

Family Dispute Resolution System and Its Challenges in Indonesia

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Abstract: *The The family dispute resolution system in Indonesia aims to resolve various issues within family relationships, such as divorce, child custody, and division of joint property. Dispute resolution can be conducted through two main channels: litigation (court proceedings) and non-litigation (mediation). The court plays an important role in enforcing the law and protecting the rights of the parties involved. This article aims to analyze the effectiveness of the family dispute resolution system in Indonesia and evaluate the challenges faced in its implementation. The discussion begins with an explanation of the dispute resolution system in court, mediation as an alternative dispute resolution method, and the challenges in resolving family disputes in Indonesia. Furthermore, the article examines the role of the court in supporting justice for the parties involved in family disputes and identifies factors that affect the success of mediation. This study is also necessary to explore the challenges and dynamics that arise in family dispute resolution, particularly regarding the duration of legal processes, high costs, and emotional tensions between the disputing parties. This research uses a qualitative method, referring to related sources such as previous studies on family dispute resolution. In conclusion, the family dispute resolution system in Indonesia requires improvements, including the optimization of mediation, simplification of legal procedures, and digitalization of legal services to achieve a more efficient and just process.*

Keywords: *Dispute Resolution System, Mediation, Challenges of Dispute Resolution*

Abstract : Penelitian membahas penyelesaian sengketa keluarga di Indonesia bertujuan untuk menyelesaikan berbagai masalah dalam hubungan keluarga, seperti perceraian, hak asuh anak, dan pembagian harta bersama. Penyelesaian sengketa ini dapat dilakukan melalui dua jalur utama: litigasi (persidangan) di pengadilan dan non-litigasi (mediasi). Pengadilan berperan penting dalam menegakkan hukum dan melindungi hak-hak pihak yang terlibat. Artikel ini bertujuan untuk menganalisis efektivitas sistem penyelesaian sengketa keluarga di Indonesia serta mengevaluasi tantangan yang dihadapi dalam penerapannya. Pembahasan dimulai dengan penjelasan sistem penyelesaian sengketa di pengadilan, mediasi sebagai alternatif penyelesaian sengketa, dan tantangan dalam penyelesaian sengketa keluarga di Indonesia. Selanjutnya, artikel ini mengkaji peran pengadilan dalam mendukung keadilan bagi pihak yang terlibat dalam sengketa keluarga dan mengidentifikasi faktor-faktor yang mempengaruhi keberhasilan mediasi. Kajian ini juga diperlukan untuk melihat tantangan dan dinamika yang muncul dalam penyelesaian sengketa keluarga, terutama terkait dengan durasi proses hukum, biaya tinggi, dan ketegangan emosional antara pihak yang bersengketa. Penelitian ini menggunakan metode kualitatif dengan merujuk pada sumber-sumber terkait, seperti kajian-kajian



terdahulu mengenai penyelesaian sengketa keluarga. Kesimpulannya, sistem penyelesaian sengketa keluarga di Indonesia perlu adanya perbaikan, termasuk optimalisasi mediasi, penyederhanaan prosedur hukum, dan digitalisasi layanan hukum untuk mencapai proses yang lebih efisien dan berkeadilan.

Keywords: Sistem Penyelesaian Sengketa, Mediasi, Tantangan Penyelesaian Sengketa

I. INTRODUCTION

Problems occur when there is a discrepancy or conflict between one party and another. A problem is a condition when the parties experience a disagreement or pros and cons regarding a decision that has been made by them. The existence of problems among humans as social beings should be resolved. Indonesia already has deliberative institutions used to discuss and resolve conflicts occurring within society. The establishment of deliberative institutions aims to resolve various conflicts that occur within a family through a familial process. Conflicts that occur in society are usually resolved through deliberation, but in practice, this does not guarantee the resolution of conflicts caused by differing interests of each party.¹

Conflict can change or develop into a dispute if the aggrieved party has expressed their dissatisfaction, either directly to the party they consider to be at fault or to another party. It can be concluded that a dispute is a continuation of an unresolved conflict. Disputes are not only harmful or destructive, but also challenging, constructive, and dynamic as a catalyst for change. Disputes are something that have become an integral part of human life.² The word "sengketa" comes from the English words "conflict" and "dispute," which mean disagreement or contention. These two words mean that there are differing interests between two or more parties. However, these two words can also be distinguished.³ Generally, disputes will always occur when there is interaction among humans, whether individually or in certain groups, and it should be noted that conflict is one of the negative things that can cause disturbances. Conflict is a behavior that is wrong or involves something that needs to be determined, so conflict can cause damaging consequences on a large scale.⁴

Dispute in the Great Dictionary of the Indonesian Language means conflict or contention. Conflict occurs due to disagreements between individuals, groups, or organizations regarding an issue. Disputes are something that can cause disagreements, differences of opinion, quarrels, conflicts, and cases (in court) that cannot be resolved amicably.⁵ Family is the smallest unit in society that can trigger conflicts. Family conflicts

¹ Maskur Hidayat, *Strategi Dan Taktik Mediasi Di Pengadilan* (Jakarta: Kencana, 2016), hal. 1.

