

Legal Certainty in the Mediation of Islamic Economic Cases: A Critical Analysis of Procedural Law and Its Reconstruction Efforts in Religious Courts

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Abstract

Legal certainty of mediation results in sharia economic cases in the Religious Courts is an important issue in the context of modern dispute resolution that prioritizes substantive justice and the efficiency of the legal process. Although mediation is intended as an alternative means of win-win solution, there is still debate about the extent to which the peace certificate resulting from mediation is able to provide a guarantee of legal certainty equivalent to a judge's decision. This research aims to analyze mediation procedures in sharia economic disputes and assess the legal certainty of peace deeds as a guarantee of legal certainty for the parties. This research uses normative juridical research that focuses on written legal norms, namely laws and regulations, court decisions, legal theories, and doctrines of jurists. The results showed that mediation procedures have been systematically regulated in PERMA Number 1 of 2016 which is substantially in accordance with the culture of Indonesian society which prioritizes deliberation in problem solving. The mediation agreement outlined in the peace deed has permanent legal force and can be executed like a judge's decision. Moreover, the peace deed resulting from mediation even more guarantees legal certainty, because it cannot be appealed in accordance with Article 130 HIR. Legal certainty born from the results of mediation not only reflects the clarity of the legal position of the parties, but also guarantees the protection of disputed rights in a fair and peaceful manner. This is in line with Jasser Auda's contemporary maqashid theory which emphasizes the importance of purposefulness and interrelated hierarchy. The deed of peace resulting from mediation authorized by the judge has permanent legal force and provides legal certainty, expediency, and justice as the theory of Gustav Radbruch. Thus, mediation has the potential to be an ideal settlement mechanism in sharia economic cases if supported by an effective and responsive legal system.

Keywords: Legal certainty, Mediation, Islamic economics.

Abstrak

Kepastian hukum hasil mediasi dalam perkara ekonomi syariah di Pengadilan Agama menjadi isu penting dalam konteks penyelesaian sengketa modern yang mengedepankan keadilan substantif dan efisiensi proses hukum. Meskipun mediasi dimaksudkan sebagai sarana alternatif yang bersifat win-win solution, masih terdapat perdebatan mengenai sejauh mana akta perdamaian hasil mediasi mampu memberikan jaminan kepastian hukum yang setara dengan putusan hakim. Penelitian ini bertujuan untuk menganalisis prosedur mediasi dalam sengketa ekonomi syariah serta menilai kepastian hukum akta perdamaian sebagai jaminan kepastian hukum bagi para pihak. Penelitian ini menggunakan jenis penelitian yuridis normatif yang berfokus pada norma-norma hukum tertulis yaitu peraturan perundang-undangan, putusan pengadilan, teori hukum, dan doktrin ahli hukum. Hasil penelitian menunjukkan bahwa prosedur mediasi telah diatur secara sistematis dalam PERMA Nomor 1 Tahun 2016 yang secara substansi sesuai dengan budaya masyarakat Indonesia

yang lebih memprioritaskan musyawarah dalam penyelesaian masalah. Kesepakatan mediasi yang dituangkan dalam Akta perdamaian memiliki kekuatan hukum tetap serta dapat dieksekusi sebagaimana putusan hakim. Lebih dari itu akta perdamaian hasil mediasi bahkan lebih memberi jaminan kepastian hukum, karena tidak dapat dilakukan banding sesuai Pasal 130 HIR. Kepastian hukum yang lahir dari hasil mediasi tidak hanya mencerminkan kejelasan posisi hukum para pihak, tetapi juga menjamin terlindunginya hak-hak yang disengketakan secara adil dan damai. Hal ini selaras dengan teori maqashid kontemporer Jasser Auda yang menekankan pentingnya sistem *purposefulness* (orientasi tujuan) dan *interrelated hierarchy* (hirarki yang saling terkait). Akta perdamaian hasil mediasi yang disahkan hakim memiliki kekuatan hukum tetap dan memberikan kepastian hukum, kemanfaatan, dan keadilan sebagaimana teori Gustav Radbruch. Dengan demikian, mediasi berpotensi menjadi mekanisme penyelesaian yang ideal dalam perkara ekonomi syariah apabila didukung oleh sistem hukum yang efektif dan responsif.

Kata kunci: Kepastian Hukum, Mediasi, Ekonomi Syariah.

Introduction

The settlement of sharia economic disputes in Indonesia has experienced significant development in line with the increase in sharia-based transactions. One of the preferred settlement mechanisms in civil procedure law in the Religious Court is mediation, which aims to provide a peaceful solution for the parties to the dispute. Mediation is considered a faster, more efficient, and prioritizes the principle of *a win-win solution* than adversarial court decisions.¹ Supreme Court Regulation (PERMA) Number 1 of 2016 concerning Mediation Procedures in the Court in article 2 paragraph (2) explains the purpose of mediation, namely, mediation aims to reach an agreement between the Parties in resolving disputes quickly and cost-effectively by emphasizing the principle of *win-win solution*.²

The explanation of the article ultimately wants to resolve disputes efficiently, reduce the burden on the court, and provide a mutually beneficial solution for the parties. In addition, mediation is also part of the case settlement effort that prioritizes substantive justice, where the parties can reach a binding agreement and have legal certainty. Law³ Number 48 of 2009 concerning Judicial Power in Article 58 explains that: "Judges are obliged to seek peace between the parties to the case."⁴ In the settlement of sharia economic disputes in the court, judges are also required to seek peace both through the procedural stage at the beginning, namely through the mediation process and in the process of proceedings in the courtroom.

