



بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ



— P R O C E E D I N G —

INTERNATIONAL CONFERENCE ON  
**LAW AND  
SOCIETY**

Yogyakarta, 04 – 07 April 2017

LP3M & Faculty of Law Universitas Muhammadiyah Yogyakarta  
2017

## **PROCEEDING**

### **International Conference on Law and Society**

Yogyakarta, 04 – 07 April 2017

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Published by:

International Conference on Law and Society, Faculty of Law & Board of Research,  
Educational Development and Community Empowerment (LP3M) Universitas  
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Proceeding International Conference on Law and Society, Yogyakarta

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396; 18,5 x 29,7 cm



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# Message from Chairman

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## **Yordan Gunawan**

Chairman, International Conference on Law and Society 6,  
Universitas Muhammadiyah Yogyakarta

Assalaamu'alaikumWarahmatullahiWabarakatuh,

In the Name of Allah, the most Gracious and the most Merciful. Peace and blessings be upon our Prophet Muhammad (S.A.W).

First and foremost, I felt honoured, on behalf of the university to be warmly welcomed and to be given the opportunity to work hand in hand, organizing a respectable conference. Indeed, this is a great achievement towards a warmers multilateral tie among UniversitasMuhammadiyah Yogyakarta (UMY), International Islamic University Malaysia (IIUM), UniversitiIslam Sultan Sharif Ali (UNISSA), Universiti Sultan ZainalAbidin Malaysia (UNiSZA), Fatoni University, Istanbul University, Fatih Sultan Mehmet Vakif University and Istanbul Medeniyet University.

I believe that this is a great step to give more contribution the knowledge development and sharing not only for eight universities but also to the Muslim world. Improving academic quality and strengthening our position as the procedures of knowledge and wisdom will offer a meaningful contribution to the development of Islamic Civilization. This responsibility is particularly significant especially with the emergence of the information and knowledge society where value adding is mainly generated by the production and the dissemination of knowledge.

Today's joint seminar signifies our attempts to shoulder this responsibility. I am confident to say that this program will be a giant leap for all of us to open other pathways of cooperation. I am also convinced that through strengthening our collaboration we can learn from each other and continue learning, as far as I am concerned, is a valuable ingredient to develop our universities. I sincerely wish you good luck and success in joining this program

I would also like to express my heartfeltthanks to the keynote speakers, committee, contributors, papers presenters and participants in this prestigious event.

This educational and cultural visit is not only and avenue to foster good relationship between organizations and individuals but also to learn as much from one another. The Islamic platform inculcated throughout the educational system namely the Islamization of knowledge, both theoretical and practical, will add value to us. Those comprehensive excellent we strived for must always be encouraged through conferences, seminars and intellectual-based activities in line with our lullaby: The journey of a thousand miles begin by a single step, the vision of centuries ahead must start from now.

Looking forward to a fruitful meeting.

Wassalamu'alaikumWarahmatullahiWabarakatuh

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# Foreword

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**Trisno Raharjo**

Dean, Faculty of Law, Universitas Muhammadiyah Yogyakarta

Alhamdulillah all praise be to Allah SWT for his mercy and blessings that has enabled the Fakultas Hukum, Universitas Muhammadiyah Yogyakarta in organizing this Inaugural International Conference on Law and Society 6 (ICLAS 6).

This Conference will be providing us with the much needed academic platform to discuss the role of law in the society, and in the context of our two universities, the need to identify the role of law in furthering the progress and development of the Muslims. Muslim in Indonesia and all over the world have to deal with the ubiquity of internet in our daily lives life which bring with it the advantages of easy access of global communication that brings us closer. However, internet also brings with it the depraved and corrupted contents posing serious challenges to the moral fabric of our society. Nevertheless, we should be encouraged to exploit the technology for the benefit of the academics in the Asia region to crat a platform to collaborate for propelling the renaissance of scholarship amongst the Muslims.

This Conference marks the beginning of a strategically planned collaboration that must not be a one off event but the beginning of a series of events to provide the much needed platform for networking for the young Muslim scholars to nurture the development of the Muslim society.

UMY aims to be a World Class Islamic University and intend to assume an important role in reaching out to the Muslim ummah by organising conferences hosting prominent scholars to enrich the developmment of knowledge. This plan will only materialise with the continous support and active participation of all of us. I would like to express sincere appreciation to the committee in organising and hosting this Conference.

