

## EFFECTIVENESS OF MEDIATION IN SHARIA ECONOMIC DISPUTE RESOLUTION: PHENOMENOLOGY AT BUKITTINGGI RELIGIOUS COURT

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### Abstract

*The main problem in this paper is how the effectiveness of mediation in sharia economic dispute resolution is based on PERMA No. 1 of 2016 at the Bukittinggi Religious Court. What are the inhibiting factors of success in mediation? To answer this question, the author uses an inductive and deductive analysis framework concerning the law effectiveness theory of Lawrence M. Friedman. This paper finds that mediation in sharia economic dispute resolution at the Bukittinggi Religious Court from 2016 to 2019 has not been effective. This is because several factors influence it. First, in terms of legal substance, PERMA No.1 of 2016 concerning Mediation Procedures in Courts still lacks in addressing the problems of the growing community. Second, in terms of legal structure, there are no judges who have mediator certificates. Third, the legal facilities and infrastructure at the Bukittinggi Religious Court have supported mediation. Fourth, there are still many people who are not aware of the law in terms of legal culture and do not understand mediation well, so they consider mediation to be unimportant.*

**Keywords:** Effectiveness, Mediation, Sharia Economic Disputes.

### Abstrak

*Tulisan ini mengkaji tentang bagaimana efektivitas mediasi dalam penyelesaian sengketa ekonomi syariah berdasarkan PERMA Nomor 1 Tahun 2016 di Pengadilan Agama Bukittinggi dan apa saja yang menjadi faktor penghambat keberhasilan mediasi. Untuk menjawab pertanyaan tersebut, penulis menggunakan kerangka analisa induktif dan deduktif dengan mengacu pada teori efektivitas hukum Lawrence M. Friedman. Tulisan ini menemukan bahwa mediasi dalam penyelesaian sengketa ekonomi syariah di Pengadilan Agama Bukittinggi dari tahun 2016 sampai 2019 belum efektif. Hal ini karena dipengaruhi oleh beberapa faktor. Pertama, dari segi substansi hukum, yaitu PERMA No. 1 Tahun 2016 tentang Prosedur Mediasi di Pengadilan masih memiliki kekurangan dalam menjawab persoalan masyarakat yang terus berkembang. Kedua, dari segi struktur hukum, belum adanya hakim yang memiliki sertifikat mediator. Ketiga, sarana dan prasarana hukum di Pengadilan Agama Bukittinggi sudah mendukung mediasi. Keempat, dari segi budaya hukum, masih banyaknya masyarakat yang tidak sadar hukum dan tidak mengerti persoalan mediasi dengan baik, sehingga menganggap mediasi tidak penting.*

**Kata Kunci:** Efektivitas, Mediasi, Sengketa Ekonomi Syariah.

## INTRODUCTION

The fast growth of the Sharia Economy is the solution for the community on lameness and social injustice.<sup>1</sup> That matter is marked with development economic institutions in operation based on the sharia principles such as the establishment of sharia Bank, sharia insurance, and other Islamic financial institutions.<sup>2</sup>

Disagreement, dispute, and contentious debate are one of the efforts made to maintain the establishment and recognition in the process of achieving and interest. Counterproductive behavior increases the tendency towards each individual who conflicts to survive and try to dominate each other with all diplomacy, negotiation, or by using the formal legal procedures that the state has provided through litigation forums.<sup>3</sup>

The development of the sharia economy in Indonesia does not close the possibility of disputes between the parties who conduct sharia economic transactions.<sup>4</sup> That would give rise to the point of the tangent with the judicial world, especially the Religious Judiciary. The point of tangency referred to here is in settlement of sharia economic disputes.

In principle, the solution of sharia economic disputes is carried out by the judicial power, which is institutionalized constitutionally by the state, called the Judicial Institution. Article 24 paragraph (2) of the 1945 Constitutions states that a Supreme Court exercises the judicial power and the judiciary under it within the General Courts, Religious Courts, Military Courts, State Administrative Courts, and a Constitutional Court. This is expected to be the best solution for the community in resolving civil cases and obtaining legal certainty based on simple principles, fast and light costs.<sup>5</sup> There are two judicial institutions in Indonesia's civil justice system that have the authority to examine, resolve, and resolve civil disputes, namely the General Judiciary for civil in general and the Religious Judiciary for Islamic civil cases, including economic civil and sharia business.<sup>6</sup>

Strengthening the authority of the Religious Courts in resolving sharia economic disputes and adjudicating dualism of sharia economic dispute resolution is contained in the Decision of the Constitutional Court No. 93/PPU-X/2012 on The Testing Of Law No. 21 Of 2008 concerning Sharia Banking against the Constitutions of the Republic of Indonesia year 1945.

Provisions on mediation in the Court shall be stipulated in the Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2016 concerning Mediation

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<sup>1</sup> Mohammad Ghozali, "Paradigma Filsafat Ekonomi Syariah Sebagai Suatu Solusi Kehidupan Manusia," *Diktum: Jurnal Syari'ah Dan Hukum* 16, no. 02 (2018): 172.

<sup>2</sup> Nofinawati, "Perkembangan Perbankan Syariah Di Indonesia," *JURIS: Jurnal Ilmiah Syariah* 14, no. 2 (2015): 67.

