

SHARIA ECONOMIC DISPUTE RESOLUTION THROUGH MEDIATION: BETWEEN FAST BASICS AND JUSTICE FOR CLIENTS

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Abstract: This study analyses the tension between the principles of speed, simplicity, and low cost in the mediation of Islamic economic disputes and the need to ensure substantive justice for customers. The rapid expansion of the Islamic financial sector in Indonesia has been accompanied by an increase in Islamic economic disputes, prompting Religious Courts, which hold absolute jurisdiction under Law Number 3 of 2006 and Constitutional Court Decision Number 93/PUU-X/2012, to optimize mediation as a dispute resolution mechanism. Supreme Court Regulation Number 1 of 2016 requires mediation before substantive case examination to promote efficient and peaceful settlement. However, the implementation of the speed principle often encounters challenges arising from unequal bargaining positions between customers and Islamic financial institutions. As a result, mediation agreements may fulfill procedural requirements while failing to provide meaningful substantive justice. This research employs a normative legal method using statutory and conceptual approaches, supported by qualitative descriptive-analytical analysis. The findings indicate that the speed principle has dual implications: it improves dispute resolution efficiency but may also weaken justice for customers with limited legal capacity. Key obstacles include the absence of customer-oriented mediation regulations, the limited number of mediators with expertise in Islamic economic law, and low public legal literacy. Strengthening customer protection, enhancing mediator competence, and improving legal literacy are essential to ensure fair and effective mediation

Keywords: Mediation, Islamic Economic Dispute, Speed Principle, Substantive Justice, Customer Protection, Religious Court

Abstrak: Studi ini menganalisis ketegangan antara prinsip kecepatan, kesederhanaan, dan biaya rendah dalam mediasi sengketa ekonomi Islam dan kebutuhan untuk memastikan keadilan substantif bagi nasabah. Ekspansi pesat sektor keuangan Islam di Indonesia telah disertai dengan peningkatan sengketa ekonomi Islam, mendorong Pengadilan Agama, yang memiliki yurisdiksi absolut berdasarkan Undang-Undang Nomor 3 Tahun 2006 dan Keputusan Mahkamah Konstitusi Nomor 93/PUU-X/2012, untuk mengoptimalkan mediasi sebagai mekanisme penyelesaian sengketa. Peraturan Mahkamah Agung Nomor 1 Tahun 2016 mensyaratkan mediasi sebelum pemeriksaan kasus substantif untuk mendorong penyelesaian yang efisien dan damai. Namun, implementasi prinsip kecepatan seringkali menghadapi tantangan yang timbul dari posisi tawar yang tidak setara antara nasabah dan lembaga keuangan Islam. Akibatnya, perjanjian mediasi mungkin memenuhi persyaratan prosedural tetapi gagal memberikan keadilan substantif yang berarti. Penelitian ini menggunakan metode hukum normatif dengan pendekatan hukum dan konseptual, didukung oleh analisis deskriptif-analitis kualitatif. Temuan menunjukkan bahwa prinsip kecepatan memiliki implikasi ganda: meningkatkan efisiensi penyelesaian sengketa tetapi juga dapat melemahkan keadilan bagi nasabah dengan kapasitas hukum yang terbatas. Kendala utama meliputi tidak adanya regulasi mediasi yang berorientasi pada pelanggan, terbatasnya jumlah mediator yang memiliki keahlian dalam hukum ekonomi Islam, dan rendahnya literasi hukum masyarakat. Memperkuat perlindungan pelanggan, meningkatkan kompetensi mediator, dan meningkatkan literasi hukum sangat penting untuk memastikan mediasi yang adil dan efektif

Kata Kunci: Mediasi, Sengketa Ekonomi Islam, Prinsip Kecepatan, Keadilan Substansial, Perlindungan Konsumen, Pengadilan Agama

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INTRODUCTION

The development of the sharia economy in Indonesia in the last two decades has taken place at a significant pace. Since the establishment of Bank Muamalat Indonesia as a pioneer, many new Islamic banks have emerged and this industry shows great market potential for Islamic financial products and services in Indonesia (Yudi, 2024). This growth is not only supported by public enthusiasm for financial products based on Islamic principles, but also by a regulatory framework that is increasingly strengthened. Strategic policies issued by Bank Indonesia and the Financial Services Authority (OJK) have provided a regulatory framework that supports the industry, including arrangements related to Islamic bank licensing, supervision, and customer protection that help build public trust. Indonesia has been recognized as one of the countries with the greatest potential for Islamic economic development due to its demographic advantages and supportive regulatory environment (KNEKS, 2019; Ascarya & Yumanita, 2022; OJK, 2024). Government initiatives, combined with the regulatory support provided by Bank Indonesia and the Financial Services Authority, have significantly contributed to the strengthening of institutional governance, legal certainty, and public confidence in Islamic financial services. Even in the national development policy map, the government targets to increase the market share of Islamic banking and encourage product innovation in accordance with Islamic principles, so that Islamic banking is no longer just an alternative but an integral part of the national financial system (Ascarya & Yumanita, 2022; OJK, 2024; Ismal, 2020).

