

## ALTERNATIVE PRACTICES FOR RESOLUTION OF FAMILY DISPUTES

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### Abstract

*Women's attitudes when negotiating for safe sex in marital relationships can be influenced by their level of empowerment at home. The purpose of these negotiation skills is to maintain reproductive health. In Islam, the Quran highlights that during sexual interactions, husbands and wives must defend each other, uphold their honor, and provide each other with comfort, beauty, and pleasure. From a fiqh and health perspective, this study investigates the opinions of women in Mataram who are married to high-risk partners regarding safer sex negotiations. To maintain their health and safety, women have the right to regulate, choose, and direct everything in their bodies according to their wishes, free from interference, pressure, or even interference from outside. This is demonstrated by the theory of bodily autonomy. This study took a qualitative phenomenological approach. Purposive sampling was used to select five women married to high-risk partners. The study findings indicate that women's attitudes in negotiating safe sex with their partners to maintain their reproductive health are strongly influenced by their socioeconomic status, level of knowledge, and involvement in family decision-making. To achieve the sustainable development goals (SDGs) including access to sexual and reproductive health, gender equality, and women's empowerment, Islamic law balances and equalizes the rights of men and women in sexual relations*

*Penyelesaian sengketa keluarga merupakan isu yang semakin relevan dalam konteks hukum dan sosial dalam dunia saat ini terlebih di Indonesia akan tetapi Umumnya, tradisi penyelesaian sengketa di Indonesia sering kali mengandalkan jalur litigasi, yang tidak hanya memakan waktu dan biaya, tetapi juga dapat memperburuk hubungan antar pihak yang bersengketa. Di sisi lain, metode alternatif seperti mediasi menawarkan pendekatan yang lebih kolaboratif, memungkinkan para pihak untuk berpartisipasi aktif dalam mencari solusi yang saling menguntungkan. Dalam penulisan ini menggunakan metode kualitatif, yang jenis penelitiannya berupa penelitian kepustakaan (library research). Dalam penawarannya perlu menggunakan metode penyelesaian konflik yang lebih efisien dan praktis. Maka dari itu, mediasi dan arbitrase merupakan metode yang efektif dalam menyelesaikan konflik di tingkat keluarga. Kedua pendekatan ini menawarkan solusi yang lebih cepat, hemat biaya, dan menjaga hubungan baik antar pihak dibandingkan dengan litigasi tradisional.*

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**Keywords:** Disputes, Mediation, Arbitration.



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## A. INTRODUCTION

Family dispute resolution is an increasingly relevant issue in the legal and social context in Indonesia. The increasing number of divorce cases and domestic conflicts makes it crucial to explore alternative practices that can be used to resolve these disputes effectively and efficiently. In this regard, the non-litigation mediation approach is one solution that is attracting attention.

Generally, dispute resolution in Indonesia often relies on litigation, which is not only time-consuming and expensive but can also worsen relations between the disputing parties. Jayadi noted that the litigation process often ends in decisions that leave the parties dissatisfied, creating an unproductive "win-lose" situation.<sup>1</sup> On the other hand, alternative methods such as mediation offer a more collaborative approach, allowing the parties to actively participate in finding a mutually beneficial solution.<sup>2</sup>

Non-litigation mediation has been recognized as an effective method for resolving family disputes. This process involves a neutral mediator who helps the parties negotiate and reach an agreement without resorting to court.<sup>3</sup> The success of mediation depends heavily on the active involvement of the parties and their willingness to reach a compromise. Within the context of Islamic law, mediation also aligns with the principles of deliberation and consensus, which are fundamental values in Indonesian society.<sup>4</sup>

The practice of mediation is not only legally relevant but also socially relevant. With the increasing number of family dispute cases, particularly in religious courts, a renewed approach to dispute resolution is needed. Non-litigation mediation may be a better alternative, given its faster process and significantly lower costs compared to litigation.<sup>5</sup> In addition, mediation can help maintain relationships between disputing parties, thereby preventing negative impacts on children and other family members.

