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Family Conflict Resolution through Mediation in Indonesia and Malaysia: A Sociological Study of Islamic Law

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Abstract

Integration of mediation or *sulh* into the judicial system is still believed by the Indonesian and Malaysian people as the right instrument in resolving family conflicts because it offers a humanistic and constructive approach that can solve problems without problems. However, in practice, it is faced with several problems that cause mediation or *sulh* to be ineffective. This study explores the dynamics of the application of mediation or *sulh* in resolving family conflicts in Indonesia and Malaysia, which is analyzed using the Islamic legal sociology approach as the basis for the study. The research method uses a sociology of law with a qualitative approach. Data sources were obtained through interviews and literature studies. The results show, the dominant factors influencing the ineffectiveness of the application of mediation or *sulh* in resolving family conflicts in both



countries include: some mediators or *sulh* employees still have weaknesses in interpersonal skills, limited certified mediators, and the lack of good faith of the parties attending the mediation or *sulh* process. The sociology of Islamic law views that this reality reflects the weakness of legal structure and culture in complying with mediation regulations and practicing Islamic law. Concrete steps in addressing the root of the problem are needed by improving the quality and quantity of mediators or *sulh* employees, as well as providing legal education to the community. This study contributes to improving the quality of mediation in the Court as well as to the formation of regulations on mediation.

KEYWORDS *Family Conflict, Mediation, Sharia Courts, Sociology of Islamic Law*

Abstrak

Pengintegrasian mediasi atau sulh ke dalam sistem peradilan masih diyakini masyarakat Indonesia dan Malaysia sebagai instrumen yang tepat dalam menyelesaikan konflik keluarga dikarenakan menawarkan pendekatan humanis dan konstruktif yang dapat menyelesaikan masalah tanpa masalah, meskipun pada praktiknya dihadapkan pada sejumlah masalah yang menyebabkan mediasi atau sulh tidak berjalan efektif. Kajian ini mengeksplorasi dinamika penerapan mediasi atau sulh dalam penyelesaian konflik keluarga di Indonesia dan Malaysia, yang dianalisis dengan pendekatan sosiologi hukum Islam sebagai basis kajian. Metode penelitian menggunakan yuridis sosiologis dengan pendekatan kualitatif. Sumber data diperoleh melalui wawancara dengan para informan dan studi pustaka. Hasil kajian menyimpulkan bahwa faktor dominan yang mempengaruhi ketidakefektifan penerapan mediasi atau sulh dalam penyelesaian konflik keluarga di kedua negara antara lain: beberapa mediator atau pegawai sulh masih memiliki kelemahan dalam keterampilan interpersonal, keterbatasan mediator bersertifikasi, dan ketiadaan itikad baik para pihak menghadiri proses mediasi atau sulh. Sosiologi hukum Islam memandang bahwa kenyataan tersebut mencerminkan lemahnya struktur dan budaya hukum masyarakat dalam mematuhi regulasi mediasi dan pengamalan terhadap hukum Islam. Langkah konkrit dalam mengatasi akar masalah tersebut diperlukan dengan peningkatan kualitas dan kuantitas mediator atau pegawai sulh, serta memberikan edukasi hukum kepada masyarakat dengan melibatkan seluruh pihak yang berkepentingan. Kajian ini berkontribusi terhadap peningkatan kualitas mediasi di Pengadilan sekaligus bagi pembentukan regulasi tentang mediasi.

KATA KUNCI *Mediasi, Konflik Keluarga, Pengadilan Agama, Sosiologi Hukum Islam*

Introduction

The reality of family conflicts such as divorce continues to increase almost every year in several countries including Indonesia and Malaysia.⁵⁴⁶ The increasing trend of divorce prevalence reflects the broader dynamics of social change and challenges within the family structure.⁵⁴⁷ It is influenced by various factors, such as socio-economic disparities, culture, and the emotional impact felt by children.⁵⁴⁸ Such conditions invite the concern of many people along with the development of Islamic family law in both countries. Various steps have been taken to minimize divorce cases, one of which is by integrating mediation into the justice system. However, mediation or sulh as an ikhtiyar step is empirically considered not to have a significant positive impact in realizing the peace agreement of the parties involved in the divorce conflict.

A report from the Indonesian Central Bureau of Statistics shows that the number of divorces decided by the court in the last three years has reached 1,427,741 cases, namely in 2023 (463,654) cases, 2022 (516,344) cases, and 2021 (447,743) cases.⁵⁴⁹ Meanwhile, based on divorce data in the Malaysian Department of Statistics report for 2023, the divorce rate in 2022 (62,890) cases, 2021 (43,836) cases, and 2020 (47,272) cases.⁵⁵⁰ The

⁵⁴⁶ Rachel Rinaldo, Eva F Nisa, and Nina Nurmila, "Divorce Narratives and Class Inequalities in Indonesia," *Journal of Family Issues* 45, no. 5 (2023): 1195, <https://doi.org/10.1177/0192513X231155657>.

⁵⁴⁷ Amit Kaplan and Anat Herbst, "Stratified Patterns of Divorce: Earnings, Education, and Gender," *Demographic Research* 32, no. 1 (2015): 949, <https://doi.org/10.4054/DemRes.2015.32.34>.

⁵⁴⁸ Aurelie M.C. Lange et al., "Parental Conflicts and Posttraumatic Stress of Children in High-Conflict Divorce Families," *Journal of Child and Adolescent Trauma* 15, no. 3 (2022): 615, <https://doi.org/10.1007/s40653-021-00410-9>.

⁵⁴⁹ Badan Pusat Statistik, "Statistik Indonesia 2024," *Badan Pusat Statistik/BPS-Statistics Indonesia*, vol. 52 (Jakarta, 2024), 277–78.

