

Priviet Social Sciences Journal

Volume 6
Issue 2 February, 2026

Article 18

09-02-2026

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Aprinelita & Hidayatullah

To cite this article: Aprinelita, A. & Hidayatullah, H. (2026). Qur'anic legal literacy on the principle of shul (Islah) in family dispute resolution. *Priviet Social Sciences Journal*, 6(1), 191-197.
<https://doi.org/10.55942/pssj.v6i2.1289>

To link to this article: <https://doi.org/10.55942/pssj.v6i2.1289>



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Qur'anic legal literacy on the principle of shul (Islah) in family dispute resolution

Aprinelita* & Hidayatullah

Sultan Syarif Kasim Islamic University Riau, Jl. H.R. Soebrantas No. 155 KM. 15, Rimba Panjang, Kec. Tambang, Kabupaten Kampar, Riau 28293, Indonesia
*e-mail: aprinelita018@gmail.com

Received 13 December 2025

Revised 23 January 2026

Accepted 09 February 2026

ABSTRACT

Family disputes arise when there is a conflict or incompatibility between parties. In this sense, a problem can be interpreted as a situation in which the parties experience pros and cons or incompatibility with the agreement made between them. This is still related to the status of humans as social beings. The existence of disputes between humans inspires the birth of the desire to resolve the conflict/dispute that occurs between them. In dispute resolution, Islam places great emphasis on peace to anyone who is in conflict, and the settlement of disputes arises more from the wishes and initiatives of the parties to the dispute, so that mediators play a petrified role in reaching agreements. In Islamic law, the mediation procedure used to resolve family disputes is called al-sulh, which means to settle, involving a hakam. The processes and facts of society are different. The mediation stage is not necessary if the couple can resolve conflicts within their families. In such situations, they can only resolve the issue with the agreement they made before, and there is no further process. However, when conflicts cannot be resolved simultaneously, families require a trusted family mediator or judge. Therefore, certain stages in this mediation process are necessary to reach an agreement between the two parties. First, each party to the conflict must be willing to present its grievances to the mediator. The second process is peace carried out by third parties. A third party does this by identifying the root cause of the conflict. The third process begins when the midpoint is determined. This process requires the approval of each family that has problems with the solution offered by a mediator. The fourth or an advanced process can be initiated. The mediator in the community is usually a religious figure or community leader, such as a kyai, a hamlet head, or maybe even a hakam, or a trusted family member.

Keywords: Qur'anic legal literacy; family dispute resolution; Al-sulh (Islah); Islamic mediation; legal awareness

1. INTRODUCTION

Humans as living beings on earth are given by Allah swt to have feelings of affection for the opposite sex and the instinct to have offspring. To realize this, Islam as a perfect religion has regulated human life, including human relationships between the opposite sexes. A couple must marry to have offspring. In addition to continuing the offspring, marriage aims to form a happy and eternal family or household based on the One Godhead. This goal is in line with the purpose of marriage in Marriage Law Number 1 of 1974 ([Hanif & Ulya, 2023](#)).

Marriage as a legal act gives rise to a number of rights and obligations between husband and wife since the ijab-qabul was conducted. The fulfillment of rights and obligations that are material and immaterial must be carried out fairly and makruf so as to be able to create a happy household permanently. Marriage rights and obligations, if not fulfilled properly, can cause disputes. Small household disputes are a significant source of increasing divorce rates ([Marwa, 2021](#)).

Disputes in the family exist when there is a conflict or incompatibility between one party and another. In this sense, a problem can be interpreted as a situation in which the parties experience pros and cons or incompatibility with the agreement made between them. It is still related to the status of humans as social beings. So that the existence of disputes between humans inspires the birth of the desire to resolve the conflict or dispute that occurs between them. The family is the smallest part of society and can trigger conflict. Conflicts in a family arise when the basic needs of a family are not optimally met. Often, these basic needs become conflicts in a family when the implementation of obligations or responsibilities is not carried out properly ([Sulistiyawati & Hariyanto, 2021](#)).

Various facts that have occurred lately, one of which is about family conflicts, where this conflict occurs from all aspects of the problem, including conflicts between husband and wife, children and parents, and between siblings. Various kinds of conflicts that arise in a family consist of several factors, namely, jealousy, continuous quarrels, infidelity, children's problems, past problems, unfulfilled responsibilities and obligations, acts of persecution, economic factors, biological factors, and others ([Listamin & Arsyad, 2018](#)).