<sup>3</sup> D.Y Witanto, *Hukum Acara Mediasi Dalam Perkara Perdata Di Lingkungan Peradilan Umum Dan Peradilan Agama Menurut PERMA No. 1 Tahun 2008 Tentang Prosedur Mediasi Di Pengadilan* (Bandung: Alfabeta, 2011): 1-2.

<sup>4</sup> Rahmani Timorita Yulianti, "Sengketa Ekonomi Syari'ah (Antara Kompetensi Pengadilan Agama Dan Arbitrase Syari'ah)," *Al-Mawarid XVII* (2007): 49.

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<sup>5</sup> Israr Hirdayadi and Hery Diansyah, "Efektivitas Mediasi Berdasarkan PERMA No. 1 Tahun 2008 (Studi Kasus Pada Mahkamah Syar'iyah Banda Aceh)," *Samarah Jurnal Hukum Keluarga Dan Hukum Islam* 1, no. 1 (2017): 206.

<sup>6</sup> Bustamar, "Small Claim Court Dalam Sistem Peradilan Perdata Di Indonesia Dan Peluang Penerapannya Dalam Penyelesaian Sengketa Ekonomi Syari'ah Pada Peradilan Agama," *Al-Hurriyah Jurnal Hukum Islam* 01, no. 01 (2016): 97.

Procedures in the Court.<sup>7</sup> This PERMA places mediation as part of a civil procedural law that can optimize the functioning of judicial institutions in dispute resolution.

Previously, mediation procedures in Court were regulated by PERMA No. 1 of 2008 concerning Mediation Procedures in the Court. However, this PERMA has not optimally met the need for a more efficient mediation and can increase the success of mediation in Court, as referred to in the dictum "weighing" letters a, b, c, d, and e, it is necessary to improve the Supreme Court Regulations on mediation procedures in the Court. Based on Article 38 PERMA No. 1 of 2016 states that at the time, the Supreme Court Regulation No. 1 of 2016 came into force. The Regulation of the Supreme Court No. 1 of 2008 concerning Mediation Procedures in the Court was revoked and declared invalid. It is expected that with the presence of PERMA No. 1, the year 2016 can improve PERMA No.1 the Year 2008.<sup>8</sup>

The Supreme Court realized that in PERMA No. 1 of 2008, there are constraints in its implementation, such as the absence of obligation for the parties to attend mediation meetings directly and the incompleteness of other regulations so that it can be said that it did not work as originally expected, this is partly due to the absence of good faith of the parties to attend the mediation process.<sup>9</sup>

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<sup>7</sup> Mia Hadiati and Mariske Myeke Tampi, "Efektivitas Mediasi Dalam Penyelesaian Sengketa Konsumen Oleh Badan Penyelesaian Sengketa Konsumen (BPSK) Di DKI Jakarta," *Jurnal Hukum PRIORIS* 6, no. 1 (2017): 70.

<sup>8</sup> Nita Triana, "Urgenitas Mediator Dalam Penyelesaian Sengketa Ekonomi Syariah Di Pengadilan Agama Purbalingga," *Law Reform* 15, no. 2 (2019): 240

<sup>9</sup> Susanti Adi Nugroho, *Mediasi Sebagai Alternatif Penyelesaian Sengketa* (Tangerang: PT Telaga Ilmu Indonesia, 2011), 183.

PERMA No. 1 of 2016 Article 3 paragraph (1) explains each Judge, Mediator, party, or legal counsel must follow the procedure for resolving disputes through mediation. Paragraph (3) adds the Examiner Judge who does not order the Parties to take mediation so that the Parties do not conduct mediation has violated the laws and regulations governing mediation in the Court.

At Bukittinggi Religious Court, establish the Judge as an official mediator referring to Article 154 R.BG/130 HIR and PERMA No.1 of 2016 concerning Mediation Procedures in the Court. In this case, the role of the Judge as a mediator is very important in the successful mediation of the settlement of sharia economic disputes. In addition, the role of the parties to the dispute is also no less important because the judges here are only trying to realize the importance of peace.

Based on the search for documents that the author did, that in the last four years, there have been four sharia economic disputes entered into the Bukittinggi Religious Court, with the following details :

1. Case No. 30/Pdt.G/2017/PA.Bkt January 16, 2017, Sharia Economy on Default.
2. Case No. 50/Pdt.G/2017/PA.Bkt January 26, 2017, Sharia Economy on Execution of Dependent Rights
3. Case No. 260/Pdt.G/2017/PA.Bkt May 9, 2017, Sharia Economy on Default
4. Case No. 672/Pdt.G/2019.PA.Bkt November 19, 2019 Sharia Economy on Default<sup>10</sup>

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<sup>10</sup> Rusmawita, Panitera Muda Hukum Pengadilan Agama Bukittinggi Kelas I.B, *Wawancara*, tanggal 17 Mei 2019.

In 2016 and 2018, no sharia economic disputes were registered with the Bukittinggi Religious Court. While in 2017, these were three matters of Sharia economy, two of which were not successfully mediated, while one case could not be conducted mediation. As for one case in 2019, revoked so as not to mediate.