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**Nunung Radliyah, Dewi Nurul Musjtari**

# The Reposition of Mediation Process in Islamic Economic Dispute Resolution Trough Religious Court After Perma No. 1 of 2016

**NUNUNG RADLIYAH, DEWI NURUL MUSJTARI**

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## ABSTRACT

Mediation, as “non-litigation dispute resolution”, becomes a choice for people who expect the dispute settlement process can provide impartial settlement to both the customer and institution of Islamic Finance. In practice, the implementation of mediation still reached a low rate of success. Since 2003 until 2015. Data shows that the maximum achievement is only 18.1 %. The research aims to determine reposition of mediation process in Islamic finance dispute resolution through religious court after the issued of Supreme Court Regulation No. 1 of 2016. The research is normative and empirical legal research which uses qualitative method. The research is based on data collected in the library and court cases. Interview from field research will involve 5 (five) religious court in Yogyakarta. Interview and Focus Group Discussion (FGD) will be conducted to support the information of the research. The results of research shows that reposition of mediation process is one of requirements to file a suit. The five factors for support legal enforcement are law and legislation, law enforcement officers, facilities and infrastructure, society and culture. The recommendation of this research is there is a need to revise the Supreme Court Regulation No. 1 of 2016.

Keywords: *Reposition, Mediation Process, Dispute Resolution, Islamic Economic.*

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## I. Introduction

Mediation mechanism is integrated in the courts has been in effect since 2003. The use of these mechanisms is a mandatory procedure in the resolution of civil matters including the settlement of civil matters Islamic. In the context of the Islamic economic dispute resolution, such a 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 Year 1989 About the Religious Courts (UU PA). Utilization mediation mechanism in the Religious Courts continues. Even the release 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 strengthens the Islamic banking institutions Religious Courts, the use of mediation mechanisms show success in some cases and has improved. However, if viewed from the achievements of the percentage of success in previous studies obtained 18.1%, means it is still below 50%.

Based on the results of previous studies indicates that the process of settling disputes through mediation mechanism in a religious court can't be said to be successful. Assumptions of researchers that has not been successful settlement of disputes through the courts because of different religious culture of Indonesian society with mediation models that become part of the law of civil procedure formal nature. Likewise with the publication of PERMA No. 1 of 2016 on Mediation Procedure in court. Based on the PERMA the mediation mechanism included in the judicial procedure. Such a condition which causes the mediation process a high percentage of failures caused

by the character of the party if it has been summoned by the court for the defendant's guilt and feel a win for the plaintiffs. The defendant has been discouraged to negotiate while the defendant is often reluctant to give waivers or leeway to reduce the burden on the plaintiff. Such conditions often prevent the success of the mediation process. Other problems are also caused due to a lack of judges who have competence as a mediator and a mediator is still inadequate availability of non-judges.

### 1.1. Problem Formulation

Based on some of the problems mentioned above, the authors are interested in doing research on Repositioning Settlement Mediation Process In the Islamic Economic Justice Through Religion After Applicability PERMA No. 1 of 2016. The formulation of the problem is how the repositioning of mediation in resolving disputes through religious courts sharia economy, after the enactment of the Supreme Court No. 1 of 2016.

### 1.2. Methodology

#### 1.2.1. Point of View/Stand Point

In this research used socio-legal approach with qualitative tradition, the operationalization done according to constructivism. Constructivism paradigm is a set of beliefs on a legal reality (Islamic banking) as a result of the construction of the relative, and contextually specific. The relative position (stand point), the author of the problem in this study at the level episteme not as a participant but rather as an observer. As an observer, the writer will seek answers to any formulation of the problem posed by studying the reality of Islamic banking dispute settlement through mediation (constructed) spread in legislation or related policies and their implementation in the religious court. Understanding plenary obtained a product of the interaction between researchers with products observed object. There is a relatively subjective transactional relationship between researcher and research subjects. The researcher is the instrument, and thus at the level of axiology not researcher is as a facilitator that bridges the diversity of existing data and subjects.

