

## **Restorative Justice in Islamic Family Law: The Mechanism of Islah in Resolving Post-Carok Civil Disputes in Madura**

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### **Abstract:**

Indonesia's criminal justice system mainly prosecutes those involved in carok, a traditional honor-based duel in Madura, but offers few legal solutions for the family issues that follow, such as problems with child custody (*hadhanah*), guardianship (*perwalian*), and maintenance (*nafkah*). This study seeks to rebuild the concept of *islah* as a guiding principle in Islamic law and to create a restorative justice approach for handling family law disputes after carok. Using a normative-doctrinal legal research method, the study combines statutory, conceptual, and comparative analysis, drawing on both primary and secondary legal sources collected through systematic library research and examined with qualitative-descriptive methods. The findings show that

standard court mediation under Supreme Court Regulation (PERMA) No. 1 of 2016 is focused on procedure and does not fully address the trauma, family pressures, and cycles of retaliation found in post-carok cases. By applying the Islamic legal maxim *al-sulhu sayyid al-ahkam* (reconciliation is the master of all legal judgments) and the goals of *Maqasid al-Shariah*, especially protecting family and life, this study introduces a new “restorative islah” framework. This model brings in local mediators like kiai and customary leaders and sets up a court-supervised process that protects children’s interests, ensures participation is voluntary, and holds families financially responsible through collective mechanisms similar to *'aqilah*. As a conceptual model, this framework is meant to guide future research and policy, not as a tested protocol. In the end, this study adds to global legal discussions by showing how diverse legal systems can use restorative methods to resolve honor-based family disputes without falling into strict legalism or cultural relativism.

**Keywords:** *Restorative Justice; Islah; Islamic Family Law; Carok; Madura.*



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## Introduction

In societies where state, religious, and customary laws overlap, honour-related violence often leads to legal consequences that go beyond criminal charges.<sup>1</sup> Studies on Islamic dispute resolution show that practices like sulh and islah are used in many different legal settings, from the Arab Middle East to Muslim minority communities, to help repair relationships harmed by honour-related and communal violence.<sup>2</sup> In Madura, Indonesia, carok—a form of honour-based violence linked to disputes over land, inheritance, family honour (*malo*), and infidelity—still influences social life, even though national criminal law is officially in charge.<sup>3</sup> When the father is killed or imprisoned because of carok, his civil responsibilities end immediately. This often leads to intense disputes between the father’s family and the mother’s family over child custody, inherited assets, and child support.

Academic discussions about conflict resolution in Indonesia and Islamic family law have developed in several ways. For example, Darmawan et al. (2025) looked at how islah can be used in restorative justice to bring together national legal norms and Islamic values through a participatory approach.<sup>4</sup> According to Indonesian marriage

<sup>1</sup> Bagis Syarof and Faiq Tobroni, “Alasan Harga Diri Pada Praktek Carok (Tinjauan Ham Dan Hukum Islam),” *Tahkim* 16, no. 1 (2020).

<sup>2</sup> Muhammad Syamsuddin, *History of Madura* (Yogyakarta: Araska, 2019).

<sup>3</sup> R Atma, “Penyelesaian Sengketa Jalur Mediasi Sebagai Perwujudan Kembalinya Hukum Berbasis Kearifan Lokal,” *Jurnal Soumatara Law Review* 4, no. 1 (2021): 229–300.

<sup>4</sup> 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.

law, especially Articles 105 and 156 of the Compilation of Islamic Law (KHI) and Article 41 of Law No. 1 of 1974 on Marriage, parents have clear civil duties to care for (*hadhanah*), represent (*perwalian*), and support (*nafkah*) their children.<sup>5</sup> But when a father is killed or jailed because of *carok*, these responsibilities suddenly fall apart, leading to new disputes between the father's family and the mother's family over child custody, inheritance, and child support.

