

# Reconstructing Indonesian Family Law through Local Wisdom-Mediated Dispute Resolution: Advancing Restorative Justice in Household Conflicts

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## Suggested Citation:

Gussevi, Sofia; Dulnasir, Dulnasir; Affandi, Khoir. (2026). Reconstructing Indonesian Family Law through Local Wisdom-Mediated Dispute Resolution: Advancing Restorative Justice in Household Conflicts. *Jurnal Iman dan Spiritualitas*, Volume 6, Number 1: 219–230. <https://doi.org/10.15575/jis.v6i1.54457>

## Article's History:

Received February 2026; Revised February 2026; Accepted February 2026.  
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## Abstract:

Domestic conflict resolution in Indonesia relies heavily on formal litigation, often leading to divorce and fractured social bonds—contradicting Pancasila's emphasis on deliberation, family harmony, and societal peace. This study analyzes local wisdom's role in developing restorative justice-oriented mediation models and reconstructing family law to better align with Indonesia's socio-cultural context. Employing a juridical-sociological approach, it qualitatively examines Supreme Court Regulation No. 1/2016 on court mediation and regional customary practices. Findings reveal local wisdom-based mediation's potential to foster reconciliation, restore relationships, and achieve moral equilibrium. Thus, family law reconstruction is essential: legally recognize customary mediation, integrate traditional leaders into pretrial processes, and enact culturally adaptive regulations—advancing progressive law rooted in national values.

**Keywords:** domestic disputes; local wisdom-based mediation; family law; progressive law; restorative justice.

## INTRODUCTION

The family is the smallest social unit that plays a fundamental role in shaping a harmonious and just society. As a primary institution, the family serves as the primary space for the socialization of values, the internalization of norms, and the formation of individual character, which will determine the quality of social life more broadly. The family is not merely a biological or emotional relationship, but rather the primary foundation for cultural sustainability, social stability, and moral cohesion in society. Families built on a strong foundation of cultural values and social ethics tend to foster healthy, civilized, and just social relations (Saebani, 2024). From a legal perspective in Indonesia, the family is positioned not only as a social institution but also as a legal institution formally regulated through various laws and regulations. Law Number 1 of 1974 concerning Marriage and its derivative regulations emphasize that marriage and family life exist within a normative space with clear legal

implications. The state exists to regulate, protect, and guarantee orderly family relationships to create legal certainty and protect individual rights (Mukhlas, 2015a). The family stands at the intersection of the private and public spheres, between personal values and broader social interests. However, in contemporary social reality, families in Indonesia face various pressures resulting from increasingly complex social, economic, and cultural changes. Modernization, urbanization, digitalization, and shifting social values have influenced family relationship patterns. Economic inequality, demands for dual roles, weak interpersonal communication, and rising individual expectations often trigger domestic conflicts that culminate in family disputes, both internal between husband and wife and involving the extended family. This phenomenon demonstrates that the family as a social institution is inseparable from the structural dynamics of modern society.

Data from the Directorate General of Religious Courts shows that divorce cases in Indonesia continue to increase year after year. The main factors causing divorce include economic problems, ongoing arguments, disharmony, and a weakening commitment to building a household (BPS, 2022). The increasing divorce rate not only impacts the individuals involved but also has broad social implications, such as child vulnerability, the disintegration of the extended family, and the weakening of community social resilience. Ironically, most of these domestic disputes have the potential to be resolved through non-litigation approaches, particularly mediation. Mediation provides a dialogue space for the parties to openly communicate their interests, emotions, and hopes with the assistance of a neutral third party. In the context of family law, mediation aims not only to reach a legal agreement but also to restore emotional and social relationships damaged by conflict. A study by Emery et al. (2012) showed that resolving family conflicts through a dialogical and mediative approach has a positive impact on the psychological stability of the parties and the sustainability of post-conflict relationships.

Normatively, the state has regulated the obligation of mediation through Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Court. This regulation places mediation as a mandatory stage before a case is further examined through litigation. However, in practice, the implementation of formal mediation in religious courts has not been optimal. Mediation is often conducted solely to fulfill procedural obligations, without delving into the substance of the conflict and without considering the socio-cultural context of the parties. As a result, mediation fails to be an effective and meaningful dispute resolution instrument (BPS, 2022). This failure of formal mediation demonstrates a gap between the normative design of positive law and the social realities of society. An overly legalistic mediation system tends to ignore the cultural and relational dimensions of family conflict. Yet, in the context of Indonesia's diverse society, cultural values and local wisdom play a crucial role in shaping how people interpret and resolve conflict. This aligns with the perspective of socio-legal studies, which emphasize that the effectiveness of law is largely determined by its alignment with prevailing social values.

Indonesia, as a multicultural nation, has a rich tradition of conflict resolution based on local wisdom that has been practiced long before the advent of the modern legal system. The traditions of deliberation and consensus in Java and Sunda, badamai in Minangkabau, pela gandong in Maluku, and bale-bale in Bugis are concrete examples of how local communities resolve family conflicts by emphasizing peace, reconciliation, and social restoration. These practices are not oriented toward punishment or determining who is right and who is wrong, but rather toward restoring social harmony and family dignity (Asshiddiqie, 2017). This local wisdom embodies the values of social justice, collective morality, and communal responsibility that are both preventative and restorative. Domestic conflict is understood not as a purely individual issue but as a social problem that impacts the community as a whole. Therefore, its resolution involves traditional figures, religious leaders, or community elders who possess moral and social legitimacy. A study by Bowen (2010) showed that community-based dispute resolution mechanisms have a higher level of compliance because they are supported by strong social legitimacy.

These local wisdom values strongly resonate with the restorative justice paradigm. Restorative justice emphasizes conflict resolution through dialogue, acknowledgment of responsibility, and restoration of relationships between disputing parties. This approach views conflict as a breakdown in social relations that needs to be repaired, not simply a legal violation that must be punished. In the context of family law, this paradigm is particularly relevant because domestic conflict almost always involves long-term relationships and complex emotional bonds.

