

Legal Analysis of Islamic Family Civil Dispute Settlement Through Mediation

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Abstract

The resolution of Islamic family civil disputes through mediation has been regulated in national regulations, particularly in Supreme Court Regulation (Perma) No. 1 of 2016. However, the implementation of this policy still faces various obstacles that hinder its effectiveness in peacefully resolving family disputes. This study aims to analyze the regulations governing mediation in the resolution of Islamic family disputes in Indonesia, evaluate the effectiveness of the applicable laws, and provide recommendations to enhance the role of mediation in the religious court system. Using a normative juridical method with a statute approach, this research examines how existing regulations have been implemented in practice and whether there is a need for revisions or improvements in the mediation system. The findings indicate that although mediation is mandatory in family dispute resolution, its success rate remains low due to limited public awareness, a shortage of certified mediators, and a lack of supervision and evaluation of its effectiveness. Therefore, strengthening the role of mediation is necessary by increasing mediator capacity, promoting the benefits of mediation to the public, and reinforcing regulations to ensure the optimal implementation of mediation. Thus, mediation is expected to become an effective solution in reducing the burden of cases in religious courts and achieving a more harmonious and fair resolution of family disputes.

Keywords: Mediation, Islamic Family Civil Disputes, Religious Court, Regulation, Legal Effectiveness

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1. INTRODUCTION

Islamic family civil disputes are one of the most common types of cases in Indonesia, particularly in divorce, child custody, joint asset distribution, and alimony cases. According to the report by the Religious Courts Agency of the Supreme Court of the Republic of Indonesia (2023)¹, the number of divorce cases handled by religious courts has continued to increase each year. The high rate of family disputes indicates that litigation remains the primary choice for resolution, despite its various drawbacks, such as high costs, lengthy resolution times, and emotional and psychological impacts on the parties involved².

As an alternative to court litigation, mediation has become a legally recognized and recommended dispute resolution method within Indonesia's religious court system. Mediation is a dispute resolution process assisted by a neutral third party (mediator) to achieve a mutually beneficial agreement (win-win solution). In national law, mediation is regulated by several legal frameworks, including:

¹ Badan Peradilan Agama Mahkamah Agung RI. (2023). Laporan Tahunan Peradilan Agama 2023. Jakarta: Mahkamah Agung RI.

² Yushadeni, Y. (2015). Kontroversi Seputar Pembaharuan Hukum Keluarga Islam Di Indonesia. *Al-Ahwal: Jurnal Hukum Keluarga Islam*, 8(1), 25-36.



1. Law No. 7 of 1989 on Religious Courts, which grants religious courts the authority to resolve Islamic family disputes.³
2. Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution, which recognizes mediation as a method of out-of-court dispute resolution⁴.
3. Supreme Court Regulation (Perma) No. 1 of 2016 on Mediation Procedures in Court, which mandates that all civil cases, including Islamic family disputes, must go through mediation before proceeding to trial.
4. The Compilation of Islamic Law (KHI), which prioritizes peaceful resolution of Islamic family disputes in accordance with the principle of Sulh in Islamic law⁵.

From the perspective of Islamic law, dispute resolution through mediation has a strong foundation. The Qur'an emphasizes the importance of peace in resolving conflicts, as stated in Surah An-Nisa, verse 35:

"And if you fear dissension between the two, send an arbitrator from his family and an arbitrator from her family. If they both desire reconciliation, Allah will cause it between them." (QS. An-Nisa: 35).

The concept of mediation in Islam is known as Sulh, which means reconciliation or peace. This principle emphasizes deliberation and mutual agreement in resolving disputes, aligning with the concept of restorative justice, where dispute resolution is not solely focused on legal rulings but also on efforts to restore harmonious social relationships⁶.

