

Mediation in Household Dispute Reconciliation: Prospects and Challenge

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ABSTRACT

Domestic disputes are disputes within the family environment. Family disputes are personal disputes that do not need to be exposed. The settlement of household disputes must prioritize the restoration of the situation to maintain good relations in the family order. Mediation is an effective way to resolve household disputes because mediation is a peaceful dispute resolution that accommodates common interests, ensures the confidentiality of both parties, is cooperative, consensual and a win-win solution. However, although mediation is an effective method and is a method that is guided by the Qur'an (Qur'an 4:35), in reality, mediation has not become the main choice. The method used is a descriptive analysis method with a normative juridical approach. Observations show that mediation is an ideal alternative for resolving household disputes because it prioritizes peace and restoration of good relations (reconciliation) in family ties. There are several ways to make mediation in household dispute resolution effective, including not violating the general principles of ADR (Alternative Dispute Resolution), strengthening the role/function of mediators and maximizing the skills of mediators. The challenges of mediation as an alternative for resolving household disputes are; socialization of mediation institutions has not been optimal, there is still a lack of certified mediators, not yet qualified mediator skills/skills, the level of conflict is quite severe, there is no good faith, peace agreements do not have legal force, mediation in court is not based on volunteerism but based on procedural lawsuits. Thus, there needs to be a concrete effort to make mediation a reconciliation of household disputes, including from the parties, mediators and regulations on mediation.

Keywords: Mediation, Reconciliation and Household Disputes

ABSTRAK

Sengketa rumah tangga merupakan sengketa dalam lingkungan keluarga. Sengketa keluarga adalah sengketa pribadi yang tidak perlu diekspos keluar. penyelesaian sengketa rumah tangga harus lebih mengutamakan pemulihan keadaan demi terjaganya hubungan baik dalam tatanan keluarga. Cara efektif untuk menyelesaikan sengketa rumah tangga adalah mediasi, karena mediasi merupakan penyelesaian sengketa secara damai, mengakomodir kepentingan bersama, menjamin kerahasiaan kedua belah pihak, bersifat kooperatif, konsensual serta *win-win solution*. Akan tetapi kendati mediasi merupakan cara efektif dan merupakan cara yang dituntunkan Alquran (QS.4:35), realitanya mediasi belum menjadi pilihan utama. Metode yang digunakan adalah metode deskriptif analisis dengan pendekatan yuridis normative. Hasil pengamatan menunjukkan bahwa mediasi merupakan alternatif penyelesaian sengketa rumah tangga yang ideal karena lebih mengutamakan perdamaian dan pemulihan hubungan baik (rekonsiliasi) dalam ikatan kekeluargaan. Ada beberapa cara agar mediasi dalam penyelesaian sengketa rumah tangga berjalan efektif, diantaranya; tidak melanggar prinsip ADR (*Alternative Dispute Resolution*) secara umum, penguatan peran/fungsi mediator serta memaksimalkan keterampilan mediator. Tantangan mediasi sebagai alternatif penyelesaian sengketa rumah tangga adalah; sosialisasi lembaga mediasi belum optimal, masih minimnya mediator bersertifikat, belum mumpuninya keahlian/keterampilan mediator, tingkat konflik yang cukup berat, tidak adanya itikad baik, kesepakatan damai tidak memiliki kekuatan hukum, mediasi di pengadilan belum berdasarkan kesukarelaan tapi atas dasar tuntutan hukum acara. Dengan demikian, perlu ada upaya kongkrit untuk menjadikan mediasi sebagai rekonsiliasi sengketa rumah tangga diantaranya dari para pihak, mediator dan peraturan tentang mediasi.

Kata Kunci: Mediasi, rekonsiliasi, Sengketa Rumah Tangga

INTRODUCTION

The dispute is the development of a conflict. In conflict theory, a difference, be it different opinions, different desires, different interests, different habits, or different backgrounds, can lead to the emergence of a conflict. When the conflict has been raised, and there is no common ground, the conflict will develop into a dispute (Aziz & Hidayah, 2020). Conflict or dispute is a necessity in a relationship and community because every individual in a relationship or community is not the same. When there is a conflict between one opinion and another, one desire with another and one interest with another, then that is where conflict will arise. And conflict, if not resolved, will develop into a dispute.

