

Research Article

The Relevance of Non-litigation Mediation in Family Dispute Resolution to Family Law Reform in Indonesia

Nurnazli^{1*}, Robi Awaludin², Asmara Dewi¹, Muhammad Akmansyah¹¹Universitas Islam Negeri Raden Intan Lampung, Indonesia²Kementerian Hukum dan HAM Lampung, Indonesia

ORCID

Nurnazli: <https://orcid.org/0009-0000-1711-8062>**Abstract.**

Non-litigation mediation is very important for its application in Indonesian society, given the increasing number of cases of family disputes in religious courts. The research question in this study is to what extent extrajudicial mediation is relevant to family law reform in Indonesia, especially in the case of domestic disputes. The approaches used in this study are legal, normative, and philosophical. The main legal materials were based on the Quran, Hadith, and Laws and Regulations. Data processing was done by creating and organizing data. This was a qualitative analysis, with a focus on non-litigation mediation. The findings show that non-litigation mediation in family disputes has been long established in Indonesian society. Non-litigation mediation for resolving family disputes is very important to include in Indonesia's legal reform agenda. This is because it has a deep connection with Indonesian society. The values of consensus consultation, fraternity, solidarity, mutual cooperation, and tolerance have always been at the forefront of the community in overcoming the various problems that arise and are an advantage in restructuring the rules of non-litigation mediation. However, their implementation is still not optimal. Non-litigation mediation occupies a very powerful position and is rooted in the legal order of life of the Indonesian people, but its application in resolving family disputes is simply underutilized. And community culture

Keywords: Non-litigation mediation, family dispute resolution, family law reformCorresponding Author: Nurnazli;
email: Nurnazli@radenintan.ac.id

Published 11 January 2024

Publishing services provided by
Knowledge E

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Selection and Peer-review under the responsibility of the RIICSHAW Conference Committee.

1. Introduction

Family disputes are growing day by day. As Roucek and Warren explained, with the passage of time and human development, rapid changes in society can lead to conflicts between members of society. Heterogeneous societies are usually characterized by a lack of close ties between one individual and another individual or group, with each individual tending to find their own way. are becoming more and more limited, competition is inevitable, and when this competition inevitably develops into conflict, conflict arises in society[1]

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Societies have a culture of living and developing to overcome various conflicts, a culture of deliberation and agreement that is effective in overcoming conflicts between community members, but has recently been abandoned and eroded along with time, human growth and technological advances.[2] In principle, the use of methods of consensual dispute resolution in communities is equivalent to methods of mediation. Applications vary according to the conditions and customs of each community.[3].

After that, consensus counseling dealing with family disputes was adopted as an effective method as a non-litigation mediation method for resolving family disputes. i.e., a non-litigation mediation method for resolving family disputes, which is also compliant with Islamic law. Non-litigation mediation involves various parties and persons in the community, including: Religious Leaders and Community Leaders. Communities like religious leaders, community leaders, traditional leaders, village leaders who are charismatic and respected by the community. A charismatic and respected village chief submits the reconciliation process to their will and consent. A successful mediation process usually comes in the form of a peace agreement. The principle of deliberation gives communities a fundamental right to develop their will and gives legitimate products a strong legitimacy. It is the opening of public space to access, criticize and modify the meaning of the law according to the interests of the community.[4]

The purpose of religion and law is to achieve the benefit of mankind (*maslahat al-ummah*), to guide society to bring about good and peace to others, and to promote good and peace in society for others and the environment. It can be an excellent theory to create. Or create compassion for all nature. Islam is the religion of *rahmah lî al-'âlamîn*, which has always been in its teachings. Islam is the religion of *rahmah lî al-'âlamîn*, whose teachings have always directed its teachings to resolve various conflicts and conflicts through an *ishlâh* (peace) approach.