¹ Puspitasari Gustami and Devi Siti Hamzah Marpaung, "Comparison of the Dispute Resolution Process through Mediation in Court and Outside the Court in Indonesia," *Renang Rencang: Lex Generalis Law Journal*. 5, no. 8 (2024). p. 2.

² Supreme Court Regulation (PERMA) Number 1 of 2016 concerning Mediation Procedures in Courts.

³ Laurensius Arliman Simbolon, "Mediation through a consensus approach as an alternative dispute resolution institution to support national economic development," *Uir Law Review* 2, no. 2 (2018): p. 390.

⁴ Law of the Republic of Indonesia Number 48 of 2009 concerning Judicial Power.

When the mediation process is successfully carried out by the mediator, the judge will decide to make the determination of the peace deed as a form of agreement between the parties who finally choose to reconcile and get the best solution. Supreme Court Regulation (PERMA) Number 1 of 2016 concerning Mediation Procedures in the Court Article 27 paragraph (2) states: "A peace deed that has been agreed upon by the parties and ratified by a judge has permanent and binding legal force like a court decision." The peace deed resulting from mediation has the same legal certainty as the judge's decision, so it can be executed as it should.⁵

However, in practice, it is a fact that some people still consider the results of mediation to be not strong legal certainty. Based on the results of interviews with parties who have litigated at the Bantul Religious Court in 2023, Mrs. S thinks that the results of mediation are difficult to execute when one of the parties does not carry out the agreement contained in the peace deed.⁶ In contrast, the judge's decision at the end of the litigation process is considered more firm, binding, and legally enforceable.⁷ This can also be seen in the cases of sharia economic disputes received by the courts, of the many cases that entered, only a small part of which were successfully resolved by mediation. For example, at the Bantul Religious Court, which is one of the courts that receives the most sharia economic cases in the Yogyakarta region, it was found that out of 13 sharia economic cases decided in 2023, only 2 cases were successfully mediated.⁸ List of successful sharia economic cases at the Bantul Religious Court that were successfully mediated and failed to be mediated:

Tabel 1.1

No	Case Number	Mediation Results
1.	378/Pdt.G/2023/PA.Btl	Verstek Verdict
2.	1408/Pdt.G/2023/PA.Btl	Verstek Verdict
3.	1010/Pdt.G/2023/PA.Btl	Unworkable
4.	477/Pdt.G/2023/PA.Btl	Didn't work
5.	1014/Pdt.G/2023/PA.Btl	Verstek Verdict
6.	487/Pdt.G/2023/PA.Btl	Didn't work
7.	1171/Pdt.G/2023/PA.Btl	Didn't work

⁵ Supreme Court Regulation (PERMA) Number 1 of 2016 concerning Mediation Procedures in Courts.

⁶ Online interview with Mrs. S, the litigant on March 25, 2025 at 16.27 WIB.

⁷ Henny Saida Flora et al., "The Role of Mediation in Resolving Civil Law Disputes in Indonesia," *Journal of Smart Law (JSH)* 3, no. 3 (February 2, 2025): p. 216, <https://doi.org/10.55299/jsh.v3i3.1269>.

⁸ Directory of Supreme Court Decisions of the Republic of Indonesia, accessed on April 06, 2025 at 23.06 WIB., <https://putusan3.mahkamahagung.go.id/>.

8.	196/Pdt.G/2023/PA.Btl	Succeeding with the Peace Act
9.	1407/Pdt.G/2023/PA.Btl	Verstek Verdict
10.	1083/Pdt.G/2023/PA.Btl	Didn't work
11.	1055/Pdt.G/2023/PA.Btl	Succeeding with the Peace Act
12.	747/Pdt.G/2023/PA.Btl	Didn't work
13.	1/Pdt.G.S/2023/PA.Btl	Dismissal

Search: http://sipp.pa-bantul.go.id/list_perkara/

In the table above, it can be seen that only 2 out of 13 cases were successful with a peace deed, so the percentage of mediation success was only around 15.38%. Then the majority of the most were the results of mediation that did not succeed amounting to 5 cases. Followed by a verstek verdict in the sense that the parties referred to by the defendants did not attend the trial process from the beginning so that no mediation efforts were made with a total of 4 cases. The rest of the verdict cannot be implemented and dismissed.⁹

The results of the research from Putri Rahayu and Arif Sugitanata also stated that the Bantul Religious Court is still not said to be successful in carrying out mediation with various factors behind it, namely the level of public awareness, the mediation time is too short, mediation is only a formality, and the good faith of the parties.¹⁰ This condition raises the idea that there is a gap between the ideality of regulation and the public's perception or understanding of the legal force resulting from mediation in court. This public view not only affects the success rate of mediation in court, but also reflects the weak legal literacy regarding the position and legal force of the peace deed as a result of mediation. As a result, the public prefers to continue the trial process until the judge's decision is obtained, even though mediation can actually be an alternative dispute resolution that is more efficient and oriented towards a *win-win solution*.¹¹

Therefore, it is necessary to conduct an in-depth study of the legal certainty of the results of mediation in the settlement of sharia economic disputes in the Religious Court. What is the procedure for mediation in the Religious Court, whether the regulations are clear and whether it provides legal certainty for the parties. This study is expected to provide a comprehensive

⁹ Case Tracking Information System (SIPP) of the Bantul Religious Court.

