Maqāṣid Al-Sharī'ah and Development of Contemporary Sharia Arbitration Doctrine as an Alternative for Sharia Economic Dispute Resolution

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Abstract:

The settlement of muamalah disputes in the Islamic tradition has been carried out since the time of the Prophet Muhammad. Dispute settlement can be done through courts known as litigation and through shulh, fatwa, tahkîm, mazhâlim, hisbah, or what is known as non-litigation. The purpose of this study is to analyze arbitration and its relationship with resolving disputes that occur against Muslims, especially in the field of Islamic financial institutions. In line with the spread of Muslims in various parts of the world with various characteristics, this requires the existence of a dispute resolution institution. This study will also examine how the position of arbitration and its relevance to *Maqāṣid Al-Sharī'ah*. This study uses a qualitative method with a literature study approach. The results of this study conclude that the form of muamalah dispute resolution that occurs today is almost the same as dispute resolution during the time of the Prophet Muhammad, although the naming is different the basic principle is the same. For example, the litigation route through the judiciary and the non-litigation route through peace or alternative dispute resolution (ADR) in fiqh is called shulh and through arbitration/tahkîm. The disputing parties are allowed to choose to settle the case through the judiciary and outside the judiciary such as through shulh, peace, and arbitration in Basyarnas.

Keywords: *Maqāṣid Al-Sharī'ah*; Arbitration; Dispute Sharia Economics

Introduction

The increasing development of business in Islamic financial institutions (LKS) shows the stability of the Islamic economic system in Indonesia. This is indicated by the increasing number of transactions carried out between real sector meetings and

the financial sector. The Financial Services Authority (OJK) noted that Indonesia's Islamic economic investment in 2021 will experience significant growth of around 25%. This makes Indonesia the country with the highest investment in the Islamic economy sector among Islamic countries.[1]

The existence of Islamic banking known as (Islamic Banking) has now received legality with the issuance of Law No. 21 of 2008 concerning Islamic Banking (UUPS 2008). The 2008 UUPS is now institutionally strong and introduces various business products that comply with Islamic legal requirements, as well as providing rules for dispute resolution mechanisms in the event of a dispute between customers and sharia banking.[2] There are two ways for dispute resolution can be through judicial mechanisms and non-judicial mechanisms. Both of these avenues are made possible by the 2008 UUPS to be used in resolving Sharia banking disputes. In addition to litigation through the religious courts, the settlement of sharia banking disputes can also be carried out non-litigation outside the judiciary by choosing the forum (choice of forum) specified in the contract.

Disputes occur in every aspect of human life, including economic matters or business relations, both in the implementation of the clauses of the agreement or outside those stipulated in the agreement.[3] The dispute is demanded to be resolved based on the principle of justice for both parties and following Islamic principles. In practice, disputes can be resolved by the disputing parties only. In some cases, the involvement of other parties, as well as formal and integral dispute resolution, is required. Settlement of sharia economic disputes fairly and following Islamic principles can be done through a court process or outside the court process (litigation and non-litigation). There are various ways of resolving disputes, each of which has advantages and disadvantages. Settlement of disputes through litigation (through the judiciary) requires a long way, while business people and Islamic finance practitioners need dispute resolution that is faster, more efficient, and cost-effective, energy and thought. This is a logical consequence of resolving a dispute[4] It is necessary to strengthen alternative dispute resolution outside the court process, such as taking (arbitration).

Sharia arbitration can be used as an option for dispute resolution mechanisms that occur between Islamic banks and customers. The terminology of arbitration, which is known in modern times as a forum for dispute resolution outside the legal assembly (out court system), in the perspective of Islamic law is proportional to him. The appointment of a tahkim is based on a two-party convention that appoints a judge (the arbitrator) to give legal decisions to be able to resolve disputes that occur between the two disputing parties based on syara' legal instructions.[5] Sharia-based economic discourse includes how the legal settlement process for disputes that occur

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[1] Financial Services Authority, Indonesian Sharia Financial Development Report (Jakarta: Financial Services Authority, 2020), 122

[2] Sutiyoso, Arbitration Law and Alternative Dispute Resolution (Yogyakarta: Gama Media, 2008), 113.

[3] Ramlan Yusuf Rangkuti, "Islamic Economic Dispute Resolution System: An Important Instrument for Future Islamic Economic Concepts," Asy-Syir'ah: Journal of Sharia and Law Sciences Vol 45, no. 2 (2011).