Other laws and regulations that assist in conducting non-litigation mediation include the laws of the Republic of Indonesia. Non-litigation mediation includes Law of the Republic of Indonesia No. 48 (No. 48 of 2009) on Judiciary, Article 58 of which stipulates that the mediation process is not limited to mediation[5].

In fact, the family relationship as the sacred bond that sustains human existence requires interaction between its members, and thus various family laws, such as marital issues, inheritance and waqf, during and after marriage. Disputes may arise in the case, eventually leading to mutual litigation in court. In the period from January 2020 to May 2021, he had 2,729 family lawsuits filed at the Tanjung Karang Inquisition Court, with divorce proceedings predominating. [6]

The incidence of such cases will continue to increase unless suitable solutions, including arbitration, are found. One resolution was through non-litigation arbitration. This method of dispute resolution has its drawbacks. Ultimately, the judge's decision brings disappointment to her one of the parties to the dispute. The assumption that one of the parties to the dispute has been wronged can lead to hostility and resentment between the parties after the court's decision, because one side feels inferior.

The urgency of extrajudicial arbitration must apply to communities[6]. Given the daily increase in family disputes in religious courts in our society, the same expressions are often uttered by lawyers who have had direct contact with them and witnessed them. The family conflicts they face are increasing day by day[7]. The family disputes they face are increasing day by day, as are the costs that must be incurred and incurred by the parties to litigation[8]. The process is more (expensive) than the issue at issue is worth[9]. Based on this, it is important to conduct this research to describe and analyze non-litigation mediation as an alternative to family dispute resolution from the perspective of Islamic law and Indonesian legislation.

This search is a descriptive library search. The primary data used in this study are the Quran, Hadith, Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution, and other laws supporting the practice of non-litigation mediation in dispute resolution. Secondary legal materials in this research include books, research papers, and scholarly articles related to the research. It also includes tertiary legal material from various sources such as Wikipedia, major Indonesian dictionaries, legal dictionaries and legal encyclopedias. Data processing consists of examining data (editing), marking data (coding), reconstructing data (restructuring), and systematizing data (systematization). Data analysis is qualitative and focused on non-litigation mediation. Analysis of extrajudicial mediation in the resolution of various family disputes based on theory collect data of a general nature and draw conclusions of a specific nature from them. A comparative analysis of Islamic law and Indonesian legislation on non-litigation resolution of family disputes

2. Methods

This study uses a qualitative method with a sociological approach. This approach recognizes the empirical truth of human behavior in resolving conflicts. Primary data tracking is carried out through interviews by determining key informants who are considered appropriate and appropriate. Secondary data sources obtained from library data (library

research). For example in the form of literature books, journals and several laws and regulations related to the subject matter studied.

Any research requires a framework to keep the research direction clear and focused. The flow of the framework in this research can be explained as follows.

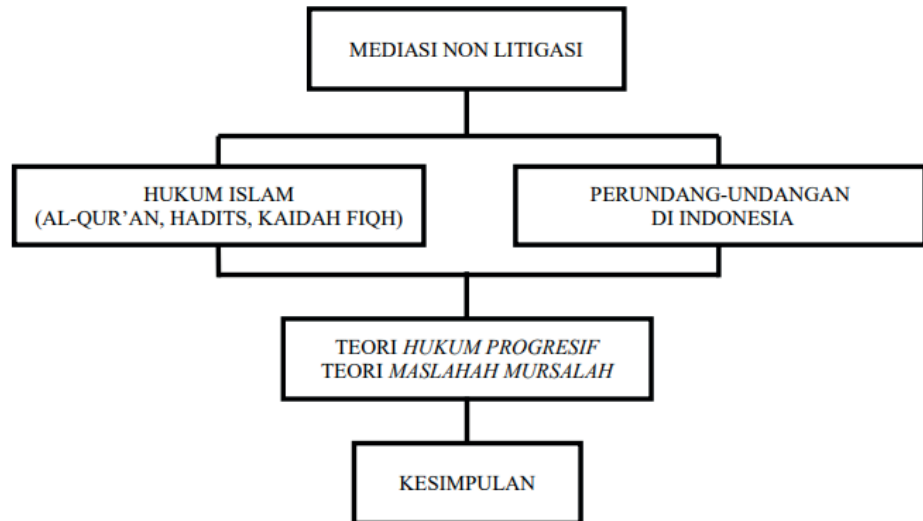


Figure 1: Framework for non-litigation mediation in family dispute resolution towards family law reform in Indonesia.