In Islam, referring to Qur'an surah An-Nisa' 34-35, Islam encourages Muslims to solve problems in the family and society in general by peaceful means. This means that Islam prefers the path of peace or Islah between the parties to the dispute rather than the election of the court or the filing of a lawsuit. However, in the scope of Islam, especially referring to the Qur'an and the sunnah of the Prophet PBUH, the settlement of disputes outside the court is much easier because it can be applied individually and practiced in the community, as follows: The solution intended here is more about the basic qualities that must be possessed by each individual so that they can be more independent of the problems or disputes experienced. It is also a way for each individual not to be entangled in complicated disputes in undergoing socialization between individuals and groups ([Sayyaf, 2023](#)).

Dispute resolution can be done through two processes: the oldest dispute resolution process is through litigation in court, followed by the development of a dispute resolution process through cooperation (cooperative) outside the court. Litigation produces adversarial agreements that do not been able to embrace common interests, tend to create new problems, are slow to resolve, require high costs, are unresponsive, and cause hostility among the parties to the dispute. The long process that seems to not solve this problem adds to the criticism of dispute resolution through litigation. In contrast, an out-of-court process will result in a win-win solution, ensuring the confidentiality of the parties' disputes, avoiding delays due to procedural and administrative matters, resolving problems comprehensively, and maintaining good relations ([Sayyaf, 2023](#)).

The settlement of family disputes outside the court is considered much more practical, cheap, and efficient than litigation. In addition to being more expensive and time-consuming, the case that is resolved does not necessarily reach the point of good justice for the parties ([Sayyaf, 2020](#)). Therefore, when we want to build a family that is sakinah, mawaddah, and warahmah, it is not as easy as we imagine; it is necessary to have a pre-marriage agreement before the marriage so that a family that is built can run harmoniously and full of responsibility with each other. Therefore, when this conflict takes place, it is very difficult to arise in the family because before the wedding, the couple has made preparations in advance.

If a conflict arises in a family, the couple can resolve it as a family if the conflict can be resolved together or if it is just an ordinary conflict. However, when the conflict erupts or can even cause disputes or divorces that cannot be overcome together or by the family, then it is necessary to process the problem or resolve the conflict with the help of a third party, better known as mediation ([Sulistiyawati & Hariyanto, 2021](#)).

Mediation is a procedure in which a person acts as a mediator to communicate between the parties to the dispute so that their differing views on the dispute can be understood and reconciled. Mediation that gives birth to a peace agreement will be a complete settlement because the final result does not use the win-or-lose principle. Settlement by mediation process provides many benefits for the parties, the time taken will reduce costs to be cheaper, seen from an emotional point of view of settlement by mediation can provide comfort for the parties, because the details of the agreement are made by the parties themselves according to their will. Mediation has basically existed for a long time, because the community dispute resolution system generally uses the principle of mediation ([Sari, 2017](#)). As a method of peaceful dispute resolution, mediation has a great opportunity to develop in Indonesia. With eastern customs still entrenched, people prioritize maintaining relationships between families or relationships with business partners rather than momentary profits if disputes arise ([Saladin, 2017](#)).

Mediation as a non-litigation dispute resolution process, there are two types of mediation, namely outside and inside the court. Mediation conducted outside the court is regulated by Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, and mediation conducted in court is regulated in PERMA No. 1 of 2016 concerning Mediation Procedures in Court ([Sari, 2017](#)).

Mediation disputes have been known in Indonesia since ancient times. To solve problems that occur in the community, customary institutions usually resolve disputes that occur among members of the community they lead. Juridically, the existence of out-of-court mediation in Indonesia has been regulated in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. In Article 6 paragraph (3), it is stated that mediation is a process of activities as a continuation of the failure of negotiations carried out by the parties in accordance with the provisions of Article 6 paragraph (2) of Law Number 30 of 1999. With this law, the existence of mediation in Indonesia is getting stronger ([Lestari, 2016](#)).

There is a culture that lives and develops in society to overcome various disputes, namely a culture of consensus deliberation that is effective in overcoming disputes between members of the community or family. Basically, the use of dispute resolution methods by consensus deliberation in society is the same as the mediation method, only its application is different according to the conditions and habits of each community. Consensus deliberation in handling family disputes, in the current era, is then adopted in an effective method to be applied, namely the non-litigation mediation method in overcoming disputes.

Consensus deliberation in handling family disputes, in the current era is an effective method to be applied, namely the non-litigation mediation method in overcoming family disputes which is also in accordance with Islamic law. Non-litigation mediation runs with the participation of various parties and figures in the community such as religious leaders, community leaders, traditional leaders and village heads who have charisma and are respected, the settlement process is handed over according to their will and strengthens the meaning of the law in accordance with their collective interests ([Awaludin, 2021](#)).