This is no exception for a relationship in domestic life. Husband and wife are two different individuals. When these differences are not processed in a positive direction, they will have the potential to create conflicts and disputes in the household. When household disputes are not resolved, it is not surprising that a marriage which is a bond that is mistaken *galidzan* will lead to divorce. Likewise, for disputes that arise from family relationships, such as inheritance disputes and others

Because a conflict and dispute is something that cannot be avoided, there must be a system that can resolve the dispute so that life in a relationship is maintained. Although, on the one hand, a dispute is seen as a disturbance in a relationship, on the other hand, a dispute can be interpreted as a natural dynamic which is precise with the existence of this dispute, a relationship will become more harmonious because it will get to know each other's character and desires better because whatever the name of the dispute, it has the potential to be resolved (Faulkes, 2018).

Dispute resolution can be made by litigation or non-litigation. Litigation dispute resolution means that the case will be decided based on the judge's decision in court, not based on the agreement of both parties. Therefore, the litigation method sometimes still leaves a sense of dissatisfaction from one party; sometimes, the case is finished, but family relations are not maintained. Thus the litigation method is sometimes a win-lose solution because it does not produce a perfect solution. The parties have been positioned as opponents from the start so that there are winners and losers automatically, in the end. Meanwhile, non-litigation dispute resolution is a peaceful dispute resolution outside the court. Non-litigation settlement is known as Alternative Dispute Resolution (ADR) (Stražičar, 2018). This method prioritizes peaceful, voluntary, familial and consensual dispute resolution methods because, on average, disputes are resolved by an agreement (consensus). When compared to litigation, this non-litigation method is more of a win-win solution because no one loses, but both win. From the start, the parties are positioned as partners, and the case is settled based on the agreement of both parties, not based on anyone's decision.

There are several ways of resolving disputes non-litigation, including negotiation, mediation, conciliation, consultation and expert judgment (Stražičar, 2018). Mediation is a way of resolving disputes peacefully by using the services of a third party as an intermediary. Mediation can be used as an option in resolving a dispute, including household disputes, because it is more familial, carried out voluntarily, peacefully and conditionally because it is not bound by procedural law. In fact, peaceful dispute resolution through mediation is a way of resolving disputes that are under the character of the Indonesian people, who always work together and make peace in a family manner. In addition, the method of resolving disputes through mediation is more in line with what is exemplified by the Qur'an (Surah 4:35).

However, most people prefer the judicial system to mediation to resolve their disputes. Not to mention if you look at the data in several courts, the success rate of mediation is still very low. The report on the implementation of West Java PTA activities in 2020 shows that the Religious Courts throughout the West Java Religious High Court 2020 received 120,287 cases. Of the total cases received, as many as 7,895

cases were processed through mediation, and mediation was successful in only 1,668 cases or 21.13%. Therefore, it is necessary to have a special discussion on mediation to resolve household disputes regarding challenges and prospects.

This short discussion will use the inshallah theory approach and conflict management theory. *Islah* is a contract to end a conflict or dispute. *Islah* is to condition something to a straight state and return it to its original function. This is under the word of Allah in the letter al-Hujurat, verse 9. In that verse, Allah commands to reconcile the two disputing parties reasonably. In conflict management theory, it is stated that one of the conflict resolution techniques is the way of compromise, namely an action by bringing together two desires. This method prioritizes restoring the situation and maintaining good relations.

RESEARCH METHOD

The type of research in this paper is library research (Cresswell John W, 2014). The descriptive analysis method used, where the author will describe mediation in the reconciliation of household disputes. Sources of data used in this study are primary data sources and secondary data sources, including laws and regulations, books, articles and other writings related to the subject matter. This study's type of data is related to mediation and household disputes, which were collected using the literature study method and analyzed using the deductive method.

