

## Marital Disputes and Divorce and Alternative Resolutions

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### ABSTRACT

This article discusses marriage and divorce disputes and alternative resolutions. The research used by the authors is library research, namely research in which the study is carried out by searching and reviewing literature or written sources related to the subject of discussion (research that focuses on library materials). The research results show that the complexity of marital dispute and divorce: disputes in marriage and divorce can involve various aspects, including finances, child custody, joint property, and emotional problems. This makes the complex and requires a careful approach. There are various types of alternative dispute resolution that can be used in various situations, including: dispute resolutions through consultation, negotiation (deliberation), mediation, conciliation and expert opinion. Each alternatives has advantages and disadvantages that need to be considered by the parties involved. The importance of openness and cooperation in resolving marriage and divorce disputes, openness and cooperation between both parties is very important. The more cooperative they are, the more likely it is to reach a fair and sustainable solution. And by considering various alternative solutions and involving openness and cooperation between partners, marital dispute and divorce can be resolved in a way that minimizes conflict and takes into account the interests of all parties involved.

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### 1. Introduction

Disputes and dispute resolution are two things that always accompany family and social life, and alternative problem solving must be developed. Society is a group of people who live together for a relatively long time and have the awareness that they are on unit bound to a common life system, in which there are various rules that aim to regulate how its citizens behave. In the life of any society there are various forms of interests. Some of these interests are in harmony with each other, but there are also those that conflict with each other. If there are two or more conflicting interests, a conflict of interest occurs. This is what in juridical terms is called a dispute. Sometimes these disputes can be resolved peacefully, but sometimes the conflict causes continuous tension, resulting in losses for both. In order to maintain the interests of each party, it does not exceed the limits of the specified norms, the act of taking the law into your own hands (eigenrichting) must be avoided. If the parties feel that their rights have been harmed, they can decide to look for ways to resolve the dispute which they think can resolve the conflict that has occurred.

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Humans who carry out the process of surviving their lives have been destined to live side by side with each other as the predicate given to humans are social creatures as in their survival humans will need help from other people. Reflecting on this, humans can be said to be human beings who provide reciprocal relationship with one another and it is undeniable that social phenomena will occur which will lead to disputes in their survival.

Humans as living creatures on earth are given the nature 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 been created to regulate human life, including human relations between members of the opposite sex. The process that a couple must go through to get offspring is by getting married. Apart from continuing the offspring, a marriage has the aim of forming a happy and eternal family or household based on the belief in almighty God. This objective is in line with the objectives of marriage in the marriage law number 1 of 1974. (marriage law, 1974).

In reality, not all married couples feel happy in their household. This is influenced by various factors. Starting from incompatibility with the economy, work, culture, religion, and so on, couples who are unable to overcome these problems can experience pressure so that the household becomes disharmonious and does not provide happiness in it. Households like this need help from other parties to resolve disputes between the two. The religious court is a judicial institution that helps husband and wife couples in resolving marital disputes.

## 2. Literature Review

A dispute is a problem or conflict that arises between two or more parties who have conflicting interests. Disputes can occur in various areas of life, whether in personal relationship, business or politics. In a dispute, each party tries to defend its interests and rights, so it often requires a resolution process involving third parties or even judicial institutions.

Dispute resolution is a resolution of a case carried out between one party and another party. Dispute resolution consists of two ways, namely through litigation (court) and non litigation (outside court). In the process of resolving disputes through litigation, it is the final means (ultimum remedium) for the parties in dispute after the resolution process through non litigation has not produced results.

Marital disputes and divorce refer to problems and conflicts that arise between married couples, both during their marriage and during the divorce process. This can include a variety of problems, from incompatibility, infidelity, domestic violence, differences in economic or cultural values.

Marital disputes and divorce disputes are two different types of conflict in the context of a marital relationship. First marital disputes are conflicts or problems that arise between couples who are still married. These can include a variety of issues such as incompatibility, differences in values or expectations, communication problems, infidelity, or financial problems. Second, divorce disputes occur when a married couple decides to end their marriage. This may include conflicts regarding the division of assets, child custody, financial support, or emotional issues that arise during the divorce process. The scope of marriage and divorce includes; permission to have more than one wife, dispensation for marriage, prevention of marriage, annulment of marriage, lawsuits for negligence of husband or wife's obligations, divorce lawsuits regarding children's rights, division of marital property and so on.