The Qur'an as the source of Islamic law has also regulated the same thing about how to handle disputes in family and human relationships. The dispute settlement is carried out to uphold justice handled through the judiciary (al-qadha) and out of court (out of court settlement). Concepts such as hakam (arbiter or mediator) in the mechanism of tahkim or al-shulhu (peace), are concepts that are explained in the Qur'an as a medium in resolving conflicts outside the courts ([Sururie, 2012](#)).

Furthermore, Mediation according to Supreme Court Regulation (PERMA) No. 1 of 2016 concerning Mediation Procedures in the Court Article 1 is "a way of resolving disputes through a negotiation process to obtain agreement between the parties with the assistance of a mediator" ([Supreme Court, 2016](#)). As one of the implementers of judicial power in Indonesia, the religious courts have practiced mediation in the case settlement process. Theoretically, dispute resolution through mediation brings a number of advantages, including cases can be resolved quickly and at a low cost and reduces congestion and court congestion in the court. The involvement of mediators in disputes that occur is only a spur for

the parties to reach a peaceful settlement, so that mediators generally do not interfere in determining the content of the peace agreement, unless it is really needed. This is based on the principle of the mediation process, that the material of the peace agreement is the absolute right of the parties to determine it without any intervention from the mediator (Handayani & Syafliar, 2017).

The presence of PERMA Number 1 of 2016 is intended to provide certainty, order, and smoothness in the process of reconciling the parties to resolve a civil dispute. This can be done by intensifying and integrating the mediation process into the litigation procedure in the Court. Mediation can have an important position in PERMA Number 1 of 2016. All civil cases resolved in the Court must be resolved through mediation. The absence of a mediation process will have legal consequences for dispute resolution.

Based on the description above, the author is interested in researching the issue more deeply with the title "Family of Qur'anic Legal Literacy Towards the Principle of Shul (Islah) in Dispute Resolution Problem Formulation

2. RESEARCH METHOD

Legal Research is an analytical process that includes certain methods, systematics and thinking that aims to study certain legal symptoms, then seek to solve the problems that arise. So a proper research method is needed. This method helps the research process in accordance with the formulation of the problem being studied and the research objectives to be achieved (Purwati, 2020). The use of methods in this paper uses normative legal research methods (literature law research). This normative law research uses literature as basic data which in research can be classified as secondary data. Some of the data obtained is sourced from books, journals and others (Soekanto, 2003).

3. RESULT AND DISCUSSION

Disputes or conflicts are commonplace in human relationships with other humans. This conflict occurs for several reasons, including; misunderstanding; differences in interpretation; dissatisfaction; Suspicion; distrust and so on. In overcoming conflicts or disputes, usually the parties have alternatives in resolving them. In Indonesia, we are familiar with the terms Litigation and Non-Litigation.

Married couples often experience family conflicts because marriage is a bond between two different people who are bound by the mitsaqan ghalidzan contract to form a family that is sakinah mawaddah warahmah. If we are Muslims, we must follow the teachings of Islam and make a productive family the ideal of all families. Remembering that human beings are made up of sin and sin, every family, both husband and wife, must understand and accept each other's shortcomings and advantages, because marriage is an act of worship to perfect one's half of one's religion. Therefore, marriage is a deed of worship that must be done with sincerity.

In dispute resolution, Islam places great emphasis on peace to anyone who is in conflict, the settlement of disputes or disputes arises more from the wishes and initiatives of the parties to the dispute, so that mediators play a petrified role in reaching agreements. In the Qur'an, it is mentioned QS An-Nisa/ 4:35:

وَإِنْ خُفِّنْ شَقَاقٌ بَيْنَهُمَا فَابْعَثُنَا حَكَمًا مِنْ أَهْلِهَا ۝ إِنْ يُرِيدَا إِصْلَاحًا يُوْفَقُ اللَّهُ بِئْنَهُمَا ۝ لَئِنَّ اللَّهَ كَانَ عَلَيْنَا خَيْرًا

And if you are worried that there is a dispute between the two, then send a hakam from the male family and a female from the female family. If the two hakam people mean to make amends, surely Allah will give taufik to the husbands and wives. Indeed, Allah is All-Knowing, All-Knowing.