RESULTS AND DISCUSSION

Household Dispute

Disputes are conflicts between two parties that originate from different perceptions of particular interests or rights, leading to legal consequences for both (Menkel-Meadow et al., 2018). The family is the smallest structure in society in which each other is bound by marriage and blood relations. The simplest form of family is a family consisting of a husband, wife and children living in the same residence. Meanwhile, the household is an environment that is formed because of the marriage bond, where interactions occur between family members, where the rights and obligations of family members are carried out and where family members feel love for each other.

Fostering a household requires several supporting aspects ranging from personal maturity and maturity, financial readiness, mental readiness, and readiness in terms of knowledge and awareness so that the household that is fostered is by the purpose of marriage itself, namely the creation of a *Sakinah* household life, *mawaddah* and mercy. Reality life shows that harmony does not always colour domestic life. Sometimes conflicts arise due to the unpreparedness of several aspects, in addition to the differences between family members who cannot be reconciled. Not infrequently, the conflicts that arise develop into disputes that end in divorce.

Thus several factors can be the background for the emergence of disputes in the household including: first, internal factors, including; the couple's maturity factor, couples who are not yet mature in terms of mental and thought tend to be unprepared to face the problems of domestic life. Emotional factors, and unstable partner emotions can also trigger the emergence of a prolonged conflict. Commitment factor: Couples who do not commit to their marriage will not appreciate their own marriage and the factor of religious understanding and knowledge. Without understanding of science and religion, they will find it difficult to overcome all household problems. Second, External Factors. Among them: are

economic factors, and economic difficulties can trigger conflicts. The factor of having WIL or PIL is outside the factor of the presence of domestic violence, and one of the factors is changing religion.

The interaction relationship in the family is intense continuously and in unlimited duration, and family members have a high dependence on each other. Therefore, in this kind of interaction, there is the potential for a conflict to arise. These conflicts can arise between husband and wife, between parents and children and conflicts between children (Jalil, 2021). When referring to the explanation of Article 49 of Law Number 3 of 2006 concerning amendments to Law Number 7 of 1989 concerning Religious Courts, it can be identified cases that can be categorized into household disputes, including disputes due to the neglect of obligations, domestic violence disputes, polygamy disputes, joint property disputes, child guardianship disputes (hadlanah), inheritance disputes and will disputes.

Household Dispute Resolution Techniques

Litigation settlement

As it is known that there are two kinds of technical dispute resolution, including household disputes, namely litigation and non-litigation. Litigation dispute resolution is dispute resolution through a procedural process in court based on a judge's decision (Rosnawati et al., 2018). The procedure for litigation settlement is very much bound by procedural law and administrative rules from the time the case is filed, examined, and decided until the case is resolved. So the process seems very formal and official.

In examining disputes in court, from the beginning, the parties have been positioned as opponents so that in the end, there are parties who are defeated, and there are parties who won. Therefore, technical dispute resolution in court is a win-loss because there is a defeated party. Because someone has been defeated. So it is logical that even though the case is finished, it still leaves dissatisfaction and disappointment from one party. Therefore, especially for civil cases, it would be wise if this litigation method was used as an alternative to the last settlement after previously adopting a cooperative settlement method that could not result in an agreement.

Non-litigation settlement

Non-litigation dispute resolution is a cooperative dispute resolution route outside the court (Syafrida & Hartati, 2021). This dispute resolution method is better known as Alternative Dispute Resolution (ADR), or in Indonesia, it is better known as Alternative Dispute Resolution (APS). The non-litigation settlement system was developed as an alternative breakthrough for the weakness of litigation settlement which tends to produce adversarial decisions that have not been able to embrace common interests and are very bound by procedural and administrative rules. Non-litigation settlement is carried out peacefully and cooperatively. The case is not resolved based on anyone's decision but on consensus or mutual agreement. Therefore, non-litigation dispute resolution is more of a win-win solution because neither party is defeated.

