

The Mediation Process in Sharia Economic Dispute Resolution Through the Religious Court in Indonesia

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Abstract: Mediation through the religious court is still achieving a low success rate in Indonesia, from 2003 to 2015. Based on the results of the study, data shows that the maximum achievement is only 18.1 %. This study aims to determine the repositioning of the mediation process in resolving Islamic financial dispute through the Religious Courts after the enactment of Supreme Court Regulation No. 1 of 2016. This research is a normative and empirical legal research that uses qualitative methods. The interviews were conducted through field research in 5 (five) Religious Courts in the Special Region of Yogyakarta. The results showed that the mediation process at the Religious Courts as one of the conditions for filing a lawsuit was no longer included in the trial, but carried out outside the trial which become a mandatory requirement in the registration of the lawsuit. As for the factors that support law enforcement there are five factors including law and legislation, law enforcement officers, facilities and infrastructure, society and culture.

Keywords: Mediation Process, Dispute Resolution, Sharia Economics, Religious court

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I. INTRODUCTION

The integration of a mediation procedure in the courts has been in effect since 2003. In other side Indonesia has the biggest Muslim compare on the others religion. It Indicates that Indonesia is suitable as pioneer and standard of Islamic banking development in the world. This is based on the Alam opinion (2017). The use of this procedure is a mandatory procedure in the resolution of civil disputes including the settlement of Islamic civil disputes. In the context of the Islamic economic dispute resolution, mediation mechanism was implemented in line with the expansion of the Religious Courts competence in handling disputes, through Law No. 3 of 2006 on the Amendment of Act No. 7 of 1989 about the Religious Courts. The utilization of mediation in the Religious Courts continues. In addition, the issuance of the decision of the Constitutional Court No. 93/PUU-X/2012 and the Supreme Court Regulation No. 1 of 2016 on Mediation Procedure in the court dispute resolution strengthen the Islamic banking institutions Religious Courts. The use of mediation mechanisms shows its success in some cases and achieves some improvements. However, if it is viewed from the achievements of the percentages of success in previous studies, it only obtained 18.1% which means it is still below 50%.

The results of previous studies indicate that the process of settling disputes through mediation mechanism in a religious court in Indonesia cannot be said to be successful. Based on Rahmiyati's research, the success of mediation achieved before Supreme Court regulation No. 1 of 2016 was 3 % up to 5 % (Rahmiyati, 2013). Based on Benny Riyanto's result of research conducted, the achievement of the mediation success rate of the highest court was only 5 % (Riyanto, 2017). Next, the records compiled by Muslim, Young Registrar in the Religious Court, the data start from 2015 to June 2017, in Wonosari Religious Court has received 40 shariah economic cases. Of these, only 4 (four) cases were solved through the litigation process, 25 (twenty-five) cases were solved through mediation and 11 (eleven) cases through the revocation of the cases. This means that the success rate of mediation on Wonosari Religious Court is 63 % (Noor, 2017).

The researchers assume that the unsuccessful settlement of disputes through the courts is caused, among others, by different religious cultures of Indonesian society with mediation models that become part of the law of civil procedure which is formal in nature. This is based on Supreme Court Regulation No 1 of 2016 on Procedure for Mediation in Courts. Based on the Supreme Court Regulation, the mediation mechanism is

part of the judicial process causes the level of achievement of success to be not optimal and there is tendency to achieve a high percentage of failure.

That is also caused by the character of the parties to the dispute. The parties usually do not want to reduce their ego. Those who were summoned by the court, the defendants felt guilty and the plaintiff felt that they had won. Therefore, it is not surprising that the defendant was discouraged from negotiating while the plaintiff was often reluctant to give relief or concessions to reduce the burden on the defendant. Such conditions often create conditions to prevent the success of the mediation process. Another factor that led to the failure of mediation was the lack of competence among judges to act as mediators and the limited number of non-judge mediators available in religious courts.

Examining the repositioning of the mediation process of sharia economic disputes resolution through Religious Court at the implementation of PERMA No. 1 of 2016. The formulation of the problem is how repositioning of the mediation process in the Sharia Economic disputes resolution through religious court. This paper is expected to contribute to the process of sharia economic dispute settlement and support the effectiveness of the legal procedure in religious court.