Various studies have explored mediation in civil dispute resolution; however, specific research analyzing the effectiveness of mediation in Islamic family disputes within religious courts remains limited. Previous studies have primarily focused on the overall success rate of mediation but have not deeply examined the key reasons behind mediation failures in Islamic family disputes and the factors influencing these outcomes. Islamic family mediation offers an alternative dispute resolution method grounded in Qur'anic principles, Sunnah, and Islamic jurisprudence⁷. It emphasizes ethical and religious foundations, promoting justice, reconciliation, and family harmony⁸. Mediation integrates sulh and tahkim concepts, facilitating consensual agreements through third-party assistance. It aligns with progressive law by providing creative, innovative, and fair solutions to family conflicts⁹. Islamic mediation principles can be applied broadly across family law contexts, fostering mutual respect and compromise¹⁰. The process adheres to Islamic ethical values, including honesty and commitment to peace¹¹. In inheritance disputes, mediation serves not only as a resolution tool but also as a preventive measure, aligning with Qur'anic and hadith guidance to avoid conflicts¹². This approach offers a more effective dispute resolution system consistent with Islamic values¹³.

Supreme Court Regulation (Perma) No. 1 of 2016 mandates mediation as an initial procedure in judicial processes. However, its implementation in religious courts still faces various challenges, such as the lack of public awareness regarding the benefits of mediation, the limited number of certified mediators, and weak evaluation mechanisms assessing mediation's effectiveness in reducing the number of cases in

³ Undang-Undang No. 7 Tahun 1989 tentang Peradilan Agama (beserta perubahan dalam UU No. 3 Tahun 2006 dan UU No. 50 Tahun 2009).

⁴ Undang-Undang No. 30 Tahun 1999 tentang Arbitrase dan Alternatif Penyelesaian Sengketa.

⁵ Kompilasi Hukum Islam (KHI), Instruksi Presiden No. 1 Tahun 1991.

⁶ Khan, M. A., & Aminuddin, M. (2023). *Praktik Hukum bagi pencuri di Pondok Pesantren Darul Falah Bangsri Jepara Dilihat Dari Perspektif Hukum Islam dan Hukum Positif* (Doctoral Dissertation, Uin Raden Mas Said).

⁷ Akbaba, B. G. (2024). The role of Islamic mediation in resolving family disputes in Turkish families. *Değerler Eğitimi Dergisi*, 22(48), 499-527.

⁸ Kurniawan, A. A. (2022). Mediasi sebagai solusi alternatif konflik keluarga: Perspektif hukum Islam dan hukum progresif. *Jurnal Hukum Islam*, 11(2), 117.

⁹ Kurniawan, A. A. (2022). Mediasi sebagai solusi alternatif konflik keluarga: Perspektif hukum Islam dan hukum progresif. *Jurnal Hukum Islam*, 11(2), 117.

¹⁰ Akbaba, B. G. (2024). The role of Islamic mediation in resolving family disputes in Turkish families. *Değerler Eğitimi Dergisi*, 22(48), 499-527.

¹¹ Hendra, M.J., & Nefri, J.E. (2024). Mediasi Dan Arbitrase. *Hutanasyah : Jurnal Hukum Tata Negara*.

¹² Rohman, A. N. (2022). Shifting the role of mediation in Islamic inheritance disputes: An overview of Islamic legal philosophy. *Diponegoro Law Review*, 7(2), 230.

¹³ Hendra, M.J., & Nefri, J.E. (2024). Mediasi Dan Arbitrase. *Hutanasyah : Jurnal Hukum Tata Negara*.



court. From a methodological perspective, most previous studies have used an empirical approach with case studies in specific courts, while research examining the alignment between existing regulations and their implementation from a normative juridical perspective remains limited. Therefore, this study aims to fill this gap by analyzing mediation regulations in Islamic family dispute resolution, evaluating their effectiveness in practice, and providing recommendations to enhance their role in Indonesia's religious court system.

Although regulations mandate mediation in resolving Islamic family civil disputes, its implementation still faces various obstacles that hinder its effectiveness. Rahmawati states that the success rate of mediation remains low because many parties prefer litigation as their primary dispute resolution method. This issue is further compounded by the public's limited understanding of mediation's benefits, leading to reluctance to pursue this alternative¹⁴. Additionally, the role of mediators in religious courts remains limited due to the small number of certified judge-mediators, as well as inadequate supervision and evaluation of mediation's effectiveness. This lack of oversight results in the absence of concrete data on its long-term impact in reducing case numbers.

