

Mediation as Family Dispute Reconciliation: An Alternative Dispute Resolution Perspective

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Abstract: The resolution of household disputes through litigation often emphasizes formal legal judgments and has not fully succeeded in restoring family relationships substantively. This condition positions mediation as one of the mechanisms of Alternative Dispute Resolution (ADR) that prioritizes reconciliatory, collaborative, and restorative approaches in resolving family conflicts. This study aims to analyze mediation as a mechanism for the reconciliation of household disputes from the perspective of Alternative Dispute Resolution and to identify its opportunities and challenges in practice. The study employs a qualitative method through library research using the Miles and Huberman data analysis model, which includes data reduction, data display, and conclusion drawing. The findings indicate that non-litigation mediation provides greater opportunities for achieving family reconciliation compared to litigation-based mediation, which tends to be constrained by formal judicial procedures. From the ADR perspective, mediation positions the disputing parties as active subjects in achieving deliberative settlements, restoring relationships, and reaching mutually beneficial agreements (win-win solutions). This concept is consistent with the principle of *ishlah* in Islamic law as reflected in Qur'an Surah An-Nisa verse 35. Nevertheless, the effectiveness of mediation still faces several challenges, including limited public understanding of mediation,

Vol.6 No.2 April 2026



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the shortage of certified mediators, inadequate mediator skills, lack of good faith among disputing parties, high levels of conflict escalation, and the weak executorial force of out-of-court settlement agreements. Therefore, strengthening mediation institutions, improving mediator capacity, and optimizing reconciliatory approaches are essential to establishing mediation as an effective and sustainable mechanism for resolving household disputes.

Keywords: Mediation, Reconciliation, Family Disputes, Alternative Dispute Resolution, Islamic Law.

Abstrak: *Penyelesaian sengketa rumah tangga melalui jalur litigasi sering kali berorientasi pada putusan hukum formal dan belum sepenuhnya mampu memulihkan hubungan keluarga secara substantif. Kondisi ini menempatkan mediasi sebagai salah satu mekanisme Alternative Dispute Resolution (ADR) yang lebih menekankan pendekatan rekonsiliatif, kolaboratif, dan restoratif dalam penyelesaian konflik keluarga. Penelitian ini bertujuan menganalisis mediasi sebagai mekanisme rekonsiliasi sengketa rumah tangga dalam perspektif Alternative Dispute Resolution serta mengidentifikasi peluang dan tantangan implementasinya. Penelitian menggunakan metode kualitatif melalui studi kepustakaan dengan teknik analisis data model Miles dan Huberman yang meliputi reduksi data, penyajian data, dan penarikan kesimpulan. Hasil penelitian menunjukkan bahwa mediasi non-litigasi memiliki peluang yang lebih besar dalam mewujudkan rekonsiliasi keluarga dibandingkan mediasi litigasi yang cenderung terikat pada prosedur formal peradilan. Dalam perspektif ADR, mediasi menempatkan para pihak sebagai subjek aktif untuk mencapai penyelesaian berbasis musyawarah, pemulihan hubungan, dan kesepakatan bersama (win-win solution). Konsep tersebut sejalan dengan prinsip ishlah dalam hukum Islam sebagaimana termuat dalam QS. An-Nisa ayat 35. Namun demikian, efektivitas mediasi masih menghadapi berbagai tantangan, antara lain rendahnya pemahaman masyarakat terhadap mediasi, keterbatasan mediator bersertifikat, lemahnya keterampilan mediator, tidak adanya itikad baik para pihak, tingginya eskalasi konflik, serta lemahnya kekuatan eksekutorial hasil perdamaian di luar pengadilan. Oleh karena itu, penguatan kelembagaan mediasi, peningkatan kapasitas mediator, dan optimalisasi pendekatan rekonsiliatif menjadi faktor penting dalam mewujudkan mediasi sebagai mekanisme penyelesaian sengketa rumah tangga yang efektif dan berkelanjutan.*

Kata kunci: Mediasi, Rekonsiliasi, Sengketa Rumah Tangga, Alternative Dispute Resolution, Hukum Islam.

Introduction

Disputes are a continuation of conflicts. In conflict theory, differences, be they differences of opinion, desires, interests, habits, or backgrounds, can lead to conflict¹. Conflict will develop into disputes when there is no common ground². Because not everyone in a relationship or community is the same, conflict or dispute is always there. Conflict occurs when people's opinions, desires, and interests differ. And disagreements will develop into disputes if they are not resolved. Family relationships are no exception. Husband and wife are not the same. Conflicts and disputes in the family can arise if these differences are not properly resolved³. It is not surprising that divorce occurs because domestic conflicts are not resolved⁴. It is very similar to disputes stemming from family relationships, such as inheritance issues⁵. There is no way to avoid conflict and disagreement in a relationship. On the one hand, disagreements are considered as disturbances in a relationship, but on the other hand, they can be considered as naturally occurring dynamics. The relationship will become more harmonious if there is a dispute because they will get to

¹ Muhamad Zuldin, "Ketimpangan Sebagai Penyebab Konflik: Kajian Atas Teori Sosial Kontemporer," *TEMALI: Jurnal Pembangunan Sosial* 2, no. 1 (2019): 157–83, <https://doi.org/10.15575/jt.v2i1.4050>.

