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Litigation and non-litigation approaches in Islamic Banking Syariah resolution

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Abstract

Purpose: This study aims to analyze dispute resolution mechanisms in Islamic banking in Indonesia, focusing on *mudharabah* contract disputes. It examines the role of litigation through the Religious Court and non-litigation through alternative dispute resolution institutions, particularly the National Sharia Arbitration Board (BASYARNAS), in maintaining Sharia compliance and legal certainty.

Research Methodology: This study adopts a normative juridical approach, analyzing statutory regulations such as Law No. 21 of 2008 on Sharia Banking, complemented by a literature review and doctrinal interpretation. A qualitative method is used to assess the legal frameworks and institutional practices in resolving Islamic banking disputes.

Results: Findings indicate that both litigation and non-litigation mechanisms are legally recognized and essential for upholding Sharia principles, ensuring fairness, and fostering trust among stakeholders in Islamic banking. Litigation provides authoritative judicial decisions, whereas non-litigation offers efficiency, confidentiality, and flexibility in resolving disputes.

Conclusions: The dual dispute resolution framework strengthens Islamic banking governance in Indonesia. However, its effectiveness depends on the synergy between financial institutions, regulators, and dispute resolution bodies, as well as the enhancement of institutional capacity and public awareness.

Limitations: This study is limited to legal and institutional analyses without empirical data from case studies, which may restrict insights into real-world challenges and stakeholder perspectives.

Contribution: This study contributes to the discourse on sharia-based dispute resolution by providing recommendations for improving the effectiveness, accessibility, and fairness of both litigation and non-litigation processes in Islamic banking.

Keywords: *Arbitration, Dispute Resolution, Islamic Banking, Litigation, Mudharabah*

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1. Introduction

In accordance with the pace of economic growth and the development movement of a nation, financial institutions grow with various alternative services. Financial institutions, which are intermediaries between those who have a surplus *of funds* and those who lack *funds*, have the function of intermediary financial intermediaries for the community (*financial intermediary*). Financial institutions, as only an institution or institution are essentially located and exist in the midst of society. An institution that is an organ of society is a "thing" whose existence is to fulfill the social duties and special needs of the community (Abu, 2024; Akabom & Ejabu, 2018; Imaniyati, 2008). Based on Article 4 of Law Number 7 of 1992 concerning Banking, banking aims to support the implementation of national development in order to increase equity, economic growth, and national stability towards improving the welfare of the people (Handayani, Marselina, & Ratih, 2025). Another definition of financial institutions was proposed

by (Muhammad & Murniati, 2000). According to him, a financial institution is a business entity that has wealth in the form of financial *assets* and liabilities. Wealth in the form of financial assets is used to run a business in the financial services field, both in the provision of funds to finance productive businesses and consumptive needs and in non-financing financial services (Habibi, 2023; Ismamudi, Hartati, & Sakum, 2023; Muharajabdinul, Latif, Roziqin, Arif, & Huyo, 2025).

In addition to the term financial institution, it is also known as the term financing institution, namely, business entities that carry out financing activities in the form of providing funds or capital goods by not withdrawing funds directly from the public. Islamic banking began in 2008 with special arrangements after the promulgation of Law No. 21 of 2008 on Islamic Banking. The drafting of the Sharia Banking Law is motivated by the idea that Islamic banking, as one of the national banking systems, requires various supporting facilities to make maximum contributions to the national economy. One of the vital supporting facilities is the existence of adequate arrangements according to their characteristics. The existing banking law is still considered insufficient to accommodate the operational characteristics of Islamic banks. To ensure legal certainty for *stakeholders*, provide confidence to the public in using Islamic bank products and services, ensure the fulfillment of Sharia principles, the principles of the health of Sharia Banks, and especially to mobilize funds from other countries that require regulation of Sharia Banks in the relevant laws, it is very urgent to draft and promulgate the Sharia Banking Law (Haqqi, 2017; Hidayah, Azis, Mutiara, & Larasati, 2023; Junaidi, 2024; Winarsi, Thalib, Hajati, & Kholiq, 2021).

The Sharia Banking Law is a lex specialis of the Banking Law. This is because the Sharia Banking Law specifically regulates Islamic banking, while the Banking Law regulates banking in general, including both Islamic and conventional banking. One of the principles of legislation is lex specialis derogat lex generalis, which is a law that is special in nature and sets aside general laws. Thus, if there are different regulations in the Sharia Banking Law than those in the Banking Law, then the law used for Sharia Banking is the Sharia Banking Law. Currently, mudharabah (a form of cooperation in business that existed before the Prophet Muhammad PBUH was appointed as an apostle, which was then determined in Islam) is not only practiced between individuals who work together, but is also implemented between individuals and institutions, or between institutions, as happens in sharia financial institutions, for example in sharia banking, sharia insurance, and others. In Sharia financial institutions, such as Sharia banking, mudharabah agreements have been expanded to include three parties: depositors as *shahibul mal*, banks as *agents*/*arrangers* who function as *intermediaries*, and entrepreneurs as mudharib who need funds (Girsang & Purnama, 2025; Susanti, Reniati, & Altin, 2025). The relationship between the parties is inseparable from the risks that ultimately cause disputes (Suryawansyah & Babussalam, 2024; Yustiardhi, Diniyya, Faiz, Subri, & Kurnia, 2020).

