

## **Sharia Economic Dispute Settlement at the Bengkulu Religious Court Case Study Case Decision Number 0161/Pdt.G/2017/PA.Bn**

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**Abstract:** The purpose of this study is to examine the answers to problems regarding the settlement of sharia economic disputes in the Bengkulu religious court case study case decision number: 0161/Pdt.G/2017/PA.Bn. This research is motivated by the increase in sharia economic growth today so that many sharia institutions have been born in Indonesia. Along with the development of Islamic financial institutions in Indonesia, there will be a tangent point with the judicial world, especially religious courts. The tangent point is in terms of dispute resolution, namely when there is a dispute between a shari'ah financial institution and its customers. The type of research used in this study is sociological or empirical legal research. Sociological or empirical legal research is legal research that obtains primary data and secondary data. The researcher found that juridically the decision number: 0161/Pdt.G/2017/PA.BN was in accordance with the legal procedures (procedural law) applicable in a religious court. In this regard, this study found an example of a case between a shari'ah financial institution and its customers that was disputed at the Bengkulu Religious Court with Case Number: 0161/Pdt.G/2017/PA.Bn.

**Keywords:** Dispute, Sharia Economics, Mediation, Religious Courts

## **Introduction**

The application of applicable law in Indonesia is known for two types of dispute resolution, namely litigation and non-litigation. Litigation is a dispute whose resolution process is carried out in court, while non-litigation is a dispute whose settlement process is carried out outside the court, which is commonly called alternative dispute resolution (ADR) which can be done by arbitration, negotiation, conciliation, or mediation.

The entry of mediation into the court proceedings through the issuance of the Supreme Court Circular issuing Supreme Court Regulation No. 2 of 2003 revised with Supreme Court Regulation No. 1 of 2008 can be an effective instrument to prevent the accumulation of cases in court and maximize judicial functions in efforts to resolve disputes. Mediation in this court strengthens peaceful efforts as stipulated in Article 130 HIR or Article 154 RBg. With the enactment of Supreme Court Regulation No. 1 of 2008, the court not only has the task of examining, adjudicating, and deciding cases that have been received, but also trying to establish peace for the parties to the dispute.

In Article 2 paragraph (1) of Supreme Court Regulation No. 2 of 2003 it is stated that all civil cases submitted to the Court of first instance must first be resolved through peace with the help of a mediator. Likewise, in Supreme Court Regulation No. 1 of 2008 in Article 2 paragraph (2) it is said that every judge, mediator, and parties must follow the dispute resolution procedure through mediation stipulated in this regulation. Judging from the sound of this article, the judge before continuing the examination of the subject matter, advised the parties to the dispute to go through peace through the mediation process. Then in Article 2 paragraph (3) of Supreme Court Regulation No. 1 of 2008 said that not taking mediation procedures based on this regulation is a violation of the provisions of article 130 HIR and or article 154 RBg which results in a null and void decision. The presence of Perma No. 1 of 2008 is intended to provide certainty, order, smoothness in the process of reconciling the parties to resolve a dispute. This can be done by

intensifying and integrating the mediation process into litigation procedures in court.

Mediation received important support in Perma No. 1 of 2008, because the mediation process is an inseparable part of the court. The judge must follow the dispute resolution procedure through mediation. If the judge violates or does not apply the mediation procedure, then the judge's decision is declared null and void. Therefore, the judge in considering his decision must mention that the case concerned has been sought peace through mediation by mentioning the name of the mediator in the case.<sup>1</sup>

Perma mediation has strengthened obligations that were not previously clearly regulated in HIR and RBg, for example in PERMA No. 1 of 2008 Article 2 point (4) requires that in considering the decision, the judge must mention that the case has been sought peace through the mediation process, but was unsuccessful by including the name of the mediator for the case concerned, based on the determination of the appointment of a mediator. This is not found in HIR and RBg, even in Article 130 HIR/154 RBg there is no mandatory word in undergoing the peace process. Article 130 HIR and Article 154 RBg state that "*if on the appointed day the parties come before him, the district court with the intercession of its chairman shall try to reconcile them*". If viewed from the sound of the article above, it is coercive, after that article 2 point (3) of PERMA No. 1 of 2008 provides a threat for violations of article 130 HIR / 154 RBg with the sanction of "null and void decision". The purpose of the issuance of the mediation PERMA is not to build a new legal institution, but merely to provide technical rules for peaceful institutions that have previously been regulated in HIR and RBg and their substance remains guided by the main rules that are the source.<sup>2</sup>

Dispute resolution through the court process is basically the last step if deliberation turns out to be unsuccessful. The end result

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<sup>1</sup>. Shahrizal Abbas, *Mediation in Shari'ah, Customary Law, and National Law*, Jakarta: Kencana, 2011, p.311.