Based on these issues, this study aims to analyze the regulations governing mediation in Islamic family dispute resolution in Indonesia, assess the effectiveness of the existing legal framework, and provide recommendations to strengthen the role of mediation in the religious court system. Using a normative juridical method and a statute approach, this research will examine how regulations are applied in practice and explore potential revisions or improvements in the mediation system to enhance its effectiveness in resolving Islamic family disputes.

2. METHOD

This study employs a normative juridical method, a legal research approach that focuses on analyzing legislation governing the resolution of Islamic family civil disputes through mediation. This approach is used to understand how existing regulations are applied in practice and to identify the effectiveness of mediation in resolving Islamic family disputes in religious courts. The research utilizes a statute approach, which involves examining various legal regulations related to mediation in Islamic family dispute resolution. The key legal instruments analyzed in this study include Law No. 7 of 1989 on Religious Courts, Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution, and Supreme Court Regulation (Perma) No. 1 of 2016 on Mediation Procedures in Court. Additionally, the Compilation of Islamic Law (KHI) serves as a primary legal source regulating various aspects of Islamic family law in Indonesia. The data sources in this study consist of primary data, which includes legal regulations related to mediation in Islamic family dispute resolution; secondary data, such as books, academic journals, previous research findings, and religious court rulings on family disputes; and tertiary data, including legal dictionaries and encyclopedias used to clarify legal concepts in this study. Data collection is conducted through library research by examining legal documents and relevant academic literature. The data analysis techniques used in this study are the descriptive-analytical method and legal interpretation method. The descriptive-analytical method is employed to describe and analyze regulations governing mediation in Islamic family dispute resolution, both from a normative perspective and its practical application in religious courts. Meanwhile, the legal interpretation method is used to interpret various legal provisions, taking into account Islamic legal principles and the judicial system applicable in Indonesia.

3. RESULTS AND DISCUSSION

Mediation is a form of Alternative Dispute Resolution (ADR) that emphasizes peaceful settlement and mutual agreement, thereby reducing the negative impact of prolonged and exhausting litigation. In Islamic law, the concept of peaceful dispute resolution is highly encouraged, as affirmed in Surah An-Nisa, verse 35, which states that if a conflict arises between a husband and wife, efforts should be made to achieve reconciliation through intermediaries (judges or mediators).

¹⁴ Saragih, N. M. R. (2021). Efektivitas Mediasi Dalam Penyelesaian Sengketa Perdata Di Pengadilan Negeri Lubuk Pakam Kelas Ia. JURNAL RECTUM: Tinjauan Yuridis Penanganan Tindak Pidana, 3(1), 385-396.



In the context of national law, mediation has been granted a strong legal foundation through Supreme Court Regulation (Perma) No. 1 of 2016 on Mediation Procedures in Court, which mandates that all civil cases, including Islamic family disputes, must first undergo mediation before proceeding to trial. Additionally, Law No. 7 of 1989 on Religious Courts stipulates that religious courts must strive for dispute resolution through peaceful means, in line with the principles of Islamic law, which prioritize reconciliation in family matters.

Mediation in Islamic family disputes holds a strategic position as it involves emotional relationships and long-term interests, particularly concerning child custody, financial support, and joint property. Therefore, the role of mediators is crucial in assisting the parties in finding the best solutions that are not only based on formal legal considerations but also take into account social and psychological aspects.

Table 1. Comparison of Mediation Principles in Islamic Law and National Law

Aspect	Mediation in Islamic Law	Mediation in National Law (Supreme Court Regulation No. 1 of 2016)
Basic Concept	<i>Islah</i> (reconciliation) as an Islamic teaching based on the Qur'an and Hadith.	Mediation is a mandatory process before a civil case is litigated in court.
Legal Basis	QS. An-Nisa: 35, Hadith on dispute resolution through deliberation.	Supreme Court Regulation (Perma) No. 1 of 2016 on Mediation Procedures in Courts.
Objective	To achieve an agreement based on justice and public interest (<i>maslahah</i>).	To reduce the court workload and seek a peaceful solution.
Mediator's Role	Can be conducted by family members, religious leaders, or judges in certain cases.	Must be conducted by a certified mediator with specialized training.
Sanctions for Uncooperative Parties	No formal sanctions, but enforced through religious and moral values.	No strict sanctions, but non-cooperation may affect case proceedings.

