

Alternative Dispute Resolution as a Solution to Family Law Issue (Field Study at the Muhammadiyah Branch Leaders in Tegalondo, Malang)

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Abstract--Harmonious family life is the goal of fostering the household to become sakinah, but it cannot be denied that conflict will always arise in family life, so an alternative dispute resolution is needed. The main question that arises is why people take litigation methods to solve family problems such as divorce, distribution of inheritance in the Religious Courts compared to alternatives dispute resolution. This study can provide the community with an understanding of Alternative Dispute Resolution in dispute resolution. This question will be solved by an empirical normative study of family dispute resolution with Alternative Dispute Resolution at the Leadership of the Muhammadiyah Branch of Perumahan IKIP-Tegalondo Asri, Karangpulo, Kabupaten Malang. This research uses descriptive analysis method. It is also complemented by a literary approach in the form of Islamic Family Law literature and Journal of Dispute Resolution to address the issues raised in this paper. The findings in practice prove that there should give more socialization about Alternative Dispute Resolution so that the community has more than one way to resolve the dispute. Thus, it does not make litigation a final solution as an institution that solves its dispute. Understanding of Alternative Dispute Resolution and its types is further enhanced to create a solution in the legal bureaucracy in Indonesia.

Keywords: *Alternative; Dispute; Family; Law; Resolution.*

I. INTRODUCTION

Disputes are a social dynamic that often appears in family life. If a dispute occurs, there are several mechanisms used to resolve it, namely through court (litigation), and outside the court (non-litigation). The litigation paradigm requires that the law must be enforced to end conflicts that occur. This paradigm is more about who is defeated and who is

won (lose-win solution). The paradigm used in addition to litigation is the out-of-court (non-litigation) paradigm. This paradigm is more encouraging so that conflicts can be ended by making all parties in dispute or in dispute a winner (win-win solution).

Alternative Dispute Resolution is considered to be much more practical, cheap and efficient than litigation. Apart from higher costs, longer time, the cases that are resolved also do not necessarily reach the point of justice for both the plaintiff and the defendant. Because what we know, humans are social beings who have various kinds of characters and different dispositions. Therefore, it is very natural that every individual or group cannot be separated from having problems with other individuals or groups.

Law Number 30 of 1999 concerning Arbitration and Alternative dispute resolution can be said to be the most real and more specific form of state efforts to apply and socialize peace institutions in business disputes. The tendency to choose Alternative Dispute Resolution (ADR) by the community is based on the following considerations: lack of trust in the court system, and the tendency of people to seek other alternatives in an effort to resolve their various business disputes, namely by way of arbitration/tahkim.

According to R. Tanzil Fawaiq Sayyaf, examines the argument that the problem of the conception of mediation outside court according to *al-kasysyāf's* interpretation is the process of reconciliation carried out by both parties to the dispute, appoint judges from the male side and from the female side and are selected from the closest kinship. Each of these judges to reconcile the two. The urgency of mediation outside the court can be a solution in resolving disputes that occur within the family in general and the Muslim family in particular.

In another study written by Imam Taufiq, Al-Tahrir Journal that tries to parse the interpretation model that Hamka raises in parsing conflict resolution through the multiculturalism verses it offers in Al-Azhar's interpretation. There are a number of principles of conflict resolution that can be derived directly from the verses of the Koran. The multiculturalism verses conceptualized with the terms *al-ta'aruf*, *al-arham* and *al-taqwa* actually lead to a number of mediation principles that can be applied to various conflict domains, from family mediation, social mediation to customary mediation and judgment.[1]

Alternative Dispute Resolution according to Priyatna Abdurasyid is a set of procedures and mechanisms that function to provide an alternative or choice of a dispute resolution or arbitration procedure in order to obtain a final and binding decision on the parties. In general, this does not always involve the intervention and assistance of independent third parties who are asked to help facilitate the resolution of the dispute.[2] Alternative Dispute Resolution is a dispute settlement institution or different income through a procedure agreed by the parties, namely settlement outside the court by means of consultation, negotiation, mediation, conciliation, or expert judgment.[3]

Humans who have conflicts with other individuals will feel threatened and will do anything to get justice or satisfaction for themselves even though they have to go through legal channels. Even people who can only vent their emotions in solving problems will dare to choose the path of violence in facing their problems. Whereas violence is not a solution to solving problems, in fact it is an addition to and magnifying of existing problems or conflicts.