3. Results and Discussion

3.1. Description of Mediation in Islamic Law and Indonesian Law

Non-litigation reconciliation of family disputes is a core value and essence of Islamic teachings found verbatim in many verses of the Qur'an, such as *tawhîd*, justice, equality, liberty, goodness, brotherly love, *syûra*, *amânah*, *fadhîlah*, *tasâmuh*, *ta'âwun*, etc. There are no verses in the Qur'an or Hadith of the Messenger of Allah that promote hatred, enmity, opposition or negative and oppressive actions that threaten the stability and quality of peaceful human life[10].

Rasulallah SAW was always sent to earth to spread love. The meaning of Rahmathan is kindness and compassion (*al-riqqah wa al-ta'âththuf*), and that of *lî al-'âlamîn*, and there is disagreement among scholars when it comes to understanding it. Some argue that the love and affection of the Messenger of Allah (peace be upon him) applies only to Muslims. Other scholars argue that *risâlah's* love and affection is for all mankind (*kâffah lî an-nâs*)[11].

The Muslim brotherhood is the foundation of all human beings who practice the teachings of Islam. By practicing the teachings of Islam, strong ties of brotherhood between fellow Muslim can be used as a basis for resolving conflicts between individuals. It can be used as a basis for resolution. After the fraternity of Muslim brothers has been strengthened in order to achieve peace, it is only natural that it is forbidden to be prejudiced against each other, find prejudices, find fault, and slander brothers and sisters among Muslim[12].

To overcome quarrels between husband and wife in marriage, the Qur'an offers a solution to resolve the issue by sending peacemakers from both sides. The peacebuilders involved must be people with good intentions who reconcile those who disagree. settle a quarrel. The Prophet prioritizes the concept of mediation (*ishlâh*) in the event of conflict, including clearing the heart of envy and resentment, and trying to tell the truth (do not lie)[13]. Islam strictly forbids people from doing wrong to their neighbors[14].

In relations between Muslims, there is a Hadith concerning the prohibition of harming one another, as Abu Said, Saad bin Malik bin Sinan al-Qudry r.a., told, Rasulullah saw say, "Do not harm each other"[15]. This provision is led by the arbitrator (*Hakam*) and is enforced when conducting arbitration. If this decision is guided by an arbitrator (*Hakam*), in conducting the arbitration will endeavor to give fair and appropriate advice and not detriment of either party to the dispute. And they will gladly take the advice and eventually reconcile with each other. Explanation of whether any disputes between Muslims are acceptable as long as they comply with Shariah. As long as it is Shariah, if the parties to a dispute are guided by this hadith, willing to accept advice, and finally reconcile, and the *hakam* (arbiter) will always apply to the mediation process, the peace is easily agreed.

Consideration of the legal basis for Islamic peace in *fiqh* cannot be separated from the question of *maslahah*[16]. Etymologically, the word *maslahah* means a benefit, good, or use. According to Yusuf Hamid al-'Ali in his book *al-Maqâsid al-Ammah li al-Syari'ah al-Islâmiyah* states that *maslahah* has two meanings, namely *majâzî* and *haqîqî*. The *majâzî* meaning, is an action (*al-fi'l*) in which there is goodness (*saluha*) which means benefit. An example of this *majâzî* meaning is seeking knowledge, with knowledge will lead to benefits. Another example is farming and trading, which by doing all of this, benefits will be obtained, namely the acquisition of property ownership. While the meaning of *maslahah* in *haqîqî* is *maslahah* which *lafaz* has the meaning of *al-manfa'ah*. This meaning can be seen in *Mu'jam al-Wasit*, that *al-maslahah al-salah wa al-naf'*. If it were *saluha*, would have lost its harm, so the word *saluha al-shay'* means

that it is beneficial or appropriate (*munâsib*). Based on this meaning, al-'Ali gives an example, for example, the pen has a benefit for writing. Therefore, *al-maslahah* in the *majâzî* sense is the certainty of human benefit from what is done. Whereas *al-maslahah* in the *haqîqî* sense is in the action itself contains benefits[17].

