

## **Legal Pluralism and Restorative Justice in Dispute Resolution under Indonesian Positive Law and Islamic Law**

**Musfa Hengki<sup>1\*</sup>**

<sup>1</sup> Pascasarjana Universitas Islam Negeri Mahmud Yunus Batusangkar

**Correspondence:**  
[musfahengki85@gmail.com](mailto:musfahengki85@gmail.com)

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**Abstract:** *Conflicts and disputes are inherent to the dynamics of Indonesia's pluralistic society. This paper aims to analyze the patterns and mechanisms of dispute resolution prevalent in Indonesian communities and identify their inherent characteristics. Employing a descriptive-analytical literature review method, it examines diverse legal, cultural, and sociological sources. Findings reveal that dispute resolution in Indonesia extends beyond formal litigation in courts, predominantly relying on non-litigious mechanisms rooted in local values. Key characteristics include a collective-communal approach, prioritization of reconciliation and relationship restoration (restorative justice) over punishment, and elastic, context-specific adaptability to local social structures. Principles such as musyawarah mufakat (deliberative consensus), gotong royong (mutual cooperation), and harmony drive these processes, manifested in customary systems, village mediation, and family negotiations. The study concludes that the effectiveness and sustainability of Indonesian dispute resolution hinge on integrating holistic local wisdom with formal national legal frameworks. A deep understanding of these characteristics is crucial for developing a responsive and accommodating judicial system in pluralistic Indonesia.*

**Abstrak:** *Konflik dan sengketa merupakan bagian tak terpisahkan dari dinamika masyarakat Indonesia yang pluralistik. Tulisan ini bertujuan menganalisis pola dan mekanisme penyelesaian sengketa yang lazim di kalangan masyarakat Indonesia serta mengidentifikasi karakteristik yang melekat padanya. Dengan menggunakan metode tinjauan literatur deskriptif-analitis, kajian ini mengkaji berbagai sumber hukum, budaya, dan sosiologis. Temuan menunjukkan bahwa penyelesaian sengketa di Indonesia melampaui litigasi formal di pengadilan, lebih banyak bergantung pada mekanisme non-litigasi yang berakar pada nilai-nilai lokal. Karakteristik utamanya mencakup pendekatan kolektif-komunal, mengutamakan rekonsiliasi dan pemulih hubungan (restorative justice) ketimbang hukuman, serta sifat elastis dan kontekstual yang menyesuaikan struktur sosial setempat. Prinsip seperti musyawarah mufakat, gotong royong, dan harmoni menjadi penggerak utama, yang terwujud dalam sistem adat, mediasi desa, dan negosiasi kekeluargaan. Studi ini menyimpulkan bahwa efektivitas dan keberlanjutan penyelesaian sengketa di Indonesia bergantung pada integrasi kearifan lokal yang holistik dengan kerangka hukum nasional formal. Pemahaman mendalam terhadap karakteristik ini krusial untuk mengembangkan sistem peradilan yang responsif dan akomodatif di Indonesia yang plural.*

**Keywords:** *Dispute Resolution, Indonesian Society, Restorative Justice, Local Wisdom, Musyawarah Mufakat, Islamic Law Pluralism*





## Introduction

Indonesia, as a pluralistic and legally complex nation, offers a particularly rich setting for examining dispute resolution because conflicts are managed not only through state courts but also through social, religious, and customary mechanisms that are deeply embedded in everyday life (Wardi et al., 2024). In this context, dispute resolution is not merely a technical legal process; it is also a social practice shaped by community expectations of harmony, reciprocity, and moral repair (Sukriono et al., 2025). The constitutional and normative environment of Indonesia reinforces this orientation, especially through the ideals of deliberation and consensus (*musyawarah mufakat*), which are widely understood as part of the nation's civic and legal culture and are often associated with the spirit of Article 33 of the 1945 Constitution, namely a social-economic order directed toward collective welfare rather than purely individualistic competition (Hamzani et al., 2025). Within Indonesian Muslim society, this plural setting becomes even more significant because Islamic family law operates as a living material law for Muslims while also being integrated into the national legal system through religious courts and mediation practices. (Rauf et al., 2025) As a result, the study of dispute resolution in Indonesia is not only relevant for understanding legal procedure, but also for grasping how law, religion, and local wisdom interact to shape social order. This is especially important in family disputes, inheritance conflicts, and other personal-status matters, where the demand for resolution often involves more than a legal ruling; it requires preservation of dignity, social ties, and communal balance.

