

Family Dispute Resolution by Litigation: Between Litigation and Mediation Efforts as a Reconciliative Solution

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Abstract : *This study aims to determine the settlement of family disputes through litigation. The method used in this study is qualitative with the type of library research and uses an empirical normative-juridical approach, where the study focuses on the reciprocal correlation between law and the phenomena that occur. The results of the study indicate that the settlement of family disputes through litigation is a dispute resolution method in which there is a process of mutually disabling opposing evidence (op tegenspraak) and producing a win-lose solution. In fact, the resolution of household problems outside the court, such as mediation which in traditional societies is often carried out at the village level or tahkim which is carried out in large families through negotiation and arbitration. However, in the modern era, people now prefer to resolve family disputes through litigation in court so that married couples are forced to choose a court decision which mostly ends in divorce.*

Keywords : *Dispute Resolution, Family, Litigation*

Abstrak : Penelitian ini bertujuan untuk mengetahui penyelesaian sengketa keluarga melalui litigasi. Metode yang digunakan dalam penelitian ini adalah kualitatif dengan jenis penelitian kepustakaan dan menggunakan pendekatan yuridis normatif empiris, dimana penelitian difokuskan pada korelasi timbal balik antara hukum dengan fenomena yang terjadi. Hasil penelitian menunjukkan bahwa penyelesaian sengketa keluarga melalui litigasi merupakan suatu metode penyelesaian sengketa yang di dalamnya terdapat proses saling melumpuhkan alat bukti yang berlawanan (op tegenspraak) dan menghasilkan solusi menang-kalah. Padahal, penyelesaian masalah rumah tangga di luar pengadilan, seperti mediasi yang dalam masyarakat tradisional sering dilakukan di tingkat desa atau tahkim yang dilakukan dalam keluarga besar melalui perundingan dan arbitrase. Namun, di era modern saat ini masyarakat lebih memilih menyelesaikan sengketa keluarga melalui litigasi di pengadilan sehingga pasangan suami istri terpaksa memilih putusan pengadilan yang sebagian besar berakhir dengan perceraian.

Kata kunci : Penyelesaian Sengketa, Keluarga, Litigasi



I. INTRODUCTION

Indonesia is a rule of law country, where the behavior of its citizens is governed by various regulations. These rules are also accompanied by sanctions that citizens will face if they violate the applicable regulations. Problems or conflicts in the family often arise when the partners' expectations are not met or when the realities of life do not align with each other's expectations. If these conflicts are not resolved wisely and carefully, they can have a negative impact on the hope of building a harmonious household, and may even lead to divorce. In many cases, the pressure in family life actually becomes greater, which is something no one ever desires.

Unfortunately, the divorce rate in Indonesia continues to rise year after year. According to data released by the Central Bureau of Statistics (BPS) of Indonesia, there were 408,347 recorded divorce cases in 2024. This figure reflects the weakness of efforts to resolve household issues outside of court, such as mediation typically conducted at the village level or arbitration pursued within the extended family through negotiation and arbitration.¹

However, in this modern era, many couples prefer to resolve family disputes through litigation in court. This often forces them to accept the court's decision, which frequently ends in divorce. Family dispute resolution in Indonesia tends to follow a litigious pattern, meaning it is more often resolved through court processes. As we know, the court resolution mechanism emphasizes an adversarial system, where each party opposes each other by presenting evidence to support their arguments. As a result, this process often leads to win-lose decisions.

Initially, the characteristics of dispute resolution through litigation were well accepted and considered effective in addressing various issues in the field of family law. However, the strong litigious culture in society makes the option of out-of-court resolution less appealing. This causes many family disputes to remain centered around litigation mechanisms. Although the court has rendered a decision, these disputes often remain "unresolved" because the implications of the decision are not well accommodated, and they may even be overlooked. A clear example can be seen in divorce cases. One of the reasons behind this pattern is the desire to obtain a quick and binding decision. However, there are actually various alternative resolutions for household disputes or conflicts, whether through approaches based on Islamic principles, positive law, or methods that prioritize familial and cultural values, which should be worth considering.²