#### 1.2.2. Strategy Research

The study was conducted with two strategies, namely research library (Library Research) and case studies (Case Study). Literature study conducted on all documents or literature about Islamic banking dispute settlement through mediation of religious court. Documents then grouped according to the dimension of time or period. The case studies in this research is the case nationwide, particularly the case of Islamic banking disputes. Research with this case study, carried out to record the social facts that accompany the development of society in supporting and sustaining human needs in the field of economics in society.

This study uses the codes of socio-legal studies<sup>1</sup>, ie understanding the law not as a normative normologik entities and esoteric merely the law of Islamic banking in this study is understood as an entity which is heavily influenced by non-legal factors. Formulation of the substance or content, choice of goals and the means used to achieve the objectives of Islamic banking or dispute settlement is believed to be interaction with non-legal factors.

#### 1.2.3. Teknik Data Collection

1.2.3.1. *Secondary data was obtained through the Research Library (Library Research) and Legal Document, which includes:*

- a. Material Primary Law, include:
  1. Law No. 21 Th, 2008 and its implementing regulations, PERMA No. 1 of 2016.
  2. The Constitutional Court Decision No. 93 / PUU-X / 2012.

b. 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, journals.

1.2.3.2. *Primary data obtained through research in the field (Field Research) with observations, interviews and Focus Group Discussion (FGD) / workshop, which includes: 1) Law sanction institution: Judge at the Religious Court and Supreme Court, Staff Legal Section at the Islamic Bank, notary Advocate, Registrar. 2) Role Occupant: Management Islamic Bank, Islamic Bank Customer-do with hermeneutics, sociology of law and phenomenology.*

## II. Discussion

### 2.1. Research Result

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.			

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

Sources: Filed Research and Library Research, 2012-2016

In the practice of settlement of civil disputes, especially disputes sharia economy, when the legal arrangements were incomplete or unclear, the parties can make interpretation of existing laws and relevant. While in terms of setting the law does not exist, then it can do the legal construction of new or provide arguments relating to urgency setting in question, to provide ease in finding a solution to the problems in this research will be described several sub topics on: 1) the dispute resolution mechanisms in general; 2) Model and mediation mechanisms in the Religious Courts, and 3) constraints on the implementation of the mediation of religious courts in Indonesia and the factors that affect law enforcement.

### 2.2. Mediation in Dispute Resolution Mechanism

Conceptually, the applicability of "mediation remotely" by the Supreme Court Regulation is one of the only types of models associated with "joint meetings". Thus, the question, "why this type of 'joint meetings' more is not adopted? More essential questions that should be put forward, namely "why other models were not adopted anyway, so mediation is integrated on the court became more varied?" There should to give freedom to the mediator build strategy, the



Supreme Court Regulation do not call "joint meeting" which is a contrario means also limiting strategy. It has been the cause of ineffectiveness of mediation in a religious court if viewed in terms of the model or type of mediation. This condition is confirmed one of the factors that influence the effectiveness of mediation as stated by Tobias Böhmelt<sup>2</sup> that:

With regard to mediation effectiveness, the existing literature frequently emphasizes three factors. The first one pertains to 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.

Variation concept of the mediation process, according to Laurence Boulle<sup>3</sup>, can be grouped by three (3) models or types, namely: (1) the variation in relation to the number of mediators (variations in relation to the number of mediators), (2) variations in relation to the a joint meeting (variations in relation to the joint meetings), and (3) variations in relation to a separate meeting (variations in relation to the separate meetings).

The first model (variation in relation to the number of mediators) are distinguished in some kind of process, namely: (a) the mediation process solo (solo mediation) and (b) the process comediation (the co-mediation process). Mediation solo essence is the use of a single mediator (single mediator). While comediation process used in the situation of more than one mediator.

The second model (variation in relation to the joint meeting) divided into several types of processes, among others: (a) meeting of doubles (multiple meetings), (b) a mediation different (different venues), and (c) meetings with teleconferencing (telephone conferences). Meetings multiply has significance as most mediation does not reach the final in one sitting (meeting) and delays become necessary. Delays can have multiple functions in the mediation process. The meeting doubles enable the parties to obtain further information, such as assessment, professional advice, to reassess their situation, and is planning and response. In addition, it also allows (the) mediator, filed a confidentiality restrictions, assess progress and plan the strategy of the next session. However, delays have weaknesses among regression to things that have been agreed.

