

THE EFFECTIVENESS OF SHARIA ECONOMIC DISPUTE RESOLUTION BETWEEN RELIGIOUS COURT AND NATIONAL SHARIA ARBITRATION BOARD

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ABSTRACT

Sharia economic dispute can be resolved through litigation or judicial and non-litigation or out-of-court lines. Resolution disputes through religious courts always takes a long time and complicated administration, but until now is it still in high demand by justice seekers. There is dispute resolution outside the judiciary, one of which is arbitration through National Sharia Arbitration Board (BASYARNAS) which can be the solution. This paper is a qualitative research study with a case was taken from Religious Court Class 1A Sleman and BASYARNAS Representative In Yogyakarta. The findings of this study provide the results dispute resolution in religious courts is more desirable because it has more executive powers than BASYARNAS, and also religious courts hold the absolute authority of sharia economic dispute resolution and religious courts spread throughout districts in Indonesia, so religious courts are very easy to find, in contrast to BASYARNAS whose existence is still in every capital of several provinces in Indonesia. Religious courts are superior because of the quality of judges, their presence in every district in Indonesia, and the culture of the people.

Keywords: Religious Court, BASYARNAS, Dispute Resolution, Shariah Economy.

INTRODUCTION

Society is a human being who lives in many places and for a long time who realizes that they are a unit tied to a system of shared life, in which some rules and norms aim to regulate how its citizens behave. In people's lives, there are many forms of interest. These interests are aligned with each other, but some are at odds with each other. If there is a difference of interest between each other, then there is a conflict of interest. This is what, in juridical terms, is called dispute (Rosita, 2017).

A dispute can be resolved peacefully through non-litigation channels, namely by negotiation (deliberation), mediation, arbitration, and conciliation (Rosita, 2017). Arbitration itself is different from mediation, although it has the same name of resolution a dispute outside the judicial channels. Arbitration can only be resolved in trade, where the sharia economy is part of the trade field that must be registered to the court if it has reached an agreement. While mediation can resolve all civil cases submitted to the court, this has been stipulated in Article 4 paragraph 1 PERMA 01 the Year 2016. Article 12 PERMA 01 the Year 2016 also explains that all dispute resolution must be attempted settlement in peace or disputes through the judicial channels or outside the judicial channels.

Arbitration has advantages over resolution a dispute through judicial channels. Therefore in the practice of actors in sharia economy, there is a tendency to choose dispute resolution through arbitration because it will be guaranteed the confidentiality of the disputes of the parties, avoiding delays due to procedural and administrative matters, can choose arbitrators who are believed to have knowledge and experience on disputed matters, legal options to resolve problems and the process and place of conduct of arbitration can be determined, the arbitral award binds the parties through direct and straightforward procedures (Sanawiyah, 2013).

Dispute resolution through the judicial path has its advantages over dispute resolution through arbitration. Dispute resolution through the judiciary is considered the right and wise choice. This is evidenced by the high trust of Purbalingga society towards dispute resolution through judicial channels, the establishment

of material law, and court offices covering districts and cities (Sanawiyah, 2013).

Settlement of disputes through the path of litigation or judicial channels has been determined in law no. 48 of 2009 on the power of justice article 10, which reads “(1) courts are prohibited from refusing to examine, adjudicate, and decide a case filed on the pretext that the law does not exist or is unclear, but rather is obliged to examine and adjudicate it. (2) the provisions as referred to in paragraph (1) shall not close the effort to settle civil cases in peace” (Manuasa, 2014). The meaning of the verse, the service to get justice is a right for everyone, but there must be no distinction between the trivial and the priority. Because the court is one of the settlement channels, the submission of all cases to the court resulted in disproportionate dispute resolution conditions. The principle of fast, simple, and light costs becomes critical when associated with refusing to examine cases (Manuasa, 2014). This principle of fast, simple, and light cost has become article no. 48 of 2009 on the power of justice article 2 paragraph 4, which means “simple” is the examination and settlement of cases conducted efficiently and effectively. What is meant by “light cost” is the cost of the case that the community can reach. While the law provisions do not provide a time limit, “fast” must lead to the settlement process’s timing (Manuasa, 2014).

In law no. 21 of 2008 on Perbankan Syariah (Islamic Banks) described in article 55 paragraph 2 the parties who have promised dispute resolution other than passing the religious court can be done by the contents of the agreement. Moreover, it is explained in the law that the settlement of sharia banking disputes and passing through the path of religious courts can be through several efforts, namely deliberation, banking mediation, arbitration or other arbitral institutions, or courts in the general judicial environment. The settlement of disputes in the religious judiciary will cost a lot, and a long time, it is also because those religious courts are still considered by state authorities to have coercion that is considered more potent than *basyarnas* which is less known by the general public (Fitriana, 2017). This is not following law number 48 of 2009 on Judiciary Power (Kekuasaan Kehakiman) article 2

paragraph 4 because in the article described the judiciary is done simple, fast, and light costs.

Indonesia has provided a solution by resolution sharia economic disputes outside the judiciary or so-called non-litigation channels because dispute resolution through non-litigation channels is considered more straightforward, faster, and costs less. However, whether solving a dispute through a non-litigation path can be considered more effective than through litigation one becomes an interesting topic to discuss. Therefore, this study aims to explore the effectiveness comparison of sharia economic dispute resolution between religious court and national sharia arbitration board.