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II. MATERIAL AND METHODS

This research used the socio-legal approach with qualitative tradition¹. The study was conducted with two strategies, namely library research and case study. Library study was conducted on all documents or literature about Islamic banking dispute settlement through mediation in the religious court. The existing documents are then grouped according to the dimension of time period. The case study in this research is the national case, particularly the case of Islamic banking disputes. This study uses the codes of socio-legal studies², i.e. understanding the law not merely as a normologic and esoteric normative entities. So that the law of Islamic banking in this study is understood as an entity which is heavily influenced by non-legal factors. The formulation of the substance or content, the choice of goals and the means used to achieve the objectives of Islamic banking or the dispute settlement are believed to be interaction with non-legal factors.

Primary data were obtained through field research with observations, interviews and Focus Group Discussion (FGD)/workshop, which includes: a. Law sanction institution: Judge at the Religious Court and Supreme Court, Legal Section Staff at the Islamic Bank, Notary Public, Advocate, Registrar. b. Role Occupant: Islamic Bank Management, Islamic Bank Customers-done with hermeneutics, sociology of law and phenomenology.

Secondary data were obtained through the Library Research and Legal Document, which includes: Primary Law Materials, include: 1) Law No. 21 of 2008 and its implementing regulations, PERMA No. 1 of 2016; 2) the Constitutional Court Decision No. 93/PUU-X/2012. Secondary Legal Materials, consisting of books about the legal system, the principles of law, the agreement (contract), Islamic banking, political law, legal theory, legal research methodology, and journals.

III. RESULT AND DISCUSSION

3.1. The Definition of Sharia Economic Law

Sharia economic law is the study of the system of economics and/or transactions based on the values of divinity and Islamic law. Sharia economics is a science that examines the behavior of the human economy which behavior is regulated based on the rules of Islamic faith and law. Based on Article 49 letter (i) Law No. 3 of 2006 as amended by Law No. 50 of 2009, sharia economics is an act and or business activity performed according to sharia principles, among others: sharia bank, sharia microfinance institution, sharia insurance, sharia reinsurance, sharia mutual funds, sharia bonds and sharia medium-term securities, sharia securities, sharia financing, sharia pledge, pension fund, sharia financial institution, and sharia business. Later on, notions of sharia economy include acts and/or activities related to *zakat*, *infaq*, *shadaqah*, and *waqf* as well as financial management of hajj.

3.2. The Variation of Concept of Mediation

The variation of the concept of the mediation process, according to Laurence Boulle (2017)³, can be categorized into three models or types, namely: (1) "the variation in relation to the number of mediators

¹ Noeng Muhadjir, *Qualitative Research Methodology*, (Yogyakarta: Publisher Rakesarasin, 2002).

² Rikardo Simarmata, *Socio-Legal Studies and Legal Reform Movement in the Law Digest*, Journal Society and Development, Volume 1, (December 2006-March 2007).

³ Laurence Boulle, *Mediation Principles, Process, Practice*, Adelaide: Butterworths, 1996, 113-118.

(variations in relation to the number of mediators), (2) the variation in relation to the joint meetings, and (3) the variation in relation to a separate meeting”.

The first model based on Laurence Boulle opinion that the variation in relation to the number of mediators indistinguished in some type of process, namely:

1. The solo mediation process, and;
2. The co-mediation process.

The essence of solo Mediation is the use of a single mediator. While the co-mediation process used in the situation of using more than one mediator”.

The second model is divided into several types of processes, among others:

1. Multiple meetings;
2. Different venues of meetings, and;
3. Meeting with teleconference (telephone conferences).

Multiple Meetings has significant meaning because most mediation doesn't reach the final in one sitting (meeting) and delays become necessary. Delays can have several functions in the mediation process. The multiple meetings enable the parties to obtain further information, such as assessment, professional advice, reassessing their situation, and planning and response. In addition, it also allows mediators to propose a confidentiality restriction, to assess the progress and plan the strategy of the next session. However, delays have weaknesses one of the regression to things that have been agreed. Different mediation process may arise regarding the reasons if space and logistics. The statements from each side can be used as the rotation to indicate the side of parties. As for meetings with teleconferencing, it can be done by telephonic either for reasons of geographical distance, lack of resources, as well as a requirement or legal necessity”.

The third model includes:

1. Shuttle mediation), and;
2. Separate meetings with the advisers and parties.

Shuttle Mediation means separate meetings without the parties meet together. The Mediator move from one party to another party; solely as a vehicle of communication and negotiation between the parties. This is achieved when in a state of antagonism and if a meeting is conducted, it will only counterproductive. The second type which is separate meetings with advisers and parties, explains the flexibility of the mediation process. This type allows the mediator to do separate meetings with lawyers or advisers of the parties.