However, that progress has unavoidable consequences. The rapid growth of sharia economic assets in Indonesia has a logical consequence for the increase in sharia economic disputes. These disputes were born from various problems, ranging from defaults in financing contracts, misunderstandings in the implementation of murabahah contracts, to unlawful acts related to transactions based on sharia principles. Disputes in Islamic economics can occur when there is a default, which is a situation where there is a failure to fulfill the obligations that have been agreed upon in a contract, as well as an unlawful act that causes losses to the other party (Moenek, 2025). This condition encourages the parties to the dispute to seek a legitimate, fair, and efficient settlement forum. Previous studies have highlighted that the increasing sophistication of Islamic financial transactions requires dispute resolution mechanisms capable of integrating both legal certainty and compliance with sharia principles (Hosen, 2020; Rahman & Anwar, 2021; Syahrizal, 2021). As Islamic financial products become more diverse, the possibility of disputes arising from contractual relationships also increases, creating a greater demand for effective and specialized dispute resolution institutions (Ahyani et al., 2023; Hosen, 2020; Fauzan, 2021).

Responding to these needs, the state is present through the expansion of the authority of the Religious Court in resolving sharia economic disputes. The enactment of Law Number 3 of 2006 concerning Religious Courts represents a significant legal reform that expanded the jurisdiction of Religious Courts beyond traditional family law matters to include disputes arising from Islamic economic activities. Scholars have argued that this expansion provides greater legal certainty and ensures that disputes involving sharia principles are adjudicated by institutions possessing relevant expertise in Islamic law (Arifin, 2018; Fauzan, 2021; Syahrizal, 2021).

Furthermore, the Constitutional Court Decision Number 93/PUU-X/2012 reinforced this authority by confirming the exclusive jurisdiction of Religious Courts over Islamic banking disputes, thereby eliminating overlapping jurisdictions and strengthening legal protection for stakeholders within the Islamic financial sector (Aminah, 2019; Nurdin, 2020; Hidayat, 2020; Mahir, 2014). The certainty of this jurisdiction was then further strengthened by the Constitutional Court Decision Number 93/PUU-X/2012 which gives absolute authority to religious courts to adjudicate sharia economic disputes in order to fulfill the guarantee of the rights of customers and sharia business units to obtain fair legal certainty in accordance with the mandate of Article 28D paragraph (1) of the 1945 Constitution (Nisrina, 2018).

With increasingly solid authority, the Religious Court then developed various case settlement mechanisms. One of the most prominent is mediation, which is formally mandated through Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Courts. Mediation was chosen not without reason. Theoretically, the simple meaning is a clear, easy-to-understand, and unconvoluted event, while the quick refers to the conduct of the judiciary without the constraints of excessive formality, and the affordable cost is intended so that interested parties are not reluctant to file a claim of rights in court (Nahda, 2025; Wahyudi, 2020; Astuti & Santoso, 2022; Alexander, 2019). These objectives are closely aligned with the Islamic concept of *ishlah*, which emphasizes reconciliation, social harmony, and consensual dispute settlement as fundamental principles of justice (Auda, 2018; Kamali, 2019; Fauzi, 2025).

Institutionally, the presence of mediation in sharia economic disputes also receives support from the broader dispute resolution ecosystem. In addition to judicial institutions, the National Sharia Arbitration Board (BASYARNAS) is a non-litigation dispute resolution forum that prioritizes efficiency, deliberation, and substantive justice, where sharia economic actors tend to choose this forum because the process is faster, less costly, and in accordance with the character of sharia financial transactions. On the other hand, the banking mediation mechanism facilitated by Bank Indonesia through Bank Indonesia Regulation No. 8/5/PBI/2006 also emphasizes that banking mediation is an alternative dispute resolution to resolve disputes between customers and banks, as a form of legal protection that must be available (Hidayat, 2020; Syahrizal, 2021; Utomo, 2019). Consequently, mediation and arbitration have become important components of Indonesia's broader sharia dispute resolution ecosystem.

Despite these institutional developments, significant challenges remain regarding the realization of substantive justice during mediation processes. One of the most persistent concerns is the unequal bargaining position between financial institutions and customers. Banks generally possess superior legal expertise, technical knowledge, and financial resources, while customers frequently have limited understanding of contractual provisions and their legal implications. Such asymmetries create structural vulnerabilities that may affect the fairness of negotiated settlements (OECD, 2020; Ayu & Nugroho, 2022; Moonti, 2025). This inequality is not only material, but also related to knowledge. More than 70 percent of clients do not fully understand the content and legal implications of the agreements they sign, so when disputes arise and the mediation process takes place, clients are often not in an equal position to negotiate their interests. In contract negotiations, there is an imbalance in the bargaining position between banks and consumers, as well as a lack of consumer knowledge about their rights based on the agreed contract. Research on consumer protection consistently demonstrates that information asymmetry and unequal bargaining power often place consumers at a disadvantage during

dispute resolution processes, particularly in complex financial transactions (OECD, 2020; World Bank, 2022; Ayu & Nugroho, 2022).