¹⁰ Putri Rahayu and Arif Sugitanata, "The Low Success Rate of Mediation in the Bantul Religious Court in 2018-2020: A Study on the Analysis of the Effectiveness of the Role of Mediators in the Bantul Religious Court," *AL-HUKAMA': The Indonesian Journal of Islamic Family Law* 12, no. 2 (2022): p. 113, <https://doi.org/10.15642/alhukama.2022.12.2.113-131>.

¹¹ Rochmani, Safik Faozi, and Wenny Megawati, "Mediation as an Alternative to Out-of-Court Dispute Resolution that is Fast, Simple and Low Cost," *SENDIU*: 2020, p. 781.

understanding of the position of mediation results in the judicial system and efforts to increase public trust in the mechanism of peaceful dispute resolution in court.

Based on the background and legal issues that have been described, this research focuses on two problem formulations. First, what is the mediation procedure in sharia economic disputes in the Religious Courts. Second, whether the peace deed as a result of mediation provides legal certainty for parties in dispute in sharia economic cases. The purpose of this study is to analyze the legal procedure of mediation proceedings in the settlement of sharia economic disputes in the Religious Court. Assess whether the peace deed as a result of mediation provides legal certainty for parties to disputes in sharia economic cases. This research is expected to provide academic contributions and knowledge for the community related to the mediation mechanism and legal certainty from the results of mediation for the parties to the dispute.

To understand the position of this research in the context of previous studies, here is a comparison with two relevant previous studies. First, Lutfiani Nada Karlina's research entitled "Mediation in Sharia Economic Disputes in Religious Courts" (Case Study in Class 1A Religious Court Purwokerto in 2019-2022).¹² This study discusses how the mediation process is applied in sharia economic disputes at the Purwokerto Religious Court, with a focus on the effectiveness of mediation in resolving cases. This study highlights the factors that affect the success and failure of mediation, such as the role of mediators, legal awareness of the parties, and procedural constraints. However, this study focuses more on the procedural aspects and effectiveness of mediation, rather than on the legal certainty of the mediation results after an agreement is reached. Second, research from Rini Fitriani entitled "Review of Legal Certainty on the Outcome of Peace Agreements in Mediation Outside Court".¹³ This study discusses the legal certainty of the results of the agreement in mediation carried out outside the court. This study focuses on how agreements made by parties in out-of-court mediation can have binding legal force. One important finding is that out-of-court mediation agreements often face challenges in terms of execution because they do not have the legal force of a court ruling. However, this study does not specifically discuss mediation in the context of sharia economic disputes in Religious Courts.

¹² Lutfiani Nada Karlina, "Mediation in Sharia Economic Disputes in Religious Courts (Case Study at the Class 1A Religious Court Purwokerto in 2019-2022)." (Purwokerto, State Islamic University Professor Kiai Haji Saifuddin Zuhri Purwokerto, 2024), p. 73.

¹³ Rini Fitriani et al., "A Review of Legal Certainty on the Outcome of Peace Agreements in Out-of-Court Mediation," *Recht Studiosum Law Review* 3, no. 1 (2024): p. 50, <https://doi.org/10.32734/rsr.v3i1.15935>.

Research Methods

This research is a normative juridical legal research, which is a type of research that relies on the study of written legal norms in laws and regulations, as well as the doctrines or opinions of relevant legal experts.¹⁴ The normative location in this study lies in the focus of analysis on the principles and positive legal norms that govern mediation in sharia economic disputes, with the aim of examining and assessing the extent to which existing legal provisions provide legal certainty guarantees for the results of mediation achieved in the religious justice environment. This study does not use field data, but rather uses secondary data obtained through literature studies. The approaches used are the statute *approach* and the conceptual approach. The legislative approach is carried out by examining the laws and regulations that regulate the mediation mechanism in court, namely Supreme Court Regulation (PERMA) Number 1 of 2016 concerning Mediation Procedures in Courts, as well as other provisions related to procedural law and sharia economic dispute resolution. Meanwhile, a conceptual approach is used to understand the concept of legal certainty in the context of mediation outcomes. The legal materials used in this study consist of primary, secondary, and tertiary legal materials. Primary legal materials include laws and regulations and official court documents. Secondary legal materials are in the form of literature, scientific journals, and scientific papers that discuss issues of legal certainty, mediation, and sharia economics. Meanwhile, tertiary legal materials are in the form of legal dictionaries and encyclopedias that are used to strengthen conceptual understanding of the legal terms or terminology used.¹⁵ The technique of collecting legal materials is carried out through library *research*, which is by tracing and examining relevant legal sources from libraries, online legal databases, and official documents from the Supreme Court and Religious Courts. All legal materials are collected, classified, and studied systematically to support the analysis of the subject matter. The analysis method used is the normative analysis method, which is by systematically interpreting the content of laws and regulations and other legal materials to be compiled in the form of a logical description.¹⁶ This analysis aims to evaluate the extent to which the applicable legal norms are able to provide legal certainty for the results of mediation in the settlement of sharia economic disputes in court, as well as identify possible disharmony or inconsistencies between legal norms and the implementation of judicial practices.

¹⁴ Soerjono Soekanto and Sri Mahmudji, *Normative Law Research, A Brief Review* (Jakarta: Raja Grafindo Persada, 2003), p. 13.

¹⁵ Djulaeka and Devi Rahayu, *Textbook of Legal Research Methods* (Surabaya: Scopindo Media Pustaka, 2019), p. 89.