In the context of the strategic freedom and flexibility to choose the model, the mediation which is integrated to the court undoubtedly allow the mediators to choose among models and strategies which are appropriate to the situation in Indonesia. The joint meeting could fit in a particular situation, but it does not guarantee it will suitable with certain other case situations. In many cases, in which the party does not want to meet with any reason, it will, of course, require another model except the joint meeting.

Theoretically, a mediation model can also be grouped into settlements model/compromise, facilitative model, therapeutic style, and evaluative model. The Acceptance of strict categorization model in Indonesia has caused distortion in the evaluative models. Susanti Adi Nugroho determines that “the court mediation is more focused on the evaluative models”.

This model is characterized by several things:

1. The parties come and expect the winner and loser should be determined;
2. Is more focused on the rights and obligations;
3. Mediators are usually experts in their fields or an expert in the field of law because of the approach is on the right. Mediators tend to provide a way out and information related to the legal field in order to lead to inappropriate final result;
4. Provide advice or counsel to the parties in the form of legal advice or the way out offered by the mediator, so that it contains weaknesses;
5. The parties felt that they did not have a signed an agreement.

This determination makes court mediation is less soft. The failure lies in determining models which are not compatible with the situation of the disputing parties. The harmed the interests, the demands, the psychological conditions, the legal relationships underlying the dispute can't be found variations of the model, so there is no other way to solve it.

The above description leads to the understanding that a mediation model that is integrated into the courts requires reconstruction for the purpose of achieving optimal results, which is a success, as a significant effort for a dispute settlement. Based on a model that has been developed, possible variations in practice in Indonesia needs to be loosened. It means that changing the settings of mediation from the tight model and strategy into the open on the choice of the mediator in accordance with the unique conditions of the case at hand.

3.3. The Model and Mechanism of the Mediation's Implementation on Religious Courts in Indonesia

The dispute resolution model using mediation mechanism is part of a model of alternative dispute resolution (ADR). The existence of the mediation develops in addition to other models such as the negotiation and conciliation which exist gradually. Adi Sulistiyono⁴, Theoretically, there are two (2) models that are often used to resolve disputes, namely:

1. "First, adjudicative dispute resolution model. This approach is an approach to justice through the adversary system and the use of coercion in managing disputes and to result in a decision if the win-lose solution, for the parties. In this adjudicative models, in addition to the court (litigation settlement) which was born in the first wave, the arbitration born in the second wave.
2. Second, non-adjudicative dispute resolution model. In this model, the justice achievement prefers the approach of "consensus" and attempt to reconcile the interests of the disputing parties and aims to achieve a win-win solution for the dispute resolution. This non-litigation dispute resolution is often called the ADR".

Benny Riyanto⁵, agreed with Ehrmann opinion as quoted by Steven Vago⁶, revealed that "There are two principal forms of resolving legal disputes throughout the world. Either the parties to a conflict, determine the outcome themselves by negotiation, which does not preclude that a third party acting as a mediator might assist them in their negotiations. Or, the conflict is adjudicated, the which means that a third, and ideally as impartial party decides the which of the disputants has the superior claim".

The forms mentioned above, used and sometimes intertwine over civil, criminal, and administrative disputes. Accordingly, Steven Vago⁶ confirms that the main dispute resolution mechanisms that can be described in a continuum series range of the negotiation to adjudication. In negotiations, the participation voluntary and the disputing parties prepare for their own settlement. The next series (continuum) is mediation, in which a third party facilitates a settlement and assist the parties in reaching a voluntary agreement. The end of the series is the adjudication (whether judicial or administrative), the parties were forced to participate, and the case was decided by a judge. In this case, the parties may be represented by legal counsel (advocate) with a formal procedure, and the results can be enforced by law. Meanwhile, adjacent to adjudication is arbitration, which is more informal.

Sharia economic dispute settlement through mediation that is integrated into the religious courts have not been effective. It is caused by several things, among others: a) because dispute settlement with litigation is identical with excessive formalities, b) Expensive; c) there is a potential siding one party; and d) there are results of the judge's decision that is still disappointing the justice seeker. In that context, ADR (alternative dispute resolution) becomes an alternative that offers the more efficient and effective, simple and confidential processes, whether in the form of negotiation or mediation. Abdul Rasyid has the same argument. He said: "the Islamic legal system, the ways in which disputes are resolved generally fall under two categories. The first category is through litigation, namely in Islamic court (al Qada or adjudication), and the second is through amicable means such as negotiation, conciliation, and compromise (Nasihah or sincere advise), mediation (Sulh), arbitration (Tahkim). Mediation along with arbitration (Sulh and Tahkim), an ombudsman (Muhtasib) expert determination (Mufti's Fatwa). These mechanisms are called alternative dispute resolution (ADR) that refers to a range of dispute processes which are alternative to traditional litigation"⁷.