Within a progressive legal framework, restorative justice is seen as an effort to return law to its fundamental purpose: serving humanity and creating substantive justice. Rahardjo emphasized that law should not be trapped in rigid procedural formalities, but must be sensitive to humanitarian values and social justice. Thus, the integration of local wisdom-based mediation into family law is a concrete manifestation of a living law that favors humanity (Rahardjo, 2009). However, the application of local wisdom within the formal legal system is not without challenges. Not all customary practices align with human rights principles, particularly those related to

gender equality and the protection of vulnerable groups. Therefore, a critical and selective approach is required in integrating local values into positive law. This integration must be carried out within a national legal framework that guarantees justice, equality, and the protection of individual rights. Effective restorative justice arises from a dialogue between local values and universal standards, not from the dominance of one or the other.

Based on these conditions, the reconstruction of family law in Indonesia is an urgent need. This reconstruction is not only intended to improve the normative aspects of the law, but also to reorient family dispute resolution to be more humane, restorative, and contextual. The integration of local wisdom values into mediation mechanisms can bridge the gap between formalistic positive law and living law. Thus, family law functions not only as a regulatory instrument but also as a means of restoring social relations and strengthening family resilience. Therefore, this research is crucial for in-depth examination of how family law reconstruction based on local wisdom and restorative justice can be realized within the Indonesian legal system. This research is expected to provide theoretical contributions to the development of family law and restorative justice, as well as practical contributions to the formulation of mediation policies and practices that are more effective, equitable, and rooted in the socio-cultural values of the Indonesian nation.

## LITERATURE REVIEW

This research was designed to systematically examine the development of scientific studies related to mediation, local wisdom, and restorative justice in domestic dispute resolution, particularly in the context of family law in Indonesia. This literature review aims to map the main concepts, theoretical approaches, and relevant previous research findings, both from normative legal, socio-legal, and interdisciplinary perspectives. Furthermore, this literature review is also used to identify trends in thought, differences in perspectives, and limitations of previous research in examining the integration of local wisdom into family law mediation mechanisms. By critically examining national and international literature, this section is expected to demonstrate the research position, clarify the conceptual framework used, and reveal research gaps that underlie the urgency of restorative justice-based family law reconstruction in Indonesia.

First, research conducted by Misnanto and Sholehuddin (2024) on "Mediation of Domestic Violence Cases Through the Village Head: A Restorative Justice Perspective." This study examines the involvement of village heads in resolving domestic violence (DV) cases in Meninjo Village, Lumajang Regency. The study focuses on informal mediation practices based on family values, social closeness, and community trust in local authorities. The mediation is not solely oriented towards the application of positive law, but rather emphasizes a restorative approach aimed at restoring social relations and re-establishing harmony within the family and community. The village head acts as a mediator who understands the socio-cultural context of the parties, thus facilitating dialogue in a more empathetic and solution-oriented manner. The research findings indicate that the presence of local mediators plays a strategic role in achieving agreements perceived as fair by the parties while preventing the escalation of conflict to litigation. Thus, community-based mediation has proven to be an effective and contextual alternative dispute resolution method (Misnanto & Sholehuddin, 2024).

Second, research conducted by Fany Kambu, A. Sakti R.S. Rakia, Sri Yati, Muh Akhdharisa SJ (2025) about "Restorative Approach in Family Conflict Resolution Through ADR Process." This study assesses the effectiveness of implementing a restorative justice approach in resolving domestic conflicts through Alternative Dispute Resolution (ADR) mechanisms at the community level. The study results indicate that mediation that adopts restorative principles is able to encourage peaceful conflict resolution and maintain the sustainability of social relations between disputing parties. This approach provides space for dialogue and relationship restoration, so that conflicts do not end in formal legal escalation. However, its implementation still faces several obstacles, particularly the dominance of patriarchal culture and the limited capacity of mediators in understanding the dynamics of family conflict. These findings emphasize the importance of strengthening the role of mediators and gender sensitivity in community-based mediation practices (Kambu et al., 2025).

Third, research conducted by Rosdalina Bukido, Sjamsuddin A. K. Antuli, Nurlaila Harun, Nurlaila Isima, Ulin Na'mah (2024) about "Reconciling Traditions: The Role of Local Wisdom in Mediating Divorce in Indonesia's Religious Courts." This study examines the integration of local wisdom values in the implementation of divorce mediation in religious courts. The study focuses on the role of traditional leaders and local cultural norms in encouraging peaceful and just dispute resolution. The results show that utilizing a contextual approach rooted in local traditions can increase the effectiveness of mediation, which has tended to be formalistic. The involvement of cultural elements and local social authorities provides stronger social legitimacy to the mediation results, while

increasing the opportunity for reconciliation between the parties. These findings emphasize the importance of synergy between formal legal mechanisms and cultural values in resolving divorce cases (Bukido et al., 2024).

Fourth, research conducted by Sukendar, Muhammad Saifullah, Priyambudi Sulistiyanto, Luthfi Rahman and A. Hasan Asy'ari Ulamai (2023) on "Women's Access to Justice: Mediation for the Victims of Domestic Violence in Central Java, Indonesia." This study examines the experiences of female victims of domestic violence in Central Java in utilizing mediation as a means of implementing restorative justice. The research findings indicate that non-litigation mediation mechanisms are often the primary choice because they are considered capable of reducing the economic burden, psychological stress, and social impacts that often arise in formal justice processes. Mediation provides a safer and more flexible dialogue space for victims to express their interests. However, this study also emphasizes that mediation practices still require strengthening the protection and fulfillment of victims' rights so as not to potentially neglect aspects of substantive justice and women's safety (Sukendar et al., 2023).