² Muhammad Faiz Aziz and Muhamamd Arif Hidayah, "Perlunya Pengaturan Khusus Online Dispute Resolution (ODR) Di Indonesia Untuk Fasilitasi Penyelesaian Sengketa E-Commerce," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 9, no. 2 (2020): 275, <https://doi.org/10.33331/rechtsvinding.v9i2.449>.

³ Mursyid Djawas and Sri Astuti A. Samad, "Conflict, Traditional, and Family Resistance: The Pattern of Dispute Resolution in Acehnese Community According to Islamic Law," *Samarah* 4, no. 1 (2020): 65–84, <https://doi.org/10.22373/sjhk.v4i1.5271>.

⁴ Robi Awaludin, "Penyelesaian Sengketa Keluarga Secara Mediasi Non Litigasi Dalam Kajian Hukum Islam Dan Hukum Positif," *Al Maqashidi: Jurnal Hukum Islam Nusantara* 4, no. 2 (2021): 1–16.

⁵ Nur Lailatul Musyafaah et al., "Family Dispute Resolution in The Sakinah Family Consultation and Counseling Bureau Surabaya-Indonesia," *MAQASIDI: Jurnal Syariah Dan Hukum*, June 27, 2022, 1–14, <https://doi.org/10.47498/maqasidi.vi.948>.

know each other's characters and desires better⁶. Disputes, whatever they may be called, can definitely be resolved⁷.

Disputes can be resolved by means of litigation or non-litigation. In litigation dispute resolution, a court decision is not a decision made by both parties⁸. Therefore, the litigation process sometimes still causes one party to be dissatisfied; Sometimes cases are resolved, but family relationships are not saved. Because litigation does not always result in a perfect solution, this method is sometimes considered a win-lose solution⁹. All sides have been positioned as opponents from the start, so there will ultimately be winners and losers. However, dispute resolution can also be resolved peacefully out of court. One term for alternative conflict resolution is non-litigation resolution¹⁰. Since most disputes are resolved by consensus, this method prioritizes peaceful, voluntary, familial, and consensual dispute resolution. The non-litigation method is more advantageous than litigation because it is both a win and no one¹¹ loses. Since the parties are positioned as partners, cases are resolved based on agreements made by both parties, not individual decisions.

Some of the non-litigation dispute resolution methods include negotiation, mediation, conciliation, consultation, and expert assessment. Mediation is a method of peaceful conflict resolution that uses third-party intermediaries¹². Mediation is one of the methods of

⁶ Endah Rundika Pratiwi, "Pemanfaatan Deeptalk Dalam Mempertahankan Hubungan Harmonis Pasangan Suami Istri," *Komunika* 19, no. 01 (2023): 09-16, <https://doi.org/10.32734/komunika.v19i01.11202>.

⁷ Zen Faulkes, "Resolving Authorship Disputes by Mediation and Arbitration," *Research Integrity and Peer Review* 3, no. 1 (December 16, 2018): 12, <https://doi.org/10.1186/s41073-018-0057-z>.

⁸ Rosita Rosita, "Alternatif Dalam Penyelesaian Sengketa (Litigasi Dan Non Litigasi)," *Al-Bayyinah* 1, no. 2 (2017): 99-113, <https://doi.org/10.35673/al-bayyinah.v1i2.20>.

⁹ M Hafid and Agus Salim Ferliadi, "Efektifitas Mediasi Dalam Penyelesaian Sengketa Waris Di Pengadilan Agama," *Syakhshiyah Jurnal Hukum Keluarga Islam* 1, no. 1 (2021): 13-24.

¹⁰ Paul Latreille, "Alternative Dispute Resolution," in *Encyclopedia of Human Resource Management: Second Edition*, 2023, 13-14, <https://doi.org/10.1515/9789882204843-013>.

¹¹ Dwi Sriyantini, *Prinsip Mediasi Nonlitigasi Sebagai Alternatif Penyelesaian Sengketa Perdata Di Indonesia*, Tesis, 2011.

¹² Tumanda Tamba and Mukharom Mukharom, "Efektivitas Peran Mediator Dalam Penyelesaian Sengketa Non Litigasi Dalam Bidang Bisnis Maupun Hukum," *Jurnal Ilmiah Mahasiswa Perbankan Syariah (JIMPA)* 3, no. 2 (2023): 445-60, <https://doi.org/10.36908/jimpa.v3i2.247>.

dispute resolution, including domestic disputes, because it is more familial in nature and is carried out voluntarily, peacefully, and conditionally because it is not bound by procedural law¹³. However, peaceful dispute resolution through mediation is a form of dispute resolution that reflects the nature of Indonesian society that always works together and is peaceful, as well as family peace¹⁴. In addition, the method of resolving conflicts through mediation is more in line with the example given in the Qur'an (Qur'an 4:35).¹⁵

However, to resolve disputes, most people choose the judicial system over mediation because the success rate of mediation is still very low. As a result of the report on the implementation of PTA Padang activities in 2022 published on sipp.ptapadang.go.id, Religious Courts throughout West Sumatra received 15,655 cases. Of the 9,087 family dispute cases received (talaq divorce, lawsuit divorce, and joint property), only 1,170, or 12.88% of the cases, were processed through mediation.