Al-Syâtibi's thoughts on *maslahah mursalah* are outlined in his two popular books, namely *al-Muwâfaqât fi Ushûl al-Ahkâm* and *al-I'tishâm*. Al-Syâtibi in this books defines *maslahah mursalah* is a problem found in a new case that is not designated by a specific *nash* but it contains benefits that are in line (*al-munâsib*) with the actions of *syara'*. Alignment with the action (*tasharrufât*) *syara'* in this case does not have to be supported by a particular argument that stands alone and points to the *maslahah* but can be a collection of arguments that provide a definite benefit (*qath'i*). If this definite evidence has a *kullî* meaning, then the *kullî* evidence that is certainly its strength is the same as one particular proposition. Al-Syâtibi in the book *al-I'tishâm* gives ten examples of cases that determine the law formulated by using *maslahah mursalah* as a technique of technique for determining the law[18].

Taufiq Yusuf al-Wa'i added that the discovery of *maslahah* on the new issue must be based on a certainty based on *syara'*s arguments about its harmony. Legal evidence does not have to stand alone but can be combined with other propositions. In the reading of Taufiq Yusuf al-Wa'i, al-Syâtibi by some circles is considered as Malik's defender by placing *maslahah mursalah* in the right understanding. Taufiq Yusuf al-Wa'i added that al-Syâtibi's explanation of *maslahah mursalah* can be returned to the appropriate statement or alignment (*al-munâsib*). The corresponding statement has no basis that points to it, in this case, there is no *syara'* basis that points specifically to the corresponding statement and its existence, and its existence is also not based on *qiyâs* that is acceptable that can be accepted by common sense. This means that the finding of conformity with the text is not based on *qiyâs*. New issues that have not been new issues that have not yet been confirmed, either justified or rejected, and contain a benefit that is decided with *maslahah* mursalah are related to *mu'âmalah* issues, not related to worship, with the reason he gave was that the problems of *mu'âmalah* can be traced rationality while the problem of '*ubudiyah* can not be traced rationality. The use of *maslahah mursalah* is a technique of determining only needs that are *dharûrî* and *hajjî*. *Dharûrî* nature here means as the rule: *mâ lâ yatimmu al-wâjib illâ bihi fahuwa wâjib*. Meanwhile, the nature of the need for *hajjî* means to eliminate difficulties so that with the use of *maslahah mursalah* one's life becomes light (*takhfîf*)[19].

The agreement of disputes via deliberation and consensus has been deeply embedded in the customs and traditions of the Indonesian people. with the customs of the

Indonesian humans and has been carried out for generations. To retain and supply perception to provisions of usual society, it need to be taken into consideration in Islamic law reform. There is a Fiqh rule that is very appropriate This is the rule put forward by al-Suyûthî, which means: “Custom customs can be hooked up as law”[20].

Tradition or customized performs a huge position in the formation and improvement of Islamic regulation[21]. The existence of a number of faculties of regulation in history, in fact, is additionally due to the contribution of the customs of the nearby community. Non-litigation mediation is very a good deal in accordance with the values of Islamic teachings as actually written in the verses of the Qur’an and the Prophet’s Hadith, neighborhood customs that are in line with *syari’ah* can be used as regulation in accordance with the regulations of Fiqh. in line with *Syari’ah* can be used as regulation in accordance with the regulations of Fiqh. Habits that have end up appropriate traditions like this have been carried out with the aid of most of the Indonesian humans in more than a few regions, is a reflection of the values of values that facilitate the lives of mankind, particularly mediation efforts facilitated via the mediator till it leads to peace, can hold suitable family members between the parties.

