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Sharia Mediation as an Alternative Model of Sharia Banking Dispute Resolution

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A B S T R A C T

The resolution of conflicts or disputes in society refers to the principle of freedom that benefits both parties. The parties can offer dispute resolution options with intermediaries of community leaders, banking mediators, or mediators from Bank Indonesia, especially related to Islamic banking disputes. Out-of-court mediation is a process of peaceful dispute resolution that is commonly used by the community and mediated by a neutral third party. The purpose of this study is, first, to explain the model of Sharia banking dispute resolution through Sharia mediation outside the court, second, to explain the implementation in the practice of Sharia banking dispute resolution outside the court. Research methods include normative/doctrinal research type. The result of this study is that the Sharia banking dispute resolution model through Sharia mediation in a non-litigation manner is considered to be more able to accommodate some of the weaknesses of the litigation model and has provided a better solution because mediation has many elements in common with the consensus deliberation mechanism which is the spirit of dispute resolution in Indonesian society. Meanwhile, the data collection technique in this study is carried out using several stages starting with the collection of secondary data in the form of primary legal materials and secondary legal materials related to the settlement of Islamic banking disputes through sharia mediation. These legal materials were obtained through the search of several laws and regulations related to the settlement of Islamic banking disputes through sharia mediation on a non-litigation basis.

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INTRODUCTION

The Indonesian people have used mediation as a peaceful alternative to conflict and dispute resolution since ancient times. They feel that by working together, they can create a harmonious, just, and balanced life where strong values of unity are fostered in communal life. Several centuries ago, there was a peaceful settlement of disputes. The peaceful settlement of cases has led the Indonesian people to a harmonious, fair, balanced life and the preservation of several values of togetherness (communality) in society. In fact, mediation is a method of dispute resolution that has developed rapidly in various parts of the world over the last three decades. By upholding togetherness and not depriving or suppressing individual freedom, a quick settlement of cases will be realized.
The resolution of disputes or conflicts in society refers to the principle of freedom that benefits both parties. The parties can offer dispute resolution options through the intermediary of community leaders. The community frequently uses mediation through non-litigation/out-of-court as a peaceful dispute resolution method. Mediation is conducted by a third party, such as traditional elders, religious leaders, or other community leaders. This form of mediation is better known as community mediation. Private mediation institutions managed by professionals who mostly focus on resolving business disputes peacefully are also developing in Indonesian society in addition to community mediation. Based on the characteristics of the business, entrepreneurs try to find a fast, cheap, and simple way to resolve disputes and make the court the last step if there is no other option (ultimatum medium).

The parties are more concerned about resolving the problem for the future by accommodating their interests in a balanced manner so that they are not fixated on proving the wrongness or correctness of the dispute that occurred. It is in the form of dispute resolution which is often referred to as deliberation or consensus. Deliberation or consensus is one of the alternative dispute resolution (ADR) systems in Indonesia which is the basis of the Indonesian state, namely Pancasila, where in its philosophy it is implied that the principle of case resolution is deliberation for consensus. Mediation with the foundation for deliberation towards peace is not a newly known method of dispute resolution but has been developing for a long time in Indonesia.

This is because mediation has several elements in common with the consensus deliberation mechanism which is the spirit of dispute resolution in Indonesian society. Mediation is a system of peaceful dispute resolution in accordance with the Fourth Precept and the noble value of Bhinekaan Tunggal Ika which is not oriented to the common accommodative needs or interests of the parties to the dispute. Mediation is a systematic process in negotiating (deliberating) with the help of an independent, impartial, non-authoritative mediator to make decisions but encouraging and facilitating the parties to find several opportunities for voluntary agreements (consensus) that can be felt fair (acceptable) by the parties.
People are treated to conflicts almost every day in the mass media, both in the news and the reality they witness, from individual to group and even international. One of the approaches to understanding conflict is mediation. Through a negotiating process or consensus reached by the parties with the

assistance of a mediator who is not empowered to make decisions or impose settlements, mediation is a procedure for resolving disputes. Through the assistance of a third person whom the parties trust, mediation is a method of issue-solving that gives priority to the form of negotiation between the parties involved. Essentially, though, the parties to the disagreement determine the type of mediation, hence the mediator plays very little role in the process of resolving conflicts. Mediation is a process that helps the parties to take part in resolving conflicts with various processes directed by a mediator to manage the parties.