Academic discussions about conflict resolution in Indonesia and Islamic family law have developed in several ways. First, Darmawan et al. (2025) looked at how *islah* can be used within restorative justice to bring together national legal standards and Islamic values through participation.<sup>6</sup> Second, Junaedi et al. (2025) studied the use of *diyat* (blood money) in Islamic criminal law as a way to ensure victims are compensated, using the collective institution of '*aqilah*.'<sup>7</sup> Third, Subrata et al. (2021) highlighted the need for restorative justice in family disputes in Religious Courts, focusing on peace mediators (*hakam*) to help lower divorce rates and protect children's mental health.<sup>8</sup> Fourth, Yangto et al. (2024) found that formal mediation in Religious Courts under Supreme Court Regulation (PERMA) No. 1 of 2016 has a very low success rate (under 20%), especially in tough cases with deep emotional wounds and strong conflicts.<sup>9</sup> Fifth, Sukendar et al. (2023) explored how domestic violence victims seek justice, showing that many prefer mediation or non-litigation in Religious Courts because it is seen as more effective in restoring their rights than the criminal justice system.<sup>10</sup>

Although prior studies have separately addressed restorative justice, court-mandated mediation, and the criminological aspects of *carok*, a significant research gap remains. Existing scholarship has not yet developed a comprehensive doctrinal framework that conceptualizes *islah* as a legally structured rest. While earlier research has examined restorative justice, court-ordered mediation, and the criminal aspects of *carok*, a major gap remains. Scholars have not yet developed a comprehensive legal framework that treats *islah* as a structured way to resolve family law issues after *carok*, such as custody, guardianship, and support. Most studies focus on mediation

<sup>5</sup> J Abdillah, T Nurhayati, and M Anwar, "Integrating Islamic Criminal Law Into Indonesia's New Criminal Code: A Study Of Legal Pluralism And Normative Transformation," *Masalah-Masalah Hukum* 55, no. 1 (2026): 1–16, <https://doi.org/10.14710/mmh.55.1.2026.1-16>.

<sup>6</sup> T Subrata and H Hikmatullah, "Implementation Of Restorative Justice In Resolving Family Conflicts From The Perspective Of Islamic Family Law," *Multidisciplinary Indonesian Center Journal (MICJO)* 3, no. 3 (2026): 2839–43, <https://doi.org/10.62567/micjo.v3i3.2452>.

<sup>7</sup> Yangto Yangto et al., "Contested Divorce Cases in Indonesia: Evaluating Mandatory Mediation under PERMA No. 1 of 2016," *Al-Ihkam: Jurnal Hukum Dan Pranata Sosial* 17, no. 2 (2022): 253–74.

<sup>8</sup> 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.

<sup>9</sup> Tedy Subrata, Iin Ratna Sumirat, and Hikmatullah Hikmatullah, "The Urgency of Restorative Justice in Family Conflict Resolution: An Islamic Family Law Perspective," *Jurnal Hukum Islam* 22, no. 2 (2024): 116–35.

<sup>10</sup> Sukendar et al., "Women's Access To Justice: Mediation For The Victims of Domestic Violence In Central Java, Indonesia."

to stop further carok or on standard divorce mediations, which do not address the complex family problems caused by customary violence.<sup>11</sup> This study is new because it combines the theory of *islah* with solutions for the civil challenges faced by families of carok victims, using Islamic family law texts and legal theory (*ushul fiqh*). This article asks two main questions: (1) How can *islah* be rebuilt as a legal principle in Islamic family law to deal with the civil effects of post-*carok* violence? and (2) What kind of restorative *islah* model can be created in Indonesia's Religious Courts to protect children, widows, and other vulnerable family members?

## Method

This study uses a normative legal research method, focusing on *de lege ferenda* analysis. Instead of only describing current law, it aims to reconstruct *islah* as a doctrine for resolving post-*carok* family disputes. The study presents its proposals as doctrinal reconstructions, not as findings from fieldwork. To address the legal issues fully, the research combines three approaches: statute, conceptual, and comparative. The statute approach involves a systematic review of Indonesian family law and alternative dispute resolution regulations, such as Law No. 1 of 1974 on Marriage, the Compilation of Islamic Law (KHI) from Presidential Instruction No. 1 of 1991, and Supreme Court Regulation (PERMA) No. 1 of 2016 on Mediation Procedures in Courts. The conceptual approach explores doctrines, principles, and theories of Islamic law from both classical texts and modern thought, focusing on *islah* (reconciliation), *sulh* (peace), *hakam* (arbitrator), and the communal responsibility of *'aqilah*. These are reinterpreted within a modern restorative justice framework using the *ushul fiqh* maxim *al-sulhu sayyid al-ahkam*. The comparative approach looks at how Malaysia and Singapore have included similar Islamic reconciliation mechanisms in their Syariah Court systems, offering a benchmark to assess Indonesia's current framework.