<sup>2</sup>. D.Y. Witanto, *Mediation Procedural Law in Civil Cases in General Courts and Religious Courts According to Perma No. 1 of 2008 concerning Mediation Procedures in Court*, Bandung: Alfabeta, 2012, p.59.

of the dispute resolution stage through mediation, the estuary is to achieve peace, because the parties have the opportunity to put forward proposals according to their interests. Even if mediation is unsuccessful or has not reached an agreement, but at least it can clarify the problem and narrow the dispute, because the parties have the opportunity to express what they feel and what they want in court in the form of a verdict.

The success of mediation in addition to the good ethics of the parties, also requires a force so that the process of resolving cases runs as expected. Mediation requires an alternative form of dispute resolution that has power so that mediation becomes one of the options that can be used by those who are in dispute.

Christopher W. Moore expressed his view of the power of mediation: "If the potential force influence of the parties is well developed, a fair equality in power and realized by the disputing parties, the mediator's duty to effectively access the influence of one party to the other will result in a joint decision of the parties".<sup>3</sup>

One of the cases that can be resolved through the court or outside the court is the case of sharia economics. The Religious Court as one of the actors of judicial power is tasked with organizing law enforcement and justice for the people seeking justice in certain cases, between people of Muslim faith in the fields of marriage, inheritance, wills, grants, waqf, zakat, infaq, sadaqah, and sharia economics.<sup>4</sup>

The principle of shari'ah in question is the rule of agreement based on Islamic law between the bank and the party for the storage of funds and financing of business activities or other activities, which are stated in accordance with shari'ah including mudharabah, musharakah and murabahah.<sup>5</sup>

Along with the development of shari'ah financial institutions in Indonesia, there will be a tangent point with the judicial world,

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<sup>3</sup>. I Made Sukadana, *Judicial Mediation*, Jakarta: Prestasi Pustaka, 2012, p.194.

<sup>4</sup> Afdol, *Islamic Law Legislation in Indonesia*, Surabaya: Airlangga University Press, 2006, p. 119.

<sup>5</sup> Mohammad Daud Ali, *Islamic Institutions in Indonesia*, Jakarta: Raja Grafindo, 1995, p. 119.

especially religious courts. The tangent point is in terms of dispute resolution, namely when there is a dispute party between the Shari'ah financial institution and its customers, between creditors and debtors in the deed of agreement usually always appears a statement if a dispute occurs, the parties agree to resolve the dispute through the National Shari'ah Arbitration body or through the Court.

Based on Law Number 3 of 2006 as amended by Law Number 50 of 2009 concerning the second amendment to Law Number 7 of 1989 concerning Religious Courts Article 49 paragraph (1), religious courts are authorized to examine, adjudicate, and resolve shari'ah economic disputes.

In Indonesia, the integration of mediation in court began when the Supreme Court of the Republic of Indonesia issued Supreme Court regulation No. 2 of 2003 which was later revised in Supreme Court regulation No. 1 of 2003 which was later revised in Supreme Court regulation No. 1 of 2008 which demands mediation procedures in the peaceful settlement of civil disputes in court. This policy is a historic legal breakthrough in the justice system in Indonesia.<sup>6</sup>

Supreme Court Regulation No. 1 of 2008 is basically more intended to regulate the principles and procedures for the use of mediation in cases or civil disputes that have been submitted to the court (court *connected mediation*). However, to further strengthen the use of mediation in the Indonesian legal system and minimize the emergence of legal problems that may arise from the use of mediation outside the court, the Supreme Court Number. 1 The year 2008 also contains provisions that can be used by disputing parties who successfully resolve disputes through out-of-court mediation to request the court that an out-of-court peace agreement be strengthened by a peace deed. Out-of-court mediation is not much different from in-court mediation lies in the agreement to be reached and implemented by the parties. When an agreement has been reached, the form of agreement is written on stamped paper, signed by the parties and the mediator. Within a maximum period of 30

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<sup>6</sup> . Fatahillah A. Syukur, *Judicial Mediation in Indonesia Opportunities and Challenges in Advancing the Justice System*, Bandung: CV Mandar, 2012, p.2.