Sharia Banking business dispute resolution, so that the approach of Islamic teachings on dispute resolution must be seen. In Islamic teachings, transacting in sharia business is included in muamalat fiqh. Islam teaches that muamalat is not a rigid, narrow, and rigid teaching, but a flexible and elastic teaching, which can accommodate various developments in modern business transactions, as long as it does not contradict the nash of the Qur'an and As-Sunnah. Likewise, if there is a dispute between others in the muamalat, then how to resolve the dispute and have legal force, both in general law and according to Islamic Sharia.

Islamic banking financial transactions today are experiencing increasingly rapid development, creating legal relationships that occur between customers and Islamic banks becoming increasingly complex. The legal relationship between the customer and the Islamic bank is carried out based on business and financial transactions agreed upon by both parties in the form of a contract or agreement. The legal relationship made between the customer and the Islamic bank through this agreement is a legal relationship based on the principle of freedom of contract. The agreement made by the customer with the bank usually contains the rights and obligations that should be carried out by the bank and its customers as the party who makes and performs the agreement, but the implementation of the contract does not rule out the possibility of differences in the implementation of an agreement that can cause losses or failure of an achievement to be implemented.

Prior to the enactment of Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts (UUPA), disputes pertaining to sharia economics, including those involving sharia banking, were settled by the Indonesian Muamalat Arbitration Board (BAMUI), which is currently known as the National Sharia Arbitration Board (BASYARNAS). BAMUI was established as part of the endeavor to settle disputes pertaining to muamalat, particularly the sharia economy. The purpose of BAMUI's founding is to foresee potential legal issues that may come from Sharia Financial Institutions (LKS), particularly Sharia Banks, which had been formed in significant numbers at the time, under muamalah law.

THEORETICAL REVIEW

Sharia banking is included in the scope of Islamic civil law or muamalat in Islamic Law. Islamic civil disputes, also known as muamalat in Islamic law, can be settled through peace (al-Sulh), arbitration (al-Tahkim), or, in the last resort, the legal process (al-Qadla). Therefore, in the event of a dispute between

a Sharia Bank and its clients, the parties may choose to pursue an alternative course of action that is mutually agreeable before pursuing the legal route through the judicial institution.

The existence of Sulh as a peaceful effort in the settlement of disputes has been explained in the Qur'an and Al-Hadith of the Prophet Muhammad PBUH, which means: "There is no good in most of their whispers, except for the whispers of those who tell them to give alms, or to do ma'ruf or to make peace among people. And whoever does this because he seeks the pleasure of Allah, we will give him a great reward. The hadith gives an affirmation to Muslims to perform Sulh in the settlement of their Islah/Sulh disputes, except for Sulh that makes it haram or prohibits what is halal." The existence of a third party is very important, in order to bridge the parties to the dispute. Third parties play a very important role in facilitating, negotiating, mediating, and arbitrating between the parties to the dispute.

METHODOLOGY

This type of research is normative/doctrinal legal research. By demonstrating the truth sought in or from certain social facts of legal significance, this method attempts to arrive at the correct solutions. This study critically assesses laws, doctrines, conceptions, and principles of law in light of the relevant circumstances. The first step taken is to conduct an inventory of positive legal sources related to sharia banking dispute resolution through sharia mediation as an alternative model for out-of-court/non-litigation dispute resolution.

This research is normative/doctrinal legal research, which is a scientific research procedure to find the truth based on legal scientific logic from the normative side. Scientific logic in normative law research is built on scientific disciplines and ways of working with normative law. In this legal research, a legal approach will be used to map problems according to the law related to the problem. The conceptual approach to see and analyze the concept of sharia banking dispute resolution is offered in the Sharia Banking Law and Law Number 30 of 1999 and the conceptual approach starts from the views and doctrines that develop in legal science.

The data collection in this study is carried out using several stages starting with the collection of secondary data in the form of primary legal materials and secondary legal materials related to the settlement of Islamic banking disputes through sharia mediation as an alternative model for non-litigation/out-of-court dispute resolution. The legal materials are obtained through literature studies, books, articles, legal journals, research reports, etc.

RESULTS AND DISCUSSION

Model of Sharia Banking Dispute Resolution Through Sharia Mediation Outside the Court

The settlement of Islamic banking disputes through sharia mediation outside the court is a relationship pattern based on the desire to enforce the sharia system. The settlement of Islamic banking disputes is believed to be a pattern of strong relationships between banks and customers. If there is a dispute, both in the interpretation and in the implementation of the content of the agreement,

both parties will try to resolve it through deliberation according to Islamic teachings. However, according to Muhammad Syafi'i Antonio in his book, there is still a possibility of disputes that cannot be resolved by deliberation. This situation occurs in daily life, especially in economic life, it must be anticipated carefully. Based on this, the importance of finding a model and forming a permanent institution that functions to resolve the possibility of civil disputes between several Islamic banks and customers is very urgent.