¹⁶ Johnny Ibrahim, *Theory & Methodology of Normative Legal Research* (Malang: Bayumedia Publishing, 2007), p. 302.

Research and Discussion Results

Mediation Procedure in Sharia Economic Disputes in Religious Courts

Etymologically and terminologically, experts give the meaning that mediation comes from the Latin words, namely "*medius*," "*medium*," or "*mediare*," which means to be in the middle.¹⁷ In the Dictionary of Popular Legal Terms The written agreement of the parties, disputes or differences of opinion is resolved with the help of one or more expert advisors or through a neutral mediator.¹⁸ According to Garry Goopaster, mediation is a negotiation process in resolving a problem, where a neutral or impartial third party works with the disputing parties to help them reach an agreement that is acceptable to all parties.¹⁹ This definition emphasizes the function of third parties as facilitators in the dispute resolution process. Based on the Regulation of the Supreme Court of the Republic of Indonesia (PERMA) Number 1 of 2016 concerning Mediation Procedures in Courts, the definition of mediation is listed in Article 1 number 1, which reads as follows: "Mediation is a way of resolving disputes through a negotiation process to obtain agreement between the Parties with the assistance of a Mediator."²⁰

Dispute resolution through mediation is an alternative form of *dispute resolution* (ADR) that is accommodated in the national legal system.²¹ In the religious justice environment, mediation has become an integral part of the judicial process, especially since the issuance of Supreme Court Regulation (PERMA) Number 1 of 2016 concerning Mediation Procedures in Courts. This PERMA strengthens the position of mediation as a mandatory stage before the case enters the subject of dispute, including in sharia economic cases. All civil cases that are resolved in court, first, must be resolved through mediation. In the consideration of the verdict, it is mandatory to mention the existence of mediation efforts, so that if a case that is attended by both parties in the trial is not mediated, then the decision is null and void.²²

¹⁷ Astarini Dwi Rezki Sri, *Court Mediation: A Form of Dispute Resolution Based on the Principle of Fast, Simple, Low Cost Justice* (Bandung: PT. Alumni, 2013), p. 87.

¹⁸ Jonaedi Efendi, Ismu Gunadi Widodo, and Fifit Fitri Lutfianingsih, *Dictionary of Popular Legal Terms* (Jakarta: Prenadamedia Group, 2016), p. 268.

¹⁹ Garry Goopaster, *Negotiation and Mediation: A Guide to Negotiation and Dispute Resolution Through Negotiation* (Jakarta: ELIPS Project, 1993), p. 201.

²⁰ Supreme Court Regulation (PERMA) Number 1 of 2016 concerning Mediation Procedures in the Court

²¹ Ahmad Hasan Basri, Rozatul Muna, and Siregar Mahrus Alwi Hasan, "Alternative Dispute Resolution (ADR) in Islamic Business Disputes A Positive Legal Perspective and Islamic Law," *Al-Mabsut: Journal of Islamic and Social Studies* 15, no. 2 (2021): p. 244.

²² Cilegon Religious Court class 1B, Mediation (Procedures and Stages), accessed on March 27, 2025 at 20.11 WIB, <https://www.pa-cilegon.go.id/kepaniteraan/mediasi/mediation>.

The procedural process and mediation stages are first examined by a panel of judges for mediation.²³ At the trial attended by both parties to the case, the judge is obliged to explain the need to carry out mediation assisted by a mediator. Next, the judge offers the parties to choose a mediator from the list of mediators provided. After the two parties agree on the name of the mediator, the hearing is postponed within the specified time. If the mediation process has been carried out, the trial will continue by paying attention to the results of the mediation.

The appointment of mediator judges is carried out through the Determination of the Chairman of the Assembly. The parties met with the mediator judge assisted by a predetermined officer. The process in mediation is determined by the mediator judge concerned until a maximum of 40 days, and on the basis of agreement of the parties, the mediation period can be extended for a maximum of 14 working days. If mediation fails to reach an agreement, the mediator judge shall serve a written notice to the judge of the panel examining the case and the parties appear before the judge on the specified day of the hearing, and the trial proceeds as usual. If mediation reaches an agreement, the parties are required to appear before the judge on the day of the trial with the result of the agreement that has been signed by both parties.²⁴

If mediation does not reach an agreement, the examination in the trial will continue according to the stages. If mediation reaches an agreement, the parties are obliged to appear before the judge with the results of the agreement that has been signed by the parties. Regarding the outcome of the agreement, the parties can request that the results of the agreement be stated in a peace decision (*deed of dading*). Revoke the lawsuit as a clause that must be included in the agreement, if the result of the agreement does not want to be stated in the decision. The cost of summoning the parties for the mediation process is first charged to the Plaintiff or Applicant. If an agreement is reached, it will be charged to the parties, if an agreement is not reached, it will be charged to the party who legally pays the case fee. The types of Mediated Cases are all types of civil cases. For mediators, judges are not given honorariums. If the mediation fails to reach an agreement, all statements or confessions cannot be used as evidence in the case concerned or other cases, and must be destroyed and the mediator cannot be a witness and if the mediation succeeds in reaching an agreement and it turns out that there is a mistake that causes losses later on, the mediator cannot be held criminally or civilly liable for the content of the peace agreement as a result of the mediation process.²⁵

²³ Kuningan Religious Court, "Mediation Procedure," accessed on March 28, 2025 at 12.15 WIB., <http://pa-kuningan.go.id/layanan-bukum/layanan-mediati/prosedur-mediati>.