This issue becomes increasingly problematic when the objective of procedural efficiency conflicts with the broader pursuit of substantive justice. While mediation is designed to accelerate dispute resolution and reduce litigation costs, excessive emphasis on settlement speed may undermine the quality and fairness of outcomes achieved. Scholars have argued that mediation should not merely facilitate agreement but should also ensure that agreements are reached voluntarily, transparently, and under conditions that adequately protect vulnerable parties (Menkel-Meadow, 2016; Alexander, 2019; Nolan-Haley, 2020). Without appropriate safeguards, mediation may inadvertently function as a mechanism that encourages weaker parties to accept unfavorable settlements simply to avoid prolonged disputes. Analysis using legal system theory shows that there is an imbalance between legal structures that have not been adequately institutionally supported, legal substance that is often perceived as mere formality, and community legal culture that has not fully supported peaceful dispute resolution. This means that the principle of speed in mediation can turn into pressure for the weaker party to accept the agreement immediately, even if the agreement does not reflect true justice. Clients have the right to get justice in dispute resolution and expect the dispute resolution process to be carried out transparently and fairly, but these expectations often clash with the reality of mediation which tends to prioritize the speed of agreement rather than the quality of justice achieved (Marcelliana, 2023). And successful implementation of mediation depends not only on regulatory frameworks and institutional capacity but also on the legal awareness and negotiating capabilities of the parties involved (Friedman, 2019; Ahyani et al., 2023).

From a broader perspective, the effectiveness of organizations in resolving disputes of sharia economic law in Indonesia is greatly influenced by the regulatory aspects, institutions, and the level of understanding of the parties involved in the principles of Islamic economic law. This indicates that mediation that takes place without the fulfillment of all three aspects simultaneously has the potential to produce an agreement product that is more a reflection of the imbalance of power of the parties than a manifestation of the value of justice in Islamic law. The law must side with the weak so that justice can truly be realized, not just produce a peace deed that looks formal but lacks the substance of protection.

This is where the gap lies that is the focus of this research. There is a clear gap between the normative goal of accelerating dispute resolution through mediation and the fulfillment of substantive justice for the client as a structurally weaker party. Mediation should be an instrument that is not only quick and cheap, but also able to bring meaningful justice. If these two objectives are not managed in a balanced manner, mediation in sharia economic disputes risks becoming a mechanism that is more economically and legally stronger, namely Islamic financial institutions, while customers are increasingly marginalized from access to real justice.

METHODS

This research uses a type of normative legal research, which is a research approach that places law as a system of norms that is systematically studied through literature materials. The choice of this type of research is based on the characteristics of the problems raised, where the central issue of the research is related to the tension between the legal norms that govern the acceleration of dispute resolution through mediation and the demand for substantive justice for clients in sharia economic disputes. Such a problem is basically a normative problem that does not require direct field observation, but requires an in-depth study of relevant legal texts, doctrines, and concepts (Marzuki, 2021; Ibrahim, 2022).

RESULT AND DISCUSSION

A. The Basic Concept of Sharia Economic Dispute Resolution Through Mediation

Before discussing mediation as an instrument for resolving it, it is important to first understand what is meant by sharia economic disputes themselves. Conceptually, disputes in this context are not born from emptiness, but are rooted in legal relationships established through contracts or agreements based on sharia principles. Sharia economic disputes are basically caused by three things, namely because one of the parties broke a promise (default), because of an unlawful act against the agreed agreement, and because of coercive circumstances. These three sources of dispute reflect the reality of economic relations that do not always run smoothly, especially when one of the parties fails to meet mutually agreed obligations.

In the perspective of Islamic law, liability for default is known as *masúliyah madaniyah* or *Düsseldorf*, namely the obligation to provide compensation due to failure to fulfill the agreement. Default is the failure of the customer to fulfill obligations or everything that is determined and mutually agreed upon in the contract, and the birth of civil liability in Islamic law must meet the elements of error, loss, and causal relationship between the two. This understanding is important because it places sharia economic disputes not only as technical problems of ordinary civil law, but also as issues that have moral and religious dimensions (Mukaromah, 2018).

The scope of the field of sharia economics that can be the object of dispute is very wide. The explanation of Article 49 of Law Number 3 of 2006 states that dispute resolution is not only limited to the field of Islamic banking, but also includes Islamic microfinance institutions, Islamic insurance, Islamic mutual funds, Islamic bonds, Islamic securities, Islamic financing, Islamic pawnshops, Islamic financial institution pension funds, and Islamic businesses. The breadth of this scope shows that sharia economic disputes cannot be narrowed down to banking matters alone, but touch almost all financial and business sectors that base their operations on Islamic principles.

Subsequently, the question of which forum is authorized to resolve sharia economic disputes has passed a long way in the history of Indonesian law. Prior to the birth of Law No. 3 of 2006, these disputes were often resolved in the District Court, a forum that incidentally was not designed to understand and apply the principles of muamalah. The amendment of Law No. 7 of 1989 concerning Religious Courts to Law No. 3 of 2006 can be interpreted as the politics of sharia economic law by expanding the authority of the Religious Court, and this amendment not only expands the authority, but also provides space for formal settlement of sharia economic disputes (Umam, 2016).