This study uses only theoretical-normative library sources, divided into primary and secondary legal materials. Primary sources, which have binding legal authority, include the Qur'an, Sunnah/Hadith, Law No. 1 of 1974 on Marriage, the Compilation of Islamic Law, and PERMA No. 1 of 2016. Secondary sources, which offer explanations and analysis, include classical *fiqh* texts such as Ibn Rushd's *Bidayat al-Mujtahid* and Wahbah al-Zuhayli's *Al-Fiqh al-Islami wa Adillatuhu*, legal research methodology books, literature on restorative justice, and academic articles on matrimonial disputes, Madurese customary law, and carok violence. In this study, Islamic legal sources are used as the main normative standard to evaluate Indonesia's state legal framework, while state legal sources serve as the baseline. The study does

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<sup>11</sup> Subrata, Sumirat, and Hikmatullah, "The Urgency of Restorative Justice in Family Conflict Resolution: An Islamic Family Law Perspective."

not treat these sources as competing bodies of law; instead, it uses a *de lege ferenda* approach to identify and address gaps in the state legal system.

The legal materials for this study were collected through library research, using systematic searches and organization of data from both global and national digital databases like Scopus, Web of Science, Google Scholar, and SINTA. The analysis followed four steps: first, identifying the legal norms for custody, guardianship, and maintenance in Indonesian family law; second, interpreting key Islamic legal concepts such as *islah*, *sulh*, *hakam*, and *'aqilah*, using the *ushul fiqh* maxim *al-sulhu sayyid al-ahkam* and the *Maqasid al-Shariah* goals of preserving lineage (*hifz an-nasl*) and life (*hifz an-nafs*); third, evaluating the differences between Indonesia's family law and the realities after carok violence; and fourth, developing a "restorative *islah*" framework to address these disputes in a way that fits the Madurese community. Since this study is based only on library research and not on fieldwork or surveys, its conclusions are normative. Questions about how the framework could be put into practice or how effective it might be are outside the scope of this study and are suggested as topics for future research.

## Discussion

### The Concept of *Islah* as a Theoretical Doctrine of Islamic Law Derived from Fiqh

The first finding of this study is that *islah*, when properly understood, serves as a doctrinal tool for legal protection. It is not just a moral call to reconcile or a process identical to court-annexed mediation. The following paragraphs first show how this doctrine is recognized in both classical and modern fiqh scholarship, then explain how this study reconstructs the doctrine to address post-*carok* civil disputes.

In Islamic legal theory, *islah* is a doctrine that helps the law repair broken relationships, remove harm, and restore a just social order. This view is well supported by scholarship on the Qur'anic and *fiqh* foundations of reconciliation.<sup>12</sup> The Qur'an connects reconciliation to family conflict by calling for arbiters from both spouses' families in cases of *shiqaq*, and it prefers settlement when marriage is damaged. This analysis answers the first research question by showing that *islah* is not just a social practice, but a doctrine based on Qur'anic commands, *fiqh* reasoning, and *usul al-fiqh* principles.

This dual character is also well established in existing scholarship: the theoretical significance of *islah* lies in its dual character as both a substantive value and a procedural method.<sup>13</sup> As a substantive value, *islah* embodies the Islamic legal commitment to *maslahah*, justice, and the prevention of continuing harm. As a

<sup>12</sup> J A Rohmana, "Mediation in the Islamic Legal Tradition: Tracing the Roots of Restorative Justice in the Practice of *Ishlah*," *Mimbar Hukum* 29, no. 1 (2017): 45–63.