⁵⁵⁰ Department of Statistics Malaysia, "Media Statement For the Publication on Marriage and Divorce Malaysia, 2023," *The Office of Chief Statistician Malaysia (Department of Statistics Malaysia)*, vol. 23 (Wilayah Persekutuan Putrajaya, 2023), 6.

data shows that people prefer their problems to be resolved in court rather than in mediation. This also creates a stigma towards the mediation process, which is integrated with the judicial system in resolving family conflicts, which is often deadlocked in seeking peace between the parties involved in the conflict.⁵⁵¹

Based on the results of a search of various scientific literature, it is known that research related to mediation in family conflict resolution is not new, meaning that it has been discussed by previous researchers, for example, a study written by Muliadi Nur,⁵⁵² discussing the role of mediators as *hakam*/peacemakers in divorce on the grounds of *syiqaq*. The results show that the presence of a neutral mediator allows the parties to be more open to discussing the real problems that occur without any psychological pressure because the mediator is more persuasive.

Junus et al,⁵⁵³ in their research, discussed the failure of mediation carried out by mediators in creating reconciliation in divorce cases. The results of his research concluded that the failure of mediation was influenced by the dissatisfaction of one of the parties with the results of the negotiation process and blaming each other so that they prefer to be resolved in litigation. Meanwhile, the results of Amrullah et al,⁵⁵⁴ the research concluded that the reason why Indonesians and Malaysians choose mediation in resolving their legal problems is because the process is fast and simple, and the tendency of mediation failure is because the parties do not have good faith in attending the mediation process.

⁵⁵¹ Septi Wulan Sari, "Mediasi Dalam Peraturan Mahkamah Agung Nomor 1 Tahun 2016," *Ahkam: Jurnal Hukum Islam* 5, no. 1 (2017): 2, <https://doi.org/10.21274/ahkam.2017.5.1.1-16>.

⁵⁵² Muliadi Nur, "Mediasi Sebagai Wadah Alternatif Penyelesaian Sengketa Perceraian," *Jurnal Ilmiah Al-Syir'ah* 8, no. 1 (2016): 10, <https://doi.org/10.30984/as.v8i1.37>.

⁵⁵³ Nirwan Junus et al., "Integration of Mediation in Divorce Cases Reviewed from Supreme Court Regulation on Court Mediation Procedures," *JALREV: Jambura Law Review* 6, no. 02 (2024): 203, <https://doi.org/10.33756/jlr.v6i1.19370>.

⁵⁵⁴ Muhammad Amrullah Drs Nasrul et al., "A Comprehensive Comparative Analysis of Mediation Practices in Indonesia and Malaysia," *Khazanah Hukum* 6, no. 1 (2024): 77-78, <https://doi.org/10.15575/kh.v6i1.31239>.

Some of the previous studies that have been presented have similarities with this article in terms of topic selection, which both discuss mediation and family conflict resolution. However, these studies have limitations in the scope and perspective used, and only review mediation and the role of mediators in the context of divorce disputes normatively. Therefore, this article discusses the dynamics of the application of mediation by mediators in resolving family conflicts through judicial mediation, both in Indonesia and Malaysia. Furthermore, the issue will be examined using a more holistic approach based on the analysis of the sociology of Islamic law.

In more detail, the use of the sociology of Islamic law approach in this article aims to explore and analyze more deeply the dynamics of the application of judicial mediation or *sulh* in the two countries as an instrument in resolving family conflicts, which is part of the scope of Islamic law issues. In addition, this research also aims to explore and analyze the interrelationship of the behavior of the parties involved in the conflict in implementing the regulation of mediation or *sulh* as a legal norm. In the theoretical dimension, the sociology of Islamic law is understood as a discipline that describes the reciprocal relationship between social change and the application of Islamic law. In terms of the approach and locus used, it can be considered as a differentiator while complementing the discussion of previous studies.

The results of this article study are theoretically expected to be useful in the scientific development of legal sociology, and Islamic law, especially in the field of sociology of Islamic law in mitigating divorce cases, and practically as an evaluation reference material for relevant parties in reconstructing mediation or *sulh* legal policies that are more responsive and progressive in responding to the dynamics of family conflict in Indonesia and Malaysia.

Methods

This article is included in the type of juridical sociological research based on the approach method used, namely qualitative. To answer the problem, the data sources used are primary data and secondary data. Primary data is obtained through intensive interviews using purposive sampling techniques to informants such as judge and non-judge mediators, sulh officials, and advocates who aim to obtain data and information related to the problem of resolving family conflicts through judicial mediation in Indonesia and Malaysia. Meanwhile, secondary data was obtained from various literature consisting of legislation related to mediation, books, journal articles, and other literature that still has relevance. The overall data obtained is then validated with a credibility test consisting of extended observation, increased persistence, and triangulation in the form of sources, techniques, and time to obtain valid data that can be scientifically accounted for. After the data is validated, the next stage is data analysis with descriptive analysis techniques aimed at describing the findings comprehensively, clearly, and systematically so that the results presented are easier to understand.

Discussion

Mediation as Family Conflict Resolution

The family as the smallest institution in society has an important role in the development of human resources of a nation and state.⁵⁵⁵ A study shows that the strength of a nation is strongly influenced by the strength of the foundation in the family because families with strong foundations will give birth to superior future generations who will continue the struggle for the leadership relay in the country.⁵⁵⁶ Therefore,

⁵⁵⁵ Miftahul Jannah, "Konsep Keluarga Idaman Dan Islami," *Gender Equality: International Journal of Child and Gender Studies* 4, no. 2 (2018): 87, <https://doi.org/10.22373/equality.v4i2.4538>.

⁵⁵⁶ Aulia Nursyifa, "Rancangan Undang-Undang Ketahanan Keluarga Dalam Perspektif Sosiologi Gender," *Jurnal Pendidikan Kewarganegaraan* 7, no. 1 (2020): 56, <https://doi.org/10.32493/jpkn.v7i1.y2020.p55-68>.

divorce in the family, according to Machasin's view in Machrus et al,⁵⁵⁷ is one of the most influential factors in the decline in the quality of future generations due to family disharmony.

According to Morissan, family disharmony is a condition in which family members can no longer carry out family functions.⁵⁵⁸ The family functions referred to include education, protection, economy, religion, recreation, affection, procreation, and adaptation.⁵⁵⁹ Theoretically, family conflict in the sense of divorce refers to the breaking of marital ties between husband and wife in a family relationship due to certain reasons. Meanwhile, according to Article 38 of Law Number 1 Year 1974 concerning Marriage *jo.* Article 113 of the Compilation of Islamic Law states that the breakdown of marital ties can occur due to death, divorce, and court decisions.