²⁴ *Ibid.*

²⁵ *Ibid.*

The first stage of mediation is the opening stage, where the mediator introduces himself and introduces the parties to the dispute. At this stage, the mediator emphasizes the importance of the good faith and willingness of the parties to resolve the dispute peacefully through mediation. Furthermore, the mediator explains the meaning of mediation, the role of mediators, and the mediation procedures to be carried out. Not forgetting to explain the concept of caucus (a separate meeting between the mediator and one of the parties), the principle of confidentiality, the implementation schedule, and the estimated time needed in the mediation process. The mediator also describes the rules of conduct during the negotiation process and provides space for the parties to ask questions to create mutual understanding.²⁶

The next stage is to formulate the problem and set an agenda. In this stage, the mediator helps the parties identify common topics of the existing problem, agree on relevant subtopics to be discussed, and arrange the order of discussion in the form of a negotiation agenda. After that, the mediator explores the hidden interests behind the positions of the parties. This can be done directly through open-ended questions, or indirectly by reformulating the parties' statements based on what they have disclosed. The process then proceeds by raising dispute resolution options. At this stage, the mediator encourages the parties to get out of the positional mindset and be open in exploring alternative solutions that are collaborative. This process greatly determines the success of mediation, because often mediation is not successful due to a lack of good faith on the part of the parties. They sometimes ignore mediation by deliberately not attending this important stage.²⁷ Actually, some people do not realize the urgency of mediation because they do not understand it well which requires a separate approach through increasing literacy.²⁸ Once the options have been presented, the mediator helps analyze each settlement option by considering the advantages and disadvantages of each alternative, as well as reminding them of the importance of being realistic and not offering unreasonable solutions.

The next stage is the final bargaining process, where the parties begin to see common ground in their interests and are willing to make concessions. Mediators play an active role in helping the parties develop offers that can be the basis for reaching a settlement. If there is an agreement, then the last stage is the preparation of a formal agreement. In this phase, the parties

²⁶Supreme Court Regulation (PERMA) Number 1 of 2016 concerning Mediation Procedures in Courts."

²⁷ Sri Turatmiyah et al, The Ineffectiveness Of Mediation In Divorce Disputes: a Case Study In The Palembang Religious Court", *Asb-Syir'Abjurnal Ilmu Syari'Ab Dan Hukum* 56, no.2, (2022): p. 374, doi: <https://doi.org/10.14421/ajish.v56i2.1232> .

²⁸ Rizka Fauziah Hayati, Busyro, and Bustamar, "Effectiveness Of Mediation In Sharia Economic Dispute Resolution: Phenomenology At Bukittinggi Religious Court," *ALHURRIYAH : Journal of Islamic Law* 6, no. 1 (2021): p. 76, doi: <https://doi.org/10.30983/alhurriyah.v6i1.4097>.

prepare the content of the agreement, as well as agree on implementation procedures or follow-up plans as a form of commitment to end existing disputes peacefully and measurably.²⁹

One example of a peace deed decided by a judge is case number 103/Pdt.G/2024/PA. Btl explained that the Plaintiff and the Defendants had come to the trial and explained that the Plaintiff and the Defendants were willing to end their dispute as contained in the lawsuit letter Number 103/Pdt.G/2024/PA. Btl dated December 15, 2023 which has been registered at the Religious Court Clerk xxxxxx on January 8, 2024 by way of peace.³⁰ That peace is carried out through a mediation process led by the mediator Non-Judge Siti Rosidah, S.H., C.M. That the parties first explain the following matters. That on December 7, 2023, the First Party as the Plaintiff has filed a Default lawsuit against the Second Party based on the Murabahah Agreement Number 1.01.21.002593/PMS/BMTAS/MRB/IV/2022 dated April 07, 2022; Second, that on January 23, 2024, the Parties have mediated with Mediator Siti Rosidah, S.H., C.M. and the parties have agreed to resolve the existing case peacefully and in the form of a peace deed; Third, that the parties agree to end the dispute, as stated in the default lawsuit and agree to peace with the following terms and conditions: First, that the First Party and the Second Party have previously signed the Murabahah Agreement Number 1.01.21.002593/PMS/BMTAS/MRB/IV/2022 dated April 7, 2022; Second, that based on the Murabahah Agreement Number 1.01.21.002593/PMS/BMTAS/MRB/IV/2022 dated April 7, 2022, the amount of material losses that must be paid by the Second Party to the First Party is IDR 74,226,000 (seventy-four million two hundred and twenty-six thousand rupiah); Third, that the Second Party is willing to pay all arrears every month in the amount of Rp. 8,000,000 (eight million rupiah) until the arrears are paid off, which begins to be paid on February 15, 2024; Fourth, that after the arrears are paid off, the Second Party continues to pay the installments normally in accordance with the installment schedule; Fifth, that the parties agree that in the event of another default, the Second Party is willing to provide collateral in the form of a Car with BPKB No. L.0965369, Police No. AB 1329 BD, Daihatsu Brand to the First Party and subsequently the collateral is sold to pay off the financing of the Second Party; Sixth, that all forms of peace on the matter will be outlined in the judge's decision, and the parties are obliged in good faith to implement the content of the peace; Seventh, that the Parties agree that this Peace Act is confirmed in a court decision.³¹

²⁹ *Ibid.*

³⁰ Peace Deed Number 103/Pdt.G/2024/PA.Btl.