In practice, when the negotiation or mediation fails to offer, the choices for the parties are arbitration or court. "Many disadvantages inherent in the process of litigation may prompt those involved to seek an alternative way of dispute resolution (ADR), offering less formality, lower costs and protection of privacy. Hence, in this respect, ADR could be proposed as an ideal mechanism"⁸.

In Indonesia, in general, the provision on mediation is based on Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution (Act of Arbitration and APS). However, in the APS Act, it is not regulated in detail related to the implementation of the mediation mechanism. Moreover, it is not mentioned that the mediation mechanism should be integrated into the judiciary. The new provision on mediation in courts is governed by the Rules of the Supreme Court No. 1 of 2016 on the Procedure of Mediation in the Court (hereinafter referred to Supreme Court Regulation).

The Act of Arbitration and APS at the level of ideas contain the controversy with the Supreme Court Regulation. Related to the mechanisms of mediation, on the one hand, it gives freedom to the mediators to use

⁴ Adi Sulistiyono, *Develop Non-Litigation Paradigm in Indonesia*, Surakarta: UNS Press, 2006, 6.

⁵ Benny Riyanto et al, *Transplantation Mediation in Civil Justice System in Indonesia*, Semarang: Universitas Ponegoro, 2016, 18.

⁶ Steven Vago, *Law and Society*, 10th Edition, New Jersey: Prentice Hall, 2011, 256.

⁷ Abdul Rasyid, "Relevance of Islamic Dispute Resolution Processes on Islamic Banking and Finance", *Journal Arab Law Quarterly*, Volume 27, Issue 4, 2017: 343-369.

⁸ Seeni Mohamed Nafees and Zainal A. Ayub, "Resolution of Islamic Banking Dispute by Way of Arbitration in Sri Lanka", *Journal Arab Law Quarterly*, Volume 30, Issue 4, (2016): 305-335.

variations of the model. On the other hand, it turns out that the model of mediation offered is very limited. Thus, technically, a mediation mechanism becomes very tight. The impression created on the freedom of mediators to use various forms of the model is actually a wrong impression because the freedom given by the Act of Arbitration and APS and the Supreme Court Regulation is a technique from the limited model which has been set. It means that the Act of Arbitration and APS and the Supreme Court Regulation adhere to the paradigm of "limited model" and do not open "the space of models freedom and technical". This is evident in the Article 6 Paragraph 18 of the Act of Arbitration and APS which confirms that: The settlement of disputes or differences of opinion through alternative dispute resolution referred to in paragraph (1) is resolved in the meeting directly by the parties within a period of 14 (fourteen) days and the results are set forth in a written agreement.

Supreme Court Regulation actually sets wider scope than the provisions of Article 6 paragraph (2) of the Act of Arbitration and APS regarding the possibility of applying the model of mediation. Article 5 Paragraph (3) of the Supreme Court Regulation provides that "The mediation meeting may be carried out through communications media, remote audiovisual that allows all parties to see and listen in person and participate in the meeting." The provisions of the Supreme Court Regulation can be said to be more advanced than the Act of Arbitration and APS. However, it leaves the question "Does it mean that the Supreme Court Regulation contradict with the Act of Arbitration and APS?" Apart from the legal meaning of this conflict, it shows that it is the time for the Act of Arbitration and APS to be revised so as not to cause multiple interpretations and contradiction. The preferences to revise the Act of Arbitration and APS is caused by its incompatibility with the nature of mediation as a more flexible dispute resolution in terms of model and technique-compared to the court or arbitration that is adjudicative in nature.

IV. DISCUSSION

12. Mediation in Dispute Resolution Mechanism

Based on the results of research in the field in the Religious Court of Yogyakarta, Central Java and West Java on 8 Religious Courts for the data from 2012 to 2016 and library research, the data are obtained as follows:

THE DATA OF THE RESEARCH IN RELIGIOUS COURT			
Location	Number of Islamic Economics Cases	Mediation Process	Percentage
Yogyakarta	6	0	0 %
Sleman	12	2	16.66 %
Bantul	6	2	33 %
Gunung Kidul	20	18	90 %
Temanggung	3	0	0 %
Purbalingga	27	10	37 %
Bandung	10	1	10 %
	84	33	39.3 % 26.67 %
Data on Nov 2016		Average	32.98 %

Previous research: 18.1 % (Religious Court Data, Year 2012-2016 From Research Data of Dewi NM and Team, Faculty of Law, University Muhammadiyah Yogyakarta, October 2016.