[4] Erie Hariyanto, "Sharia Economic Dispute Resolution in Indonesia," Iqtishadia 1, no. 1 (2006): 44.

[5] Legal Dictionary, cet. 7th (Bandung: Citra Umbara, 2016), 29

between the parties is closely related to fiqh. Jurisprudence as a legal product that was strongly influenced by the social, political, and cultural conditions of its time has contributed to the arbitration discourse.[6] Arbitration is a form of dispute resolution outside the court to accelerate and facilitate the settlement process.[7] In addition, it is hoped that through arbitration the cost of dispute resolution can be cheaper, although it must be admitted that the low cost and fast process are not always a reality.

Debates in the financial world are comprehensively caused by the development of issues that occur in the implementation of agreements or agreements, such as default, coercive conditions, and acts against the law. Therefore, in resolving these questions, an answer is needed through a legitimate game plan for the settlement of banking debates that can accommodate, provide arrangements, and provide a sense of justice at interrogation meetings, so that these meetings can be resolved. well. There are various legitimate choices made concerning the purpose of the inquiry, specifically, through the courts (claim process) and out-of-court channels (non-prosecution proceedings, through Arbitration and Alternative Dispute Resolution through discussion,[8]

In the process of litigation dispute resolution, decisions in the community are considered to have not reached and satisfied many parties, especially the disputing parties, because it resulted in decisions that have not been able to accommodate common interests. What's more, the process of debating objectives in court is time-consuming and expensive. This can create tension for all associations, whether local, clients, or banks. Assuming you rely on the courts as a job to determine the question, it could interfere with the execution of the bank's business. In the regulation of Article 1851 of the Civil Code. Article 1855 of the Civil Code and the provisions of Article 3 of Law Number 30 of 1999 Concerning and Alternative Dispute Resolution, all things considered, meetings like to decide questions using organizations other than courts such as affirmations or compromises. Through arbitration, the disputing parties agree to submit their dispute resolution to the arbitrator or arbitrators who will examine and then give a binding decision on the parties[9] Arbitration is the termination of a dispute by one or more persons appointed by the disputing parties themselves outside the judge or court.

Affirmation in Indonesia is regulated in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. Settlement of questions through affirmation, time is faster and costs more than resolving disputes through the courts, therefore the choice of a valid arbitral tribunal cannot be submitted. The choice of the arbitral tribunal is usually final and limiting. Nonetheless, as a general rule, the options can be considered conclusive and limiting on the assumption that the debate can be exercised once it is registered in court. If the trial fails to execute its purpose, then at that time the election can be made based on the request of the Head of the

[6]Article 1 point 1 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution.

[7] Musyfikah Ilyas, "Review of Islamic Law on Deliberation in the Settlement of Sharia Economic Disputes," Journal of Al-Qadau: Islamic Courts and Family Law 5, no. 2 (2018): 227.

[8] Karnaen Perwaatmaja, et al., Islamic Banks and Insurance in Indonesia, (Jakarta: Prenada Media, 2005), 288.

[9] Rifyal Kaaba, "Syariah Economic Dispute Resolution as a New Authority for Religious Courts," Journal of Law IUS QUIA IUSTUM 13, no. 2 (2006): 241–250.

District Court following one of the examination sessions. In addition, the mediation grant can also be mentioned to be crossed out to the District Court.[10]

The method of dispute resolution that is carried out by litigation is through the Religious Courts, while the settlement of disputes that are resolved through non-litigation channels is through a sharia arbitration institution. Settlement through arbitration is regulated in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. The state makes efforts to implement arbitration institutions including sharia arbitration institutions as one of the steps to bring about peace in the process of resolving business disputes in Indonesia.[11]

The arbitration law states that the state provides alternative settlement options to the public by utilizing consultation, mediation, negotiation, conciliation, arbitration, and expert assessment to carry out the dispute resolution process in the field of sharia economic law. This means that the community can take the path of settlement according to the agreement between the parties to achieve peace. The method of settlement of cases carried out by arbitration is based on an agreement made in the form of an agreement. Cases that can be resolved through arbitration are cases that have been agreed upon by the parties in the form of an agreement by choosing a settlement route through arbitration so that not all cases can be processed by arbitration.[12]