## 3. Methodology

The type of research used by the authors is library research, namely research in which the study is carried out by searching and reviewing literature or written sources related to the subject of discussion (research that focuses on library materials). Which are written arguments and the results of scientific reasoning, literature reviews, as well as the results of logical research reasoning regarding a problem or topic being discussed, library research contains ideas or thoughts that are supported by library data.

## **4. Results and Discussion**

### **1. Understanding Alternative Solutions**

According to law number 30 of 1999 concerning arbitration and alternative dispute resolution, in article 1 number 10, alternative dispute resolution is an institution for resolving disputes or differences of opinion through

Alternative dispute resolution is a method used to resolve problems or conflict that arise between two parties, without having to go through a formal judicial process in court. This method provides another alternative for the parties involved in the dispute to reach a solution that is fair and satisfactory to both parties. There are various types of alternative dispute resolution that can be used in various situations, including dispute resolution through consultation, negotiation (deliberation), mediation, conciliation, and expert opinion.

### **2. Alternative Resolution In Marriage Disputes and Divorce Disputes**

Consultation is a personal action between a certain party, often called a client, and another party a consultant. This consultant provides his opinion to the client to meet client's needs and requirements. The role of the consultant in dispute resolution is not dominant, the consultant only provides (legal) opinions, as requested by the client. Then, the decision regarding dispute resolution will be taken by the parties themselves, although often the consultant is given the opportunity to formulate the forms of dispute resolution desired by the disputing parties.

As time goes by, consultations can now be carried out directly or using existing communication technology. Consultations are carried out by the client asking a number of questions to the consultant. The results of the consultation are in the form of suggestions that are not legally binding. In other words, the client can use this advice or not, depending on the interests of each party.

To resolve a dispute, one way that can be taken is for the disputing parties to carry out negotiations, namely way to find a solution to the problem through deliberation on reach a direct agreement between the parties to the dispute whose results can be accepted by the parties.

In practice, negotiations are carried out for two reasons, namely:

- a. To look for something new that cannot be done alone, for example in a buying and selling transaction, the seller and buyer need each other to determine the price (here there is no dispute).
- b. To resolve dispute or disputes that arise between the parties.

In article 6 paragraph 1 of law number 30 of 1999 concerning arbitration and alternative dispute resolution, it is stated that "civil disputes or differences of opinion can be resolved by the parties through alternative dispute resolution based on good faith by excluding litigation settlement in the district court. This legislation shows that basically the disputing parties have the right to resolve dispute that between them themselves without the need to go to court.

Mediation is also a form or method of resolving disputes outside of court. Unlike negotiations, the process of resolving disputes through mediation can involve other people or third parties as mediators. The legal basis for mediation can be found in article 6 paragraphs 3, 4, 5 of law number 30 of 1999 concerning arbitration and alternative settlements dispute.

The legal provisions regarding mediation regulated in law 30 of 1998 area a process of activity as a continuation of failed negotiations carried out by the parties to the dispute. Article 6 paragraph 3 of law number 30 of 1999 states that in the event that a dispute or difference of opinion between the disputing parties cannot be resolved, then based on the written agreement of the parties, the dispute or difference of opinion is resolved through the assistance of one or more expert advisors or through one mediator.

Settlement through conciliation is carried out through one or several people or bodies (conciliation commission) as mediators called conciliators. This is done by bringing together or providing facilities for disputing parties to resolve dispute peacefully. The conciliator actively participates in providing solutions to dispute problems. Conciliation is more formal than mediation. The conciliator can provide opinions to the parties regarding the dispute issue, but these opinions are not binding on the parties. These are the efforts that can be taken to resolve dispute in the business world. Each of these dispute resolutions, whether non-litigation or litigation, has different characteristics or characteristic. Each method also has advantages and

disadvantages. So that the parties can adjust it, by choosing a dispute resolution institution that is most effective in resolving disputes and is profitable for the parties

Expert opinion in an effort to resolve disputes by appointing experts in the relevant field of expertise to provide their opinion on the disputed issues so that the parties get an objective view. Non-legal can provide good guarantees to solve your problems. But the choice of type must be adjusted according to needs. For example, if you want to choose a solution within the family environment. You should choose consultation and mediation first. Both are good to choose because they are able to mediate existing problems. By using consultants and mediators as neutral parties, neither of them has the authority to decide on the problem. Both of them only act as mediators so they still uphold the principles of kinship. There is no bad faith from either of them. Then if you really need a mediating party such as a judge but don't want to enter the realm of law. There is conciliation which can provide an active mediator just like a judge. But conciliation also provides costs that are not cheap. It even seems expensive because hiring the services of an experienced conciliator who knows the law is not cheap.