Previous research: 10 % (Supreme Court Data, Year 2012-2016 From Research Data of Benny Riyanto and Team, Faculty of Law, Diponegoro University, Agustus 2016.

Sources: Field Research and Library Research, 2012-2016

In the practice of settlement of civil disputes, especially the disputes on shariah economic, when the legal arrangements were incomplete or unclear, the parties can make interpretation of existing and relevant laws. While in terms of legal arrangements do not exist, then the legal construction of new can be done or provide arguments⁹, relating to the urgency of the arrangements in question, to provide ease in finding a solution to the problems in this research which will be described several sub topics on:

1. The dispute resolution mechanisms in general;
2. The model and mediation mechanisms in the Religious Courts, and;
3. The constraints on the implementation of the mediation in the religious courts in Indonesia and the factors that affect law enforcement.

Conceptually, the applicability of "distance mediation" by the Supreme Court Regulation is only one of the types of models associated with "joint meetings". Thus, the question is "why another type of joint meetings is not adopted? The More essential question is that should be put forward, namely "why other

⁹ Sudikno Mertokusumo, Mengenal Hukum (Suatu Perantar), Yogyakarta: Liberty, 2015, 143-159.

models are not adopted as well, so mediation integrated on the court becomes more varied?" To give freedom to the mediators to build strategy, the Supreme Court Regulation should not call "joint meeting" which is a contrary which means also limiting the strategy. It has been the cause of ineffectiveness of mediation in a religious court if it in terms of the model or type of mediation.

This condition confirms one of the factors that influence the effectiveness of mediation as stated by Tobias Böhmelt that: "With regard to mediation effectiveness, the existing literature frequently emphasizes three factors. The first one pertains to the characteristic of the dispute, i.e. its intensity and duration or the issues at stake. The third factor describes the mediators as such or the type of mediation pursued"¹⁰.

4.2. The Constraints in the Implementation of the Mediation and The Factors Affecting Law Enforcement

The problems in the ineffective mediation integrated on the court are caused by some obstacles. Some of them are due to the failure to create a model of integration, including the mediator's failure in the mediation process. Confidential mediation should be integrated with civil judicial models which are open to the public. This is caused some problems of legal culture for the mediators, advocates and the disputing parties in the mediation practice. As revealed by Tony Whatling¹¹, that cultural assumptions affect the success of a mediator in the practice of mediation.

Steven E. Barkan¹², based on the socio-legal view, suggests the influence of social factors as well as individuals. Communities have differences in certain aspects of the structure and their culture, which helps explain the difference in preference of the method of dispute resolution processes. As it explains why some communities or individuals prefer mediation than other communities¹³. If it is considered as a special situation, then as stated by Christopher W. Moore¹⁴, a strategy is needed to respond to that particular situation.

The next explanation is related to the strategy in conducting examinations and contingent activities. At this stage interventions and prevention are carried out by mediators to respond to unique or unusual situations, the dynamics of conflicts, or parties, which are not present in any negotiations or disputes. Although the mediator faces several obstacles in identifying or describing all situations that may require contingency activities by the mediators, and a detailed explanation of the actual case description, there are some mediators who have the general ability to explain and clarify the case.

Moore in Benny Riyanto¹⁵ also mentions "several authors among others are Fisher, Maggiolo, and Wall describing a unique situation and potential contingency strategies that can be chosen by a mediator to address the issue of failures in the practice of mediation". The situation and strategies discussed are among others:

1. "Problems with parties working together in joint sessions that may require private meetings or Caucuses;
2. Situations involving time and timing that may require time management by mediators;
3. Situations requiring mediator influence and potential strategies and techniques;
4. Problems with parties' bases of power and means of influence, and mediator techniques to address and manage them;
5. Issues related to gender, working with women, and women as mediators;
6. Problems related to the past, present, and future causes of conflicts, and grand strategies to address them;
7. The presence of strong values and how they may be handled".

The above seven situations and strategies are strictly regulated by the Supreme Court Regulation so that the mediator in the Religious Court does not have the creativity to adjust to the conditions of the disputing parties. In addition, the number and skills of Mediator Judge are still limited. In each court, there are only 1-3 Mediator Judges which are certified. Even there are still courts that do not have Mediator Judge. In case there is any violation of the procedures which must be carried out as intended in PERMA No. 1 of 2016, it can lead to the imposition of sanctions so that the court decision becomes null and void.