LITERATURE REVIEW

Sharia Economic Disputes

Sharia economy is a business or activity carried out by individuals, groups of people, business entities that are incorporated or not legal entities in order to meet the needs of a commercial and non-commercial nature according to sharia principles (Umam, 2016), including Islamic banks, Islamic microfinance institutions, Islamic insurance, Sharia reinsurance, Islamic mutual funds, Islamic bonds, Islamic financing, Islamic pawnshops, Islamic financial institution pension funds, and sharia business (Hardiati, 2021). Thus, a sharia economic dispute arises from the act of Sharia business law, a dispute or dispute between two or more people about a right and obligation caused by a difference of understanding of an agreed agreement in a sharia-based engagement (Pertaminawati, 2019). Alternatively, a sharia economic dispute is a dispute between two or more economic actors whose business activities are carried out according to the principles and principles of Sharia economic law due to different perceptions of interest or property that can have legal consequences for both and can be given legal sanctions against either of them (Muaidi, 2017).

The occurrence of disputes is generally due to fraud or broken promises by the parties, or one of the parties does not do what is promised or agreed to be done (Muaidi, 2017). It can then

be said that the forms of disputes in Islamic banks can be caused by denial or violation of the agreement reached, mainly because (Saputra, 2019):

1. The bank's failure to refund the money deposited by the customer in the wadi'ah agreement
2. The Bank lowers the customer's income ratio without prior approval, especially in the mudharabah agreement
3. The Customer engages in liquor business activities prohibited by Islamic Sharia from Islamic bank loans, qardh agreements, etc.

Broadly speaking, Sharia economic disputes can be classified into 3, namely (Ilham, 2019) :

1. Disputes in the field of Islamic economics between financial institutions and Islamic financing institutions with their customers
2. Disputes in the field of Islamic economics between financial institutions and Islamic financing institutions
3. Disputes in the field of sharia economy between people who are Muslim, which is the agreement is stated unequivocally that the business activities carried out are based on sharia principles.

Thus, the occurrence of sharia economic disputes is caused by (Muaidi, 2017):

1. Individual parties or legal entities that perform agreements or agreements with sharia principles that one of the parties performs default
2. Parties who commit acts against the law resulting in the other party feeling aggrieved.

The occurrence of disputes is generally caused by several factors (Makarim, 2019):

1. Data conflicts, some of the things behind data conflicts, including lack of information, misinformation, differences in views, differences in interpretation of data, and differences in interpretation of procedural.

2. Conflict of interest, in drafting the agreement, each party expresses its interests. The interests brought by each party cause conflict if the interests brought depart or clash with each other. In addition, the causes of conflicts of interest are the existence of feelings or acts of interest, the existence of substance interests of the parties, the existence of procedural interests, the existence of psychological interests.
3. Conflict of relations, the parties who cooperate, must be able to control emotions. Emotional control aims to maintain relationships between the parties. A well-maintained relationship can smooth the course of the deal. However, if the parties' relationship is not good, let alone carrying out the agreement, reaching an agreement in a business will be challenging to achieve. Poor relationships are due to strong emotions, misperception, poor communication, communication errors, or repeated negative actions.
4. Structural conflict, the occurrence of structural conflict due to patterns of destructive behavior or interaction, unequal control, unequal ownership or distribution of resources, the existence of power and power, geographical location of a place, unstable psychology, or environmental factors that hinder cooperation, and little time.
5. Conflict of Values occurs due to differences in criteria for evaluation of opinions or behaviors, differences in views of life, ideology, or religion, and the existence of self-assessment without regard to the judgment of others.

Sharia economic disputes can be in the form of bankruptcy statement applications (PPP). They can also be a delay in debt payment obligations (PKPU) in the field of Islamic economics, in addition, bankruptcy derivative cases (impure cases as bankruptcy cases) (Ilham, 2019).

Settlement of Sharia Economic Disputes in Indonesia

The rapid and complex growth of the sharia economy, producing diverse sharia economic products, increasing economic cooperation certainly impact the increasing vulnerability due

to conflict or sharia economic disputes. Conflicts caused by differences in interest will develop into disputes if the party experiencing the loss expresses dissatisfaction or concern, directly or indirectly to the party considered the cause of the loss. The law has legalized the choice of dispute resolution by the parties to the dispute, namely through litigation and non-litigation (Fitri, 2019), Dispute resolution through litigation is a process of Resolution disputes in court. All parties to the dispute face each other to defend their rights before the court; the final result of a dispute resolution through litigation is a ruling that states a win-lose solution (Finanda, 2018). Dispute resolution through non-litigation is out-of-court dispute resolution, out-of-court dispute resolution is closed to the public, and the confidentiality of the parties is guaranteed, the process of healing faster and more efficiently, this out-of-court dispute resolution process avoids procedural and administrative delays as it does in public court and has a win-win solution (Finanda, 2018). This out-of-court dispute resolution is called Alternative Dispute Resolution (ADR).