Based on the results of the documents searched above, all sharia economic disputes from 2016 to 2019 were not successfully mediated, even though the Bukittinggi Religious Court, in carrying out mediation procedures, has referred to PERMA No. 1 of 2016.<sup>11</sup> The problem is that all cases are not successfully mediated, and the resolution continues to the Court. If the case fails to be mediated, what factors hinder the success of mediation. Based on this fact, this study is intended to analyze the Effectiveness of Mediation in the Settlement of Sharia Economic Disputes Based on PERMA No. 1 of 2016 (Study at Bukittinggi Religious Court). The author hopes that this paper can answer the factors inhibiting the success of mediation to improve the future.

This research is field research in Bukittinggi Religious Court with primary data source and secondary data, namely the result of interviews with mediator judges, mediation data in the master book of sharia economic case register, PERMA No.1 of 2016, and books related to research. The data collection techniques used are interviews, documentation, and literature. The data or information obtained in this study will be presented descriptively-analytically. Furthermore, the data is analyzed using

inductive and deductive analysis frameworks concerning the theory of legal effectiveness.

## MEDIATION IS A ALTERNATIVE TO SHARIA ECONOMIC DISPUTE RESOLUTION

The term mediation, etymologically, comes from the Latin measure, which means to be in the middle. This meaning refers to the role displayed by third parties as mediators in carrying out their duties of mediating and resolving the parties' dispute. Being in the middle also means the mediator must be neutral and impartial in dispute resolution. He must be able to protect the interest of the parties in a fair and equal manner, thereby engendering the trust of the litigants.<sup>12</sup>

The word mediation is also derived from the English "mediation," which means resolving disputes involving third parties as intermediaries, of which the mediator is called a mediator. Mediation in the Collins English Dictionary and Thesaurus is an activity that connects the two parties to the dispute to produce an agreement. The mediators carry out these activities as parties who help find various alternatives to dispute resolution. The mediator encourages the parties to reach agreements that can end disputes and disputes. He cannot force the parties to accept the offer of dispute resolution. Mediators only help find alternatives and encourage them to resolve a dispute jointly.<sup>13</sup>

In the Great Dictionary of The Indonesian Language (KBBI), it is explained that mediation is the process of following

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<sup>12</sup> Nofiardi, *Hukum Acara Peradilan Agama* (Bukittinggi: STAIN Bukittinggi Press, 2010), 62

<sup>13</sup> Syahrizal Abbas, *Mediasi Dalam Perspektif Hukum Syariah, Hukum Adat Dan Hukum Nasional* (Jakarta: Kencana Prenada Media Group, 2009), 2.

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<sup>11</sup> Rusmawita.

third parties in resolving a dispute as an advisor.<sup>14</sup> This understanding explains that there are third parties involved in the mediation process tasked with advising the parties.

Experts also describe various terms of mediation, according to Joni Emirzon. He explained that mediation is an effort to resolve disputes between the parties by mutual agreement through a neutral mediator and does not make decisions or conclusions for the parties but supports the facilitator for the implementation of dialogue between the parties with an atmosphere of openness, honesty, and exchange of opinions to achieve consensus.<sup>15</sup>

In line with that, Laurence Bolle explained that mediation is a decision-making process conducted by the parties with the help of third parties as mediators.<sup>16</sup> Bolle's statement shows that decision-making authority is entirely in the hands of the parties, and the mediator only assists the parties in the decision-making process. The presence of a mediator is very important because it can help and strive for a better decision-making process, resulting in outcomes received by those in conflict.

Not much different from Bolle, J. Folberg and A. Taylor emphasized mediation on the efforts made by mediators in conducting mediation activities.<sup>17</sup> The two

experts stated that disputes through mediation channels are carried out jointly by the parties to the dispute and assisted by the neutral parties. The mediator may develop and offer dispute resolution options, and the parties may also consider the mediator's offer as an alternative to an agreement on dispute resolution.<sup>18</sup> The mediator's alternative dispute resolution is expected to accommodate the parties' interests to reach an agreement without feeling that there is a winner or a loser.<sup>19</sup>

Bustamar explains the elements that can be used as mediation characteristics, namely:<sup>20</sup>

- a. Mediation is a follow-up negotiation;
- b. Neutral and impartial third parties assist mediation;
- c. Third parties do not have authority to decide;
- d. The existence of third parties is accepted by the parties, which aims to resolve disputes based on satisfactory agreement.

The understanding of mediation in a more concrete manner can be found in Supreme Court Regulation No. 1 of 2016 concerning Mediation Procedures in the Court. According to the provisions of Article 1 letter (a), mediation is a way of resolving disputes through the negotiation process to

<sup>14</sup> Tim Penyusun Kamus Pusat Pembinaan dan Pengembangan Bahasa, *Kamus Besar Bahasa Indonesia* (Jakarta: Departemen Pendidikan dan Kebudayaan, 1998), 569.

<sup>15</sup> Joni Emirzon, *Alternatif Penyelesaian Sengketa Di Luar Pengadilan: Negosiasi, Mediasi, Konsialisasi Dan Arbitrase* (Jakarta: Gramedia Pustaka Utama, 2001), 69.

<sup>16</sup> Abbas, *Mediasi Dalam Perspektif Hukum Syariah, Hukum Adat Dan Hukum Nasional*, 4.

<sup>17</sup> Abbas, 5.

<sup>18</sup> Mhd Teguh Syuhada Lubis and Rachmad Abduh, "Pengembangan Model Penyelesaian Sengketa Keputusan Pemberhentian Mahasiswa Secara Mediasi," *Jurnal EduTech* 4, no. 2 (2018): 62-63.