Fifth, research conducted by Usman, Andi Najmi, Maryati M, and Musyayidah M (2022) on "Resolving Domestic Violence Through Customary Law: A Restorative Justice Perspective." This empirical research examines the practice of resolving domestic violence (DV) cases in Batang Hari Regency through customary law mechanisms that are still alive and practiced in the community. The research focuses on the deliberation process involving various local actors, such as traditional leaders, village heads, family members, and local officials as supporting parties. This mechanism places dialogue and mutual agreement at the heart of conflict resolution, with the primary goal of restoring social relations disrupted by domestic conflict. The results of the study indicate that this customary-based approach reflects the principles of restorative justice, as it does not solely emphasize sanctions, but rather reconciliation, shared responsibility, and the restoration of social harmony. Thus, customary mechanisms are seen as effective in maintaining social stability while providing contextual solutions that are acceptable to the local community (Usman et al., 2022).

Based on the overall literature review, it can be concluded that local wisdom-based mediation has significant relevance and potential in resolving domestic disputes in Indonesia. Various studies have shown that a mediation approach that integrates cultural values, deliberation, and the involvement of local actors is more effective in restoring social relations than formalistic litigation mechanisms. The concept of restorative justice serves as an important framework that bridges positive law with the existing law within society, particularly in the context of family conflicts that are fraught with emotional and social dimensions. However, the literature also identifies several challenges, such as the risk of gender inequality, limited mediator capacity, and the suboptimal integration of local values into the formal legal system. Therefore, a reconstruction of family law that can accommodate local wisdom selectively and critically and oriented toward protecting the rights of the parties is needed to achieve a just, humane, and contextual resolution of domestic disputes.

## METHOD

This research is an empirical legal study (Soekanto et al., 2006), namely research that views law as a social phenomenon that lives and develops in society. The main focus of the research is on the application of mediation rules (PERMA No. 1 of 2016) in the practice of resolving divorce cases in the Religious Courts. This approach was chosen to directly assess the effectiveness of mediation implementation and identify obstacles that arise in the field. The study uses a qualitative-sociological approach, which positions law as a social behavior that can be observed through interactions between the community and legal institutions (Mukti & Yulianto, 2020). Primary data was obtained through in-depth interviews with judges, mediators, court clerks, and parties involved in the mediation process, as well as direct observation (Salim & Nurbani, 2013) of the mediation process, including at the Purwakarta Religious Court. To further understand the implementation of this local wisdom-based mediation, the researchers also conducted interviews with the Village Head and the Head of the Kiarapedes District Religious Affairs Office, Purwakarta Regency. Secondary data was collected from primary legal materials such as Law No. 7 of 1989 and its amendments, PERMA No. 1 of 2016, as well as secondary legal materials in the form of books, scientific journals, articles, court decisions, annual reports, case statistics data, and official documentation from Badilag.

Data collection was conducted using several techniques: semi-structured interviews (Moleong, 2019) to gain a direct perspective on the implementation and obstacles to mediation; and participant observation to review various relevant reports and documents. The researchers also utilized data available on the official websites of the Purwakarta Religious Court and the Religious Courts Agency (Badilag) as additional sources of information. After data collection, descriptive-qualitative analysis was conducted through several stages. The first stage is

data reduction, which is the process of sorting, selecting, and simplifying data to focus on information relevant to the research objectives (Sugiyono, 2019). Next, the data is presented narratively and thematically to map certain patterns or trends that emerge from the interviews, observations, and documentation studies. The researchers then interpret the data by linking field findings to applicable theories and regulations, thus providing a comprehensive picture of the effectiveness and obstacles to mediation implementation. The final stage is drawing conclusions based on these findings and developing recommendations as solutions to the problems identified in this study. Thus, this method is expected to be able to provide a comprehensive understanding of the reality of the application of mediation in resolving domestic disputes, not only from a normative perspective, but also from the social practices that occur in the field.

## RESULTS

### Mediation and Family Law in Indonesia

#### 1. *Definition and Legal Basis of Mediation*

Mediation is a non-litigation dispute resolution mechanism included in the Alternative Dispute Resolution (ADR) framework and emphasizes dialogue, deliberation, and voluntary agreement between the parties. This approach provides a broader participatory space than formal court proceedings. In the Indonesian legal system, the implementation of mediation has a clear normative basis through Supreme Court Regulation (Perma) Number 1 of 2016 concerning Mediation Procedures in Court, which emphasizes the obligation of judges and parties to seek a peaceful dispute resolution before the case is decided through litigation.

Mediation is understood as a negotiation process involving a neutral third party (mediator) to help the parties reach a peaceful agreement without coercion (Gussevi et al., 2025). The Supreme Court defines mediation as "a method of resolving disputes through negotiation with the assistance of a mediator to reach an agreement between the parties" (Article 1 Paragraph 1) (Mahkamah Agung Republik Indonesia, 2016). Thus, mediation is voluntary, confidential, and oriented towards mutual resolution (Rahardjo, 2009).

In the context of family law, mediation plays a strategic role in preventing family disintegration and maintaining the integrity of household relationships. Through mediation, the disputing parties, particularly husbands and wives, are provided with a constructive dialogue to express their concerns, understand their respective interests, and explore the possibility of reconciliation before the case proceeds to a divorce decision in a religious court. Therefore, mediation cannot be understood solely as a procedural obligation within the judicial system, but rather as a substantive instrument oriented toward restoring emotional, psychological, and social relationships within the family. This approach allows for a more humane and equitable conflict resolution, while minimizing the negative impact of divorce on children, the extended family, and the surrounding social environment (Abdullah, 2018).

#### 2. *Mediation in the Indonesian Family Law System*

Family law in Indonesia is fundamentally built on two main foundations: positive national law and religious and customary law within society. These two systems interact to regulate family relations, particularly in the resolution of domestic disputes. Normatively, the regulation of marriage and divorce is regulated by Law Number 1 of 1974 concerning Marriage, while for Muslims, these provisions are reinforced by the Compilation of Islamic Law (KHI). In the KHI, efforts to resolve family disputes are not solely directed at terminating legal relations, but first emphasize the importance of a peaceful resolution. Article 31 of the KHI explicitly mandates that divorce must be preceded by family deliberation before the case is submitted to court. This provision reflects the spirit of restorative mediation, prioritizing dialogue and reconciliation. Thus, the goal of resolving family disputes is not merely to provide legal certainty but also to restore harmony in household relations and maintain the family values that underpin Indonesian social life (Kompilasi Hukum Islam, 1991).