Given these developments, it is crucial for researchers and legal practitioners to delve deeper into alternative family dispute resolution practices. Further research into the effectiveness of non-litigation mediation is essential to ensure widespread implementation and maximum benefit to society. Therefore,

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<sup>1</sup>Hendri Jayadi, *Buku Ajar Hukum Alternatif Penyelesaian Sengketa dan Teknik Negosiasi*, (Yogyakarta, Publikasi Global Media, 2023). hlm. 9

<sup>2</sup>Syeh Khaliluddin, "Alternatif Penyelesaian Sengketa Keluarga Islam Indonesia", *Posita: Jurnal Hukum Keluarga Islam*, Vol. 01 No. 01, Juni 2023. hlm. 20-21

<sup>3</sup>Robi Awaludin, "Penyelesaian Sengketa Keluarga Secara Mediasi Non Litigasi Dalam Kajian Hukum Islam Dan Hukum Positif" *Al Maqashidi: Jurnal Hukum Islam Nusantara*. Vol. 4, No. 2, Desember 2021, hlm. 2

<sup>4</sup>Deni Achmad, dkk. "Penyelesaian sengketa hukum keluarga & kekerasan dalam rumah tangga di luar pengadilan Desa Negeri Katon", *Sumbangsih*, Vol. 3, Nomor 1, 2022, hlm. 22

<sup>5</sup>Selinah, Paisal Ahmad Dalimunthe, Hidayatullah Ismail, "Penyelesaian Permasalahan Keluarga secara Mediasi Non Litigasi Perspektif Hukum Islam dan Hukum Positif", *Hamalatul Qur'an: Jurnal Ilmu-Ilmu AlQur'an*, Vol. 5, Nomor 2, 2024, hlm. 538

this paper aims to explore various aspects of alternative family dispute resolution practices, focusing on mediation and arbitration as primary solutions.

## B. METHODS

This research uses a qualitative method, which is library research, using a descriptive analysis approach. The analysis uses the Miles and Huberman method, which is divided into three simultaneous activity streams. These three streams are: (1) data reduction; (2) data display; and (3) drawing conclusions.<sup>6</sup> Data sources are obtained from documents or document studies. Document studies involve searching for data based on variables in the form of journal articles, books, and other information from the internet.

## C. THEORY

### 1. Alternative Practices for Family Dispute Resolution Based on Mediation and Arbitration

#### a. Mediation and the Mediation Process

Mediation is one of the primary methods for resolving family disputes. According to Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, mediation involves a third party acting as a mediator to help the parties reach an agreement.<sup>7</sup> This process not only prioritizes fair resolution but also maintains relations between the disputing parties.

Mediation is a dispute resolution process that involves a neutral third party, namely a mediator, to help the disputing parties reach an agreement. According to the Chief Justice of the Supreme Court, mediation is a method of dispute resolution through negotiation to reach an agreement between the parties with the assistance of a mediator.<sup>8</sup>

Etymologically, the term mediation comes from the Latin "mediare," which means to be in the middle, reflecting the mediator's role in mediating and resolving disputes between the parties.<sup>9</sup> Mediation does not give the mediator the authority to decide the dispute; instead, the mediator serves as a facilitator who helps the parties find a mutually satisfactory solution.<sup>10</sup>

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<sup>6</sup>Hardani, *Metode Penelitian Kualitatif & Kuantitatif* (Yogyakarta: CV. Pustaka Ilmu Group, 2020), hlm.163.

<sup>7</sup>Robi Awaludin, "Penyelesaian Sengketa Keluarga Secara Mediasi Non Litigasi Dalam Kajian Hukum Islam Dan Hukum Positif" *Al Maqashidi: Jurnal Hukum Islam Nusantara*. Vol. 4, No. 2, Desember 2021, hlm. 2

<sup>8</sup>Nur Iftitah Isnantiana, "Mediasi Sebagai Alternatif Penyelesaian Sengketa", *SEMNAS*, Vol. 1, No. 3, 2018, 33

<sup>9</sup>Bagir Manan, *Mediasi Di Pengadilan*, 31 Juli 2008 <https://pn-makassar.go.id/website/index.php/layanan-hukum/prosedur-berperkara/864-mediasi-di-pengadilan> diakses Selasa, 17 Desember 2024.

