SHARIA MEDIATION IN ISLAMIC BANKING DISPUTES: STRATEGIES FOR STRENGTHENING LEGAL PROTECTION FOR CUSTOMERS

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Abstract: *Sharia mediation constitutes an alternative dispute resolution mechanism that integrates Sharia principles with conventional mediation techniques, grounded in the values of "*sulh*" (amicable settlement) and "*tarāḍin*" (mutual consent of the parties). This study examines the role of Sharia mediation in protecting the legal rights of customers in Islamic banking disputes and formulates strategies for strengthening its implementation. This study uses a normative legal research method, analyzing primary and secondary legal sources through literature review and descriptive-qualitative analysis. The findings indicate that Sharia mediation offers an efficient and cost-effective process and delivers equitable solutions based on the principles of "*sulh*" and "*tarāḍin*". However, its effectiveness remains constrained by information asymmetry, unequal distribution of mediator resources, and low levels of legal literacy among customers.The study concludes by emphasizing the need for an integrative strategy. This strategy should include strengthening the regulatory framework, standardizing procedures, improving mediator resources and access to legal aid,as well as educating customers. These coordinated measures are crucial to optimizing Sharia mediation as a tool for legal protection within the Islamic banking system.*

Keywords: *Sharia Mediation, Sharia Banking Disputes, Legal Protection for Customers, Alternative Dispute Resolution.*

Introduction

In the dynamics of the global financial system,Islamic finance has demonstrated rapid and transformative growth momentum,as reflected in global industry data and projections (Islamic Financial Services Board (IFSB),2023). This evolution marks a paradigm shift, where Islamic finance is no longer viewed merely as a complementary option,but has established itself as an independent and comprehensive system with a clear ethical foundation,attracting attention not only from Muslim communities but also from global ethical investors (Abdullah & Rahman, 2022). However,this rapid growth brings an increased potential for disputes between financial service providers and customers,given the complexity of contractual agreements and the expectations inherent in Shariah-based products (Kronke,2021).The general judicial system often faces challenges in handling such disputes,as it requires a dual understanding of positive law and profound Shariah principles a combination of expertise not necessarily possessed by every legal practitioner (Saeed,2020). Consequently,the paradigm of Alternative Dispute Resolution (ADR) has grown increasingly relevant,offering pathways considered faster,more cost-effective, and less confrontational than litigation (Ibrahim & Al-Muharrami, 2022).

It is within this context that Shariah mediation emerges as a compelling legal construct,seeking to bridge the world of modern dispute-resolution techniques with the rich heritage of Islamic law (Karim, 2019). Thus,an exploration of this mechanism is not merely a national interest,but also part of the international academic and practical discourse on the future of ethical finance (Thontowi, 2023).Indonesia,as the nation with the world's largest Muslim population and a continuously expanding Islamic banking market,provides a crucial empirical context for examining the effectiveness of Shariah mediation.Data from the Financial Services Authority (Otoritas Jasa Keuangan,OJK) shows sustained growth in the national Islamic financial industry,yet this is accompanied by increasing operational complexity and a rising potential for disputes (Otoritas Jasa Keuangan,2023). Disputes in Islamic banking frequently originate from divergent interpretations of contractual agreements ("akad"),disagreements over profit-sharing ratios ("nisbah"),allegations of Shariah non-compliance,and issues concerning information and fee transparency (Susanti,2021). The nature of these disputes distinguishes them from conventional banking conflicts,as they inherently involve dimensions of religious belief and compliance alongside purely commercial considerations (Ishaq,2019).Litigation through religious courts,though possessing the necessary jurisdiction,is often criticized for its protracted procedures and the financial burden it imposes a burden that disproportionately affects customers as the typically more economically vulnerable party (Sutedi, 2022).

On the other hand,conventional mediation governed by Supreme Court Regulation is also perceived as insufficient in addressing the conscience of the parties,who seek a resolution that is not only legally valid under state law but also spiritually fulfilling (Misbahuddin, 2020). Therefore,the presence of Shariah mediation is anticipated to fill this void by offering an arena where a shared ethical language and common values can form the basis for meaningful dialogue (Zain & Ali,2022). Despite its strong philosophical foundation,the implementation of Shariah mediation in Indonesia is confronted with complex structural and operational challenges.First,a significant information asymmetry exists between Islamic banks and their customers. Second, there is a limited pool of competent Shariah mediators who possess not only mediation techniques but also a profound understanding of fiqh muamalat (Islamic commercial jurisprudence) and Islamic banking regulations.Third, customers often exhibit low levels of legal and financial literacy specific to Islamic finance. These interrelated issues create a self-reinforcing cycle that undermines the effectiveness of Shariah mediation as a mechanism for consumer legal protection (Fachrudin,2021).