Islamic law is based on principles that are directly directed by Allah SWT, the universe's Lord, who has given precise and thorough direction in all areas, including this one of resolving disputes. In Islamic law, dispute resolution can generally be pursued by two channels, namely peacefully (as Sulh/Sulhu) or by arbitration (at-Tahkim) outside the trial process in the Court, which is known as non-litigation. Or through another way, namely in Court (al-Qadha), with the name of litigation. As-Sulh/Sulhu is usually carried out outside the court, where the parties agree not to take legal steps in resolving their disputes. The legal basis of sulh in the Qur'an is enshrined in Surah An-Nisa' verses 114 and 128.

Islam offers a principle that aims to form an agreement after the parties to the dispute have heard their statements so that there is a clear and patient exchange of ideas. This principle is called deliberation, which is essentially the same as negotiating, mediating, conciliating, and arbitrating. According to Achmad Heidar, deliberation is a process or mechanism in decision-making based on principles including; equality between the parties, freedom of expression, prioritizing the public interest, paying more attention to the content and starting from ideas, starting with good prejudice, and the existence of a standard reference that all parties adhere to. Deliberation can be carried out as it should, there are several conditions, namely among people who are equal, equal in rights and obligations, and equal in carrying out sovereignty over the establishment that is discussed. The Qur'an commands humans to solve all social (worldly) problems by deliberation. Two verses that are firmly outlined are in Surah As-Shura verse 38 which means: "The affairs of society are decided by deliberation between them" and Surah Al-Imran verse 159 which means "And you deliberation with them O Muhammad in every affairs of society".

After the issuance of the Decision of the Constitutional Court of the Republic of Indonesia Number 93/PUU-X/2012 dated August 29, 2013. The Religious Court as the only court of sharia economic disputes has finally found legal certainty because it has canceled the option of resolving sharia banking disputes which is the explanation of Article 55 paragraph (2) of Law Number 21 of 2008 concerning Sharia Banking (UUPS). The settlement of sharia banking disputes is regulated in Article 55 of the UUPS which states that: Paragraph (1) The settlement of sharia banking disputes is carried out by the court within the Religious Court, paragraph (2) in the event that the parties have agreed to resolve the dispute other than as referred to in paragraph (1), the dispute settlement is carried out in accordance with the content of the contract, paragraph (3) the dispute settlement as the accusation in paragraph (2) must not be contrary to Sharia principles. The Constitutional Court's Decision No. 93/PUU-X/2012 regarding the cancellation of the explanation of Article 55 paragraph (2) of the

Constitution, determines that in the event that the decision of the National Sharia Arbitration Board (Basyarnas) is not implemented voluntarily, then one of the parties to the dispute has the right to submit an application for execution to the Chief of the Religious Court who has absolute authority for the determination of the Basyarnas decision deed so that it can be carried out executively. This is in line with the provisions of Article 61 of the UUAAPS.

Meanwhile, although Islamic banks have developed quantitatively, in their activities Islamic banks still face several obstacles, including; 1). Lack of understanding and insight as well as public misunderstanding of the Islamic banking system and principles; 2). Limited number of Islamic bank office networks; 3). Islamic banking supporting institutions that are not complete and effective; 4). Lack of human resources to support the development of Islamic banking; 5). Socialization that has not been maximized in the community; 6). There are no adequate regulations and provisions that regulate Islamic banking operations. The foundation for Bank Indonesia's (BI) banking mediation program is the numerous grievances of clients who are not happy with how the Bank has handled their concerns. The bank's reputation will be impacted by the numerous client demands that it fails to satisfy and its inability to adequately handle conflicts. Theoretically, a peace agreement cannot be reached if one of the parties does not comply with and implement the agreement. This is because reaching a peace agreement already requires the parties to be willing to find a win-win solution, and the outcome of the negotiation process cannot be determined by third parties using coercion.

In Chapter II Article 6 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, it is clearly stated that mediation is highly dependent on the goodwill of the parties, and the outcome is highly dependent on the will of the parties. The threat will not be tonal if one of the parties does not carry out the mediation agreement other than the threat of a demand for default from the interested party. The effectiveness of a deed of agreement resulting from mediation will certainly depend on the good faith of the parties, obeying the results of the negotiations/agreements. Every action of one party that is contrary to the results of the negotiations is an act of breach of promise (default).