<sup>10</sup>Djumardin, "Mediasi Sebagai Pilihan Penyelesaian Perselisihan", *Jatiswara*, Vol. 30, Nomor 3, 2017. hlm. 480

Based on a broader definition, Christopher W. Moore defines mediation as an intervention in a dispute by a neutral and impartial third party, which aims to help the parties reach a voluntary agreement.<sup>11</sup> Thus, mediation focuses on open and collaborative dialogue between the disputing parties.

In carrying out mediation, there are several processes that must be gone through, including pre-mediation and mediation itself.

b. Pre-Mediation Stage

The pre-mediation stage is a crucial initial step in the mediation process. During this stage, the mediator undertakes several preparations, including:<sup>12</sup>

- 1) Building Trust; The mediator tries to create a sense of security and mutual trust between the disputing parties.
- 2) Liaison of the Parties; The mediator contacts and provides initial information to all parties regarding the mediation process.
- 3) Determining the Purpose; The mediator determines the purpose of the meeting and agrees on the time and place of the meeting.

This stage is crucial because it determines the smoothness of the subsequent mediation process. If the parties feel comfortable and trust the mediator, the chances of reaching an agreement are higher.

c. Mediation Process

After the pre-mediation stage, the process continues to the mediation stage. In this stage, the parties meet to discuss and negotiate before a mediator. The steps taken include:<sup>13</sup>

- 1) Introductory Remarks; The mediator introduces himself and explains his role and mediation procedures to the parties.
- 2) Case Presentation; Each party presents their views and stories regarding the dispute at hand.
- 3) Problem Identification: The mediator helps sort and clarify existing problems.
- 4) Discussion and Negotiation; The parties discuss to find settlement options and formulate a joint decision.

The mediator plays an active role in facilitating the discussion to keep it focused on the main issue without getting caught up in emotions or personal conflicts.

d. Implementation Stage of Mediation Results

The implementation phase of mediation results occurs after mediation has taken place. This means that this phase begins after a mutual agreement

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<sup>11</sup>Bambang Sutiyooso, Hukum Arbitrase dan Alternatif Penyelesaian Sengketa, (Yogyakarta: Gama Media, 2008), hlm. 57

<sup>12</sup>Ni Kadek Candra Nanda Devi and Kadek Julia Mahadewi, "Dispute Resolution Scheme Through Mediation Process Based on Supreme Court Regulation No. 1 of 2016", Citizenship Journal, Vol. 6 No. 2 September 2022. pp. 5215-5216

<sup>13</sup>Ibid. 5217-5218

has been reached. At this stage, there are two urgent matters that must be addressed, including:<sup>14</sup>

- 1) Drafting an Agreement; The agreement reached is set out in a written document signed by all parties.
- 2) Implementation of the Agreement; The parties are expected to implement the agreement in accordance with the contents of the agreement.

The implementation stage of the mediation results is very important to carry out because it aims to ensure that the mediation results are not just mere words but are also implemented in real terms by all parties and agreed to.

## 2. Arbitration

Besides mediation, arbitration can be an alternative to consider, namely arbitration-based dispute resolution. Arbitration offers a different approach than traditional litigation, focusing on a faster and more final resolution.