According to Basuki Rekso Wibowo, dispute resolution through social institutions outside the general court is based on the agreement and volunteerism of the parties to the dispute (Yusna, 2015). This dispute resolution model is the resolution of disputes outside the courts based on the law, and the resolution of such disputes can be classified as high-quality settlements. This is because disputes resolved in this way will be resolved without leaving any resentment and residual hatred (Yusna, 2015). Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution regulates disputes outside the court through consultation, mediation, negotiation, conciliation, and expert judgment. This law does not entirely provide a detailed and clear understanding of boundaries. Here will be explained a brief understanding of alternative forms of dispute resolution as follows:

1. Consultation,

As quoted by A. Rahmad Rosyadi, Black's Law Dictionary gives the notion that consultation is "a client-like consulting or consulting activity with his legal advisor." (Muaidi, 2017) In addition, consultation is also understood as consideration

of the parties to an issue. Consultation as an Alternative Dispute Resolution institution in practice can take the form of hiring a consultant to be asked for his opinion to solve a problem (Komarudin, 2014). In this case, consultation is not dominant but only provides legal opinions that can later be used as a reference for the parties to resolve the dispute.

2. Negotiation

Negotiation is a process that two parties have different requests (interests) by agreeing by compromising and giving leeway (Muaidi, 2017). According to Joni Emerson, negotiation can be interpreted as an effort to resolve the parties' disputes without going through the judicial process to reach a mutual agreement based on harmonious and creative cooperation. Negotiations allow the parties not to go directly in negotiations, namely representing their interests to each of the negotiators they have appointed to conduct competitively and mutually release or give leeway for a peaceful settlement (Komarudin, 2014).

3. Mediation

Etymologically, mediation comes from the Latin *mediare*, which means to be in the middle because a person who is mediating (mediator) must be in the middle of the warring person (Maryam, 2019). It can be described that mediation is a process of resolution the warring parties to reach a satisfactory settlement through a neutral third party (mediator) (Maryam, 2019). Supreme Court Regulation (PERMA) No. 1 of 2016 on Mediation explains that mediation is a way of resolution disputes through the negotiation process to obtain the parties' agreement with the help of mediators (Yunita, 2021). Mediation has gained more attention in Indonesia in recent years, among other reasons (Komarudin, 2014):

- a. Economic factors, mediation as a dispute resolution alternative has the potential to resolve disputes more economically, both from the point of view of cost and time.
- b. Scope factors discussed, mediation can discuss the agenda of the problem broadly, comprehensively, and flexibly.

- c. The factor of fostering good relations, where mediation relies on cooperative ways of settlement, is perfect for those who emphasize the importance of good relations between people, which have been ongoing and to come.
4. Conciliation
Marwan and Jimmy interpret conciliation as an attempt to bring together the parties' wishes to reach an agreement to resolve disputes with families (Komarudin, 2014). It can then be interpreted that conciliation is the creation of adjustment of opinion and resolution of a dispute with an atmosphere of friendship and without any hostility carried out in court before the trial to avoid the litigation process (Muaidi, 2017).
5. Expert Judgment,
The formulation of Article 52 of Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution stated that the parties to an agreement have the right to invoke a binding opinion of the arbitral institution on the particular legal relationship of an agreement (Muaidi, 2017). This provision is essentially the implementation of the duties of the arbitral institution as stated in Article 1 Paragraph 8 of Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, which reads that the arbitral institution is the body chosen by the parties to the dispute to give a ruling on the dispute, the institution can also give a binding opinion on a particular legal relationship in the event of a dispute has not arisen (Komarudin, 2014).

METHODS

This study applied qualitative method in the form of comparative law of a litigation and non litigation. In addition, this study also compared effectiveness between religious court and national sharia arbitration board. This method is useful for exploring and analysis procedures and implementation (Athief & Juwanti, 2020).

This research is descriptive, meaning that the researcher intends to provide a clear picture systematically (Waluyo, 2012),

to the analysis of sharia economic dispute resolution, with an empirical approach, namely legal research that examines laws conceptualized as actual behavior, as an unwritten social symptom, which everyone experiences in the relationship of community life (Muhaimin, 2020), in this study use interviews, observations, and documents in collecting data (Sugiyono, 2020).

The research subjects were conducted at the Office of The National Sharia Arbitration Board (BASYARNAS) representative in Yogyakarta and the Sleman Religious Court Class 1A.

Types and sources of data used in qualitative research are data in the form of events that occur, not just visible, spoken, but data that contains the meaning behind the visible and spoken (Sugiyono, 2020).

The types of data with the sources used in this study are divided into two kinds of primary data sources and secondary data sources

Data collected by the researcher directly from the first source or object of the study is conducted that directly provides data to the data collector (Sugiyono, 2020), the source of the data in this study is the results of interviews from judges, arbitrators, and plaintiffs or those representing them who directly feel the course of the judiciary in the BASYARNAS Representative Yogyakarta office and Sleman Religious Court Class 1A.

The data obtained is not directly from the data collector but through other or existing documents. Secondary data sources are additional sources in the form of documents, books obtained from library materials, and a relationship with research.

In qualitative research, the data analysis we use is the analysis of Miles and Huberman model data, which is an activity in qualitative data analysis that is done interactively and continues continuously until complete so that the data is saturated. This is the stage that is done when the research is running and after all the research data is collected. Activities in data analysis, among others (Sugiyono, 2020): Data Collection, Data Reduction, Presentation of Data, Conclusion Withdrawal and Verification

RESULTS

The principle of alternative dispute resolution is a system of conflict or dispute resolution that is carried out outside the ways of litigation and always prioritizes the principle of consensus deliberation (Yusna, 2015).