II. RESEARCH METHOD

The research method used in this study is qualitative with a library research type and employs an empirical normative-juridical approach, where the study focuses on the reciprocal correlation between law and the phenomena that occur. Law is not only a study of literature in law in books but can also actively play a role in realizing social harmony among humans by embracing the concept of law as a tool of social engineering. Moreover, it is also important to understand law in action, where the resolution of family disputes through litigation in court seeks ideal, effective, and efficient alternative solutions for every social problem, especially family issues. More than that, it is also necessary to understand the law in action where family dispute resolution through litigation in court

¹ Khaliludin, *Alternatif Penyelesaian Sengketa Keluarga Islam Indonesia*. Posita: Jurnal Hukum Keluarga Islam, vol. 1 no.1 (Juni, 2023); hlm. 17

² Asnawi Natsir, *Family Dispute Resolution dan Collaborative Practice: Prospek Penerapannya dalam Penyelesaian Sengketa Hukum Keluarga di Indonesia*. Al-USroh vol3 no.2 (2023)

seeks ideal, effective, and efficient alternative solutions for every social problem, especially family issues.

III. RESULT AND DISCUSSION

Resolution of Family Disputes Through Litigation (Court)

A dispute is a situation where one party feels aggrieved by another party and then expresses that dissatisfaction. When there are differences of opinion, disputes can arise. The causes of this dispute can vary, one of which is differing objectives and the relationship between both parties, such as in the context of family. Dispute resolution for the parties involved can be carried out through litigation, namely through state judicial institutions. That means the case will be examined by a judge in a series of court sessions. The administration of justice is regulated by the Supreme Court and the judicial bodies under it, including the General Court, Religious Court, Military Court, Administrative Court, and also the Constitutional Court. As an institution executing judicial power, the court has the primary duty to receive, examine, adjudicate, and resolve every dispute submitted, with the aim of upholding law and justice based on Pancasila, for the realization of the rule of law in the Republic of Indonesia.

One of the advantages of resolving disputes through litigation is that court decisions have clear legal force and are final. This process creates legal certainty with a clear position of winning or losing. In addition, court decisions can be enforced, especially if the losing party refuses to comply with the content of the ruling, through an execution process. According to Suyud Margono, litigation can be understood as a lawsuit over a conflict that has been ritualized to replace the actual conflict. In this process, each party presents two opposing choices to a decision-maker.³

According to Amriani Nurmaningsih, litigation is a process of dispute resolution in court, where each party in dispute confronts each other to defend their rights. The final result of this litigation process is a decision that results in a win-lose situation.⁴ Meanwhile, the word "peradilan" comes from the root word "adil," with the prefix "per" and the suffix "an." The word "peradilan" as a translation of "qadha," which means "to decide," "to execute," "to resolve." The word "pengadilan" in the Encyclopedia of Indonesia Volume 5 refers to a body or organization established by the State to manage and adjudicate legal disputes. All court decisions are made "in the name of the Republic of Indonesia" or "in the name of justice." Mahadi stated that the court refers to a structure of institutions that adjudicate cases. In carrying out its duties, the court administers justice.

1. General Judiciary

General Judiciary is the judicial environment under the Supreme Court that exercises judicial power for the general public seeking justice. General courts include:

- a) The High Court is located in the provincial capital and has jurisdiction covering the entire province. As a judicial institution, the High Court functions as the first and last court to resolve jurisdictional disputes between District Courts within its jurisdiction. The formation of the structure of the High Court is carried out based on the provisions of the Law, which covers the jurisdictional area of the province. In its organization, the High Court consists of Leadership (a Chief Justice and a Deputy Chief Justice), High Court Judges, Court Clerks, Secretaries, and Staff.⁵

³ Nurmaningsih Amriani, *Mediasi Alternatif Penyelesaian Sengketa di Pengadilan*, Grafindo Persada, Jakarta, 2012, hlm. 16

⁴ Ahmad Warson Munawir, *Al-Munawwir* (Kamus Arab-Indonesia), (Cet.I, Jakarta:1996), hlm 7

⁵ R.Subekti dan R. Tjitrosoedibio, *Kamus Hukum* (Jakarta: Pradya Paramita,1971), hlm 82

- b) The District Court is a judicial institution that plays a role in examining and deciding on daily criminal and civil cases. This court is located in the capital of each district or city, and its jurisdiction covers the entire area of the respective district/city. The duties of the district court include the examination, judgment, and resolution of criminal and civil cases at the first level. In addition, this court can also provide explanations, considerations, and legal advice to local government agencies if requested.