Amir Syarifuddin as quoted by Hasmiah Hamid argues that the breakup of marriage due to death is the will of Allah SWT. The breakdown of marriage due to divorce can occur due to divorce (husband) or a lawsuit (*khulu'*) from the wife, and the breakdown of marriage due to a court decision as a third party is called *fasakh*. This is in line with the definition of divorce according to Subekti, namely the abolition of marriage by a judge's decision or the demands of one of the parties to the marriage.⁵⁶⁰

Islam views divorce in family conflict as an act that is permitted but hated by Allah SWT. This perspective is based on the essence of the purpose of marriage, namely realizing a lasting and happy married life is the joint responsibility of husband and wife.⁵⁶¹ If divorce is seen as the best way between the two due to unresolved conflicts, then divorce is nothing

⁵⁵⁷ Adib Machrus et al., *Fondasi Keluarga Sakinah: Bacaan Mandiri Calon Pengantin* (Jakarta: Subdit Bina Keluarga Sakinah Direktorat Bina KUA & Keluarga Sakinah Ditjen Bimas Islam Kemenag RI, 2017), vii.

⁵⁵⁸ Morissan, *Psikologi Keluarga* (Bogor: Ghalia Indonesia, 2013), 161.

⁵⁵⁹ Kustiah Sunarty and Alimuddin Mahmud, *Konseling Perkawinan Dan Keluarga*, Cet.1 (Makassar: Badan Penerbit Universitas Negeri Makassar, 2016), 21.

⁵⁶⁰ Subekti, *Pokok-Pokok Hukum Perdata* (Jakarta: Intermasa, 2001), 42.

⁵⁶¹ Aristoni and Junaidi Abdullah, "4 Dekade Hukum Perkawinan Di Indonesia : Menelusik Problematika Hukum Dalam Perkawinan Di Era Modernisasi," *Yudisia* 7, no. 1 (2016): 95, <https://doi.org/10.21043/yudisia.v7i1.2133>.

more than a relief (*rukhsah*) from Allah SWT in emergency conditions, meaning that divorce can only be done in urgent conditions.⁵⁶²

Sayyid Sabiq in Imron said that divorce is the last resort or emergency way when there is no longer a chance to repair the marital bond.⁵⁶³ Meanwhile, Iskandar et al, suggest that even if the divorce is still carried out, it should be done in a good and honorable way. This is following the words of Allah SWT, namely '*fa-imsakun-bima'rufin au tasrihun-biihsan*', which means maintaining the integrity of the household in a good way, or if forced to release it in a good way too.⁵⁶⁴ This understanding is based on the fact that morally every married person should save their marriage from divorce.⁵⁶⁵

One method of saving a marriage from divorce in family conflict is through mediation.⁵⁶⁶ In fact, in some countries, mediation is placed in the legal framework as an alternative means of family conflict resolution,⁵⁶⁷ aimed at reducing conflict tension and restoring family harmony.⁵⁶⁸ In Indonesia, mediation is integrated with the judicial system, hereinafter referred to as judicial mediation, specifically regulated in Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Courts.

Article 1 point 1, defines mediation as a dispute resolution mechanism through a negotiation process to obtain an agreement between

⁵⁶² Mazro'atus Sa'adah, *Penyebab Persegresan Perceraian Dalam Masyarakat Urban* (Lamongan: Academia Publication, 2022), 74.

⁵⁶³ Ali Imron, "Memahami Konsep Perceraian Dalam Hukum Keluarga," *BUANA GENDER: Jurnal Studi Gender Dan Anak* 1, no. 1 (2016): 20, <https://doi.org/10.22515/bg.v1i1.66>.

⁵⁶⁴ Iskandar et al., *Hukum Perceraian Adat Tinjauan Fiqh Dan Peraturan Perundang-Undangan Perkawinan Di Indonesia* (Bengkalis: DOTPLUS Publisher, 2021), 13.

⁵⁶⁵ Monika Lindbekk, "Inscribing Islamic Shari'a in Egyptian Divorce Law," *Oslo Law Review* 3, no. 2 (2017): 117, <https://doi.org/10.5617/oslaw4081>.

⁵⁶⁶ Doralúcia Azevedo Rodrigues, Thaygra Barbosa Irene Magalhães, and Manoel de Castro Carneiro Neto, "The Importance of Mediation for Resolving Conflicts in Family Law," *Revista Contemporânea* 4, no. 2 (2024): 1, <https://doi.org/10.56083/rcv4n2-032>.

⁵⁶⁷ Anna V. Vereshchagina and Angelina A. Zhidenko, "The Role of Family Mediation in Resolving Family Conflicts and Reducing the Dynamics of Divorce in Russian Society," *Caucasian Science Bridge* 6, no. 4 (2023): 127, <https://doi.org/10.18522/2658-5820.2023.4.12>.

⁵⁶⁸ Mardalena Hanifah and Meidana Pascadinianti, "Function of Non-Judge Mediators in Divorce Settlement Through Religious Courts," *Unnes Law Journal* 9, no. 2 (2023): 378, <https://doi.org/10.15294/ulj.v9i2.75611>.

the parties with the assistance of a mediator. Meanwhile, ethically and morally, mediators in carrying out their duties and functions are regulated separately in the Decree of the Chief Justice of the Supreme Court Number 118/KMA/SK/VI/2016 concerning the Mediator Code of Conduct.

Whereas in Malaysia, mediation, or what is called *sulh* is established as a family conflict resolution mechanism especially in mal cases after divorce is decided by the Syariah Court. The legal basis for *sulh* in mal cases related to divorce refers to Practice Directive Number 1 of 2010 concerning the Determination of Cases that need to be Referred to the Sulh Assembly at the Case Registration Level. As for the *sulh* implementation mechanism, it refers to the Sulh Work Manual and Rules of Sulh Procedure, and Practice Directive Number 7 of 2015 concerning Standardization of Work Processes and Sulh Flowcharts in JKSN/MSN All Malaysia. Mediation or *sulh* in both Indonesia and Malaysia emphasizes the importance of peace (*ishlah*) in maintaining family harmony. Both countries adopted mediation or *sulh* as an approach to applying Islamic principles to resolve family conflicts, although there are technical differences in its implementation in the courts.