Although mediation has been institutionalized normatively within the judicial system, its implementation in courts still faces a number of obstacles. One major obstacle is the view of some parties that mediation is merely an administrative procedure that must be completed before a case is decided, rather than as a substantive space for building peace. Furthermore, the limited number of certified and competent mediators in religious courts also impacts the quality of the mediation process. Another obstacle relates to mediators' limited understanding of the social, cultural, and relational contexts of the parties, resulting in a formalistic approach that is less responsive to prevailing values within the community. Yet, sociologically, Indonesian society has long been familiar with the tradition of deliberation and family-based conflict resolution, which long predates both the colonial and modern legal systems. Therefore, the development of family law in Indonesia should ideally be directed at integrating

local wisdom values into formal mediation mechanisms, so that dispute resolution is more contextual, just, and has strong social legitimacy (Munawaroh, 2017a).

### 3. *Mediation as an Instrument of Restorative Justice*

In the realm of family law, restorative justice emphasizes efforts to restore relationships, strengthen moral responsibility, and restore social balance between conflicting parties. This approach views domestic disputes not simply as violations of legal norms that must be resolved through sanctions or formal decisions, but rather as a breakdown in social and emotional relationships that requires a process of collective healing. Therefore, conflict resolution is directed at dialogue, active participation of the parties, and the search for mutually agreed-upon and equitable solutions. The primary focus of restorative justice is to restore individual dignity, improve communication, and prevent future conflict from recurring. In this context, the law functions not merely as a tool of coercion, but as a means to create sustainable peace and strengthen social cohesion within the family (Asshiddiqie, 2017).

Mediation plays a strategic role in realizing restorative justice because it positions the parties as the primary subjects in the dispute resolution process. Through equal and participatory dialogue, mediation allows the parties to express their interests, needs, and emotional burdens that are not always accommodated in formal litigation. Mediation is not solely focused on reaching a legal agreement, but also on restoring social relationships, psychological balance, and inner peace for the parties. In the context of family law, this approach becomes increasingly relevant because disputes are fraught with emotional, social, and spiritual dimensions. Therefore, integrating local wisdom-based mediation into the family law system has the potential to strengthen the character of progressive law, namely law that favors humanitarian values and is oriented towards substantive justice, rather than merely procedural compliance (Rahardjo, 2009).

## **Local Wisdom as a Restorative Basis**

### 1. *Understanding Local Wisdom and Its Relevance in Dispute Resolution*

Local wisdom (local wisdom) can be understood as a set of values, norms, and social practices that grow and are maintained by a community to regulate relations between individuals and maintain harmony in communal life. This wisdom not only functions as a guide to behavior, but also as a social mechanism that ensures balance and order in society. Asshiddiqie defines local wisdom as the embodiment of law that lives in society (living law), reflecting the collective morality, spirit of solidarity, and principles of social justice that are characteristic of the Indonesian nation. These values were formed through a long historical process and stem from religious teachings, customs, and social ethics passed down through generations. With its contextual character and deep roots in social life, local wisdom possesses high social legitimacy and has the potential to enrich the national legal system (Asshiddiqie, 2019).

In resolving domestic disputes, local wisdom serves as a social instrument that goes beyond simply fulfilling formal legal requirements. This mechanism emphasizes efforts to restore personal relationships and maintain social balance among the disputing parties. A local values-based approach views family conflict as a social event with broad impacts, so its resolution must be directed toward reconciliation and the sustainability of relationships, not merely the determination of normative rights and obligations. This orientation aligns with the principle of restorative justice, which places humans and social relations at the center of the law enforcement process. Within this framework, the law is positioned not as a mere coercive instrument, but rather as a means to restore harmony, dignity, and a sense of substantive justice for the parties involved (Abdullah, 2018).

### 2. *Local Wisdom-Based Mediation Practices in Indonesia*

Indonesia is known as a country with a rich cultural diversity and legal traditions, which have contributed to various models of dispute resolution outside of litigation. In many regions, communities have long developed family conflict resolution mechanisms rooted in local values and prevailing social norms. These mechanisms serve not only as an alternative to formal judicial processes but also as a means of maintaining social harmony and community stability. In the context of domestic disputes, local wisdom plays a crucial role because family conflict is understood not solely as an individual legal issue, but as a social phenomenon with broad impacts on the extended family and the surrounding community.

One example can be found in the tradition of badamai, which thrives in Minangkabau society. The principle of badamai, or peace, is a key value in resolving conflicts, including domestic disputes. The resolution process generally involves the ninik mamak (traditional elders) as traditional leaders with moral and social authority. The primary goal of this traditional mediation is not to determine who is right or wrong, but rather to restore harmony in the household and maintain the dignity of the extended family. Peaceful agreements reached

through badamai are considered more honorable and meaningful than formal court settlements, as they maintain sustainable family relationships. In Java and Sunda, family conflict resolution is often carried out through the tradition of deliberation and consensus involving the extended family and community leaders. Values such as harmony, respect, and tepo seliro (tolerance) are the main foundations of this process. Conflicts are not resolved through open confrontation, but rather through dialogue that emphasizes self-control and compromise. This approach aims to maintain social balance and avoid the negative impacts that can arise from prolonged conflict within the community.

Similar practices are also found in Bugis and Makassar cultures through the bale-bale tradition. This customary institution serves as a dispute resolution forum led by a traditional leader or panrita. In the context of domestic disputes, the bale-bale serves as a space for dialogue that emphasizes the importance of reconciliation and relationship restoration. Conflict resolution is not focused on retaliation or sanctions, but rather on efforts to restore harmony, symbolically expressed as a process of clearing muddy waters. Meanwhile, the Maluku community recognizes the principle of pela gandong as the basis for resolving disputes based on bonds of brotherhood. From this perspective, conflicts between individuals or families are viewed as violations of the moral values of the community as a whole. Therefore, the healing process is carried out collectively through dialogue, traditional rituals, and the strengthening of social bonds. This approach emphasizes that peace is not merely an individual's interest, but a shared responsibility of the entire community. These various practices demonstrate that local wisdom in Indonesia functions as a traditional restorative justice mechanism that emphasizes peace, the restoration of dignity, and social reintegration. Rather than prioritizing punishment or hostility, this mechanism prioritizes the sustainability of relationships and social harmony as the main goals of resolving family disputes.