Literature Review

A. The Concepts of Mediation and Shariah Mediation.

Mediation is a dispute resolution process in which a neutral third party,the mediator,assists the disputing parties in negotiating towards a mutually acceptable settlement (Ibrahim & Al-Muharrami,2022).This process is voluntary,confidential,and focused on the parties' interests, thereby distinguishing it from the adversarial nature of litigation.Within the framework of Islamic law,amicable dispute settlement is strongly encouraged,as evidenced by the long established institution of "sulh" (reconciliation) which has deep historical roots (Karim, 2019).Shariah mediation subsequently emerged as a synthesis,adopting the procedural framework of modern mediation while infusing it with the substance and values of Islamic law (Thontowi,2023).Specifically,in the context of Islamic banking,Shariah mediation can be defined as a facilitated process for resolving disputes between Islamic financial institutions and their customers,assisted by a competent mediator.This process prioritizes Shariah principles such as justice ('adl"), welfare ("maslahah"),and the pursuit of a resolution that is not only legally final but also spiritually satisfactory for the parties involved (Zain & Ali,2022). Consequently,Shariah

mediation transcends its role as a mere dispute resolution tool, functioning also as an instrument for actualizing the ethical values of Islamic economics in practice (Abdullah & Rahman,2022).

B. Principles of Sharia Mediation

The principles of Sharia mediation are as follows: First, the principle of "Al-Ikhtiyariyyah" (Voluntariness and Willingness), which stipulates that the participation of the parties in the mediation process must originate from their free will, devoid of any coercion, pressure,or exploitation.Second,"Al-Sirriyyah" (Confidentiality), meaning that the entire process, discussions,documents,proposals,and information disclosed during the mediation are confidential and may not be submitted as evidence in court should the process fail (M. Ibrahim & Al-Muharrami,2022).

Third,"Al-Hurriyyah wa Al-Musawah" (Freedom and Equality of the Parties).A Sharia mediator must ensure that all parties,despite potential disparities in economic power or access to information,are treated as equals throughout the mediation.Each party retains full freedom to express their views,propose solutions,and accept or reject any settlement proposal (Thontowi,2023).Fourth,"Al-Tawassuth wa Al-I'tidal" (Neutrality and Impartiality of the Mediator).A Sharia mediator is obliged to maintain neutrality and must not side with any party.The mediator acts as both facilitator and guardian of values,tasked with guiding negotiations to prevent settlements that contain elements of riba,"gharar" (excessive uncertainty),or "zhulm" (oppression) (Zain & Ali, 2022).

Fifth,"Al-Muwafaqah li Maqasid al-Syariah" (Conformity with Maqashid al-Shariah).Every process and outcome of the mediation must align with the higher objectives of Islamic law ("maqashid al-syariah"),which encompass the preservation of faith ("hifzh al-din"),life ("hifzh al-nafs"),intellect ("hifzh al-'aql"), progeny ("hifzh al-nasl"),and wealth ("hifzh al-mal").Any agreement must embody benefit ("maslahah") and repel harm ("mafsadah"),thereby protecting the rights of customers who are often the more vulnerable party (Abdullah & Rahman,2022).Sixth,"Al-Ihsan" and "Al-Sulh" (Goodwill and Peaceful Settlement).Sharia mediation aims not merely to legally resolve a dispute but also to restore relational harmony and foster a settlement rooted in goodwill ("ihsan").The mediator should invoke the spirit of "al-sulh" (reconciliation) and encourage the parties to consider forgiving certain entitlements in pursuit of a more blessed and sustainable peace (Karim,2019).

Seventh,"Al-Kifayah al-Ma'rifiyyah" (Mediator Competency).This principle stipulates that a Sharia mediator must possess dual competency:mastery of modern mediation techniques such as effective communication,negotiation,and facilitation alongside a profound understanding of "fiqh muamalat" (Islamic commercial jurisprudence),Sharia banking contracts ("akad"),and applicable financial sector regulations.Without this comprehensive expertise,a mediator would be ill-equipped to guide the parties toward an agreement that is valid under both Sharia law and positive law (Saeed, 2020).

C. Disputes in Shariah Banking

Disputes within Shariah banking possess distinct characteristics that fundamentally differentiate them from those in conventional banking.A Shariah banking dispute refers to any conflict arising between a Shariah financial institution and its customer within a relationship grounded in Shariah contracts ("akad") (Susanti,2021). A primary source of dispute often stems from divergent interpretations of these contracts,where a customer's understanding of "murabahah","mudharabah",or "ijarah" agreements may significantly differ from the bank's interpretation,particularly concerning rights,obligations,and risk allocation (Kronke,2021). Disagreements over the calculation and distribution of profit-sharing ratios ("nisbah") also

represent a critical point of contention,as these involve the transparency of fund management and the clarity of profit-calculation methodologies (Financial Services Authority, 2023).