The literature indicates that dispute resolution in Indonesia has long been characterized by a strong preference for non-litigation mechanisms, particularly mediation and customary negotiation, rather than adversarial adjudication alone (Taufik et al., 2025). Recent studies show that mediation is widely recognized in Indonesian legal thought as an alternative dispute resolution method that aligns with indigenous values, especially those emphasizing reconciliation, social harmony, and mutually acceptable outcomes (Hasanah & Hayati, 2025). In Islamic legal scholarship, mediation is likewise viewed as consistent with Sharia principles because it prioritizes justice, cooperation, and peaceful settlement, even though implementation in Indonesian courts may differ procedurally from classical Islamic jurisprudence (Nabilah et al., 2024). Research on family disputes also notes that mediation is often framed as more efficient, less costly, and more relationship-preserving than litigation, making it attractive in cases where parties remain socially connected after the dispute ends. At the same time, comparative studies on customary mediation and Islamic family law suggest that Indonesian dispute resolution is not a single model but a layered system, combining adat institutions, religious norms, and state regulations (Warman et al., 2023). This literature demonstrates that the country's dispute-resolution culture is already rich and multifaceted, yet much of the academic focus remains fragmented: some studies isolate mediation as a procedural instrument, others discuss Islamic law in doctrinal terms, and others examine customary law in local settings. What is still missing is a more integrated analysis of how positive law and Islamic law together shape the character of dispute resolution in Indonesian society, especially when viewed through the lens of Islamic law as both normative doctrine and lived social practice.

This article addresses a clear research gap in the existing scholarship. Although prior studies have examined mediation as an alternative dispute resolution mechanism, including its philosophical basis, effectiveness, and institutional implementation, they tend to focus on either procedural efficiency or specific case types such as divorce, without sufficiently mapping the broader character of dispute resolution across Indonesian society as a whole. Likewise, studies on customary mediation often highlight local wisdom and harmony, but do not always place these findings in dialogue with Islamic legal principles and the formal legal order of the state (Siregar et al., 2022). On the other hand, Islamic family law literature frequently discusses mediation as a religiously appropriate process, yet it may not fully explain how state

law, customary practice, and Islamic norms coexist in practical dispute settlement. This gap matters because Indonesia's legal reality is plural as a dispute may be understood differently by judges, religious leaders, community elders, and the parties themselves. In family disputes, for example, mediation is not only a procedural requirement but also a moral and social intervention, and its success depends on cultural legitimacy, mediator competence, and the willingness of parties to accept compromise (Mat Hasan et al., 2025). Existing research therefore leaves open a more fundamental question: what are the distinctive characteristics of dispute resolution in Indonesian society when positive law and Islamic law are examined together, and how do those characteristics influence the effectiveness and sustainability of settlement mechanisms? Answering this question is essential for moving beyond descriptive accounts of mediation toward a deeper conceptual understanding of Indonesia's dispute-resolution order.

The importance of this study lies in both its theoretical and practical contributions to Islamic law scholarship and national legal development. Theoretically, it can enrich the study of Islamic law by showing that Sharia-based dispute resolution in Indonesia is not confined to formal doctrinal texts but is continuously negotiated through legal institutions, social norms, and local practices. Practically, it may offer a stronger basis for policy design in a plural society where courtroom litigation alone cannot resolve the full range of social conflicts. Indonesian dispute resolution is most effective when it combines formal legal certainty with the moral and social legitimacy of local values such as deliberation, consensus, cooperation, and family cohesion. This is especially relevant in the context of religious courts, where mediation and family conciliation remain central to reducing conflict escalation and preserving social order. By exploring the relationship between positive law and Islamic law, this article seeks to clarify why certain dispute-resolution practices endure, how they are justified, and what makes them socially acceptable in Muslim-majority Indonesia. The study is therefore significant not only for legal scholars, but also for judges, mediators, policymakers, and postgraduate researchers who seek a more responsive framework for dispute settlement in a society marked by legal pluralism and religious diversity.

## Method

This study employed a qualitative research design with a descriptive-analytical approach. This approach was selected because the present inquiry seeks to understand a complex social-legal phenomenon in depth, particularly the patterns, meanings, values, and contextual logic underlying dispute resolution in Indonesian society from both positive law and Islamic law perspectives. Rather than measuring variables numerically, the study focuses on explaining how and why certain dispute-resolution mechanisms emerge, operate, and gain legitimacy within plural legal and social settings. The research was conducted through a literature study. The data were derived from a wide range of secondary sources, including statutes and legal provisions, scholarly books, academic journal articles, research reports, and relevant sociological and cultural writings. These materials were selected because they provide conceptual, normative, and contextual insights into dispute resolution, mediation, customary practices, and Islamic legal principles in Indonesia. The literature was used to trace how dispute settlement is understood in legal doctrine, social practice, and local wisdom traditions.

The analytical process followed a descriptive-analytical logic. First, the collected literature was organized according to key themes such as litigation, non-litigation mechanisms, mediation, *musyawarah mufakat*, customary settlement, and Islamic reconciliation principles. Second, the sources were critically examined to identify recurring patterns, doctrinal positions, and social characteristics of dispute resolution in Indonesian society. Third, the findings were interpreted in relation to the interaction between national law, Islamic law, and socio-cultural values. This analytical strategy enabled the study to move beyond mere description and toward a deeper conceptual explanation of the phenomenon. This qualitative descriptive-analytical method is particularly appropriate because dispute resolution in Indonesia is not merely a legal procedure, but a social practice shaped by communal values, religious norms, and historical experience. By using literature as the primary basis of inquiry, the study aims to construct a comprehensive understanding of the character of dispute resolution and its relevance for Islamic legal scholarship. The

approach also allows the research to highlight the significance of local wisdom and legal pluralism in developing a more responsive and context-sensitive model of dispute settlement.