² Yusuf Shofie, *Penyelesaian Sengketa Konsumen Menurut UUPK Teori Dan Praktik Penegakkan Hukum* (Bandung: PT Citra Aditya Bakti, 2003), hal. 12.

³ Meirina Nurlani, "Alternatif Penyelesaian Sengketa Dalam Sengketa Bisnis Di Indonesia," *Jurnal Kepastian Hukum Dan Keadilan* Vol. 3, no. 1 (2021): 26–31, <https://doi.org/10.32502/khdk.v3i1.4519>.

⁴ Endang Purwaningsih, *Hukum Bisnis* (Bogor: Ghalia Indonesia, 2010), hal. 268.

⁵ Tiberius Zaluchu and Dhoni Yusra, "Penyelesaian Sengketa Medis Antara Pasien Atau Keluarga Pasien Dengan Dokter Berdasarkan Ketentuan Hukum Di Indonesia," *KRTHA Bhayangkara* Vol. 16, no. 2 (2022): 237–58, <https://doi.org/10.31599/krtha.v16i2.1114>.

can occur when the primary needs of the family are not met optimally, such as physical, spiritual, or social needs. This is caused when rights and obligations are not fulfilled properly. Disputes also often occur within a family, involving several family members, such as husband and wife, parents and children, or between siblings. This happens because it can be caused by several factors, such as continuous arguments between husband and wife, jealousy, economic problems, infidelity, inheritance division, biological factors, unfulfilled obligations and responsibilities, domestic violence (DV), child custody, and others.⁶

Cases such as divorce, child custody disputes, alimony obligations, and the division of marital property are common examples of family disputes that frequently occur in court. The resolution of family disputes in Indonesia is regulated by various laws, including the Marriage Law, the Compilation of Islamic Law (for Muslims), as well as various other regulations that govern family rights. The Religious Courts have the authority to handle family matters for the Muslim community, while for those outside the Islamic faith, family disputes are resolved in the District Court. Although legal avenues are available to resolve family disputes, in practice, there are various challenges faced.

First, the litigation process often takes a long time and drains both emotions and finances. Many parties involved in family disputes feel burdened by the lengthy legal procedures that must be followed. Second, although mediation has been mandated in every civil dispute, its effectiveness is still a matter of debate, especially due to the psychological unpreparedness of the disputing parties. Additionally, cultural and social factors also influence the family dispute resolution system in Indonesia. Based on several cases, the community prefers to resolve disputes through non-formal channels such as family deliberations or traditional leaders before bringing the matter to court. However, this path does not always provide legal certainty, especially in cases involving the rights of children and women.⁷

Based on legal studies, in general, dispute resolution procedures are divided into two, namely dispute resolution through litigation and non-litigation channels. Dispute resolution through litigation is the process of legal proceedings in court conducted according to specific legal procedures and involving law enforcement officials. On the other hand, dispute resolution through non-litigation channels is a flexible mechanism and procedure based on the type of process carried out by a third party as a mediator.⁸

Family dispute resolution in Indonesia has become one of the important issues and has a direct impact on the lives of religious communities both socially and culturally, thus not only involving legal aspects but also incorporating religious values, social norms,

⁶ Sulistiyawati and Erie Hariyanto, "Peran Itikad Baik Mediasi Dalam Proses Penyelesaian Konflik Keluarga," *Mahkamah: Jurnal Kajian Hukum Islam* Vol. 6, no. 1 (2021): 79–87, <https://doi.org/10.24235/mahkamah.v6i1.7577>.

⁷ Kartika Sari Dewi and Costrie Ganes Widayanti, "Gambaran Makna Keluarga Ditinjau Dari Status Dalam Keluarga, Usia, Tingkat Pendidikan, Dan Jenis Pekerjaan (Studi Pendahuluan)," *Jurnal Psikologi Undip* Vol. 10, no. 2 (2011): 163–72.

⁸ Ahmad Bastoni and Pinastika Prajna Paramita, "Penyelesaian Sengketa Perceraian Melalui Mediasi Program Pusakan Sakinah," *Jurnal Hukum Dan Kenotariatan* Vol. 5, no. 3 (2021): 490–500, <https://doi.org/https://doi.org/10.33474/hukeno.v5i3.13037>.

and customs that prevail in Indonesia.⁹ The challenge in resolving family disputes in Indonesia is the existence of two parallel legal systems, namely Islamic law and positive law. Islamic law is derived from the teachings of Islam found in the Qur'an, Hadith, Ijma', and Qiyas, which serve as guidelines for Muslims in Indonesia. Meanwhile, positive law is derived from the state's legal system such as the 1945 Constitution, statutory regulations, government regulations, and court decisions.¹⁰

Based on these issues, an in-depth study of the family dispute resolution system in Indonesia is necessary. This research is expected to provide an overview of how the family dispute resolution mechanisms are implemented, as well as the extent of the efforts and obstacles faced in their implementation. Thus, solutions can be found to improve the existing system, so that family disputes can be resolved more quickly, fairly, and with the welfare of all parties involved prioritized.