It is usually used to solve major problems of large companies without having to go into law. The reason is that large companies that have a good name do not want their name to be tarnished. So choosing a non-legal option is the best decision to make

### 3. Advantages and Disadvantages In Marriage and Divorce Disputes and Alternative Resolutions

Let's review the advantages and disadvantages of marital disputes and divorce, as well as alternative resolutions:

#### a. Marital Disputes:

excess:

1. Opportunity to improve relationship; one of the main advantages of marital disputes is that they provide opportunities for couples to improve their relationship through mediation or counseling, which can lead to healthier and stronger relationships.
2. Lower involvement; marital disputes may have a lower level of emotional involvement compared to divorce, as there is still hope for fixing the existing problems.
3. More affordable solutions; alternative solutions such as mediation or counseling tend to be more affordable than the legal processes involved in divorce.

Lack:

4. Uncertainty of outcome; despite efforts to repair the relationship, there is no guarantee that the dispute will resolve marriage will produce a satisfactory or successful solution.
5. Waste of time and energy; attempts to resolve marital dispute can take a lot of time and energy, especially if no agreement is reached.

Risk of failing to improve relationship; there is a risk that efforts to resolve disputes in marriage are unsuccessful and actually worsen the relationship between partners.

#### b. Divorce Disputes:

excess:

1. Defining resolution; divorce provides a clear resolution to existing issues and gives both parties the opportunity to restart their lives independently.
2. Release from prolonged conflict; deciding to divorce can end a protracted conflict and give both parties the opportunity to find their own happiness.
3. Clearer arrangements; with a divorce agreement, such as the division of joint property or child custody, both parties have clearer arrangements for their future.

Lack:

1. Huge Emotional Impact Divorce can have a big emotional impact on both parties, especially if there are children

involved.

2. High Costs: The divorce process, especially through court, can be very expensive due to the legal fees involved, especially if there is a long dispute.
3. Potential for Enduring Conflict Even though divorce officially ends the relationship, there is still the potential for continued conflict, especially regarding child custody or division of joint assets.

c. Alternative Solution

Excess:

1. Partner Involvement Alternative solutions such as mediation or negotiation involve direct involvement of both parties giving them control over the outcome
2. Faster Solutions Alternative methods of resolution are often faster than legal proceedings. allowing both parties to reach an agreement more quickly.
3. Presence of a Neutral Party: Through mediation or negotiation, the presence of a mediator or mediator can help direct the discussion and reach a fair agreement for both parties.

Lack:

1. There is no guarantee of agreement. There is no guarantee that mediation or negotiation will produce a satisfactory agreement for both parties
2. Limitation of Legal Force Agreements reached through mediation or negotiation may have lower legal force than court decisions.
3. Requires Full Involvement Alternative methods of resolution require full involvement and cooperation from both parties to reach a successful agreement.

In conclusion, both marital disputes and divorce have their respective advantages and disadvantages and alternative resolution options depend on the needs and desires of the couples involved. Alternative resolutions in marital disputes and divorce can have several similarities, but also have differences depending on the context and goals of the resolution.

## 5. Conclusion

The Complexity of Marital Disputes and Divorce Disputes in marriage and divorce can involve various aspects including finances, child custody, joint property and emotional problems. This makes the solution complex and requires a careful approach.

There are various types of alternative dispute resolution that can be used in various situations. including: dispute resolution through consultation, deliberative negotiation), mediation, conciliation. and expert opinion. Each alternative has advantages and disadvantages that need to be considered by the parties involved.

The importance of openness and cooperation in resolving marriage and divorce disputes, openness and cooperation between both parties is very important. The more cooperative they are, the more likely it is to reach a fair and sustainable solution. And by considering various alternative solutions and involving openness and cooperation between partners, marital disputes and divorce can be resolved in a way that minimizes conflict and takes into account the interests of all parties involved.

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