The role of Arbitration as a non-judicial dispute resolution institution is currently in great demand by both national and international business circles. This is because the arbitration institution is a business dispute that can be resolved quickly with simple procedures. The National Sharia Arbitration Board (hereinafter written BASYARNAS) is an arbitration body established by the Indonesian Ulema Council (MUI). Initially, this arbitration institution was named the Indonesian Ulema Council Arbitration Board (BAMUI). The arbitration institution was formed to resolve the process of resolving sharia economic disputes. The underlying principles must be based on Islamic law, starting from the making of the contract to the settlement of disputes.[13]

Basyarnas as an arbitration institution that refers to the Arbitration Law was established with the provisions of Islamic sharia principles. Basyarnas is authorized to receive, examine and resolve sharia economic cases. With the rapid growth of Islamic financial institutions, this is a challenge for Basyarnas in the future to be more optimal. With the increase in the Islamic finance industry as one of the largest sectors, disputes in carrying out Islamic economic activities will also increase. Often there are differences of opinion or implementation disputes in interpretation and in the process of implementing contracts at Islamic financial institutions. These disputes must be

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[10] Sutan Remy Sjahdeini, Sharia Banking Transaction Dispute Resolution through Arbitration, (Jakarta, 2004), 10

[11] Yuhanin Zamrodah, "Islamic Economic Dispute Resolution Based on the Value of Legal Certainty," Journal of Ius Constituendum 15, no. 2 (2016): 1–23.

[12] Umm Uzma. 2014. Implementation or Execution of Decisions of the National Sharia Arbitration Board (Basyarnas) as the Authority of the Religious Courts. Journal of Law and Development 44 (3) : 389

[13] Karimatul Khasanah, Hendri Hermawan Adinugraha, and Putri Ayu Mayangsari, "Online Dispute Resolution (ODR) as an Alternative Resolution of Sharia Economics in Indonesia" 19, no. 1 (2021).

anticipated by applying the precautionary principle in managing activities according to sharia to provide certainty and prevent problems that arise so that the parties can comply with sharia principles. The parties involved in the process also no longer rely solely on religious courts if they are to enforce sharia principles, but it is time to go through an alternative sharia economic dispute resolution institution, namely the Sharia Arbitration Board.[14]

The ineffectiveness of the settlement of Islamic banking mediation and the non-optimal settlement of sharia economic cases that are resolved through the Religious Courts encourage the authors to study the settlement of sharia economic disputes through arbitration institutions. Settlement of sharia economic disputes that are resolved through arbitration institutions is of course resolved through Basyarnas which for now has been going well, but in practice it still requires evaluation. Starting from this background, the author will explore the problem of how to resolve sharia economic disputes through an arbitration institution, which in this study is the National Sharia Arbitration Board.[15]

This study is a literature study with primary data, namely fiqh tahkim, sharia standards on tahkim from AAOIFI, and provisions on tahkim in Indonesia. The data analysis used the content analysis method by examining the contents of the articles in sharia standards and fiqh texts related to tahkim. Then also see it in the reality of legislation in Indonesia. Thus, this study is descriptive and qualitative, namely by describing the provisions of the tahkim contract in the dispute resolution process in sharia economic issues and integrating them with the provisions of tahkim in sharia standards from AAOFI. This study also uses secondary data sources from books, scientific articles, and other references relevant to the research theme. Furthermore, the data were analyzed, and data reduction, categorization, and data verification were carried out.

Results and Discussion

Islamic Economic Dispute Resolution in the Indonesian Legal System

The birth of Law no. 7 of 1992, Law no. 10 of 1998, and Law no. 23 of 1990 has become a strong legal basis for the implementation of Islamic banking in Indonesia, although there are still some things that still need to be perfected, including the need for the preparation and improvement of statutory provisions regarding the operation of Islamic banks separately so that in the event of a dispute in this regard. relationship with Islamic banking can be resolved by referring to the applicable law. At first, the legal obstacle to the settlement of sharia banking disputes was where to take the settlement. The District Court does not use sharia as a legal basis for the settlement of cases, while the authority of the Religious Courts in Article 49 of Law no. 7 of 1989 is limited to adjudicating cases of marriage, inheritance, wills, grants, waqf, and alms. So then to anticipate emergency conditions, the Indonesian Muamalah Arbitration Board (BAMUI) was established jointly by the

[14] Beautiful Sari. 2019. Arbitration as a Dispute Resolution Forum Out of Court. Scientific Journal of Aerospace Law 9 (2): 49

[15] Urwatul Wusqo, Much. Salahuddin, and M. Zidny Nafi' Hasbi, "Skill, Professionalism, and Achievement of the Islamic Bank Employee in Ntb, Indonesia," Tabarru' Journal: Islamic Banking and Finance 5, no. 1 (2022): 207–215.