II. RESEARCH METHODOLOGY

The method used in this research employs library research, which is a data collection method that involves studying and understanding various theories from literature related to the research. The type of research used in this study is a literature review. A literature review is a summary, description, and critical evaluation of a topic studied from literature, including books, journals, and other scholarly works. The sources used in this research are based on the analysis of previous researchers related to the dispute resolution system in Indonesia. The type of data in this research consists of articles both in journals and those contained in books. The data collection technique in this research was conducted by searching for relevant journals on Google Scholar and books that discuss the dispute resolution system in Indonesia. The analysis technique used in this research is qualitative analysis. Qualitative descriptive is a method used to find theories from previous research through journals and books. Through the review process, researchers provide insights, look for similarities, identify differences, combine them into new ideas, and summarize.¹¹

III. DISCUSSION

Family Dispute Resolution System

Family disputes are legal issues that involve relationships between family members, such as divorce, child custody, alimony, and the division of joint property. Based on the legal system in Indonesia, the resolution of family disputes can be carried out through two main mechanisms, namely litigation (court proceedings) and non-litigation

⁹ Titin Wulandari Malau, "Dialog Antaragama Dan Kontribusi Tokoh Agama Dalam Penyelesaian Konflik Dan Implementasinya Untuk Memperkuat Toleransi," *Jurnal Magistra* Vol. 2, no. 1 (2024): 1–18, <https://doi.org/https://doi.org/10.62200/magistra.v2i1.70>.

¹⁰ Dody Wahono Suryo Alam, "Implementasi Hukum Keluarga Islam Dalam Kehidupan Kontemporer," *AL MIKRAJ: Jurnal Studi Islam Dan Humaniora* Vol. 4, no. 2 (2024): 119–32, <https://doi.org/10.37680/almikraj.v4i02.4525>.

¹¹ Marinu Waruwu, "Pendekatan Penelitian Kualitatif: Konsep, Prosedur, Kelebihan Dan Peran Di Bidang Pendidikan," *Afeksi: Jurnal Penelitian Dan Evaluasi Pendidikan* Vol. 5, no. 2 (2024): 198–211, <https://doi.org/10.59698/afeksi.v5i2.236>.

(mediation). Litigation is the process of resolving disputes through formal legal channels in court. In the context of family disputes, this process is carried out in the Religious Court for the Muslim community and in the District Court for non-Muslims. Litigation is carried out if the parties cannot reach an agreement peacefully and require a binding legal decision. The litigation process includes:

1. Filing a lawsuit: One party submits a lawsuit to the relevant court, such as a divorce lawsuit, child custody, or joint property.
2. Mandatory mediation: Before the trial begins, the court mandates mediation as an effort for reconciliation. If mediation fails, the case proceeds to trial.
3. Trial and evidence presentation: Both parties present evidence and witnesses to support their respective arguments.
4. Judge's ruling: The judge issues a ruling based on the facts revealed during the trial.
5. Execution of the verdict: If one party does not voluntarily comply with the verdict, the court can execute it in accordance with the applicable law.

Although litigation provides legal certainty, the process often takes a long time, incurs high costs, and can increase emotional tension between the disputing parties. One of the dispute resolution methods through non-litigation channels is mediation. Mediation is an alternative dispute resolution outside of court proceedings aimed at reaching a peaceful agreement between the disputing parties. Mediation can be conducted independently with the help of a professional mediator or during the judicial process before the case reaches the trial stage. Resolving family disputes through mediation has several advantages¹², including:

1. Faster and cheaper, the mediation process is shorter compared to court trials and does not require large expenses.
2. Prioritizing family interests. Mediation encourages solutions that are not only based on the law but also consider emotional relationships and the well-being of the family, especially children.
3. More flexible outcomes. The parties can negotiate a resolution that is more suitable to their conditions compared to a judge's absolute decision.
4. Mediation in court is mandatory as part of the litigation process, but it does not always succeed. If mediation fails, the case will proceed to trial.