### 3. *The Relationship between Local Wisdom and Restorative Justice*

The concept of restorative justice positions conflict or dispute as an event that not only results in a violation of the law but also damages the social relations, emotional well-being, and moral fabric of the parties involved. Therefore, conflict resolution within a restorative justice framework focuses not solely on determining fault and imposing sanctions, but rather on efforts to restore the harm caused. This approach emphasizes the importance of dialogue, active participation of the parties, and shared responsibility for repairing disturbed relationships. Through open and empathetic communication, restorative justice seeks to create solutions that are fairly acceptable to all parties, while preventing future escalation of conflict. Thus, restorative justice is oriented not only toward legal certainty but also toward restoring social welfare and harmonious relationships within society (Rahardjo, 2009). Associated with local wisdom, this approach has long been practiced by Indonesian society, long before the formal legal system was introduced.

Restorative justice rooted in local wisdom emphasizes the role of the community as a central element in the conflict resolution process, not simply the individual disputants. In the context of domestic disputes, the involvement of traditional leaders, religious leaders, or village elders as mediators reflects the social view that family conflict is a shared problem that impacts the community order. Therefore, the resolution is not solely directed at the interests of the parties, but also at restoring collective social harmony. Local values such as mutual cooperation, deliberation and consensus, and a peace orientation are the main foundations of the community-based mediation process. This approach enables the development of more contextual, socially acceptable, and sustainable solutions, as it arises from a shared awareness of the need to maintain a balance of social and moral relations within the community (Munawaroh, 2017a). Thus, the local wisdom-based mediation approach substantially incorporates elements of restorative justice. Integrating these values into the formal family law system will enrich modern mediation practices, which often lack their moral and social dimensions.

### 4. *The Challenge of Integrating Local Wisdom into the Legal System*

Although local wisdom makes a significant contribution to supporting the implementation of restorative justice, its implementation within the national family law system still faces a number of structural and normative obstacles. One major challenge is the fact that not all customary practices align with human rights principles, particularly regarding gender equality and the protection of vulnerable groups. In some contexts, customary mechanisms have the potential to perpetuate unequal power relations and place certain parties, particularly women and children, in an unfair position. Furthermore, the diversity of customary norms across Indonesia also creates the potential for legal disharmony, given the differences in values, procedures, and sanctions that apply between customary communities. This situation complicates the application of uniform standards of justice within the national legal framework. Another equally important challenge is the lack of legal regulations that expressly and comprehensively recognize the results of customary mediation as legal products with binding force and legal certainty equivalent to court decisions.

Based on these conditions, the reconstruction of national family law is urgently needed to bridge local wisdom practices with the positive legal system in a balanced and measured manner. This reconstruction is not intended to adopt customary practices in their entirety, but rather to undertake a normative selection process to ensure that the integrated local values remain aligned with the principles of justice, equality, and human rights protection. Formal recognition of customary mediation can be institutionalized through the creation of implementing regulations, technical guidelines, or strengthening Supreme Court jurisprudence, which provides legal space for local wisdom-based mediation outcomes. With this approach, Indonesian family law has the potential to develop into a responsive, contextual legal system capable of substantively realizing restorative justice.

## **Restorative Justice-Based Family Law Reconstruction**

### *1. The Concept of Family Law Reconstruction*

The reconstruction of family law is essentially a process of renewing the legal system to align it with the social, cultural, and moral values that develop in society. This effort emphasizes that law cannot be understood as a static set of rules detached from social reality. In line with Satjipto Rahardjo's thinking, law should be dynamic and contextual, so that it can respond to the needs of justice felt by society. This view emphasizes that law that relies solely on a normative-formal approach has the potential to ignore aspects of humanity and substantive justice. Therefore, the reconstruction of family law needs to be directed at strengthening the social and moral dimensions, including recognition of local values and dispute resolution practices that exist within the community. With this approach, family law functions not only as a regulatory tool but also as a means to create justice that is more humane and relevant to the social context (Rahardjo, 2009). In this context, family law in Indonesia needs to be directed not only at resolving domestic conflicts legally and formally but also at restoring social and emotional relationships between parties.

The Indonesian family law system, based on Law Number 1 of 1974 concerning Marriage, still tends to emphasize an administrative and retributive approach, particularly in handling divorce cases. This orientation places greater emphasis on fulfilling legal procedures and determining the legal status of the parties, while aspects of relationship restoration and social impact are often overlooked. Yet, family law is closely related to the humanitarian dimension, encompassing compassion, moral responsibility, and the sustainability of social relationships within the family and community. Therefore, a purely formal legal approach is not always able to address the complexity of domestic conflict. A paradigm shift is needed toward a more restorative and humanistic model, one that places dialogue, deliberation, and restoration as essential components of family dispute resolution. Thus, family law can function more effectively in creating justice that is oriented toward the welfare of the parties (Abdullah, 2018).

Legal reconstruction in this context can be understood as an effort to renew the orientation and framework of family law by integrating local wisdom values as the ethical and social basis for the application of restorative justice. This approach emphasizes that family law cannot be separated from the cultural context and traditions of the community in which it is implemented. Local values such as deliberation, kinship, and respect for social harmony play a crucial role in establishing a more humane and just dispute resolution mechanism. By utilizing local wisdom as a foundation, family law is directed not only at resolving conflicts formally but also at restoring relationships and maintaining social balance. Therefore, restorative justice-based family law reconstruction has the potential to produce a legal system that is more responsive to community needs and aligned with the values of justice inherent in social reality.