The placement of mediation mechanism which is integrated into the Religious Courts is a means to replace and optimize the provisions of Article 130 HIR/Article 154 Rbg. The articles regulate about peace.

¹⁰ Tobias Böhmelt, Interaction Synergy International Mediation, Conflict, Effectiveness, Germany: VS Research, 2011, 16.

¹¹ Tony Whatling, "Difference Matters: Developing Culturally Sensitive Mediation Practice", *Journal of Mediation & Applied Conflict Analysis*, Maynooth University, 2016: 48-58.

¹² Steven E. Barkan, Law, and Society, An Introduction, New Jersey: Pearson, Prentice Hall, 2009), 104.

¹³ *Id.*

¹⁴ Christopher W. Moore, *The Mediation Process*, Fourth Edition, San Francisco: Jossey-Bass, 2014, 489.

¹⁵ Benny Riyanto et al., *Op.Cit.*, 21.

Meanwhile, the “peace” under Article 130 HIR, in its implementation, should be through the registers case and the announcement by the Religious Courts. This last thing, in fact, impacts quite serious. These conditions cause the defendant to feel embarrassed, even challenged. The next result, the defendant, in particular, is very difficult to give concessions in the process of bargaining/negotiating during the mediation. This reality is one of the reasons for the rise of ADR mechanisms. ADR is present and growing, due to the inability of such mechanisms in the judicial process to maintain the confidentiality of the parties in legal relations which create dispute. Thus, when the mediation is also placed in a process that has been open since been announced by the court, the mediation process also creates cynicism on the parties. As mentioned by Laurence Boule quoted by Benny Riyanto¹⁶ “mediation is often promoted in terms of the privacy of the mediation sessions and the confidentiality of what transpires there.”

To overcome this, the liability of the “openness” session of the court-connected mediation process needs to be rethought, so as not to injure the main character the ADR mechanism which is more confidential. Mediation should be carried out before the case is registered by the Religious Courts, so the Religious Courts have not made a public announcement on it. This thing directly reduces the burden on the openness of disputes, since the parties have not felt defamed as a result of the lawsuit in which their actions have not been stated as against the law, default or force majeure. In this case, are “purification” mediation which is integrated with the Religious Courts becomes inevitable.

Purification of mediation which is integrated with the Religious Courts is not easy. It is considering that so far Procedural Law of Religious Courts in Indonesia is still using HIR/Rbg, which governs the openness of all disputes in court, including a peace which is based on Article 130 HIR/Article 154 Rbg. These conditions reflect the need for immediate reformation of HIR and Rbg. The conditions of using mediation model which is integrated on the court still need an open model to achieve the expected results. As confirmed by Esin Orucu¹⁷ that: “Cultural diversity ‘reflecting on the legal systems must be appreciated since’ diversity ‘and’ flexibility ‘, is related to freedom of choice, are part of democracy, the one fundamental value upheld by all in at least the Western world. Aims such as’ harmonization, ‘integration’ and ‘Globalization’ show acceptance of the existence of differences but nevertheless, aspire to produce sameness. Yet the distinctiveness and mutuality should be emphasized also within the concept of ‘harmony’”.

It means that the use or selection of more open models still requires harmonization with the culture of the recipient society. The Indonesian plurality with the traditional patterns of dispute resolution in creating peace needs to be given roles in the formation of a mediation model which is integrated on the court.

In the resolution of economic disputes in Islamic Religious Court, it is known a mechanism of “deliberation”, which means that the effort or the road of peace between the parties. However, the mechanism of “deliberation” is not entirely the same as mediation mechanism known in the APS. In certain cases, deliberations have fundamental differences with the mediation. Basically, in terms of reconciling, the principle is the same, while there are differences in terms of technical aspects. Therefore, the mediation which is integrated to courts is not easy, and it requires modifications in the levels of strategies and models.