### a. Definition of Arbitration

Arbitration is a dispute resolution process outside the courts based on the parties' agreement to submit their dispute to a neutral third party, namely the arbitrator. According to Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, arbitration is defined as a method of resolving a civil dispute outside the general courts based on an arbitration agreement made in writing by the disputing parties.<sup>15</sup>

In resolving family disputes, there are several important steps that must be taken, some of which include:

#### 1) Initial Agreement

The parties must agree to resolve the dispute through arbitration. This agreement is usually set out in an arbitration clause in the main agreement or in a deed of compromise after the dispute arises.<sup>16</sup>

#### 2) Selection of Arbitrators

The parties select an arbitrator or panel of arbitrators who will handle the dispute. This selection can be made jointly or through a designated arbitration institution.<sup>17</sup>

#### 3) Filing an Arbitration Request

The party who feels aggrieved submits a request for arbitration, stating the identities of the parties, the reasons for the request, and supporting evidence.<sup>18</sup>

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<sup>14</sup>Pradana Arie Wijayanto, Bambang Eko Turisno, Mujiono Hafidh Prasetyo, "Hambatan dan Solusi Dalam Pelaksanaan Mediasi Pembatalan Eksekusi Lelang Jaminan Kredit yang Dibebani Hak Tanggungan", NOTARIUS, Volume 14 Nomor 2 (2021) hlm. 665-666

<sup>15</sup>Rifqani Nur Fauziah Hanif, , *Arbitrase Dan Alternatif Penyelesaian Sengketa*, Kementerian Keuangan Indonesia, Rabu, 30 Desember 2020, <https://www.djkn.kemenkeu.go.id/kpknl-manado/baca-artikel/13628/Arbitrase-Dan-Alternatif-penyelesaian-sengketa.html> diakses Selasa, 17 Desember 2024

Syeh Khaliluddin, Alternatif Penyelesaian Sengketa Keluarga Islam Indonesia, Posita: Jurnal Hukum Keluarga Islam, Vol. 01 No. 01, Juni 2023, hlm. 19

<sup>17</sup>Ibid.

#### 4) Arbitration Hearing

Once the request is received, an arbitration hearing is held. At this stage, each party presents its arguments and evidence before the arbitrator. The arbitrator will ask questions to clarify the issues.<sup>19</sup>

#### 5) Arbitration Decision

After hearing all arguments and evidence, the arbitrator will issue a decision that is final and binding on both parties. This decision must be implemented by the parties in accordance with the previously agreed terms.<sup>20</sup>

### **D. ANALYSIS AND DISCUSSION**

#### **1. Effectiveness of Dispute Resolution through Mediation and Arbitration**

The effectiveness of dispute resolution is a crucial consideration, as it is an integral part of the legal system, which aims to achieve justice and order. In Indonesia, alternative dispute resolution methods such as mediation and arbitration are increasingly gaining attention as more efficient methods than litigation. There are at least several advantages to mediation and arbitration.

Compared to other alternatives, mediation is increasingly popular as an alternative dispute resolution method in Indonesia, particularly in the context of civil procedure. It offers several advantages, including:

##### a. Processing Speed

Mediation offers a faster solution than litigation in court. The mediation process tends to be shorter, saving time and energy for the disputing parties. This is especially important in business or tribal disputes, where time is a key factor that can impact business continuity.<sup>21</sup>

##### b. Cost Savings

Mediation is more cost-effective because it eliminates the need to pay attorney fees and the often-high costs of litigation. Therefore, mediation is an economical option for parties seeking to resolve disputes without having to spend a lot of money.<sup>22</sup>

##### c. Final Result Control

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<sup>18</sup>Idandi limbong, dkk. "Arbitrase Syariah Di Indonesia : Tantangan Dan Solusi dalam Penyelesaian Sengketa", *Mabkamah: Jurnal Riset Ilmu Hukum*, Vol.1, No.4, Oktober 2024, hlm. 6

<sup>19</sup>Ibid. p. 7

<sup>20</sup>Rifqani Nur Fauziah Hanif, Kementerian Keuangan Indonesia, Arbitrase Dan Alternatif Penyelesaian Sengketa, Rabu, 30 Desember 2020, <https://www.djkn.kemenkeu.go.id/kpknl-manado/baca-artikel/13628/Arbitrase-Dan-Alternatif-penyelesaian-sengketa.html> diakses Selasa, 17 Desember 2024

<sup>21</sup>Safira Putri Zakia, "Tinjauan Yuridis Terhadap Pemanfaatan Mediasi Sebagai Alternatif Penyelesaian Sengketa Dalam Hukum Acara Perdata di Indosenia", *Jurnal Multidisiplin Ilmu Akademik*, Vol.2, No.1 Februari 2024, hlm. 72-73

<sup>22</sup>Ibid.