How to resolve disputes through religious courts has been regulated in civil procedure law. Wirjono Prodjokoro explained that civil procedure law is a series of rules that contain how people should act in front of the court and how the court must act to carry out the rules of civil law. Abdul Manan also explained that civil procedure law is the law that governs the procedure for filing a lawsuit with the court, how the defendant defends themselves from the plaintiff's lawsuit, how the judges acted well before and under examination, and how the judge decides the case filed by the plaintiff and how to carry out the ruling as appropriate following applicable regulations so that the rights and obligations that have been regulated in civil law can run as they should (Sufiarina, 2013). Under Article 54 of Law No. 7 of 1989 concerning Religious Courts, the event law applicable to courts in the religious justice environment is a civil procedure law that applies to courts in a general judicial environment, except as specifically regulated in this law (Ahmad, 2014).

In every examination of sharia economic matters, judges should always be guided by the principles outlined in the law of religious justice. The principles referred to are as follows (Ahmad, 2014):

1. The Foundation of Godhead
2. Islamic Personality Principle
3. Foundation of Freedom
4. Judge's Principle is Passive
5. The Principle of Open Session to the Public
6. Principle of Equality
7. The Principle of Speech Is Charged
8. Principle of Flexibility
9. Principle of Peace

Dispute resolution can be through litigation or judicial, and non-litigation or out-of-court. Table 1 shows the comparison of sharia economic dispute resolution in Religious Court Class 1A and BASYARNAS Yogyakarta.

Table 1. Comparison between litigation and non-litigation of sharia economic dispute

| No | Scope | Litigation (Religious Court Class 1A) | Non-Litigation (BASYARNAS) |
|----|--------------------------|---|---|
| 1 | Definition | Justice for People who are Muslim | How to Resolve Civil Disputes Outside the General Court Based on Arbitration Agreements Made in Writing By The Parties to The Dispute |
| 2 | Legal Standing | Law No. 50 of 2009 On The Second Amendment to Law No. 7 of 1989 On Religious Justice | Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution |
| 3 | Acces to Location | Easy, because it is in the middle of a road often passed by the community and in the middle of the office center. | Although it is in the middle of the city, BASYARNAS is on a road that is rarely traversed by people. |
| 4 | Scope of Case | Marriage, Inheritance, Will, Grant, Waqf, Zakat, Infaq, Shadaqah, and Sharia Economy | Trade, Finance, Industry, Services |
| 5 | Dispute Resolution Model | Simple lawsuit and ordinary lawsuit | Arbitration |
| 6 | Parties | Plaintiff or who represents him, Defendant or who represents him, Witness | Plaintiff or who represents him, Defendant or who represents him, Witness |

| No | Scope | Litigation (Religious Court Class 1A) | Non-Litigation (BASYARNAS) |
|----|-------------------|---|--|
| 7 | Procedure | <ol style="list-style-type: none"> 1. Pre-Trial, which includes (Bahri, 2022, p. 33): <ol style="list-style-type: none"> a. Case registration b. Determination of the panel of judges c. Appointment of the trial clerk or substitute clerk d. Determination of the trial day and summons of the parties 2. The trial stage, which includes (Ahmad, 2014, p. 481): <ol style="list-style-type: none"> a. At the first trial, the judge tried to reconcile the two parties (Muhammad, 2015, p. 67). b. If it does not work, then the judge requires both parties to first go through mediation. c. If the mediation is unsuccessful, the examination will be continued by reading the lawsuit. d. Defendant's response e. Plaintiff's answer and Defedant's answer (Replik Duplik) f. Proving the case of sharia economics g. Conclusion 3. The reading of the verdict | <ol style="list-style-type: none"> 1. Application Letter Registration 2. Payment of Trial Fees 3. Appointment of arbitrators 4. Determination of Place 5. Summoning the parties 6. Examination: <ol style="list-style-type: none"> a. At the first hearing, the arbitrator sought to reconcile the two sides. b. If it is unsuccessful, then the arbitration continues with the reading of the lawsuit letter. c. Defendant's answer d. Plaintiff's answer and Defedant's answer (Replik Duplik) e. Proof of sharia economics f. Conclusion 7. Verdict |
| 8 | Length of Process | Maximum of 5 months or 150 days | Maximum of 6 months or 180 days after the arbitrator's decision |
| 9 | Decision Result | Verdicts are Declaratory, Constitutive, Kondemnator | The verdict is final and binding. |

| No | Scope | Litigation (Religious Court Class 1A) | Non-Litigation (BASYARNAS) |
|----|----------------|--|--|
| 10 | Legal Remedies | Appeal, Cassation, and Review | No appeal or cassation efforts |
| 11 | Strengths | Has executive power, and has absolute and relative power in the handling of Sharia economy | Free from the complexity of administration, and free in choosing judges, places, even laws used in arbitration, and guaranteed confidentiality from any party. |
| 12 | Weakness | Many disputes go to religious courts, so they have to wait in line for a long time to resolve a dispute. | Not the main choice because it is another option other than to settle in a religious court, and less known by the public. |