The process of resolving family disputes can be done through litigation (court) or non-litigation (mediation). Litigation provides a binding legal decision but tends to be time-consuming and costly, whereas mediation is more flexible and peace-oriented. In practice, a combination of these two methods is often used to ensure that dispute resolution can proceed more effectively and fairly for all parties involved. The court plays an important role in resolving family disputes with the main tasks of upholding the law, resolving conflicts, and protecting the rights of each family member involved. As an institution authorized to handle legal matters, the court serves as a forum for resolving

¹² Rika Lestari, "Perbandingan Penyelesaian Sengketa Perceraian Secara Mediasi Di Pengadilan Dan Di Luar Pengadilan Di Kabupaten Kampar," *Jurnal Hukum Ius Quia Iustum* Vol. 21, no. 2 (2014): 309–32, <https://doi.org/10.20885/iustum.vol21.iss2.art8>

conflicts that arise in family relationships, such as divorce, child custody, alimony, and the division of joint property.¹³

One of the main roles of the court in family disputes is to ensure that the resolution process is carried out in accordance with the applicable legal regulations. Based on the legal system in Indonesia, family matters for the Muslim community are handled by the Religious Courts, while non-Muslims' cases are handled by the District Courts. The court acts as a mediator that evaluates the facts presented by the parties and issues a decision based on the applicable law. In addition to issuing rulings, the court also plays a role in facilitating mediation between the disputing parties. Mediation is a mandatory stage before a case proceeds to trial.¹⁴

The mediation process in court aims to help the parties reach a peaceful agreement to maintain family relationships, especially in cases involving children. If mediation is successful, a resolution can be reached without going through a long and exhausting judicial process. However, if mediation fails, the court will proceed to the trial stage. In addition, the court also has the responsibility of upholding individual rights in family disputes. For example, in divorce cases, the court ensures that children's rights are protected, including custody and alimony rights. The court also determines the fair division of joint property and ensures that the decision made does not disproportionately harm one party. However, in carrying out its role, the court faces various challenges, such as the lengthy legal process and significant costs. Therefore, improvements in the judicial system are necessary so that the resolution of family disputes can be carried out more effectively, quickly, and still based on the principle of justice. Nevertheless, as an institution with legal authority, the court remains the primary body in providing solutions for families facing legal issues.

Resolving family disputes through legal channels often faces various obstacles that can slow down the process and add burdens for the parties involved. One of the main challenges is the lengthy legal process that must be undergone. The judicial process in family dispute cases, such as divorce, child custody, or division of joint property, often takes a considerable amount of time because it must go through various stages, from case registration, mediation, trial, to the judge's decision.¹⁵

Another challenge is the high emotional tension between the disputing parties. Family disputes often involve deep emotions, especially in cases of divorce and child custody battles. Prolonged conflicts can worsen relationships among family members, and even affect the psychological condition of children if they are involved in their parents'

¹³ Manuasa Saragi, "Litigasi Dan Non Litigasi Untuk Penyelesaian Sengketa Bisnis Dalam Rangka Pengembangan Investasi Di Indonesia (Kajian Penegakan Undang-Undang Nomor 48 Tahun 2009 Tentang Kekuasaan Kehakiman Jo Undang-Undang Nomor 30 Tahun 1999 Tentang Arbitrase Dan Altern," *E-Journal Graduate Unpar* Vol. 1, no. 2 (2014): 54–73.

¹⁴ Andi Fariana, "Peran Strategis Pengadilan Agama Dalam Penyelesaian Sengketa Ekonomi Syari'ah," *Al-Ihkam: Jurnal Hukum Dan Pranata Sosial* Vol. 10, no. 2 (2015): 228–51, <https://doi.org/https://doi.org/10.19105/al-ihkam.v10i2.720>.

¹⁵ Abdul Rokhim, "Peraturan Mahkamah Agung Republik Indonesia Nomor 01 Tahun 2008 Tentang Prosedur Mediasi Di Pengadilan," *Masalah-Masalah Hukum* Vol. 43, no. 3 (2014): 322–29.

disputes. These emotional factors often make the mediation process difficult, as each party tends to maintain their ego and personal desires without considering the best solution for everyone involved.¹⁶

Family dispute resolution in court often faces various challenges, such as lengthy processes, high costs, and emotional tension between the disputing parties. Therefore, strategic measures are needed to enhance the effectiveness of dispute resolution to make it faster, fairer, and less burdensome for the parties involved.¹⁷ One of the main ways to achieve this is through the optimization of mediation as an alternative dispute resolution. A restorative justice-based approach can also be applied in family dispute resolution. The concept of restorative justice places more emphasis on restoring relationships between the disputing parties, rather than merely imposing punishment or rigid legal decisions. In the context of family disputes, this approach can help reduce the negative impact of the conflicts that occur, especially for children who often become emotional victims in cases of divorce or custody battles. By emphasizing fair resolutions and relationship restoration, this approach can help create more sustainable solutions for all parties involved. By optimizing mediation, simplifying legal procedures, and implementing a restorative justice-based approach, the resolution of family disputes is expected to become more effective and less burdensome for the parties involved. These steps can also help reduce emotional stress, expedite legal processes, and provide fairer and more harmonious outcomes for all parties involved. Additionally, by optimizing mediation and simplifying legal procedures, this approach is expected to make the family dispute resolution process more effective and less burdensome for the parties involved. These measures can also help reduce emotional stress, expedite legal processes, and produce fairer and more harmonious decisions.