### *2. Integration of Local Wisdom Values into Positive Law*

The integration of local wisdom into positive law is not intended to eliminate the existing formal legal system, but rather to enrich and contextualize it to better align with the social realities of Indonesian society. This approach positions law not merely as a collection of written norms, but as a social institution that grows and gains legitimacy from cultural values that exist within society. Asshiddiqie emphasized that just national law must be able to absorb and reflect the social and moral values that develop in community life as part of its normative legitimacy source. Thus, positive law is not rigid and detached from the social context, but rather becomes an instrument that is adaptive, responsive, and has a stronger binding force. This integration allows for the creation of a national legal system that is not only formally valid, but also socially accepted and complied with (Asshiddiqie, 2019).” In the context of domestic dispute resolution, reconstruction can be carried out through the following steps:

First, strengthening formal recognition of customary mediation is a crucial step in the reconstruction of family law based on restorative justice. The state needs to provide a legal framework that explicitly recognizes mediation



outcomes derived from local wisdom, as long as the process and outcomes comply with the principles of justice, equality, and do not conflict with national legal provisions. In this context, agreements reached through customary mediation mechanisms can be elevated to legally binding peace agreements, after being ratified by a religious or civil court. With this mechanism, customary mediation practices not only gain social legitimacy but also legal certainty. Second, strengthening the role of customary and religious leaders as social mediators needs to be systematically integrated into family dispute resolution. Community leaders, religious scholars, and traditional leaders possess the moral authority and social closeness that enable them to play an effective role in fostering dialogue and peace. Their presence is not intended to replace the function of the judiciary, but rather serves as a pre-mediation stage oriented towards preventing conflict escalation before cases progress to formal litigation.

Third, developing locally context-based mediator training and certification is an urgent need. Such training programs emphasize not only mastery of positive law but also a deep understanding of local social structures, cultural values, and community dynamics. With these competencies, mediators are expected to be able to apply an empathetic, communicative, and local-values-sensitive approach to family dispute resolution. Fourth, the development of adaptive derivative regulations is necessary to support the implementation of this model. Regulations such as Supreme Court regulations or ministerial regulations can be designed to regulate the mechanism for recognizing customary mediation results, implementation standards, and coordination between customary institutions and judicial institutions, thus creating a responsive and equitable family law system. These steps will create a more restorative, participatory, and contextual family law system, in accordance with the spirit of Pancasila and the social values of the Indonesian nation.

### 3. *Restorative Mediation as an Implementation of Progressive Law*

Restorative justice in the context of family law is closely linked to the progressive legal thinking put forward by Satjipto Rahardjo. Progressive law places humans at the center of attention, so the primary goal of law enforcement is not merely compliance with formal procedures, but rather the achievement of substantive justice. Within this framework, law is understood as a social instrument that must be able to respond to the realities of community life and real humanitarian needs. The application of restorative justice in family law reflects this spirit by focusing on restoring relationships, peacefully resolving conflicts, and mitigating the impact of suffering experienced by the parties. Thus, the law does not function as a rigid and repressive mechanism, but rather as a means to create prosperity, harmony, and a more meaningful sense of justice for individuals and families in conflict (Rahardjo, 2009). Therefore, the reconstruction of family law based on local wisdom and restorative justice is expected to be able to:

- a. Reduce the burden of divorce cases in court;
- b. Reviving social mechanisms for dispute resolution based on deliberation;
- c. Restoring social and moral harmony in families and communities;
- d. Building public trust in national laws that are just and rooted in Indonesian cultural values (Abdullah, 2018).

### 4. *The Ideal Model of Restorative Family Law Reconstruction*

The ideal model for developing restorative justice-based family law can be formulated through an interconnected, multi-level, integrated approach. At the socio-cultural level, the revitalization of local traditions such as deliberation and consensus (*musyawarah mufakat*), *badamai* (*pela gandong*), and *bale-bale* (*conciliation*) serve as an ethical foundation for resolving domestic disputes, as these traditions emphasize peace, relationship restoration, and social harmony. At the institutional level, synergy is needed between customary mediation institutions and religious courts so that both can act as strategic partners in resolving family conflicts in a more humane and contextual manner. Meanwhile, at the normative-legal level, the state needs to develop a regulatory framework that provides legal recognition for the results of customary mediation and opens up space for the participation of community leaders in family law processes. Through the integration of these three levels, Indonesian family law is expected to have a national character rooted in local culture, while remaining aligned with the principles of universal justice and the protection of human rights.

## DISCUSSION

Mediation and family law in Indonesia demonstrate a paradigm shift in dispute resolution from a formal-legal approach to a dialogical and restorative approach. Mediation is no longer understood merely as an alternative procedure within the judicial system, but rather as a socio-legal instrument reflecting the values of deliberation, family, and peace that have long existed in Indonesian society. In the context of family law,

particularly domestic disputes and divorce, mediation holds a strategic position because it touches on emotional, social, and moral dimensions that cannot be fully reached by conventional litigation mechanisms. Normatively, the strengthening of mediation in the Indonesian legal system through Supreme Court Regulation No. 1 of 2016 demonstrates the state's commitment to mainstreaming peaceful dispute resolution. However, as seen in practice, the success of mediation is not solely determined by the existence of regulations, but rather by the substantive approach used in the process. The effectiveness of mediation depends heavily on the mediator's ability to understand the social and relational context of the parties, not just the formal legal aspects of the dispute. This finding is relevant to conditions in Indonesia, where mediation failure is often caused by a procedural approach that ignores cultural dimensions and family relations (Raharjo et al., 2024).

In family law, domestic disputes cannot be reduced to mere conflicts of rights and obligations. Divorce, for example, impacts not only the legal status of husband and wife but also children, the extended family, and the surrounding social structure. Therefore, mediation in family law ideally functions as a space for relationship reconstruction, not simply an administrative step before a court decision. Family conflict resolution must be oriented toward the sustainability of the relationship and the psychosocial well-being of the parties. A closer look reveals that the restorative nature of family law mediation actually has strong intersections with Indonesian local wisdom. The traditions of *musyawarah* (consultation), *badamai* (*pela gandong*), and *bale-bale* (consultation) demonstrate that Indonesian society has long practiced conflict resolution based on relationship restoration and social harmony. From a socio-legal studies perspective, these practices represent a concrete form of living law, possessing stronger social legitimacy than top-down positive law. This aligns with Merry's findings, which emphasize that community-based dispute resolution mechanisms are often more effective because they are rooted in local values and social structures (Abdullah, 2018).