Based on the above data, a comprehensive study of mediation as a resolution of domestic disputes must be carried out regarding the problem and its prospects. The low quantity of the use of mediation in the Religious Court as a juridical institution authorized to adjudicate domestic dispute cases illustrates the ineffectiveness of mediation that is carried out in litigation. Therefore, in this study, it will be described about non-litigation mediation as an alternative dispute resolution that prioritizes the concept of *ishlah* (peace) and conflict management. The description is accompanied by an analysis of opportunities and challenges in its implementation.

Method

This research uses a qualitative method through a literature study¹⁶. Data analysis techniques refer to the model suggested by Miles and Huberman which includes data reduction, data presentation,

¹³ Sarfika Datumula, "Mediasi Dalam Penyelesaian Perkara Perceraian Di Luar Pengadilan," *Innovative: Journal Of Social Science Research* 3, no. 2 (2023): 14550–64, <https://doi.org/10.31004/innovative.v3i2.2090>.

¹⁴ Faisol Rizal, "Peran Mediasi Sebagai Salah Satu Solusi Alternatif Penyelesaian Sengketa," *Minhaj: Jurnal Ilmu Syariah* 3, no. 1 (2022): 17–30.

¹⁵ Djawas and Samad, "Conflict, Traditional, and Family Resistance: The Pattern of Dispute Resolution in Acehese Community According to Islamic Law."

¹⁶ Jhon W. Creswell, *Research Design: Pendekatan Metode Kualitatif, Kuantitatif, Dan Campuran*, 4th ed. (Yogyakarta: Pustaka Pelajar, 2021).

conclusion drawn/verification¹⁷. The stages in the analysis of research data are the study of references to mediation in the reconciliation of domestic disputes in the form of books, relevant articles, and other relevant sources. The information obtained is then classified to be further interpreted and verified in accordance with the concept of mediation as a resolution in family dispute resolution to be presented in the form of a descriptive narrative. Conclusion is made deductively. Testing the validity of the data uses a credibility test by increasing the researcher's diligence in assessing opportunities and challenging the implementation of mediation in marriage dispute cases.

FAMILY CONFLICT

A dispute is a dispute between two parties that occurs due to a difference of opinion about a particular interest or right that causes legal consequences for both¹⁸. The family is the smallest social structure that is tied to each other by lineage¹⁹. The simplest family consists of a husband, wife, and children living together. However, the household is a place where family members interact, fulfill their rights and obligations, and love each other.

¹⁷ Matthew B. Milles and Michael A. Huberman, *Qualitative Data Analysis*. (Saldana, 1984).

¹⁸ C J Menkel-Meadow et al., *Dispute Resolution: Beyond the Adversarial Model*, Aspen Casebook Series (Aspen Publishing, 2010), <https://books.google.co.id/books?id=omxuDwAAQBAJ>.

¹⁹ Dear Sukoco, Fahmi Hidayat, and Wisnu Wardhana, "Analisis Struktur Sosial Ibu Rumah Tangga Dalam Strategi Peningkatan Kesejahteraan Keluarga," *Antroposen: Journal of Social Studies and Humaniora* 2, no. 1 (2023): 33-45, <https://doi.org/10.33830/antroposen.v2i1.5094>.

Fostering a household requires many things, such as personal maturity²⁰ and maturity²¹, financial readiness²², mental readiness,²³ and readiness of knowledge and awareness²⁴. Thus, the household that is built will fulfill the purpose of marriage, which is to create a household that is sakinah, mawaddah, and grace²⁵. Life shows that harmony does not always color home life. Conflicts sometimes arise due to the incompatibility of some elements, as well as irreconcilable differences between family members²⁶. Not infrequently, initial disputes develop into disputes that eventually lead to divorce.

Therefore, there are several backgrounds that can contribute to the emergence of domestic disputes, including: internal factors, for example; factors of the maturity of the partner²⁷, for example; couples who are mentally and mentally immature tend to be not ready to face problems in domestic life. Emotional factors²⁸, as well as the unstable

²⁰ Reza Zulaifi, Ahmad Yani, and M. Zainuddin, "Penyuluhan Upaya Pencegahan Pernikahan Dini," *Jurnal Dedikasi Madani* 1, no. 1 (2022): 1, <https://doi.org/10.33394/jdm.v1i1.6483>.

²¹ Rosleny Marliani, "Sakralitas Pernikahan Dan Kedewasaan Diri Dalam Analisis Resiliensi Keluarga Muslim Di Kota Bandung," *Journal of Islamic and Contemporary Psychology (JICOP)* 3, no. 1s (2023): 1-15, <https://doi.org/10.25299/jicop.v3i1s.12339>.