Indonesian Attorney General's Office and the MUI.

With the enactment of Law no. 3 of 2006 concerning the Religious Courts as an amendment to Law no. 7 of 1989, the Authority of the Religious Courts according to Article 49 of Law no. 3 of 2006 has the duty and authority to examine, decide and settle cases at the first level between people who are Muslims in the fields of; marriage, inheritance, will, grant, waqf, zakat, infaq, alms, and sharia economics. In the explanation of the sound of article 49, especially in point I or Islamic economics, it is stated that dispute resolution is not only limited to the field of Islamic banking, but also other fields of Islamic economics. As for what is meant by sharia economics actions or business activities carried out according to sharia principles, including but not limited to: (a) sharia banks; (b) Islamic microfinance institutions; (c) sharia insurance; (d) sharia reinsurance; (e) sharia mutual funds; (f) Islamic bonds and medium-term Islamic securities; (g) Islamic securities; (h) Islamic financing; (i) sharia pawnshops; (j) Islamic financial institution pension fund; and (k) sharia business.

Article 4 of PBI No.9/19/2007 concerning the Implementation of Sharia Principles in Fundraising and Distribution Activities as well as Sharia Bank Services also explains that the settlement of disputes between customers and banks by way of deliberation, if an agreement is reached then mediation is carried out including banking mediation, if not If an agreement is reached, it will be carried out through a sharia arbitration mechanism or a judicial institution determined by law.[16]

Meanwhile, what is meant by people who are Muslims are people or legal entities that automatically submit themselves voluntarily to Islamic law regarding matters that are under the authority of the Religious Courts following the provisions of Article. The authority of the Religious Courts to handle cases of sharia economic disputes was disturbed by the issuance of Law No. 21 of 2008 concerning Sharia Banking in article 55 which explains that; (1) Sharia Banking dispute settlement is carried out by a court within the Religious Courts; (2) the parties have agreed to settle the dispute as referred to in paragraph; (3) dispute resolution is carried out following the contents of the contract; (4) dispute resolution as referred to in paragraph (4) may not conflict with Sharia principles.

The explanation of paragraph (2) above states that the party authorized to settle disputes following the contents of the contract is through deliberation, banking mediation, the National Sharia arbitration body, or other arbitration institutions as well as through courts within the general judiciary. Substantially, Article 55 of the Sharia Banking Law has re-emerged the absolute competence of the general courts on sharia economic disputes which had previously been delegated to the religious courts. Settlement of disputes other than through religious courts (mediation, arbitration, and general courts) is highly dependent on the contracts made when customers and banks conduct banking transactions. Therefore, after the issuance of the Sharia Banking Law other than the Religious Courts,

Thus, although the law explains that the judiciary and arbitration institutions are institutions for resolving sharia economic disputes, the parties are allowed to choose the resolution of sharia economic disputes through litigation or non-litigation. In the form of litigation, namely dispute resolution through a judicial body formed

[16] Zubairi Hasan, Sharia Banking Law Point Islamic Law and National Law, (Jakarta: Rajawali Pers, 2009), p. 227

by the government to resolve disputes in the community. In addition to explaining dispute resolution, it can be done through judicial or non-judicial channels. UU no. 21 of 2008 explains in Article 58 regarding administrative sanctions that will be imposed on Islamic banks and sharia business units and their management, in the form of (1) monetary fines, (2) written warnings, (3) lowering the soundness of banks and UUS, (4) prohibition from participating in the clearing process.[17]

By looking at some of the laws and regulations related to the settlement of sharia economic disputes, there are several alternative routes offered to the parties who carry out sharia contract transactions, if in the future there is a breach of contract or there are several things that cause problems. The forms of dispute resolution and the institutions authorized to resolve them include alternative dispute resolution (ADR) and alternative dispute resolution (APS). The form of this institution, in particular, is not formed by the government but by the needs of the community. Regarding this institution, it has been regulated in Law no. 30 of 1999 concerning Arbitration and APS. In Indonesia, there are two permanent arbitration bodies, namely the Indonesian National Arbitration Board (BANI) formed by Kadin in 1997, and the Indonesian National Arbitration Board (BANI) in 1997.[18]