Mediation in Islam is called As-Sulhu, which means peace, ending the dispute by involving *hakam* (third party) as an intermediary in resolving one of the feuds (*syiqaq*) between the disputing parties.⁵⁶⁹ Moore C.W. in Pradipta & Asrori said that Mediation is the involvement of a third party in a dispute that can be accepted by all parties. In this process, the third party does not have the authority to make decisions but aims to create peace between the disputing parties, thus leading them to end the existing feud.⁵⁷⁰

⁵⁶⁹ Abdul Manan, *Penerapan Hukum Acara Perdata Di Lingkungan Peradilan Agama* (Jakarta: Kencana Prenada Media Group, 2005), 151.

⁵⁷⁰ Moh. Saleh Hadi Pradipta and Asrori, "Mediasi Sebagai Alternatif Penyelesaian Sengketa Perbankan Syariah Di Luar Pengadilan (Studi Kasus BPRS Bhakti Sumekar)," *Jurnal Justisia Ekonomika: Magister Hukum Ekonomi Syariah* 2, no. 2 (2018): 10, <https://doi.org/10.30651/justeko.v2i2.2481>.

The same opinion is expressed by Folberg & Taylor in Abbas,⁵⁷¹ according to him mediation essentially refers to the efforts taken by the mediator in creating peace between the parties in mediation activities. Through judicial mediation facilitated by the mediator, it allows the parties, namely husband and wife, to negotiate their problems openly and collaboratively to find the best resolution.⁵⁷² Mediators in this matter are required to have the ability to manage conflict by continuing to seek reconciliation of the parties, facilitating communication in negotiating and providing advice, and impartiality.⁵⁷³ Thus, the effectiveness of mediation or sulh in resolving family conflicts is highly dependent on the role played by the mediator and the extent to which the community accepts this method.

Mediation in Family Conflict Resolution in Indonesia and Malaysia: Similarities and Differences

Society is constantly undergoing social change both in the realm of values and structures as a result of the conflicts that arise within it.⁵⁷⁴ This shows that conflict is a natural phenomenon in social life, and is often difficult to avoid.⁵⁷⁵ Conflict in the sociological dimension does not always have a negative connotation. Instead, conflict also has positive potential and can even be a necessary thing in human life to encourage better social change.⁵⁷⁶

⁵⁷¹ Syahrizal Abbas, *Mediasi Dalam Hukum Syariah, Hukum Adat, Dan Hukum Nasional* (Jakarta: Kencana Prenada Media Group, 2011), 5.

⁵⁷² François Bogacz, Thierry Pun, and Olga M Klimecki, "Improved Conflict Resolution in Romantic Couples in Mediation Compared to Negotiation," *Humanities and Social Sciences Communications* 07, no. 01 (2020): 1, <https://doi.org/10.1057/s41599-020-00622-8>.

⁵⁷³ Joan Albert Riera Adrover, Maria Elena Cuartero Castaner, and Juan Jose Montano Moreno, "Mediators' and Disputing Parties' Perceptions of Trust-Building in Family Mediation," *Negotiation and Conflict Management Research* 13, no. 2 (2020): p.151, <https://doi.org/10.1111/ncmr.12167>.

⁵⁷⁴ Marek Hrubec and Zuzana Uhde, "Global Conflicts and Local Interactions: Contradictions of Global Capitalism and Civil Society," *Critical Sociology* 45, no. 6 (2019): 1, <https://doi.org/10.1177/0896920518798880>.

⁵⁷⁵ Manijeh Daneshpour, "Couples Therapy and the Challenges of Building Trust, Fairness, and Justice," *Family Process* 63, no. 1 (2024): 1-2, <https://doi.org/10.1111/famp.13072>.

⁵⁷⁶ David J Hess and Kaelee Belletto, "Knowledge Conflicts: The Strategic Use and

The above thinking is in line with the opinion of Sabian Utsman in Rosana,⁵⁷⁷ who said that conflict can have positive implications if it is addressed wisely and managed constructively. This is because conflict can create and enrich the meaning of life and be able to dynamize social processes that are improvements for individual and community social change.⁵⁷⁸ However, conflict in the family, whatever its form, needs to be resolved immediately.⁵⁷⁹ Otherwise, negative conflicts can trigger a rift in family relationships and cause wider negative impacts.

Therefore, the state should take part in resolving family disputes by drafting legislation on judicial mediation as *ius constitutum*, to create harmony, peace, and justice.⁵⁸⁰ The results show that mediation or *sulh* in family conflict resolution in Indonesia and Malaysia have similarities and fundamental differences that are influenced by policy factors and the legal system of each country.

Table 1. Comparison of Mediation in Indonesia and *Sulh* in Malaysia

Aspect	Mediation	Sulh
Purpose	To obtain an amicable agreement between the parties involved in the conflict with the assistance of a judge/non-judge mediator.	To reach an amicable agreement that is mutually beneficial to both parties with the assistance of sulh officials.
scope of case type	All civil cases including divorce, cases against verdict (<i>verzet</i>), and cases against (<i>partij verzet</i>) and third parties (<i>derden verzet</i>) against the execution of final	All civil matters include: (1) betrothal damages, (2) mut'ah, (3) joint property, (4) wife's maintenance, (5) maintenance to the

Effects of Expertise in Social Movements,” *Sociological Inquiry* 93, no. 3 (2023): 592, <https://doi.org/10.1111/soin.12508>.

⁵⁷⁷ Ellya Rosana, “Konflik Pada Kehidupan Masyarakat (Telaah Mengenai Teori Dan Penyelesaian Konflik Pada Masyarakat Modern),” *Al-Adyan* 10, no. 2 (2015): 217, <https://doi.org/http://dx.doi.org/10.24042/ajsla.v10i2.1430>.