Given the potential for disputes that will occur, efforts are needed to overcome them. Therefore, each bank has a section responsible for listening to consumer complaints and resolving them. This is the first attempt to resolve the disputes. Based on Article 55 of Law No. 21 of 2008 concerning Sharia Banking, Islamic banking disputes can be done through 2 (two) options: litigation or non-litigation. What is meant by Litigation refers to the court. Islamic banking disputes are examined at the Religious Court. Paragraph 1 of Article 55 of Law No. 21 of 2008 concerning Sharia Banking states that the settlement of Islamic banking disputes is carried out by the courts within the religious judicial environment. In addition, the competence of the Religious Court in examining Sharia economic cases is also in Article 49 of Law No. 3 of 2009 concerning Religious Courts (Fanggidae, Molidya, & Guterres, 2024). The Religious Court, as a litigation institution, is also obliged to organize mediation efforts before examining the subject matter of the case. This is regulated in PERMA No. 1 of 2016 concerning Mediation Procedures in Court (Majid, Al Hasan, Candra, & Saleh, 2024; Maskanah, Burhanuddin, Zaenudin, & Suhartini, 2024).

Furthermore, non-litigation institutions are out-of-court dispute resolution institutions, better known as alternative dispute resolution (APS) institutions. An alternative to dispute resolution is the resolution of civil disputes through negotiation, mediation, and arbitration (Hasanov, 2025; Nurnaningsih, 2012). Despite its advantages, the implementation of banking dispute resolution in non-litigation institutions

is regulated by Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (APS). In Indonesia, many non-litigation institutions resolve disputes. One of these is the National Sharia Arbitration Board (BASYARNAS). BASYARNAS is an Islamic arbitration institution that was established in Indonesia. Basyarnas is a legal instrument to resolve disputes between parties in the scope of the sharia economy, both sharia banking and sharia insurance. BASYARNAS operates based on Article 11 of the Law on Arbitration and APS, which states that "*the existence of a written arbitration agreement negates the right of the parties to submit dispute resolution or differences of opinion contained in the agreement to the District Court*." From this article, it is concluded that what has been agreed upon at the beginning is what will apply in the future. Almost every contract, such as in Islamic banking, contains a dispute resolution clause that states that the dispute settlement will be resolved at an arbitration institution. This deed is called *Pactum de Compromitendo (Maskur, Basir, & Dewi, 2024; Rachmawati & Wibisono, 2024; Soemartono, 2006)*.

In addition, BASYARNAS is mentioned in the explanation of Article 55 of the Law on Sharia Banking. With the words "*what is meant by dispute resolution is carried out in accordance with the content of the contract, it is an effort as deliberation, banking mediation, through the national Sharia arbitration body (Basyarnas) or other arbitration institutions; and/or through the courts within the general judicial environment*". Then other non-litigation institutions, there is the Indonesian Islamic Banking Alternative Dispute Resolution Institution (LAPSPI) which also accepts all cases in the banking sector, including Islamic banking. LAPSPI was established based on the Financial Services Authority Regulation Number 01/POJK.07/2014 concerning Alternative Dispute Resolution Institutions in the Financial Services Sector (Harrieti, 2017).

In its implementation, dispute resolution through the non-litigation channel must be accompanied by a written agreement from both parties to the dispute to resolve the dispute through the non-litigation route. If the agreement between the parties does not include a dispute resolution clause through non-litigation channels, the parties have the option of resolving the dispute either through litigation or non-litigation. If the parties still want to resolve their dispute through non-litigation channels, they must make a written agreement that their disputes will be resolved through non-litigation channels (*compropis deeds*). The process of resolving Sharia banking disputes through the Religious Court and non-litigation forums such as Basyarnas and LAPSPI generally has the same stages. Based on research conducted by Prof. Dr. H. According to Nasution, the dispute resolution process in Basyarnas is much shorter than the settlement process in the Religious Court. The speed of the process is due to the fact that there are not many stages of the process that are passed, such as examination, proof, and verdict events. Disputes can also be resolved if the parties to the dispute agree to reconcile (Batubara, 2022; Nwosu, Obalum, & Ananti, 2024; Zahedi, Abbasi, & Khanachah, 2020).

Meanwhile, LAPSPI offers three ways of resolving non-litigation disputes: mediation, adjudication, and arbitration. The stages carried out are also not much different from those of Basyarnas. Basyarnas and LAPSPI tend to mediate Islamic banking disputes rather than litigation institutions, in this case, the Religious Court. Based on the description above, the author is interested in studying more deeply related to efforts to resolve Islamic banking disputes with the title "**LITIGATION AND NON-LITIGATION APPROACHES IN SHARIA BANKING DISPUTE RESOLUTION.**"

1.1 Problem Identification

1. How to resolve Islamic banking disputes through litigation institutions?
2. How to resolve Sharia banking disputes through non-litigation institutions?