The advantages of dispute resolution with banking mediation are said to be cheap, fast, and simple because; There is no charge, the mediation process period is a maximum of 60 working days, and the mediation process is carried out informally/flexibly. In the banking mediation process, only disputes related to aspects of customer financial transactions at the bank, with the provision that the maximum dispute value is five hundred million rupiah (Rp. 500 million). Before conducting the mediation process, the customer and the bank must sign a mediation agreement that contains; an agreement to choose mediation as an alternative to dispute resolution, and an agreement to comply with and be subject to the rules of mediation. Bank Indonesia as a mediator will facilitate a meeting between banks and customers to find a solution. In the mediation, the mediator will be neutral, motivating the parties to resolve the dispute, and not providing recommendations or decisions. The result of the settlement of the dispute is an agreement between the customer and the bank. If an agreement is reached, the

customer and the bank will sign a deed of agreement. If no agreement is reached, the customer can make further settlement efforts through arbitration or court. There are several things that need to be considered, including; Ensuring that the dispute meets the requirements to be resolved through the banking mediation route, submitting complete documents accompanied by supporting data, obtaining information about banking mediation from the bank, and complying with the results of the agreement contained in the agreement deed.

In addition to helping the disputing parties, mediation has various advantages for the legal system as a whole. Through mediation, the likelihood of having more cases filed with the court is decreased. The amount of cases that are settled through mediation will inevitably result in fewer cases being filed in court. Because there are fewer cases filed with the court, supervision will be easier to provide if there is an unjustifiable delay in the examination of a case. The court's review of cases will also go more swiftly due to the limited quantity of cases that have been presented. In Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (AAPS), mediation is not explained in a balanced and proportionate manner.

In the Law, arbitral institutions are regulated and explained in detail in eighty (80) Articles, while alternative dispute resolution, including mediation, is only mentioned in two articles, namely Article 1, point (10) and Article 6 paragraph (3), paragraph (4), and paragraph (6). The rest is only regulated in general in the Regulation of the Supreme Court of the Republic of Indonesia Number 02 of 2003 concerning Mediation Procedures in Court. In addition, dispute resolution through mediation is more similar to deliberative dispute resolution to reach a consensus. Dispute resolution between customers and banks through mediation is considered ideal, considering that justice arises from the parties because neither party makes a decision that benefits one of the parties. Another nature of dispute resolution through mediation is the existence of an element of voluntariness. Without voluntariness between the parties, alternative dispute resolution mechanisms will not be able to be implemented properly. The voluntariness in question includes voluntariness to the settlement mechanism and voluntariness to the content of the agreement.

Mediation is one of the alternative dispute resolution methods that is indecisive, fast, cheap, and provides access to the parties to the dispute to obtain justice or a satisfactory resolution. In the mediation process, it is hoped that it can reduce the burden of cases in court and provide the widest possible access to the parties to the dispute to obtain justice so that it can indirectly form an independent judiciary. Dispute resolution patterns that reflect procedural and substantial justice need to be developed, in the sense that there is justice created through the determination of a time period, with the object in dispute. Disputes between customers and banks can be resolved, it takes more than just arrangements about banking mediation and institutions that carry out banking mediation. However, conventional mediation models can be found and applied that have mediation processes and mechanisms based on sharia principles.

According to Article 1 Number (12) of Law Number 21 of 2008 concerning Sharia Banking, sharia principles are the principles of Islamic Law in banking

activities based on fatwas issued by institutions that have the authority to determine fatwas in the field of sharia. The sharia principles intended in Article 2 of the UUPS also state that "Islamic banking in carrying out its business activities is based on sharia principles, economic democracy and the principle of prudence", this is further emphasized by the explanation of Article 2 of the UUPS that business activities based on the sharia principles referred to above, among others, are business activities that do not contain several elements, such as 1). Riba, which is an illegal increase in income (bathil), among others, in the exchange transaction of similar goods that are not the same in quality, quantity, and delivery time (fadhl) or in loan-borrowing transactions that require the customer receiving the facility to return the funds received in excess of the principal of the loan due to the passage of time (nasi'ah). The meaning of riba is additional, but what is meant by riba in the verse of the Qur'an (QS. Ar-Rum verse 39) is any addition taken without an 'iwad (replacement) in accordance with sharia. Riba in all its forms is prohibited even in the last verse of the Qur'an about the prohibition of usury, namely Surah Al-Baqarah verses 278-279 which is expressly stated, which means, "O you who believe, fear Allah and leave the remnants of rib, if you are believers. If you do not do it, know that there is a war from Allah and His Messenger against you, and if you repent, then for you the fruits of your treasure you will not persecute, nor will you be persecuted."