²² Humaerah Nisai, "Pengambilan Keputusan Oleh Remaja Perempuan (Studi Kasus Pada Remaja Akhir Dalam Pengambilan Keputusan Untuk Menikah)," *Jurnal Ilmu Kesejahteraan Sosial HUMANITAS*, 2023, <https://journal.unpas.ac.id/index.php/humanitas/article/view/9706%0Ahttps://journal.unpas.ac.id/index.php/humanitas/article/download/9706/4477>.

²³ Muhammad Andri, Mahmutarom HR, and Ahmad Khisni, "The Ideal Age of Marriage as an Effort to Establish an Ideal Family," *UNIFIKASI: Jurnal Ilmu Hukum* 7, no. 1 (2020): 70, <https://doi.org/10.25134/unifikasi.v7i1.2695>.

²⁴ Etsuko Sugawara and Hiroshi Nikaido, "Properties of AdeABC and AdeIJK Efflux Systems of *Acinetobacter Baumannii* Compared with Those of the AcrAB-TolC System of *Escherichia Coli*," *Antimicrobial Agents and Chemotherapy* 58, no. 12 (2014): 7250-57, <https://doi.org/10.1128/AAC.03728-14>.

²⁵ Syamsul Bahri, Makmur Syarif, and Eficandra Eficandra, "Aktualisasi Kaidah Al-Umuru Bi Maqashidiha Dalam Pencatatan Perkawinan Di Indonesia," *El-Hekam* 7, no. 2 (2022): 241, <https://doi.org/10.31958/jeh.v7i2.6924>.

²⁶ Amany Lubis, *Ketahanan Keluarga Dalam Perspektif Hukum Islam, Majelis Ulama Indonesia* (Tangerang Selatan: Pustaka Cendekiawan Muda, 2018).

²⁷ Mohammad Najich Chamdi, "Keluarga Sakinah Dan Problematikanya Dalam Rumah Tangga," *Syariati: Jurnal Studi Al-Qur'an Dan Hukum* 6, no. 1 (2020): 89-100, <https://doi.org/10.32699/syariati.v6i01.1241>.

²⁸ Yasin Arief et al., "Faktor-Faktor Yang Mempengaruhi Keharmonisan Rumah Tangga Muslim Di Jawa Tengah," *ADHKI: Journal of Islamic Family Law* 5, no. 1 (2023): 17-30, <https://doi.org/10.37876/adhki.v5i1.94>.

emotions of the partner, can also contribute to long-lasting conflicts. Commitment factor²⁹: If couples are not committed to their marriage, they will not value their marriage. In addition, the factors of religious understanding and religious knowledge are important factors³⁰. They will have difficulty dealing with all domestic problems if they do not understand science and religion. Second, external factors, including economic factors³¹ that have the potential to lead to conflict. Apart from the factor of domestic violence, one of these WIL or PIL is religious conversion³².

Family members are highly dependent on each other and have intense and ongoing relationships. Therefore, conflicts can arise in interactions like this. This conflict can occur between a spouse, between parents and children, or between children and parents³³. According to the explanation given in Article 49 of Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts, cases that can be categorized as domestic disputes include disputes due to neglect of obligations, disputes due to domestic violence, disputes over common property, disputes about child custody (hadlanah), and disputes about inheritance.

FAMILY DISPUTE RESOLUTION

Litigation Settlement

Dispute resolution techniques, including domestic disputes, are divided into two types: litigation and non-litigation. According to Rosnawati, the settlement of litigation disputes is the settlement of

²⁹ Lidya Nur Amana, Suryanto Suryanto, and Isrida Yul Arifiana, "Manajemen Kesetiaan Istri Yang Menjalani Long Distance Marriage Pada Istri Pelaut," *Psisula: Prosiding Berkala Psikologi* 1 (2020): 1, <https://doi.org/10.30659/psisula.v1i0.7697>.

³⁰ Mudzakir Mudzakir, "Pemikiran Islam Dalam Kaitannya Dengan Keluarga," *Jurnal Kajian Agama Hukum Dan Pendidikan Islam (KAHPI)* 1, no. 1 (2019): 30–52, <https://doi.org/10.32493/kahti.v1i1.p30-52>.

³¹ Rama Dhini Permasari, "Pandangan Hukum Keluarga Islam Terhadap Manajemen Konflik Ekonomi Dalam Rumah Tangga," *Mitsaqan Ghalizan* 1, no. 2 (2023): 48–62, <https://doi.org/10.33084/mg.v1i2.5135>.

³² Rama Dhini Permasari Johar and Hamda Sulfinadia, "Manajemen Konflik Sebagai Upaya Mempertahankan Keutuhan Rumah Tangga," *Journal Al-Ahkam XXI*, no. 1 (2020): 34–48, www.bps.go.id.