2. Literature Review

The legal system is an integrated legal rule based on certain principles. As a system, law consists of sub-sub-systems that are related to each other in a balanced and harmonious relationship that does not overlap or clash because of its unified principles. The principles of the covenant are the concretization of philosophical norms, namely, the basic values that are the foundation of Islamic teachings. The principles of agreement in Islamic law consist of the principle of competence (*mabda' al-ibahah*), the principle of freedom of contract (*mabda' hurriyyah atta'aqud*), the principle of

consensualism/agreement (*mabda' ar-radha'iyyah*), the principle of binding promises, the principle of balance (*mabda' at-tawazun fi al mu'awadhah*), the principle of benefit (non-burdensome), the principle of trust, and the principle of justice (Imaniyati, 2008). The principle of ibahah or ability is the general principle of Islamic law in the field of muamalat, which is formulated in the sentence "basically everything can be done until there is evidence that prohibits it." This is contrary to the principle that applies in worship, that there is no worship except what has been exemplified by the Prophet (peace and blessings of Allah be upon him) (Puneri, 2021; Witro, Nuraeni, & Januri, 2021).

The principle of freedom of contract in Islamic law is limited by the prohibition of eating other people's property through bathil (Q.S. Al-Nisa verse 29). Eating other people's property in the way of bathil means eating other people's property in a way that is not justified and is illegal according to Sharia law. The cosensual principle is based on the principles of Islamic law; basically, the agreement (akad) is the agreement of the parties, and the legal consequence is what they stipulate through the promise. The principle of the promise is binding, based on the command in the Qur'an to fulfill the promise. In the rules of ushul fiqh, a command indicates an obligation. Among the verses and hadiths in question is, and fulfill the promise, indeed the promise will be held accountable (Al-Isra verse 34). Islamic covenant law emphasizes the need for balance in treaties. This balance can be in the form of a balance between what is given and what is received or a balance in taking risks, for example. The principle of benefit is intended so that the contract made by the parties aims to create benefits for them and must not cause losses (*mudharat*) or aggravating circumstances (*masyaqqah*). The principle of trust means that the parties who make the contract must have good faith in transacting with other parties. In Islamic agreements, it is required to have a mandate, such as keeping secrets, providing true information, and not lying (Choi, Han, Muhammad, & Bae, 2018; Khan, Han, Hoi, & Bae, 2019).

3. Research Methodology

The method used is a normative juridical approach, namely by examining secondary data (Soekanto, 2006). This study examines the legal principles of Islamic banking from the literature and legal regulations. The research specification is analytical, namely a study that describes the object of research in this case related to the authority of litigation institutions (Religious Courts) and non-litigation institutions (Basyarnas and Lapspi) as sharia banking dispute resolution institutions. The type of data used is sourced from primary legal materials, namely the Law on Banking, the Law on Sharia Banking, the Law on Arbitration and APS, and the Law on Religious Justice, as well as secondary legal materials used to clarify the meaning of primary legal materials, including books, legal journals, internet articles, and other sources that are related to this research. The data collection technique used document or literature studies. Document study is a way to collect legal materials that are carried out through written legal materials, namely, secondary legal materials (Marzuki, 2005). The data analysis technique used a qualitative method supported by a deductive reasoning (logic) method. Formulate matters that are general in nature and then draw conclusions based on the facts of the case analyzed regarding the banking dispute resolution model through litigation and non-litigation institutions.

4. Result and Discussion

The system and working mechanism of Islamic banking in Indonesia, as well as the content of Law Number 7 of 1992 Article 1 paragraph on Banking, explain that Sharia Principles are rules in an agreement based on Islamic law between the bank and other parties (customers) to deposit funds and/or apply for financing of business activities or other activities that are stated in accordance with Sharia provisions. Among them are financing with the principle of profit sharing (*mudharabah*), financing based on the principle of capital participation (musyarakah), the principle of buying and selling goods with profits (*murabahah*), or the type of financing of capital goods according to the principle of pure lease without option (ijarah), or with the option to change the name of goods rented from the bank by other parties (*ijarah wa iqṭina*).

The provisions of Law Number 21 of 2008 concerning Sharia Banking, Article 1, paragraph (12), state that Sharia Principles are Islamic legal principles in banking transaction activities based on fatwas issued by authorized institutions to establish fatwas in the field of Sharia. In the general provisions, it

is also stated that sharia principles are based on the values of justice, utility, balance, and universality (*rahmatan lil 'alamin*). It was also explained that this principle is part of Islamic teachings related to the economy. One of the principles in the field of Islamic economics is the prohibition of riba in various forms, and using a system including the principle of profit sharing (*mudharabah*). With the principle of mudharabah, Islamic banks can create a clean, healthy, and fair investment area because each party can share with each other both in terms of profits (profits) and potential risks of losses that arise, so that it will create a balanced situation between the bank (creditors) and its customers (debtors). In the long run, this event will encourage the equitable distribution of the national economy because profits are not only enjoyed by capital owners (creditors) but also by capital managers (debtors) (Cahyadi, 2016). The explanation above also indicates that business activities that do not contradict or intersect with Islamic Sharia principles are business activities that do not contain elements of riba, *maysir, gharar*, haram, and *dhalim* in their transactions. This point can be explained by the fact that business transaction activities according to Sharia are those that are carried out without contradicting Sharia principles.

4.1 Sharia Banking Dispute Resolution Through Religious Courts

The Religious Court is one of the courts that exercises judicial power in Indonesia and functions to resolve certain civil cases among Indonesian Muslims. Meanwhile, its position, especially in this reform era, reached its peak of solidity in 2001, when the MPR agreed to the third amendment to the 1945 Constitution. Article 24 of the 1945 Constitution, as amended, explicitly states that the Religious Court is one of the executors of judicial power in Indonesia, along with other judicial environments under the Supreme Court (Arifin, 2008). With the end of Law No. 3 In 2006, the authority of the Religious Court increased, namely resolving sharia economic disputes, as stated in Article 49 of this law, which states: "The Religious Court is tasked and authorized to examine, decide, and settle matters at the first level between Muslims in the fields of: marriage, inheritance, asat, grants, waqf, zakat, infaq, shadaqah, and sharia economics."