Peace and Alternative Dispute Resolution

Peace and alternative dispute resolution (ADR) are known in fiqh as such. The concept of the church (peace) as mentioned in various fiqh books is one of the main doctrines of Islamic law in the field of muamalah to resolve a dispute. Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution can be said to be an effort by the state to socialize the institution of peace in business disputes. The law states that the state gives freedom to the public to resolve their business disputes outside the court, either through consultation, mediation, negotiation, conciliation, or expert judgment. With positive arrangements regarding peace, all matters relating to peace, both those that are still in the form of efforts.[19]

The tendency to choose alternative dispute resolution (ADR) by the community today is based on several considerations. First, they lack confidence in the court system and at the same time understand the advantages of using the arbitration system compared to the courts, so the business community prefers to look for other alternatives to resolve various business disputes, namely by way of arbitration. Second, public trust in arbitration institutions, especially BANI, began to decline due to the large number of arbitration clauses that did not stand alone but followed with a clause on the possibility of filing a court dispute if the arbitration decision was not successfully resolved. In other words, not a few disputed cases received by the court are cases that have been decided by BANI arbitration. Thus, dispute resolution utilizing ADR is a profitable alternative.[20]

Some of the forms of ADR (alternative dispute resolution) are as follows: a) Consultation is the activity of consulting or negotiating like a client with his legal

[17] Zubairi Hasan, Sharia Banking Law, p. 227-228
[18] Yusuf Bukhori, Sharia Banking Dispute Litigation in the Perspective of Law Number 3 Year 2006
[19] Abdul Manan, Sharia Economic Dispute Resolution: A New Authority of Religious Courts (Bandung: Pustaka Pelajar, 2008), p 56
[20] Mujahidin Ahmad, 2010, Sharia Economic Dispute Resolution Procedure, Bogor: Ghalia Indonesia, page 46

advisor. In addition, consultation is also understood as the consideration of people (parties) on a problem. Consultation as an ADR institution in practice can take the form of hiring a consultant to be consulted to resolve a problem. In this case, consultation is not dominant but only provides legal opinions which can later be used as a reference for the parties to resolve the dispute; b) Negotiation is a process carried out by two parties with different demands for interests by making a compromise agreement and providing concessions. These negotiations were carried out simply and full of friendship. This form of ADR allows the parties not to participate directly in the negotiations, namely to represent their interests to each of the negotiators who have been appointed to make compromises and release each other or provide concessions to achieve a peaceful settlement. To have binding power, This peace agreement through negotiation must be registered at the District Court within 30 days after its signature and implemented within 30 days from its registration as stipulated in Article 6 paragraphs 7 and 8 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. Negotiations can only be carried out outside the court process; c) Conciliation is the creation of an adjustment of opinion and the resolution of a dispute in an atmosphere of friendship and without any sense of hostility carried out in court before the start of the trial to avoid the litigation process. This conciliation process can be carried out in the trial process or outside the trial process; and d) Expert opinion and judgment. The form of ADR introduced in Law Number 30 of 1990 is the opinion and assessment of experts. The formulation of article 52 of this law states that the parties to an agreement have the right to request a binding opinion from the arbitration institution on certain legal relationships of an agreement.[21]

Position of Arbitration (Tahkîm) In Dispute Resolution

Arbitration is a dispute resolution carried out by one or several arbitrators based on the agreement of the parties who will comply with the decisions given by the arbitrator they choose. Article 1 paragraph (1) of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution states that arbitration is a way of settling civil disputes outside the general court based on an arbitration agreement made in writing by the disputing parties. The idea of establishing an Islamic arbitration institution in Indonesia began with the meeting of Muslim scholars, legal practitioners, and ulama' to exchange ideas about the need for an Islamic arbitration institution in Indonesia. This meeting was chaired by the MUI Leadership Council and was held on April 22, 1992. After holding several meetings to improve the design of the organizational structure and procedures, finally, on October 23, 1993, the Indonesian Muamalat Arbitration Board (BAMUI) was inaugurated. National Sharia Arbitration (Basyarnas). Decree of the MUI Leadership Council No. Kep-09/MUI/XII/2003 dated December 24, 2003, concerning the National Sharia Arbitration Board. The National Sharia Arbitration Board (Basyarnas) is the only sharia arbitration court in Indonesia authorized to examine and decide on muamalah disputes that arise in the fields of trade, finance, industry, services, and others. All fatwas of the National Sharia Council of the Indonesian Ulema Council (DSN-MUI)

[21] Ahmad Ali, Sociology of Law, Empirical Studies of Courts, (Jakarta: BP IBLAM, 2004), p. 21.