Regarding the different mediation may arise regarding the reasons of space and logistics. The statements from each side of the rotation can be used to indicate the side of the parties. As for meetings with teleconferencing can be done telefonik either for reasons of geographical distance, lack of resources, as well as a requirement or legal necessity.

The third model (variation in relation to a separate meeting) includes: (a) mediation back and forth (shuttle mediation), (b) a separate meeting with the advisor and the parties (separate meetings with advisers and parties). Mediation alternating means separate meetings without the parties meet together. 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 will take at the meeting were counterproductive. The second type, ie separate meetings with advisors and stakeholders to explain the flexibility of the mediation process. This type allows the mediator did separate meetings with attorneys (lawyers) or advisor of the parties. This type of process be allowed to teach.

In the context of the strategic freedom and flexibility to choose the model, which is integrated with the mediation of the court undoubtedly allow mediators to choose among models and strategies appropriate to the situation in Indonesia. Joint meeting could fit a particular situation, but it does not guarantee compliance with certain other case situations. In many cases the side do not want to see any reason other than the model would require a joint meeting.

Theoretically, a mediation model can also be grouped into a model settlement (settlement model/compromise), facilitation (facilitative model), therapeutic (theurapetic style), and evalua-

tive (evaluative model). Acceptance strictly categorization model in Indonesia has caused distortion in the court mediation evaluative models. Susanti Adi Nugroho<sup>4</sup> determiner that the court mediation is more focused on evaluative models. This model is characterized by several things: (a) the parties come and expect the mediator gives an understanding that if this case continues, then determined between winning and losing, (b) is more focused on the rights and obligations, (c) mediators are usually experts in their fields or an expert in the field of law because of the focus on the right approach. Mediators tend to provide a way out and get the legal field in order to lead to a final result that is inappropriate, (d) 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 (e) the parties were not has signed an agreement together. This makes the determination of the court mediation is less soft. Failure resulting models are not compatible with the situation of the parties to the dispute - which harmed the interests, demands, psychological conditions, legal relationships underlying the dispute – can't be resolved variations of the model, so there is no other way to accomplishing.

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

### 2.3. Model and Implementation Mechanisms Mediating On Religious Courts in Indonesia

Model resolving disputes using mediation mechanism, is part of a model of alternative dispute resolution (ADR) or alternative dispute resolution (APS). The existence of developing mediation in addition to other models such as the negotiation and conciliation born gradually. Theoretically, there are two (2) models are often used to resolve disputes, namely<sup>5</sup>:

- a. First, the model of dispute resolution is adjudicative. This approach is an approach to justice through the system resistance (the adversary system) and the use of force (coercion) in managing disputes and to produce a decision win-lose solution, for the parties to the dispute. In this adjudicative models in addition to the court (litigation settlement) were born in the first wave, also arbitration born in the second wave.
- b. Second, the model dispute resolution non-litigation. In this model, achieving justice prefer the approach of "consensus" and attempt reconcile the interests of the parties to the dispute and aims to get the dispute towards a win-win solution. Non-litigation dispute resolution is often called the ADR.

Ehrmann in Riyanto Benny and his friends<sup>6</sup> as quoted by Steven Vago<sup>7</sup>. 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, the 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 to disputes over civil, criminal, and administrative<sup>8</sup>. Accordingly, Steven Vago confirms that the main dispute resolution mechanisms that can be described in a continuum range (series) of the negotiation to adjudication. In negotiations, voluntary participation and the disputing parties prepare for their own settlement. In the circuit (continuum) is the next mediation, in which a third

party to facilitate a settlement and assist the parties in reaching an agreement voluntarily (voluntary agreement). At the end of the series, namely 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<sup>9</sup>.

Islamic economic dispute settlement through mediation that is integrated in the Religious Courts have not been effective. It is caused by several things, among others: a) Litigation for dispute resolution infestation excessive formalities, b) Expensive; c) there is a potential sati siding with one party; and d) the results of the judge's decision is disappointing there are still seeking justice. In that context, ADR (alternative dispute resolution) be an alternative that offers the processes more efficient and effective, simple and confidential, whether in the form of negotiation or mediation. In practice, when negotiation or mediation fails to offer, the choice of the parties engaged in arbitration or court.