<sup>13</sup> Nanang Solikhin, "Reconciliation as Sayyid Al-Ahkam: Legal Analysis of Umar Bin Khattab's Judicial Instructions," *Jurnal Hukum Islam* 21, no. 2 (2023): 47–65.

procedural method, it authorises the involvement of family representatives, community figures, and morally trusted intermediaries to prevent conflict from escalating into permanent rupture.<sup>14</sup> However, this dual character also creates a doctrinal risk. If *islah* is interpreted only as “peace at all costs,” it may legitimise social pressure against vulnerable parties, particularly women and children.<sup>15</sup> Therefore, the stronger doctrinal reading is that *islah* is valid only when it produces just reconciliation, not coerced silence. This risk is especially acute in post-*carok* disputes, where the imbalance of power between an assailant’s kin group and a victim’s widow or children makes the distinction between genuine reconciliation and coerced silence a matter of direct legal consequence, not merely doctrinal nuance.

This view matches *usul al-fiqh*. The legal maxims *al-darar yuzal* (harm must be eliminated) and *dar’ al-mafasid muqaddam ’ala jalb al-masalih* (preventing harm takes priority over gaining benefits) require the law to remove harm and prevent further damage before seeking other benefits.<sup>16</sup> In post-*carok* civil disputes, reconciliation should not be judged only by the lack of open conflict. It should be measured by whether it ensures custody, guardianship, maintenance, psychological safety, and dignity for families affected by violence. The doctrine of *’adah muhakkamah* (custom as a legal source) can support using Madurese kinship, local discussion, and the authority of *kiai*, but only if these customs do not lead to intimidation, revenge, or gender-based subordination.<sup>17</sup>

This is where this study stands apart from earlier research. Most previous studies on *carok* have focused on it as a criminal-law or social issue, especially in terms of honour, shame, masculinity, and penal mediation.<sup>18</sup> For example, Mahrus Ali’s study says that settling *carok* needs to consider Madurese cultural values and suggests penal mediation using village or tribal models, victim-offender mediation, and community panels.<sup>19</sup> While this is valuable, it mainly addresses the criminal side of *carok*. This article shifts the discussion to Islamic family law, arguing that *carok*’s effects continue after the criminal process, especially in disputes over *hadhanah*, guardianship, and maintenance.

The new contribution of this study is its reconstruction of *islah* as a doctrine for repairing civil relationships after violence.<sup>20</sup> In typical family disputes, *islah* may try

<sup>14</sup> Mohammad Hashim Kamali, *Shari’ah Law: An Introduction* (Oxford: Oneworld Publications, 2008).

<sup>15</sup> Mahrus Ali, “Akomodasi Nilai-Nilai Budaya Masyarakat Madura Mengenai Penyelesaian Carok Dalam Hukum Pidana,” *Jurnal Hukum Ius Quia Iustum* 17, no. 1 (2010): 85–102, <https://doi.org/https://doi.org/10.20885/iustum.vol17.iss1.art4>.

<sup>16</sup> Kamali, *Shari’ah Law: An Introduction*.

<sup>17</sup> Supreme Court of the Republic of Indonesia, “Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2016 Concerning Mediation Procedures in Court” (2016).

<sup>18</sup> Ahmad Rifai Mien, *Manusia Madura: Perilaku, Etos Kerja, Penampilan, Dan Pandangan Hidupnya* (Yogyakarta: Pilar Media, 2007).

<sup>19</sup> Ali Sodiqin, “Restorative Justice in Islamic Law: Integration of Legal, Moral, and Spiritual Aspects,” *AHKAM: Jurnal Ilmu Syariah* 21, no. 2 (2021): 359–82.

<sup>20</sup> Rohmana, “Mediation in the Islamic Legal Tradition: Tracing the Roots of Restorative Justice in the Practice of Ishlah.”

to keep the marriage together, lower hostility, or help with a peaceful separation. In post-carok disputes, though, *islah* has a more complex role: it must stop revenge, rebuild communication between families, and set up legally binding arrangements for children and dependants. This means *islah* must move from being just a general idea of reconciliation to a clear legal doctrine of protection.<sup>21</sup>

After explaining *islah*'s doctrinal foundations and this study's reconstruction of it as a doctrine of protection, it is important to see how the Indonesian legal system compares. The Indonesian legal framework partly supports this reconstruction, but it is still incomplete. The Compilation of Islamic Law, issued by Presidential Instruction No. 1 of 1991, covers marriage, inheritance, and waqf for use by state institutions and society. In family matters, the Religious Courts have authority over certain civil disputes among Muslims, as shown in Law No. 7 of 1989 on Religious Courts, which is still in effect with later changes.<sup>22</sup> However, neither the Compilation of Islamic Law nor the Religious Courts' procedures directly address the unique civil effects of honour-based communal violence like *carok*.