⁵⁷⁸ Ressa Uli Patrissia and Jamalullail, “Dialectic Perspective on Interpersonal Conflict of Pre-Divorce and Its Reconciliation,” *Mediator: Jurnal Komunikasi* 17, no. 1 (2024): 162, <https://doi.org/10.29313/mediator.v17i1.3505>.

⁵⁷⁹ Subhan A Acim and Lalu Sumardi, “Systematic , Sustantive and Functional Comparison Between the Holy Qur’an and Pancasila,” *Theological Studies* 79, no. 2 (2023): 7, <https://doi.org/10.4102/hts.v79i2.8154>.

⁵⁸⁰ Rodica-Cristina Balan-Liseanu, “Mediation a Tool For Solving the Fundamental Problems of the Contemporary World,” *International Conference Knowledge-Based Organization XXIX*, no. 2 (2023): 17, <https://doi.org/10.2478/kbo-2023-0030>. see, Naser Sherman and Bashar Talal Momani, “Alternative Dispute Resolution: Mediation as a Model,” *F1000Research* 13, no. 778 (2024): 1, <https://doi.org/10.12688/f1000research.152362.1>.

	judgment.	incapacitated party, (6) maintenance security, (7) iddah maintenance, (8) changing maintenance order, (9) maintenance arrears, (10) child maintenance, (11) changing child custody order, (12) changing child custody agreement, (13) hadhanah, (14) marital damages, (15) right of residence, (16) order for husband to live together again, (17) wife to return to obedience, (18) dowry.
Implementation process	This stage includes: (1) Welcome and opening statements by the mediator, (2) The mediator provides an explanation to the parties regarding the purpose, purpose, and nature of the mediation, (3) Explains the position of the mediator to the parties, (4) Develops a schedule and rules for implementing mediation with the parties, (5) Explains the possibility that the mediator can hold caucus meetings, (6) The parties are allowed to convey problems and proposals for peace, (7) Mapping and scheduling the discussion of problems with a priority scale, (8) The mediator encourages all parties to explore and understand their interests and seek various settlement options that are most satisfactory for all parties involved.	This stage includes: (1) The sulh employee introduces himself and the parties, and starts the assembly with the recitation of Al-Fatihah and prayer, explains the rules during sulh, and the parties are required to maintain confidentiality, (2) The parties are allowed to convey the problem to the sulh employee, (3) The sulh employee and the parties discuss ways of settlement, (4) The sulh employee can caucus in the mediation, (5) Joint negotiations, (6) Decision of the sulh assembly.
Venue	Judge mediators may only conduct mediation in court. Whereas non-judge mediators may conduct mediation outside the court following the agreement of the parties.	The <i>sulh</i> officer conducts the <i>sulh</i> in the <i>sulh</i> booth that has been provided.
Participation of the parties	The parties are required to attend the scheduled mediation.	The parties are required to be present at the sulh assembly hearing.
Time limit	30 days, and may be extended for a maximum of a maximum of 30 days by mutual agreement of the parties to the conflict after the expiration of the time limit for the implementation of the first mediation.	No more than 2 months.

Source: Supreme Court Regulation Number 1 Year 2016, Practice Directive Number 1 of 2010, Sulh Work Manual/Suh Procedures/Practice Directive Number 7 of 2015

Based on the description of the mapping in the table above, it can be explained that the regulation of mediation or sulh in both countries in the legal framework, philosophically has a tendency to adopt principles in Islamic law, namely placing deliberation (*shura*) and justice (*al-adalah*) as a construction in the mediation process for the realization of peace (*ishlah*) between the parties involved in the conflict. According to the author, this is reinforced by the fact that deliberation and consensus have long been part of the socio-cultural life of the people of Indonesia and Malaysia, which are known to be religious, which is applied in resolving every conflict.

In terms of the consideration of mediation or sulh regulations in both countries, they have similarities in terms of function, namely to reduce the caseload, and increase public access to justice as well as a form of implementation of the principles of the administration of justice that is simple, fast and low cost, and can maximize and strengthen the function of judicial institutions in dispute resolution. The regulatory function can be said to be a form of maintaining a balance between the interests of the community and the state. In this context, Roscoe Pound in Maulidia et al,⁵⁸¹ argues that the functioning of law is seen as a means of balancing the interests of the state, individuals, and the public as guardians of the interests of society. For this reason, it is not an exaggeration to say that the essence of law as a rule is a guideline as well as a reflection of the interests of humans/society.⁵⁸²

Meanwhile, the difference in regulations in the two countries lies in regulating the scope of types of cases that can be resolved through mediation or sulh. In addition, at the practical level, there are quite

⁵⁸¹ Gisa Inggit Maulidia et al., "Hukum Dan Perubahan Masyarakat : Pendekatan Filsafat Roscoe Pound," *Praxis: Jurnal Filsafat Terapan* 1, no. 2 (2022): 13, <https://doi.org/10.11111/praxis.xxxxxxx>.

⁵⁸² Roseffendi, "Hubungan Korelatif Hukum Dan Masyarakat Ditinjau Dari Perspektif Sosiologi Hukum," *Al Ijarah : Jurnal Pemerintahan Dan Politik Islam* 3, no. 2 (2018): 192, <https://doi.org/10.29300/imr.v3i2.2151>.

fundamental differences where the mediation process in Indonesia is carried out at the first hearing before the judge examines the subject matter submitted by the applicant or plaintiff. While *sulh* in the Malaysian Syariah Court is applied to post-divorce *mal* cases where the parties do not reach an amicable agreement on the *mal* issue.

Furthermore, the application of judicial mediation by promoting the principle of deliberation in the view of legal sociology can be understood as a manifestation of dialogical culture in realizing the legal objectives of mediation, namely legal certainty, justice, and expediency to achieve a win-win solution. Thus, the application of mediation or *sulh* in Indonesia and Malaysia not only acts as a legal instrument to resolve family conflicts but also as an effective means to restore social relations between the parties that were previously tenuous.