Several principles must be considered in the non-litigation settlement process (Cahyono et al., 2019), namely: 1) the voluntary principle, meaning that both parties must voluntarily, based on their wishes and not under orders or pressure from anyone to resolve their dispute through litigation. 2) the principle of neutrality, in the non-litigation dispute resolution process that uses the services of a third party as an intermediary, this third party must be a neutral party, there should be no partiality to either party, and 3) the principle of confidentiality. Non-litigation settlements will never be exposed because both

parties must approve the presence of other parties in the dispute resolution process to the dispute. Unlike in the litigation process, the examination itself must be conducted in a trial open to the public.

Non-litigation dispute resolution can be made by negotiation, mediation, conciliation, consultation and expert judgment. Negotiation is the resolution of disputes by negotiation in which there is a bargaining process. Mediation is a way of resolving disputes by using the services of a neutral third party as a mediator. Conciliation is a dispute resolution through consensus carried out by both parties with the assistance/accompaniment of a neutral third party active as a conciliator. A consultation is a personal act of requesting an opinion by a client from a consultant. Meanwhile, expert judgment is the result of a scientific study by an expert on the subject of the dispute so that it becomes clear and clear.

Mediation in Domestic Disputes

Mediation is a way of resolving disputes peacefully by using the services of a third party, namely a mediator, as an intermediary. Mediation is a cooperative method of resolving disputes because it is carried out by means of cooperation between the two parties to the dispute. It is collaborative. Both parties can cooperate and consensual because the result is a consensus or agreement, not a third-party decision (Sitinjak & SH, 2019). Because the dispute is resolved by mutual agreement, neither party feels defeated because the agreement is a mutual desire and interest. This technical settlement is a win-win solution, namely a dispute resolution that embraces common interests while maintaining the integrity of kinship and familial relations between both parties.

In technical settlement by mediation, the confidentiality of both parties will be maintained because, in the mediation process, only the two parties and the mediator are entitled to attend. The parties must authorize the presence of other people in the mediation process. As long as there is no permission from both parties, the mediation process is only attended by both parties and the mediator without the presence of other people.

Then the advantages of mediation in terms of time will be shorter, in terms of the budget will be minimal, and in terms of procedures, the mediation process is simpler because it is not bound by procedural law and is more conditional, flexible and flexible because the mediation process can be adapted to the conditions and situations of the parties. Each.

Of the several advantages of mediation above, there is one main weakness of mediation; namely, the resulting peace agreement does not have legal force and executive power, so one of the disputing parties in the future does not comply with the contents of the agreement, and anyone including the mediator cannot force the person concerned to comply with the terms of the agreement. Therefore, so that the result of the mediation settlement in the form of a peace agreement can have permanent legal force and executive power, the peace agreement must be requested by the court for a peace deed to be drawn up.

The power of the peace deed is the same as a decision with permanent legal force, and the peace deed cannot be appealed or caused. Then the peace deed also has executorial power, meaning that the peace deed can be executed if one of the parties to the dispute does not want to voluntarily carry out the contents of the peace deed.

Seeing some of the advantages of the mediation dispute resolution process above, this kind of settlement process is more effective for resolving household disputes because disputes that arise in the household environment are private, not public, cases that must be exposed to the general public. Then domestic disputes are disputes that are not to be worn by anyone but to be reconciled so that kinship relations are maintained, and at the same time, the case is resolved peacefully. This is by the principle of

Islamic marriage, which makes divorce difficult and makes marriage easier, meaning that the marital bond is maintained and divorce does not occur just because of a dispute between husband and wife, then the existing dispute must be resolved peacefully, not the marriage which must be ended. Likewise, with other disputes that arise in the household environment, it would be wise if the cases were resolved peacefully instead of eliminating relations.

There is an attitude guide in the Qur'an that can be used to resolve domestic disputes peacefully, namely in QS An. Nisa verse 35. In that verse, Allah provides an overview of one way that can be taken to resolve household disputes, one of which is *syiqaq*. Namely by choosing a mediator/peacemaker (*hakam*) from both the husband and wife parties to the dispute.