2. Religious Courts

The scope of religious courts includes examining, adjudicating, and resolving cases at the first level among people who are Muslim. The areas of cases handled include Marriage, Inheritance, Wills, Gifts, Endowments, Zakat, Charity, and Shariah Economics. Structure of religious courts Religious Courts (first instance court), High Religious Courts (appellate court), Special Courts.

3. Military Judiciary

The scope of military justice includes military judicial bodies, such as the Military Court, High Military Court, Main Military Court, and Combat Military Court.

4. Administrative Judiciary

Administrative courts are institutions that oversee actions taken by the government and resolve administrative disputes. This institution is also known as a special court that focuses on resolving conflicts related to administration and personnel affairs. Based on the explanation above, of the four existing judicial institutions, only the Religious Court and the District Court can resolve family disputes through litigation. The Religious Court is an institution that specifically handles cases related to Muslims, while the District Court is a general court that deals with civil and criminal cases.

The Process of Resolving Family Disputes through Litigation

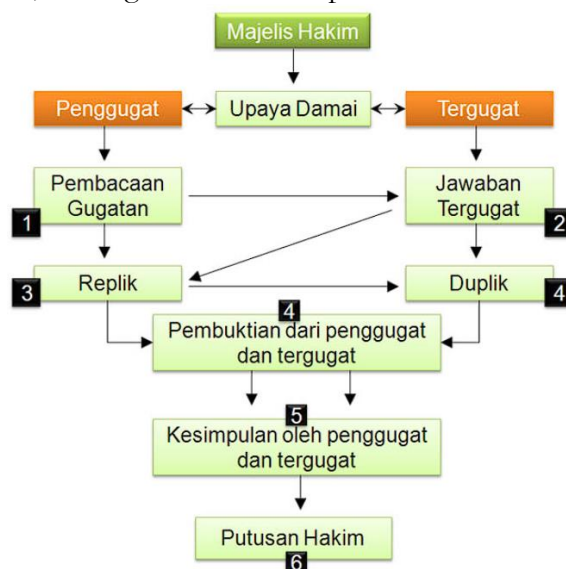
In resolving issues or what can also be referred to as family disputes, through litigation or known through court channels, it can go to the Religious Court for Muslims, and also to the District Court for non-Muslims. The procedure for registering a case at the Religious Court is as follows:

- a) First, the party visits the nearest Religious Court.
- b) Fill out the form that has been provided and given by the Information officer.
- c) After filling out the form, you will receive a queue number to go to the Posbakum.
- d) At Posbakum, we can consult, receive guidance, and also discuss the documents that need to be prepared and get assistance in drafting the lawsuit letter.
- e) After that, go to the Registration counter for registration, then you will be given a receipt to proceed to the payment counter.
- f) After paying the case deposit at the payment counter, wait to be called back to the registration counter, and you will receive a case number.
- g) After that, wait for a call from the court officer (bailiff) to come to the house regarding the trial schedule.

After receiving the court schedule, the plaintiff and defendant will visit the Religious Court to follow the trial proceedings. If the plaintiff and defendant attend until the end of the trial, the proceedings will be as follows:

- a) The first hearing, where the documents are examined, followed by mediation led by a mediator.
- b) The second hearing, reading of the plaintiff's petition.
- c) Third hearing, the defendant submits an answer.
- d) Fourth session, the plaintiff submitted a reply.
- e) Fifth session, the defendant submits a rebuttal.
- f) Sixth session, Evidence from witnesses of both the plaintiff and the defendant.

- g) Seventh session, conclusions from both parties, namely the plaintiff and the defendant.
- h) Eighth session, reading of the verdict.
- i) Ninth session, reading of the divorce pronouncement.



After the trial has been completed, it takes one month to wait for the issuance of the divorce certificate, which can be collected at the product collection counter. That is the process of resolving family disputes through litigation in the Religious Court.