regarding muamalah (civil) relations always end with a provision, if one party does not fulfill its obligations or if there is a dispute between the two parties, then the settlement is carried out through the Sharia Arbitration Board after not fulfilling its obligations. reached an agreement through deliberation.[22]

The authority of Basyarnas is: (1) To resolve fairly and quickly muamalah (civil) disputes that arise in the fields of trade, finance, industry, and services which according to law and legislation are fully controlled by the disputing parties and the parties agree in writing to submit the settlement to Basyarnas following the procedure. (2) Provide a binding opinion at the request of the parties without any dispute regarding issues relating to an agreement. If the arbitration route cannot resolve the dispute, then the judiciary is the last resort to decide the case. Judges must pay attention to referrals from arbitrators who have previously handled the case for consideration to avoid the length of the settlement process.[23]

Dispute Resolution Through the Judiciary

Disputes that cannot be resolved, either through shulh (peace) or tahkîm (arbitration) can be resolved through the judiciary. In the context of sharia economics, the religious judiciary through Article 49 of Law Number 7 of 1989 which has been amended by Law Number 3 of 2006 concerning the Religious Courts has determined matters that are the authority of the Religious Courts in Article 49. However, with the issuance of Law no. 3 of 2008 concerning Sharia Banking, the parties may choose to settle their case either through the Religious Courts, General Courts, or other channels.

Since the enactment of Law no. 3 of 2006, the Religious Courts in Indonesia began to resolve economic disputes. Economic dispute cases received by PA jurisdictions of provincial/PTA courts throughout Indonesia in 2007 can be seen that the Religious Courts in Indonesia have received a total of twelve (0.006%) cases related to sharia economic disputes out of a total of 217,084 cases. Of the twelve cases of sharia economic disputes, only two (0.001%) cases have permanent legal force, out of a total of 200,795 cases. As for the case of sharia economic disputes that were accepted and decided by the Religious Courts in 2008, there were eight (0.003%) sharia economic cases that were submitted to the PA out of a total of 245.023 cases. Of the eight cases, only four cases (0.002%) out of 223,

In 2009 the case of sharia economic disputes received by the judiciary amounted to twelve sharia economic cases that were submitted from 284,749 cases that were submitted or only about 0.004%, of the 12 cases that entered the PTA only 5 (0.002%) of the cases submitted to the PTA. 257,798 cases that have permanent

[22] Association of DSN MUI Fatwa, Revised 2006 edition, (Jakarta: DSN MUI & BI, 2006). See DSN Fatwa No. 05 concerning Sale and Purchase of Salam, p. 34; Fatwa No. 06 concerning Istishnâ' Sale and Purchase, p. 46; Fatwa No. 07 concerning Mudharabah Financing; Fatwa No. 08 concerning Musyarakah Financing, p. 54; DSN Fatwa No. 09 concerning Ijarah Financing, and others.

[23] For example, DECISION Number: 792/Pdt.G/2009/PA.JP The Central Jakarta Religious Court which examines and hears certain cases in the first instance has rendered a decision on the case of canceling the Decision of the National Sharia Arbitration Board (BASYARNAS) Number 16/Tahun 2008/BASYARNAS/ Ka.Jak regarding the Murâbahah Financing Contract was decided in the deliberation of the Panel of Judges of the Central Jakarta Religious Court on Thursday, December 10, 2009 AD to coincide with the 22nd Dzulhijjah 1430.

legal force. The tendency of not many sharia economic dispute resolutions submitted to the Religious Courts cannot be concluded that the parties lack respect for this institution, to find the answer further research is needed.[24]

Conclusion

The settlement of muamalah disputes in the Islamic tradition has been carried out since the time of the Prophet Muhammad, in addition to making accusations in spreading Islam, he is also a judge. Dispute settlement can be done through the court known as litigation and through the shulh, fatwa, tahkîm, mazhâlim, hisbah, or what is now known as non-litigation. The form of muamalah dispute resolution at this time is almost the same as the settlement during the Islamic tradition, although with a different name but the basic principle is the same. For example, the litigation route through judicial institutions and the non-litigation route through peace or alternative dispute resolution (ADR). This path is known in fiqh as shulh and through arbitration or known in fiqh as tahkîm.

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[24]Anshori, Abdul Ghofur. 2010. Settlement of Sharia Banking Disputes. Yogyakarta: Graha Indonesia, p. 10.

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