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

Arbitration Act and APS at the level of ideas to contain the controversy with the Supreme Court Rules. Related to the mechanisms of mediation, on the one hand gives freedom of mediators to use variations of the model. But on the other hand turned out to be a model of mediation offered is very limited. Thus, technically, a mediation mechanism to be very tight. The impression created about the freedom of mediators to use variations of the model is actually a wrong impression because liberated by APS and the Arbitration Act and the Supreme Court is a technical regulation of the model has been specified limited. That is, the Arbitration Act and Regulations and APS Supreme Court adheres to the paradigm of "limited model" and open "space of freedom models and technical". This is evident in Article 6 paragraph (2) of the Arbitration and APS which confirms that: Settlement of disputes or differences of opinion through alternative dispute resolution referred to in paragraph (1) 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.

Regulation of the Supreme Court actually set wider than the provisions of Article 6 paragraph (2) of the Arbitration and APS regarding the possibility of applying the model of mediation. Article 5 (3) of the Regulation of the Supreme Court, provides that "The meeting Mediation may be through communications media, audio visual remote that allows all parties were seen and heard in person and participate in the meeting." The provisions of the Regulation of the Supreme Court can be said to be more advanced than the Arbitration Act and the APS, but leaves the question "whether it is by no means the Regulation of the Supreme Court and the law on Arbitration and APS?" Apart from this conflict means legally, it shows that the Arbitration Act and APS's time to be revised so as not to cause multiple interpretations top the contradiction. Preferences to select the APS changes Arbitration Act and the resulting incompatibility with the nature of mediation as a dispute resolution more flexible - and technical models - compared to court or arbitration that is adjudicative.

#### 2.4. Constraints in the Implementation of the Mediation and Factors Affecting Law Enforcement

Issues that are integrated on the court mediation does not work effectively because there are some obstacles are due to the failure to create a model of integration, including the failure of a mediator in the mediation process. Mediation is confidential should be integrated with civil judicial models are open to the public. This has caused some problems for the legal culture mediators, advocates and the parties to the dispute in mediation practice. As revealed by Tony Whatling<sup>10</sup> that cultural assumptions affect the success of a mediator in the practice of mediation. Steven E. Barkan<sup>11</sup>, based on 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 method of dispute resolution processes. As explained why some communities or individuals prefer mediation than other communities<sup>12</sup>. If it is considered as a special situation, then as stated by Christopher W. Moore<sup>13</sup>, a strategy is needed to respond to that particular situation.

We now turn to an examination of contingent strategies and activities - interventions and preventions by mediators to respond to unique or unusual situations, conflict dynamics, or parties, the which are not present in every negotiation or dispute. Though it is impossible to identify or describe all the situations that may require contingent activities by mediators, and details about Reviews their actual moves, there are a number of them that are common enough to merit description.

Moore in Riyanto Benny<sup>14</sup> also mentions several authors among others Fisher, Maggiolo, and Wall describing a unique situation and potential contingency strategies that can be selected by a mediator to address the issue of failures in the practice of mediation. The situation and strategies meant, among other things<sup>15</sup>:

- a. Problems with parties working together in joint sessions that may require private meetings or Caucuses;
- b. Situations involving time and timing that may require time management by mediators
- c. Situations requiring mediator influence and potential strategies and techniques;
- d. Problems with parties' bases of power and means of influence, and mediator techniques to address and manage them;
- e. Issues related to gender, working with women, and women as mediators;
- f. Problems related to past, resent, and future causes of conflicts, and grand strategies to address them;
- g. The presence of strong values and how they may be handled.

Seventh of the situation and the strategies, the Supreme Court Rules is strictly regulated, so as mediator in the Religious Court does not have the creativity to adjust to the conditions of the parties to the dispute. In addition, the number and skills of Judge Mediator is still limited. Each justice there are only 1-3 Judge Mediators are certified. Even still there are courts that do not have Judge Mediator. In case of any violation of the procedures which must be carried out as intended in PERMA No. 1 of 2016, then it can lead to the imposition of sanctions, so that the court decision becomes null and void.

Placement mediation mechanism is integrated in the Religious Courts is a means to replace and optimize the provisions of Article 130 HIR/Article 154 Rbg. Articles specify peace. 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 is in fact quite serious impacts.