## Results and Discussion

### Dispute Resolution in Indonesian Positive Law

The discussion section of this study must be read against the broader landscape of Indonesian dispute resolution, where positive law, Islamic law, and local socio-cultural values intersect in a highly plural legal order. Indonesian law does not treat dispute resolution as a purely adversarial process; rather, it provides multiple institutional channels for settlement, ranging from formal litigation in the courts to non-litigation mechanisms under the Arbitration and Alternative Dispute Resolution Act, as well as court-annexed mediation. In this context, disputes concerning marital property are particularly revealing because they sit at the junction of civil law, family law, and Islamic legal norms. For Muslim litigants, the Religious Courts are the primary forum for resolving such disputes, and the legal basis for this jurisdiction is firmly established in Article 49 of Law No. 7 of 1989 concerning Religious Judicature, which places marriage-related matters, including the settlement of joint property, under the authority of the Religious Courts. At the level of legal doctrine, this arrangement reflects a central feature of Indonesian legal development as the state recognizes Islam not only as a religious identity but also as a normative source of family law, especially in matters that are deeply connected to marriage dissolution, inheritance, and property division (Nasrullah et al., 2025). The consequence is that dispute resolution in this field cannot be understood solely through positive law or solely through Islamic law, it must be approached as a hybrid legal phenomenon shaped by overlapping sources of authority, social expectations, and institutional practice (Ali et al., 2024).

A central finding emerging from the legal framework is that Indonesian positive law strongly favors settlement and reconciliation, even within litigation. Although the Religious Courts possess authority to adjudicate disputes over joint property, the procedural culture of the courts does not exclude amicable settlement, indeed, court procedures encourage the parties to reach agreement before a final judicial determination is issued (Reynold Simanjuntak & Apriska Sibarani, 2024). This is significant because it demonstrates that litigation in Indonesia is not always synonymous with confrontation. In many family-law disputes, the court functions as both adjudicator and facilitator of settlement, producing either an *akta perdamaian* or a binding judicial decision after the failure of reconciliation. From the perspective of dispute-resolution theory, this dual structure weakens the strict opposition between litigation and non-litigation, because the courtroom itself is often structured around the possibility of compromise. Such a model is compatible with the Indonesian preference for harmony, but it is also strategically important in marital property disputes, where the parties may remain connected through children, kinship, or continuing economic ties. In these situations, an adversarial judgment may settle the immediate legal issue but deepen social rupture, while a negotiated settlement can preserve both legal certainty and social cohesion (Shofi et al., 2023). This is one reason why amicable settlement in Indonesian family disputes is often regarded as more than a procedural option it becomes a substantive expression of justice oriented toward relationship repair, a quality that aligns closely with Islamic values of *sulh* and *islah* (Ribi, 2025).

The literature further indicates that non litigation mechanisms have become increasingly important because litigative processes are often perceived as costly, time-consuming, formalistic, and psychologically burdensome. Although the state court system offers finality and coercive enforceability, it does not always provide the speed, privacy, or flexibility that disputing parties seek. In contrast, negotiation, mediation, conciliation, consultation, arbitration, and expert determination each offer distinctive procedural advantages, especially in civil and commercial matters (Anam & Syarifah, 2023). Mediation is particularly prominent because it preserves party autonomy while introducing a neutral facilitator who helps the parties search for mutually acceptable solutions. Its core logic is not to impose a winner and a loser but to enable a result that both parties can endorse. This makes mediation attractive in family disputes, where preserving dignity and continuing relationships may be more important than obtaining a fully adversarial

victory. Arbitration, meanwhile, is valued for its final and binding character, the confidentiality of proceedings, and the parties' ability to choose decision-makers with technical expertise. However, the literature also shows that arbitration in Indonesia has not become as culturally embedded as mediation, partly because of cost, complexity, and limited familiarity among the public. Adjudication and expert determination are newer mechanisms, especially in complex commercial and technical disputes, but their relevance to family law remains limited. The broader point is that Indonesian positive law has developed a plural dispute-resolution architecture, yet the degree of social uptake varies substantially across mechanisms. Mediation has gained the strongest normative legitimacy because it resonates with the cultural grammar of deliberation, consensus, and kinship (Khaliluddin, 2023).

When these positive-law mechanisms are interpreted through the lens of Islamic law, a deeper conceptual harmony becomes visible. Islamic law does not merely tolerate reconciliation. It positively encourages it when it can restore justice and prevent greater harm. In family and property disputes, this orientation is especially relevant because the objective is not only to distribute assets but also to preserve moral order, family ties, and social trust (D. Rizal et al., 2023). The Indonesian legal system, by accommodating settlement through mediation and by granting the Religious Courts jurisdiction over Muslim family disputes, has created institutional space where Islamic values can operate within state law. This does not mean that the positive law system is identical to Islamic jurisprudence, but it does mean that both systems converge in their preference for settlement where possible. The literature on court annexed mediation and customary mediation in Indonesia supports this conclusion by showing that the formal law has increasingly incorporated values of dialogue, compromise, and restorative justice (Fitri et al., 2024). What is particularly noteworthy is that these values are not imported from outside Indonesian society; they are already rooted in local wisdom, including *musyawarah mufakat*, family negotiation, and communal forms of conflict management. In this sense, Islamic law in Indonesia often functions not as a foreign legal overlay but as a normative force that reinforces a broader Indonesian ethic of consensual dispute resolution. The compatibility between Islamic principles and local customs helps explain why mediation remains the most socially legitimate form of non-litigation settlement, especially in marital disputes involving Muslim parties (Apriyanita et al., 2024).