³³ Abdul Jalil, "Manajemen Konflik Dalam Keluarga Relevansinya Dalam Membentuk Keluarga Sakinah," *Al Magashidi: Jurnal Hukum Islam Nusantara*. 4, no. 1 (2021): 55–69.

disputes through a court process based on the judge's decision³⁴. The litigation settlement process is highly dependent on administrative laws and procedural law from the time the case is filed, examined, and decided until the case is resolved. Therefore, the process seems very formal and formal.

In Indonesia, the peaceful settlement of cases has long existed in the court system (*court annexed mediation*), also known as court annexed dispute resolution³⁵. Article 130 of the Criminal Code of Civil Procedure (IPC) states that if both parties appear on the appointed day, the district court, through the intermediary of its chairman, shall try to reconcile them. If peace occurs, then at the time of the trial a deed must be made that obliges both parties to carry out the agreement made. This letter or deed will have legal force and will be carried out as an ordinary judge's decision. By adding the mediation process to the court case procedure, the judge's obligation to reconcile the parties becomes greater. Mediation is a neutral and unbiased third-party dispute resolution method, which encourages both parties to reach a solution that is favorable to both parties³⁶. The Supreme Court's rules govern this integration, which applies to all judicial environments under the Supreme Court, including religious courts. PERMA RI No. 2 of 2003—which was later replaced by PERMA No. 1 of 2008—was issued by the Supreme Court of the Republic of Indonesia in 2003³⁷.

The mediation process begins with the pre-mediation stage³⁸. On the first day of the trial, the examining judge asked both parties to mediate. If one of the parties is unable to do so, the panel of judges

³⁴ Emy Rosnawati et al., "Mediasi Penal Sebagai Alternatif Penyelesaian Perkara Kekerasan Dalam Rumah Tangga," *De Jure: Jurnal Hukum Dan Syar'iah* 10, no. 2 (2018): 61–71, <https://doi.org/10.18860/j-fsh.v10i2.4888>.

³⁵ Erik Sabti Rahmawati, "Implikasi Mediasi Bagi Para Pihak Yang Berperkara Di Pengadilan Agama Malang," *De Jure: Jurnal Hukum Dan Syar'iah* 8, no. 1 (2016): 1–14, <https://doi.org/10.18860/j-fsh.v8i1.3725>.

³⁶ Indah Tria Sari Simatupang, Ibrahim Siregar, and Ikhwanuddin Harahap, "Pengetahuan Peran Mediator Dalam Proses Mediasi Perkara Perceraian," *Wahana Didaktika: Jurnal Ilmu Kependidikan* 22, no. 1 (2023): 18–34, <https://doi.org/10.31851/wahanadidaktika.v22i1.12925>.

³⁷ Erik Yesak, "Daya Kekuatan Mengikat Putusan Pasca Keluarnya Peraturan Mahkamah Agung RI No. 1 Tahun 2003 Jo PERMA No. 1 Tahun 2016 Tentang Prosedur Mediasi Di Pengadilan," *Lex Administratum* 66, no. 3 (2018): 173–82.

³⁸ Suryaningsih, "Prosedur Penyelesaian Perkara Perdata Melalui Mediasi," *MAKSIGAMA* 16, no. 1 (2022): 79–89, <https://doi.org/10.37303/maksigama.v16i1.118>.

adjourns the trial to give the disputing parties a chance to mediate. At this point, too, the parties are given the opportunity to select a mediator from the list of names available on the first day of the hearing, or at most the next two business days. If within that period, the parties cannot reach an agreement on the selection of the desired mediator, the chairman of the hakim panel immediately appoints a judge who is not the subject matter examiner to carry out the function of a mediator, in accordance with Article 11 of PERMA RI Number 1 of 2008. Mediators that can be chosen by the parties are among the following: a) Judges who do not examine cases in the relevant court; b) Advocate or legal academic; c) A non-legal profession that is considered by the party to be proficient or experienced in the subject matter of the dispute; d) Judge of the case examining panel; or e) a combination between the mediators mentioned above, a combination between the mediators mentioned above, or a combination between the mediators mentioned above

In the examination of disputes in court, all parties are positioned as opponents of each other until finally there is a winning party and a losing party³⁹. Because there is a losing party, the dispute resolution process in court is a win-loss. Because one of the people has done it. As a result, even though the case has been resolved, there remains dissatisfaction and disappointment on the part of certain parties. Therefore, once a cooperative settlement approach fails to reach an agreement, litigation, particularly in civil cases, should be used as a last resort.

Non-Litigation Settlement

A method of dispute resolution that works together outside of court is known as non-litigation dispute resolution⁴⁰. This dispute resolution method is better known as *Alternative Dispute Resolution* (ADR) or *Alternative Dispute Resolution* (APS) in Indonesia. One alternative to dispute resolution is a non-litigation settlement system that is not bound by procedural and administrative rules, often results in favorable rulings, and is able to meet common interests. Non-

³⁹ Kamaruddin, "Autokritik Peraturan Mahkamah Agung No. 1 Tahun 2016 Terhadap Tingginya Tingkat Perceraian Di Pengadilan Agama Sulawesi Tenggara Tahun 2013-2017," *MIZANI: Wacana Hukum, Ekonomi Dan Keagamaan* 6, no. 2 (2019): 131-50.