2). Maisir, which is a transaction that depends on an uncertain and lucky situation. According to the opinion of Muhammad Ali As-Sayis, Al-Maisir comes from the word Taisir which means to facilitate, namely a way of distribution based on agreement as is done in gambling. Al-Maisir or gambling is a game that contains elements of betting that are carried out face-to-face or directly between two or more people. 3). Gharar, which is a transaction whose object is unclear, not owned, whose existence is unknown or cannot be handed over at the time the transaction is carried out unless regulated in sharia. Gharar according to the language means doubt, deception or action aimed at harming the other party. The definition of gharar according to the jurists of Imam Al-Qarafi as quoted by M. Ali hasan is as follows; Imam Al-Qarafi stated that gharar is a contract that is not known in a strict way, whether the effect of the contract is carried out or not, such as buying and selling fish that are still in water (ponds). The prohibition of gharar is prohibited in Islam based on the Qur'an which prohibits eating other people's property in a bathyl way, as Allah says in QS. An-Nisa verse 29, which means: O you who believe, do not eat one another's wealth in a false way, except by a consensual way of business among yourselves. And do not kill yourselves, for Allah is Most Merciful to you."; 4). Haram is a transaction whose object is prohibited in sharia. Haram is something that Allah expressly prohibits to do and the perpetrator is threatened with punishment and punishment permanently in the hereafter, sometimes even supplemented with sanctions in this world; 5). Tyranny, is a transaction that causes injustice to other parties. Wrongdoing is an act that is forbidden by Allah SWT and is included in one of the great sins. Humans who commit wrongdoing will get retribution in this world and be tortured bitterly in the hereafter. as Allah SWT says in QS. As-Shura verse 42, which means "Indeed, the great sin is against those who do wrongful to man and

go beyond the limits of the earth without rights. They received a painful punishment".

Some of the mediation models that exist include Settlement Mediation, Facilitative Mediation (Problem Solving), Transformative/Reconciliation Mediation (therapeutic), and Evaluative Mediation (Advisory). There are several ways to do Facilitative Mediation (Problem Solving), as follows; a). Guiding the parties, negotiating their needs, transforming their wants and needs; b). Defining disputes of needs (substantive, procedural, emotional); c). Maintaining the continuity of dialogue, and process intervention; d). Mediation skills and techniques, mandatory and subjective; e). Case, secondary.

In this case, the mediator is expected not to suggest a solution or direct the outcome to a reasonable settlement of the dispute, but to help the parties to fundamentally review the situation and reach their own agreement. Problem-solving mediation avoids positions, seeks the interests underlying the position, and people who have expertise in mediation techniques. Carry out the process and maintain communication between the parties. The Problem-Solving model is the only model that can be studied and applied by people from different professional backgrounds and is a model that significantly reduces the likelihood of a mediator being held accountable. Other characteristics are; mediator intervention is weak and parties are encouraged to be creative in order to serve interests fairly. The fields of application are community disputes, family, environment, and partnership. Its strength is to be able to make the most of consensus. The disadvantage is that it can be time-consuming, and requires negotiation skills.

Two models of dispute resolution in Islamic law can be used as a reference, such as; 1). Dispute resolution with Al-Qadha' (Judiciary); 2). Dispute resolution through tahkim (referee/arbitration). The main dispute resolution is shulh, the word shulh-yashluhu-shalahan, which means to decide a dispute. In the Qur'an, Surah Al-Hujurat verse:65 and Surah An-Nisa verse:65 explain that disputes are resolved fairly and quickly in various Islamic civil issues or muamalah that arise in the fields of trade, industry, services, and so on with the principle of ishlah. Ishlah in Islam is known as Ash-Shulhu which means deciding quarrels or disputes between two people in dispute.