Source : *Al-qur'an, hadis, serta Peraturan Mahkamah Agung (Perma)*

The comparison shows that both Islamic law and national law recognize the importance of mediation in resolving family disputes. However, Islamic mediation is more flexible and relies on moral and religious principles, while national law mandates formal mediation through certified mediators. The absence of strict sanctions in both systems may hinder mediation effectiveness, as uncooperative parties are not penalized.

Table 2. Mediation Success Rate in Several Religious Courts

No.	Religious Court	Total Cases (2023)	Mediated Successfully	Failed Mediation	Success Rate
1	South Jakarta PA	1,200	450	750	37.50%
2	Bandung PA	950	380	570	40%
3	Surabaya PA	1,100	420	680	38.20%
4	Medan PA	870	330	540	37.90%
5	Makassar PA	780	320	460	41%

Source: *Religious Court Data (2023)*

The data reveals that the mediation success rate in religious courts ranges between 37.5% and 41%, indicating that less than half of the cases are successfully mediated. The relatively low success rate suggests



that certain challenges hinder effective mediation, such as lack of cooperation from disputing parties, emotional conflicts, and the limited authority of mediators. Courts with a stronger mediation culture, such as Makassar PA, tend to have slightly higher success rates.

Table 3. Factors Affecting the Success of Mediation

Factor	Impact on Mediation
Mediator's Competence	Experienced mediators are more effective in reaching agreements.
Legal Awareness of Society	When people understand the benefits of mediation, they are more cooperative.
Emotional Level of the Disputing Parties	Cases involving high emotional conflict are harder to mediate.
Culture of Deliberation	Societies with strong deliberation traditions are more likely to accept mediation.
Availability of Time	If both parties have sufficient time, mediation is more effective.
Regulatory Support and Sanctions	The lack of sanctions for non-cooperative parties remains a challenge.

Source : various studies on the effectiveness of mediation

Several key factors influence the success of mediation in family dispute resolution. The mediator's skill and societal awareness play a crucial role in achieving positive outcomes. However, emotional intensity and time constraints can hinder the mediation process. Additionally, the absence of strict sanctions for non-cooperative parties often leads to unsuccessful mediation efforts. Strengthening regulations and promoting a culture of mediation could improve success rates in religious courts.

The effectiveness of mediation in resolving Islamic family disputes in religious courts varies depending on the type of case and the psychological condition of the parties involved. Based on case studies in several religious courts, mediation is more effective in cases involving children's interests, such as custody and financial support, compared to divorce cases, which tend to involve higher emotional intensity. According to Supreme Court Regulation (Perma) No. 1 of 2016, Article 17, if mediation is successful, the parties will sign a peace agreement, which will be ratified by the judge and hold legal force. However, in practice, many mediation sessions fail to reach an agreement because one party insists on proceeding to litigation.

In some cases, the success of mediation also depends on the quality of the mediator, including their communication skills, persuasive approach, and understanding of Islamic law and local customs. Judge mediators with strong negotiation skills are more likely to guide the parties toward a fair and mutually acceptable solution. Although mediation in religious courts has a strong legal foundation, several challenges hinder its effectiveness, including:

- a. **Public Perception of Litigation as the Only Legal Solution**
Many people still believe that legal disputes can only be resolved through court rulings rather than peaceful agreements. This perception leads to a lack of seriousness in mediation, with many parties preferring litigation even when a simpler and faster resolution is possible through mediation.
- b. **Limited Number of Certified Mediators**
According to Perma No. 1 of 2016, Article 13, mediation must be conducted by a certified mediator. However, in many regions, the number of certified mediators is still very limited. As a result, mediation is often carried out by judge mediators who also have other case-handling responsibilities. This limitation makes the mediation process less optimal, as mediators do not have sufficient time to



handle each case effectively.

c. Cultural and Psychological Factors in Family Disputes

In many Islamic family disputes, cultural and psychological factors often pose significant obstacles to successful mediation. For example, in communities that strongly uphold traditions, dispute resolution often involves religious leaders or extended family members, making court mediation less trusted by the parties. Additionally, the high emotional intensity in divorce cases often hinders negotiation and compromise.

d. Lack of Sanctions for Parties Acting in Bad Faith

Although mediation is mandatory in every civil case, there are no clear sanctions for parties who refuse to participate in good faith. As a result, many parties treat mediation as a mere formality without genuinely attempting to reach a peaceful resolution.