This gap is important, and it is necessary to explain why. The KHI sets rules on *hadhanah*, such as children under *mumayyiz* age or under twelve usually being in the mother's care, while older children can choose between parents. Child maintenance is mainly the father's responsibility. These rules are meant as default norms for typical family breakups, where both parents are alive, free, and able to negotiate directly, and the main legal task is dividing care and support between two capable parents. Post-*carok* disputes do not fit this situation: the father may be dead, in prison, socially excluded, or unable to provide; the mother may face threats from the other kin group because of the violence; and the child's welfare is at risk not from parental disagreement but from ongoing family hostility. The problem with applying the KHI's default rules here is not just practical difficulty, but a deeper mismatch: the rules assume parental ability and negotiation, which honour-based violence has already destroyed. Using them without changes could lead to outcomes that follow procedure but fail to provide the protection, safety, economic security, and freedom from intimidation that *hadhanah* and *nafkah* are meant to ensure.<sup>23</sup>

For this reason, *islah* should be understood through *maqasid al-shariah*. In post-carok disputes, the key goals are not just *hifz al-nafs* (preserving life), but also *hifz al-nasl* (preserving lineage), *hifz al-mal* (preserving wealth), and *hifz al-'ird* (preserving dignity). Preserving life means stopping revenge violence; preserving lineage means ensuring stable guardianship and custody; preserving property means having enforceable maintenance; and preserving dignity means widows, children, and

<sup>21</sup> Sukendar et al., "Women's Access To Justice: Mediation For The Victims of Domestic Violence In Central Java, Indonesia."

<sup>22</sup> Yangto et al., "Contested Divorce Cases in Indonesia: Evaluating Mandatory Mediation under PERMA No. 1 of 2016."

<sup>23</sup> Atma, "Penyelesaian Sengketa Jalur Mediasi Sebagai Perwujudan Kembalinya Hukum Berbasis Kearifan Lokal."

families are not silenced for the sake of harmony. Reading *islah* through *maqasid* turns reconciliation from a symbolic act into a real legal tool.

This means Indonesian Islamic family law should have a clearer doctrine of restorative *islah*. With such a doctrine, judges, mediators, and community leaders could use reconciliation not just to end court cases, but to create settlements that are legally accountable. These settlements should clearly state custody, guardianship, maintenance, schooling, visitation, security guarantees, and ways to monitor compliance. Without these details, *islah* could become just a ritual that eases social embarrassment but leaves children and women without real legal protection.

### **Restorative Justice as an Instrument for Resolving Civil Disputes Arising from Carok**

The second main argument of this study is that restorative justice can help resolve post-carok civil disputes, but only if it is adapted beyond its usual focus on criminal law. Around the world, restorative justice is seen as an inclusive and flexible way to address crime, involving offenders, victims, families, and communities in repairing harm. Yet, in post-carok situations, the harm goes beyond the crime itself. The violence leads to civil and family problems: children may lose caregivers, widows may lose financial support, guardianship can become disputed, and family ties may be strained by fear and revenge.

This analysis answers the second research question by showing that restorative justice should not replace criminal accountability, but instead support civil and family recovery. The person responsible for carok is still subject to criminal law. However, criminal proceedings alone do not resolve questions like who will care for the children, who will be the guardian, who will provide financial support, how widows and orphans will be protected, or how to restore peace between families. Therefore, restorative justice needs to shift from focusing on crime to focusing on families.

The Indonesian legal framework already contains fragments of this approach, but they remain scattered. Law No. 1 of 1974 on Marriage recognises the continuing obligation of parents toward children after marital breakdown and remains in force, as amended by Law No. 16 of 2019. The Child Protection Law recognises child protection, parental responsibility, guardianship, foster care, and the need to secure children's welfare without discrimination.<sup>24</sup> PERMA No. 1 of 2016 provides the procedural basis for mediation in court proceedings. Yet these regimes are not integrated into a specific protocol for post-violence family disputes arising from *carok*.