Another alternative in resolving Islamic banking disputes according to the perspective of Islamic Sharia is through peace institutions. In Arabic, peace is called islah/as-Sulhu or Suluh. Literally, it contains the meaning of deciding quarrels/disputes. In the sense of shari'a, it is formulated as a type of contract/agreement to end a conflict/dispute between two opposing people. Each party that makes peace in Islamic law is called mushalih, while the disputed issue is called mushalih'anhu, and the act done by one party against the other party to end the dispute/quarrel is called mushalih 'alaihi or also called badalush shulh. Broadly speaking, islah/as-Sulhu or Suluh is divided into four types, namely: a). Peace between Muslims and non-Muslim communities, namely making an agreement to lay down arms for a certain period of time (nowadays known as truce only), freely or by way of compensation as regulated in the law agreed by both parties; b). Peace between the ruler (imam) and the rebels, i.e.

making agreements or regulations regarding security in the State that must be observed, the full details of which can be seen in the special discussion on bughat; c). Peace between husband and wife in a family, namely making agreements and rules for the division of alimony, the issue of disobedience, and in the matter of handing over their rights to their husband in the event of a dispute; d). Peace between the parties to the transaction (peace in muamalah), i.e. establishing peace in matters related to disputes that occur in muamalah issues.

Implementation in the Practice of Sharia Banking Dispute Resolution Outside the Court

Islamic banking financial transactions today are experiencing increasingly rapid development, creating legal relationships that occur between customers and Islamic banks becoming increasingly complex. The legal relationship between the customer and the Islamic bank is carried out based on business and financial transactions agreed upon by both parties in the form of a contract or agreement. The legal relationship made between the customer and the Islamic bank through this agreement is a legal relationship based on the principle of freedom of contract. The agreement made by the customer with the bank usually contains the rights and obligations that should be carried out by the bank and its customers as the party who makes and performs the agreement, but the implementation of the contract does not rule out the possibility of differences in the implementation of an agreement that can cause losses or failure of an achievement to be implemented.

Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts (UUPA) before it was enacted, sharia economic disputes, including sharia banking disputes, were resolved by the Indonesian Muamalah Arbitration Board (BAMUI), and now the National Sharia Arbitration Board (BASYARNAS) which was formed as one of the efforts to resolve disputes in the field of muamalah especially the sharia economy. The establishment of BAMUI is intended as an anticipation of legal problems that may arise due to the application of muamalah law by LKS (Sharia Financial Institutions), including Sharia Banks which at that time had been established in large numbers.

In addition, the UUPA has determined which legal subject can resolve the dispute in the Religious Court. In Article 2 and Article 49 of the UUPA, it is stated that the Religious Court is one of the implementers of judicial power for the people seeking justice for Muslims regarding certain civil cases regulated in the UUPA. The authority to adjudicate within the Religious Court has determined two factors that characterize the existence of the Religious Court system. The first is certain factors and the second is certain people. The specific people in question are certain groups of people who are subject to the law into the power to adjudicate within the Religious Court. The UUPA adheres to the principle of Islamic personality, where what is amended by that principle is, that the parties to the dispute must both be Muslims, or the legal relationship that occurs is carried out according to Islamic Law, then the parties are still subject to the authority of the Religious Court even if at the time of the dispute one of the parties has changed the religion from Islam to another religion.

The parties in a dispute consist of the so-called Plaintiff, the Defendant, and the existence of a third party, may also consist of a person representing the Plaintiff or Defendant and a third party who enters the case due to intervention. As for the parties to the dispute in the Islamic banking case, a customer can be an individual or an Islamic bank as a legal entity, in the case of an Islamic bank as a legal entity can be represented by the board of directors. The Board of Directors is fully responsible for the management, in accordance with the provisions of the Articles of Association, so that the Board of Directors will represent the Company or legal entity in the event of a dispute in court. Banking business players, especially Islamic banking, tend to be reluctant to choose the court as a dispute resolution institution, even preferring dispute resolution outside the court (non-litigation).

Article 55 of Law Number 21 of 2008 concerning Sharia Banking (UUPS) provides an alternative to resolving Islamic banking disputes through a non-litigation mechanism. The explanation of Article 55 paragraph (2) of the Constitution states that the settlement of Islamic banking disputes can be resolved by deliberation, banking mediation, and through the National Sharia Arbitration Board (BASYARNAS). The settlement of Islamic banking disputes through non-litigation channels is known as ADR (Alternative Dispute Resolution). Consultation, Negotiation, Mediation, Conciliation, Expert Opinion and Arbitration. Dispute resolution through BASYARNAS not only has advantages as a positive side but also has disadvantages as a negative side that cannot be avoided. These shortcomings include that in the BASYARNAS Decree, the parties can apply for cancellation. The final and binding BASYARNAS decision can be deviated if several elements are found in the BASYARNAS decision that can cancel the decision. The decision is canceled if it is believed to contain multiple elements, such as documents submitted during the examination that were later found to be false or declared false; documents that were crucial but were withheld by the opposing party after the verdict was rendered; or results of a trick that one of the parties in the dispute examination admitted to be true.