⁸ Based on the results of research in the practice of mediation in 8 (eight) religious courts (PA), namely: PA Yogyakarta, PA Sleman, PA Bantul, PA Gunung Kidul, PA Kulon Progo, PA Temanggung, PA Bandung, and PA Purbalingga, it shows the ineffectiveness of the implementation of the mediation. It is based on the evaluation of the Principles of Good Corporate Governance. Based on this principle, the notion of efficient and effective in ensuring the service to the community by using the available resources optimally and responsibly. The achievement of the results of the mediation should be higher than 18.1%¹⁸. However, by the time this research conducted, the achievement of mediation has no improvement even there is a declining trend. Similarly, when it is evaluated with effectiveness theory of law enforcement by Soerjono Soekanto, the mediation mechanism in the Religious Courts has not been effective. The conclusion is based on the premise that the mediation process should be successful if the five law enforcement factors, namely: a. the factor of law; b. the factor of law enforcement; c. the factor of supporting facilities; d. the factor of community; and e. the factor of culture, are optimized and synergized in its implementation. However, in reality, the factors referred to are not yet fully functioning optimally and synergically.

Based on the above results, then the solutive thought can be analyzed with the theory of the operation of the law. The mediation which is integrated into Islamic economic dispute resolution in Indonesia easier to obtain results or would be more effective to use the theory of operation of the law of Robert B. Seidman. Every legal regulations should tell about how a role occupant, in this case, a mediator, is expected to act. It is how the

¹⁶ *Id.1.*

¹⁷ Esin Orucu, “Critical Comparative Law, Considering Paradoxes for Legal System in Transition”, *EJCL*, Vol.4.1., June 2000, <http://www.ejcl.com>, 23 Maret 2010.

¹⁸ The average results of field research in eight (8) Religious Court: PA Yogyakarta, PA Sleman, PA Bantul, PA Gunung Kidul, PA Kulon Progo, PA Purbalingga, PA Temanggung, and PA Bandung.

mediator will act as a response to the legislation that is a function-regulations aimed at him, the sanctions, the activities of the implementing agencies as well as the whole complex of social, political and others about him. Furthermore, how the implementing agencies, in this case the religious court, will act a responsibly to the legislation that is a function-regulations aimed at them, the sanctions, as well as the whole complex of social, political and others about them and feedback coming from the role occupant. It should be noted also that, how the legislators will act, in implementing the functions of the rules governing the behavior either for judges and mediators as well as their party, the sanctions, the whole complex of social, political, ideological and others about them and the feedback comes from the role occupant as well as the bureaucracy. The series of activities will be more optimal if it also applies Talcott Parson's Sibenertika Theory that essentially says that a social system, in essence, is a synergy between the various social sub-systems experiencing mutual dependence and connection with one another. There is an interconnectedness, interaction and interdependence relationship.

V. CONCLUSION

Based on the research conducted, the position of the mediation process is no longer part of the proceeding in court, but a requirement in filing a lawsuit. The concept of integrated mediation in the Religious Court is in accordance and can be applied in the Religious Courts in Indonesia although it can be said not yet effective, given the level of achievement on average of 18.1% (not yet reached >50%). Nevertheless, the average level of achievement of 18.1% for the mediation mechanism referred to, is also influenced by factor of the compatibility between law enforcement with the culture that flourished in the Religious Court by the disputing parties. Moreover, the attitudes and perspectives of the Muslim community who like peace give positive stigma and the support of the judiciary encourage the compliance of parties to implement the decision. Furthermore, Mediator Judge, whose characteristics of Sidiq, Amanah, Tabligh and Fathonah, becomes one of the factors that influence the success of mediation in the Religious Courts in Indonesia. However, the number and skills of Mediator Judge still needs to be improved.