The above view is in line with the thinking of M. Atho' Mudzhar, who asserts that mediation is not just a dispute resolution process, but also an important step in reconstructing social relations and creating harmony in society in line with Islamic values.⁵⁸³ Similarly, S. Bril,⁵⁸⁴ in his study, explained that mediation processes that encourage understanding and open communication can significantly reduce interpersonal dynamics and create a more collaborative environment. Furthermore, based on the thoughts of M. Atho' Mudzhar, the author can also say that in the dimension of Islamic law, the legal substance contained in the provisions of mediation or *sulh* regulations essentially has coherence with Islamic values.

The coherence with Islamic values can be seen from the main indicators of the purpose and function of judicial mediation itself. This is supported by almost the majority of informants arguing that seeking

⁵⁸³ Büşra Gülşah Akbaba, "The Role of Islamic Mediation in Resolving Family Disputes in Turkish Families," *Değerler Eğitimi Dergisi* 22, no. 48 (2024): 507, <https://doi.org/10.34234/ded.1569537>.

⁵⁸⁴ Mikhail S. Bril, Yulia S. Bekreneva, and Ilya S. Osipenko, "The Use of Mediation in Resolving Interpersonal and Intra-Family Conflicts," *Social Psychology and Society* 15, no. 3 (2024): 163, <https://doi.org/10.17759/sps.2024150310>.

ishlah in the mediation process is the same as realizing the objectives of maqashid sharia, namely *hifdz mal* (property) and *hifdz nasl* (offspring). In addition, the results of Altaj⁵⁸⁵ and Sunarto's⁵⁸⁶ research show that institutionally the application of judicial mediation in the context of resolving divorce cases can not only minimize the arrears of cases every year in court but also save property and offspring. This is because if a divorce occurs, the marital bond will be damaged and cause new problems, such as fighting over joint property and children potentially being neglected due to lack of affection from their divorced parents.

Islam places mediation as a pioneer in resolving disputes for Muslims. This statement confirms that Islam is a religion of peace. History records that the practice of mediation in Islam was carried out by the Prophet Muhammad Saw in resolving conflicts between tribes on the laying of *Hajar Aswad* when rebuilding the *ka'bah* where he acted as a *hakam*/mediator.⁵⁸⁷ Kamaruddin⁵⁸⁸ said what the Prophet Muhammad did was nothing but trying to restore a peaceful, orderly social life and promote unity.

Meanwhile, Sridepi⁵⁸⁹ in his study explained that mediation rooted in Islamic teachings as applied by the Prophet Muhammad Saw is an effective method in conflict resolution that emphasizes the importance of finding the best solution utilizing peace and understanding. This is as implied in the Qur'an Surah Al-Hujurat verse 10 which means 'Verily

⁵⁸⁵ Abdulmalek Hussein Ali Altaj, "Family Security Is a Legitimate Purpose to Achieve Human Security Spoken Legal Texts and Witnessing Human Studies-A Legal Scientific Study in the Light of the Purposes of Islamic Law," *Evolutionary Studies in Imaginative Culture* 8.2, no. S1 (2024): 453, <https://doi.org/10.70082/esiculture.vi.826>.

⁵⁸⁶ Muhammad Zainuddin Sunarto, "Mediasi Dalam Perspektif Maqashid Syariah: Studi Tentang Perceraian Di Pengadilan Agama," *AT-TURAS: Jurnal Studi Keislaman* 6, no. 1 (2019): 113, <https://doi.org/10.33650/at-turas.v6i1.573>.

⁵⁸⁷ Wirhanuddin, "Mediasi Perspektif Hukum Islam: Studi Kasus Di Wilayah Pengadilan Tinggi Agama Makassar," *Jurnal Diskursus Islam* 1, no. 2 (2013): 234, <https://doi.org/10.24252/jdi.vii2.6626>.

⁵⁸⁸ Kamaruddin et al., "Justice, Mediation, and Kalosara Custom of the Tolaki Community in Southeast Sulawesi from the Perspective of Islamic Law," *Samarah* 7, no. 2 (2023): 1092, <https://doi.org/10.22373/sjkh.v7i2.13183>.

⁵⁸⁹ Sridepi, Umi Kalsum, and Hidayatullah Ismail, "Advokasi Hukum Keluarga Islam Melalui Mediasi: Membangun Keharmonisan Dalam Keluarga," *Rayah Al-Islam: Jurnal Ilmu Islam* 8, no. 4 (2024): 2533, <https://doi.org/10.37274/rais.v8i4.1228>.

believers are brothers, therefore reconcile your brothers when you have disputed, and fear Allah that you may have mercy' (QS. Al-Hujurat: 10).⁵⁹⁰

The word 'reconcile' in the meaning of the verse above, implies the existence of a third party to mediate disputes or conflicts. According to M. Atho' Mudzhar, the logical consequence of the mediator or *sulh* officer as a third party in carrying out the mediation or *sulh* process is not only as a facilitator⁵⁹¹ but also must understand Islamic values well and show moral and ethical responsibility in creating peace and justice.⁵⁹² In addition, the mediator must also have the ability to convince the parties involved in the conflict to sit together in dialogue and create a conducive situation in navigating mediation, so that the parties involved in the conflict feel comfortable in negotiating.⁵⁹³

Although the application of judicial mediation is sociologically dimensioned to achieve a win-win solution, in Astarini's view, it is not solely the interest of the court or *Sharia court*, and the mediator/*sulh* officer, but rather the needs and interests of the parties themselves.⁵⁹⁴ The community must have awareness and believe that mediation facilitated by the court or sharia court is a common interest in restoring the functioning of the family which aims to create a harmonious, peaceful, and prosperous family life.⁵⁹⁵ This confirms that the successful implementation of the mediation process also requires the awareness of all parties involved in complying with mediation regulations as a reflection of legal culture and the practice of Islamic teachings.

⁵⁹⁰ Tim Pelaksana, "Al-Qur'an Al-Karim Dan Terjemah Bahasa Indonesia (Ayat Pojok) Juz : 1-30" (Kudus: Menara Kudus, 2006), 516.

⁵⁹¹ Rahadi Wasi Bintoro, "Kajian Ontologis Lembaga Mediasi Di Pengadilan," *Yuridika* 31, no. 1 (2016): 133, <https://doi.org/10.20473/ydk.v31i1.1959>.