<sup>19</sup> Lina Nur Anisa, "Mediasi: Tantangan Kurikulum Bagi Perguruan Tinggi Fakultas Syariah Dan Hukum," *Al-Mabsut: Jurnal Studi Islam Dan Sosial* 12, no. 2 (2018): 117.

<sup>20</sup> Bustamar, "Efektivitas Mediasi Dalam Penyelesaian Sengketa Konsumen Pada Badan Penyelesaian Sengketa Konsumen (BPSK) Kota Bukittinggi Tahun 2014-2017," *JURIS: Jurnal Ilmiah Syariah Jurnal Ilmiah Syariah* 16, no. 2 (2017): 189.

obtain the parties' agreement with the help of mediators.

Based on some understanding of mediation put forward by experts and the above legislation, it can be understood that mediation is one of the alternatives in resolving the dispute between the two parties with the help of third parties as mediators. Thus, mediation aims to reach the meeting point of resolution of problems or disputes faced by the parties. Decision-making is not in the hands of the mediator but the hands of the disputing parties.<sup>21</sup>

Mediation is also a negotiation process, where third parties have a dialogue with the parties to the dispute and try to find a possible resolution to the dispute.<sup>22</sup> Third parties play a role in helping the parties to the dispute to find a resolution to lead to an agreement or agreement that satisfies both parties.

The implementation of mediation in the Court of Religion is stipulated in the Supreme Court Regulation No. 1 of 2016 concerning Mediation Procedures in the Court. PERMA is divided into nine chapters and 39 Articles. Chapter I on general provisions. Chapter II, on mediation guidelines in Court. Chapter III on mediators. Chapter IV on the premediation stage. Chapter V on the stages of the mediation process. Chapter VI on voluntary peace. Chapter VII on the separation of mediation from litigation. Chapter VIII on peace outside the Court. Last Chapter IX is about closing.

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<sup>21</sup> Setiati Widihastuti and Dkk, "Mediasi Dalam Penyelesaian Sengketa Kesehatan Di Jogja Mediation Center," *Jurnal Ilmu-Ilmu Sosial* 14, no. 1 (2017): 17.

<sup>22</sup> Karmuji, "Peran Dan Fungsi Mediator Dalam Penyelesaian Perkara Perdata," *Jurnal Ummul Qura* VII, no. 1 (2016): 38.

Before the entry into force of PERMA No. 1 of 2016, the provisions or legal basis for mediation were stipulated in Supreme Court Regulation No. 1 of 2008 concerning Mediation Procedures in the Court. PERMA No.1 of 2008 was declared revoked and no longer valid with Supreme Court Regulation No. 1 of 2016. This change is because PERMA No. 1 of 2008 is considered not optimal to meet the needs of implementation of mediation that is more effective and able to improve mediation in Court.

Supreme Court Regulation No. 1 of 2016 was established on February 3, 2016, and promulgated on February 4, 2016. This regulation explains the obligation to mediate in the litigation process in Court, as in Article 3 paragraph (1) and paragraph (3) :

"(1) Every Judge, Mediator, and Parties or legal representative shall follow the dispute resolution procedure through mediation.

(3) The Examiner Judge who does not order the Parties to undergo mediation so that the Parties do not conduct mediation has violated the provisions of the laws and regulations governing mediation in the Court."

With the PERMA, all matters entered in the Religious Court must be mediated first, including sharia economic matters. Judges mediate sharia economic disputes that enter the Religious Court. Mediation of sharia economic disputes is conducted following the procedures established by PERMA. However, the mediation that was carried out tended to be unsuccessful, so it was continued to the trial. The failure of mediation in sharia economic disputes certainly raises questions about the effectiveness of mediation or not

and the reasons behind the unsuccessful mediation.

### OVERVIEW OF SHARIA ECONOMIC CASE IN BUKITTINGGI RELIGIOUS COURT IN 2016-2019

The process of resolving the case at the Bukittinggi Religious Court through several procedures, as contained in the official website of the Bukittinggi Religious Court. This is contained in the Legal Services section of the Litigant Procedure section, which includes the registration of first-degree cases, registration of appeal cases, registration of classification-level cases, application for review, application for execution, and stages of litigants as well as procedures for returning the remaining and biased cases.<sup>23</sup>

Bukittinggi Religious Court is in charge and authorized to examine, decide, and resolve matters in the first level between Muslims in marriage, inheritance, wills, grants, endowments, zakat, infaq, etc. sadaqah, and sharia economy. This is as regulated in Article 49 of Law No. 3 of 2006 concerning Amendments to Law No. 7 of 1989 concerning Religious Courts.<sup>24</sup>

Sharia economic disputes referred to in the provisions of Article 49 letter (i) of Law No. 3 of 2006 are acts or business activities carried out according to sharia principles, including Sharia banks, Sharia microfinance institutions, Sharia insurance, Sharia reinsurance, Sharia mutual funds, Sharia bonds and sharia medium-term securities, Sharia securities, Sharia financing, Sharia pawn shops, Pension Funds of Sharia Financial Institutions and Sharia Businesses.

<sup>23</sup> Rusmawita, Panitera Muda Hukum Pengadilan Agama Bukittinggi Kelas I.B, *Wawancara*, tanggal 02 Januari 2020.

<sup>24</sup> Rusmawita.