(thirty) days from the date of signing the agreement, the original sheet or authentic copy of the agreement shall be submitted and registered with the clerk of the district court. The submission or registration of an authentic copy of the agreement is carried out by the mediator or one of the parties or parties to the dispute. If one of the parties violates the agreement, it is not allowed to ask the court for execution, but must file a lawsuit first. It is different with mediation in courts that have executory power so that they can be asked for execution.<sup>7</sup>

Supreme Court Regulation No. 2 of 2003 makes mediation part of the court proceedings. Mediation becomes an integral part in the resolution of disputes in court. In addition, mediation in court strengthens peaceful efforts as stipulated in the procedural law Article 130 HIR or Article 154 RBg. This is affirmed in Article 2 of Perma No. 2 of 2003, namely that all civil cases submitted to the court of first instance must first be resolved through peace with the help of a mediator.

Cases with the assistance of a mediator in accordance with the Supreme Court regulations in the private/civil area such as disputes regarding ownership, regarding inheritance, and regarding business submitted to the court of first instance must be resolved through a mediation process with the assistance of a mediator in accordance with Supreme Court regulation No. 2 of 2003 which was later amended by Supreme Court Regulation No. 1 of 2008 concerning mediation procedures in court, in article 2 paragraph (2) which reads: "Every judge, mediator, and parties must follow the dispute resolution procedure through mediation stipulated in this regulation".

Based on the provisions in Article 130 HIR/154 RBg recommends that the judge presiding over the hearing seek peace first for the parties in dispute. Then with the issuance of Supreme Court Regulation No. 2 of 2003 which was later revised into Supreme Court Regulation No. 1 of 2008 concerning Mediation procedures in

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<sup>7</sup>. Shahrizal Abbas, *Mediation in Shari'ah, Customary Law, and National Law*, Jakarta: Kecana, 2011, p.305.

Court provides an obligation for parties who are in dispute to seek peace through mediation channels involving third parties who are not on the side of the disputing party. But the fact is that of the many mediation processes presented in order to get a fair mutual agreement is still far from expectations. The percentage of mediation success rate is so small that many disputes lead to failure. Thus, the mediator reports the failure to mediate to the chairman of the panel of judges so that the trial process continues to mabali.

In practice in court, although the dispute resolution process is carried out based on the principle of fast, simple and low-cost trials, then the court has examined and then decided the case appropriately based on the law and fairly, but by law still provides room for the losing party to use legal remedies because the parties feel the decision issued is unfair. For this reason, in order to minimize the backlog of cases at the last level, the Supreme Court issued a regulation, namely Supreme Court Regulation No. 2 of 2003 which was amended by Supreme Court Regulation No. 1 of 2008. With mediation in court, it can help the parties in resolving disputes fairly according to their respective wills, without having to win and lose. In addition, dispute resolution through mediation in court, if successfully implemented, has executory power so that the parties must maintain and implement what has been mutually agreed as stated in the peace deed.

Mediation has the power to authorize the parties to resolve disputes in accordance with their wishes. The parties control the course of the mediation process and can determine simpler ways, when compared to formal proceedings in court. Then the parties are obliged to comply with the mutually agreed decision with the help of a mediator. The mediator acts as a mediator who is neutral or impartial to both parties with the aim of obtaining a fair settlement and not harming either party. Mediation is carried out behind closed doors or confidentially. This is characteristic of the method itself so that many certain groups who are facing a matter do not want the case to be announced or published in the mass media. On the other hand, the mediator should try to maintain the confidentiality of the

substance of the mediation itself, and should destroy all documents at the end of the session that has been previously made.

One of the default disputes that has reached the Religious Court is a dispute that occurred between one of the financial institutions labeled shari'ah and one of the institution's customers. From the disputed dispute was born the Bengkulu Religious Court Decision Number: 0161 / Pdt.G / 2017 / PA.Bn.