Normatively, Article 49 of Law Number 3 of 2006 emphasizes that the Religious Court has absolute competence to receive, examine, adjudicate, and decide disputes in the field of Islamic banking, and parties who enter into agreements based on sharia principles cannot make legal choices to be tried in other courts. This provision is absolute and cannot be overridden by the will of the parties through a choice of law clause in the contract. The certainty of this jurisdiction was then strengthened through the Constitutional Court Decision Number 93/PUU-X/2012 which expressly gives absolute authority for religious courts to adjudicate sharia economic disputes in order to ensure the rights of customers and sharia business units to obtain fair legal certainty in accordance with the mandate of Article 28D paragraph (1) of the 1945 Constitution.

In terms of procedural law used, the basis of judges in resolving sharia economic cases includes three layers of law at the same time, namely the legal basis of judicial authority based on Law Number 3 of 2006 jo. Article 55 paragraph (1) of Law Number 21 of 2008 concerning Sharia

Banking, procedural law referring to the Civil Code and the applicable Supreme Court Regulations, as well as material law in the form of a Compilation of Sharia Economic Law and fiqh books. The combination of these three layers reflects the character of sharia economic disputes that cannot be separated from Islamic values even though they are resolved through formal mechanisms of the state judiciary.

Mediation as a dispute resolution instrument is not a foreign idea in the Indonesian legal system. Before it was formally known, the deliberation approach to consensus had long been part of the legal culture of Indonesian society, especially in conflict resolution at the community level. In the context of modern law, mediation began to gain attention after its recognition in various applicable laws and regulations (Yahya, 2025).

Definitively, mediation can be understood as a process in which the disputing parties, with the help of a neutral third party, seek to reach an agreement voluntarily. Mediation is an attempt to resolve a conflict by involving a neutral third party, who does not have the authority to make decisions, which helps the disputing parties reach a settlement acceptable to both parties (Rochmani, 2020). The fundamental difference between mediation and litigation lies in the position of the third party itself, and in mediation, the mediator is not authorized to decide, while the judge in litigation instead has full authority to determine who wins and loses.

The positive legal basis for mediation in Indonesia is currently based mainly on Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Courts. This regulation strengthens the position of mediation as a mandatory part of the settlement of civil cases in court, where every civil dispute must first be taken through mediation before entering the main examination stage. This mandatory nature reflects the state's commitment to encourage more peaceful, efficient, and non-adversarial dispute resolution before a judge's decision is rendered. The integration of mediation into the dispute resolution process in Indonesian courts aims to create an inclusive and humane value-based justice, where mediation provides an alternative settlement that allows the parties to reach an agreement peacefully without harming either party (Marpaung, 2024).

Mediation also offers a dimension of fairness that is not always available in the litigation pathway. In contrast to litigation decisions that tend to produce a win-lose pattern, mediation encourages the creation of mutually beneficial solutions that are more responsive to the real needs of the parties, thereby strengthening access to justice, especially for people who have limited resources to go through a long and complex litigation process (Prince, 2026). If positive law recognizes mediation as a product of modernization of the judicial system, then Islamic law has actually had a substantially equivalent concept since long before. Islam offers three main mechanisms for dispute resolution, namely *as-sulhu* (peace), *at-tahkim* (arbitration), and *al-qadha* (justice), and these three mechanisms emphasize the principles of justice, deliberation, and balance in resolving disputes. Among the three, *as-sulhu* or *al-shulhu* is the closest to the concept of mediation in positive law (Musaffa, 2016).

Al-shulhu literally means peace or reconciliation, and in the fiqh muamalah it is interpreted as an attempt to remove disputes through agreements reached voluntarily. In Islamic law, the peace efforts undertaken by the parties to resolve muamalah disputes are known as *al-shulhu*, and the involvement of third parties in this process can act as mediators or facilitators to help the parties reach an agreement. It is this neutral third-party involvement that makes *al-shulhu* a powerful conceptual equivalent for mediation in the modern sense.

The legitimacy of *al-shulhu* in Islam comes directly from the Qur'an. Surah Al-Anfal verse 61 emphasizes that if the opponent is inclined towards peace, then he should also be inclined towards peace. Similarly, the concept of *ishlah* is not just a technical solution, but a restorative

strategy that encourages the restoration of social relations, respect for the rights of others, and higher moral awareness, as well as bringing spiritual values that provide a sense of peace and contentment from the perspective of faith. This shows that mediation within the framework of Islamic law is not just a legal technique, but contains a deeper dimension of worship and moral responsibility.

Mediation is also a legal institution that does not work in a void of values. It is built on a number of principles that become a normative as well as a philosophical framework for the entire process. In Indonesian positive law, there are several basic principles inherent in mediation. The first is the principle of voluntariness, which means that the parties are free to decide whether or not to reach an agreement without pressure from either side. The second is the principle of confidentiality, which provides a sense of security for the parties to convey their interests without public pressure. The third is the principle of good faith, where mediation is the process of resolving disputes through consensus deliberation or consensus of the parties that will be able to run well if it is based on good faith (Lestari, 2020). The fourth is the principle of mediator neutrality, where the mediator acts as a facilitator to create an environment that favors compromise that benefits both parties, and the content of the agreement remains the property of the parties to the dispute.