Every Indonesian citizen has the right to obtain justice, including in legal matters. Ideally, the resolution of a legal dispute is carried out through the court. However, in some cases, resolution outside of court is also possible through the mediation process, which is one alternative to achieve justice. Linguistically, mediation comes from the word "mediation" in English, which refers to the process of dispute resolution. This word itself comes from the Latin word "mediare," which means to mediate or connect. Thus, mediation can be understood as a method of dispute resolution where the conflicting parties are assisted by a mediator to reach an agreement. Terminologically, mediation has various definitions used in dispute resolution literature. One of them, according to The National Alternative Dispute Resolution Advisory Council (NADRAC), mediation is a process in which the disputing parties, with the

¹⁶ Damayanti Wardyaningrum, "Komunikasi Untuk Penyelesaian Konflik Dalam Keluarga: Orientasi Percakapan Dan Orientasi Kepatuhan," *Jurnal Al-Azhar Indonesia Seri Pranata Sosial* Vol. 2, no. 1 (2013): 47–58, eprints.uai.ac.id/12/1/110-506-1-SM.pdf%250A%250A.

¹⁷ Jumadiah, "Proses Penyelesaian Perkara Perceraian Melalui Mediasi Di Mahkamah Syar'iyah Lhokseumawe," *Fiat Justitia: Jurnal Ilmu Hukum* Vol. 6, no. 2 (2012): 1–12, <https://doi.org/10.25041/fiatjustisia.v6no2.328>.

assistance of a mediator, identify the existing issues, seek and develop resolution options, and consider other alternatives that can help them reach an agreement.¹⁸

The word mediation in the Great Dictionary of the Indonesian Language is defined as the process of involving a third party in the resolution of a dispute as an advisor. The definition provided by the Great Dictionary of the Indonesian Language contains three important elements. First, mediation is a process of resolving disputes or conflicts between two or more parties. Second, the parties involved in resolving the dispute come from outside the disputing parties. Third, the parties involved act as advisors and do not have the authority to make decisions. As for some limitations of mediation according to experts, among them:

1. Gary Goodpaster stated that mediation is a problem-solving negotiation process in which an impartial and neutral third party works with the disputing parties to help them reach a satisfactory agreement. Unlike a judge or an arbitrator, a mediator does not have the authority to decide a dispute. However, the parties empower the mediator to help them resolve the issues between them. The assumption is that a third party can change the power and social dynamics in a conflict relationship by influencing the trust and behavior of the parties, providing knowledge or information, and using a more effective negotiation process, thereby helping the participants resolve the disputed issue.
2. Jacqueline M. Nolan Haley also states that mediation is generally understood as a structured, task-oriented, and participatory intervention process in the short term. The disputing parties work with a neutral third party, namely a mediator, to reach a mutually acceptable agreement. Unlike the adjudication process, where a third party imposes a decision, in mediation there is no such coercion. The mediator helps the parties to reach a consensus. Those parties are the ones who form their own agreement.
3. Takdir Rahmadi states that mediation is a resolution process between two or more parties through negotiation or consensus with the assistance of a neutral party that does not have the authority to decide. The party acting as the mediator has the duty to provide assistance in both procedural and substantive matters.
4. Mediation in Black's Law Dictionary is described as a process of resolving disputes that is private and informal, where a neutral third party, namely the mediator, assists the disputing parties in reaching an agreement. The mediator does not have the power to impose a decision on the parties involved.

Based on various definitions of mediation proposed by experts, it can be concluded that mediation is a method of resolving disputes outside of court, conducted through negotiations between the disputing parties with the assistance of a neutral and impartial third party. The third party acts as the mediator. In mediation, the mediator does not have the right to decide the dispute. The mediator's task is only to assist the disputing parties by providing solutions that can open their minds to resolving the dispute.¹⁹ These

¹⁸ Tolkah, *Mediasi Peradilan Di Indonesia*, Edisi Pert (Semarang: Alenia Media Dipantara, 2024), hal. 2-3.

¹⁹ Nita Tiana, *Alternative Dispute Resolution* (Yogyakarta: Kaizen Sarana Edukasi, 2019), hal. 18-20

solutions are then negotiated by the parties to reach a mutual agreement, without any coercion from either side. The advantages and benefits of mediation are related to the general characteristics of alternative dispute resolution institutions, including:²⁰

1. Lower costs compared to other dispute resolution methods. Additionally, the disputing parties tend to be more accepting and feel a sense of ownership over the decisions made through mediation.
2. Providing an opportunity for the disputing parties to negotiate issues that may arise again in the future, in a manner they mutually agree upon. Providing an opportunity to understand the underlying issues of the dispute more deeply, so that a more appropriate solution can be found.
3. Increasing mutual trust between the disputing parties, which can reduce feelings of hostility or resentment.
4. The mediation process is confidential. Everything disclosed during mediation and the nature of the mediation proceedings are confidential (Article 6 PERMA No.1 of 2008), unlike litigation processes which are open to the public.