In fact, the dispute has been resolved by proving the decision of the Bengkulu Religious Court with number: 0161 / Pdt.G / 2017 / PA. Bn and the Peace Act that followed. However, whether the settlement is in accordance with applicable regulations or rules, this is where researchers consider it necessary to study and conduct research on it.

After researchers conducted an investigation of existing scientific papers, many scientific papers were found that discussed the resolution of sharia economic disputes in several religious courts.

Throughout the search, it was found that scientific work was carried out by academics in the form of research and journals both directly and indirectly related and almost the same about the object of study. Some of them are as follows:

Research written by Ifa Latifa Fitriani entitled "The Choice of Sharia Economic Dispute Settlement Forum Between Religious Courts and the National Sharia Arbitration Board: Community Preferences and Sharia Financial Institutions in the Special Region of Yogyakarta" in her research shows how State Regulation and its implementation towards Sharia Economic dispute resolution and its choice of Forum in Indonesia, How the Community responds to the choice of sharia dispute resolution forum between Basyarnas and PA in DIY and Factors influencing the choice of such forums.

Research written by Eva Khoerunnisa Fauzi Lestari with the title "Analysis of Sharia Economic Dispute Resolution through Mediation in Religious Courts (Wonosari Religious Court Study)". Broadly speaking, it aims to find out how Alternative Dispute Resolution (ADR) in Sharia Economic disputes at the Wonosari

Religious Court, and how the mediation process is successful in resolving Sharia economic disputes at the Wonosari Religious Court.

An article written by Ahmad in the IUS Journal of Law and Justice Studies, Faculty of Law, University of Mataram entitled "Sharia Economic Dispute Settlement in Religious Courts". This article aims to determine the implementation of article 49 letter (i) of Law No. 3 of 2006 on the Competence of Religious Courts, conduct an analysis of the mechanism for resolving shari'ah economic disputes in religious courts, and analyze the implementation of Article 49 letter (i) of Law No. 3 of 2006 in the decisions of shari'ah economic cases in religious courts. In contrast to the purpose of the researcher who aims to find out juridically related to Sharia Economic Dispute Settlement, specifically the case study of the Bengkulu Religious Court Decision with number: 0161 / Pdt.G / 2017 / PA.Bn.

Article written by Ikhsan Al Hakim in the Pandecta Journal – Faculty of Law, Semarang State University entitled "Sharia Economic Dispute Settlement in Religious Courts". This article aims to analyze the implementation of Law Number 3 of 2006 concerning Religious Courts in resolving Sharia Economic disputes. In addition, analyzing what factors affect the resolution of Sharia Economic disputes in the Purbalingga Religious Court compared to the Banyumas Ex-Residency Religious Court. In contrast to the purpose of the researcher who aims to find out juridically related to Sharia Economic Dispute Settlement, specifically the case study of the Bengkulu Religious Court Decision number: 0161 / Pdt.G / 2017 / PA.Bn. In addition, the difference lies in the judicial body, namely the author chooses at the Bnegkulu Religious Court.

Article written by H. Darwinsyah Minin in Kanun Journal of Legal Sciences, Faculty of Law, Syiah Kuala University entitled "Dispute Resolution in Sharia Economic Practices Outside the Court according to Islamic Law." This article aims to find out how the settlement of sharia economic disputes outside the court is viewed from the point of view of Islamic law. In contrast to the objectives of researchers who not only look at the settlement of sharia economic

disputes from the side of Islamic law, but also look at other existing regulations.

Article written by Rifyal Kaaba in Al Mawarid Journal, Faculty of Islamic Sciences, Universitas Islam Indonesia entitled "Sharia Economic Dispute Settlement as a New Authority for Religious Courts." This article attempts to investigate the changes and challenges of Islamic courts as one of the modern Indonesian states of the future. In addition, in terms of the title, this article just traced that there is a new authority for Religious Courts, namely about Sharia Economic Disputes. Unlike the researchers, this research is already in the phase of the Religious Court resolving Sharia Economic Disputes.