A further issue arises from the character of joint property itself. Because joint property is acquired during marriage through the joint life of the spouses, disputes over its division are often emotionally charged and economically consequential. The legal doctrine recognizes that property acquired before marriage, through inheritance, gift, or other personal means, falls outside the scope of joint property, whereas assets accumulated during the marriage are generally subject to division. This distinction seems conceptually clear, but in practice it frequently generates contestation over ownership, contribution, and fairness. Indonesian positive law provides a rule-based framework for resolving such disputes, yet rule-based adjudication may not always capture the relational and moral complexity of marital dissolution. This is precisely where the value of mediation becomes evident (Abdul Fatakh, 2025). Mediation allows parties to clarify their respective claims, negotiate the meaning of contribution, and consider outcomes that are legally acceptable but also socially workable. In family disputes, strict legal entitlement may not always produce a socially stable outcome. An agreement that is slightly less than maximal legal advantage for one party may nevertheless be preferable if it prevents prolonged conflict, protects children, and allows both parties to move forward with dignity (Nabilah et al., 2025). This is why the procedural flexibility of mediation is so often praised in Indonesian literature: it does not deny law, but it reframes law as a resource for compromise rather than domination.

The economic and institutional critique of litigation also strengthens the argument for broader use of non-litigation mechanisms. The literature repeatedly notes that litigation in Indonesia is often viewed as expensive, slow, and not always responsive to the needs of ordinary citizens. These criticisms are not unique to Indonesia, but they are especially salient in a developing legal system where access to justice remains uneven (Frensiska Ardhiyaningrum & Diana Setiawati, 2024). In family disputes, delays and costs can be particularly harmful because the disputed property may represent the parties' main economic safety net after divorce or death. The longer the dispute remains unresolved, the more likely it is to generate

emotional distress and financial insecurity. For that reason, mediation and negotiation are not merely convenience mechanisms; they are justice-enhancing tools when they prevent procedural hardship and enable timely resolution (Pratama & Suryono, 2023). From an Islamic legal perspective, this matters because justice is not measured only by formal correctness but also by the avoidance of unnecessary hardship and social damage. The positive-law literature also suggests that public preference for litigation is often driven not by genuine confidence in adversarial justice, but by perceptions of prestige, authority, and finality (Salsabila, 2024). Yet as awareness of alternative mechanisms increases, there is a visible shift toward settlement-based approaches that emphasize efficiency, confidentiality, and social repair. This shift reflects a broader transformation in the legal consciousness of Indonesian society, one that moves from the idea of winning a case toward the idea of resolving a problem. Such a transformation is highly relevant for Islamic law scholars because it shows how doctrinal principles can be operationalized in lived legal practice.

At the same time, the comparative analysis of positive law and Islamic law reveals that the two systems are not always equally explicit or equally institutionalized in their support for dispute settlement. Positive law offers a formal procedural framework for litigation, arbitration, and mediation, and it defines institutional competence with considerable specificity. Islamic law, by contrast, often supplies normative ideals rather than detailed procedural codification, especially in the context of modern family disputes (Sariyani & Metekohy, 2025). This difference creates a practical gap: while Islamic principles strongly favor reconciliation, the institutional expression of those principles depends on the state legal system, particularly the Religious Courts and court-annexed mediation. In other words, Islamic law contributes the normative substance, but positive law provides the procedural infrastructure. This interdependence is one of the most important implications of the present discussion. It suggests that the effectiveness of dispute resolution in Indonesian Muslim society depends on the successful translation of Islamic ethical principles into legally enforceable and institutionally workable mechanisms. Without this translation, Islamic law risks remaining aspirational, while positive law risks becoming procedural but socially thin. The Indonesian model shows that the two can be mutually reinforcing if the state continues to recognize family mediation, support judicial settlement, and preserve room for culturally informed negotiation. This is why recent scholarship has increasingly emphasized legal pluralism rather than legal exclusivity in understanding Indonesian dispute resolution (Pertiwi et al., 2025).

Another important dimension concerns the role of legal culture. The success of mediation and other non-litigation mechanisms cannot be explained only by formal rules, because dispute resolution is also shaped by trust, authority, and social habits. Indonesian society has a strong tradition of communal deliberation, and this tradition makes consensual settlement more intuitive than adversarial confrontation in many settings. The same cultural pattern is visible in customary processes, family negotiations, and village-level settlement practices, all of which reflect a preference for preserving balance within the social group. In Islamic family disputes, this cultural disposition is reinforced by religious norms that value peace, fairness, and mutual respect. The legal significance of this alignment is substantial: when positive law, Islamic law, and local wisdom point in the same direction, settlement becomes not only possible but legitimate. This is why mediation enjoys greater practical success when it is culturally embedded and institutionally supported. The mediator's role is not simply to manage conversation but to activate a socially intelligible process of repair. Likewise, the parties' willingness to compromise often depends on whether the process is perceived as just, respectful, and aligned with their moral universe. This helps explain why purely formal or imported dispute-resolution models may fail when they do not resonate with local expectations. In contrast, mechanisms that combine legal certainty with social sensitivity are more likely to endure.