The scope of the authority of the Religious Court in the field of sharia banking can be seen from the explanation of article 49 letter (i) of Law No. 3 Th. 2006, namely; What is meant by Sharia economy refers to an act or business activity that is carried out according to Sharia principles, including; Sharia banks, Sharia microfinance institutions, Sharia insurance, Sharia mutual funds, Sharia bonds and Sharia medium-term securities, Sharia securities, Sharia financing, Sharia pawnshops, Financial institution pension funds, and Sharia businesses. The legal rules that govern banking operational activities in Indonesia, including Sharia banks, broadly consist of at least three areas of law, namely the field of civil law, the field of criminal law, and the field of constitutional law. These three areas of law are not considered if they are violated or disputes occur that fall within the authority of the Religious Court. To answer this problem, four steps can be taken:

1. Covers all Sharia Banking cases in the civil field

The scope of the authority of the Religious Court in the field of sharia banking is only in the civil sector, as can be seen in Article 49 of Law No. 3 of 2006, as mentioned above. Therefore, to determine the extent of the jurisdiction of the Religious Court in adjudicating disputes in the civil field, it can be analyzed with the approach of the principle of Islamic personality, meaning that the court within the Religious Justice Agency only serves the settlement of cases in certain fields, as stated in article 49 of Law Number 3 of 2006, namely to settle marriage cases, inheritance, will, ibah, waqf, shadaqah, zakat, infaq, and sharia economy from the Indonesian people who are Muslims. In other words, a person's Islam is the basis of the authority of the court within the Religious Justice body (Ghofur Anshori, 2007).

2. Covering Disputes Between Sharia Banks and Non-Muslim Parties

This can be known through the explanation of Article 49 of Law No. 3 of 2006, which states that "What is meant by "between people of the Muslim faith": includes persons or legal entities that voluntarily submit themselves to Islamic law regarding matters that are the authority of the Religious Court in accordance with the provisions of this article". This means that if there is a dispute between a Muslim or non-Muslim legal entity in the field of Sharia economics, it will be resolved through the Religious Court, including disputes that occur between non-Muslims, as long as they submit to Islamic law, which is also the authority of the religious court environment. In practice, in the banking world, transactions that become business partners or customers of Sharia banks are not only limited to Islamic people or

entities but also non-Islamic, as long as the dispute is related to the business activities of Sharia banks, which are carried out in accordance with Sharia principles (Bisri, 2000).

3. Not reaching the arbitration clause

Arbitration is an agreement in the form of an arbitration clause contained in a written agreement made by the parties before the dispute arises or a separate arbitration agreement made by the parties after the dispute arises. Arbitration is a private body, outside the State Judiciary, that is authorized by law to resolve cases or disputes that occur among members of the public on the basis of agreements or agreements that they have previously made in an arbitration agreement (arbitration clause). In the banking world, including in this case, business activities carried out by Sharia banks with their business partners or customers are always based on a written agreement that they make and agree on beforehand. The agreement or aqad applies as a law for both parties, where in carrying out business activities or transactions that have been agreed upon, each party is bound by the content of the agreement that they have made, and both agree on the rules by mutual consent. In the implementation of sharia banking activities, if there is a dispute (dispute), it is submitted to an arbitration clause body (M.Yahya Harahap, 2006).

4. Includes Sharia Arbitration Awards in the Field of Sharia Banking

If there is a dispute regarding the agreement or aqad that has been agreed upon by both parties, then the settlement is submitted to the albitrase kalusula. However, regarding the arbitral decision, especially in this case the decision of the National Sharia Arbitration Board (BASYARNAS) in the field of sharia banking, if the parties do not want to implement it voluntarily, then in accordance with the provisions of the law, the Religious Court is authorized to order the implementation of the decision. This is because the arbitral body itself does not have the authority to execute or execute its own award. Thus, the sharia arbitration decision will be implemented based on the order of the Chief Justice of the Religious Court at the request of one of the parties to the dispute, in accordance with the provisions of Article 61 of Law No. 30 of 1999 and the Supreme Court Circular Letter (SEMA) No. 08 of 2008 concerning the Execution of Sharia Arbitration Awards.

This civil procedure law contains the following rule: "The judiciary may not refuse to examine, adjudicate, and decide a case submitted under the pretext that the law does not exist or is not clear, but is obliged to examine and adjudicate it. The provisions as referred to in paragraph (1) do not rule out the possibility of efforts to resolve civil cases peacefully"From the provisions of this article, it can be understood that there are two paths for the settlement of cases in the Religious Court, namely:

1. Settlement Through Peace

The basis for the settlement of cases through peace is based on the principle of the procedural law of the Religious Court known as the azaz: "The court is obliged to reconcile to the two parties", then it is also based on the provisions of article 154 R. Bg/130 HIR and the Supreme Court Regulation (PERMA) No. 01 of 2008 concerning mediation procedures in the Court.