With these various advantages, mediation becomes an effective, efficient, and relationship-friendly alternative for dispute resolution. Therefore, mediation can be the primary choice in resolving disputes, both outside the court and within the judicial process. The implementation of mediation in court has a procedure divided into three stages: pre-mediation, mediation process, and mediation outcome stage.

1. Pre-Mediation

The pre-mediation stage is the initial preparation phase, where the mediator outlines the necessary steps before the mediation begins. At this stage, the mediator does several things, including building self-confidence, contacting the disputing parties, providing initial information about mediation, focusing on future solutions, coordinating both parties, determining who will be present, agreeing on the time and place of the meeting, and creating a safe atmosphere so that both parties feel comfortable meeting and discussing the issues at hand. The judge is required to explain the mediation procedure as regulated in PERMA Number 1 of 2016 to the disputing parties or their representatives, and to encourage them to actively participate in the mediation process. The parties or their legal representatives are required to select a mediator from the list of mediators provided by the court. If the parties or their legal representatives have agreed on the choice of mediator, they must report this decision to the presiding judge, who will then inform the selected mediator to explain their duties. On the other hand, if the parties fail to reach an agreement, they must immediately inform the presiding judge, who is authorized to

²⁰ Umi Umaroh, Tarmidzi Tarmidzi, and 'Alamul Yaqin, "Tinjauan Yuridis Terhadap Mediasi Sebagai Sarana Penyelesaian Sengketa Perdata Di Pengadilan Negeri Kelas Ib Kota Pekalongan (Studi Putusan No.13/Pdt.G/2019/PN.PKL)," *El Hisbah: Journal of Islamic Economic Law* Vol. 1, no. 2 (2021): 15–28, https://doi.org/10.28918/el_hisbah.v1i2.4459.

appoint another judge with mediation certification in the same court to perform the mediator's function by issuing a decree.

2. Mediation Process

The mediation process is the stage where the mediator begins the mediation. At this stage, the disputing parties will meet directly and begin the mediation process. Mediation is confidential, so the mediator, whether a judge or another mediator, must immediately destroy all documents related to the mediation after the mediation process is completed. The meeting procedures in mediation are regulated by PERMA No.1 of 2016, which includes three meeting systems, namely:

- A. Closed to the public: This system is a fundamental principle in mediation, where mediation is generally not open to the public, unless both parties agree to it.
 - b. Open to the public with the parties' consent: Mediation can be opened to the public if both parties agree to it, which is often referred to as an open court, meaning a session that is officially declared open to the public.
- B. Public disputes that must be open to the public: For certain types of disputes, especially those related to public interest, the mediation process must be open to the public. If the parties, with the assistance of a certified mediator, successfully reach a peace agreement outside of court, the agreement can be submitted to the competent court to obtain a peace deed. This process is carried out by filing a lawsuit with the judge, where the judge will only ratify the peace agreement in the form of a peace deed if the agreement meets the following conditions:
 - a. In accordance with the will of the parties.
 - b. Not contrary to the law.
 - c. Does not harm third parties.
 - d. Enforceable.
 - e. Conducted in good faith.

3. Mediation Results

This stage is the stage where the parties only implement the agreement they have made together in the form of a written agreement. They implement the results of the agreement based on the commitment they have shown during the mediation process. If within the time specified by PERMA Number 1 of 2016, the parties do not reach an agreement, the mediator is obliged to declare in writing that the mediation process has failed and inform the judge of the failure. After receiving the notification, the judge will continue the examination in accordance with the applicable legal provisions. Mediation as a method of dispute resolution has a legal basis that regulates its implementation. Some important legal bases for mediation include:

- a) HIR Article 130/Article 154 Rbg 13

- b) Civil Code Chapter XVII on Peace Articles 1851-1864
- c) Government Regulation Number 9 of 1975, Article 32. If a settlement is reached, no new lawsuit may be filed based on reasons that existed before the settlement and were known to the plaintiff at the time the settlement was reached.
- d) Law Number 7 of 1989 on Religious Courts, which was later amended by Law Number 50 of 2009 on Religious Courts.
- e) SEMA Number 1 of 2002 on Empowering First-Level Courts to Implement Peaceful Settlement, which was later revised by PERMA Number 2 of 2003 on Mediation Procedures in Court, and further refined by PERMA Number 1 of 2008 on Mediation Procedures in Court.

Although mediation has many advantages as a dispute resolution method, there are also some drawbacks that need to be considered. Here are the drawbacks of resolution through mediation:

- 1) That mediation can only be effective if both parties in dispute have the willingness and desire to reach an agreement through consensus. If only one party wants to pursue mediation, while the other party does not share the same desire, then mediation will not be able to proceed effectively. This is especially true if the mediation is conducted voluntarily.
- 2) If the parties do not have good faith, they might exploit the mediation process as a tactic to delay resolution. For example, by not adhering to the mediation session schedule or merely negotiating to gather information about the opponent's weaknesses.
- 3) Some cases may not be resolvable through mediation, especially those related to ideological issues or fundamental values that do not allow the parties to compromise.
- 4) Mediation is considered less appropriate if the main issue in a settlement relates to a rights decision, because such a settlement must be decided by a judge.²¹

Therefore, although mediation has many advantages in resolving disputes in a more flexible and consensual manner, it is important to consider the conditions and types of disputes faced. Mediation is more effective for resolving conflicts that involve cooperation and negotiation between the parties, but for disputes that involve clear decisions of rights or obligations, formal judicial processes are still necessary.