⁴⁰ Rika Aryati et al., "Alternatif Penyelesaian Sengketa (APS) Perdata Dalam Hukum Acara Perdata," *Journal of Social Science and Digital Marketing* 3, no. 2 (2023): 47-62, <https://doi.org/10.47927/jssdm.v3i2.670>.

litigation settlements are carried out in a peaceful and collaborative manner. Individual decisions do not solve this problem; Instead, they resolve it through agreement or deliberation. Since no party is harmed, non-litigation dispute resolution is more beneficial for all parties.

In non-litigation dispute resolution, there are several principles that must be considered⁴¹. The first is the principle of voluntary, which means that both parties must resolve their disputes voluntarily, free from the pressure of the other party. The second is the principle of neutrality, which means that the third party using the services of a third party as an intermediary must be really the party involved in the dispute. Since both parties must agree to the presence of the other party in the dispute resolution process, a non-litigation settlement will never occur. The examination itself must be carried out in a hearing open to the public, in contrast to the litigation process.

Negotiation, mediation, conciliation, consultation, and expert assessment are some of the methods that can be used to resolve non-litigation disputes⁴². Negotiation is the process of resolving disputes through negotiations that involve bargaining. Mediation is a dispute resolution method in which a neutral third party acts as a mediator. Conciliation is the resolution of conflicts through consensus deliberation carried out by both parties with the help or support of a third party who acts as a conciliator and neutral. A request for an opinion from a consultant is known as a consultation. Expert judgment, on the other hand, is the result of scientific research conducted by an expert on a disputed issue so that it becomes clear and easy to understand⁴³.

Family Dispute Resolution

Mediation is a method of peaceful dispute resolution that uses an intermediary, a third party. Mediation is a well-cooperated dispute

⁴¹ Ni Made Trisna Dewi, "Penyelesaian Sengketa Non Litigasi Dalam Penyelesaian Sengketa Perdata," *Jurnal Analisis Hukum* 5, no. 1 (2022): 81-89, <https://doi.org/10.38043/jah.v5i1.3223>.

⁴² Dara Quthni Effida, Ilka Sandela, and Asmaul Husna, "Resolusi Konflik: Penyelesaian Sengketa Non-Litigasi Melalui Komunikasi Peradilan Adat Di Desa Bumi Sari," *Lok Seva: Journal of Contemporary Community Service* 1, no. 1 (2023): 44, <https://doi.org/10.35308/lokseva.v1i1.6355>.

⁴³ Amran Suadi, "Preference of Non-Litigation Procedures through Alternative Dispute Resolution in the Settlement of Sharia Economic Disputes," *Lex Publica* 5, no. 2 (2018): 1-12, <https://doi.org/10.58829/lp.5.2.2018.1-12>.

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resolution method⁴⁴. Since the result is a consensus or agreement, not a third-party decision, both parties can work together and agree⁴⁵. No party is harmed because the dispute is resolved through mutual agreement, which is a mutual desire and interest. By maintaining the integrity of the family and the kinship relationship between the two parties, this technical settlement is a dispute resolution that benefits all parties.

Since only both parties and the mediator have the right to be present during the settlement process through mediation, the confidentiality of both parties will be maintained. As long as both parties do not give permission, the mediation process is attended only by both parties and the mediator, without the presence of others⁴⁶. Thus, the advantages of mediation are shorter time, lower costs, and simpler procedures because they are not bound by procedural law. In addition, the mediation process is more flexible, flexible, and conditional because it can be adjusted to the circumstances and conditions of each party.

Mediation has several advantages, but one major drawback. The peace agreement made has no legal and executive force, so either of the disputing parties will not abide by the content of the agreement in the future, and anyone, including the mediator, cannot force the disputing party to comply with the terms of the agreement⁴⁷. Therefore, a peace agreement must be requested from the court to be made as a peace deed so that the outcome of the mediation settlement in the form of a peace agreement has permanent legal force and executive authority. Peace deeds cannot be appealed or challenged, as their force is the same as a permanent legal decision. Furthermore, a peace deed has executory power, which means that it can be enforced if one of the parties to the dispute is unwilling to voluntarily carry out the contents of the deed.

⁴⁴ Ihtesham Ullah Khan, Nurah Sabahiah Mohamed, and Sodiq Omoola, "Alternative Dispute Resolution (ADR) in Resolving Community Disputes in Pakistan: Learning From Malaysia'S Experience," *IJUM Law Journal* 33, no. 1 (2025): 167–200, <https://doi.org/10.31436/iiumlj.v33i1.1029>.

⁴⁵ Dian Maris Rahmah, "Optimalisasi Penyelesaian Sengketa Melalui Mediasi Di Pengadilan," *Jurnal Bina Mulia Hukum* 4, no. 1 (2019): 1–12, <https://doi.org/10.23920/jbmh.v4i1.174>.