The parties have greater control over the outcome in mediation because they are directly involved in the discussions and negotiations to reach an agreement. This differs from a judge's decision, which may be unsatisfactory to either party.<sup>23</sup>

d. Secret and Flexibility

Mediation is conducted behind closed doors, ensuring confidentiality. The mediation process is also very flexible, allowing parties without legal training to actively participate. This allows the parties to discuss various aspects of their dispute, not just the legal aspects.<sup>24</sup>

e. *Win-Win Solution*

Mediation can produce a win-win solution for the parties because it is consensual and collaborative. Therefore, mediation provides an opportunity for the parties to reach a resolution that might not be possible through the courts.<sup>25</sup>

## 2. Advantages of Arbitration

In addition to mediation, arbitration as a dispute resolution method is increasingly recognized as an effective alternative in the Indonesian legal context. It also offers several advantages over traditional litigation, making it an attractive option for individuals and companies seeking to resolve disputes. Some of the advantages of arbitration include:

a. Speed and Efficiency

One of the main advantages of arbitration is the speed of the resolution process. Arbitration is generally faster than court litigation, which can take years. Under Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, arbitration is expected to be completed within six months, with limited extensions.<sup>26</sup> This allows the parties to immediately obtain legal certainty without having to wait a long time.

b. Lower Costs

Arbitration is also often more economical than litigation. Arbitration costs are generally lower because the process is simpler and doesn't involve the many formal procedures involved in court. Munir Fuady explained that this lower cost is one reason many parties choose arbitration as an alternative dispute resolution method.<sup>27</sup>

c. Confidentiality of the Process

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<sup>23</sup>Ibid. 70

<sup>24</sup>Ibid. 72

<sup>25</sup>Alda Christa Ivanda dan Martika Dini Syaputri, "Mediasi Sebagai Alternatif Penyelesaian Sengketa Bisnis Di Indonesia", *Jurnal Yustitita*, Vol. 9 No. 2, 2023, hlm. 209

<sup>26</sup>Rahmadi Indra Tektona, "Arbitrase Sebagai Alternatif Solusi Penyelesaian Sengketa Bisnis di Luar Pengadilan", *Pandecta*, Volume 6. Nomor 1. Januari 2011, hlm. 91

<sup>27</sup>Joejoen Tjahjani, Peranan Pengadilan Dalam Pelaksanaan Putusan Arbitrase, *Jurnal Independent* Vol. 2 No. 1, 2021, hlm. 28

The arbitration process is confidential, meaning all information related to the dispute will not be made public. This is especially important for companies that want to maintain the confidentiality of business strategies or other sensitive information.<sup>28</sup> In litigation, the process is open to the public, potentially revealing unwanted information.

d. Control the Process and Results

In arbitration, the parties have greater control over the dispute resolution process. They can choose the arbitrator they deem most competent and experienced in the area of dispute.<sup>29</sup> In addition, the parties can also determine the law to be applied and the location where the arbitration will be conducted, providing flexibility in dispute resolution.

e. Final and Binding Decision

Arbitration decisions are final and binding, meaning there is no possibility of appeal as in the court system.<sup>30</sup> This provides legal certainty for the parties after the decision is issued, so they can continue their business activities or relationships after the dispute is resolved.

### 3. Experiences from Various Countries

Mediation has been widely implemented in many countries as an effective dispute resolution method. For example, in the United States, mediation is widely used in family and business disputes.<sup>31</sup> Mediation in the US often involves a trained professional mediator who helps the parties reach a mutually beneficial agreement. This process not only expedites dispute resolution but also maintains relationships between the parties.

In Europe, mediation has also become an important part of the dispute resolution system. Countries such as the UK and France have integrated mediation into their legal systems, with legislation supporting its use in a wide range of disputes. Research shows that mediation in Europe can reduce the burden on the courts and increase party satisfaction with the outcome of dispute resolution.