From the perspective of Islamic law, these principles find their roots in more fundamental values. In Islamic law, justice ('adl) and balance (tawazun) are core values that must animate every dispute resolution mechanism, where conflict resolution from an Islamic perspective emphasizes the principles of justice, equality, and mediation as the main instruments. The value of justice in Islam is not only procedural, but substantive, in the sense that the agreement resulting from mediation must truly reflect real justice for both parties and not just a formality (Puspita, 2025).

In the context of Islamic economics, the principle of balance between the parties (tawazun) becomes very relevant considering that the relationship between Islamic financial institutions and customers is fundamentally unequal. The principle of justice in Islamic law requires the contracting parties to be true in the disclosure of their wishes and circumstances and to fulfill all obligations, where any form of transaction that contains elements of oppression cannot be justified (Cindawati, 2016). Thus, mediation in sharia economic disputes is not enough to meet the principle of speed and simplicity of the procedure, but must also ensure that the process and its outcome are in harmony with the values of justice and balance mandated by Islamic law itself. If one of these principles is sacrificed for the sake of another, then mediation loses its substantive legitimacy both within the framework of positive law and Islamic law.

B. Implications and Obstacles to the Application of the Principle of Speed and Justice for Customers in Solving Sharia Economic Disputes Through Mediation

After understanding the basic concept of mediation in sharia economic disputes, both from the perspective of positive law and Islamic law, the next discussion moves to a more critical area, namely how the principle of speed and justice works in reality. Understanding the concept is important, but what is even more decisive is how the two principles go hand in hand in the practice of concrete dispute resolution. And this is where the real problem arises, because the principles of speed and justice do not always move in the same direction. In many situations, the two are in a tension that is not easily resolved, especially when one of the parties to the dispute is in a structurally weaker position.

Normatively, the principle of fast, simple, and low cost is the basic principle of the administration of justice that has long been recognized in the Indonesian legal system. The principle of simple, fast, and low cost is a principle in the administration of justice because it is a guideline for judges in carrying out a judicial process in order to answer the sense of justice in society, and so that everyone can easily fight for their justice, the judicial process must be carried out as simply as possible, as quickly as possible, and as cheaply as possible. In the context of mediation, this principle becomes particularly relevant because mediation is designed as a more efficient alternative to full litigation. Access to justice not only means the ability to bring a case to court, but it also includes the ability to obtain a fair, fast, and affordable settlement, while lengthy litigation processes often hinder communities, especially economically disadvantaged groups, and in such situation mediation offers simpler and more cost-effective solutions because a settlement can be reached without going through complex evidentiary stages.

The positive implications of the application of the principle of speed in the mediation of sharia economic disputes cannot be ignored. Research shows that mediation is effective in speeding up dispute resolution, reducing costs that must be incurred by the parties, and maintaining good relations between the parties because the process is collaborative. From the customer side, time and cost efficiency certainly bring real benefits. A customer who has a dispute with an Islamic financial institution, with the limited resources he has, will certainly benefit much more from a short process and does not require large case costs than having to attend a full trial that can last months or even years. The non-litigation pathway, including mediation, is able to accelerate dispute resolution while maintaining the principles of justice and benefits in the context of non-performing financing in Islamic financial institutions (Ziaharah, 2025). Thus, the principle of speedy mediation actually contains a noble goal, which is to ensure that justice is not only available on paper, but also affordable in time and cost for all levels of society.

However, deeper problems begin to arise when this principle of speed is faced with the reality of the relationship between customers and Islamic financial institutions. The relationship is structurally unequal. In the legal framework of agreements, the principle of equality of position of the parties is a fundamental prerequisite to ensure the realization of substantive justice, but empirically there are still many standard contract practices with unilateral clauses that injure the principle of contractual justice, where the principle of balance requires equality of legal standing, the absence of dominance of one party, and a balance of bargaining power between the parties involved. This inequality is not temporary or accidental, but inherent in the nature of the relationship between financial institutions and their customers. Islamic financial institutions have a trained legal team, understand the intricacies of contracts and regulations, and have experience in the dispute process. Meanwhile, customers, especially individuals or small business actors, are often present in the mediation process without adequate legal understanding.

The limitation of customer legal literacy is the biggest weak point in the application of the fast principle. When mediation takes place with time pressure that is felt from various sides, clients who do not fully understand their rights will be vulnerable to making agreements that are actually detrimental to them. Mediation also has a dimension of substantive justice, in litigation judges are bound to a positive legal framework and formal proof so that the room for compromise is relatively limited, while mediation provides freedom for the parties to formulate solutions that not only conform to legal norms, but also reflect their real needs and interests. This space of freedom, which should be the advantage of mediation, can actually turn into a loophole that is used by the stronger party. In a situation where one party has a much greater understanding and resources, freedom to negotiate does not reflect equality, but rather simply formalizes pre-existing inequalities.