³¹ *Ibid.*

Furthermore, the content of the peace deed is to consider, that on the peace the Panel of Judges renders a Decision as follows, the Religious Court; Have read and studied the case file; Having heard both sides of the case; Have read the results of the mediation report; Have read the peace agreement letter mentioned above; Considering Article 130 of the HIR and the Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2016 concerning the Mediation Process in the Court and other relevant legal provisions; prosecuting, 1. Declare that peace has been achieved between the two parties; 2. Punishing the Plaintiff (PLAINTIFF) and Defendant I (DEFENDANT 1) and Defendant II (DEFENDANT 2) to obey the agreed peace content; Charging the Plaintiff and the Defendants to pay the case fee of Rp 705,000.00 (seven hundred five thousand rupiah).

Based on the decision of case Number 103/Pdt.G/2024/PA. In the above case, it can be seen that when the parties have chosen to reconcile and agree with the outcome of the mediation mediated by the mediator, the parties agree to end the dispute and the mediator is obliged to submit the results of the mediation to the judge for further the results of the mediation are outlined in the judge's decision so that the rights and obligations listed are binding on the parties and are obliged to carry out the content of the peace. During the mediation process, the mediator plays the role of facilitating communication between the parties to reach a peaceful agreement without forcing a specific settlement. Therefore, a mediator is required to have qualified communication skills, have good knowledge in the mediated field and be insightful.³² In the context of sharia economic disputes, the mediation process not only pays attention to positive legal aspects, but also sharia values such as justice (*al-'adl*), benefits (*al-maslahah*), and voluntary agreements. If an agreement is reached, then a deed of peace (*deed van dadang*) is made which is then determined by the panel of judges in the form of a verdict.³³

This process shows that mediation is not only a formal procedure, but also a substantive instrument for resolving sharia economic disputes peacefully, quickly, and with dignity. More than that, it even contributes to the preservation of relations between the disputing parties.³⁴ This is in line with the principles of simplicity, speed, and low cost as mandated in the national justice system.

³² Herliana, "Maqasid al-Sharia in Court-Mediation Reform: A Study on Efficiency and Social Justice in Medical Disputes," *De Jure: Jurnal Hukum dan Syar'iah* 15, no. 2 (2023): hlm. 217.

³³ M. Mahzar, "An Analysis of the Comparison of Peace Deeds Made Before a Notary and Peace Deeds Made by Mediators in Court in Dispute Resolution," *Journal of Law of Deli Sumatra Journal of Legal Science* 1, no. 2 (2022): p. 11.

³⁴ Asep Syarifuddin Hidayat, "The Emergency of Mediation in Religious Court," *Salam: Journal of Syar'i Social and Cultural* 10, no. 3 (2023): 713, <https://doi.org/10.15408/sjsbs.v10i3.33318>.

Legal Certainty of the Peace Act as a Result of Mediation

Legal certainty is the main principle in every legal settlement, including the outcome of mediation. In the context of religious justice, if mediation results in an agreement, the judge is obliged to ratify the agreement in the form of a peace decision that has permanent and binding legal force for the parties. When a case is resolved through a peace stipulated in the peace deed before the court, the content of the decision must be obeyed and carried out by the parties as stipulated in the peace decision. Every peace decree has binding legal force and must be enforced, as stipulated in Article 1858 paragraph (2) of the HIR which states that a peace deed has the same legal force as a court decision that has permanent legal force and has the power to execute (*executorial kracht*).

Thus, from the moment a peace judgment is issued by the court, the judgment automatically has the force of execution. If one of the parties does not fulfill the content of the agreement in the peace deed voluntarily, then the aggrieved party has the right to apply for execution to the court. The application will be followed up by the chief justice through the execution in accordance with the provisions of Article 195 of the HIR. In sharia economic cases, the guarantee of legal certainty over the results of mediation is increasingly important considering the nature of the agreement based on sharia contracts and the principle of trust (*amanah*) between the parties. The peace act is not only legally binding, but also reflects the understanding and good faith of the parties in resolving disputes in accordance with sharia values. With the achievement of peace through mediation and the pronouncement of a peace deed by the panel of judges, the decision is final and has permanent legal force, because neither appeal nor cassation can be filed (except for default on the deed). It can be executed immediately if one of the parties breaks the promise (without going through a new lawsuit). It is a form of alternative legal certainty that still guarantees the protection of the civil rights of the parties in the sharia and national systems.

Reviewing the legal consequences of the decision of the peace deed, it can be affirmed that the peace deed that has been agreed upon by the parties is then stated in the form of a court decision. The goal is for the agreement to have binding and executory legal force. Thus, if in the future one of the parties defaults on the content of the agreement, the peace deed can be immediately implemented through an execution mechanism by the clerk or bailiff of the court without the need to file a new lawsuit. The execution process was recorded in the minutes of the trial as a form of official documentation that became the basis for implementation in the field.