The lack of public knowledge about the mechanism when a dispute occurs is one of the reasons why this service is held. The community still understands that when there is a dispute in the family especially, it can only be resolved in court. In fact, the mechanism that can be taken apart from the court is outside the court.

Based on previous research, socialization related to ADR has never been carried out, especially at PRM IKIP Tegalondo, Malang. Alternative dispute resolution is a breath of fresh air for people who want to resolve family disputes in a relatively cost-effective and efficient manner. The settlement of disputes outside the court is carried out amicably, so that the disputing parties can find mutually beneficial decisions.

Sociologically, there are family disputes in the community which are resolved by litigation (court). So that the community prefers the litigation path rather than the amicable settlement. This happens because the community does not understand how to resolve disputes by non-litigation channels. Settlement of disputes carried out by the previous community was sufficiently carried out by both

parties and attended by community leaders or village heads as leaders in the community, so that the dispute resolution process carried out by the previous community reflected that the non-litigation route was fast, low cost, and not being convoluted, and the values of life that exist in society are realized.

II. PROBLEMS

Family dispute resolution often arises as a result of disagreements and good communication patterns between family members have not been developed, resulting in conflicts that end in the Religious Courts. Most people do not understand that dispute resolution can be done non-litigation outside the court, because of this ignorance, the community thinks that the court is the final solution to solving problems in the family. As a follow-up to these problems, the community service team tries to educate the public, especially in the PRM IKIP area of Tegalondo Branch in overcoming family problems in non-litigation ways. The community service team tries their best to socialize so that the public understands alternative dispute resolution outside the court. In this regard, the following problem formulations are formulated;

- a. What is the best effort that can be made by the community service team and the benefits obtained by the partners (RPM IKIP Tegalondo community) in terms of alternative non-litigation dispute resolution as the main option in resolving family disputes?
- b. What are the benefits that can be obtained by the community and institutions in this case PRM IKIP Tegalondo by holding this community service by academics?

III. RESEARCH METHOD

The approach method in this community service activity is fully adapted to the results of the situation analysis on the priority issues that have been agreed to be resolved together.

1. Plan of Activities

Based on the description of the existing implementation methods, an activity plan can be drawn up which will serve as a guideline to facilitate the implementation of community service activities.

2. Filling the questionnaire

At the initial stage, the identification of problems that arise in the community with regard to problems or disputes in the family such as husband and wife conflicts, distribution of inheritance or waqf is carried out. This questionnaire was held to explore the level of public understanding of APS outside the court according to Islam.

3. Socialization (Delivery of Introductory Materials and Equation of Perceptions)

This socialization was carried out to provide education to the public about APS outside the court according to Islam. This is deemed important so that the public knows that family dispute resolution can be done outside the court.

IV. DISCUSSION

Community service activities at PRM IKIP Tegalondo are carried out online by the zoom application platform on Monday, July 27, 2020. PRM IKIP Tegalondo is a community of Muhammadiyah members who are active in various Muhammadiyah activities who have different educational backgrounds. In an effort to maintain family resilience, community service related to alternative dispute resolution is carried out to assist the community in resolving family disputes.

Tegalondo Village, Karangploso District is a village located in the west of Tunggulwulung Village with a village area of 220,235 HA with a land height above sea level of 421 m. This village is directly adjacent to Ampeldento Village in the north, in the south by Tlogomas Village, and in the west by Pendem Village. In Tegalondo Village, there are 1 University, 3 Elementary Schools, 6 Kindergardens or PAUD.