⁵⁹² Sihabudin Mukhlis, "Peran Mediasi Dalam Rekonsiliasi Rumah Tangga Dari Perspektif Gender," *Krtha Bhayangkara* 14, no. 2 (2020): 227, <https://doi.org/10.31599/krtha.v14i2.282>.

⁵⁹³ Sara Greco and Chiara Jermine-martinez Soria, "Mediators' Reframing as a Constitutive Element of a Reconciliatory Argumentative Style," *Journal of Argumentation in Context* 10, no. 1 (2021): 16, <https://doi.org/10.1075/jaic.20019.gre>.

⁵⁹⁴ Dwi Rezki Sri Astarini, *Mediasi Pengadilan* (Bandung: Alumni, 2020), 10.

⁵⁹⁵ Sri Lestari, *Psikologi Keluarga: Penanaman Nilai Dan Penanganan Konflik Dalam Keluarga* (Jakarta: Kencana, 2016), 22.

Mediation for Family Conflict Resolution in Indonesia and Malaysia: Obstacles and Solutions

At the empirical level, the mediation process carried out by mediators or sulh officials in family conflict resolution in Indonesia and Malaysia faces quite complex obstacles that can have an impact on the effectiveness of the mediation itself. The research findings show that several factors hinder the mediation process in the judicial environment in Indonesia, namely firstly, the parties or one of the parties from the beginning did not have good intentions to resolve their problems through mediation.⁵⁹⁶⁵⁹⁷ Second, the limited resources of certified mediators.⁵⁹⁸ Third, the litigation culture, where people still tend to think that litigation is the only effective method of resolution to obtain justice and legal certainty.⁵⁹⁹ Fourth, there are still some mediators who side with one of the parties involved in the conflict.⁶⁰⁰

In response to these obstacles, efforts have been made, namely first, involving the closest family and community leaders such as village heads to assist mediators in encouraging the parties to participate in the implementation of the mediation process. Second, strengthening the human resources of mediators through training and education, especially in the mastery of sociology and psychology, as well as recruiting retired judges and other parties who are certified mediators. Third, increasing socialization and education to the public on the importance and benefits of mediation.

Whereas in the Malaysian Sharia Court environment, obstacles in the implementation of the sulh process are influenced by several factors,

⁵⁹⁶ Interview with Abd. Halim Zailani, Judge and Deputy Chairman of the Purwodadi Religious Court, 17 November 2023.

⁵⁹⁷ Interview with Mursid, Judge and Deputy Chairman of the Pati Religious Court, 23 August 2023.

⁵⁹⁸ Interview with Miftahul Huda, Judge and Deputy Chairman of the Kendal Religious Court, 15 Agustus 2023.

⁵⁹⁹ Interview with Rendra Widyakso, Judge of the Demak Religious Court, 14 July 2023.

⁶⁰⁰ Interview with Faisal, Advocate/Lawyer, 28 November 2023.

namely first, the parties or one of the parties is not committed or reluctant to participate in the *sulh* assembly. Second, public awareness is still low in utilizing *sulh* as a peaceful method. Third, there is intervention from third parties in making decisions. Fourth, there is no preparation by the parties before the *sulh* trial begins. Fifth, the parties were unclear about the direction of the case filed and did not know their rights concerning the claims filed. To overcome these obstacles, efforts were made to realize the success of *sulh*, namely first, involving the families of the parties to provide support in the implementation of *sulh*. Second, increasing training and education for *sulh* officials. Third, increasing public awareness through socialization and education.

Referring to the reality of the data above, if examined further, the most dominant factor causing the ineffectiveness of mediation is the absence of one of the parties or the parties in following the implementation of the mediation process organized by the mediator or *sulh* employee. This occurs because one of them still harbors resentment towards their spouse so they still want to continue their case to be resolved in the realm of litigation. Therefore, it is important to bridge this problem by involving the closest family members of the parties involved in the conflict, community leaders such as the village head, and children in the mediation process.

The basic argument for the importance of involving family members and village heads is that they are seen as having a positive influence that can influence and encourage the parties to actively participate in the implementation of the mediation process so that they can assist the mediator in carrying out his duties and functions. The steps taken by the mediator, according to the author, are part of the strategy so that the parties commit to cooperatively follow the stages of the mediation process so that an amicable agreement can be reached.

The importance of involving family members in the mediation process is also expressed by S. Rooss & Lazinski,⁶⁰¹ according to which the involvement of family members in the mediation process tends to increase emotional support, deepen understanding, and encourage collaborative problem-solving. This is very important, especially in stressful situations such as divorce. Meanwhile, Azro'i et al,⁶⁰² in their study concluded that the presence of the village head as a community leader as contained in Supreme Court Regulation Number 1 Year 2016 reinforces his contribution in assisting the mediation process of the parties to reach an amicable agreement.

In line with Azro'i's opinion, Nurdin et al,⁶⁰³ in their study explained that the village head is considered to have a strong influence in the community so his involvement in the mediation process by giving advice has the potential to be obeyed by the parties involved in the conflict. Then related to the involvement of children, Ballard et al,⁶⁰⁴ in their study explained that presenting children in the mediation process of divorce conflicts can produce better decisions, especially in child custody arrangements, and greatly enable the parties to undo their intention to divorce. However, a different opinion was expressed by Tveit et al,⁶⁰⁵ that the participation of children in the mediation process is no guarantee of success in reducing the tension of parental conflict, especially in decision-making.

⁶⁰¹ Hildy S Ross and Marysia J Lazinski, "Parent Mediation Empowers Sibling Conflict Resolution," *Early Education and Development* 25, no. 2 (2014): 259, <https://doi.org/10.1080/10409289.2013.788425>.

⁶⁰² Achmad Azro'i, Galang Asmara, and Minollah, "The Position of The Village Head as Mediator in Resolving Disputes in the Village in Terara District , East Lombok Regency," *International Journal of Scientific Research and Management* 10, no. 07 (2022): 369, <https://doi.org/10.18535/ijstrm/v10i07.lla02>.