Obstacles and Challenges in Resolving Family Disputes

Obstacles and challenges in resolving family disputes are issues that are often encountered during legal proceedings, whether through litigation in court or non-litigation methods such as mediation or counseling. Some challenges in resolving family disputes through litigation are:

1. The legal process in court often takes a long time and involves complex procedures, both administratively and technically. This situation can cause frustration for both parties and tends to worsen the already strained relationships among family members. The lengthy litigation process often creates additional tension between the disputing parties, especially in cases of divorce and child custody battles.⁶
2. Judicial or legal institutions often face issues regarding resources, including the number of judges, funding, and available facilities.⁷

This situation can affect the efficiency and effectiveness in handling dispute resolution. In addition to the existing challenges, the implementation of family dispute resolution through litigation also faces several obstacles, including:

- a) In various cultures, the family is often viewed as an institution that must be preserved and maintained. This makes the legal process related to divorce or child custody issues considered taboo or unacceptable in some societies. As a result, individuals often feel ashamed or afraid to file legal claims or involve third parties in conflict resolution.
- b) The existing gender influences in society can also affect the way family disputes

⁶ Kusnadi, *Proses Litigasi dalam Penyelesaian Sengketa Keluarga di Pengadilan Agama*. Jurnal Hukum Agama, Volume 15 (3) 2, 2018. Hlm. 45-61

⁷ Mulyadi. *Kendala Sosial dan Budaya dalam Penyelesaian Sengketa Keluarga*. Jurnal Sosial dan Hukum, volume 18(1) 2022, hlm. 44-56.

are resolved, especially in terms of child custody and property division. In some cultures or legal systems, women and children often become the disadvantaged parties in the decisions made.⁸

- c) Family disputes, such as separations or custody battles, involve many emotions that can worsen the resolution process. Tensions and feelings of hatred between parties often hinder the achievement of a fair agreement, despite mediation or counseling efforts. The influence of emotions such as hatred or the desire for revenge often becomes the main obstacle in mediation or peaceful dispute resolution.
- d) Many individuals involved in family conflicts do not fully understand their rights and the applicable legal procedures, making it difficult for them to access dispute resolution properly. The lack of knowledge or education regarding rights and legal procedures can hinder access to justice and prolong the resolution process.
- e) The use of legal services and high legal costs often become obstacles for low-income families to achieve legitimate dispute resolution. The high court fees and the need for legal assistance can limit access for families with limited economic conditions to the judicial system. Starting from the PNPB registration fee to the Relas Pbt stage to the Plaintiff/Defendant. The costs vary and are divided according to radius.⁹
- f) Ambiguity or inaccuracy in regulations governing the resolution of family conflicts can be an obstacle, whether in the division of inheritance, child custody, or other aspects. Thus, ambiguity in the law can lead to various interpretations, both at the court level and in the mediation process.

Family dispute resolution, whether through litigation or non-litigation paths, faces various obstacles and challenges. These obstacles include complex legal aspects, strong social and cultural influences, psychological and emotional factors affecting the parties involved, economic constraints, and challenges in the mediation process or out-of-court settlements. Therefore, a better understanding of the law, more efficient judicial system support, and efforts to build trust in the mediation process are needed so that family dispute resolutions can proceed fairly and efficiently. Therefore, a better understanding of the law, more efficient judicial system support, and efforts to build trust in the mediation process are needed so that family dispute resolution can proceed fairly and efficiently.¹⁰

Example Case Study of Family Dispute Resolution Through Litigation

It seems there is no text provided for translation. Please share the text you would like me to translate. One example of a case that handles family disputes through legal processes is the resolution of issues arising from divorce. In Article 41 of the Marriage Law, it is explained that the consequences of divorce include: 1) Both parents have the obligation to care for and educate their children, in the interest of the child, and if there is a dispute regarding custody, the decision will be made by the court; 2) The father is responsible for all educational and maintenance costs of the child, and if the father is unable to fulfill his responsibilities, the court may decide that the mother will bear those costs; 3) The court can order the ex-husband to provide alimony and determine the

⁸ Gunawan, A. *Penyelesaian Sengketa Keluarga Melalui Mediasi: Suatu Pendekatan Hukum*. Jurnal Hukum Keluarga, 32(1) 2020, hlm. 78-90.

⁹ Regulation of the Bandung Religious Court Number 1401/KPA/W10-A1/HK.05/XI/2024 concerning Advance Case Costs at the Bandung Religious Court

¹⁰ Zainuddin. *Mediasi Keluarga dalam Perspektif Legitimasi Hukum*. Jurnal Hukum Keluarga dan Masyarakat, volume 24 no.2 (2021), hlm. 82-95.

obligations that the ex-wife must fulfill.