The above Azaz shows that it requires the judge to first try to reconcile the two parties to the case in handling a civil case. Efforts to reconcile the two parties in a lawsuit in court are imperative. The judge's negligence in seeking peace for both parties to the lawsuit will result in the cancellation of the examination of the case for the sake of the law (M Yahya Harahap, 2017).

If an agreement is reached between the two parties to resolve the case peacefully, then the agreement is poured into the form of a peace agreement (deed) signed by the parties. Regarding this peace agreement, if requested by the parties to be made a court decision, the relevant Religious Court will issue a decision in accordance with the content of the agreement, without adding or subtracting it, with the dictum (amar): "punishing the parties to obey and implement the content of the peace agreement" (M Yahya Harahap, 2023). The implementation of the decision of the judge of the Religious Court must be based on the provisions of Article 154 R.Bg/130 of the HIR, as well as the provisions of articles 1851 to 1864 which are the formal provisions of the peace decree as stipulated in the Third Book of the Civil Code.

2. Peace Efforts Through Mediation

This peace effort through mediation (Abbas, 2017) is carried out if the peace recommendation carried out in accordance with the provisions on the basis of the provisions of article 154 R.Bg/130 HIR above is not successful, then the judges at the first hearing seek peace through mediation in accordance with the instructions of PERMA No. 01 Year 2008, by following these steps:

a) Mediated matters

Mediable cases are all civil disputes submitted to the court of first instance. Except as long as the case is not a case that, according to the law, cannot be resolved through peace, such as divorce cases, cases regarding a person's status, grants, wills, and others.

b) Who can act as a mediator

The judge is not the examiner of the case at the court concerned, the advocate or legal academic, the profession is not the law that is considered to be the master or experience of the parties in the subject matter of the dispute, the panel judge is not the examiner of the case, and the joint between mediators.

To perform their functions as mediators, they are required to have a mediator certificate obtained from mediator training organized by institutions accredited by the Supreme Court of the Republic of Indonesia.

c) Duties of the Mediator

The duties of this mediator are regulated in Articles 15, 16 paragraph (1), article 17 paragraph (10), and article 18 paragraph (1) of PERMA. Based on the provisions of these articles, the following can be seen: Preparing a proposal for a mediation meeting schedule for the parties to be discussed and approved; encouraging the parties to directly play a role in the mediation process; if deemed necessary to be able to conduct a caucus, the parties will explore and explore their interests and seek various settlement options that are best for the parties; with the consent of the parties or a legal representative, one or more experts in a certain field may be invited to provide an explanation that can help resolve differences of opinion between the parties; assist the parties in formulating a peace agreement in the event that the mediation reaches an agreement; in the event that the mediation fails, the mediator is obliged to state it in writing and notify the failure to the judge.

d) Judge's actions in mediation

To conduct mediation, the judge must refer to Article 7 of PERMA, which contains the following:

Ordering the parties to undergo mediation first.
After the peace effort fails to be carried out against the parties, the judge orders the parties to mediate. This is in accordance with the provisions of Article 7 Paragraph (1) of PERMA, namely: "On the day of the predetermined hearing attended by both parties to mediate.”

Postponing the trial process of the case, After the election of the mediator, the first trial process is postponed for 40 days, so that the parties go through the mediation process, this is in accordance with the provisions of Article 13 Paragraph 30 of PERMA, namely: "The mediation process lasts a maximum of 40 working days from the time the mediator is selected by the parties or appointed by the chairman of the panel of judges.”

In addition to ordering the parties to first go through mediation followed by a delay in the case examination process, the next action that must be taken by the judge on the first day of the hearing, in accordance with the provisions of Article 17 paragraph (6) of PERMA, is to explain the mediation procedure to the parties.

Mediation reaches an agreement, if the mediation turns out to reach an agreement, then the parties must do several things in accordance with the provisions of Article 17 of PERMA, namely: The parties with the help of a mediator are obliged to formulate in writing an agreement reached signed by the parties and the mediator, If in the mediation process the parties are represented by a legal representative, the parties are obliged to declare in writing approval of the agreement reached, The parties are obliged to return to the judge on the day of the hearing that the peace agreement has been determined, The parties can submit a peace agreement to the judge to be strengthened in the form of a peace deed and Otherwise, the peace agreement must contain a clause to withdraw the lawsuit or a clause stating that the case has been completed. The parties then ask the judge to make the peace agreement they made

into a court decision. For example, the judge concerned in this case must issue a judgment in accordance with the content of the peace agreement or reduce it, with the dictum of punishing the parties to obey and implement the content of the peace agreement.

Continuing the examination of the case if mediation fails,
In the event that the mediation does not reach an agreement (fails), then the action that must be taken in this case must refer to the provisions of Article 18, paragraphs (1) and (2) of PERMA: "If the parties up to a maximum deadline of 40 working days from the time the mediator is chosen by the parties or appointed by the chairman of the panel, it turns out that they are unable to produce an agreement, including in this case if one of the parties does not comply with the mediation order as outlined in Article 14 paragraph (1), the mediator is obliged to declare in writing that the mediation judge has failed and notify the judge of the failure. After receiving the notification of the failure of mediation, the judge must continue the examination of the case in accordance with the provisions of the applicable procedural law. Therefore, the examination at the trial will continue with the next event, which will begin with the reading of the lawsuit letter.