There are four cases of sharia economics registered at the Bukittinggi Religious Court in the last four years. The details of the case are as follows:<sup>25</sup>

Table 1. Sharia Economic Case of Bukittinggi Religious Court year 2016-2019

No	Case Number	Types of things	Mediation
1	30/Pdt.G/2017/PA.Bkt	Default	Unsuccessful
2	50/Pdt.G/2017/PA.Bkt	Dependent rights	Unenforceable
3	260/Pdt.G/2017/PA.Bkt	Default	Unsuccessful
4	672/Pdt.G/2019/PA.Bkt	Default	Case revoked

Source: Bukittinggi PA Case Notes

The table above shows that there have been four sharia economic cases in the Bukittinggi Religious Court in the last four years, three cases in 2017, and one case in 2019. Meanwhile, in 2016 and 2018, there are no sharia economic dispute cases listed. Of the four cases, two were unsuccessfully mediated, one case could not be mediated, and one case was revoked before the mediation process. Bukittinggi Religious Court conducts mediation based on mediation procedures in PERMA No. 1 of 2016. The description of the process of mediating sharia economic dispute cases in the last four years following PERMA No. 11 of 2016 at the Bukittinggi Religious Court, among others:<sup>26</sup>

1. Case Number 30/Pdt.G/2017/PA. But Sharia Economics concerning Default

After the case was registered to the Bukittinggi Religious Court on Monday, January 16, 2017, then Thursday, January 19, 2017, the Head of the Bukittinggi Religious Court appointed a Panel of Judges. The

<sup>25</sup> Rusmawita.

<sup>26</sup> Rusmawita.

appointed Judges are Drs. Alizarin as the Presiding Judge, Anhar and Yusnizar as Member Judges. Then, Friday, January 20, 2017, the first session is set for Monday, February 6, 2017. At this first session, the Judge explained the mediation procedure to the parties to the dispute.<sup>27</sup>

After the Judge explains the mediation procedure, a mediator is selected. The Judge first gives the option to the parties to choose a mediator, appointed based on the parties' agreement or appointed by the Panel of Judges. The parties submit the selection of mediators to the Judge. The Judge then appointed Drs. H. A. Rahman, SH., MA as mediator. On Monday, February 6, 2017, the mediation date that mediation was conducted on that day was also determined. Previously, the Panel Of Judges submitted a resume of the case to the mediator who will mediate the parties.<sup>28</sup>

Mediation is conducted until Tuesday, February 14, 2017. That is, the mediation process of the default case only lasts for nine days. Based on this fact, it can be understood that the mediation process in this default case has not maximized the time of 30 days in conducting mediation as stipulated in PERMA No.1 of 2016.

The mediation process was not successful. In other words, the parties cannot be reconciled so that the proceedings proceed to the Court. In this case, Plaintiff feels harmed by Defendant because Defendant has committed an act of resentful promise

(default). Plaintiff asked Defendant to pay compensation to Plaintiff materially amounting to Rp. 709.589.143,- and declares a bail on the land and the Defendant's house.

On Tuesday, February 14, 2017, the mediator made a report in writing and submitted it to the Panel of Judges, the examiner of the case, explaining that mediation between the two parties was not successful. Thus, the trial stage resumed on Monday, March 20, 2017.<sup>29</sup>

2. Case Number 50/Pdt.G/2017/PA. But Sharia Economics concerning Execution of Dependent Rights

The Execution of Dependent Rights case was registered to the Bukittinggi Religious Court on Thursday, January 26, 2017. After that, the Head of the Bukittinggi Religious Court appointed a Panel of Judges on Monday, January 30, 2017. The appointed Judges are Drs. H Martias as The Presiding Judge, Erni Mutiara, and A. Rahman as Member Judges. Then, on Wednesday, February 1, 2017, the first hearing will be held on Monday, February 27, 2017. At this first session, the plan was to mediate the parties, but because Defendant was not present, the hearing continued on Monday, April 3, 2017, to call Defendant.<sup>30</sup>

Monday, April 3, 2017, the hearing continued for mediation. The Judge first gives the option to the parties to choose a mediator, appointed based on the parties' agreement or appointed by the Panel of Judges. The parties submit the selection of mediators to the Panel of Judges. The Judge then appointed Kastel Bahri, S.H as a mediator in the execution of

<sup>27</sup> Khairul, Hakim Pengadilan Agama Bukittinggi Kelas I.B, *Wawancara*, tanggal 03 Januari 2020..

<sup>28</sup> Zulmiati, Hakim Pengadilan Agama Bukittinggi Kelas I.B, *Wawancara*, tanggal 03 Januari 2020.

<sup>29</sup> Zulmiati.

<sup>30</sup> Khairul, Hakim Pengadilan Agama Bukittinggi.



the dependent rights. On Monday, April 3, the mediation date was also set, and mediation began on that day. The Panel of Judges submits the resume of the case to the mediator, who will mediate to the parties. Mediation is only conducted one day, which is on Monday, April 3, 2017.<sup>31</sup>

Based on this fact, it can be understood that the mediation process in the case of execution on dependent rights has not maximized the time of 30 days in conducting mediation as stipulated in PERMA No. 1 of 2016.

Based on the mediator's report, the mediation process in executing dependent rights cannot be carried out. In other words, the process of examining the case proceeded to the trial. On Monday, April 3, 2017, the mediator made a written report to the Panel of Judges of the examiner explaining that mediation could not be conducted between the two parties.