⁶⁰³ Nurdin et al., "Using Mediation Method in Customary Justice of Aceh-Indonesia," *International Asia of Law and Money Laundering* 3, no. 2 (2024): 115, <https://doi.org/10.59712/iaml.v3i2.96>.

⁶⁰⁴ Robin H Ballard et al., "A Randomized Controlled Trial of Child-Informed Mediation," *Psychology, Public Policy, and Law* 19, no. 3 (2013): 271, <https://doi.org/10.1037/a0033274>.

⁶⁰⁵ Olav Bertin Tveit, Kristin Gustavson, and Maren Sand Helland, "Children's Participation in Post-Divorce Decision-Making: The Role of Conflict and Attachment," *Child & Family Social Work* 28, no. 3 (2023): 720, <https://doi.org/10.1111/cfs.12997>.

Concerning the above statement, the author can say that in overcoming obstacles that can lead to the ineffectiveness of the mediation process, it is very important for mediators or *sulh* employees to have expertise in conflict management by mastering and applying various approaches or strategies, such as communication skills, mastering knowledge of psychology and sociology. Conflict management expertise is necessary because not all conflicts start from the same problem, so mediators need to adjust the characteristics of the problem they are dealing with. These skills can also be perceived as interpersonal skills.

Furthermore, the mediator's ability to communicate effectively and empathetically can create a conducive environment, so that the parties feel comfortable sharing their views and feelings permissively without fear of judgment.⁶⁰⁶ M. Atho' Mudzhar explains that a mediator in the communication process must remain neutral and impartial to one of the parties. This is very important to ensure that the outcome of the mediation is acceptable to all parties involved. A mediator's ability to maintain these principles can build trust and effective communication, which ultimately leads to successful dispute resolution. Similarly, according to Kugler & Coleman,⁶⁰⁷ mediators who can demonstrate effective and adaptive ways of communicating can increase party satisfaction.

Furthermore, knowledge of psychology is necessary for the mediator to understand and manage the parties' emotional state. This view is in line with Cesaris,⁶⁰⁸ the idea that a psychological approach to family conflict resolution is essential to relieve tension and emotional burden. Through the application of this approach, it allows all parties to feel valued, improve mental health, and foster a sense of justice. Meanwhile,

⁶⁰⁶ Viktorija Portere, "Communication in Mediation," *Sciendo* 15, no. 1 (2024): 110, <https://doi.org/10.2478/acpro-2024-0010>.

⁶⁰⁷ Katharina G Kugler and Peter T Coleman, "One Style Does Not Fit All: The Relationship of Mediator Behavioral Adaptivity to Mediator Empowerment, Efficacy, and Satisfaction," *International Journal of Conflict Management* 36, no. 1 (2025): 166, <https://doi.org/10.1108/IJCMA-03-2024-0060>.

⁶⁰⁸ Alessandro De Cesaris, "Philosophy and Mediation. A Manifesto," *Ethics in Progress* 10, no. 1 (2019): 77-78, <https://doi.org/10.14746/eip.2019.1.6>.

Saputra et al,⁶⁰⁹ explained that the application of psychological approaches in the mediation process can reduce the emotional burden and provide opportunities for participants to feel more valued so that mediation is more easily accepted by the parties. This statement is in line with the teachings of Islam which encourages its people to understand and respect each other.

The realization of the parties' peace agreement is also greatly influenced by the mediator's or *sulh* officer's skill in mastering sociological knowledge. By mastering sociological knowledge, mediators will find it very easy to identify the causes of family conflict symptoms that are born from social interactions and determine the most effective and mutually beneficial solutions for the parties involved in the conflict. As stated by Adrover et al,⁶¹⁰ a mediator who masters sociology can more easily understand the symptoms of family conflict dynamics and can dynamize the problem to find the right solution.

In closing this article, the author would like to reiterate that the presence of the parties in the mediation process is the main element of the success of mediation because they are the subjects in finding solutions, in addition to the interpersonal skills of the mediator or *sulh* officer. The absence of the parties in the mediation process reflects the low level of community compliance with the law and Islamic law, especially for the Muslim community. Adequate law and Islamic law education can be an effective means to increase public understanding and awareness of law. Reconstruction of mediation law policies that accommodate recognition and awards for the most successful mediators in conducting mediation, as motivation in carrying out the task of reconciling the parties. With a comprehensive approach, it is hoped that mediation or *sulh* in Indonesia

⁶⁰⁹ Muhammad Alvin Saputra et al., "The Urgency of Mediation in the Settlement of Joint Property Disputes," *Jurnal USM Law Review* 7, no. 2 (2024): 800, <https://doi.org/10.26623/julr.v7i2.9012>.

⁶¹⁰ Adrover, Castaner, and Moreno, "Mediators' and Disputing Parties' Perceptions of Trust-Building in Family Mediation," 157–59.

and Malaysia can become the main choice in resolving family conflicts, creating a more stable, harmonious, and just society.

Conclusion

Based on the previous discussion and analysis, it can be concluded that the integration of mediation or *sulh* into the justice system in Indonesia and Malaysia is an important breakthrough in resolving various family conflicts to recreate a harmonious life order in the family. At the empirical level, there are fundamental differences in terms of application between mediation and *sulh* in the two countries. The mediation process in Indonesia is carried out in the first session before the judge examines the subject matter of the case filed by the applicant or plaintiff. While *sulh* in the Malaysian Syariah Court is applied in post-divorce *mal* cases where the parties do not reach an amicable agreement on the *mal* issue. The resolution of family conflicts through mediation or *sulh* in both countries in reality is faced with quite complex dynamics, such as the problem of the weak interpersonal skills of some mediators or *sulh* officials, the limited number of mediators, and the absence of goodwill of the parties in attending mediation or *sulh* assemblies, thus causing the ineffectiveness of mediation or *sulh* itself. This fact from the perspective of the sociology of Islamic law, reflects the weakness in the structure and legal culture of the community in complying with the law and practicing Islamic law. Further research related to mediation in resolving family conflicts in various Muslim countries is relevant to conduct, considering that mediation is part of Islamic legal norms.

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