3. Sharia Banking Dispute Resolution Through Non-Litigation Institutions
The establishment of sharia banking marked the beginning of the development of the sharia economy in Indonesia. In subsequent developments, the practice of sharia economics is not only limited to the practice of establishing and operating banks but is more extensive to other commercial activities such as financing and other non-bank financial institutions. The business fields developed include Sharia Insurance, Sharia Mutual Funds, Sharia Bonds, and others.

In Indonesia, the Islamic or Sharia economy is developing rapidly. This development is in line with the issuance of laws and regulations for the Sharia economy (Umam, 2009). Shariah business activities continue to develop in the realm of Shariah economics, despite facing various challenges such as disputes, defaults, and other problems. In practice, sharia economic growth is always based on agreements that bind the parties involved in economic activities. However, various factors can affect the implementation of the agreement, so it cannot always be fully fulfilled. However, these factors generally occur unintentionally in the real world. However, according to the law, each party is responsible for the consequences that arise.

The ratification of Law No. 21 of 2008 concerning Sharia Banking on July 16, 2008, which was recorded in the Statute Book of the Republic of Indonesia No. 94, is the result of a long struggle to present a special law regulating Sharia banking (Ghofur Anshori, 2007). One of the important aspects of this law is the regulation of the legal umbrella for the settlement of Islamic banking disputes. Along with the rapid growth of Islamic banking, the potential for disputes in this sector is increasing. Therefore, it is important for Islamic banks and the community to understand the dispute resolution mechanisms that may occur (Cahyadi, 2016).

In general, Islamic banking disputes can be settled through litigation (court) or non-litigation (out of court). From a jurisdictional perspective, the selection of a forum is an important aspect of resolving Islamic banking disputes. Special provisions regarding dispute resolution in Islamic banking are regulated in Law Number 21 of 2008 concerning Islamic Banking, especially in Chapter IX, Article 55, which regulates the following:
1. Islamic banking disputes are settled through the courts within the Religious Court.
2. If the parties have agreed to resolve the dispute outside the provisions of paragraph (1), the dispute settlement shall be carried out in accordance with the content of the contract that has been agreed.
3. Dispute resolution, as referred to in paragraph (2), must remain in accordance with sharia principles and must not contradict them.

The explanation of Article 55 paragraph (2) states that dispute resolution carried out in accordance with the content of the contract includes deliberation efforts, banking mediation, the National Sharia Arbitration Board (Basyarnas), or other arbitration institutions and/or courts within the General Court. These articles raise constitutional issues that confuse the parties due to the lack of legal certainty

regarding the mechanism for resolving Islamic banking disputes through the courts. This indecisive legal choice is detrimental to customers, Islamic business units, and Islamic banks. However, with the decision in case No. 93/PUU-X/2012 by the Constitutional Court, the dualism of authority in resolving Islamic banking disputes no longer applies. As a constitutional consequence, the Religious Court is the only court institution authorized to resolve Islamic banking disputes.

With the abolition of the Explanation of Article 55 paragraph (2), full authority is given to the Religious Court to resolve Sharia banking disputes. However, the out-of-court dispute resolution has also changed. Prior to the cancellation of the Explanation of Article 55 paragraph (2), dispute resolution was limited to deliberation, banking mediation, and the National Sharia Arbitration Board (Basyarnas) or other arbitration institutions. Consequently, the choice of an alternative dispute resolution forum regulated by Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution cannot be applied comprehensively.

With the issuance of Constitutional Court Decision No. 93/PUU-X/2012, which deletes the Explanation of Article 55 paragraph (2) of Law No. 21 of 2008 concerning Sharia Banking, the parties are no longer limited to resolving disputes in a non-litigation manner through deliberation, banking mediation, arbitration through the National Sharia Arbitration Board (Basyarnas), or other arbitration institutions. Now, it can also be pursued through other non-litigation processes such as consultation, negotiation (negotiation), conciliation, banking non-mediation mediation, as well as expert opinions or assessments, as stipulated in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution.

The settlement of Islamic banking disputes through non-litigation channels, even though the freedom to choose a forum has been granted based on Law Number 30 of 1999, must still be carried out in accordance with Sharia principles, as explained in Article 55, paragraph (2) of Law No. 21 of 2008 concerning Sharia Banking. The next question is how to resolve disputes in accordance with Sharia principles. Based on Law No. 21 of 2008 concerning Sharia Banking Article 1 paragraph (12), it is explained that: "Sharia principles are the principles of Islamic law used in banking activities, in accordance with the fatwa stipulated by the institution authorized to issue fatwas in the field of sharia."

From this explanation, it can be concluded that the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) is an institution with the authority to issue fatwas in the field of sharia economics. However, among the various fatwas issued by the DSN-MUI, no specific fatwas were found that discussed dispute resolution in detail. Dispute resolution is only mentioned as part of a subtopic in fatwas related to Islamic banking products. In fatwas, dispute resolution is generally mentioned through deliberation and/or through the National Sharia Arbitration Institution (Basyarnas). Therefore, the non-litigation dispute resolution mechanism stipulated in Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution has not been fully accommodated.

Dispute resolution in Islam can be done in three ways (Sabiq, 2017), one of which is *Islah* or *Shulh* (peace) or deliberation. Islah literally means to break a quarrel or a dispute. In Islamic law, Islah is defined as an agreement or agreement to end a conflict between two parties to a dispute. This peace is highly recommended because it can prevent the destruction of friendship and end hostility between the parties to the dispute.