In order to achieve justice based on the principle of the One and Only God, the Religious Court has made a decision in this divorce case: The Plaintiff is 45 years old, a Muslim, works as an entrepreneur (contractor), and resides on Jl. Palma, Libuo Village, Dungingi District, Gorontalo City, hereinafter referred to as the Plaintiff. The defendant is 30 years old, a Catholic Christian, also works as a freelancer, and lives at the same address, hereinafter referred to as the defendant. The Religious Court has conducted a case study; heard testimony from the plaintiff; and examined evidence in the form of documents and witness statements; related to the main issues that can be explained as follows: Considering that the Plaintiff has submitted a lawsuit without a date registered at the Gorontalo Religious Court's Registrar's Office on June 20, 2012, with case number: 180/Pdt.G/2012/PA.Gtlo and has presented several matters after making corrections, as follows:

That the plaintiff and the defendant are legally married, having wed on June 13, 2007, according to Marriage Certificate Excerpt No. 79/03/VIII/2007 dated August 1, 2007, which was made and signed by the Marriage Registrar Officer of the Dungingi District Religious Affairs Office, Gorontalo City;

1. That from the marriage of the plaintiff and the defendant, they have not been blessed with children;
2. That after getting married, the plaintiff and the defendant lived in harmony for 6 months, but as they entered the seventh month of their marriage, their household began to be colored by disputes and quarrels;
3. That the cause of the disputes and quarrels is because the defendant has returned to their religion, so the plaintiff is no longer willing to maintain a household with the defendant;
4. That because the defendant has frequently gone to church, the plaintiff no longer has a relationship as a husband and wife, and therefore the plaintiff and defendant have been separated for more than a year;
5. That realizing the respondent's attitude and actions, the plaintiff no longer wishes to remain married to the respondent and the best way to end the marriage is through divorce.

Based on the above reasons, the plaintiff requests that the Gorontalo Religious Court examine and adjudicate this case and subsequently issue a ruling with the following decree:

Primarily:

- a) Granting the plaintiff's lawsuit;
- b) Declaring the plaintiff and defendant divorced;
- c) Determining the legal costs of the case.

Subsidiary:

- If the Gorontalo Religious Court holds a different opinion, then please issue the fairest decision;

In an effort to strengthen their lawsuit, the plaintiff presented written evidence showing that they are a legitimate husband and wife, who were married on June 13, 2007, based on Marriage Certificate Excerpt No. 79/03/VIII/2007 dated August 1, 2007, which was prepared and signed by the Marriage Registrar at the Dungingi District Religious Affairs Office, Gorontalo City.

Therefore, after undergoing the court process, the Gorontalo Religious Court decided to grant a one ba'in shugra divorce from the defendant to the plaintiff. The legal considerations taken by the Judge in deciding this divorce case are: a. Government Regulation Article 19 letter (f) Number 9 of 1975; b. Compilation of Islamic Law Article 116 letter (f) and (h); c. Law Number 7 of 1989 paragraph (1); d. Law Number 3 of 2006

article 89; e. Law Number 1 of 1974 article 42 letter (f); f. Matters that must be considered by the Judge in rendering the Verdict. However, the Judge in stating the basis and reasons must include specific articles of laws and regulations related to the case being decided or based on unwritten law, jurisprudence, or legal doctrine. According to Article 178 paragraph (1) of the HIR, the Judge, by virtue of their position or ex officio, is obliged to provide all legal reasons not presented by the parties involved in the case. Based on Article 27 paragraph (1) of Law No. 14 of 1970, which was amended by Law No. 35 of 1999 and is currently stated in Article 28 paragraph (1) of Law No. 4 of 2004, the judge's duty is to formulate and explore the legal values that prevail in society.¹ Judges are required to resolve all parts of the lawsuit. The judge is not allowed to grant demands beyond what has been requested. The decision must be announced in public.² It must clearly and succinctly cover the core of the case, the response, the considerations, and the decision.³ Include the plaintiff's arguments briefly and clearly; and state the defendant's reasons; 4. Summary and limitations of the evidence presented. Relevant legal considerations and regulations; 5. Final decision; and it must mention the case costs. It can be seen that a change of religion can be used as a reason for divorce. Changing religions involves issues related to acts of apostasy, which can lead to significant problems that are difficult to resolve peacefully. Such changes can cause a rift in the husband-wife relationship, leading to divorce. In addition, changing religions brings about difficulties in determining the religious status of children, care, education, costs, as well as issues of inheritance and joint property between the couple. The impact of this religious conversion is not only felt by the couple but will also affect the family as a whole. Children become confused and hesitant in determining their religion, which can lead to depression. In the end, this becomes a reason to end the marriage. In the end, this was used as a reason to end the marriage.¹¹