The problem is not a lack of legal rules, but a lack of coordination between them. Family law, child protection, mediation, and criminal justice all work separately. This means that after carok, the criminal case may be handled in court,

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<sup>24</sup> John Braithwaite, "Restorative Justice and Responsive Regulation Revisited," *Regulation & Governance* 16, no. 4 (2022): 987–1001.

but civil issues are often left unresolved or managed informally by the community. This separation is a problem because post-*carok* disputes involve legal risks, emotional trauma, and community tensions. Applying only legal rules may be correct in law but not help socially, while relying only on custom may be accepted by the community but not meet legal standards.

Restorative justice can help close this gap, but only if its parts are used together as a single framework, not just as a list of separate safeguards. These four parts match the *maqasid*-based approach to *islah* discussed earlier: each one turns a *maqasid* goal into a clear procedural step, and if any are missing, the settlement cannot be considered valid restorative *islah*, even if it seems peaceful. Voluntariness protects dignity (*hifz al-'ird*): reconciliation is not valid if widows, children, or weaker family members are pressured by stronger families, because forced consent repeats the very inequality that *maqasid al-shariah* aims to prevent. Child-centredness protects lineage (*hifz al-nasl*): the Convention on the Rights of the Child requires decision-makers to put the child's best interests first, protect them from discrimination, and listen to their views, making the abstract goal of protecting lineage concrete in law.<sup>25</sup> Enforceability protects wealth (*hifz al-mal*): agreements about custody, guardianship, and maintenance must be recorded or confirmed by the court, because promises that cannot be enforced do not really protect the family's financial well-being.<sup>26</sup> Protection from retaliation protects life (*hifz al-nafs*): since *carok* involves honour, shame, and revenge, any restorative process must start with risk assessment, making the goal of protecting life a real procedural step, not just a general aim.<sup>27</sup> Together, these four elements turn the *maqasid*-based doctrine into a practical test for any proposed settlement.

Comparing with other countries is helpful, as long as we focus on specific legal rules rather than just general descriptions. In Malaysia, *sulh* has been made official through written procedures, not just administrative practice. For example, in Selangor, *sulh* is regulated by Sections 47 and 48 of the Islamic Family Law (Selangor) Enactment 2003 and Section 99 of the Shariah Court Civil Procedure (Selangor) Enactment 2003, and is implemented through the Shariah Court Civil Procedure (*Sulh*) Rules 2001. The same kind of framework exists in the Federal Territories under the Shariah Court Civil Procedure (*Sulh*) (Federal Territories) Rules 2004.<sup>28</sup> The Department of Syariah Judiciary Malaysia (JKSM) has also formalised

<sup>25</sup> United Nations, "Convention on the Rights of the Child" (1989).

<sup>26</sup> Yangto et al., "Contested Divorce Cases in Indonesia: Evaluating Mandatory Mediation under PERMA No. 1 of 2016."

<sup>27</sup> Junaedi Junaedi et al., "Restorative Justice in Islamic Criminal Law: A Comparative Study of Diyat and Victim Rights," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 2 (2024): 847–65.

<sup>28</sup> Malaysia, "Islamic Family Law (Selangor) Enactment 2003" (2003); Malaysia, "Shariah Court Civil Procedure (Selangor) Enactment 2003" (2003); Malaysia, "Shariah Court Civil Procedure (*Sulh*) Rules 2001" (2001); Malaysia, "Shariah Court Civil Procedure (*Sulh*) (Federal Territories) Rules 2004" (2004); Norfatin Najwa Che Adnan, "Sulh (Resolution) of Family Dispute and Its Application in the Shariah Courts of Malaysia," *Al-Manhaj*, n.d.

the process with Practice Direction No. 3 of 2002, which set up the Majlis Sulh (Sulh Council) as a pre-litigation forum, and Practice Direction No. 1 of 2010, which lists the types of disputes, such as child custody (*hadhanah*), post-divorce consolation (*mut'ah*), and iddah maintenance, that can be referred to the Majlis Sulh before a formal trial.<sup>29</sup>