The total population of Tegalondo Village is 7,087 people consisting of 3,609 men and 3,478 women, 1,796 Heads of Household. Consists of 5 hamlets, namely Gondang, Babatan, Wunutsari, Dawuhan, and Ketangi. The number of voters is 2,325, most of the people's livelihoods are industrial/private sector as many as 1,239 people.

Execution and Activities Materials

A. Framework for Problem Solving

The strategies used to collect data related to needs and potentials that can be used as assistance materials are as follows:

- 1) Conducting an interview with one of the PRM officials Tegalondo Asri
- 2) Preparation of mentoring materials at PRM Tegalondo Asri
- 3) Provide assistance and tabulation or inventory of problems related to Islamic family law in the community.

B. Goals

Based on preliminary observations made earlier, the target will be socialization to structural members of PRM Tegalondo Asri.

C. Activity Methods

Community service activities are carried out using the Mentoring method, Small Group Discussion, a kind of small discussion and tabulation of problems using the PBL (Problem Based Learning) method. The mentoring method is to provide and explain material that aims to make

the congregation know and understand about APS (Alternative Dispute Resolution) outside the court. This means that the congregation has only known about the settlement through court proceedings or litigation. Another method used is online-based seminars given the conditions that do not allow to bring in a crowd.

The criteria for achieving the goals of this service are as follows:

1. In general, the congregation understands and understands the sophistication of hadith search technology.
2. The congregation's understanding of APS outside the court increased
3. The establishment of an agenda, namely an inventory of family law problems in the community. Which will be implemented in a not so long period of time.

D. Mentoring Materials

Table.1 Mentoring Materials

No	Activity	Method
1	Inventory of Family Problems	Questionnaire
2	General Knowledge of Alternative Dispute Resolution	Webinar, Zoom
3	Types of Alternative Dispute Resolution	Webinar, Offline
4	Types of Advocacy	Webinar, Offline
5	Introduction of Mediation	Webinar, Offline dan Digital (Application)
6	Institutional Alternatives for Dispute Resolution	Webinar, Digital
7	Formulation of Special Platform / Canal for Legal Consultation	Webinar, Offline

Source : Self Research

This activity begins with filling out a questionnaire using the google form platform which is distributed from 11 August 2020 to 14 August 2020 as a first step to identify problems that often arise in families at PRM IKIP Tegalondo. Data processing from the questionnaire provides conclusions in the table below:

Table.2 Questionnaire Data Processing

Identification of Family Problems	1. Differences of Opinion (11 People) 2. Communication (2 Persons) 3. Character Differences (1 Person) 4. Inheritance (1 Person) 5. Others
Public Understanding of ADR	As many as 11 people understand alternative Dispute Resolution as a mechanism for dispute resolution in the community. And as many as 7 do not understand this ADR.
Public Understanding of ADR Types	As many as 8 people understand the types of ADR, and 10 people do not understand

Public Understanding of the Duration of ADR by Litigation	As many as 11 people know about the period of ADR or litigation in court, and the remaining 7 people do not understand
Public Understanding of Expensive Costs of Litigation	As many as 9 people knew the costs of litigating cases in court and 9 people do not understand
Public Understanding of the Subjectivity of Judges	As many as 4 people knew about the subjectivity of judges in the judicial process, while 14 people did not know it.
Community Experience with Court cases	There are only 2 people in PRM who have experience with court cases, and as many as 16 people do not have experience with court cases.
The Urgency of a Special Channel for Dispute Resolution in PRM	A total of 13 people said it was necessary to create a special channel for dispute resolution in PRM. A total of 5 people said it was not necessary.
The Urgency of Establishing a Legal Aid Division in the PRM structure of Tegalgondo Asri	As many as 11 people thought it was necessary to establish a legal aid division in PRM, and 7 people said it was not necessary
Public Expectations for the 2020 UMM PPM Team	1. Education and socialization on increasing the understanding of APS in PRM 2. Assistance to the family dispute resolution process by non-litigation channels

Source : Self Research

This activity was only carried out for one period, because considering the condition of the community in the midst of a pandemic outbreak that made it impossible to carry out activities offline.