The legal basis for encouraging the prioritization of peace is set forth in:
1. The Qur'an: Q.S. Al-Hujurat [49]: 9 emphasizes the importance of reconciling the disputing parties in a fair and proportionate manner.
2. Hadith of the Prophet PBUH: It states that an agreement between Muslims is permissible as long as it does not make the haram or halal.
3. Ijmak Ulama: Islamic jurists agree that dispute resolution through peace has been sharia in Islam.

For dispute resolution to run effectively and in accordance with the law, several important principles need to be applied.
1. Fairness: Every decision must be fair and not harm either party.

2. Family: Settlement must prioritize a harmonious approach to family relationships.
3. Win-Win Solution: Provide a win-win solution.
4. Confidentiality: Maintain the confidentiality of disputes between parties.
5. Comprehensive Solutions: Addressing problems holistically in the spirit of togetherness.

Peace in Islam has three main pillars, which are also the conditions for the validity of an islah, namely:
1. *Ijab* (offer),
2. *Kabul* (reception),
3. *Pronunciation* (statement):

These three pillars are important because without their presence, a peace treaty has no legal force. Without ijab, kabul, and recitation, there is no peace between the parties. If this pillar is fulfilled, the peace agreement will create a legal binding, namely, each party is obliged to obey the content of the agreement.

Peace is considered valid if it meets two main conditions:
1. Subject, the parties involved must be legally capable and have full authority to agree to peace.
2. The object must be something that can be assessed, handed over, and useful. Objects must also be clear and free from ambiguity that could spark new conflicts in the future.

Dispute resolution at the Sharia Economic Institution (LES) is basically in the realm of agreement law; therefore, the principle of freedom *of contract* applies. This means that the parties have the freedom to determine the choice of law and dispute resolution forum to be used in the event of a dispute. This clause regarding dispute resolution is almost always found in modern business contracts, including financing agreements between customers and Islamic banks. The following are the steps in resolving disputes through consensus deliberation.
a. referring back to the points of the agreement that have been previously agreed.
b. Both parties, namely the customer and the bank, sit together to discuss and focus on the issue that is the subject of the dispute.
c. prioritizing a deliberation and familial approach, which is highly recommended in dispute resolution; and
d. reach a peace agreement between the parties to the dispute

The second is through arbitration or *al-Tahkim*. In Islam, arbitration or *al-Tahkîm* is part of the *al-Qadhâ'* (judicial) system. The legal basis for arbitration comes from the Qur'an, sunnah, and ijmak. At the heart of this foundation is the encouragement to peacefully resolve disputes. However, if the peaceful path does not come to fruition, a neutral third party is needed to help resolve the conflict between the two sides. Third, through the path *of al-qadhâ'* (judiciary). *Al-Qadhâ'* literally means, among other things, to determine or to determine. According to the term fiqh, it is to establish sharia law on an event or dispute to resolve it fairly and binding. This judicial institution is authorized to resolve criminal and civil cases in the country. The power of *the qâdhî* cannot be limited by the consent of the warring parties, and the decision of this qadhi is binding on both parties.

The next non-litigation dispute resolution method is arbitration. The establishment of Islamic arbitration institutions in Indonesia began with a meeting of experts, Muslim scholars, legal practitioners, kyai, and scholars who discussed the importance of the existence of such institutions in Indonesia. The MUI Leadership Council initiated this meeting on April 22, 1992. After several meetings and a process of refining the design of the organizational structure and procedural procedures, the Indonesian Muamalat Arbitration Board (BAMUI) was officially established on October 23, 1993. In 2002, BAMUI changed its name to the National Sharia Arbitration Board (BASYARNAS) according to the results of the MUI's National Meeting. The change in the form and management of BAMUI was stipulated through the MUI Decree No. Kep-09/MUI/XII/2003 dated December 24, 2003. BASYARNAS functions as an arbitration institution that handles dispute resolution in the field of Sharia economics.

In the study of Islamic law (*fiqh*), arbitration is known as *tahkim*. Tahkim literally means appointing someone as a referee or mediator to reconcile a dispute (Mardani, 2011). According to Djamil, tahkim can be interpreted as the process of appointing one or more individuals as referees or peacemakers by the parties to the dispute, with the aim of resolving disputes peacefully (Djamil, 1994). Sharia arbitration in Indonesia is a form of development of the concept of tahkim, which has long been known in Islamic law. Sharia arbitration specifically functions to resolve disputes related to muamalah, which is carried out in accordance with Sharia principles. Therefore, Sharia arbitration only deals with disputes arising from contracts drafted based on Sharia principles. Although its scope is sectoral, Sharia arbitration remains part of Indonesia's national arbitration system.

The main rules on arbitration in Indonesia are regulated by Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (UUAAPS). This law was drafted based on Law Number 14 of 1970 concerning the Principal Provisions of Judicial Power, which was later amended by Law Number 35 of 1999. Article 3 of the Judicial Power Act of 1970 states that, "Settlement of cases outside the court, on the basis of peace or through arbitration, is still allowed." This provision was formalized through the UUAAPS. Until now, legal developments on judicial power are reflected in Law Number 48 of 2009 concerning Judicial Power, which still recognizes the mechanism for resolving disputes outside the court, including arbitration. In fact, the regulation is more detailed than the previous law. The UUAAPS plays an important role as a legal umbrella for arbitration in Indonesia, including Sharia arbitration. This law is the main guideline for implementing dispute resolution through arbitration, both for ad hoc arbitrations formed specifically to handle certain disputes and for permanent arbitration institutions such as BANI and BASYARNAS. Article 3 of the UUAAPS clearly mentions the absolute competence of the arbitral institution. If the parties to a civil dispute, including those related to Islamic banking, have agreed to resolve their dispute through arbitration, the District Court or the Religious Court no longer has the authority to examine or decide the case.