Article written by Nurhayati in the journal J-HES University of Muhammadiyah Makassar entitled "Dispute Resolution in Islamic Economic Law". This article finds that in resolving the problem of Sharia Economic Disputes it can be achieved through the Classical Islamic Tradition (through Sulh, Tahkim, and Wilayat al Qadha) and the Indonesian Positive Law Tradition (ADR and Arbitration). In contrast to researchers, this study looks juridically related to the settlement of sharia economic disputes specifically the case study of the Bengkulu Religious Court Decision No.0161/Pdt.G/2017/PA.Bn.

Starting from what has been described above, researchers are interested and want to know the problem by conducting research. With the subject matter of research how is the problem of sharia economic dispute resolution in case decision Number: 0161/Pdt.G/2017/PA. Bn at the Bengkulu Religious Court juridically and How is the juridical analysis of the Decision in case No.0161/Pdt.G/2017/PA.Bn. Of course, researchers have conducted previous literary studies. It is stated that this research has never been conducted before. The purpose of this study was to describe and analyze judges in the Curup Religious Court about the treatment of mediation.

Research is usually interpreted as *a method or study by which through the careful and exhaustive of all ascertainable evidence bearing upon a definable problem, we reach a solution to the problem.*

While meaningful methods provide guidelines, about how a scientist studies, analyzes, and understands the law in question.<sup>8</sup> The type of research used in this study is sociological or empirical legal research. Sociological or empirical legal research is legal research that obtains primary data and secondary data.<sup>9</sup> Primary data is legal research carried out by describing or describing a legal phenomenon in detail, then looking for a causal relationship from a legal phenomenon. Empirical legal research is a legal research method that serves to see the law in a real sense and examine how the law works in the community.<sup>10</sup> This research uses a qualitative descriptive approach method. Descriptive research in question is to provide data that may be studied about humans, conditions, or other symptoms.<sup>11</sup> Qualitative research directly leads to circumstances and actors without reducing the elements contained in them. Data Collection Techniques are carried out through observation, and documentation studies. The data obtained is then analyzed to answer the problem.

## Discussion

Court decisions in reality are still felt not to solve the problem, tend to cause new problems, including the emergence of dissatisfaction from the defeated party, then take legal remedies that require additional energy, thought, cost, and time. Such a settlement process has led to the need for an alternative out-of-court dispute resolution mechanism that is effective, efficient and beneficial to the disputing parties, including mediation.

Mediation as a method of resolving disputes by peaceful means that has a great opportunity to develop in Indonesia with eastern customs

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<sup>8</sup> Ade Saptomo, *Fundamentals of Methodology, Pure Empirical Legal Research*, trisakti university, Jakarta, 2009, p. 70.

<sup>9</sup> Merry Yono, *Teaching Material for Legal Research Methods*, Faculty of Law, University of Bengkulu, Bengkulu, 2003, pIm. 8.

<sup>10</sup> Soerjono Soekanto, *Factors Influencing Law Enforcement*, Jakarta, PT Raja Grafindo Persada, 2005, p. 9.

<sup>11</sup> Soerjono Soekanto, *Introduction to Legal Research*, UI-PRESS, Jakarta, 1987, hIm. 10.

that are still rooted in the community that prioritizes the establishment of good relations between families or relationships with business partners rather than temporary benefits if disputes arise. Mediation is expected to be carried out properly by the community, not only used as a temporary formality in fulfilling the procedural law applicable in the Religious Court environment, but is expected to be able to resolve disputes optimally.

In the case study used in this study, the case was finally resolved through mediation. The litigants are as follows plaintiff. MM Sejahtera Microfinance Institution Syari'ah Cooperative (MFI) represented by Yusmaneri Arifin as Chairman/Manager authorized to Firnandes Maurisya, SH., MH, Fitriansyah, SH., and Arie Elcaputera, SH., advocate from Maurisya & Partner Law Office. Second, defendants as Erwan Mercu Stiawan, 36 years old, Muslim, Private Occupation

The position of the case in case No. 0161/Pdt.G/2017/PA.Bn originated from a dispute that occurred between a shari'ah-based financial institution, namely the Sharia Microfinance Institution Cooperative (MFI) MM Sejahtera (Plaintiff) and one of its customers on behalf of Erwan Mercu Stiawan (Defendant). The MM Sejahtera Syari'ah Microfinance Institution Cooperative (MFI) in question sued its customers (Defendants) for default. The form of default in question is the Defendant who is unable to fulfill other obligations as in the KSP AMF SYARIAH Deliberation Agreement dated March 23, 2015 and the existence of documents or statements (guarantees) submitted/given by the defendant as guarantor/afalis to the plaintiff. Therefore, on this information, the MM Sejahtera Sharia Microfinance Institution Cooperative (MFI) which has been aggrieved filed a lawsuit at the Bengkulu Religious Court.