The Webinar event will be held on Tuesday, 18 August 2020 at 19.00-21.00. This webinar was delivered by the 2020 PPM UMM team which consisted of 3 members, namely; Rahayu Hartini, R. Tanzil Fawaiq Sayyaf and Luciana Anggraeni as panelists, and led by a moderator. During the event the participants listened enthusiastically. This can be seen from the number of attendees, as well as the number of questions about family dispute resolution that were submitted.

Dispute resolution in the court (litigation) is not the only way to resolve disputes, there is non-litigation dispute resolution by negotiation (deliberation), mediation, arbitration and conciliation. The method of non-litigation dispute resolution as mentioned can be understood in detail as follows.

Literature Review on Alternative Civil Dispute Resolution (APS)

a. According to the Arbitration Law and APS (Law No. 30 of 1999)

Based on the disputing parties, the dispute can be grouped into certain fields. Whose boundaries can overlap, namely:

1. Disputes between individuals, for example disputes within the family due to divorce such as problems with children, distribution of property, inheritance, and others.
2. Disputes between individuals and legal entities, for example, labor issues where disputes arise between employees and companies regarding wages, working hours, severance pay, and others.
3. Disputes between legal entities, for example disputes between corporations in which one company sues another.[4]

To resolve a possible dispute, you have several options for how to resolve it. In general, several ways that can be chosen are distinguished through the court or outside the court such as negotiation, conciliation, consultation, expert judgment, mediation, arbitration, and others, which are often referred to as alternative dispute resolution (APS).

According to Islamic Law and Civil Law / Family Law

Obligations and Duties of the Mediator, it is mentioned about the obligations or duties that must be carried out by the mediators, namely, the principle that the Mediator is the responsible party for settling disputes between both husband and wife.[5]

The Mediator is the person in charge, or the conciliator between the two disputing parties. This is contained in the Al-Quran Surat An-Nisa 'verse 35 which reads:

وإن خفتم شقاق بينهما فابعثوا حكماً من أهله وحكماً من أهلها إن يريدوا إصلاحاً يوفق الله بينهما إن الله كان عليماً خبيراً

Then according to what Allah has stated in His word above, the parties in dispute should take a peacemaker from each party. , the men's side and the women's side. The meaning of the word *Hakam* is a peacemaker. This verse describes the mediation (*al-Tahkim*) between husband and wife, if there is a dispute and *shiqaq* between the two. Allah SWT ordered two arbiters / mediators to settle the dispute with the aim of maintaining the unity / integrity of a family. This was not debated by the scholars of *fiqh* in the appointment of the arbitrator / mediator. And it is mandated for the mediator to be fair, capable of an improvement and from the close relatives of the disputing husband and wife to keep the secrets of the husband and wife's life. And there are many other verses of the al-Qur'an that teach al-Tahkim, including: QS. Al-Maidah: 42, QS. an-Nisa: 65, QS. al-Maidah: 95.

Things that must be done by a peacemaker include:

1. The mediator looks for the cause of the dispute with the following steps:
 - a. Asking the husband
 - b. Ask the wife

After knowing the problems that occur between the disputing parties, the mediator provides an explanation of the importance of the mahligai of marriage, advises the parties on the importance of

marriage, and provides views on what will happen if separation occurs both good and bad.

2. After knowing the cause of the dispute, the mediators / peacemakers gathered with the aim of listening to the matters to be conveyed by each of the rights either from the husband's side or from the wife's side, so that the peacemakers will know what the problems are and can decide what will be. Will be communicated to the disputing parties.

In the Jordan Family Law of 1976, article 132 states that:

"The peacemakers should look for the causes of problems to the family, relatives, or people who can give knowledge to the peacemaker"

Dispute Resolution by Negotiation

The term Negotiation is contained in Chapter I of the General Provisions of Law no. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, Article 1 point 10, states that ADR is a dispute resolution institution or difference of opinion through procedures agreed upon by the parties, In practice, namely settlement by means of consultation, negotiation, mediation, consolidation, or expert judgment. So, the law governing negotiations is not explicitly stated. Negotiation is an effort to find solutions to problems by deliberation to reach a direct agreement between the disputing parties, which results can be accepted by the parties.