Furthermore, the pressure to reach an agreement that is inherent in the logic of the principle quickly has the potential to shift justice from the substantive to the purely formal level. Mediation is not solely positioned as an instrument to speed up dispute resolution or reduce the burden of cases in court, but also as a means to realize substantive justice, which is the result of dispute resolution that is not only in accordance with formal legal provisions, but also reflects the sense of justice that lives in society and pays attention to the real interests of the parties. This means that a peace deed born from the mediation process can appear procedurally valid, signed by both parties, recorded by the mediator and the court, but in fact does not reflect a free and balanced agreement. The client may agree not to it because they feel fair, but because they have no other choice, do not understand the legal consequences, or feel pressured by a fast-paced process that does not give them room to think and prepare carefully. Under such conditions, the resulting justice is only procedural justice that is devoid of substance, and this is a tangible manifestation of the tension between the principle of speed and the demands of actual justice.

These tensions cannot be separated from a number of structural obstacles that have prevented the mediation of sharia economic disputes from running optimally. The first obstacle is related to the regulatory aspect that has not fully provided adequate protection for customers as weaker parties. Supreme Court Regulation Number 1 of 2016 concerning mediation procedures is a revision of Supreme Court Regulation Number 1 of 2008, where in the previous regulation there were still many normative weaknesses that hindered the achievement of the expected goals. Although it has been improved, the existing mediation regulatory framework does not specifically regulate how to ensure that the client's position as a vulnerable party can be substantively protected during the process. Existing mediation regulations tend to be procedural, regulating the course of the process without paying enough attention to the dimension of party protection which is economically and informatively weaker. As a result, norms that are supposed to be protective can actually operate neutrally in unequal situations, so the results cannot be called neutral (Luis Ma'luf, 2009).

The second obstacle concerns the quality and capacity of the mediator. A good mediator is not just a facilitator of the process, but must also be able to detect and balance the inequality that exists between the parties, especially in disputes involving professional financial institutions on the one hand and ordinary clients on the other. Sharia economic cases are easier to resolve through mediation when they involve a mediator who understands sharia principles, which shows that the success of mediation in sharia economic cases does not only depend on the procedure, but is highly determined by the substantive competence of the mediator. Unfortunately, mediators who have dual competence, namely proficient in mediation procedural law as well as a substantive understanding of sharia economic law, are still very limited in number. The effectiveness of mediation still faces various obstacles, including low public understanding and participation, limited number of competent mediators, legal culture that is still litigation-oriented, and not optimal support facilities in the courts, which shows that the success of mediation does not only depend on regulations, but also on the quality of human resources and institutional support. When the mediator does not have a sufficient understanding of the principles of muamalah, contract balance, and customer rights under Islamic law, he will not be able to judge whether the agreement being formed is truly fair according to substantive sharia standards, or simply the result of pressure from a stronger party.

The third obstacle, which often goes unnoticed, is the low legal culture and legal literacy of the community, especially customers, in understanding their rights. One of the main obstacles to

the effectiveness of mediation is that the process often depends on the good faith of the parties to reach an agreement, so it is necessary to optimize the non-litigation dispute resolution mechanism through increasing the role of competent mediators, strengthening regulations related to non-litigation, and developing a supervisory system for the implementation of dispute resolution results. A client who does not understand that he is entitled to sufficient information before agreeing to an offer, or who does not know that he can reject an unfair deal without burdensome legal consequences, will easily be positioned as a passive party and accept whatever is offered. This ignorance is not just an individual problem, but also reflects the lack of systematic public legal education, both by the government, financial institutions, and the courts themselves (Tuasikal, 2025).

These three obstacles, namely inadequate regulations, limited competent mediators, and low legal literacy of customers, actually reinforce each other. Weak regulations do not encourage the formation of qualified mediators. Incompetent mediators are unable to compensate for the information imbalance between customers and financial institutions. And customers who are not legally literate will not be able to make optimal use of mediation procedures even though the regulations are available. In such conditions, the principle of speed, which is supposed to expand access to justice, can actually operate the opposite, it speeds up the process, but also accelerates the injustice that is hidden behind a peace act that appears to be legitimate. The loss of a sense of justice in society due to the slow resolution of cases is a serious impact, because the sense of justice that should be obtained immediately becomes blurred, while the weak parties are often unable to bear the costs of the case which continue to swell, and this condition creates the perception that the law only favors those who have the resources.

Thus, there is a real and serious tension between the principle of speed and the demands of substantive justice in the mediation of sharia economic disputes. The principle of speed does not automatically produce justice, especially for those who are structurally in an unbalanced position. Mediation can only become a real instrument of justice if the above three obstacles are addressed simultaneously, namely through strengthening regulations that explicitly protect the client's position in the mediation process, improving the quality of mediators who are not only procedurally proficient but also substantively competent in sharia economic law, and building a community legal culture that allows clients to attend the mediation process with a sufficient understanding of the rights. Without comprehensive improvements in these three aspects, mediation in sharia economic disputes risks becoming just a legal formality that speeds up the process without guaranteeing justice, and in that condition, it is precisely the party who needs legal protection the most, namely the customer, who will be most harmed.