Furthermore,a lack of information transparency and undisclosed fees frequently trigger conflicts (Patrik,2021).This is compounded by a significant information asymmetry,which places the customer often the economically and informationally weaker party in a vulnerable position (Fachrudin,2021).Ultimately,resolving disputes in Shariah banking demands not only the settlement of material losses but also the restoration of breached trust and the underlying spiritual values integral to the relationship (Sutedi, 2022).

D. Legal Protection for Customers within the Shariah Mediation Framework

Legal protection for customers of Shariah banks constitutes a multidimensional concept aimed at safeguarding the rights of customers as both consumers and contractual partners within the Shariah framework.This protection encompasses preventive aspects,such as the right to receive clear,honest,and comprehensive information prior to executing a contract ("akad"),as well as curative aspects,specifically access to effective and equitable dispute resolution mechanisms when their rights are violated (Susanti,2021).

Shariah mediation is posited to serve as a legal protection instrument more responsive than litigation.Its informal and dialogue-based process enables customers,who often occupy a weaker bargaining position,to voice their interests without being encumbered by the rigid procedures and high costs characteristic of court proceedings (Misbahuddin,2020).The Shariah mediator acts as both facilitator and guardian of principle,ensuring the negotiation process remains balanced and that any resulting settlement does not contravene Shariah principles,thereby protecting the vulnerable party ("dhu'afa") from injustice (Zain & Ali,2022).

Method

This study employs a normative juridical approach,which entails legal research conducted through the examination of library materials (secondary data).The research analyzes the role of Shariah mediation in protecting the legal rights of customers in Shariah banking disputes and formulates strategies for its enhancement.Data was collected by examining primary and secondary legal sources through literature study and subsequently analyzed using a descriptive-qualitative method.

Results and Discussion

The profound information asymmetry between Islamic banks and their customers results in customers' limited understanding of the technical details of the contracts they sign,the profit-and-loss sharing calculation mechanisms,and the legal implications of specific clauses within the agreements (Patrik, 2021).Within the context of Islamic banking,this information asymmetry transcends a mere imbalance in access to financial data.It has evolved into a structural dysfunction that erodes the fundamental Islamic principles of justice ("adl") and mutual consent ("tarāḍin") in economic transactions (Razak & Abdul Rahman, 2020). Customers often merely assume the role of end-users who receive standardized contract documents.These documents are replete with technical legal and fiqh terminology such as murābaḥah,"wakālah bil ujrah",or "muḍārabah musytarakah" without being provided with adequate contextual explanation regarding their economic and legal implications (Ascarya & Tanjung, 2021).

Consequently,customers' comprehension of contract substance tends to be superficial and partial,often restricted to information about installments and tenure,without encompassing a deeper understanding of margin-setting mechanisms,the specific risk characteristics borne by each party,or the legal consequences of default (Mansoor & Ellahi, 2023). This condition is

exacerbated by the generally low level of public Islamic financial literacy,leaving customers without sufficient capacity to conduct independent verification or negotiate balanced clauses (Sutrisno & Azmi, 2024).

Furthermore, a lack of understanding regarding the profit-sharing calculation mechanisms, as in muḍārabah or mushārakah contracts,creates room for non-transparency in reporting fund performance and allocating profits.This ambiguity can ultimately lead to disputes and an erosion of trust (Ascarya & Tanjung,2021). Such pervasive information asymmetry not only violates the principle of "gharar" (prohibited uncertainty) by creating obscurity ("jahālah") in the contract's subject matter but also potentially,albeit inadvertently,pushes the transaction into the realm of "ribā".This occurs when the parties' true rights and obligations are not proportionately understood (Razak & Abdul Rahman, 2020).

Therefore, this informational disparity is no longer merely a routine business communication issue.It has become a fundamental problem concerning the very validity of the contract and the level of protection ("ḥimāyah") afforded to customers,who occupy a position of economic and informational weakness (Mansoor & Ellahi,2023). Consequently,efforts to resolve this problem of information asymmetry must be viewed as both a sharia-driven and an ethical business imperative.It requires systematic policy intervention,spanning product design,educational processes,and dispute resolution mechanisms oriented toward substantive justice (Sutrisno & Azmi,2024;Huda et al.,2022).