⁴⁶ Muten Nuna et al., "Esensi Penyelesaian Sengketa Perdata Melalui Mediasi Nonlitigasi," *Journal of Judicial Review* 23, no. 1 (2021): 85–92, <https://doi.org/10.37253/jjr.v23i1.4390>.

⁴⁷ Dedy Mulyana, "Peningkatan Status Hukum Kesepakatan Perdamaian Oleh Mediator Di Luar Pengadilan Menjadi Akta Perdamaian," *ADHAPER: Jurnal Hukum Acara Perdata* 8, no. 1 (2022): 19–31, <https://doi.org/10.36913/jhaper.v8i1.168>.

Due to some of the advantages offered by the dispute resolution process through mediation above, it is considered more effective for resolving domestic disputes. This is because disputes that arise in the domestic environment are personal problems rather than public problems that must be made public to the general public. Then a domestic dispute is a dispute that cannot be borne by anyone. They just need to be resolved amicably to maintain kinship relations. It is based on Islamic marriage principles that prevent divorce and facilitate marriage⁴⁸. With the intention that the marital bond is maintained and divorce does not occur just because of a dispute between husband and wife, which must be resolved amicably rather than ending the marriage. As with any domestic problem, it would be nice if the dispute could be resolved amicably rather than damaging the relationship.

In the Qur'an, there are guidelines for attitude, namely in surah Al-Anbiya', which can be used to resolve domestic disputes peacefully. Verse 35 of the Holy Book In this verse, Allah shows syiqaq as one of the methods to resolve domestic disputes. In other words, choosing a judge as a mediator or peacemaker for the disputed couple.

Mediation as Family Dispute Reconciliation

A special effort that is applicable and skill-based by a mediator is necessary to achieve the goal of mediation, which is to resolve the issue peacefully through the creation of a peace agreement, and the restoration of circumstances to maintain good relations⁴⁹. There are several mediation techniques in domestic dispute resolution, such as: not violating the principle of Alternative Dispute Resolution (ADR)

In order for mediation to run effectively and efficiently, several principles must be considered⁵⁰. First, the principle of voluntariness. This means that mediation should only be based on the voluntary wishes of both parties, not on wishes, orders, or coercion. The authors assume

⁴⁸ Reo Zaputra, "Tujuan Dan Hikmah Nikah Menurut Perspektif Al-Qur'an," *Jurnal Ilmiah Falsafah: Jurnal Kajian Filsafat, Teologi Dan Humaniora* 9, no. 1 (2023): 42–49, <https://doi.org/10.37567/jif.v9i1.2148>.

⁴⁹ Febri Handayani and Syafliwir Syafliwir, "Implementasi Mediasi Dalam Penyelesaian Perkara Perceraian Di Pengadilan Agama," *Jurnal Al-Himayah* 1, no. 2 (2017): 227–50, <https://journal.iaingorontalo.ac.id/index.php/ah/article/view/586>.

⁵⁰ Christopher W. Moore and NIGEL KEMP, "The Mediation Process: Practical Strategies for Resolving Conflict," *R&D Management* 18, no. 1 (1988): 79–89, <https://doi.org/10.1111/j.1467-9310.1988.tb00569.x>.

that the low success rate of mediation in the courts so far may be due to the absence of a voluntary principle. This is because mediation in court is only carried out according to legal procedures and is not based on the voluntary wishes of both parties to the dispute. The second principle is freedom. Since mediation as an alternative dispute resolution is flexible and conditional, the parties have the right to choose and determine the method to be used for mediation. Third, approval. In the implementation of mediation, everything must start with an agreement between the two parties to the dispute, starting from the selection of a mediator, determining the schedule, place, and budget, to the outcome of the agreement. This is not the desire or choice of either party. Fourth, active involvement of both parties: The principle of agreement results in the active involvement of both parties. To solve the problem, both parties must be actively involved.

Although the mediator can only act as a mediator, not the deal-maker⁵¹. All parties must reach such an agreement unconditionally. Therefore, mediation as part of ADR is a unique solution because they are the ones that raise disputes and resolve them. It is not a third party that decides the case; Instead, the matter is settled based on their agreement. Fifth, the principle of neutrality says that the chosen mediator must be neutral, impartial or biased towards one of the parties to the dispute, and the agreement made is not partial or beneficial to one of the parties to the dispute but detrimental to the other party. The sixth principle is the principle of good faith. This concept says that each party must commit to resolving the issue peacefully so that they can unite and cooperate in the implementation of mediation.

Strengthening the Function and Role of Mediators

Strengthening the role and function of mediators is one of the suggestions so that mediation in resolving domestic disputes runs smoothly and effectively so that peace is achieved. Mediators do many things, such as maintaining neutrality in the discussions, keeping the negotiations running according to the rules, controlling the feelings of the parties, encouraging the parties to express their opinions, assessing the progress of the negotiations, pushing the parties towards a solution, making and drafting the minutes of the negotiations, and making the parties aware that differences are not a fight.

⁵¹ Simatupang, Siregar, and Harahap, "Pengetahuan Peran Mediator Dalam Proses Mediasi Perkara Perceraian."