Singapore's system needs to be understood in detail, not just by mentioning its "Family Justice Courts." Muslim family issues like divorce, custody (*hadhanah*), and maintenance are handled by the Syariah Court *under* Section 35 and Section 52(3)(c) of the Administration of Muslim Law Act (AMLA, Cap. 3), and are separate from the civil Family Justice Courts, which use the Women's Charter for non-Muslim marriages.<sup>30</sup> Since 1955, the Syariah Court has run a Marriage Counselling Programme, which became formal in 2004 and is now a required step before filing under Section 46A(4) of AMLA. This programme acts as a structured, pre-litigation reconciliation process for Muslim couples.<sup>31</sup> More recently, the Syariah Court has adopted "Therapeutic Justice," shaping its child-focused and reconciliation-based procedures around the Islamic value of *ihsan* (excellence and kindness).<sup>32</sup> These examples show that effective family dispute resolution needs more than just legal theory; it also needs clear rules, defined types of disputes, and trained mediators—features that are mostly missing from Indonesia's PERMA-based mediation system.

Indonesia's current system is less specialised. While court mediation is available, it is not tailored for post-*carok* disputes that involve trauma, revenge, family pressure, and vulnerable children. Because of this, a restorative justice model for post-*carok* civil disputes should not just copy criminal restorative justice into family law. Instead, it should be developed as "*restorative islah*": a hybrid approach based on Islamic legal principles, adapted to Madurese social conditions, and guided by child protection and judicial accountability.

The proposed *restorative islah* framework differs from existing mediation under PERMA No. 1 of 2016 in three specific respects, rather than merely in degree of cultural sensitivity. First, PERMA operates as a generic, case-neutral mediation procedure applicable to any civil dispute brought before the courts; it contains no pre-litigation screening for intimidation, revenge risk, or the survival of the parties' capacity to participate freely, whereas the framework proposed here places such risk assessment as a mandatory precondition before reconciliation may proceed. Second,

<sup>29</sup> JKSM) Department of Syariah Judiciary Malaysia (Jabatan Kehakiman Syariah Malaysia, "Practice Direction No. 3 of 2002" (2002); JKSM) Department of Syariah Judiciary Malaysia (Jabatan Kehakiman Syariah Malaysia, "Practice Direction No. 1 of 2010" (2010).

<sup>30</sup> Singapore, "Administration of Muslim Law Act (Cap. 3, 2009 Rev. Ed.)" (2009); Singapore, "Family Justice Act 2014" (2014).

<sup>31</sup> Singapore, Administration of Muslim Law Act (Cap. 3, 2009 Rev. Ed.); Community and Youth Ministry of Culture Singapore, "Syariah Court's Marriage Counselling Programme Plays Key Role in Nurturing Strong and Resilient Muslim Families," 2025.

<sup>32</sup> Singapore Academy of Law, "Therapeutic Justice in the Syariah Court – The Striving for Ihsan," *SAL Practitioner*, 2026.

PERMA does not formally integrate non-judicial cultural authorities: mediation is conducted by judge-mediators or accredited mediators operating within the court's own procedural rules, whereas *restorative islah* explicitly incorporates kiai, family elders, and customary figures as accountable facilitators alongside, rather than instead of, judicial supervision. Third, PERMA's substantive scope is generic to the dispute before the court, whereas *restorative islah* mandates a fixed set of civil obligations, custody, guardianship, maintenance, education, visitation, residence, and protection from harassment that must be addressed in every settlement regardless of how the parties initially frame their dispute. These differences position *restorative islah* as a specialised protocol nested within, rather than a replacement for, Indonesia's existing PERMA-based mediation architecture.

The comparative analysis above suggests three key points for designing Indonesia's own protocol. First, like Singapore's Syariah Court, Indonesian Religious Courts could shift post-*carok* mediation from focusing on keeping marriages together, as in PERMA No. 1 of 2016, to a more therapeutic, child-focused approach, especially when spouses cannot reunite. Second, following Malaysia's Majlis Sulh, Indonesia's Religious Courts would benefit from having specially trained mediation officers, instead of relying on general judge-mediators, to handle the unique challenges of honour-based violence. Third, combining the Islamic idea of *'aqilah* (shared financial responsibility) with the state's legal system could help turn informal family commitments into legally enforceable orders for maintenance and guardianship, as required by the enforceability safeguard. These suggestions are offered as proposals for further study, not as proven solutions in Indonesia.