These conditions cause the defendant to feel embarrassed, even challenged. The next result, Defendants in particular, is very difficult to give concessions in the process of bargaining/negotiating when mediation. Reality, in reality is one reason the birth of ADR mechanisms. ADR is present and growing, due to the inability of such mechanisms in the judicial process to maintain confidentiality (confidential) of the parties in legal relations arising from the dispute. Thus, when 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. It thus Laurence Boulle said as quoted by Benny<sup>16</sup> that "mediation is often promoted in terms of the privacy of the mediation sessions and the confidentiality of what transpire there."

To overcome this, need to be rethought liability session "openness" of the process of the court connected mediation, so as not to injure the main character ADR mechanism is more confidential. Mediation should be carried out before the case is registered by the Religious Courts, so it has not made a public announcement by the Religious Courts. This directly reduces the burden on openness disputes, since the parties have not felt defamed as a result of the lawsuit is not necessarily stating his actions against the law, default or coercion. In this case, a "purification" remediation that is integrated with the Religious Courts becomes inevitable.

Purification of mediation that is integrated within the Religious Courts is not easy. It is considering for this, Procedural Law Religious Courts in Indonesia are still using HIR / Rbg, governing openness all disputes in court, including a peace which rests on Article 130 HIR / Article 154 Rbg. These conditions reflect the need for immediate reform and Rbg HIR. Conditions of use mediation model that is integrated on the court, still need an open model, to achieve the expected results. As confirmed by Esin Orucu<sup>17</sup> that:

"Cultural diversity 'reflecting on the legal systems must be appreciated since' diversity 'and' flexibility', being 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 emphasised Also within the concept of 'harmony'."

That is, the use or selection of more open models still require harmonization with the culture of the recipient society. The plurality of the Indonesian nation with the traditional patterns of dispute resolution that creates peace, need to get a part in the formation of a mediation model that is integrated on the court.

In the resolution of economic disputes Islamic Religious Court, known mechanism of "deliberation", which means 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 integrated mediation in courts is not easy, and it requires modifications to the levels of strategies and models.

Based on the results of research in the practice of mediation in 8 (eight) religious courts, namely: PA Yogyakarta, PA Sleman, PA Bantul, PA Gunung Kidul, PA Kulon Progo, PA Bandung and PA Purbalingga, 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 efficient and effective is ensuring the service to the community by using the available resources

optimally and responsibly, should the achievement of the results of the mediation is higher than 18.1%<sup>18</sup> but in fact to this research achievement of mediation has been no improvement even there is a declining trend. Likewise, when evaluated with theoretical effectiveness of law enforcement by Soerjono Soekanto mediation mechanism in the Religious Courts has not been effective. Conclusions are based on the premise that the mediation process should be successful if the five factors, namely a law enforcement. Factors law (Law); b. Areas of law enforcement; c. Factors supporting different facilities or facilities; d. Community factors; e. Optimized and synergized cultural factors in its implementation. However, in reality, the factors referred to is not yet fully functioning optimally and synergy.

Based on the above results, then as a thought solution can be analyzed with the theory of operation of the law. Mediation be integrated into economic dispute resolution sharia in Indonesia easier to obtain results or would be more effective to use the theory of operation of the law of Robert B. Seidman. Supposedly every legal regulations tell about how a holder of the role (role occupant) in this case a mediator was expected to act. How it will act as a mediator in response to 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 religious court, will act in response to legislation that is a function of legal rules directed at them, the sanctions, the whole complex of social, political and others are about themselves and feedback coming from the holder role. It should be noted also is, how the legislators will act, in implementing the functions of the rules governing good behavior for judges and mediators as well as his party, the sanctions, the whole complex of social, political, ideological, and others who about themselves as well as the feedback comes from stakeholders as well as the bureaucracy. The series of activities will be more optimal if applied also Sibenertika Theory of Talcoot Parson that essentially says that a social system in essence is a synergy between the various sub-systems experiencing social mutual dependence and connection with one another. Relationship interconnectedness, interaction and interdependence.