CONCLUSION

The sharia economic dispute in Indonesia is faced with two demands that are theoretically complementary to each other, but in practice often move against each other. On the one hand, the principle of fast, simple, and low cost which is the spirit of the mediation mechanism is expected to be able to ensure that each party to the dispute can obtain an efficient resolution without having to bear unnecessary time and cost burdens. On the other hand, substantive justice requires that any agreement born out of the mediation process must truly reflect a balance of interests and real protection for the weaker parties, especially customers as consumers of Islamic financial services. A critical analysis of the implications of applying the fast principle shows that such a seemingly robust formal framework holds serious vulnerabilities when dealing with the structural reality of the relationship between customers and Islamic financial institutions. The pressure to reach an agreement immediately, which is inherent in the logic of speed, has the

potential to result in a peace treaty that is procedurally valid but substantively hollow. Clients who attend the mediation process with limited legal knowledge, without adequate assistance, and in the presence of financial institutions with much greater technical and legal capacity, are in a structurally unequal position. In such conditions, the freedom to negotiate, which is the advantage of mediation, has actually turned into an instrument that formalizes inequality. The resulting justice stops at the procedural level, not to the substantive level that is actually needed by the client.

REFERENCES

- Alexander, N. (2019). *International and comparative mediation: Legal perspectives*. Wolters Kluwer.
- Aminah, S. (2019). Constitutional Court decision and sharia banking dispute resolution in Indonesia. *Jurnal Konstitusi*, 16(3), 455-472.
- Arifin, M. (2018). Religious court authority in resolving sharia economic disputes in Indonesia. *Jurnal Hukum dan Peradilan*, 7(2), 211-228.
- Ascarya, A., & Yumanita, D. (2022). *The development of Islamic finance in Indonesia: Challenges and opportunities*. Bank Indonesia.
- Astuti, D., & Santoso, B. (2022). The effectiveness of mediation in civil dispute settlement in Indonesia. *Hasanuddin Law Review*, 8(1), 45-60.
- Auda, J. (2018). *Maqasid al-shariah as philosophy of Islamic law: A systems approach*. International Institute of Islamic Thought.
- Cindawati. (2016). Perkembangan Perjanjian Baku Dalam Praktik Perdagangan (Perspektif Hukum Islam Dan perspektif Hukum Positif). *Jurisdictie: Jurnal Hukum Dan Syariah*, 7(2).
- Fauzan. (2021). *Hukum acara peradilan agama*. Kencana.
- Fauzi, M. (2025). Efektifitas Penyelesaian Sengketa Ekonomi Syariah Pendekatan Mediasi Dalam Perspektif Yuridis Normatif. *Hutanasyah: Jurnal Hukum Tata Negara*, 4(1).
- Friedman, L. M. (2019). *The legal system: A social science perspective* (2nd ed.). Russell Sage Foundation.
- Hallaq, W. B. (2021). *An introduction to Islamic law* (2nd ed.). Cambridge University Press.
- Hidayat, T. (2020). BASYARNAS as an alternative institution for sharia economic dispute resolution in Indonesia. *Jurnal Arbitrase Indonesia*, 12(1), 33-48.
- Hosen, N. (2020). Islamic financial disputes and legal resolution in Indonesia. *Al-Iqtishad: Journal of Islamic Economics*, 12(2), 157-174. <https://doi.org/10.15408/aiq.v12i2.15744>
- Ibrahim, J. (2022). *Teori dan metodologi penelitian hukum normatif* (Edisi revisi). Bayumedia Publishing.
- Ismal, R. (2020). *Islamic banking in Indonesia: New perspectives on monetary and financial issues*. Kencana.
- Kamali, M. H. (2019). *Shariah law: An introduction*. Oneworld Publications.
- Komite Nasional Ekonomi dan Keuangan Syariah. (2019). *Masterplan ekonomi syariah Indonesia 2019–2024*. KNEKS.
- Lestari, R. (2020). Perbandingan Hukum Penyelesaian Sengketa Secara Mediasi Di Pengadilan Dan Di Luar Pengadilan Di Indonesia. *Jurnal Ilmu Hukum*, 3(1).
- Luis Ma'luf, A.-M. (2009). *Hukum Pidana Islam di Indonesia*. Teras.