During the trial process, based on PERMA Number 1 of 2016, the panel of judges handling the case ordered the parties to pursue its resolution through mediation facilitated by the Bengkulu Religious Court itself. These facilities include venues and mediators from the Bengkulu Religious Court. Throughout the mediation process, there was no agreement or in other words the mediation was unsuccessful. So that the

case is continued in the trial process by the panel of judges who handle the case.<sup>12</sup> Based on the results of the interview, the author found that the mediator judge who handled the mediation was not certified.

In fact, throughout the course of the trial the parties have made peace over the case outside the Court. Good communication was facilitated by each party itself after the failure of mediation at the Bengkulu Religious Court. On the basis of kinship, each party agreed to make peace. Of course, each party has understood each other that peace outside the Court is permissible by law. So that both parties get legal certainty for the peace.<sup>13</sup>

The peace that occurred between the two parties resulted in the Plaintiff agreeing to withdraw the case along with the Bail Sit. Meanwhile, the Defendant agreed to carry out the obligations as stated in the KSP AMF SYARIAH Deliberation Agreement dated March 23, 2015 directly when the peace agreement was signed. In addition, the parties agreed to request the panel of judges handling the case to issue a Peace Deed in accordance with the parties' peace agreement.<sup>14</sup>

Then because the Parties have made peace outside the court, the Panel of Judges handling the case issued a Decision on case Number: 0161/Pdt.G /2017/PA.Bn. The decision contains Amar Judgment, Deed of Peace and Determination.<sup>15</sup> Then from the resolution of the case, the researcher can provide a juridical analysis as follows about the case registration process. Since the object of the Plaintiff's lawsuit is about Sharia Economic Disputes, it is appropriate for the lawsuit to be filed at the Bengkulu Religious Court. This is based on Article 49 of Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts.

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<sup>12</sup> Results of an interview with Rita Elvianti, SH., Panmud Hukum of the Bengkulu Religious Court on June 20, 2020

<sup>13</sup> Results of an interview with Rita Elvianti, SH., Panmud Hukum of the Bengkulu Religious Court on June 20, 2020

<sup>14</sup> Interview with Arie Elcaputra, SH., MH; Legal Counsel of either Party on June 22, 2020

<sup>15</sup> Results of an interview with Rita Elvianti, SH., Panmud Hukum of the Bengkulu Religious Court on June 20, 2020

The Bengkulu Religious Court is right to accept the lawsuit from the Plaintiff, so the Bengkulu Religious Court cannot reject the case. This is in accordance with Law No. 48 of 2009 concerning Judicial Power. This law states: the court may not refuse to examine cases, try cases and decide cases submitted on the grounds that the law does not exist or is vague, but must examine and try them. Judges are required to explore, follow and understand justice and legal values that grow and develop in society.

About the determination of the Panel of Judges and the trial process. Since the lawsuit has been registered with the Bengkulu Religious Court, it is appropriate for the Chairman of the Bengkulu Religious Court to appoint a panel of judges to handle the case. This is in accordance with the Decree of the Chief Justice of the Supreme Court of the Republic of Indonesia Number: KMA / 032 / SK / IV / 2006 concerning the Implementation of Book II of the Guidelines for the Implementation of Duties and Judicial Administration. The contents of the Decree of the Chief Justice of the Supreme Court of the Republic of Indonesia Number: KMA/032/SK/IV/2006 one of them states "No later than within 10 (ten) working days since the case is registered, the Chief Justice of the Religious Court determines the Panel of Judges who will hear the case".