Disputes that occur in business transactions between customers and Islamic banks can be an obstacle in the implementation of Islamic bank transaction activities because these disputes can reduce the reputation and public trust in the bank itself, so as much as possible the dispute must be resolved quickly so as not to cause obstacles to the implementation of financial transactions at the bank. Islamic banking financial transactions that are running faster and more complex can cause the potential for a dispute between the customer and the Islamic bank. Because every kind of issue needs to be settled and handled quickly, the settlement of disputes involving Islamic banking typically follows a non-litigation method.

The bank considers that the court decision can take a long time and the decision is not always fairly beneficial to the interests of the disputing parties, so it can create potential new problems. The media spotlight on disputes that occur between customers and banks that can cause a bad image for banks involved in disputes is also one of the reasons why banks prefer dispute resolution through

a non-litigation process. According to Abdul Manan, in principle, there are several steps that are usually taken by the parties when a dispute occurs, including: a). Returning to the items of the pre-existing contract, where a contract contains a dispute resolution clause consisting of a choice of law and a choice of forum or dispute resolution institution (choice of forum); b). The parties, namely the bank and the customer, sit together again to subdue the problem with a focus on the disputed issue; c). Prioritizing deliberation and family; d). The Court should be used as the last solution if it is necessary.

The settlement of Islamic banking disputes outside the court in practice, in Indonesia, is: a). Settlement of Islamic bank disputes through mediation outside the court (non-litigation), namely non-litigation mediation, is regulated in PBI No.8/5/PBI/2006, concerning banking mediation. Mediation is a dispute resolution process that involves mediators to assist the parties to the dispute in order to reach a settlement in the form of a voluntary agreement on part or all of the disputed issues (Number 5 PBI No. 8/5/PBI/2006 concerning banking mediation). Based on this understanding, it can be said that; a mediator is not in a position (not having the authority) to decide the dispute of the parties, unlike a judge or arbitrator; The duties and authority of the mediator are only to assist and facilitate the parties to the dispute, to reach a state of agreement on the disputed matters; and Mediation is non-coercive. This means that no dispute (resolved through mediation) will be resolved unless it is mutually agreed or agreed upon by the parties to the dispute. b). The implementation of out-of-court mediation is regulated in Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (UUAAPS) and PP 54 of 2000 concerning Out-of-Court Dispute Resolution in the Field of Environment (PP 54 of 2000), the Law emphasizes the settlement of disputes outside the court by taking mediation or alternative dispute resolution methods and regulates the institution providing dispute resolution services outside the court. The process of implementing out-of-court mediation in the UUAAPS is regulated in Articles 20 to 24. Meanwhile, the process of implementing mediation in the provisions of Article 20 of Government Regulation No.54 of 2000 begins with the election or appointment of a mediator by the parties to the service provider institution. On the basis of the appointment, the mediator will mediate as soon as possible to resolve the dispute peacefully.

After the mediation process is reached, the agreement is made in the form of a written agreement on stamped paper and signed by the parties and the mediator. Within 30 days after the signing of the agreement, the agreement sheet is submitted and registered to the district court clerk.

The relationship pattern based on the desire to uphold the sharia system is believed to be a pattern of solid relationships between Islamic banks and customers. Even if there is a disagreement, both in the interpretation and in the implementation of the content of the agreement, both parties will try to resolve it through deliberation according to Islamic teachings. Nevertheless, there is still a possibility of disputes that cannot be resolved by deliberation. Such a situation in daily life, especially in the life of the economic and business world, must be carefully anticipated. To anticipate this possibility, the community of several

Islamic banks and users of Islamic banking services realize that they cannot rely on existing judicial institutions. The existing judicial institutions have legal bases for dispute resolution that are different from those desired by the parties bound by sharia contracts.

Article 1 number 10 of the UUAPS defines APS as an institution for resolving disputes or differences of opinion through procedures agreed upon by the parties, namely settlement outside the court by means of consultation, mediation, or expert assessment. With this in mind, it can be concluded that ADR/APS is a dispute resolution process in which the parties to the dispute can assist or be involved in resolving the dispute or involve a neutral third party. Mediation is a problem-solving negotiation process, where a neutral or impartial third party or has an interest in working with the parties to the dispute to help the parties obtain a satisfactory dispute resolution. The way to resolve disputes outside the court with mediation where a third party functions as a mediator or facilitator and the decision is on the parties.