Based on the verse mentioned above, it should be emphasized that Islam calls on its adherents in the context of resolving disputes, to choose the ma'ruf way, namely by doing justice and also peace. In fact, in Islamic societies, when there is a dispute, which option do they choose? The answer is the judicial process or known as litigation. This is evidenced by the increase in the registration of cases in courts, especially religious courts. Why is that? This is the anxiety in this study. That Allah has called out in his words in various nash-nash, both the Qur'an and the Hadith, or we can find it in the opinions of scholars

about the settlement of this dispute. Can all disputes be resolved only through the judicial process? Then, the next question is whether the outcome of the trial can be felt by the two parties to the dispute? Of course not. Because to achieve an equally favorable situation, it can be pursued through a non-litigation process, namely through mediation and sulu.

In the study of the Qur'an, Nusyuz and syiqaq are two types of conflicts in the household. The Qur'an uses the *ıslâh* method to resolve this technical conflict. Domestic conflicts, such as nusyuz, must be resolved gradually and in an educated manner. Likewise, the conflict of syiqaq should be resolved by sending a *hakam*, or peacemaker (QS. An- Nisa). Nusyuz is defined in various ways by scholars. According to Imam Syirazi, nusyuz is a wife who is disobedient, arrogant, and abandons the commands of Allah SWT regarding her responsibility towards her husband. However, based on the nash-nash from the Qur'an and Hadith, nusyuz applies to both husband and wife. So nusyuz can be said to be husband and wife who do not carry out their responsibilities towards their spouse as mandated by Allah SWT to them (Ghazali, 2007). Meanwhile, Syiqaq contains the meaning of quarrel, this word is usually associated with husband and wife so that it means a quarrel that occurs between husband and wife that cannot be resolved by both of them themselves. This syiqaq arises when the husband or wife or both do not carry out the obligations that must be carried out (Syarifuddin, 2009).

In Islamic law, the mediation procedure used to resolve family disputes is called al-sulh, which means to settle, in this case by involving a hakam. The process and facts of society are different. The mediation stage is not necessary if the couple can resolve conflicts within their own families. In situations like this, they can only resolve the issue with the agreement they have made before, and there is no further process. However, when conflicts cannot be resolved simultaneously, families need a trusted family mediator or judge. Therefore, certain stages in this mediation process are necessary to reach an agreement between the two parties.

First, with the willingness of each party in conflict in front of the mediator. This willingness shows that both parties are genuinely willing to resolve their family conflicts openly by involving a third party. to resolve conflicts that arise because each partner cannot resolve them independently. After the first process is completed, the second process is peace carried out by a third party. A third party does this by identifying the root cause of the conflict itself. One way to achieve peace is to make a new marriage agreement from both sides. This agreement can optimize and anticipate that the family will return to harmony as previously expected and return to building the sakinah mawaddah and warahmah (Sulistiyawati & Hariyanto, 2021).

The third process begins when the midpoint is found. This process requires the approval of each family that has problems with the solution offered by the mediator. The mediator acts as a neutral and impartial middle point, and is responsible for finding a solution that works for each family. Once all families agree to this process, a fourth or follow-up process can begin. The mediator in the community is usually a religious figure or community leader, such as a kyai, a hamlet head, or maybe even a hakam or a trusted family member. Mediation processes conducted outside of court are cheaper, faster, and easier to do than in-court processes.

4. CONCLUSION

In Islamic law, the mediation procedure used to resolve family disputes is called al-sulh, which means to settle, in this case by involving a hakam. The process and facts of society are different. The mediation stage is not necessary if the couple can resolve conflicts within their own families. In situations like this, they can only resolve the issue with the agreement they have made before, and there is no further process. However, when conflicts cannot be resolved simultaneously, families need a trusted family mediator or judge. Therefore, certain stages in this mediation process are necessary to reach an agreement between the two parties.

Ethical Approval

This study is a normative legal study based on publicly available literature and legal materials; therefore, ethical approval was not required.

Informed Consent Statement

Not applicable.

Authors' Contributions

Conceptualization, A.; methodology, A. and H.; formal analysis, A. and H.; writing – original draft, A.; writing – review & editing, H.

Disclosure Statement

The authors declare no conflict of interest.

Data Availability Statement

All materials used in this study are drawn from publicly available legal and scholarly sources.

Funding

This research received no external funding.

Notes on Contributors

Aprinelita

Aprinelita is affiliated with Sultan Syarif Kasim Islamic University Riau, Indonesia. Her research interests include Islamic family law, alternative dispute resolution, and mediation practices in religious and community settings. Her work focuses on strengthening legal literacy and reconciliation mechanisms in family dispute resolution.

Hidayatullah

Hidayatullah is affiliated with Sultan Syarif Kasim Islamic University Riau, Indonesia. His academic interests center on Islamic legal studies, sharia-based dispute resolution, and the development of practical mediation frameworks for family conflicts. He contributes to research on harmonizing Qur'anic principles with contemporary legal procedures.

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