In this case of execution of dependent rights, Plaintiff feels harmed by Defendant. Plaintiff does not accept the execution auction of dependent rights owned by Plaintiff in the form of Property Rights No. 800/Kel. Campago Ipoh. S.U. Dated July 12, 2001, No. 16/Campago Ipoh. Mandarin Koto Selayan Subdistrict that the Announcement of the Auction of Dependent Rights is not in good faith on January 26, 2017, and the announcement is a non-binding announcement.<sup>32</sup>

3. Case Number 260/Pdt.G/2017/PA. But Sharia Economics concerning Default.

After the case was registered to the Bukittinggi Religious Court on Tuesday, May 9, 2017, then, Friday, May 12, 2017, the Head

of the Bukittinggi Religious Court appointed a Panel of Judges. The panel of judges appointed is Dra. Elfayari as the Presiding Judge, Alizaryon and Yusnizar as member judges. Then, Monday, May 15, 2017, the first session will take place on Tuesday, June 13, 2017. At this first hearing, the Defendants were not present, and the hearing continued on Tuesday, August 1, 2017, to call Defendant.<sup>33</sup>

At the second hearing, the Judge explained the mediation procedure to the disputing parties. After the Judge explains the mediation procedure, the selection of a mediator is carried out. The Judge first gives the option to the parties to choose a mediator, appointed based on the parties' agreement or appointed by the Panel of Judges. The parties submit the selection of mediators to the Judge. The Judge then appointed Drs. H. Martias as mediator. On Tuesday, August 1, 2017, the mediation date was also set that the mediation would be held on the same day. Previously, the Panel of Judges submitted a resume of the case to the mediator who will mediate to the parties.

Mediation is conducted until Monday, September 4, 2017. The mediation process for the default case lasts for 34 days. Based on this fact, it can be understood that the mediation process in this default case has maximized the time of 30 days in conducting mediation as stipulated in PERMA No. 1 of 2016.

The mediation process was unsuccessful. In other words, the parties cannot be reconciled so that the proceedings proceed to the Court. In this case, Plaintiff feels harmed by Defendant because Defendant has committed an act of resentful

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<sup>31</sup> Khairul.

<sup>32</sup> Zulmiati.

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<sup>33</sup> Zulmiati.

promise (default). Plaintiff asks Defendant to pay compensation to Plaintiff materially amounting to Rp. 709.589.143.<sup>34</sup>

On Monday, September 4, 2017, the mediator made a report in writing and submitted it to the Panel of Judges, the examiner of the case, explaining that mediation between the two parties was unsuccessful. So, the trial stage will be continued on Monday, September 5, 2017.<sup>35</sup> Case No. 672/Pdt.G/2019/PA. But the default registered on November 19, 2019, did not reach the mediation process because the case was revoked.<sup>36</sup>

### **EFFECTIVENESS OF MEDIATION IN THE SETTLEMENT OF SHARIA ECONOMIC DISPUTES BASED ON PERMA NUMBER 1 OF 2016 AT THE BUKITTINGGI RELIGIOUS COURT**

Effective is the extent to which a group can achieve its goals. Soerjono Soekanto said that a law could be effective if there is a positive legal impact. The law managed to guide or change human behavior so that it becomes legal behavior.<sup>37</sup>

Talking about the effectiveness of the law means talking about how the legal workforce regulates and or forces people to obey a law.<sup>38</sup> The law will be effective if the factors affecting the law can function as much as possible. As Lawrence M. Friedman in his book entitled "Law and Society" cited by Soerjono, the effectiveness or absence of a

piece of legislation or known as the effectiveness of the law, is influenced by several factors, including the substance of the law, the legal structure, and the culture of the law.

To see the effectiveness of mediation in settlement of sharia economic dispute in the Bukittinggi Religious Court, the author explained based on the theory of effectiveness of the law, which is seen from four factors as described by Soerjono Soekanto, namely the law itself (substance), law enforcement (structure), supporting facilities, and legal culture.<sup>39</sup>

#### 1. Legal Substance

Factors of the legislation itself, in this case namely PERMA No. 1 of 2016 On Mediation Procedures in the Court. This regulation regulates the guidelines for the implementation of mediation in Court. The Bukittinggi Religious Court uses this regulation as a reference to reconcile the parties to the dispute, especially in sharia economic disputes. Bukittinggi Religious Court implemented this PERMA in early 2016 with the repeal of PERMA No. 1 of 2008 concerning Mediation Procedures in the Court.<sup>40</sup>

The manager of the APSI Education and Training Center, Thais Noor Cahyadi, said several important things distinguish between PERMA No.1 of 2016 and PERMA No.1 of 2008, namely: First, related to the mediation deadline that is shorter than 40 days to 30 days starting from the determination of mediation orders. Second, there is an

<sup>34</sup> Zulmiati.

<sup>35</sup> Khairul.

<sup>36</sup> Zulmiati.

<sup>37</sup> Soerjono Soekanto, *Efektivitas Hukum Dan Penerapan Sanksi* (Bandung: CV. Ramadja Karya, 1988), 80.

<sup>38</sup> Djaenab, "Efektivitas Dan Berfungsinya Hukum Dalam Masyarakat," *Asb-Shababab: Jurnal Pendidikan Dan Studi Islam* 4, no. 2 (2018): 151.