REFERENCES

- [1]. A. Rasyid, Relevance of Islamic Dispute Resolution Processes on Islamic Banking and Finance, *Journal Arab Law Quarterly*, Volume 27, Issue 4, (2017), 343-369.
- [2]. A. Sulistiyono, *Develop Non-Litigation Paradigm in Indonesia*, Surakarta: UNS Pres, 2006.
- [3]. B. Riyanto et al, *Transplantation Mediation in Civil Justice System in Indonesia*, Semarang, Diponegoro University, 2016.
- [4]. B. Riyanto, et al, *Transplanting Mediation Into Indonesian Civil Judicial System*, *Journal Sampurasun*, Vol. 03, No. 01, June 2017, 1.
- [5]. B.A. Sidharta. *Indonesian Legal Studies, Legal Studies Systematic Development Efforts Responsive Community Change*. Yogyakarta: Genta Publishing, 2013.
- [6]. Bush, R.A. Baruch, and J.P. Folger, *The Promise of Mediation. The Transformative Approach to Conflict*. San Francisco: Jossey-Bas, 2005.
- [7]. Christopher W. Moore. *The Mediation Process: Practical Strategies for Resolving Conflict*. San Francisco: Jossey Bass Publishers, 2014.
- [8]. E. Orucu, *Critical Comparative Law, Considering Paradoxes for Legal System in Transition*, *Electronic Journal of Comparative Law*, Vol. 4. 1., June, 2000, <http://www.ejcl.com>, March 23, 2010.
- [9]. H.Alam, et al, *Analysis of Islamic Banking Growth in Indonesia*, *IOSR Journal Of Humanities And Social Science (IOSR-JHSS)* Volume 22, Issue 2, Ver. V, Feb. 2017, 120-127
- [10]. L. Boulle. *Mediation Principles, Process, Practice*. Adelaide: Butterworths, 2017.
- [11]. M. Noor, *Successful Mediation of Islamic Economic Case in Religious Court*, *Religious Justice Magazine*, Issue 12, Agustus 2017, 97.
- [12]. N. Muhadjir. *Qualitative Research Methodology*. Yogyakarta: Publisher Rakesarasin, 2011.
- [13]. N. Rahmiyati. *Thesis: The view of Mediation Judge (Mediator) in the success of Mediation at the Malang Religion Court and in The Regency of Malang*, 2013.
- [14]. R. Simarmata. *Socio-Legal Studies, and Legal Reform Movement in the Law Digest, Society and Development*, 2010.
- [15]. R. Wilson, *Syariah Governance For Islamic Financial Institutions*, *ISRA International Journal of Islamic Finance*, Vol. 1, Issue 1, 2009.
- [16]. S.M Nafees and Z.A A. Ayub, *Resolution of Islamic Banking Dispute by Way of Arbitration in Sri Lanka*, *Journal Arab Law Quarterly*, Volume 30, Issue 4, 2016.
- [17]. S. Mertokusumo. *Pengantar Hukum (Suatu Pengantar)*, Yogyakarta: Liberty, 2015.
- [18]. S.A. Nugroho, *Mediation as an Alternative Dispute Resolution*, Jakarta: Telaga Ilmu Indonesia, Jakarta, 2009.
- [19]. S.M. Corkle and M.J Reese, *Mediation Theory and Practice*, USA: Pearson Education, 2005.

The Mediation Process in Sharia Dispute Resolution Through The Religious Court in Indonesia

- [20]. S.B. Goldberg, *Dispute Resolution, Negotiation, Mediation, and Other Process*. New York: Aspen Publishing, 2003.
- [21]. S.E. Barkan, *Law and Society, An Introduction*. New Jersey: Pearson, Prentice Hall, 2009.
- [22]. S. Vago, *Law and Society, 10th Edition*, New Jersey: Prentice Hall, 2011.
- [23]. T. Bohmelt, *Interaction Synergy International Mediation, Conflict, Effectiveness*. Germany: VS Research, 2011.
- [24]. T. Whatling, *Difference Matters: Developing Culturally Sensitive Mediation Practice*, *Journal of Mediation & Applied Conflict Analysis, Maynooth University*, 2016.
- [25]. Yayah Yarotul Salamah, *Dissertation: Mediation in the Proceedings in the Court Process, Study of Mediation in the District Court, the Supreme Court Pilot Project*, FH UI, 2009.

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Journal Papers:

- [1] M Ozaki, Y. Adachi, Y. Iwahori, and N. Ishii, Application of fuzzy theory to writer recognition of Chinese characters, *International Journal of Modelling and Simulation*, 18(2), 1998, 112-116.

Note that the journal title, volume number and issue number are set in italics.

Books:

- [2] R.E. Moore, *Interval analysis* (Englewood Cliffs, NJ: Prentice-Hall, 1966).

Note that the title of the book is in lower case letters and italicized. There is no comma following the title. Place of publication and publisher are given.

Chapters in Books:

- [3] P.O. Bishop, Neurophysiology of binocular vision, in J. Houseman (Ed.), *Handbook of physiology*, 4 (New York: Springer-Verlag, 1970) 342-366.

Note that the place of publication, publisher, and year of publication are enclosed in brackets. Editor of book is listed before book title.

Theses:

- [4] D.S. Chan, *Theory and implementation of multidimensional discrete systems for signal processing*, doctoral diss., Massachusetts Institute of Technology, Cambridge, MA, 1978.

Note that thesis title is set in italics and the university that granted the degree is listed along with location information

Proceedings Papers:

- [5] W.J. Book, Modelling design and control of flexible manipulator arms: A tutorial review, *Proc. 29th IEEE Conf. on Decision and Control*, San Francisco, CA, 1990, 500-506

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