Restorative justice, as a theoretical framework, provides normative justification for these local wisdom practices. Unlike retributive justice, which focuses on determining fault and imposing sanctions, restorative justice positions conflict as a damaged relationship that needs to be repaired through dialogue, responsibility, and reconciliation. In the context of family law, this paradigm is particularly relevant because domestic conflict almost always involves long-term relationships and complex emotional ties. A restorative approach to interpersonal conflict can increase the satisfaction of the parties and reduce future conflict escalation. However, the integration of local wisdom into the formal family law system cannot be approached in a romantic and ahistorical manner. The main challenge lies in the potential conflict between customary practices and human rights principles, particularly regarding gender equality and the protection of vulnerable groups. Some customary mediation practices have the potential to reproduce unequal power relations, for example, when women are encouraged to maintain their household despite situations of violence. Therefore, the reconstruction of family law based on restorative justice must be selective and critical, by making the values of substantive justice and human rights protection as normative boundaries that cannot be negotiated (Asshiddiqie, 2017).

In this context, the adoption of a hybrid approach is inevitable, combining the values of local wisdom inherent in society with modern, universal legal principles. The restorative justice approach emphasizes that substantive and sustainable justice does not arise from the dominance of one value system, but rather from a process of dialogue and negotiation between local norms and universal legal standards. Within this framework, the state is not positioned as a ruler dictating dispute resolution practices, but rather as a facilitator, ensuring that the implementation of customary-based mediation remains in line with the principles of equality, non-discrimination, and the protection of individual rights, particularly those of vulnerable groups.

Reconstructing family law based on restorative justice also requires a shift in institutional orientation. Religious courts, as the primary institution for resolving family disputes for Muslims, are no longer sufficient as merely adjudicative courts. Furthermore, their role as conflict resolution centers that prioritize humanitarian values, dialogue, and social restoration needs to be strengthened. This strengthening of their function can be achieved through the integration of mediators with a deep understanding of the social and cultural context of the community, the involvement of traditional and religious leaders in the mediation process, and the granting of stronger legal recognition to the outcomes of non-litigation mediation. Various studies have shown that mediation systems involving community actors tend to have a higher success rate in resolving family conflicts compared to mediation conducted entirely through formal and bureaucratic means. This is because community actors possess social legitimacy, emotional closeness, and contextual understanding, enabling the creation of solutions that are more acceptable and sustainable to the parties (Diantha, 2016).

From a progressive legal perspective, this reconstruction represents a form of resistance to rigid and ahistorical legal positivism. Family law cannot be separated from the social and cultural context in which it

operates. When the law fails to capture social realities, it risks losing legitimacy in the eyes of society. By integrating restorative mediation based on local wisdom, Indonesian family law has the potential to become an instrument of social transformation that not only resolves conflicts but also strengthens social cohesion and human values. A multi-level integration model that combines the socio-cultural, institutional, and normative-legal levels offers a realistic implementation framework. At the socio-cultural level, the revitalization of local practices serves as a moral foundation. At the institutional level, courts and customary institutions can synergize in pre-mediation mechanisms. Meanwhile, at the normative level, adaptive regulation provides legal certainty without stifling social flexibility. This model aligns with Ostrom's findings regarding the importance of polycentric and community-based legal governance. Thus, this discussion confirms that mediation in Indonesian family law cannot be separated from the context of local wisdom and the restorative justice paradigm. Restorative-oriented family law reconstruction is not simply a policy choice, but a structural necessity to address the complexity of domestic conflict in a pluralistic society. Proper integration of local values and universal principles will enable Indonesian family law to develop as a just, humanistic legal system firmly rooted in the nation's socio-cultural identity (Mukhlis, 2015b).

## CONCLUSION

Based on the results of the study, it can be concluded that domestic dispute mediation in Indonesia plays a strategic role as an alternative dispute resolution mechanism that is not only oriented towards legal conflict resolution but also towards maintaining family integrity and harmony. Mediation is an important instrument to prevent conflict escalation that leads to divorce, while minimizing the social impacts resulting from broken household relationships. In this context, the effectiveness of mediation is greatly influenced by the psychological readiness of the disputing parties, the quality of communication established during the mediation process, and the mediator's ability to manage emotions, empathy, and interpersonal relationship dynamics. Psychological aspects have been proven to have a significant influence on the success of mediation, both in building mutual trust, opening a space for constructive dialogue, and encouraging the parties to find a fair and mutually acceptable solution. Therefore, a formal and procedural legal approach needs to be complemented by adequate psychological understanding so that mediation is not merely an administrative obligation in the judicial process, but rather a means of substantive human relations restoration. The role of the mediator is crucial, not only as a legal facilitator, but also as a conflict manager who is able to understand the emotional conditions and psychosocial backgrounds of the parties. From a policy perspective, structural reforms are needed in the implementation of mediation in Indonesia to ensure the systemic integration of psychological approaches. The Supreme Court and related institutions need to strengthen mediation regulations by emphasizing the importance of emotional competence, empathy, and communication skills in mediators through ongoing education and training. Ultimately, the ideal domestic dispute mediation is one that harmoniously integrates legal, psychological, and local cultural dimensions, thereby achieving substantive justice, sustainable peace, and resilient social relations within Indonesian society.