Riska Fauziah Hayati, *Busyro, Bustamar*

<sup>39</sup> Soerjono Soekanto and Abdullah Mustafa, *Sosiologi Hukum Dalam Masyarakat* (Jakarta: Rajawali, 1982), 13.

<sup>40</sup> Rusmawita.

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obligation for the parties (in-person) to attend mediation meetings directly with or without being accompanied by a legal representative, unless there are valid reasons such as health conditions that do not allow to attend mediation meetings based on a doctor's certificate, under guardianship, having a residence, residence or position abroad, or carrying out state duties, professional demands or jobs that cannot be abandoned. Third, there are rules about good faith in the mediation process and the legal consequences of the parties not in good faith in the mediation process.<sup>41</sup>

The enactment of PERMA No.1 of 2016 and the revocation of PERMA No. 1 of 2008 means that new regulations are more perfect than previous regulations.<sup>42</sup> However, after three years of enacting PERMA No. 1 of 2016, it has also begun to appear weak. Another thing is also caused by people's lives that are constantly changing and evolving so that the law is needed following the conditions and needs of the community. One day may be issued PERMA No. 1 of 2016; this certainly cannot be separated to achieve the perfection of the law.<sup>43</sup>

The imperfection of PERMA also influences the failure of mediation No. 1 of 2016 or the PERMA has not set the provisions of mediation in more detail, for example, the absence of incentives for the mediator of judges, while mediators who are not judges get incentives following the agreement of the parties. This could be a success factor in seeking mediation.

<sup>41</sup> Dewan Pengurus Pusat APSI (DPP APSI), "Ini Poin Penting yang Diatur dalam PERMA Nomor 1 Tahun 2016", dalam <https://apsi.web.id/379-2/>, akses pada 12 Januari 2020.

<sup>42</sup> Zulmiati

<sup>43</sup> Khairul.

Meanwhile, article 16 of PERMA No.1 of 2016 states that the Head of the Court is obliged to submit a report on the performance of judges or court employees who successfully resolve cases through mediation to the Chairman of the High Court and the Supreme Court, without specifying what awards they will receive. This regulation also does not regulate for mediator judges or court employees who have never successfully resolved a case through mediation, so there is no obligation for the mediator judge or court employee to resolve the dispute by mediation.

On the other hand, Zulmiati, a judge at the Bukittinggi Religious Court, explained that in mediation in settlement of sharia economic disputes in the Bukittinggi Religious Court, no one uses mediators outside the Court. This is due to the cost burden borne by the parties and the costs to the Court.<sup>44</sup> It is necessary to consider this fact for the state to incentivize mediators outside the Court as legal aid to the community.

## 2. Legal Structure

The legal structure in question is the law enforcement officers who have a position and role in carrying out their duties and functions. In this case, the law enforcement is the Judge of the Bukittinggi Religious Court as the mediator, who reconciles the parties to the dispute, especially in sharia economic disputes.<sup>45</sup> A mediator is required to have adequate skills or skills for the success of mediation.<sup>46</sup>

The mediator judge at the Bukittinggi Religious Court has performed his duties

<sup>44</sup> Zulmiati.

<sup>45</sup> Khairul.

<sup>46</sup> Triana, "Urgenitas Mediator Dalam Penyelesaian Sengketa Ekonomi Syariah Di Pengadilan Agama Purbalingga.", 252.

following PERMA No.1 of 2016 concerning Mediation Procedures in the Court, listed in Article 15, 16 of the Mediator's Code of Conduct. The premeditation stage conducted by the examiner judge in the Bukittinggi Religious Court has also been carried out following the provisions of Article 17 PERMA No.1 of 2016.

The mediator judge of Bukittinggi Religious Court plays an active, neutral, independent, and impartial role to reconcile the disputing parties. The Judge carries out his duties as stipulated in PERMA No.1 of 2016.

All judges in the Bukittinggi Religious Court can be mediators, but no judge has a mediator certificate. This is the obstacle in reconciling the parties to the dispute. PERMA No.1 of 2016 explains that the mediator is a judge of other parties with a mediator certificate issued by the Supreme Court or an institution that has obtained accreditation from the Supreme Court. However, due to the absence of a certified mediator judge, it is not the Judge who performs the mediator's function. In line with what is expressed in the PERMA, a mediator certificate will support the success of mediation in the Bukittinggi Religious Court.<sup>47</sup>

The mediator will control the mediation process, how smart and clever a mediator is in creating good communication and understanding by the parties to the dispute. With the mediator certificate, a mediator will have more provisions, more knowledge related to the disputed material, more ability and skills in listening, fast, precise, and able to simplify what the parties convey influence, and be patient in dealing with the parties.

### 3. Legal Infrastructure

The success of mediation is supported by the availability of adequate facilities and infrastructure to provide a comfortable atmosphere in the implementation of mediation; the availability of mediation rooms with appropriate design becomes an important factor determining mediation success.