The issue of limited capacity and availability of competent Sharia mediators extends beyond mere human resource scarcity,it constitutes a multidimensional qualitative challenge that strikes at the core effectiveness of the entire Sharia financial dispute resolution system (Abdullah & Aziz,2023).An ideal Sharia mediator must possess dual competency,which synergizes technical expertise in modern mediation procedures with a deep and contextual understanding of "fiqh mu'amalat" (Islamic commercial jurisprudence) and the dynamics of contemporary Sharia banking regulation (Choudhury & Haque,2022). Such a mediator must be proficient in facilitation skills,effective communication,interest-based negotiation,and the psychology of conflict.Moreover,they must possess the ability to interpret complex Sharia financial contracts,such as "muḍārabah","mushārakah","murābaḥah",and "ijārah", and comprehend the legal implications of each contractual clause within the framework of both national positive law and Sharia principles (Alam & Gupta,2021).

The gap between these two domains of expertise often results in mediators who are proficient in only one aspect:some possess a sound understanding of "fiqh" but lack the skill to manage mediation process dynamics,while others are adept in mediation techniques but have a fragile foundation in Sharia knowledge,rendering them incapable of assessing the substance of an agreement from an Islamic legal perspective (Khan & Siddiqi,2020).The ramifications of this limitation are profound for mediation outcomes.A mediator's inability to identify clauses containing "gharar" (excessive uncertainty),"ribā",or inequity may steer parties toward a settlement that is formally agreed upon yet substantively contravenes "maqāṣid al-sharīʿah" (the higher objectives of Islamic law) (Nurdin & Hassan,2024).

The absence of specific national competency standards and certification for Sharia mediators exacerbates this situation,leading to wide variations in quality and making it difficult for customers to identify genuinely competent practitioners.This phenomenon ultimately risks eroding public trust in the efficacy of Sharia mediation as a credible dispute resolution avenue,potentially pushing parties back toward lengthy and costly litigation (Shah & Malik,2023). Consequently,fundamental corrective measures and a holistic, systematic strategic effort are imperative.This must encompass the development of integrated training curricula,the establishment of recognized professional certification schemes,and the creation of sustainable

capacity building centers involving academics, Sharia legal practitioners,and financial industry regulators. Only through such comprehensive steps can Sharia mediation evolve beyond a partial mechanism into one that optimally fulfills its role in achieving substantive justice and providing comprehensive legal protection for all parties, particularly customers as consumers of Sharia financial services (Ismail & Farooq,2022).

The low level of legal literacy among customers encompassing an understanding of contractual rights and obligations,the mechanisms of sharia financial products,and awareness of available dispute resolution mechanisms is not merely an educational barrier but a condition of structural vulnerability that fundamentally undermines the principle of parity between parties in mediation processes (Abdul-Rahman & Sultan,2023). When customers enter mediation with limited comprehension of technical terms such as “murabahah”,”wakalah”,or “hiwalah”,they inadvertently position themselves in a significantly weaker bargaining position with financial institutions, which are supported by proficient legal and sharia advisory teams (Alam et al.,2021).

This knowledge gap directly contradicts the spirit of mediation,which presupposes informed and meaningful participation from all involved parties,thereby transforming what should be an equitable dialogue into a monologue dominated by the more knowledgeable party (Ibrahim & Char, 2023).Furthermore,low literacy hinders customers’ ability to assess whether the mediation process and its outcome comply with sharia principles,potentially leading them to accept settlements that formally resolve the conflict while still containing elements of concealed injustice or uncertainty (“gharar”) (Khan & Bashir,2022). Therefore,enhancing legal literacy constitutes an essential prerequisite and an integral component of a fair consumer protection framework and equitable dispute resolution mechanisms within the sharia financial ecosystem (Nurul-Ain & Ismail, 2023).

Conclusion

First,the substantial information asymmetry between banks and customers has evolved into a structural dysfunction that erodes the principles of justice (“adl”) and mutual consent (“tarāḍin”),thereby jeopardizing contractual validity and constituting a “shar‘i” imperative for resolution.Second,the effectiveness of dispute resolution is constrained by the scarcity of dually-competent Sharia mediators proficient in both modern mediation techniques and “fiqh al-muʿāmalāt” (Islamic commercial jurisprudence).This scarcity risks producing settlements contrary to “maqāṣid al-sharīʿah” (the higher objectives of Islamic law) and underscores the urgent need for integrated certification standards and training.Third,the low level of customer literacy in Sharia law and finance creates a structural vulnerability that undermines parity in mediation,elevating financial literacy enhancement to an absolute prerequisite for consumer protection and equitable dispute resolution mechanisms.These three elements form a self-perpetuating cycle of challenges that can only be broken through a holistic and systematic intervention.

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