To enhance the effectiveness of mediation in resolving Islamic family disputes, several strategies can be implemented, including:

a. Improving the Quality and Number of Certified Mediators

Referring to Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution, broader training and certification programs should be conducted for mediators, including judges and third parties with expertise in Islamic family law. With a greater number of mediators, the mediation process can be conducted more effectively.

b. Legal Education and Public Awareness Campaigns on Mediation

To improve public understanding of mediation benefits, campaigns and legal education programs should be conducted through seminars, workshops, and social media. Article 55 of Law No. 7 of 1989 also states that religious courts are responsible for providing legal education to the public to increase awareness of alternative dispute resolution methods.

c. Strengthening the Role of Judge Mediators in Mediation

Judge mediators should be equipped with communication techniques, conflict psychology, and negotiation skills to guide parties more effectively toward fair agreements. Additionally, regular evaluations of judge mediators' effectiveness should be conducted to ensure that mediation is carried out professionally.

d. Implementing Sanctions for Parties Acting in Bad Faith

To ensure serious participation in mediation, legal provisions should be established to impose consequences on parties acting in bad faith. These could include administrative penalties or special considerations in final court rulings if a party is found to be uncooperative during mediation.

Although mediation in Islamic family disputes has a strong legal foundation, its effectiveness still depends on public awareness, mediator competency, and cultural and psychological factors. Therefore, strategic steps such as increasing the number of certified mediators, providing legal education, and enforcing sanctions against uncooperative parties are necessary. By implementing these measures, mediation can become a more optimal solution for resolving Islamic family disputes in religious courts.

DISCUSSION

Comparison of Mediation in Islamic Law and National Law

Mediation in Islamic law and national law shares the same fundamental principle: resolving disputes peacefully to prevent larger conflicts. In Islamic law, mediation is known as *islah*, which means reconciliation or peacemaking. Surah An-Nisa (4:35) emphasizes that if a dispute arises between a husband and wife, an arbitrator (*hakam*) should be appointed from both sides to seek a fair solution. This principle is also reflected in national law through Supreme Court Regulation (Perma) No. 1 of 2016, which mandates mediation in every civil case before litigation proceeds. However, there are several fundamental differences in the implementation of mediation between Islamic law and national law. In Islamic law, mediation is more



moral and religious, relying on the awareness and goodwill of the disputing parties. Meanwhile, in national law, mediation is procedural and follows formal regulations, making the process more structured. One weakness in the national legal system is the lack of strict sanctions for parties who act in bad faith during mediation, leading to the possibility that mediation is merely a formality without genuine intent to reconcile.

Analysis of Mediation Success in Islamic Family Disputes

The success of mediation in resolving Islamic family disputes depends on various factors, including the parties' compliance, the role of the mediator, and societal culture. In practice, mediation is more effective in cases related to child custody and financial support, as the parties often consider the child's well-being as a primary factor in decision-making. Conversely, in divorce cases, mediation success rates are lower due to high emotions and conflicts between spouses, making it difficult to reach a mutually beneficial agreement. Research in several religious courts shows that mediation success rates are significantly influenced by the mediator's skills. Mediators with strong communication skills and deep knowledge of Islamic law tend to be more successful in helping the parties find fair solutions. Moreover, mediation is more effective in communities that highly value deliberation (*musyawarah*) compared to those that are more individualistic and rely heavily on formal judicial systems.