The Indonesian legal system has long allowed the resolution of interpersonal disputes outside the state courts. Along with the jurisprudence journey in Indonesia, long before there was a culture that has grown and lived in the life of the community from generation to generation. The value of consultation to achieve consensus, fraternity, solidarity, mutual cooperation and tolerance. Gotong royong and tolerance have always been prioritized by people in different parts of the country. Therefore, when conflict arises, it makes sense for communities to use mediation methods to resolve disputes. It is emphasized that even if the dispute escalates to court proceedings, efforts should be made to resolve it.[22]

Mediation processes lead to peace in the form of peace agreements, including agreements to do or not to do something, which are binding on both parties. An agreement in civil law is called a contract, and the origin of a contract or contract may arise from contract or law (Article 1233). To be a valid contract, an obligation must meet four conditions: consent of a person to commit; ability to reach an agreement; specific topic; anything not prohibited (Article 1320). The purpose of an agreement is to give, do or not (Article 1324).

Article 1338, Paragraph 1 of the Civil Code states that an agreement shall be reached on the most important matter of an obligation or agreement, that is, on the content of the agreement, and all agreements made under the law shall be applied as law to the person who made the agreement. It is determined that that. The contract can be

canceled only by the consent of both parties or for reasons specified by law. Consent must be given in good faith. A contract is binding not only on what is expressly written therein, but also on whatever is required by its nature by justice, custom or law (Article 1339). The validity of the contract exists only between the parties entering into the contract and, pursuant to Article 1339, no third party may be harmed or benefited. Do not harm or take advantage of third parties as provided in Article 1340. The contract must not prejudice third parties. Except as referred to in Section 1317, contractual agreements do not give third party benefits.[23].

Peace agreement according to Article 1851 of the Civil Code emphasizes that peace is an agreement by which both parties, by submitting, promising, or withholding an item end an ongoing case or prevent the emergence of a case. The agreement is not valid unless it is made in writing, while the peace agreement is based on Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. Article 6 paragraph (2) requires that the result of the settlement of a dispute or disagreement be outlined in a written agreement signed by the parties. Article 6 paragraph (7) states that the written agreement must be registered at the district court must be registered at the district court. The written nature of an amicable agreement, because it stipulates a certain formality or form or a certain method or also known as a formal agreement. Thus, a peace agreement is a formal agreement and it can be concluded that three things can be stated, namely things that can be stated, namely: Peace is one form of agreement; The peace agreement is an agreement to settle a dispute or prevent a case from arising; and the peace agreement must be made in writing[24].

Mediation is deliberation and consensus, namely as a method or process in addition to other methods or processes through arbitration, negotiation, conciliation, and others. If in mediation there is an agreement, and it is outlined in a peace deed, this peace deed is a legal product and has binding force as characterized by the consensual principle according to Article 1338 of the Civil Code. Thus, an agreement made legally, applies as law to the parties to the dispute, because in the peace deed, the parties have reached an agreement and both feel satisfied and fair, and resolve the disputes that exist between them[25].

Mediation is an acceptable, impartial and neutral third-party intervention in a dispute or negotiation that does not have decision-making authority and voluntarily assists the disputing parties to reach mutually acceptable solutions to the issues in dispute. Arbitration must be conducted by an acceptable, impartial and neutral third party[26]. Some theorists conclude that a mediator can come from any group involved in a dispute, as long as all parties involved in the dispute are willing to accept it. It cannot represent

only one party's interests, but it must be fair even if it affects one party. The mediator has no decision-making power. The arbitrator cannot compel the parties to accept any particular settlement. The mediator's role is to volunteer to help the conflicting parties find a mutually acceptable solution. It is not the mediator's role to give the parties an answer. It is also important that participation is voluntary. There is little to be gained by unwillingly enforcing the process, as they are likely to sabotage the process and fail to honor the agreements made. Progression is the concept of a legal process that is an action or effort, rather than just reading and applying text like a machine. The Path of Justice begins with the text, does not stop there, but develops it further. This is called human action and effort. This type of law is not linear. The inclusion of the human factor and involvement means that the law is full of creativity and choice rather than textual spelling[27].