One of the functions of mediators is as a catalyst, which means they must be able to create a good atmosphere during discussions or negotiations. A mediator must be able to teach the dynamics of differences between the parties as an educator. A mediator must be able to translate the wishes of one party to the other by using more subtle language without compromising the intent of the requesting party. A mediator must be able to provide theoretical and practical information on the subject matter in dispute as a resource person. A mediator is considered a bearer of bad news when they have to hold separate meetings (Caucasus) to gather unpleasant information, which if conveyed in open negotiations will disturb the emotions of the other party. A mediator must have the ability to provide a reasonable explanation in cases where the other party shows excessive or overly idealistic desires—which would be difficult to achieve—as an agent of reality.

To do their job well, a mediator must have special skills. These include social skills, professional skills, and personal skills. Abilities related to the mediator's abilities are called personal skills⁵² Social skills include acting objectively and nondiscriminatory, communicating well, and adapting to different conflict backgrounds. Skills combined with expertise in negotiation are known as professional skills.

Mediation as an Alternative Dispute Resolution

In family ties, the relationship between family members is very strong and lasts a long time. There is a possibility that conflicts will arise due to differences of opinion, interests, or even unlawful acts, which will cause one party to feel aggrieved and cause a dispute. Disputes will develop into conflicts if they are not resolved properly. When there is no way to reach agreement between existing differences, conflict arises. Often, situations like this end in disconnected lines of communication because each party does not take a solution by putting the other party's fate and interests aside.

Interests, rights, and power status are three things that are commonly defended by the parties to the dispute. Each party wants its

⁵² Susanti Adi Nugroho, *Manfaat Mediasi Sebagai Alternatif Penyelesaian Sengketa* (Kencana, 2022), <https://books.google.co.id/books?id=tKbJDwAAQBAJ>.

interests to be achieved, its rights fulfilled, and its status maintained⁵³. So, to resolve disputes effectively, these three things must be considered. In addition, both parties' right to be heard must be met. As mentioned earlier, there are two methods of resolving domestic disputes: court decision-making and consensus deliberation, one of which is through mediation. Mediation is considered most effective if it is carried out in a family manner and prioritizes the recovery of the situation.

Mediation is one way to resolve conflicts for several reasons. This reason can be considered an opportunity for mediation to develop and become one of the methods of dispute resolution. It includes, among others: Family peace, deliberation, and cooperation are socio-cultural characteristics of Indonesian society, so mediation as a method of peaceful settlement is suitable.

Mediation itself is a dispute resolution method that prioritizes the recovery of both parties. The mediation process saves time and costs because it is simpler, flexible, and conditional. Trials, which rely on procedural law, require longer time, greater costs, and win-lose verdicts, which often lead to dissatisfaction or even revenge from the losing party.

In addition to some reasons to develop mediation opportunities, there are several challenges that must be considered so that the problems can be overcome and no longer hinder the mediation opportunities themselves. Among these issues are: Since mediation institutions are not yet fully known to the public, many people still do not understand them and believe that the judiciary is the only way of resolving disputes that provides legal guarantees and certainty. If a peace agreement is not submitted to the court, the outcome of the mediation has no legal force. As a result, double or twin judicial proceedings arise. It is difficult to achieve peace because the level of conflict between the parties is already very high.

Conclusion

From the above explanation, it can be concluded that mediation is the appropriate, efficient, and effective method to resolve domestic disputes. Mediation is a dispute resolution method that eliminates the judicial process. Mediation is a method of peaceful conflict resolution that uses the services of a third party as an intermediary or mediator.

⁵³ A. Ruibal et al., "[Serum CA 15.3 in Women with Non-Tumor Breast Pathologies. Initial Results].," *Medicina Clinica* 87, no. 9 (September 27, 1986): 393-94, <http://www.ncbi.nlm.nih.gov/pubmed/3467152>.

This is in accordance with the Qur'an surah Al-Nisa verse 35. One of the advantages of resolving domestic disputes through mediation is that it will be resolved amicably without leaving any latent conflict on both sides because mediation results in an agreement or mutual consensus between the two parties to the dispute. Thus, no one loses and no one wins, but rather both win.

An applicative methodology based on the skills of the mediator is needed so that the implementation of mediation can resolve domestic disputes effectively and efficiently. This includes paying attention to and heeding the principles of Alternative Dispute Resolution (ADR). These resolutions generally strengthen the role and function of mediators and maximize their skills. Mediation has many opportunities to develop and be used as one of the methods of dispute resolution.

One opportunity is that mediation is in accordance with the social and cultural culture of Indonesian society, many critics express dissatisfaction with the judicial process, prioritize the recovery of the situation, and some of the advantages offered by the mediation process. In addition to the opportunities, there are several issues that must be addressed. These include the socialization of poor mediation institutions, uncertified mediation institutions and uncertified mediators, the emergence of double judicial processes as peace treaties must also be left to peace laws, and the still lack of expertise and skills of mediators, leading to conflicts and many parties in bad faith during the process.

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