Meanwhile, international arbitration has become a primary method for resolving cross-border disputes. One well-known example is the case between the Indonesian government and Churchill Mining Plc, where arbitration was

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<sup>28</sup>Muhammad Yasril Ananta Baharuddin, "Peran Hukum Arbitrase dalam Penyelesaian Sengketa Bisnis Nasional", *Jurnal Risalah Kenotariatan*, Volume 5, No. 2, Juli-Desember 2024, hlm. 314

<sup>29</sup>Ahmad Widad Muntazhor, "Arbitrase Sebagai Pilihan Forum Penyelesaian Sengketa Konstruksi Bagi Perguruan Tinggi Negeri Berbadan Hukum", *Jurnal Ilmiah dan Ilmu Hukum*, Vol.6, No. 3, 2024. hlm. 362

<sup>30</sup>Joejoen Tjahjani, Peranan Pengadilan Dalam Pelaksanaan Putusan Arbitrase, *Jurnal Independent*, Vol. 2 No. 1, 2021, hlm. 28

<sup>31</sup>Gusti Ngurah Parikesit Widiatedja, Dkk. *Rekonstruksi Pengaturan Confidential Principle Bagi Komunikasi Pada Mediasi Sengketa Perdata Di Indonesia: Studi Perbandingan Dengan Praktek Di Amerika Serikat*, (Denpasar: Laporan Kemajuan Hibah Penelitian Dosen Muda, 2015), hlm. 4

used to resolve a dispute related to the revocation of a business license.<sup>32</sup> This case demonstrates how arbitration can provide a quicker and more binding solution than international litigation.

Countries such as Singapore and Hong Kong have become international arbitration hubs with robust legal infrastructure and leading arbitral institutions. Singapore, for example, has ratified the Singapore Mediation Convention, which facilitates the enforcement of cross-border mediated settlement agreements.<sup>33</sup> This reflects the country's commitment to promoting mediation as an efficient alternative dispute resolution.

#### **D. Conclusion**

As social beings, humans are inextricably linked to social conflict, and therefore more efficient and practical conflict resolution methods are needed. Therefore, mediation and arbitration are effective methods for resolving family-level conflicts. Both approaches offer faster, more cost-effective solutions and maintain good relations between parties compared to traditional litigation. Mediation, both in and out of court, has been proven to create mutually beneficial agreements for disputing parties. This process focuses not only on problem resolution but also on restoring interpersonal relationships, which is crucial in a family context. In many cases, mediation can prevent families from divorce and protracted conflict by involving community leaders or experienced mediators to facilitate discussions. Meanwhile, arbitration is also an attractive option because it provides a final and binding decision, thus providing legal certainty for all parties. With regulations supporting the implementation of arbitration in Indonesia, such as Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, these two methods are increasingly relevant in the context of family dispute resolution. However, challenges remain, particularly regarding public understanding of these two methods and the tendency to choose litigation. Therefore, it is crucial to increase public awareness and legal education regarding mediation and arbitration as better alternative dispute resolution methods. This way, it is hoped that these practices can be further optimized to achieve justice and well-being in family life in Indonesia.

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<sup>32</sup>Hadiwinata, dan V. Bob Sugeng, *Studi Dan Teori Hubungan Internasional : Arus Utama, Alternatif, Dan Reflektifis* (Jakarta : Yayasan Pustaka Obor Indonesia, 2017) hlm. 29

<sup>33</sup>Jana Lamas, *Singapore's Recipe For Becoming A Top International Arbitration Hub*, 7 Juni 2022, dapat diakses melalui [https://www-uria-com./singapores-recipe-for-becoming-a-top-international-arbitration-hub? x\\_tr sl=en& x\\_tr tl=id& x\\_tr hl=id& x\\_tr pto=tc](https://www-uria-com./singapores-recipe-for-becoming-a-top-international-arbitration-hub? x_tr sl=en& x_tr tl=id& x_tr hl=id& x_tr pto=tc) diakses 17 Desember 2018

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