Methodological Techniques of Mediation in Domestic Disputes

In order for the mediation target to be achieved, namely, the case is resolved peacefully by producing a peace agreement, and the situation is restored so that family ties are maintained, a special effort is needed that is applicable and skill-based from a mediator. Among the methodological techniques of mediation in resolving household disputes are:

Does not violate the ADR principle (Alternatif Dispute Resolution)

In the implementation of mediation, several principles must be considered so that the mediation runs effectively and efficiently, including volunteer. This means that mediation must be purely based on both parties' wishes voluntarily, not on the wishes, orders and coercion. So that the author assumes that the low success rate of mediation in court to date may be one of the factors in the absence of this voluntary principle because mediation in court is not based on the voluntary desire of the two disputing parties but is required by procedural law. Second is the principle of freedom (Moore, 2014). Continuing from the voluntary principle, the parties have the freedom to choose and determine the mechanism for the implementation of mediation because mediation as an alternative dispute resolution is flexible, flexible and conditional. Third, the deal. In the implementation of mediation, everything must start from the agreement of the two parties to the dispute, from the selection of the mediator, the determination of the schedule/time, place, and budget to the outcome of the agreement, everything must be based on an agreement, not a wish or only the choice of one party. Fourth, active involvement of both parties As a consequence of the principle of agreement, the principle of active involvement of both parties will emerge, meaning that both parties must be actively involved to solve their problems.

While the mediator's capacity is only as a mediator, the mediator does not have the authority to make agreements. The agreement must come purely from both parties. Therefore, mediation as one of the ADRs is a unique solution because it is actually from them that disputes arise, and they also come up with solutions for their resolution. The case is settled based on their agreement, not decided by a third party. Fifth, the principle of neutrality, namely, the mediator chosen must be neutral, there is no partiality or inclination towards one of the parties in dispute, and the resulting agreement is not in favour of or benefits one party and harms the other party. Sixth is the principle of good faith (Good Faith). This principle demands a commitment from the parties to resolve the case peacefully so that they can act in good faith and cooperate in the implementation of the mediation.

Strengthening the role and function of the mediator

Among the tips so that mediation in resolving household disputes runs smoothly and effectively so that it can achieve peace, it is necessary to strengthen the role and function of a mediator. Among the roles

of a mediator are: being a neutral discussion leader, regulating the course of negotiations so that negotiations take place according to the rules, controlling the emotions of the parties, encouraging the parties to express their views, evaluating the progress of the negotiation process, empowering the parties towards a settlement, preparing and making minutes of negotiations, formulating meeting point/agreement of the parties, making the parties aware that the dispute is not a battle that must be won but resolved, compiling and proposing alternative solutions to problems, and helping the parties analyze alternative solutions to problems (Suyud, 2010).

Based on these several roles, the function of a mediator is; as a catalyst, meaning that the mediator must be able to encourage the birth of a constructive atmosphere in the discussion/negotiation process. As an educator, a mediator must be able to educate on the dynamics of differences between the parties. As a translator, it means that a mediator must be able to translate every aspiration from one party to be conveyed to another party using a more refined language without compromising the intent of the aspiration provider. As a resource person, meaning as a resource person, a mediator must be able to provide theoretical and practical information related to the disputed subject matter. As a bear of bad news, it means that here a mediator must hold a separate meeting (Caucasus) to accommodate various unfavourable information, which, if put forward in open negotiations, will bring up emotions from the other party. As an agent of reality, an agent of reality means that a mediator must be able to provide a realistic explanation if he or she gets smoky or too idealistic aspirations (which will indeed be difficult to achieve) from one of the parties.

Maximizing mediator skills

A mediator is required to have special skills as a mediator to be able to carry out his duties and functions effectively. These skills include personal skills, social skills and professional skills. Personal skills are abilities related to the mediator's capacity (Rahmadi, 2011). Social skills include the skills to act objectively and non-discriminatory, communicate effectively, and get along and adapt to the diverse backgrounds of the disputing parties. Professional skills are skills related to expertise as a negotiator.