Mediation in settlement of sharia economic disputes in the Bukittinggi Religious Court was conducted in the mediation room at the Bukittinggi Religious Court office. The mediation room available at the Bukittinggi Religious Court is representative enough to be used as a mediation. In the mediation room, some tables and chairs allow the parties to sit face to face and mediators on the other side. The available room is not too formal because if the mediation room is very formal, it can cause a sense of awkwardness, especially for the ordinary community.<sup>48</sup>

Zulmiati also explains this, "For the mediation process, it has been carried out in a special room, namely the mediation room, which has been arranged in such a way as to smooth mediation. I think it is sufficient for the implementation of mediation. A room that is too formal will affect the rate of mediation, especially for the ordinary people; they will certainly be awkward."<sup>49</sup>

Furthermore, based on the author's research who directly saw the mediation room in the Bukittinggi Religious Court, there is a slogan about the beauty of peace in the mediation room, complemented by several flowers that give a sense of coolness.

Based on the above statement, the mediation facilities and infrastructure in the Bukittinggi Religious Court are adequate.

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<sup>47</sup> Zulmiati.

<sup>48</sup> Khairul.

<sup>49</sup> Zulmiati.

There is already a special room where to carry out mediation, arranged in such a way as to smooth the mediation process. In addition to the mediation room, the Bukittinggi Religious Court also provided the names of mediators in judges to help the parties in selecting mediators in resolving their disputes. Although the facilities and infrastructure are adequate, mediation still does not run effectively. This explains that other factors affect the ineffectiveness of mediation.

#### 4. Legal Culture

In principle, every mediation process is based on the wishes of the parties, both plaintiffs and defendants. If they do not want to make peace, then, of course, the mediator will be difficult to influence the parties because the character of the parties will affect the course of a mediation.<sup>50</sup>

Karl, Judge of Bukittinggi Religious Court, explained that legal culture includes the basic values of enacting a law, the values of what is considered good and what is considered bad. Cultural factors greatly influence society in carrying out every activity, one of which is carrying out mediation. This is closely related to public legal awareness. When the legal awareness of Bukittinggi people is good, it will create a good legal culture.<sup>51</sup>

The legal culture is strongly influenced by the parties' understanding of the laws and regulations relating to mediation and the good faith of the parties to the dispute. The legal culture of a society can be seen from the mindset of society itself. The parties to the dispute in the sharia economic case at the Bukittinggi Religious Court generally do not know and do not understand mediation. As previously explained, for the parties, the

mediation process is only one step towards the trial. Thus, the absence of understanding of the parties about mediation causes them to think mediation is unimportant.

Based on the author's analysis of the legal culture in mediation in the Bukittinggi Religious Court, ignorance, and the mediation room, in the Bukittinggi Religious Court also provided the names of mediator judges to help the parties choose mediators in resolving their disputes. Although the facilities and infrastructure are adequate, mediation still does not run effectively. This explains that other factors affect the ineffectiveness of mediation, or lack of knowledge of the parties related to mediation, causing the parties to think that mediation is not important. This is caused by the lack of government socialization about mediation in the community. The public only understands mediation in court hearings; it will be more effective if the public already understands the mediation, both related to the process and the benefits of mediation. This causes the legal culture in society to not go well. This analysis was corroborated by Khairul's experience as a mediator judge. He often found that the parties to the dispute did not understand mediation. This is due to the lack of legal socialization in the community, so the community thinks that mediation is not important.

In the mediation process, it is expected that the parties can comply with the applicable regulations so that mediation can be successful. In the process of mediating sharia economics disputes in the Bukittinggi Religious Court, the parties or communities are to the ego. They do not want to relent to forgive each other mutually. The parties both

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<sup>50</sup> Zulmiati.

<sup>51</sup>Khairul.

feel they are on the right side, so this hinders the success of mediation.

## CONCLUSION

Mediation in settlement of sharia economic disputes in the Bukittinggi Religious Court has not been effective. It can be seen from the absence of successful mediated matters. The effectiveness is influenced by: First, the legal substance in the content of PERMA No. 1 of 2016, basically PERMA has arranged the implementation of mediation very well, but over time this PERMA will begin to appear weaknesses because it is no longer following the social life of the community that is constantly changing and growing. Second, the legal structure is law enforcement, in this case, the Judge of the Bukittinggi Religious Court as a mediator in sharia economic disputes. The mediator judge has performed his duties following PERMA No.1 of 2016 concerning Mediation Procedures in the Court, but no judge has a mediator certificate. Third, legal infrastructure is a facility that supports the implementation of mediation in the Bukittinggi Religious Court. Mediation is conducted in the mediation room available at the Bukittinggi Religious Court. The room is representative enough to be used as a mediation place. Fourth, the culture of law is the attitude of the legal community in which the law is

implemented. When the legal awareness of Bukittinggi people is good, it will create a good legal culture. In the process of mediation of sharia economic disputes in the Bukittinggi Religious Court, the parties or the public do not understand mediation, even consider mediation is not important. In addition, the attitude of the parties who both feel they are on the right side also hinders the success of mediation.

Based on the result of the study, it may be necessary to socialize/counsel the law to the public about the importance of peaceful dispute resolution through mediation. Improvement of PERMA on mediation is also needed to realize the implementation of mediation more maximally. Judges in the Bukittinggi Religious Court should attend mediation certificate training or expand mediation education at Supreme Court accredited institutions, especially in sharia economic disputes. Thus, judges in the Bukittinggi Religious Court are certified mediators issued by the Supreme Court or institutions that have obtained accreditation from the Supreme Court. In addition, every society needs to better understand the social and cultural values that exist, such as the spirit of cooperation, helping each other, and forgiving each other.

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