The appointment of the Substitute Registrar and the determination of the day of the hearing are in accordance with the applicable procedural law, namely the Decree of the Chief Justice of the Supreme Court of the Republic of Indonesia Number: KMA / 032 / SK / IV / 2006 concerning the Implementation of Book II of the Guidelines for the Implementation of Duties and Judicial Administration. The contents of the Decree of the Chief Justice of the Supreme Court of the Republic of Indonesia Number: KMA /032/SK/IV/2006 among others stated "The Registrar appoints a Substitute Registrar to assist the Panel of Judges in handling cases", and "The Chairman of the Tribunal after studying the file within no later than 7 (seven) working days must have set a hearing day." For the trial process based on Table 6: Trial Schedule that the author has stated above, it is in accordance with SEMA Number 3 of 1998 concerning Case Settlement which among others reads "That cases in court must be decided and resolved within 6 (six) months including minutation."

About Mediation in Court, Against the Panel of Judges who ordered the Parties at the first session to take mediation in accordance with the procedural law, namely Article 154 RBg and Article 130 HIR encouraged the Parties to take a peace process that can be utilized through Mediation by integrating it into litigation procedures in the Court. In addition, Article 4 of PERMA Number 1 of 2016 reads "All civil disputes submitted to the Court including cases of resistance (verzet) to the decision of verstek and resistance of litigants (partij verzet) and third parties (derden verzet) to the implementation of decisions that have permanent legal force, must first seek settlement through Mediation, unless otherwise stipulated under this Supreme Court Regulation."

For mediation in the Bengkulu Religious Court that failed/was unsuccessful, one of them was due to the presence of a Mediator Judge who was not yet certified. This is based on article 13 paragraph (1) of PERMA Number 1 of 2016 "Every Mediator must have a Mediator Certificate obtained after attending and being declared passed in Mediator certification training organized by the Supreme Court or institutions that have obtained accreditation from the Supreme Court", even though paragraph (2) states that Mediator Judges who have not been certified may become Mediators, However, it will be handled differently in a quality mediation process. Quality mediation is determined by the Competence of Mediators (Judges / Non-Judges) which has been regulated in the Decree of the Chief Justice of the Supreme Court Number: 108/KMA/SK/VI/2016.

About Peace Beyond the Court, For the peace that occurs between the Parties outside the Court after mediation at the Bengkulu Religious Court, this is in accordance with article 36 of PERMA Number 1 of 2016. Article 36 of PERMA Number 1 of 2016 reads: "Parties with or without the assistance of a certified Mediator who successfully resolves disputes outside the Court with a Peace Agreement may submit a Peace Agreement to the Court authorized to obtain a Peace Deed by filing a lawsuit."

Based on the Deed of Peace, Amar Judgment and Copy of Case Determination Number. 0161/Pdt.G/2017/PA. The Bn issued by the

Panel of Judges handling the case was obtained as follows.<sup>16</sup> Based on the Deed of Peace Number: 0161/Pdt.G/2017/PA. Bn. Article 1, The parties agreed to resolve the dispute of default/breach of promise from the nominal debt contained in lawsuit Number 0161/Pdt.G/2017/PA. Bn to Rp. 75.000.000,- (seventy-five million rupiah); Article 2, The parties agree to the payment of the amount of debt mentioned above settled with the following details. The SECOND PARTY (Defendant) paid in cash in the amount of Rp. 58,000,000 (fifty-eight million rupiah) and was handed over on July 11, 2017 to the FIRST PARTY (Plaintiff). The SECOND PARTY will settle the remaining amount of debt from article 1 mentioned above in the amount of Rp. 17,000,000 (seventeen million rupiah) by installments and or pay in full within the period / maturity of the payment for 3 months starting from July 11, 2017 to October 11, 2017. Article 3, the parties, for the remaining debt that is still borne by the SECOND PARTY will be settled quickly and on time and for the remaining debt, the SECOND PARTY still guarantees a plot of yard land and a building on freehold land Number: 00515, area 239 M<sup>2</sup>, located in Kelurahan Kebun Kenanga Kota Bengkulu, as described in Measuring Letter No. 1656/1994 dated July 5, 1994, written in the name of Rusdi Zulkifli and accompanied by proof of selling power of attorney before a notary from Rusdi Zulkifli to the Second Party. Article 4, The parties agreed to settle the lawsuit Number 0161/Pdt.G/2017/PA.Bn. at the Bengkulu Religious Court through this peace agreement. Article 5, If in the future the Second Party reneges on the contents of this agreement by the time limit mutually determined, the Second Party assigns full authority to the First Party to legally process / execute the warranties of the Second Party.