Therefore, a peace deed has legal force equivalent to a court decision that has permanent legal force, so that it can become a valid legal hold for the parties to the dispute.³⁵

In civil procedural law (including religious courts), when the parties succeed in reconciling in the mediation process, the judge will end the case with a "peace decision" (peace deed). This decision is final and binding. In order for the peace agreement to have the force of executory law, the judge "punishes" both parties to obey the content of the agreement. This is not a negative meaning (such as punishing for being wrong), but a formal term in a judgment to give legal force. So, a kind of "court order" that is valid and enforceable if violated. In the verdict of several cases that can be found in the copy of the verdict, it was found that the judge decided to "punish the Plaintiff and Defendant I and Defendant II to obey the content of the peace that has been agreed." Although the phrase "punish" seems negative, in the context of civil procedure law, the terminology is part of the standard formula of a peace decree (*deed van dading*) which aims to give executory legal force to the content of the agreement.³⁶

The legal basis can be traced from Article 1858 of the Civil Code and Article 130 of the Civil Code / Article 154 of the Civil Code which states that the peace that occurs before the judge must be stated in the decision so that it has permanent legal force and cannot be filed for legal remedy. Therefore, the judgment must expressly contain an "order" to the parties to obey the content of the peace, so that the agreement is not only legally valid, but also has legal force if one of the parties defaults in the future.³⁷

This formulation is also in line with Supreme Court Regulation No. 1 of 2016 concerning Mediation Procedures, which states that the results of mediation that are successfully stated in the peace deed become part of a binding court decision. Thus, the use of the phrase "punishing the parties to obey the content of the peace" is not a form of criminalization, but a legal statement that provides a guarantee of certainty and legal protection for the parties. In the context of sharia economic law, this amar formula also affirms the importance of settlement through peaceful channels (*islah*), while ensuring that the results of the *islah* have formal legal legitimacy. This is important to maintain justice and legal stability in sharia economic transactions based on trust and contracts.

³⁵ Yuni Priskila Ginting et al., "Socialization Related to the Arrangement for the Implementation of Peace Decisions Based on Civil Procedure Law" 2, no. 11 (2023): p. 925, <https://doi.org/10.58812/jmws.v2i11.740>.

³⁶ Jesica Silvani Onibala, Josina E. Londa, and Roy R. Lembong, "The Peacemaking Power of the Parties under the Law of Civil Procedure," *Lex Privatum* 9, no. 6 (2023): p. 187.

³⁷ Civil Code (Burgerlijk Wetboek voor Indonesie).

Analysis of Legal Certainty Results of Mediation from the Perspective of Islamic Law and Gustav Radbruch's Theory

Islamic law interprets mediation with the term *sulh*, which is the resolution of disputes through peaceful means.³⁸ Islam not only recognizes mediation, but also strongly advocates it as a conflict resolution mechanism that prioritizes justice and mutual benefit.³⁹ This can be seen in Q.S. al-Hujurat verse 9:

وَأِنْ طَائِفَتَيْنِ مِنَ الْمُؤْمِنِينَ اقْتَتَلُوا فَأَصْلَحُوا بَيْنَهُمَا فَإِنْ بَغَتْ إِحْدَاهُمَا عَلَى الْأُخْرَىٰ فَقَاتِلُوا الَّتِي تَبْغِي حَتَّىٰ تَفِيءَ إِلَىٰ أَمْرِ اللَّهِ فَإِنْ فَاءَتْ فَأَصْلَحُوا بَيْنَهُمَا بِالْعَدْلِ وَأَقْسِطُوا إِنَّ اللَّهَ يُحِبُّ الْمُقْسِطِينَ

Meaning: If there are two groups of believers at war, reconcile the two. If one of them persecutes the other, fight the persecutor, until that group returns to Allah's command. If they have returned, reconcile them justly. Be fair! Indeed, Allah loves those who are just.

In the modern context, legal certainty is part of the principles of *hifz al-mal* and *al-'adalah*. According to Jasser Auda, in the theory of contemporary sharia maqashid as explained in *Maqasid al-Shariah as Philosophy of Islamic Law*, there are six maqasid systems of thought, including the system of guaranteeing justice and the sustainability of law. The concept is reflected in the characteristics of *Purposefulness* and *Interrelated Hierarchy*.⁴⁰ Through this approach, Auda emphasizes that the main goal of Islamic law is to achieve justice, welfare, and the benefit of humanity, as well as to ensure that the law remains relevant and sustainable in the face of the changing times.⁴¹

In this context, the legal certainty born from the results of mediation not only reflects the clarity of the legal position of the parties, but also ensures the protection of disputed rights in a fair and peaceful manner. This is in line with Jasser Auda's contemporary maqashid theory which emphasizes the importance of *the system of purposefulness* (goal orientation) and *interrelated hierarchy*. Therefore, when the results of mediation are legally formalized and can be executed, it becomes not only a juridical product, but also a sharia instrument that fulfills maqasid: maintaining benefits, ensuring social stability, and avoiding damage (*mafsadah*).⁴² This is a form of legal certainty that is both functional and spiritual in the framework of Islamic law that is dynamic and adaptive to the development of the times.

³⁸ Burhanuddin S., *Sharia Business Law* (Yogyakarta: UII Press Yogyakarta, 2011), 243.

³⁹ Muhamad Ulul Albab Musaffa, "Optimizing Dispute Resolution in the Perspective of Islamic Law and the Indonesian Legal System: A Comparative Study between Litigation and Alternative Dispute Resolution (ADR)," *Az-Zarqa: Journal of Islamic Business Law* 8, no. 2 (March 1, 2025): 265, <https://doi.org/10.14421/g1674m86>.

⁴⁰ Jasser Auda, *Maqasid al-Shariah as philosophy of Islamic law: a systems approach*. (International Institute of Islamic Thought (IIIT), 2008), 48–51.

⁴¹ Auda, 48–51.

⁴² Maqasid al-Sharia in Court-Mediation Reform: A Study on Efficiency and Social Justice in Medical Disputes, 217–20.