Non-litigation mediation is a manifestation of dispute resolution efforts covered by various existing laws. Progressive legal thought, which is an advance in understanding the flexibility of law, represents the ideal law in society to realize the justice and convenience of human life, that is, the law and the happiness and well-being of its people. To realize the welfare and happiness of the people, the justice and convenience of human life. A court only strengthens a peace treaty, and a court only strengthens a peace agreement made by court, whereas a peace treaty was previously agreed upon by both sides, which is simple, quick and cheap. Achieving fair justice is easy to achieve.

3.2. Non-Litigation Mediation: Solutions and Family Dispute Resolution Models

Non-litigation mediation has a very strong and entrenched position in the legal order of Indonesian society, given the historical fact that many legal rules confirm its existence, including Article 130 HIR and Article 154 RBg[28]. The regulation on peace proceedings in the judiciary states that to realize a simple, fast, and low-cost judicial process as stipulated in Law Number 14 of 1970 concerning the main provisions of judicial power as amended by Law Number 48 of 2009, Article 39 paragraph (1) of Law Number 1 of 1974 concerning marriage, also confirmed in Articles 16, 31, 32, and 33 of Government Regulation Number 9 of 1975 concerning the implementation of Law Number 1 of 1974 concerning marriage, and Law Number 7 of 1989 concerning Religious Courts, which is the Procedural Law of Religious Courts, also emphasizes several provisions regarding the implementation of peace in Articles 65, 82, and 83, which emphasize several provisions regarding the implementation of the 1974 law concerning marriage

The Compilation of Islamic Law also contains rules on reconciliation, as in articles 115, 143, 145, and 183[29]. Then, in 1999, the government issued Law Number 30 of 1999 concerning arbitration and alternative dispute resolution outside the court, one of which was carried out using mediation[30].

With the various peace-oriented legal rules above, the government should be able to accommodate the implementation of mediation outside the court or in non-litigation mediation outside the court or non-litigation in the form of laws and regulations. Legislation as one of the family law reforms that are by the dynamics of the development of the law and the culture of Indonesian society. This process will always be the main choice of the community, in resolving disputes that arise to produce an agreement. Disputes that occur to produce peaceful agreements that are the mutually win-win solution, so that the parties to the dispute feel heard. Parties feel that their grievances are heard, their wishes are accommodated, and they are benefited.

The parties are generally satisfied with the decision reached this way because the dispute does not become an open conflict. In this regard, parties are advised to place more emphasis on deliberation and consensus towards harmony in such a way that such methods can shorten the duration of time, reduce the number of costs, and can be implemented immediately. This background may be the basis for many people's expectations that disputing parties will settle disputes by returning to the cultural ways of the local community. The culture in question is a way of managing disputes that is born, grows, and develops in the community and that has become a habit or custom[31].

This non-litigation mediation process is also a criticism of the litigation process through the courts. Although efforts have been made to integrate mediation into the trial process, in reality, this has not solved the problem of mediation. Efforts have been made in the form of integration of mediation in the trial process, but in reality, this has not solved the problem of the accumulation of civil cases to be tried in court. The accumulation of civil cases that will be tried in court, the peaceful effort that is expected to be present in this effort, has not yet been resolved. Peace efforts that are expected to be present in this effort, are sometimes difficult to achieve because the two sides attempted because two parties to the dispute are already in opposing positions and hope to get a verdict in favor of what is the content of their lawsuit. The judge's decision is win or loses so what happens afterward is that there will be disappointment and a deep sense of hostility for those who are in a defeated position.