It can be seen from Table 1 that each of the dispute resolutions from the Religious Court Class 1A and BASYARNAS Yogyakarta have advantages and disadvantages. The legal standing that applies the legal basis for religious courts has been renewed, while arbitration to date has not been renewed. While the harmonization of laws and regulations is needed has an essential meaning in drafting laws and regulations that are an integral part or sub-system in a country's legal system so that the laws and regulations can be interrelated and dependent and can form a complete roundness (Soegiyono, 2015). However, the scope of the case for religious courts is a weakness for them because the breadth of the scope of the case makes the whole problem of seeking justice through religious courts and slows the resolution of a dispute because it has to wait in line for the resolution of disputes in religious courts and limited courtrooms and mediation and human resources in the Religious Court Class 1A, This is by the results of the researcher's interview with Dra. Hj. Syamsiah, M.H., said, "the courtroom and mediation owned by the Sleman Religious Court Class 1A are considered insufficient and unbalanced with the number of cases that enter, so it must stand in line." Although religious court rulings are declaratory, constitutive, and concussive, there are still attempts at appeal, cassation, and review. Even if a dispute

is decided quickly, there is still the possibility of an appeal that gives rise to a lengthy dispute resolution.

DISCUSSION

The event law that applies to the courts in the religious justice environment is the civil procedure law that applies to the court in the general judicial environment, and this is based on Article 54 of law no. 7 of 1989 concerning religious justice, except that it has been specifically regulated in the law (Ahmad, 2014).

Meanwhile, the scope of the authority of the Religious Judiciary in the field of Islamic banking can be seen from the explanation of article 49 letter (i) of law no. 3 of 2006, namely; What is meant by sharia economy is an act, or business activity carried out according to sharia principles, including; Islamic banks, Islamic microfinance institutions, Islamic insurance, Islamic mutual funds, Islamic bonds and Islamic medium-term securities, Islamic securities, Islamic financing, Islamic pawnshops, financial institution pension funds, and Islamic businesses (Ramlah, 2012).

With the addition of the absolute authority of the religious court on the issue of sharia economics, a set of rules of law is needed. Among the legal instruments in litigation on the implementation of the sharia economic question in the religious court, it is well-known that there are 2 measures of settlement of the sharia economic dispute, first with a simple and second with a normal event (Azma, 2017). When deciding a dispute through trial or litigation comes into focus (Azma, 2017):

a. The case does not contain any arbitration.

Ascertaining the case of arbitration or not is crucial, for it is beyond the scope of absolute religious judicial authority. Even before the court sought peace for the parties, it was necessary to examine whether or not the treaty raised by the parties contained arbitration of arbitration so that the judges would not have to continue the judicial process because the case did not include absolute religious judicial authority.

b. Carefully study the covenants on both sides.

Any case in the Islamic economy will not be despite the disputes that will take place between the parties that make the

agreement and the implementation of the agreement. Whereas every cooperation or enterprise of any kind always has or is based on an agreement or agreement made and agreed upon by both sides. Therefore, the focus of the inspection must depart from the agreement or the contract upon which the cooperation is an issue between the two sides. Since it is the focus of the agreement or the contract that underlies the cooperation of both parties, then it must be the law of the agreement listed in the civil valid from 1233 to article 1864 and of course, its application must be relevant to the terms of the agreement in either the Qur 'an and as-sunnah or fatwa cleric of the field (Basir, 2009).

The settlement of the Islamic economic dispute with the simple program has been in place under the rule of the 2019 Supreme Court (PERMA), no. 4 in 2019 on the 2015 rule of the 2015 no. 2 Supreme Court. The suit can be presented orally or written in print or electronic case registration (Basir, 2009). The material value of the lawsuit filed is Rp 500,000,000 in case of promise injury or unlawful acts. In settling the sharia economic dispute in a simple lawsuit, the judge is the lone judge. It was not included in the simple lawsuit of the matter in which the controversial settlement was done by special courts as governed in legislation or land rights disputes. In a simple lawsuit, the plaintiff and the defendant are only one unless they have the same legal interest (Mukaromah, 2018). The stages of settling a simple lawsuit include the following (Azma, 2017):

- a. Registration
- b. Check the completeness of a simple lawsuit
- c. Appointment of judges and appointment of substitute clerks
- d. Preliminary examination
- e. Determination of the day of trial and summons of the parties
- f. Trial hearings and reconciliation
- g. Proof
- h. Verdict

The deadline for settling a simple lawsuit is 25 days from the day of the first trial. In examining a simple lawsuit, no claims for provisions, exceptions, conventions, interventions, duplications, or conclusions can be filed. If there is an objection to the decision determined, then submit an objection to the court chairman, who has the right to decide the case (Mukaromah, 2018).

Settlement of sharia economic disputes through ordinary procedures can be done with 2 things: simple lawsuits based on PERMA Number 4 of 2019 concerning Procedures for Settling Simple Lawsuits and ordinary lawsuits based on applicable civil procedural law except those specifically regulated in the Supreme Court Regulations. Religious courts examine, adjudicate, and decide by ordinary procedure with at least 3 judges unless the law provides otherwise. The panel of judges must comply with the provisions stipulated in the Supreme Court Regulation (PERMA) Number 5 of 2016 concerning the Certification of Sharia Economic Judges. The process of examining sharia economic cases can be divided into 2, which are as follows (Ahmad, 2014):