Taken together, the discussion shows that dispute resolution in Indonesian positive law and Islamic law should be understood as a layered system rather than a single hierarchical model. Litigation remains necessary because it provides authoritative determination and legal enforceability, especially in cases where negotiation fails or power imbalances are severe. Yet litigation is not the only, or even always the best, response to family property disputes. Mediation, negotiation, and other alternative mechanisms offer

faster, cheaper, more confidential, and more relationship-preserving solutions, and these qualities are especially valuable in disputes among Muslims whose legal lives are shaped simultaneously by state law and Islamic norms. The Indonesian legal order therefore demonstrates a pragmatic synthesis: it preserves the authority of the courts while encouraging consensual settlement, and it allows Islamic law to operate within that framework as a moral and doctrinal guide. From a scholarly standpoint, this synthesis is important because it challenges any simplistic separation between positive law and Islamic law. The present discussion suggests instead that the most realistic and effective model for Indonesian dispute resolution is integrative, dialogical, and culturally grounded. Such a model can better serve justice in a plural society because it recognizes that disputes are not only legal conflicts, but also social ruptures that require restoration, not merely decision.

### Dispute Resolution in Islamic Law

The Islamic law discussion deepens and complements the positive-law analysis by showing that dispute resolution in Indonesia is not only institutionally plural but also normatively grounded in Qur'anic and juristic principles (Umam et al., 2024). In Islamic legal thought, dispute settlement is structured around three interconnected pathways they are peaceful settlement (*sulh/islah*), arbitration (*tahkim*), and judicial adjudication (*wilayat al-qadha*). This hierarchy is highly significant because it reflects a normative preference for reconciliation before coercive judgment. The Qur'an does not present litigation as the first or most ideal route; rather, it repeatedly encourages reconciliation, restoration of relations, and justice through compromise when possible. This is especially visible in the treatment of family conflict, where the Qur'an explicitly proposes arbitration through *hakam* in cases of marital discord and endorses peace as better in relations involving spouses. When placed beside the Indonesian positive law framework discussed above, this reveals a strong conceptual alignment: the state legal system provides procedural channels for dispute resolution, while Islamic law supplies a moral and theological logic that prioritizes peace, fairness, and social repair. The combination of the two explains why mediation and consensual settlement are not marginal practices in Indonesian Muslim society but central legal and ethical instruments (Laksmi, 2025).

The first and most foundational pathway in Islamic law is *sulh or islah*, which may be understood as reconciliation, reform, and the restoration of broken relations. Its linguistic and conceptual range is broad, extending beyond a private settlement technique to a general ethic of peace that applies to individual, communal, and even intergroup relations. Qur'anic usage of *sulh* and related forms shows that peace is not merely a desirable outcome but a normative demand in situations of conflict (Joko Budi Darmawan et al., 2025). In social practice, this is important because it transforms dispute resolution from a mechanism of winning into a process of repairing harm. In the context of Indonesian society, where disputes often occur within families, kinship groups, neighborhoods, or small communities, this principle has strong resonance. The social preference for *musyawarah mufakat* in Indonesian legal culture is not foreign to Islamic law; rather, it mirrors the spirit of *sulh* by emphasizing dialogue, mutual accommodation, and the search for a result that both sides can accept. The Qur'anic discussion of peace among believers in Surah al-Hujurat is particularly important here because it frames conflict resolution as a collective obligation. Muslims are not only permitted to reconcile disputing parties; they are instructed to do so justly, and justice is made an explicit condition of durable settlement. This provides a powerful jurisprudential basis for mediation in modern Indonesian courts and non-court institutions, especially when the conflict involves people who remain socially connected after the dispute ends (Arifki Budia Warman et al., 2023).

Family disputes occupy a central place in the Islamic-law discussion because they reveal the intimate relationship between law, morality, and social continuity. The Qur'an's guidance in Surah al-Baqarah regarding wills and inheritance demonstrates that reconciliation is necessary not only after a dispute has become visible, but also before conflict intensifies among heirs and beneficiaries. Likewise, Surah al-Nisa' 128 is one of the clearest scriptural foundations for spousal reconciliation, indicating that if a woman fears neglect or aversion from her husband, both parties may reach a peace agreement, and peace is better. This text is highly relevant for Indonesian family law because it affirms that settlement should be

shaped by fairness, mutual goodwill, and the reduction of harm rather than by mechanical legalism. In practical terms, this means that family disputes—whether concerning divorce, maintenance, inheritance, or joint property—should ideally be resolved in ways that preserve dignity and minimize social fragmentation (Islami Putri & Harry, 2025). This approach is especially valuable in Indonesia, where the parties to family disputes may still have continuing responsibilities toward children, extended kin, and communal obligations. The Islamic preference for *sulh* therefore strengthens the argument that mediation is not merely a procedural convenience but a normative imperative that supports the maqasid-oriented goals of protecting family stability and preventing unnecessary harm.