It is not easy to shake the image that formal justice processes generally have weaknesses[32]. The judicial process takes place on the basis of hostility or contention between the parties to the dispute considering that one party is positioned in opposition

to the other party. Such a judicial process necessarily results in a form of settlement that places one party against another in a subordinated manner, with one party as the winner and the other party as the loser. The judicial process runs on the basis of formal, static, rigid, and standardized legal rails. As a result, the parties to the dispute, through their chosen lawyers, often question the procedural legal stages which take a long time, causing the core issues to be neglected. The judicial process is often incapable of capturing the socio-cultural values that emerge in disputed cases due to judges referring to the standardized formal rules. The judicial process is tiered, from the district court institution, high court, and the institution of cassation. If even this last decision's legal verdict is not satisfied, then the person concerned can apply for a judicial review with the review, provided that new evidence (*novum*) is found.

Family law reform is needed in terms of strengthening the concept of non-litigation family dispute resolution, this is when viewed in a sociological approach, for example, the theory of Cochrane that what controls social relations is society itself. This means that basically, the community itself is active in finding, choosing, and determining its own laws. This view becomes important when disputes over family, land, environment, and natural resources are resolved through a sociology-inductive approach. The semi-autonomous social field theory says that within social units there are rules, customs, and habits that are usually used to resolve and regulate social relations between resolve and regulate social relations between members in the social unit even though there is a national social unit even though nationally there are rules governing the same thing[33].

When referring to the concept of the rule of law, Pancasila, which aims to realize social justice for all Indonesian people, requires the role and cooperation of the people with the concept of participatory democracy, then the government is directly responsible for democracy, then the government is directly responsible for the implementation of its duties and functions of running the government to realize it, by jointly embracing and involving the active role of various elements of society.

There are three forms of pouring norm decisions in law, namely decisions that are regulating in nature (*regelling*) produce regulations (*regels*), determine or determine something in state administration (*beschikkings*), judgmental as a result of the judicial process (*adjudication*) resulting in a decision (*vonnis*). In addition, there is also the term *beleidsregel* or policy rules, which are often called quasi-regulatory, such as implementing instructions, edicts, and letters, regulations, such as implementation instructions, circulars, instructions, and so on, which are not categorized as regulations but are categorized as policy rules so on, which are not categorized as regulations but their contents have a regulating nature[34]. Philosophically the source of national law comes

from three laws that exist in Indonesia, namely Customary Law, Western Law, and Islamic Law[35]. The position of Islamic Law in the Unitary State of the Republic of Indonesia Indonesia, not only generally exists in Article 20 or 24 of the 1945 Constitution, but is specifically listed in Article 29 paragraph (1) in which it is clearly stated that the state is based on Godhead The Almighty.

The principles of legislation above need to be considered in the preparation of law because these principles relate to the enactment of a law. After being enacted, a law is expected not only to apply juridically but also philosophically and sociologically[36]. This is the case with the implementation of non-litigation mediation, with a variety of mediation practices in community life, it is hoped that a law can be formed as a family law reform in Indonesia, which strengthens the implementation of non-litigation mediation in various cases. implementation of non-litigation mediation in various family disputes, so that people feel that they own and comply with the law because it is by their customs.

Family law is defined as all provisions concerning legal relationships related to blood kinship and kinship by marriage (marriage, parental authority, guardianship, guardianship, absence). Blood kinship is a family relationship that exists between several people who have the same nobility. Another definition of family law is the provisions of Allah swt which are sourced from the Qur'an and al-Sunnah regarding family ties (family) both those that occur due to blood relations and due to marriage relations which must be obeyed by every *mukalaf*. Family law has a very important urgency, because it is by its nature, human beings cannot live alone in the sense that they have the nature of dependence and need each other. dependence and mutual need, as is the case between men and women. woman. For the relationship between men and women to live in harmony, then Islam regulates through legal provisions the procedure for family or household life, through legal marriage.