Efforts and Challenges in Resolving Family Disputes Family

Islam is a religion that upholds harmony and peace both in social and family spheres. Therefore, Islam does not encourage families to divorce even though it is a permissible act. When two people are involved in a dispute, whether in the family or society, Islam strongly encourages seeking a solution immediately so that the issue can be resolved.²² This is in accordance with the words of Allah SWT in Surah Al-Hujurat verse 10:

²¹ Harahap, *Hukum Acara Perdata Di Indonesia*, hal. 265.

²² Syeh Khaliluddin, "Alternatif Penyelesaian Sengketa Keluarga Islam Indonesia," *Posita: Jurnal Hukum Keluarga Islam* Vol. 1, no. 1 (2023): 16–23, <https://doi.org/10.52029/pjhki.v1i1.127>.

إِنَّمَا الْمُؤْمِنُونَ إِخْوَةٌ فَأَصْلِحُوا بَيْنَ أَخَوَيْكُمْ وَاتَّقُوا اللَّهَ لَعَلَّكُمْ تُرْحَمُونَ ﴿١٠﴾

Meaning: "Indeed, the believers are brothers, so reconcile your brothers (who are in conflict) and fear Allah that you may receive mercy."

Every family surely has the aspiration to become a *sakinah*, *mawaddah*, *warahmah* family. Of course, that aspiration begins with good communication among family members. All problems can be resolved if communicated well. Good communication begins with gentle greetings. This is an initial step towards creating a family that is *sakinah*, *mawaddah*, *warahmah*.²³ To achieve this, of course, it cannot be done by one party alone, but the husband and wife must contribute together in resolving issues that could lead to conflicts or even escalate to disputes within the family. Disputes within the family must be resolved wisely. One of the main principles in resolving family disputes is through deliberation, so that solutions and ways out of a problem can be found.²⁴ The strategies for managing family conflicts include the following:

1. Effective Communication: Communicating effectively is one of the most important steps in managing family conflicts, such as speaking with gentle words, listening actively, and respecting each other's opinions among family members.
2. Forgiving Each Other and Being Together: When a family experiences conflict, it is very important for family members to forgive each other to create peace within the family.
3. Visiting Religious Leaders: When family conflicts are difficult to resolve internally, it is very important to seek help from a trusted local religious leader.
4. Taking Solutions Based on the Results of Deliberation: The outcome of deliberating a problem should find a middle ground without disadvantaging any party or family member.
5. Resolving Conflicts through Mediation: When family conflicts cannot be resolved through familial means, involving a third party as a moderator is the right and wise step to resolve conflicts within the family.²⁵
6. Self-Reflection and Patience: Islam emphasizes the importance of maintaining calmness, self-reflection, and controlling emotions. Every family member needs to engage in self-reflection, acknowledge the mistakes they have made, and willingly strive to become a much better person than before.²⁶

²³ Zainal Arifin, "Tantangan Membentuk Keluarga Sakinah Pada Generasi Milenial," *Wahana Islamika: Jurnal Studi Keislaman* Vol. 6, no. 2 (2020): 197–211, <http://wahanaislamika.ac.id>.

²⁴ Muh Ibnu Sholeh, "Manajemen Konflik Di Lembaga Pendidikan Islam," *Edusiana: Jurnal Manajemen Dan Pendidikan Islam* Vol. 10, no. 2 (2023): 1–20, <https://doi.org/10.51192/tadbiruna.v2i2.500>.

²⁵ Sholeh, "Manajemen Konflik Di Lembaga Pendidikan Islam."

²⁶ Zainuddin Abdullah, "Tanbih Al-Masyi Menyoal Wahdatul Wujud: Kasus Abdurrauf Singkel Di Aceh Abad 17 Karya Oman Fathurahman," *Mumtaz: Jurnal Studi Al-Qur'an Dan Keislaman* Vol. 3, no. 2 (2019): 280–88, <https://doi.org/https://doi.org/10.36671/mumtaz.v3i2.45>.

7. Spiritual Involvement and Prayer: Spiritual involvement and prayer in resolving family conflicts are very important. Prayer serves as a medium to obtain guidance and assistance from Allah SWT in resolving family conflicts. In addition to prayer, engaging in acts of worship such as dhikr, reading the Quran, and performing good deeds can help create a calm atmosphere in the family and bring the family closer to Allah SWT.