Munir Fuady distinguished two types of dispute resolution by negotiation. First, negotiation of interests Interest negotiation is a negotiation in which prior to negotiation, the parties do not have any rights from one party to another. They negotiate because each party has an interest in negotiating. If the negotiation of the interests of the negotiating parties fails to find an agreement, then in general it can be said that neither party can force the will to continue the negotiation. Second, Negotiation of Rights In contrast to negotiation of rights (right negotiation), before the parties negotiate, the parties already have a certain legal relationship, so that the parties have created certain rights which are guaranteed to be fulfilled by law. Then the parties negotiate how to fulfill these rights by the opposing party. So it is different from negotiation of interests where the negotiation is only intended to create a certain legal relationship, whereas in the negotiation of the right to a legal relationship it actually exists before the negotiation is carried out.[6]

Dispute Resolution by Mediation

According to Perma No.1 of 2008, Mediation is a way of resolving disputes by the negotiation process to obtain agreement from the parties with the assistance of a mediator. The mediator is the person in charge in settling disputes between the two parties, either husband or wife.[7]

If a problem occurs in a household, according to what Allah has stated in His word above, the disputing parties should take a peacemaker from

each party, the male side and the female side. The meaning of the word *Hakam* is a peacemaker. This verse describes the mediation (*al-Tahkim*) between husband and wife, if there is a dispute and *shiqaq* between the two. Allah SWT ordered two arbiters / mediators to settle the dispute with the aim of maintaining the unity / integrity of a family. This was not debated by the scholars of *fiqh* in the appointment of the arbitrator / mediator. And it is mandated for the mediator to be fair, capable of an improvement and from the close relatives of the disputing husband and wife to keep the secrets of the husband and wife's life.

Dispute Resolution by Arbitration

It is contained in Article 1 Paragraph (10) of Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. Arbitration is a way of resolving a civil dispute outside the general court based on an arbitration agreement made in writing by the disputing parties. How to resolve disputes according to Article 6 of Law No. 30 of 1999 Arbitration and Alternative Dispute Resolution, namely Civil disputes or differences of opinion can be resolved by the parties by alternative dispute resolution based on good faith by overriding litigation settlement in state courts.[8]

Settlement of disputes or differences of opinion by alternative dispute resolution is resolved in a direct meeting by the parties within a maximum period of 14 (fourteen) days and the results are stated in a written agreement. In the event that a dispute or difference of opinion cannot be resolved, then with the written agreement of the parties, the dispute or difference of opinion is resolved through the help of a person or more expert advisors or by a mediator.

Dispute Resolution by Consultation

Marwan and Jimmy P, explain the meaning of consultation, as follows: "Request for advice or opinion to resolve a dispute in a family manner made by the disputing parties to a third party".[9]

In law, consultation is one of the activities in resolving disputes, which is "personal" between a certain party (client) and another party who is a consultant, where the consultant gives his opinion to the client according to the needs and needs of his client.

Legal basis for consultation. So that the consultation itself is based on law with the Law of the Republic of Indonesia Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. It is stated in article 1 Paragraph 10 which reads "Alternative Dispute Resolution is a dispute resolution institution or difference of opinion through a procedure agreed upon by the parties, namely settlement outside the court by means of consultation, negotiation, mediation, conciliation, or expert judgment.

Dispute Resolution by Conciliation

Conciliation is an attempt to reconcile the disputing parties' desires to reach agreement and

settlement. However, Law Number 30 Year 1999 does not provide an explicit formula for the meaning of conciliation. However, this formula can be found in Article 1 point 10 and paragraph 9 of the General Elucidation, namely that conciliation is an alternative institution in dispute resolution.