Weaknesses in Mediation Implementation in Religious Courts

Although mediation is mandatory in resolving Islamic family disputes in religious courts, several challenges hinder its effectiveness. One major issue is that mediation is often perceived as a mere formality, where the parties undergo the process as an administrative requirement before proceeding to trial. This occurs due to the lack of mechanisms ensuring that the parties genuinely attempt to resolve disputes peacefully. Additionally, the absence of legal sanctions for parties unwilling to compromise in mediation is a key factor contributing to low mediation success rates. Many cases involve one party insisting on litigation without giving mediation a fair chance. Emotional and social factors also pose significant obstacles to successful mediation, especially in divorce cases where one party often feels hurt and is unwilling to reconcile.

The Impact of Mediation on Legal Process Efficiency

One of the main benefits of mediation in Islamic family disputes is its ability to reduce the burden on courts. Mediation enables many cases to be resolved without lengthy and exhausting trials. This not only saves time for the disputing parties but also reduces legal costs. Data from several religious courts indicate that cases resolved through mediation take significantly less time than those undergoing full litigation. For example, cases that proceed to trial can take months or even years, whereas cases settled through mediation may conclude within a few weeks. Therefore, mediation can serve as a more efficient solution for resolving Islamic family disputes, particularly for those seeking to avoid prolonged conflicts.

Recommendations for Strengthening Mediation in Islamic Family Dispute Resolution

To enhance the effectiveness of mediation in Islamic family dispute resolution, several strategic steps are needed to address existing challenges:

1. **Increasing the Number and Competence of Certified Mediators**

Referring to Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution, broader training and certification programs for mediators both among judges and third parties with expertise in Islamic family law should be implemented. A greater number of well-trained mediators can improve the quality of mediation and increase trust in the process.

2. **Legal Awareness and Public Education on Mediation**

To ensure that the public fully understands the benefits of mediation, awareness campaigns and legal education initiatives should be conducted through seminars, workshops, and social media platforms. Article 55 of Law No. 7 of 1989 also emphasizes that religious courts have an obligation to educate the public on legal matters to enhance awareness of alternative dispute resolution methods.

3. **Strengthening the Role of Mediator Judges in the Mediation Process**

Mediator judges should be equipped with effective communication techniques, conflict psychology, and negotiation skills to guide parties toward fair agreements. Additionally, periodic evaluations of mediator judges' effectiveness should be conducted to ensure mediation is carried out with the



highest level of professionalism.

4. Imposing Sanctions for Parties Acting in Bad Faith During Mediation

To increase the seriousness of parties in mediation, legal provisions should be established to impose consequences on those who refuse to participate in good faith. These could include administrative penalties or special considerations in the final court ruling if one party is found to be uncooperative during mediation.

While mediation in Islamic family disputes has a strong legal foundation, its effectiveness still depends on public awareness, mediator skills, and cultural and psychological factors. Therefore, strategic steps such as increasing the number of certified mediators, educating the public on legal options, and imposing sanctions on parties acting in bad faith are necessary. By implementing these measures, mediation can become a more effective and sustainable dispute resolution alternative in both Islamic and national legal systems.

CONCLUSIONS

This study shows that mediation in resolving Islamic family civil disputes plays a crucial role in achieving faster, more efficient, and harmonious solutions compared to litigation in court. The principle of mediation in Islamic law, based on the concept of **islah** or reconciliation, aligns with national legal provisions that mandate mediation in every civil case, as stipulated in Supreme Court Regulation (Perma) No. 1 of 2016. However, in practice, various obstacles hinder the effectiveness of mediation, such as the lack of mediator skills, low public awareness, and the absence of strict sanctions for parties acting in bad faith during the mediation process. Although mediation has been proven to reduce court burdens, save time and costs, and prevent prolonged conflicts, its success rate still varies depending on social, cultural, and legal factors in different regions. Certain cases, such as child custody and alimony, are more easily resolved through mediation, whereas divorce cases often face emotional challenges that are difficult to overcome. Therefore, strategic steps are needed to enhance mediation effectiveness, including improving mediator quality, raising public awareness of mediation benefits, and strengthening regulations and monitoring mechanisms in its implementation. With reforms in the mediation system, it is expected that the resolution of Islamic family disputes can be more optimal and provide justice for all parties involved. Mediation should not merely be a formal procedure but should genuinely function as an alternative dispute resolution method that aligns with Islamic legal values and modern judicial principles in Indonesia.

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