- a. Pre-Trial, which includes (Bahri, 2022):
 - 1) Case registration
 - 2) Determination of the panel of judges
 - 3) Appointment of the trial clerk or substitute clerk
 - 4) Determination of the trial day and summons of the parties
- b. The trial stage, which includes (Ahmad, 2014):
 - 1) At the first trial, the judge tried to reconcile the two parties (Muhammad, 2015)
 - 2) If it does not work, then the judge requires both parties to first go through mediation (Muhammad, 2015).
 - 3) If the mediation is unsuccessful, the examination will be continued by reading the lawsuit.
 - 4) Defendant's response
 - 5) Plaintiff's answer and Defendant's answer (Replik Duplik)
 - 6) Proving the case of sharia economics
 - 7) Conclusion
 - 8) The reading of the verdict

- In deciding by a judge, what must be done is to (Basir, 2009):
- a. *Konstatir*, which means testing whether or not the events or facts proposed by the parties through evidence using valid evidence according to the law of evidence.
 - b. Qualifying, which means assessing events or facts that have been proven, including what relationships and finding the law for events that have been confirmed. This must be done in the judge's decision in the legal considerations section.
 - c. Constituting to find the law and enforce justice in the case to be then compiled in a judge's decision, and determine the law on the case.

There are 2 usual procedural decisions in settlement of sharia economic disputes, namely (Bahri, 2022):

- a. A decision that states that the plaintiff's claim is granted either partially or completely.
- b. A decision stating that the plaintiff's claim is rejected.

With the decision of legal remedies in examining ordinary procedures, the parties can file an appeal. The parties cannot file a legal action against the sharia economic dispute decision to file a cassation or judicial review.

In settlement of disputes in religious courts, the Supreme Court has given a time limit through Circular Letter Number 2 of 2014, which is the settlement of disputes at the court of the first instance within 5 months at the latest. Furthermore, if the time limit has been determined by the judges of the first instance court, they shall make a report to the Chief Justice of the First Level Court, a copy of which is addressed to the Head of the Court of Appeal and the Chief Justice of the Supreme Court (Ketua Mahkamah Agung Republik Indonesia, 2014).

Arbitration is one of how disputes are resolved outside the judiciary and is carried out by the arbitrator chosen and authorized to make decisions (Soemartono, 2006). Moreover, arbitration in Indonesia has been stipulated in law no. 30 of 1999 concerning arbitration and alternative dispute resolution, it can be concluded from the law that there is a dispute resolution process

before heading to arbitration, each plaintiff and defendant must pass a meeting directly between the two parties and this lasts for 14 days, if the dispute cannot be resolved, then the dispute is resolved through the help of an expert advisor or mediator, if within 14 days the dispute cannot be resolved with the help of an expert advisor or a mediator, then the parties may contact the arbitral institution or alternative dispute resolution institution to appoint a mediator, after the appointment of a mediator by the arbitral institution or alternative institution of dispute resolution, the mediation effort must have been started no later than 7 days after the appointment, then within 30 days an agreement must be reached in written form signed by all parties concerned, and the agreement that has been written is final and binding the parties must be registered in the District Court within a maximum of 30 days after the day of signing, and the agreement must be completed by both parties after 30 days from the registration of the agreement, and if the dispute resolution efforts described above have not resulted in an agreement, then the parties may file a dispute resolution effort through an arbitration institution or ad-hoc institution. The above explanation has been written in law number 30 of 1999 on Arbitration and Alternative Dispute Resolution article 6 from paragraphs 1 to 9.

With law number 30 of 1999 on Arbitration and Alternative Dispute Resolution as well as the fatwas on sharia economy issued by the National Sharia Council of the Indonesian Ulama Council (DSN-MUI), the National Sharia Arbitration Board (BASYARNAS) as an Islamic arbitration institution under the Indonesian Ulama Council (MUI) has authority in efforts to resolve business disputes or sharia trade in accordance with the rules of procedure of the National Sharia Arbitration Board (Yusna, 2015).

The procedure in resolution disputes through BASYARNAS has a standard procedure. It must follow the procedure in good faith, and this procedure becomes standard in the proceedings. The proceedings in BASYARNAS still refer to the Indonesian Muamalat Arbitration Board (BAMUI), which was ratified and established on October 01, 1993, in Jakarta. Furthermore, the

event procedure that applies in BASYARNAS is as follows (Masse, 2017):

a. Application letter registration

The application for arbitration proceedings begins by registering a letter of application to arbitrate to the secretary of BASYARNAS (Siswanto, 2018). The application letter contains the full name and residence of the parties and a brief description of the sitting of the case and its demands. The application file must attach various documents, including (Nugroho, 2007):

- 1) A copy of the agreement's text that expressly submits authority to BASYARNAS to examine and decide the case.
- 2) Letter of an agreement containing an arbitration clause, which is a provision that stipulates that the dispute arising will be resolved in BASYARNAS.

BASYARNAS will examine the application letter submitted and determine whether BASYARNAS is authorized to examine and resolve the proposed arbitration dispute. BASYARNAS will declare that the application is unacceptable if the arbitration agreement and clause are deemed insufficient to be the basis of BASYARNAS's authority and declare the application unacceptable as outlined in a determination issued by the Chairman of BASYARNAS before the examination process begins. Moreover, if the application is accepted, then the Chairman of BASYARNAS immediately determines and appoints the sole arbitrator or arbitrator of the tribunal (Masse, 2017).