In addition, the result of mediation is considered a valid contract (agreement) if it meets the conditions of willingness of both parties (without coercion), the object and content of the agreement is clear, does not violate sharia principles (does not legalize what is haram or otherwise).⁴³ If these conditions are met, then the outcome of the mediation becomes legally binding according to Islam. This is confirmed in the word of Allah:

يَا أَيُّهَا الَّذِينَ آمَنُوا أَوْفُوا بِالْعُقُودِ

Meaning: O you who believe, fulfill the contracts... (QS. Al-Māidah: 1)

This means that the agreement resulting from mediation is a promise that must be kept and has legal certainty in Islam, equivalent to other muamalah contracts. In practice, if the result of mediation is ratified by a judge, then in Islamic law it has the status of *a hukm* (legal decision) that must be obeyed, has the power of execution, as the judge's decision.⁴⁴ This strengthens the legal certainty of the outcome of mediation, because it is not only a moral or social agreement, but also has the formal force of sharia law.

Gustav Radbruch's legal theory states that the ideal law must meet three basic values: legal certainty (*Rechtssicherheit*), utility (*Zweckmäßigkeit*), and justice (*Gerechtigkeit*). The three are inseparable, and an imbalance between them can cause the law to lose its substantial meaning.⁴⁵ First, from the aspect of legal certainty, the results of mediation outlined in the peace deed and ratified by the judge have legal force equivalent to an inkracht court decision. This shows that the mediation process in religious courts has met the element of legal certainty. A peace deed can be used as a basis for execution if the losing party does not implement the content of the agreement. This certainty is obtained through clear and structured legal procedures as stipulated in PERMA No. 1 of 2016 and Article 130 of the HIR, so that the parties can predict the legal consequences of the outcome of the mediation.

From the perspective of this legal certainty, a peace deed can be said to be even stronger than a judge's decision, if the dispute settlement is carried out in a manner that is straightforward. This conclusion is based on the provisions of article 130 of the HIR which imperatively states that the peace deed will be carried out as it should be an ordinary decision with the emphasis of the clause "such decision shall not be allowed to appeal". Meanwhile, the judge's decision on legal

⁴³ Nik Abdul Rahim Nik Abdul Ghani and Abdul Rahman A Shukor, "Deemed Consent in Islamic Banking from Contract Law Perspective: A Sharia Analysis," *Samarah: Journal of Family Law and Islamic Law* 8, no. 1 (January 13, 2024): 42–43, <https://doi.org/10.22373/sjhk.v8i1.16305>.

⁴⁴ N. Khalidah Dahlan, "Alternative Dispute Resolution for Islamic Finance in Malaysia," ed. oleh S.A. Aljunid dkk., *MATEC Web of Conferences* 150 (2018): 2–3, <https://doi.org/10.1051/mateconf/201815005077>.

⁴⁵ Gustav Radbruch, "Five Minutes of Legal Philosophy (1945)," *Oxford Journal of Legal Studies* 26, no. 1 (2006): hlm. 13.

disputes that are resolved through litigation can be made in the form of an appeal, for up to 14 days from the reading of the decision.

Second, in terms of benefits, mediation provides faster, more efficient, and low-cost solutions for justice-seeking communities, especially in sharia economic disputes that often involve business relationships between Muslim individuals. Through mediation, the relationship between the parties can be restored, and the agreement reached tends to be more acceptable because it is the result of deliberation. This is in line with sharia values that emphasize the peaceful settlement of disputes (*ṣulh*) and uphold the principle of *maslahah*.

Third, regarding the value of justice, the results of mediation in sharia economic cases contain a high participatory aspect because the parties voluntarily reach an agreement that is considered fair according to themselves. This method is even in accordance with the culture of Indonesian society which prioritizes deliberation in decision-making that has been practiced for generations.⁴⁶ Mediation provides greater room for the accommodation of substantive justice values, compared to the more rigid litigation process. However, justice must also be maintained so that it does not only benefit one party. Therefore, the role of the judge as a supervisor and endorser of the outcome of the mediation is very important to ensure that the agreement does not violate the law and the principles of justice. Thus, if analyzed using Radbruch's theory, the mediation mechanism in the settlement of sharia economic disputes has led to integrative efforts between legal certainty, utility, and justice. The three complement each other in creating a dispute resolution system that is not only legally valid, but also effective and socially and spiritually just.

Conclusion

Mediation in sharia economic disputes in the Religious Court is an effective, efficient, substantive mechanism that reflects the value of deliberation in the Indonesian legal culture. The legal basis can be traced from Article 1858 of the Civil Code and Article 130 of the Civil Code / Article 154 of the Civil Code which states that the peace that occurs before the judge must be stated in the decision so that it has permanent legal force and cannot be filed for legal remedy. The legal certainty born from the results of mediation not only reflects the clarity of the legal position of the parties, but also ensures the protection of disputed rights in a fair and peaceful manner. This is in line with Jasser Auda's contemporary maqashid theory which emphasizes the importance of *the system of purposefulness* (goal orientation) and *interrelated hierarchy*. The peace deed as a result of mediation passed by a judge has permanent legal force and provides legal certainty, utility, and

⁴⁶ Karmawan, "Mediation in The Religious Courts of Indonesia," *Abkam: Jurnal Ilmu Syariah* 20, no. 1 (2020): p. 94.

justice as Gustav Radbruch's theory. However, practical challenges such as default and lack of understanding of the law still hinder its effectiveness. Therefore, standardization of peace deeds, legal education to the public, and clear execution regulations are needed. With these measures, mediation has the potential to be an ideal dispute resolution within the framework of sharia and national law.

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