The Arbitration Agreement, as referred to in Article 3 of the UUAAPS, either in the form of *Pactum de Compromitendo* or *Acta Compromis*, must be made in writing by the parties involved in the business contract. In the context of dispute resolution in Islamic banking, if the contract agreed upon between the customer and the bank contains a clause stating that the dispute will be resolved through Sharia arbitration, then the Religious Court no longer has the authority to examine or decide the case. Regulations in the field of Islamic banking, namely Law Number 21 of 2008 concerning Islamic Banking, also recognize arbitration as an alternative dispute resolution between customers and banks. Article 55 explains that disputes in Islamic banking can be resolved through the courts within the religious court environment or using other mechanisms, as long as the mechanism is clearly stated in the contract and does not conflict with Sharia principles. Thus, sharia arbitration has the authority, even absolute competence, to deal with disputes in sharia banking if the parties expressly agree in writing to the use of arbitration in their binding contracts.

The existence of BASYARNAS in Indonesia further strengthens the recognition of Sharia principles in the national legal system. BASYARNAS currently functions as an official and legitimate institutional arbitration institution under the Arbitration and Alternative Dispute Resolution Act (UUAAPS) 1999. This has a positive impact on the development of Islamic law in Indonesia because parties who need a decision on a dispute or a binding opinion from a legally recognized national arbitration institution can choose BASYARNAS.

The authority of BASYARNAS includes two main aspects:

1. Muamalah disputes are resolved fairly and quickly in various fields such as trade, finance, industry, services, and others, as long as the dispute is fully under the control of the parties involved, and both parties have agreed in writing to submit the settlement to BASYARNAS in accordance with applicable rules and procedures.
2. Providing a binding opinion to the requesting parties, even if there is no dispute, related to a particular issue related to the agreement.

After the entire examination process until the arbitral award (BASYARNAS award) must be completed within a maximum period of 180 days from the appointment of the arbitrator and a certified copy of the arbitral award must be registered at the Clerk of the local District Court to obtain legal recognition. BASYARNAS has several advantages that make it a reliable choice for dispute resolution. This institution provides a sense of trust to the parties because dispute resolution is conducted respectfully and responsibly. Arbitrators who handle cases are experts in their fields, so that the parties feel confident in the process being carried out. Additionally, the dispute resolution process is quick and voluntary, where the parties submit their disputes to a body or an arbitrator they trust. In the arbitration process, there are elements of peace and deliberation, reflecting values that align with Sharia principles. BASYARNAS also provides opportunities to apply Islamic law as a guideline in resolving cases, so that it is in accordance with the needs of the parties based on Sharia principles.

BASYARNAS still faces several shortcomings that need to be corrected to support its role in sharia-based dispute resolution. One of the obstacles faced is human resource management that needs to be improved in order to be able to keep up with the rapid development of Islamic financial institutions in Indonesia. In addition, BASYARNAS has not fully gained the trust of the public. The limited network of offices in various regions is also a challenge, so that Sharia arbitration services have not been evenly accessed. The lack of socialization and dissemination of information to the public also results in a limited understanding of the role and function of Sharia arbitration. This is a challenge that needs to be overcome to strengthen the existence and trust in BASYARNAS.

5. Conclusion

5.1 Conlusion

Dispute resolution in Islamic banking can be carried out through litigation (Religious Court) and non-litigation (outside the court) such as deliberation, mediation, and arbitration. Law Number 21 of 2008 stipulates the Religious Court as an institution that has full authority to resolve Islamic banking disputes after the elimination of dualism of authority through Constitutional Court Decision No. 93/PUU-X/2012. Non-litigation dispute resolution, especially through Sharia arbitration conducted by BASYARNAS, provides a faster alternative and is in accordance with Sharia principles. However, this mechanism still faces challenges such as network limitations, lack of socialization, and human resource management. Therefore, it is necessary to increase public capacity and understanding so that the settlement of Islamic banking disputes can be more effective and support the development of the Islamic economy in Indonesia.

5.2 Suggestion

This article provides an in-depth understanding of the legal position of Islamic banking in Indonesia, particularly the application of the *lex specialis derogat lex generalis* principle and *mudharabah* contracts. Readers are encouraged to understand the differences between the regulations of Law No. 21 of 2008 and the General Banking Law, as well as their implications for the relationship between customers, banks, and business actors. Understanding the potential risks and disputes in *mudharabah* contracts is crucial for legal practitioners, academics, and Islamic banking industry players. This article also highlights dispute resolution mechanisms through litigation (Religious Courts) and non-litigation (BASYARNAS, LAPSPI), which can serve as a strategic guide in selecting the most appropriate resolution method. For academic readers, this article can serve as a foundation for further research, while for practitioners, it can be a reference for evaluating policies and dispute resolution procedures. A combination of theoretical understanding and field practice will strengthen the reader’s contribution to developing an integrity-based Islamic banking system.

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