The second pathway, *tahkim*, corresponds closely to arbitration, but its Islamic meaning is broader than the modern commercial legal usage of the term. *Tahkim* involves appointing a neutral *hakam* to help resolve a dispute according to Sharia principles. This is especially important because it shows that Islamic law recognizes the need for third-party intervention when direct negotiation fails. Unlike ordinary negotiation, *tahkim* introduces an external authority, but unlike full adjudication, it remains grounded in party consent and often aims to preserve flexibility (Maula, 2023). The classical juristic debate over whether the *hakam*'s decision is binding illustrates that Islamic law has long grappled with the relationship between autonomy and authority in dispute resolution. Some jurists hold that the decision is binding once accepted, while others view it more like a legal opinion unless both parties explicitly authorize it. This doctrinal diversity is valuable for contemporary Indonesian legal development because it demonstrates that Islamic arbitration is not a rigid monolith. Rather, it contains room for procedural adaptation, provided that justice, consent, and Sharia compliance are maintained (Bambach & Çelikhası, 2025). In the Indonesian context, this opens the possibility for integrating Islamic norms into modern arbitration and mediation institutions, especially for disputes involving Muslim parties who seek settlements that are both legally effective and religiously legitimate. It also helps explain why community-based intermediaries, religious figures, and family elders remain trusted in many local settlement practices, their authority is not only social but also religiously intelligible.

The third pathway, *wilayat al-qadha*, represents formal judicial authority and corresponds to litigation in a state court. In Islamic legal theory, adjudication is necessary when reconciliation and arbitration fail or when a dispute requires authoritative resolution through a judge appointed by legitimate authority (Sucipto, 2022). The Qur'anic passages invoked in this regard show that judgment is a serious and binding act, but not the first preference in the hierarchy of dispute settlement. The judicial process is important because it establishes finality, protects rights, and prevents arbitrary private vengeance. Yet the Islamic discourse also makes clear that adjudication is limited by the evidentiary structure of the case. Judges decide based on the available proofs, which means that judicial truth may not always coincide perfectly with subjective truth or moral nuance. This limitation is not a weakness unique to Islamic law but it is a structural feature of all formal legal systems. What matters is that Islamic law recognizes adjudication as necessary but not exhaustive. In the Indonesian setting, this understanding aligns well with the role of the Religious Courts, they are the formal forum for Muslim family disputes, but they are also expected to support reconciliation where possible. Thus, adjudication in Islamic law should not be understood as a rival to reconciliation, but as its fallback mechanism when peace cannot be achieved. This hierarchical ordering is crucial for a legal system that seeks to be both principled and humane.

The principles that govern Islamic dispute resolution are particularly relevant for evaluating Indonesian family law practice (Muhammad, 2024). The first principle is the prioritization of reconciliation (*ishlah*), which places settlement before confrontation and encourages parties to seek peace before escalating the conflict. The second is justice (*'adl*), which requires that the process and outcome be equitable and not biased by status, wealth, or gender. The third is public and private welfare (*maslahah*), a foundational concept in Islamic legal theory that demands solutions produce benefit and avoid harm. The fourth is confidentiality, especially in non-litigation mechanisms such as *sulh* and *tahkim*, because protecting privacy can be critical to preserving honor and social standing. The fifth is the binding force of agreement, rooted in the Qur'anic ethic of fulfilling covenants, which gives moral and legal weight to settlements and arbitration decisions. These principles are not abstract ideals; they offer a concrete

framework for assessing how dispute resolution should function in practice. When the Indonesian positive-law system provides mediation and settlement opportunities, it is not merely borrowing a foreign procedural model. It is, in effect, building procedural space for values that Islamic law has long treated as central (Kato, 2023). This is why the Indonesian Religious Courts' emphasis on mediation and amicable settlement should be viewed not as a marginal feature but as a juridical expression of the deeper Islamic norm of peace before punishment.

The comparison between positive law and Islamic law also reveals an important structural congruence, both systems recognize that not every conflict is best resolved through adversarial judgment. In positive law, especially through the Arbitration and Alternative Dispute Resolution Act and court-annexed mediation, the law increasingly favors settlement-oriented techniques such as negotiation and mediation (Suci Ramadhan et al., 2023). In Islamic law, the Qur'an and classical jurisprudence similarly privilege *sulh* and *tahkim* before moving to *qadha*. This shared preference suggests that the Indonesian dispute-resolution order is not merely plural but also convergent at the normative level. The convergence is especially visible in family disputes, where relational continuity is often more important than formal victory. In such cases, litigation may produce a valid judgment, but mediation may produce a more socially durable outcome. That is why the literature on Indonesian mediation repeatedly emphasizes speed, affordability, confidentiality, and preservation of relationships. These are not just practical benefits; they are indicators of substantive justice in a society where legal problems are deeply entangled with social ties. Islamic law gives theological and ethical legitimacy to this orientation, while positive law gives it institutional form. Together, they create a dispute-resolution environment that is more flexible and more responsive than either system would be alone.