Thus, conciliation is an alternative dispute resolution process and involves a third party involved in resolving disputes. The differences between litigation and non-litigation are as follows[10]:

Litigation 1. Time to resolve cases is long and costly 2. Procedures, formal and rigid 3. Settlement of legal disputes by courts based on one legal litigation 4. Court will issue rights and establish new legal relationships between the parties involved in the dispute law 5. After the issuance of rights and establishing a new legal relationship between the parties, shall apply and bind the parties and the general public 6. Court decisions will provide legal justice, not necessarily received fairly by the parties, so that it has the character of "win or lose (Winner-Losser), so that the justice provided by the court is symbolic justice, resulting in disappointment for the loser, and can potentially lead to revenge (*eighten richting*). Non-litigation 1. The time for resolving legal disputes and costs depends on the parties making peaceful efforts 2. The settlement of legal disputes is informal and not procedural 3. The parties directly conduct negotiations in the context of peace efforts, using the methods of negotiation, mediation, conciliation and facilitation 4. Issuance of rights based on agreement between the parties. 5. The parties who resolve legal disputes will issue a court decision that is a win-win solution.

Based on the facts in family life that conflict will always appear in the dynamics of human life, humans can never avoid a dispute. Juridically, the litigation process can be taken to resolve family disputes through court channels. The court which acts as "the last resort" is the last solution to seek justice for the community.

But in fact, courts have weaknesses that ultimately make dispute resolution more complicated. M. Yahya Harahap explained several criticisms of the court, as follows[11]:

1. The trial takes a long time
2. The high cost of court proceedings
3. The judiciary is less responsive
4. The ability of judges to be generalist

The implementation of the modern justice system as an effort to uphold justice has proven to face various types of obstacles. One of the contributing factors is the modern judiciary with the burden of formalities, procedures, bureaucracy, and strict methodology. Therefore, justice received by society is bureaucratic.

The role and function of the judiciary is considered to be overloaded, the process is slow and time-consuming, requires quite expensive costs, and

is not responsive to community needs. Nevertheless, some family cases in the community are still submitted to the Religious Courts, to be processed and decided upon as an effort to obtain justice.

In family life, disputes are normal and normal. However, every dispute has a solution. There are two types of dispute resolution, namely through court (litigation) and outside court (non-litigation). If the settlement is brought to court, the solution is that there are parties that are won and there are parties that are defeated. Meanwhile, settlement outside the court provides a mutually beneficial solution. The priority issue is to introduce to the public about non-litigas dispute resolution techniques, namely without going through a trial mechanism.[12]

One of the questions raised by one of the participants attracted enough attention from the panelists, this question was "Why do so many people still go to court to resolve their disputes, whereas there are solutions that prioritize win-win solutions, namely Alternative Dispute Resolution?" This question was answered by Speaker R. Tanzil Fawaiq Sayyaf, that the problem is that there are still many people who do not understand about APS, this is based on the high level of court cases.

V. CONCLUSION

There are two important findings in this service, first, the best efforts made by the PMM UMM 2020 Team regarding increasing public understanding of Alternative Dispute Resolution, especially family disputes, are in the form of education, socialization through online seminars, distributing questionnaires and identifying problems about family. In order to increase public awareness about the urgency of dispute resolution through non-litigation channels, which is to provide an image to the community that family disputes can be resolved using non-litigation channels. Second, while the benefits obtained by the community are increased understanding and awareness in resolving family disputes by taking non-judicial channels.

As an intellectual reflection on this dedication, there are still many people who do not understand the dispute resolution mechanism through non-litigation channels. Therefore, the importance of continuous education, socialization and assistance to the community, especially in the PRM Tegalondo Asri area.

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Muhammadiyah Branch Leadership, hereinafter abbreviated as PRM, has been established since November 2016, which is chaired by the late. Abdul Ghofur Amrullah for the period 2016-2018.

Our Community Service Partner, PRM IKIP Tegalondo Asri is located at Jalan Wunutsari, Babatan, Tegalondo, Karangploso District, Malang Regency, East Java.

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