This proposal is based on legal theory, not on a system that has already been tested or implemented. It would work through several legal steps, each with a clear responsible party and legal basis, but would need to be tested and discussed with stakeholders before being adopted. First, screening: the Religious Court, using its authority under Law No. 7 of 1989 on Religious Courts, or an authorised mediator under PERMA No. 1 of 2016, should check if the civil dispute is related to earlier *carok* violence. Second, risk assessment: before any reconciliation, the Religious Court, following the Child Protection Law, must check for intimidation, revenge risk, and whether parties can participate freely. This may require court-appointed social or psychological assessors. Third, facilitation: kiai, family elders, or community leaders can be involved if referred by the Religious Court, acting as accountable facilitators under court supervision, not as independent decision-makers. Fourth, substantive settlement: with this facilitation, the parties must agree on specific civil obligations like custody, guardianship, maintenance, education, visitation, residence, and protection from harassment, using the KHI's rules as a guide. Fifth, judicial ratification: the agreement should be made official as a court-recognised settlement or order, turning a socially negotiated *islah* into a legally enforceable document.

This analysis suggests that Indonesian Islamic family law would benefit from a special restorative protocol for civil disputes after violence. However, this idea still

needs to be tested through more research, assessment of court capacity, and policy discussion before it can be put into practice. Such a protocol could be created through Supreme Court regulations, Religious Court guidelines, or a mediation framework based on child protection. The goal is not to replace state law with custom, but to make sure state law addresses the ongoing social effects of violence. In post-carok cases, the law should help both to decide rights and to repair relationships.

## Conclusion

This study aimed to answer two main research questions. First, the analysis finds that *islah* can be understood as a normative doctrine for repairing civil relationships after violence. When viewed through the *ushul fiqh* maxim *al-sulhu sayyid al-ahkam* and the *Maqasid al-Shariah* goals of preserving life, lineage, wealth, and dignity, *islah* is not just a general principle of peacemaking. Instead, it becomes a structured legal process that is valid only if it secures custody, guardianship, maintenance, and the safety of affected families, rather than simply ending open conflict. For the second question, the analysis shows that restorative justice, when shifted from a crime-focused to a family-focused model and built on the four safeguards of voluntariness, child-centredness, enforceability, and protection from retaliation, can be turned into an institutional protocol called “restorative *islah*.” This protocol includes screening, risk assessment, facilitation, substantive settlement, and judicial ratification, and is doctrinally different from Indonesia’s current PERMA-based mediation.

These findings contribute in three main ways. First, they expand restorative justice beyond its usual focus on criminal law to include Islamic family law. Second, they present a direct view of Islamic reconciliation, showing that *islah* is only valuable when it protects vulnerable people instead of silencing them. Third, they highlight Madura as a place to study how legal systems with multiple influences can address culturally rooted violence without falling into strict legalism or cultural relativism. As a practical implication, this analysis suggests that Indonesian Islamic family law could benefit from a more specialized and coordinated restorative protocol for civil disputes after violence. This could be developed through Supreme Court regulations or Religious Court guidelines, but the exact design should be decided through policy discussions, not by this doctrinal study alone.

This study is based on legal literature, not field data, so the *restorative islah* framework is a conceptual idea rather than a model that has been tested in practice or in court. To see if it would work in Indonesia’s Religious Courts or across Madura’s different regions, further empirical and socio-legal research is needed before it can be put into practice. Despite these limits, Islamic family law does not have to be just an administrative system. It can return to its core purpose: protecting people, preserving family lines, and promoting peace in society.

## Declaration of AI Tool Usage

During the preparation of this manuscript, the authors used Chat GPT to assist with English academic law. All AI-generated content was critically assessed and substantially edited to ensure factual accuracy, clarity, and academic integrity. The authors take full responsibility for the final content of this manuscript.

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