Declaring that peace has been established between the Plaintiff and the Defendant. Punish both parties for abiding by the peace agreement;. Charge the cost of the case to both parties in the amount of Rp. 2,791,000,- (two million seven hundred ninety one thousand rupiah). Based on Determination Number: 0161/Pdt.G/2017/PA. Bn. Appoint the Registrar/Bailiff of the Bengkulu Religious Court to appoint the bail that

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<sup>16</sup> Copy of Case Decision Number:0161/Pdt.G/2017/PA.BN and Interview Results with Arie Elcaputra, SH.,MH; Legal Counsel of either Party on June 22, 2020

has been placed on a plot of yard land and a building on freehold land Number: 00515, area 239 M<sup>2</sup>, located in Kelurahan Kebun Kenanga Kota Bengkulu, as described in Measuring Letter No. 1656/1994 dated July 5, 1994, written on behalf of Rusdi Zulkifli. Charge the cost of removal of the confiscation to the Plaintiff;

Based on the description above, researchers can provide juridical analysis as follows, Against the Peace Act. The peace deed issued by the Panel of Judges is based on the existence of Peace Outside the Court, so according to law it is justified to do so. This is based on article 36 paragraph (3) of PERMA Number 1 of 2016 which reads "The Case Examining Judge before the Parties will only strengthen the Peace Agreement into a Peace Deed, if the Peace Agreement is in accordance with the provisions of Article 27 paragraph (2)." "The content of the Peace Deed issued by the Panel of Judges refers to the Peace Agreement made by the Parties themselves, where the content of the Peace Agreement is in accordance with article 27 paragraph (2) of PERMA Number 1 of 2016. Article 27 paragraph (2) of PERMA Number 1 of 2016 states that the Peace Agreement must not conflict with law, public order, and/or decency, and must not harm third parties. Against Amar Judgment Number: 0161/Pdt.G/2017/PA. Bn. Because there has been peace between the two litigants in a "consensual" manner, it is justified for the Panel of Judges handling the case to issue a verdict as stated by the author above. According to the author, the judges' consideration is in accordance with article 13 paragraph (2) and article 14 paragraph (1) of Law Number 48 of 2009, which reads.

Article 13 paragraph (2): "Court decisions are only valid and have legal force if pronounced in a public session." Article 14 paragraph (1): "Decisions shall be made based on a confidential consultative session of judges." Against Determination Number: 0161/Pdt.G/2017/PA. Bn. Because the Bail Sita was raised by the Plaintiff and on the basis that there has been peace between the two parties, it is justified by law if the Panel of Judges determines the Appointment of Bail Sita through the Clerk/Bailiff of the Bengkulu Religious Court. The rules regarding this matter have been stipulated in articles 197, 227 HIR and the Decree of the

Chief Justice of the Supreme Court of the Republic of Indonesia Number: KMA/032/SK/IV/2006 which states "If a bail has been confiscated and then peace is achieved or the lawsuit is rejected/not accepted, then the bail seizure must be lifted."

Since the Bail Seizure was raised by the Plaintiff, it is justified by law if the Panel of Judges determines to charge the Plaintiff the cost of lifting the seizure. Regarding these provisions, it has been regulated in PERMA Number 2 of 2009 concerning the Cost of the Case Settlement Process and its Management at the Supreme Court and Judicial Bodies under it.

### **Conclusion**

Based on the results of the study, the researcher found that the settlement of Sharia Economic Disputes case number: 0161 / Pdt.G / 2017 / PA.BN could not be resolved by mediation in the Court. This is due to the quality of mediation implementation is not optimal. The researcher also found that the settlement of Sharia Economic Disputes case number: 0161/Pdt.G/2017/PA.BN can be resolved by mediation outside the Court. The Parties' Peace Agreement outside the Court is justified by the applicable procedural law. Based on the results of the study, researchers found that juridically the Decision number: 0161/Pdt.G/2017/PA.BN was in accordance with legal procedures (procedural law) applicable in a Religious Court.

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