Islamic Family Law in Indonesia is regulated in the Compilation of Islamic Law, the provisions governing the implementation of peaceful efforts are: "Divorce can only be carried out in front of a Religious Court session after the Religious Court has tried and failed to reconcile the two parties" (Article 115). Article 143: "(1) In the examination of a lawsuit for divorce, the judge tries to reconcile the two parties. (2) As long as the case has not been decided, attempts to reconcile can be made at every examination session". Article 145: "If no reconciliation is reached, the examination of the divorce suit shall be conducted in closed session". Article 183: "The heirs can agree to make peace in the division of the inheritance after each realizes his share"[37].

Another provision that is not yet clear in Article 229 of the Compilation which says: "Judges in resolving cases submitted to them, must pay serious attention to the values

of the law. to him, must pay serious attention to the values of the law that live in the community, so that his decision is in the sense of the community. that live in the community so that the decision is by a sense of “justice”. What is the meaning of the words “living legal values” which “must” be considered by the Judge in his decision by a sense of justice, it needs special attention and is closely related to the position of the Compilation of Islamic Law itself[38].

The lack of regulation on the strengthening of non-litigation peace efforts has resulted in the accumulation of cases in religious courts, the compilation only seeks peace when the case has reached the trial process. Peace when the case has reached the trial process, this is important to regulate as a step to reform family law, by This is important to regulate as a step towards family law reform, by the purpose of the preamble of the Compilation of Islamic Law. Compilation can be used as a guideline in solving problems in the field of family law namely marriage law, inheritance, and waqf, by government agencies and the people who need it. Definition as a guideline must mean a demand or instruction that must be used both by the Religious Courts and citizens of the community[39].

Family law reform that contains provisions for the implementation of Non-litigation mediation is very much by the values of Islamic teachings, customary Community customs that are in line with *syari'ah* can be used as law by one of the rules of Fiqh: “Customs can be established as a law”, the value of the benefit is reflected in the form of providing convenience in the lives of mankind and prevent *mafsadah* or bad things that will occur in the form of perm The value of the benefit is reflected in the form of providing convenience in the lives of mankind and preventing *mafsadah* or badness that will occur in the form of hostility in the family.

Progressive legal thinking is a form of progress in understanding the flexibility of a law. understanding the flexibility of law has the aim of realizing justice and convenience for humans. Justice and convenience for humans, this concept works as an effort to realize family law reform, with the basis of collective thinking to realize the renewal of family law, with a common premise that a rule of law must have progress in providing benefits in the form of ease in overcoming every problem. Provide benefits in the form of convenience in overcoming every family problem that occurs in Indonesia.

4. Conclusion

The family law reform agenda in Indonesia demands a dispute resolution process that is fast, simple, low cost, brings benefit and brings peace to the disputing parties. Islamic

teachings contained in the Qur'an and Hadith also emphasize the importance of peace in the event of conflict. Therefore non-litigation mediation is relevant to be used as an agenda for family law reform in Indonesia. So far, non-litigation mediation has only been used in the field of contract law, and has not touched on family dispute resolution. The implementation of Mediation outside the court has a very strong position and is rooted in the legal order of Indonesian society. the legal order of Indonesian society, various legal rules support its implementation, it's just that it hasn't focused on its implementation.

With the renewal of this law there is value in the form of convenience in human life and preventing *mafsadah* or crime. as well as preventing *mafsadah* or ugliness in the form of the emergence of hostility in the family. in the family. Progressive legal thinking is a form of progress in understanding law and has the goal of realizing justice and convenience for humans, this concept works to realize family law reform. For this reason, it is necessary to reform family law that accommodates the implementation of mediation. family law that accommodates the implementation of mediation outside the court as a dynamic development of the latest methods of resolving civil disputes in family law. Progressive legal thinking is a form of progress in understanding law and has the goal of realizing justice and convenience for humans, this concept works to realize family law reform.

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