At the same time, the Islamic-law discussion exposes an important limitation in contemporary legal implementation: the gap between normative preference and actual practice. Even though Islamic law clearly privileges peace and compromise, parties may still prefer adversarial proceedings because of emotions, strategic behavior, mistrust, or the perception that courts provide stronger finality. In other cases, mediation may fail because the parties do not trust the mediator, do not understand the legal implications of settlement, or enter the process only as a formality. This is where the earlier discussion of positive-law weaknesses becomes relevant again. If courts and non-court institutions are to realize the Islamic ideal of reconciliation, then they must be supported by competent mediators, clear procedure, and public legal education. The success of *sulh* and *tahkim* depends not only on their doctrinal legitimacy but also on institutional design and social trust. This is particularly important in disputes over joint property, because such cases often involve emotional grievances, contested contributions, and unequal bargaining power. Without careful facilitation, mediation may simply reproduce inequality under the language of compromise. Therefore, the Islamic emphasis on justice is not merely rhetorical; it is the condition that prevents reconciliation from becoming coerced settlement. The challenge for Indonesian legal practice is to ensure that the mediation culture reflects true *ishlah*, not mere procedural formality.

In light of the previous discussion, the Islamic-law framework provides a normative and conceptual foundation that strengthens the argument for integrative dispute resolution in Indonesia. It shows that peace-making is not a secondary option but an essential component of Islamic justice. It also clarifies that legal pluralism in Indonesia does not create incoherence; rather, it allows positive law, Islamic law, and local wisdom to converge around a shared commitment to settlement, dignity, and social harmony. The significance of this convergence is especially evident in the Religious Courts, where family disputes can be resolved through mediation, settlement agreements, or, when necessary, judicial decisions. Such a model is highly relevant for Islamic law scholarship because it demonstrates how classical doctrines continue to shape modern legal institutions. It also highlights the need for further research on how *sulh*, *tahkim*, and *qadha* are operationalized in specific Indonesian contexts, including joint property disputes, divorce, inheritance, and post-marital economic conflicts. Ultimately, the discussion shows that the most persuasive model of dispute resolution in Indonesian Muslim society is one that integrates doctrinal fidelity, procedural fairness, and social pragmatism (Gerasimchuk, 2024).

## Legal Pluralism and Restorative Justice in Indonesian Dispute Resolution

This discussion section should be read as an extension of the preceding analysis of dispute resolution in Indonesian positive law and Islamic law. The distinctive character of dispute settlement in Indonesia is not merely procedural; it reflects a deeper socio-legal configuration in which legal modernity, customary authority, and religious norms interact to produce a plural and layered model of justice. In this sense, Indonesian dispute resolution cannot be reduced to a single doctrinal framework or institutional pathway. Rather, it is shaped by a long-standing cultural preference for conciliation, a legal system that formally accommodates diversity, and an Islamic normative tradition that privileges reconciliation over confrontation. This combination gives Indonesian dispute settlement its particular identity they are pragmatic, relational, and socially embedded.

One of the most visible characteristics is the dominance of non-litigation and familial values in the resolution of disputes. In Indonesian society, disputes are often viewed less as legal antagonisms and more as social disruptions that must be repaired through dialogue, compromise, and mutual accommodation. The principle of *musyawarah untuk mufakat* reflects this orientation by prioritizing consensus rather than victory (Muhammad Rudi Syahputra et al., 2024). This is not only a cultural habit but also a normative ideal that has long structured community life in Indonesia. When a dispute is resolved through deliberation, the goal is not to determine a loser and a winner, but to restore balance, preserve dignity, and repair relationships. This is why many disputes, including land conflicts, debt matters, and family disagreements, are first brought to local leaders, elders, or respected community figures before any formal legal step is taken. In this respect, Indonesian dispute resolution retains a distinctly communal character that distinguishes it from more adversarial legal cultures (Murniwati, 2023).

This non-litigious orientation also helps explain why open conflict is often socially avoided. Litigation, while legally legitimate, is frequently perceived as exposing private matters to public scrutiny and thereby generating shame or social embarrassment. The preference for confidential or closed-door settlement is therefore not simply a matter of convenience; it reflects a cultural logic that values social harmony over public confrontation. In many communities, the successful resolution of a dispute is judged not by the severity of punishment imposed, but by whether relations can continue without open hostility. This is especially important in closely connected social environments where the parties may remain neighbors, kin, co-workers, or members of the same religious community (F. Rizal, 2022). The legal process is thus expected to serve social continuity, not just doctrinal correctness. From an Islamic perspective, this orientation is highly compatible with the values of *ishlah* and *sulh*, both of which encourage settlement in a way that preserves human relationships and prevents wider harm.