Based on the results of research in the practice of mediation in 8 (eight) religious courts, namely: PA Yogyakarta, Sleman PA, PA Bantul, Gunung Kidul PA, PA Kulon Progo, PA Temanggung, PA Bandung and PA Purbalingga, shows the ineffectiveness of the implementation of the mediation. It is based on the evaluation of the Principles of Good Corporate Governance. Based on the principle of efficient and effective understanding is ensuring the service to the community by using the available resources optimally and responsibly, should the achievement of the results of the mediation is higher than 18.1% but the fact hingga<sup>4</sup>.  
Simpulan and Suggestions

### III. Conclusion

Based on the research conducted, the position of the mediation process as a requirement to file a lawsuit no longer in the proceedings through the court. The concept of integrated mediation in accordance Religious Court and can be applied to the Religious Courts in Indonesia although it can be said yet effective, given the level of achievement on average 18.1% (not yet reached e" 50%). Nevertheless, the average level of attainment of 18.1% for the mediation mechanism referred to, are also influenced by factors compatibility between law enforcement with the culture that flourished in the Religious Court by the parties to the dispute. Moreover, the attitudes of the Muslim community who like peace stigmatize positive and the support of the judiciary to encourage the compliance of parties to implement the decision. Furthermore, Mediator Judge awake professional *Sidiq* nature, *Amanah*, *Tabligh* and *Fathonah* be one of the factors that influence the

success of mediation Religious Courts in Indonesia. However, the number and skills of Judge Mediator remains to be improved.

### Recommendation

Based on the above conclusions, some suggestions are necessary in the context of this study is that is making an amendment to the Supreme Court Regulation No. 1 of 2016. In the process of amending the peril steps are taken:

- a. Establishment of processes and procedures for settling disputes need to be adapted to the character of Indonesian society that emphasizes deliberation;
- b. The need of harmonization between Rule of Law APS with the Supreme Court as well as the revision of the HIR and RBg., Which is still valid;
- c. Necessary preparation of human resources with competence as a mediator non judges because judges mindset as decision makers and as a mediator is different;
- d. Access the opportunity to become a non-judge mediator (independent mediator) also need to be increasingly expanded.
- e. The synergy of the various aspects such as: legal, political, cultural, economic and social need to optimize.
- f. Change the culture developed in the community should be prioritized to get the support of the political, economic and social.

### Acknowledgement

I would like to convey my deepest gratitude to Faculty of Law Lampung University, Faculty of Law Universitas Muhammadiyah Yogyakarta and All Committee of ICLAS 6. I am really grateful for your guidance and counseling. I would also like to give my sincere appreciation to Ministry for Research, Technology and Higher Education of the Republic of Indonesia on funding through the Grants for Fundamental Research and my team in research to collecting data for their support in a series of international scientific publications have.

### Endnotes

- 1 Socio Legal Studies to see the law as one of the factors in the social system that can determine and be determined. There are a number of terms used to describe it, such as apply social science to law, social scientific approaches to law, social scientific disciplines that apply perspective to the study of law. Rikardo Simarmata, Socio-Legal Studies and Legal Reform Movement in the Law Digest, Society and Development, Volume 1 December 2006-March 2007
- 2 Tobias BBhmelt, Interaction Synergy International Mediation, Conflict, Effectiveness, Germany: VS Research, 2011, p.16.
- 3 Laurence Boulle, Mediation Principles, Process, Practice, Adelaide, Butterworths, 1996, p.113-118.
- 4 Susanti Adi Nugroho, Mediation as an Alternative Dispute Resolution, Telaga Ilmu Indonesia, Jakarta, 2009, hlm.63-64.
- 5 Adi Sulistiyono, Develop Non-Litigation Paradigm in Indonesia, Surakarta, UNS Pres, 2006, p. 6.
- 6 Benny Riyanto et al, Transplantation Mediation in Civil Justice System in Indonesia, 2016, p. 18.
- 7 Steven Vago, Law and Society, 10th Edition, New Jersey, Prentice Hall, 2011, p. 256.
- 8 *Ibid.*
- 9 *Ibid.*, p. 258-259.
- 10 Tony Whatling, "Differenc Matters: Developing Culturally Sensitive Mediation Practice", dalam *Journal of Mediation & Applied Conflict Analysis*, Maynooth University, 2016, hlm. 48-58.
- 11 Steven E. Barkan, *Law and Society, An Introduction*, New Jersey: Pearson, Prntice Hall, 2009, p.104.
- 12 *Ibid.*
- 13 Christopher W. Moore, *The Mediation Process*, Fourth Edition, San Francisco: Jossey-Bass, 2014,

p.489.

14 Benny Riyanto et all., *Op.Cit.*, p.21.

15 *Ibid.*

16 *Ibid.*,p. 41.

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.

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