IV. CONCLUSION

Litigation (court) resolution of family conflicts is a legal process used by individuals involved in disputes to obtain a legitimate ruling from a judge. Although this process can provide a legally recognized resolution, it often faces challenges such as lengthy durations, high costs, and increased emotional tension among the conflicting parties. Therefore, although the court provides legal certainty, non-judicial methods such as mediation and family counseling can be a more efficient choice, especially in disputes involving ongoing family relationships. The parties involved need to consider psychological and social aspects when choosing a conflict resolution method, with the aim of achieving lasting family harmony.

It seems there is no text provided for translation. Please share the text you'd like me to translate, and I'll be happy to assist you! In the above presentation, although court procedures play an important role in the legal system, resolutions that focus more on reconciliation and the restoration of relationships between individuals are more likely to provide long-term benefits. As a suggestion, there is a need to strengthen the family mediation system and provide deeper social support to reduce reliance on the court process in resolving family conflicts.

¹¹ Pongoliu Hamis, *Perceraian Akibat Peralihan Agama: Studi Kasus Tentang Putusan Abkim Pengadilan Agama Gorontalo*. Al-Mizan volume 11 no.1 (Juni 2015); hlm. 55

As a suggestion, strengthening the family mediation system and providing deeper social support are necessary to reduce dependence on the court process in resolving family conflicts. If it is necessary to use the litigation route for resolving family conflicts, its implementation should be maximized to achieve a win-win solution for both parties, as well as for the family and relatives. If it is necessary to use the path of resolving family conflicts through litigation, its implementation must be maximized to achieve a win-win solution for both parties as well as for the family and relatives. Resolving family conflicts through litigation or court proceedings needs to be intensified as an effort to minimize household disputes that end in divorce.

REFERENCES

- Ahmad Warson Munawir, Al-Munawwir (Kamus Arab-Indonesia),(Cet.I, Jakarta:1996)
- Asnawi Natsir, *Family Dispute Resolution dan Collaborative Practice: Prospek Penerapannya dalam Penyelesaian Sengketa Hukum Keluarga di Indonesia*. Al-USroh vol3 no.2 (2023)
- Gunawan, A. *Penyelesaian Sengketa Keluarga Melalui Mediasi: Suatu Pendekatan Hukum*. Jurnal Hukum Keluarga, 32(1) 2020
- Khaliludin, *Alternatif Penyelesaian Sengketa Keluarga Islam Indonesia*. Posita: Jurnal Hukum Keluarga Islam, vol. 1 no.1 (Juni, 2023)
- Kusnadi, *Proses Litigasi dalam Penyelesaian Sengketa Keluarga di Pengadilan Agama*. Jurnal Hukum Agama, Volume 15 (3) 2, 2018.
- Mulyadi. *Kendala Sosial dan Budaya dalam Penyelesaian Sengketa Keluarga*. Jurnal Sosial dan Hukum, volume 18(1) 2022
- Peraturan Pemerintah Pengadilan Agama Bandung Nomor 1401/KPA/W10-A1/HK.05/XI/2024 tentang Panjar Biaya Perkara pada Pengadilan Agama Bandung
- Pongoliu Hamis, *Perceraian Akibat Peralihan Agama: Studi Kasus Tentang Putusan Abkim Pengadilan Agama Gorontalo*. Al-Mizan volume 11 no.1 (Juni 2015)
- Subekti & R. Tjitrosoedibio, Kamus Hukum (Jakarta: Pradya Paramita,1971)
- Nurmaningsih Amriani, *Mediasi Alternatif Penyelesaian Sengketa di Pengadilan*, Grafindo Persada, Jakarta, 2012
- Zainuddin. *Mediasi Keluarga dalam Perspektif Legitimasi Hukum*. Jurnal Hukum Keluarga dan Masyarakat, volume 24 no.2 (2021)