BASYARNAS Secretariat will submit a copy of the application letter to the respondent no later than eight days after the arbitrator's appointment or arbitrator, and the respondent shall be given no later than 30 days to answer the copy of the application letter in writing (Nugroho, 2007).

b. Appointment of Arbitrators

Following article 12 of law number 30 of 1999 concerning arbitration and alternative dispute resolution, an arbitrator must meet the following conditions:

- 1) Capable of taking legal action.
- 2) At least 35 years old.
- 3) Do not have a blood family relationship up to the second degree with one of the parties to the dispute.
- 4) Have no financial or other interest in the arbitral award
- 5) Have experience and actively master in their field for a maximum of 15 years.

Furthermore, for sharia arbitration, an arbitrator other than having to meet the requirements stated in law number 30 of 1999, sharia arbitrator must meet additional requirements, namely (Masse, 2017):

- 1) Muslims who obey the teachings of their religion and are not entangled in the rule of law.
- 2) Expert in science and experienced at least ten years in their field
- 3) Agree and accept all provisions contained in the articles of association, bylaws, and regulations of procedures in advance of the body.
- 4) Fill out and sign the list of fields (forms) submitted by the board and willing to be sworn in.

Following the provisions of article 8, paragraph 2 letter f of law number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution and BAMUI procedure rules, that the number of arbitrators must be odd at least one person and a maximum of 3 persons (Undang-Undang Tentang Arbitrase Dan Alternatif Penyelesaian Sengketa, 1999). Suppose any of the plaintiffs or defendants object to the arbitrator whom the chairman of BASYARNAS has sent. In that case, no later than in the first examination hearing or no later than three days, the sole arbitrator or arbitrator submits the objection of the arbitration to the chairman of BASYARNAS by in-

cluding the reasons based on the law and no later than seven days, the chairman of BASYARNAS will decide the objection and decide whether the objection of the defendant or the plaintiff is accepted or rejected. If the objection is accepted, then the chairman of BASYARNAS, in the same determination, will appoint another arbitrator (Batubara, 2020).

c. Inspection mechanism

All inspections and proceedings are conducted in closed hearings to the public. The entire proceedings and correspondence are in Indonesian. However, if one party does not understand Indonesian and wants a translator, the interested party must present a translator.

The right to defend its interests is granted to each party. Arbitrators shall give equal treatment to the parties by adhering to the principle of equality before the law. Moreover, any evidence or documents must be copied in duplicates to be provided to the arbitrator or the opposing party (Masse, 2017).

The proceedings are conducted at the central BASYARNAS office located in Jakarta or BASYARNAS branches and representatives or elsewhere with the parties's consent. When the examination begins, the arbitrator shall attempt to reconcile the two parties. Suppose the arbitrator's efforts in reconciling the two parties are achieved. In that case, the arbitrator will make a deed of peace and register it to the Court of Religion following Article 13 of the Supreme Court Regulation (PERMA) No. 14 of 2016 concerning Procedures for Settlement Sharia Economic Matters (Batubara, 2020).

The process of resolution disputes outside the court or through arbitration has the purpose of avoiding delays caused by procedural and administrative proceedings in public courts. Therefore the arbitration has a win-win solution (Batubara, 2020).

d. Venue of the trial

Following the previous point, the proceedings are conducted at the central BASYARNAS office located in Jakarta or BASYARNAS branches and representatives or elsewhere with the parties' consent (Batubara, 2020). The sole arbi-

trator or council arbitrator may examine witnesses and may submit expert witnesses at hearings (Nugroho, 2007), goods or documents relating to the disputed matter (Masse, 2017). The proceedings begin with the examination process until the verdict is made in private. The nature of BASYARNAS confidentiality has been stipulated in article 27 of law number 30 of 1999, which reads, “All examination of disputes by arbitrators or arbitral tribunals shall be conducted in private”.

Each party is given the same right to prove the evidence or opinions in the proceedings (Masse, 2017). The board of arbitrators, either in their own opinion or at the request of either party or both parties, may examine by hearing witness testimony and oral examination between the parties (Nugroho, 2007). Any evidence or document submitted by either party, then the copy must be submitted to the opposing party to respond to (Batubara, 2020). The examination phase starts from responding to each other, the evidentiary, and the verdict is done at the discretion of the sole arbitrator or tribunal (Masse, 2017).

e. Trial period

The trial phase begins with the receipt of the registration application file (Siswanto, 2018). Upon receipt of the application file by the secretariat and after the registration fee, the inspection fee and the arbitrator’s honorarium are paid in full. Therefore, the chairman of BASYARNAS will select and send the sole arbitrator or appointed arbitrator of the Board of Arbitrators registered with BASYARNAS. However, if the inspection requires unique expertise, then the chairman of BASYARNAS has the right to appoint an expert in the required unique field. Appointed and sorted arbitrators may not resign unless there is a compelling reason (Batubara, 2020). Before the proceeding begins, the sole arbitrator or council of arbitrators shall attempt to reconcile the parties. After achieving peace, a final and binding deed of peace is made. The decision of peace must be registered in the Religious Court following Article 13 PERMA No. 14 of 2016 (Batuba-

ra, 2020). Before the verdict is handed down, the applicant may cancel his application. The costs paid will be refunded if the chairman of BASYARNAS has not appointed the arbitrator. If the application's revocation is submitted after the examination begins, then the entire cost is not refunded. If the sole arbitrator or panel of arbitrators considers the examination sufficient, then the examination will be closed and will determine the day of the hearing to read the award (Masse, 2017). At the latest, within 180 days, the entire examination process until the decision is read out by a single arbiter or a panel of arbiters must be completed, starting from the determination of the single arbiter or panel of arbiter (Batubara, 2020).