The important principles in resolving family disputes according to Islamic family law are as follows:

1. Deliberation and Negotiation: Every family member must communicate openly first, listen actively, and strive to reach a mutual agreement through constructive communication.
2. Mediation: Mediation is one of the important principles in resolving family disputes. The involvement of a neutral and trustworthy third party can support productive communication, help achieve a fair agreement, and help ease tensions between one party and another.
3. Reconciliation Approach: This approach aims to mend the rifts that have occurred and restore relationships among family members by finding solutions that do not harm any party, fostering mutual forgiveness, and restoring peace within the family.²⁷
4. Arbitration: Arbitration as one of the principles of dispute resolution involves submitting the dispute to a judge or an expert in Islamic law. The outcome of this arbitration is binding and must be accepted by all parties involved.
5. The Role of Religious Leaders and Scholars: Religious leaders and scholars play a very important role in resolving family disputes, as they possess knowledge and understanding of Islamic law. They can also provide guidance and advice on resolving family disputes in accordance with Islamic teachings.²⁸

Disputes that occur within the family should be minimized gradually and continuously, even though there are legal instruments regulating them. However, without proper implementation, it will feel less beneficial. The concept of eliminating domestic violence should not only be something that women as wives must know, but it should also become a consciousness that men as husbands must possess, so they become more caring and feel responsible for promoting the anti-domestic violence movement.²⁹

The resolution of family disputes in Indonesia certainly has its own unique aspects. Based on several case studies of family dispute resolution there is inequality in dispute resolution, such as racial bias in law enforcement or gender discrimination in access to justice. During the mediation and arbitration process, the impartiality of a

²⁷ Sihabudin Mukhlis, "Peran Mediasi Dalam Rekonsiliasi Rumah Tangga Dari Perspektif Gender," *KRTHA Bhayangkara* Vol. 14, no. 2 (2020): 221–35, <https://doi.org/10.31599/krtha.v14i2.282>.

²⁸ Mahdi NK, "Peran Teungku Dalam Perspektif Konseling Islam," *At-Taujih: Bimbingan Dan Konseling Islam* Vol. 3, no. 1 (2020): 29–47, <https://doi.org/10.22373/taujih.v3i1.7219>.

²⁹ Juli Andriyani, "Konsep Konseling Individual Dalam Proses Penyelesaian Perselisihan Keluarga," *At-Taujih: Bimbingan Dan Konseling Islam* Vol. 1, no. 1 (2018): 17–31, <https://doi.org/10.22373/taujih.v1i1.7189>.

mediator and arbitrator is extremely important. This ensures that the dispute resolution process will proceed fairly and that every decision made must be based on existing facts, not on external pressure or personal preferences.³⁰

In addition, the challenges of enforcing family law in Indonesia also face important issues that need to be reviewed. Some regions may have different views or enforcement of family law, whether due to customary factors or differing opinions among Islamic jurists, leading to legal uncertainty and injustice for the community. The service and cost of legal processes also pose a significant challenge for the Muslim majority in Indonesia. Moreover, for Muslim communities living in rural areas who are still relatively less affluent, accessing the judicial system to resolve their family disputes poses significant difficulties. The cost of legal proceedings is also a significant obstacle for them, necessitating greater efforts to ensure the effectiveness of the principles of swift, simple, and low-cost justice

IV. CONCLUSIONS

The family dispute resolution system in the Court is a legal mechanism aimed at resolving conflicts arising in family relationships such as divorce, child custody, and division of joint property. This dispute resolution can be carried out through two main avenues, namely litigation (court proceedings) and non-litigation (mediation). The court serves as an institution that upholds the law, resolves conflicts, and protects the rights of each party involved, especially in divorce cases. Although the judicial system has provided a clear legal foundation, the resolution of family disputes still faces various challenges. The lengthy legal process, high costs, and emotional tension between the disputing parties are the main obstacles to a fair and effective resolution. In addition, limited access to legal services, especially in remote areas, also poses a barrier in the process of resolving disputes in court. To improve the effectiveness of family dispute resolution, efforts for improvement are needed. Optimizing mediation as an alternative dispute resolution can help reduce the court's burden and provide more flexible and peaceful solutions for the parties involved. Additionally, simplifying legal procedures through service digitization and accelerating administrative processes needs to be done to reduce the duration of case resolution. A restorative justice-based approach can be a solution in family disputes and is more oriented towards restoring relationships, thereby not only producing legal decisions but also maintaining the well-being of all parties involved. With improvements in the family dispute resolution system, it is hoped that the legal process can proceed more quickly, efficiently, and fairly. The court does not only function as a mediator in creating more humane and sustainable solutions for families experiencing conflict.

³⁰ Sumardi Efendi, "Prinsip Keadilan Dalam Proses Penyelesaian Sengketa Hukum Islam," *Constitutio: Jurnal Riset Hukum Kenegaraan & Politik* Vol. 1, no. 2 (2022): 87–96, <https://doi.org/10.47498/constitutio.v1i2.3427>.

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