Prospects and Challenges of Mediation as an Alternative for Household Dispute Resolution

The relationship between family members in familial ties is intense and continuous. It is possible to create a conflict due to differences of opinion, interests or even acts against the law so that one party feels aggrieved and a dispute arises. When conflicts and disputes are not resolved properly, they will develop into disputes. Disputes arise when there is no meeting point between existing differences, and prolonged debate results in the failure to reach an agreement. Situations like this often end in the breakdown of communication lines because each party does not take a way out by putting aside the fate and interests of the other party (Takdir, 2020).

There are three things that are usually defended by the disputing parties, namely interests, rights and power status. the parties each want their interests to be achieved, their rights fulfilled, and their status maintained (Ury et al., 1993). So in resolving an effective dispute, these three things must be considered, and both parties' right to be heard must be fulfilled. As explained earlier, two events can be taken to resolve household disputes, including by way of a decision by a judge in court and by means of amicable consensus deliberation, one of which is by means of mediation. Mediation is considered the most effective because it prioritizes restoring the situation and is carried out in a family manner.

There are several reasons why mediation is an option to resolve disputes. This reason can be seen as an opportunity for mediation to be further developed and used as an option in resolving disputes. Those reasons include:

1. The character of the indigenous Indonesian people always prioritizes peace in a family manner and consensus and cooperation, so mediation, which is a peaceful settlement method, is very compatible with the socio-cultural character of the Indonesian people.
2. The mediation process itself is a dispute resolution technique that prioritizes recovery of the situation
3. The advantages of the mediation process are more flexible, flexible, conditional and economical in terms of time and budget.
4. The judicial process is complicated and rigid because it is bound by procedural law, relatively requires a longer time, more budget, and the decision is win-lose, so it often leaves dissatisfaction or even revenge from the defeated party.

In addition to several reasons as a mediation opportunity to be developed, several challenges must be considered so that in the future, they can be addressed and no longer become an obstacle to the mediation opportunity itself. Among those challenges are:

1. The mediation institution has not been fully socialized, so many people still do not understand mediation and think that only the judiciary is the only way to resolve disputes that provide legal guarantees and certainty.
2. The result of mediation which is only in the form of a peace agreement, has no legal force if a peace deed is not submitted to the court, resulting in a double/twin judicial process.
3. The level of conflict between the parties is already acute, so it is difficult to reach peace
4. The lack of certified mediators
5. There is no good faith from the parties. Because there was no good faith from the start, often the parties were not present at the mediation, were not cooperative, did not want to sign a peace agreement and so on. So here, qualified mediator skills are required
6. The mediator's expertise and skills are still not qualified

The implementation of mediation in the judiciary is not based on volunteerism but is still based on procedural law demands

CONCLUSION

From the explanation above, it can be concluded that mediation is the right, effective and efficient way to resolve household disputes. Mediation is a way of resolving disputes by overriding the judicial process. Mediation is a way of resolving disputes peacefully by using the services of a third party as an intermediary or mediator. This is by what is described in QS An-Nisa verse 35. The advantage of resolving household disputes using mediation is that the case will be resolved peacefully without leaving any latent conflicts from both parties because the result of mediation is a mutual agreement/consensus between the two disputing parties so that between the parties, there is no loser and no winner but the same as a win (win-win solution).

In order for the implementation of mediation to be effective and efficient in resolving household disputes, methodological techniques that are applicable and based on mediator skills are needed, including paying attention to and heeding the principles of ADR (Alternative Dispute Resolution) in general, strengthening the role and function of mediators and maximizing mediator skills. There are several opportunities for mediation to be further developed and made an option as a way to resolve disputes.

These opportunities include: the suitability of mediation with the socio-cultural culture of the Indonesian people, many criticisms of dissatisfaction with the judicial process, prioritizes restoration of the situation and several advantages in the mediation process. In addition to opportunities, some challenges must be addressed, including the not-yet optimal socialization of mediation institutions, the lack of certified mediators, the emergence of a dual judicial process because the peace agreement must also be submitted to a peace deed, the expertise and skills of mediators are still not qualified, and in its implementation, many parties do not have good intentions and the conflict has become so acute that it is difficult to reach peace.

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