The mediation process during the initial stage of the examination of the case outside the court should pay attention to PERMA Number 1 of 2008 concerning the Mediation Process in Court. According to PERMA Number 1 of 2008 concerning the Mediation Process in Court, there are five (5) stages, including: a). agreeing to go through the mediation process; b). Understanding problems; c). Raising problem-solving options; d). Reach an agreement; and e). Execute the agreement. The results of out-of-court mediation are submitted to the peace deed as a result of the court's products, with several conditions; Certified mediator, filed through the court, the requirements are cumulative. In addition, it is also necessary to pay attention to; In accordance with the will of the parties, not contrary to the law, and not detrimental to third parties, can be executed and in good faith.

Alternative dispute resolution methods are preferred for a number of reasons, such as generally more flexible and less hostile outcomes; comparatively faster or less expensive than litigation; freedom to discuss a wide range of pertinent issues without being constrained by procedural law; preservation of good relations; capacity to involve the greatest number of interested parties; and authority for decision-making. The settlement may be finalized in a confidential way, if desired by the parties. In addition, ADR still has several weaknesses, namely: It cannot be executed, it does not have definite legal force, it cannot be enforced, and excesses will arise.

The presence of an economic mediation body, later abbreviated as BaMES, is a semi-autonomous body established and its management is elected by the central management of the Islamic economic community (MES). BaMES will only strengthen BASYARNAS and complement each other. In addition, BaMES will play a role, before the dispute goes to court. BaMES enters when both parties to the dispute are given time for mediation. If there is a dispute, they will be given a choice, whether they want to be mediated or not. If the mediation option is given three (3) months, when BaMES enters. However, the mediation of the parties to the dispute can still be taken over by BASYARNAS. It is emphasized that this will not make the functions of the two institutions overlap. Currently, a

number of cases of disputes over Islamic financial institutions, he admitted, and some are mediated by BI (Bank Indonesia), but the mediation is because there is no mediator institution in the community. If the community already has a mediation body, BI does not need to carry out mediation and can focus on becoming a regulator.

Furthermore, after BaMES held an audience with the Supreme Court of the Republic of Indonesia (MARI), which was welcomed by the Chairman of MARI Andi Syamsu Alam, in his speech it was stated that the presence of BaMES is positive news and can help solve existing sharia economic cases both in the Religious Court, District Court and BASYARNAS. In addition, Andi Syamsu Alam also explained that sharia economics is a new thing for the Supreme Court, so his party continues to support and send judges to continue to educate them on this matter so that judges are no longer too dependent on expert witnesses when conducting trials.

CONCLUSIONS AND RECOMMENDATION

Based on the discussion in the previous chapters, conclusions can be drawn as an answer to the research problems as follows:

A. The settlement of sharia banking disputes outside the court is resolved through the Religious Court as one of the executors of judicial power for the people seeking justice who are Muslims regarding certain civil cases regulated in Article 2 and Article 49 of the UUPA. Before the enactment of these two Articles, sharia economic disputes, including sharia banking disputes, were resolved by BAMUI, now the name BASYARNAS was formed as one of the efforts to resolve disputes in the field of muamalah, especially in the field of sharia economics. Article 55 of Law No. 21 of 2008 concerning Sharia Banking provides an alternative to resolving Islamic banking disputes through a non-litigation mechanism. in Article 55 paragraph (2) of the Constitution is resolved through deliberation, banking mediation, and through the national sharia arbitration body (BASYARNAS).
B. In Islamic law, peace efforts made by the parties to resolve muamalah disputes are called islah. Islah as a means of realizing peace can be pursued by the parties to the dispute or from third parties who try to help the parties resolve their disputes. The involvement of third parties can act as mediators or facilitators in the Islah process. The application of Islah in Islamic law is actually very broad, not only used to resolve disputes related to property (muamalah), but can also be used to resolve family, custom or custom (urf') and political disputes.

FURTHER STUDY

While writing this essay, the researcher realized there are still many shortcomings in language, writing, and presentation style, which is not surprising given their own limited experience and expertise. To guarantee the work is perfect, the researcher therefore expects insightful criticism and suggestions from a variety of sources.

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