f. The Nature of The Verdict

The determination of the arbitrator's decision is taken on the basis of deliberation and consensus (Masse, 2017), if no agreement is reached, then the verdict is based on the most votes (Nugroho, 2007). The award may not be announced unless agreed upon by the parties (Masse, 2017). A copy of the award signed by the arbitrator shall be provided to the parties to the dispute (Batubara, 2020). BASYARNAS's decision is final and binding (Nugroho, 2007). No later than 30 (thirty) days from the date the award is read, the original sheet or an authentic copy of the arbitrator's award is registered with the clerkship of the Religious Court (Batubara, 2020). BASYARNAS is different from the general judiciary. BASYARNAS has no execution institutions. Therefore, to carry out the execution, BASYARNAS needs to ask for help from the court, especially the Religious Court (Nugroho, 2007).

g. Determination of trial costs

The cost of arbitration consists of the registration fee, the examination fee, and the arbitrator's honorarium (Batubara, 2020). The amount of fees is determined by the chairman of BASYARNAS in a separate regulation. The cost elements include, first, the convention registration fee calculated based on the nominal amount of the claim, which is 10% of

the claim's value. Second, administrative costs or convention checks are calculated based on the value of the claim. Third, arbitrator fees with variations between 0.70 and up to 10 of the value of the claim. The higher the nominal value of the claim, the smaller the percentage (Masse, 2017). Table 2 describes the details of it.

**Table 2: Arbitration Fees
At The National Sharia Arbitration Board**

| No | Disputed Nominal | Fees |
|--|--|--------------|
| <i>Convention Registration Fee (IDR)</i> | | |
| 1 | 500,000,000 | 500,000.00 |
| 2 | 500,000,001 - 1,000,000,000 | 1,000,000 |
| 3 | More Than 3,000,000,000 | 1,000,000 |
| <i>Administrative Costs or Convention Checks</i> | | |
| 1 | 500,000,000.00 | 1,000,000.00 |
| 2 | 500,000,001.00 - 1,000,000,000.00 | 1,500,000.00 |
| 3 | 1,000,000,001.00 - 3,000,000,000.00 | 2,000,000.00 |
| 4 | More Than 3,000,000,000.00 | 2,500,000.00 |
| <i>Arbitrator Fees</i> | | |
| 1 | 100,000,000.00 - 500,000,000.00 | 10% |
| 2 | 500,000,000.00 - 2,000,000,000.00 | 8% |
| 3 | 2,000,000,001.00 - 5,000,000,000.00 | 7% |
| 4 | 5,000,000,001.00 - 7,000,000,000.00 | 6% |
| 5 | 7,000,000,001.00 - 9,000,000,000.00 | 5% |
| 6 | 9,000,000,001.00 - 10,000,000,000.00 | 4% |
| 7 | 10,000,000,001.00 - 20,000,000,000.00 | 3% |
| 8 | 20,000,000,001.00 - 40,000,000,000.00 | 2% |
| 9 | 40,000,000,001.00 - 60,000,000,000.00 | 1,5% |
| 10 | 60,000,000,001.00 - 80,000,000,000.00 | 0,9% |
| 11 | 80,000,000,001.00 - 100,000,000,000.00 | 0,8% |
| 12 | More Than 100,000,000,000.00 | 0,7% |

Source: Secretary of The National Sharia Arbitration Board Representative of Yogyakarta

From the explanation above, we can understand that using BASYARNAS services as a legal route in the resolution of sharia economic disputes is perceived to be relatively cheap litigation costs and faster litigation. Arbitrators selected by BASYARNAS must be experts in their fields and active in their fields with at least 15 years of experience. The arbitrator in BASYARNAS must be a devout Muslim, understand the field of sharia economic law and have a bachelor's degree, and also understand Islamic sharia well. BASYARNAS often faces dispute resolution because the parties are reluctant to attend, so that they buy time for trials. Unclear addresses also make it difficult for BASYARNAS to send mail and search addresses (Sari, 2016). By putting aside the constraints of BASYARNAS, arbitration is a solution in resolution sharia economic disputes effectively and efficiently.

CONCLUSION

Sharia economic dispute resolution through litigation is considered the right and wise choice because religious courts are in every district and are strategically so that they are easily accessible to the public and also because religious courts have executive powers. However, dispute resolution through BASYARNAS also has its advantages, namely disputes that are reportedly guaranteed confidentiality from any party so that the parties will feel safe and comfortable carrying out arbitration in BASYARNAS.

Dispute resolution at Religious Court and Sleman BASYARNAS have their respective advantages, including deficiencies. Dispute resolution in BASYARNAS is said to be more effective because arbitration rulings are final and binding. There is no appeal or cassation even after the verdict is read and registered with the local religious court. All data from plaintiffs and defendants are guaranteed confidentiality from outside parties. However, Religious Court is considered more effective than BASYARNAS. However, after reading the verdict, there is an appeal or cassation or even judicial review. Than, the result of this research, Religious Court is considered good enough to maximize the existing room to minimize the buildup of existing

disputes and continue to innovate optimally to realize rapid dispute resolution, simple and cheap.

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