## REFERENCES

- Abdullah, A. (2018). *Keadilan Restoratif dalam Sistem Hukum Indonesia [Restorative Justice in the Indonesian Legal System]*. Gadjah Mada University Press.
- Asshiddiqie, J. (2017). *Pengantar Ilmu Hukum Tata Negara [Introduction to Constitutional Law]*. Rajawali Pers.
- Asshiddiqie, J. (2019). *Hukum dan Kearifan Lokal: Integrasi Nilai Sosial dalam Pembangunan Hukum Nasional [Law and Local Wisdom: Integration of Social Values in National Legal Development]*. Rajawali Pers.
- BPS. (2022). *Statistik Perceraian di Indonesia Tahun 2022 [Divorce Statistics in Indonesia in 2022]*. BPS RI.
- Bukido, R., Antuli, S. A. K., Harun, N., Isima, N., & Na, U. (2024). Reconciling Traditions : The Role of Local Wisdom in Mediating Divorce in Indonesia ' s Religious Courts. *Khazanah Sosial*, 6(2), 307–320. <https://doi.org/10.15575/ks.v6i2.32809>
- Diantha, I. M. P. (2016). *Metodologi Penelitian Hukum Normatif dalam Justifikasi Teori Hukum [Normative Legal Research Methodology in Justifying Legal Theory]*. Prenada Media Group.
- Gussevi, S., Rosadi, A., Saepullah, U., Muttaqin, T., & Alman, J. F. (2025). Religious Court of Purwakarta: Efforts

- to Increase The Effectiveness of Case Resolution and Minimize Social Impact. *Muttaqien: Indonesian Journal of Multidisciplinary Islamic Studies*, 6(2), 174–200. <https://doi.org/10.52593/mtq.06.2.05>
- Kambu, F., Rakia, A. S. R. S., Yati, S., & Sj, M. A. (2025). Restorative Approach in Family Conflict Resolution Through ADR Process. *Journal of Law Justice (JLJ)*, 3(3), 240–252. <https://doi.org/10.33506/jlj.v3i3.4458>
- Kompilasi Hukum Islam. (1991). *Instruksi Presiden Republik Indonesia Nomor 1 Tahun 1991 tentang Kompilasi Hukum Islam [Presidential Instruction of the Republic of Indonesia Number 1 of 1991 concerning the Compilation of Islamic Law]*. Sekretariat Negara RI.
- Mahkamah Agung Republik Indonesia. (2016). *Peraturan Mahkamah Agung Nomor 1 Tahun 2016 tentang Prosedur Mediasi di Pengadilan [Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Court]*. MA RI.
- Misnanto, & Sholehuddin. (2024). Mediasi Perkara Kekerasan dalam Rumah Tangga Melalui Kepala Desa Perspektif Restorative Justice [Mediation of Domestic Violence Cases Through the Village Head: A Restorative Justice Perspective]. *Al-Qadlāya Jurnal Hukum Keluarga Islam*, 4(1). <https://doi.org/10.55120/qadlāya.v4i01.2387> [In Indonesian]
- Moleong, L. J. (2019). *Metodologi Penelitian Kualitatif [Qualitative Research Methodology]*. Remaja Rosdakarya.
- Mukhlas, O. S. (2015a). *Pranata Sosial Hukum Islam [Islamic Legal Social Institutions]*. Refika Aditama.
- Mukhlas, O. S. (2015b). *Pranata Sosial Hukum Islam [Islamic Legal Social Institutions]*. Refika Aditama.
- Mukti, F., & Yulianto, B. (2020). *Dualisme Penelitian Hukum Normatif & Empiris [Dualism of Normative & Empirical Legal Research]*. Pustaka Pelajar.
- Munawaroh, H. (2017a). Praktik Mediasi dalam Penyelesaian Sengketa Adat di Indonesia [Mediation Practices in Customary Dispute Resolution in Indonesia]. *Ijtihad: Jurnal Hukum Dan Ekonomi Islam*, 11(2), 297. <https://doi.org/10.21111/ijtihad.v11i2.2553> [In Indonesian]
- Munawaroh, H. (2017b). Praktik Mediasi Dalam Penyelesaian Sengketa Adat Di Indonesia [Mediation Practices in Customary Dispute Resolution in Indonesia]. *Ijtihad: Jurnal Hukum Dan Ekonomi Islam*, 11(2), 297. <https://doi.org/10.21111/ijtihad.v11i2.2553> [In Indonesian]
- Rahardjo, S. (2009). *Hukum Progresif: Sebuah Sintesa Hukum Indonesia [Progressive Law: A Synthesis of Indonesian Law]*. Genta Publishing.
- Raharjo, A. D., Putri, A. A., & Budi, H. R. (2024). The Use of Game-Based Learning to Increase Student Engagement. *Hipkin Journal of Educational Research*, 1(3), 299–310. <https://doi.org/10.64014/hipkin-jer.v1i3.30>
- Saebani, B. A. (2024). *Sosiologi Hukum Islam [Sociology of Islamic Law]*. Pustaka Setia.
- Salim, H. S., & Nurbani, E. S. (2013). *Penerapan Teori Hukum pada Penelitian Tesis dan Disertasi [Application of Legal Theory in Thesis and Dissertation Research]*. Rajawali Pers.
- Soekanto, S., Sumilih, R. P., & Ario, D. (2006). *Sosiologi Suatu Pengantar [Sociology An Introduction]*. PT. Star Digital Publishing, Yogyakarta-Indonesia.
- Sugiyono. (2019). *Metode Penelitian Kualitatif, Kuantitatif dan R&D [Qualitative, Quantitative and R&D Research Methods]*. Alfabeta.
- Sukendar, Saifullah, M., Sulistiyanto, P., Rahman, L., & Ulamai, A. H. A. (2023). Women's Access To Justice: Mediation For The Victims of Domestic Violence In Central Java, Indonesia. *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam*, 7(1), 602–628. <https://doi.org/10.22373/sjhk.v7i1.9471>
- Usman, Najmi, A., M, M., & M, M. (2022). Penyelesaian Kekerasan Dalam Rumah Tangga Secara Adat Perspektif Retorative Justice [Settlement of Domestic Violence According to Customary Law from a Restorative Justice Perspective]. *Jurnal Sains Sosio Humaniora*, 6(23), 1–14. <https://doi.org/10.22437/jssh.v6i2.20968> [In Indonesian]



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