- Mahir. (2014). Kewenangan Pengadilan Agama dalam Sengketa Perbankan Syariah. *Al-Qānūn*, 17(1).
- Marcelliana, V. (2023). Penerapan Perlindungan Konsumen Terhadap Nasabah PT. Bank Syariah Indonesia Dalam Kasus Kebocoran Data Nasabah. *Deposisi: Jurnal Publikasi Ilmu Hukum*, 1(2).
- Marpaung, P. G. & D. S. H. (2024). Perbandingan Proses Penyelesaian Sengketa Melalui Mediasi Di Pengadilan Dan Di Luar Pengadilan Di Indonesia. *Rewang Rencang: Jurnal Hukum Lex Generalis*, 5(4).
- Marzuki, P. M. (2021). *Penelitian hukum* (Edisi revisi). Kencana.
- Menkel-Meadow, C. (2016). *Mediation: Theory, policy and practice*. Routledge.
- Moenek, E. A. (2025). Penyelesaian Sengketa Ekonomi Syariah di Indonesia: Analisis Efektivitas Lembaga Penyelesaian Sengketa. *Jurnal Ilmu Sosial & Hukum*, 3(2).
- Moonti, K. H. & R. M. (2025). Perlindungan Hukum Bagi Nasabah dalam Perjanjian Kredit Bank. *Mahkamah: Jurnal Riset Ilmu Hukum*, 2(3).
- Mukaromah, L. A. (2018). Penyelesaian Perkara Ekonomi Syariah Dengan Gugatan Acara Sederhana Dan Acara Biasa Di Indonesia (Studi Komparasi Antara Perma Nomor 14 Tahun 2016 Dengan Perma Nomor 2 Tahun 2015). *AT-TUHFAH: Jurnal Keislaman*, 7(1).
- Musaffa, M. U. A. (2016). Optimalisasi Penyelesaian Sengketa dalam Perspektif Hukum Islam dan Sistem Hukum Indonesia: Studi Komparatif antara Litigasi dan Alternative Dispute Resolution (ADR). *Az Zarfah*, 8(2).
- Nahda, S. (2025). Pelaksanaan Mediasi Berdasarkan Peraturan Mahkamah Agung Nomor 1 Tahun 2016 Tentang Prosedur Mediasi. *Jurnal USM Law Review*, 8(3).
- Nisrina, D. N. (2018). Upaya Perlindungan Konsumen terhadap Akad Klausula Baku (Studi pada Pengadilan Agama Makassar Klas IA). *Al-Qadau*, 5(2).
- Nolan-Haley, J. (2020). *Alternative dispute resolution in a nutshell* (6th ed.). West Academic Publishing.
- Nuridin, M. (2020). Jurisdiction of religious courts in Islamic banking disputes after Constitutional Court Decision Number 93/PUU-X/2012. *Al-Manahij: Jurnal Kajian Hukum Islam*, 14(1), 95-110.
- OECD. (2020). *Consumer protection and financial inclusion: Revised G20/OECD high-level principles*. OECD Publishing. <https://www.oecd.org>
- Otoritas Jasa Keuangan. (2024). *Laporan perkembangan keuangan syariah Indonesia 2024*. OJK. <https://www.ojk.go.id>
- Puspita, I. S. (2025). Prinsip Keadilan Dan Keseimbangan Dalam Hubungan Industrial: Tinjauan Hukum Islam. *JURNAL MEDIA AKADEMIK (JMA)*, 3(7).
- Putri, J. T. (2026). Mediasi Sebagai Instrumen Penyelesaian Sengketa Perdata Yang Efektif Dan Berkeadilan. *Jurnal Kolaboratif Sains*, 9(2).
- Rahman, F., & Anwar, M. (2021). Sharia economic dispute resolution and legal certainty in Indonesia. *Journal of Islamic Law Studies*, 5(2), 101-118.
- Rochmani. (2020). Mediasi Sebagai Alternatif Penyelesaian Senketa Di Luar Pengadilan Yang Cepat, Sederhana Dan Biaya Ringan. *Proceeding SENDIU*.
- Syahrizal. (2021). *Penyelesaian sengketa ekonomi syariah di Indonesia*. Kencana.
- Tuasikal, D. & H. (2025). Penyelesaian Sengketa Perdata Melalui Non-Litigasi: Kajian Hukum dan Implementasinya di Indonesia. *Journal of Dual Legal Systems*, 2(1).
- Umam, A. K. (2016). Hukum Penyelesaian Sengketa Ekonomi Syariah Di Indonesia. *Risalah*, 1(1).
- Utomo, M. A. & S. L. (2019). Mediasi Perbankan Dalam Penyelesaian Sengketa Antara Nasabah Dan Bank. *SUPREMASI JURNAL HUKUM*, 2(1).
- Utomo, S. (2019). Banking mediation as consumer protection in Indonesian financial services. *Jurnal Hukum Ekonomi dan Bisnis*, 4(2), 88-102.

- Wahyudi, A. (2020). Court-connected mediation and judicial efficiency in Indonesia. *Jurnal Hukum IUS QUIA IUSTUM*, 27(3), 451-470.
- World Bank. (2022). *Consumer protection in financial services: Good practices and emerging challenges*. World Bank Publications.
- Yahya, A. S. (2025). Pengaturan Hukum Terhadap Praktik Mediasi Dalam Penyelesaian Sengketa. *JURNAL HUKUM CARAKA JUSTITIA*, 5(1).
- Yudi. (2024). Perkembangan Perbankan Syariah di Indonesia. *Socius: Jurnal Penelitian Ilmu-Ilmu*, 2(4).
- Ziaharah, O. S. M. & L. I. (2025). Penyelesaian Hukum Non Litigasi Pembiayaan Bermasalah Pada Lembaga Keuangan Syariah. *Qanuniya : Jurnal Ilmu Hukum*, 2(2).