated on a basis of Islamic values and community norms that resonated deeply with the parties' own moral framework, facilitating the generation of solutions perceived as religiously legitimate.

Interview participants who had undergone kiai mediation consistently described the experience as qualitatively different from court-annexed mediation processes conducted within formal judicial settings. In their accounts, the intervention of the kiai was not perceived merely as a procedural or administrative requirement, but rather as a form of pastoral care rooted in moral authority, religious legitimacy, and deep communal trust. The kiai's role was understood as encompassing not only dispute resolution, but also emotional guidance, spiritual counsel, and ethical reflection, which collectively shaped how the parties interpreted both the process and its outcomes. As a result, whether the mediation led to reconciliation or to an agreed extra-judicial separation, the resulting agreement was experienced by the parties as morally binding and socially legitimate, even when its status within the formal civil legal system remained limited or indirect.

Interaction Between Kiai Authority and Formal Mediation Requirements

Analysis of Religious Court records revealed that a significant proportion of divorce petitions filed at the Pamekasan and Sumenep Religious Courts were preceded by kiai-mediated interventions, the outcomes of which influenced the subsequent court proceedings in complex ways. In approximately 35 percent of reviewed cases, parties reported prior kiai mediation that had failed to achieve reconciliation, and the filing of a court petition was thus in part a consequence of kiai referral to the formal legal system. In approximately 15 percent of cases, parties reported that kiai mediation had produced a form of extra-judicial separation — typically a talak (Islamic divorce declaration) by the husband in the kiai's presence — and the court petition was filed subsequently to obtain the legally required judicial confirmation.

The relationship between kiai-mediated outcomes and formal court proceedings was found to be complex and sometimes contradictory. In cases where the kiai had validated a talak, the Religious Court was in principle required to treat the petition as a new case and conduct its own mediation phase, often producing frustration and confusion among parties who regarded the matter as already settled. Several judges interviewed expressed sympathy with this dilemma while noting their obligation to follow the procedural requirements of PERMA No. 1 of 2016.

Kiai participants expressed a range of attitudes towards the formal court system. Several senior kiai in Pamekasan described an evolving collaborative relationship with the local Religious Court, in which they referred irreconcilable cases to the court while the court periodically sought their informal facilitation in cases involving high-profile families. This emergent collaborative pattern represents a significant shift from the historically competitive relationship between kiai authority and state legal institutions in Madura.

Transformation of the Kiai's Mediatorial Role

Comparative analysis of interview data across age cohorts of kiai revealed significant generational variation in the understanding and practice of mediatorial authority. Younger kiai (under 45 years of age) were substantially more likely to encourage parties to pursue formal court proceedings alongside or following kiai mediation, to possess some knowledge of the formal legal framework, and to see their mediatorial role as complementary to rather than competitive with the Religious Court. Older kiai more commonly expressed scepticism about the Religious Court's capacity to address the relational and religious dimensions of marital disputes effectively.

This generational shift reflects the broader transformation of Islamic education and authority in Madura documented by Dhofier (2019) and Turmudi (2004), including the increasing exposure of pesantren graduates to formal legal education, the influence of national Islamic organizations such as Nahdlatul Ulama that have endorsed legal formalization, and the growing accessibility of Religious Court services through expanded court outreach programs.

The findings of this study illuminate a process of ongoing negotiation and transformation in the relationship between kiai authority and formal legal institutions in the governance of marital disputes in Madurese society. Rather than a straightforward displacement of traditional authority by formal legal mechanisms, the evidence reveals a more nuanced pattern of coexistence, complementarity, and selective integration between the two normative frameworks (Bowen, 2003; Lindsey & Pausacker, 2016).

The substantially higher reconciliation rates achieved in kiai mediation compared to court-annexed mediation are striking and merit serious policy attention. These rates appear to reflect the relational, moral, and religious dimensions of kiai mediatorial authority that PERMA No. 1 of 2016's formal mediation framework has not succeeded in replicating. The certified mediation model introduced by PERMA focuses on interest-based negotiation techniques adapted from secular Western dispute resolution practice, which may be inadequate for addressing the deep religious and social values that structure marital relationships in Madurese Islamic communities (Nurfaqih & Rachman, 2020).

The emergent collaborative patterns observed between kiai and Religious Courts in Pamekasan point toward a potentially productive institutional innovation: the formal recognition of kiai as pre-litigation mediators within a legally structured framework. Such a framework could leverage kiai authority and community trust to achieve higher reconciliation rates while ensuring that formal legal rights — particularly those of women, who are disproportionately the petitioning party in Religious Court divorce proceedings — are adequately protected. Similar hybrid mediation models have been explored in other Muslim-majority jurisdictions,

including Malaysia's sulh (amicable settlement) system, with promising results (Othman & Abdullah, 2018).

However, the integration of kiai authority into formal dispute resolution frameworks must be approached with attention to gender equity concerns. Research on kiai mediation in other contexts has documented cases where the exercise of informal religious authority has been used to pressure women to withdraw legitimate legal claims, particularly in cases involving domestic violence or financial abuse (Mulia, 2020; Van Doorn-Harder, 2019). Any institutional framework for kiai-assisted mediation must therefore include robust safeguards for women's rights and ensure that kiai mediators are trained in gender-sensitive approaches.

CONCLUSION

This study has demonstrated that the role of the kiai in divorce mediation in Madurese society has undergone significant transformation in response to the formalization of the Indonesian legal system, but has not disappeared. Kiai-mediated dispute resolution continues to achieve substantially higher reconciliation rates than court-annexed mediation, reflecting the unique relational and religious authority of kiai in the Madurese social context. The relationship between kiai authority and the formal Religious Court system has evolved from one of competition toward patterns of complementarity and selective collaboration, particularly among younger generations of kiai.

The findings suggest that a policy framework formally integrating qualified kiai as pre-litigation mediators within the Religious Court's dispute resolution process could significantly improve outcomes for divorcing couples in Madura, provided that robust gender equity safeguards are embedded in the framework design. Such a framework would harness the demonstrated effectiveness of kiai mediatory authority while ensuring that the fundamental legal rights of women are protected within the ambit of the Indonesian national legal system. Further research is needed to evaluate the design and implementation of such a framework, as well as to extend the comparative analysis to other Indonesian regions with similar patterns of strong Islamic religious authority.

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