A second defining characteristic is legal pluralism. Indonesia is a plural legal order in which state law, customary law, and religious law operate simultaneously, sometimes in parallel and sometimes in overlap. This pluralism is not merely theoretical; it shapes the actual behavior of litigants, judges, and community leaders. In practice, people may invoke more than one legal source when resolving disputes. A land conflict may be framed according to customary entitlement, state property law, or local administrative rules. A family dispute may be resolved under Islamic law in the Religious Courts, under civil law in the general courts, or according to local custom in the community (Anggraeni, 2023). This flexibility is one of the most distinctive features of the Indonesian legal system. It enables contextual resolution, but it can also create complexity when the applicable legal source is contested. The coexistence of these systems demonstrates that Indonesian dispute resolution is not monocentric but plural and negotiated. Within this pluralism, Islamic law occupies a particularly important place because it has formal institutional recognition in the Religious Courts. For Muslim citizens, matters such as marriage, inheritance, wills, waqf, and Islamic economic disputes are not only religious concerns but legally cognizable claims. At the same time, customary law remains socially resilient, especially in communities where adat continues to shape notions of justice, belonging, and ownership. This means that a single dispute may be interpreted through different normative lenses. The diversity of available frameworks can be beneficial because it allows the settlement mechanism to match the social and moral context of the

conflict. However, it also requires careful coordination so that legal certainty is not undermined. The importance of this plural structure is that it confirms the Indonesian legal order as both flexible and culturally responsive. In the context of Islamic law, it also shows that Sharia operates not in isolation, but in dialogue with national and customary norms (Hamida, 2022).

Another important feature is the centrality of mediation, which in Indonesia is not only a voluntary option but increasingly a procedural obligation. In formal court settings, mediation has become a mandatory stage for civil disputes, reflecting the state's commitment to settlement-oriented justice. This procedural framework shows that mediation is no longer peripheral; it is now embedded in the architecture of adjudication itself. In Religious Courts, mediation carries even greater normative weight because it aligns with the Islamic command to reconcile disputing parties whenever possible. The importance of this development lies in the convergence between positive law and Islamic law. The procedural duty to mediate in court corresponds closely to the Islamic doctrine that peace is preferable to prolonged conflict. As a result, mediation functions both as a legal mechanism and as a moral practice. It is not simply a step before trial; it is a substantive expression of the Indonesian ideal that disputes should be resolved through dialogue and compromise. The role of third-party interveners further reinforces the social and relational dimension of dispute settlement in Indonesia. Traditional dispute resolution has long depended on respected figures whose legitimacy derives from social trust, moral authority, and communal recognition rather than state power alone. These figures may include village heads, customary leaders, religious teachers, or other respected community members. Their function is crucial because they help create an atmosphere of legitimacy in which the disputing parties are willing to listen, compromise, and accept the outcome. This practice illustrates that dispute resolution in Indonesia is not fully privatized and not fully bureaucratized; it remains deeply interpersonal (Judijanto et al., 2024). The authority of these intermediaries is often persuasive rather than coercive, and that persuasion works because it resonates with the social values of the community. In Islamic family disputes, for example, the involvement of a respected religious figure can make the process feel more morally grounded and religiously acceptable. This strengthens the likelihood that a settlement will be accepted and implemented in practice.

Taken together, these characteristics show that dispute resolution in Indonesia is pluralistic, conciliatory, mediation-centered, socially mediated, restorative, and locally adapted. These are not isolated traits but interrelated elements of a broader legal culture. The result is a dispute-resolution model that seeks not only to decide conflicts, but to preserve relationships and sustain communal life. This is precisely why the Indonesian experience is so significant for Islamic law scholarship. It demonstrates that Islamic principles of reconciliation can be institutionalized within a modern state framework without losing their social relevance. At the same time, it shows that national law becomes more effective when it acknowledges the cultural and religious foundations of social order. The Indonesian model therefore offers an important contribution to the study of legal pluralism, restorative justice, and Islamic dispute resolution in a plural society.

## Conclusion

The two dispute-resolution patterns discussed in this study represent an important intellectual and practical heritage for Indonesian legal development. Positive law and Islamic law both provide valuable frameworks for resolving conflict, and when examined carefully, they reveal significant similarities in purpose, method, and underlying moral orientation. Although they arise from different normative sources, both systems ultimately aim to bring disputes to a fair and peaceful end, while ensuring security, comfort, and social stability for the parties involved. This shared objective shows that dispute resolution in Indonesia is not merely about determining legal victory, but about restoring order, protecting relationships, and promoting broader social harmony. The analysis also demonstrates that the distinctive features of Indonesian positive law often parallel the spirit of Islamic dispute resolution, especially in their emphasis on mediation, reconciliation, and settlement through consensus. For this reason, both traditions should be understood as complementary rather than contradictory. Their convergence provides a strong

foundation for building a dispute-resolution model that is culturally rooted, legally sound, and socially responsive. In a plural society such as Indonesia, this integrative approach is essential because it enables law to function not only as a mechanism of adjudication, but also as a means of peace-building and communal well-being. Ultimately, the strength of both systems lies in their capacity to direct conflict toward resolution rather than prolongation. Their value is not limited to legal doctrine, but extends to the lived experience of justice in society. By recognizing the common purpose of positive law and Islamic law, this study affirms that the most meaningful resolution is one that ends conflict, restores certainty, and creates a sense of safety and comfort for all parties concerned.

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## Conflict of Interest

This article has no conflicts of interest.

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