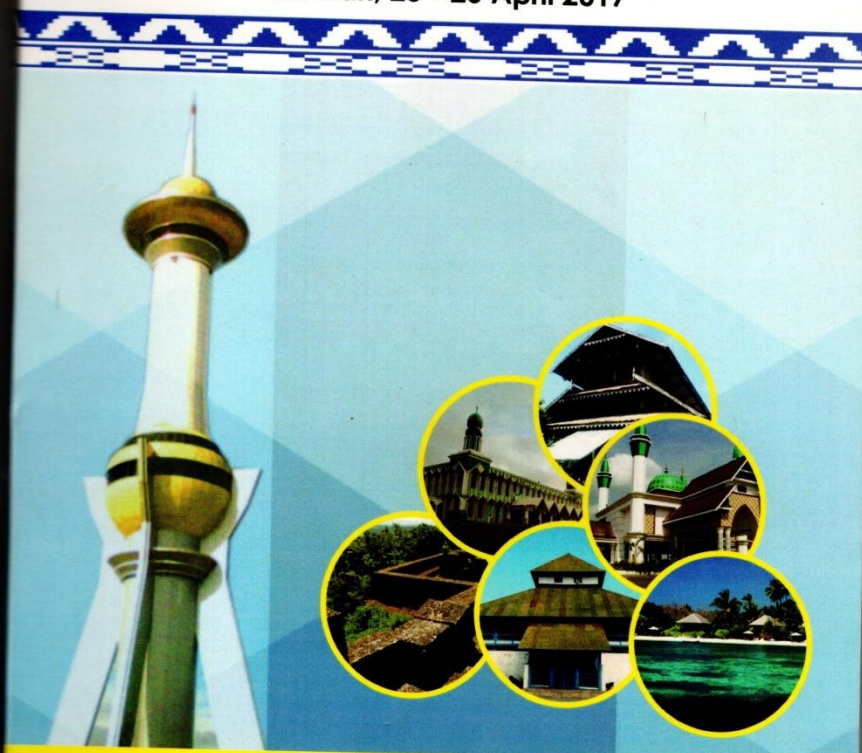


ABSTRACT PROCEEDING
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*"Understanding Local Wisdom in Multidisciplinary Perspective
From Local Relevance to Global Significance"*

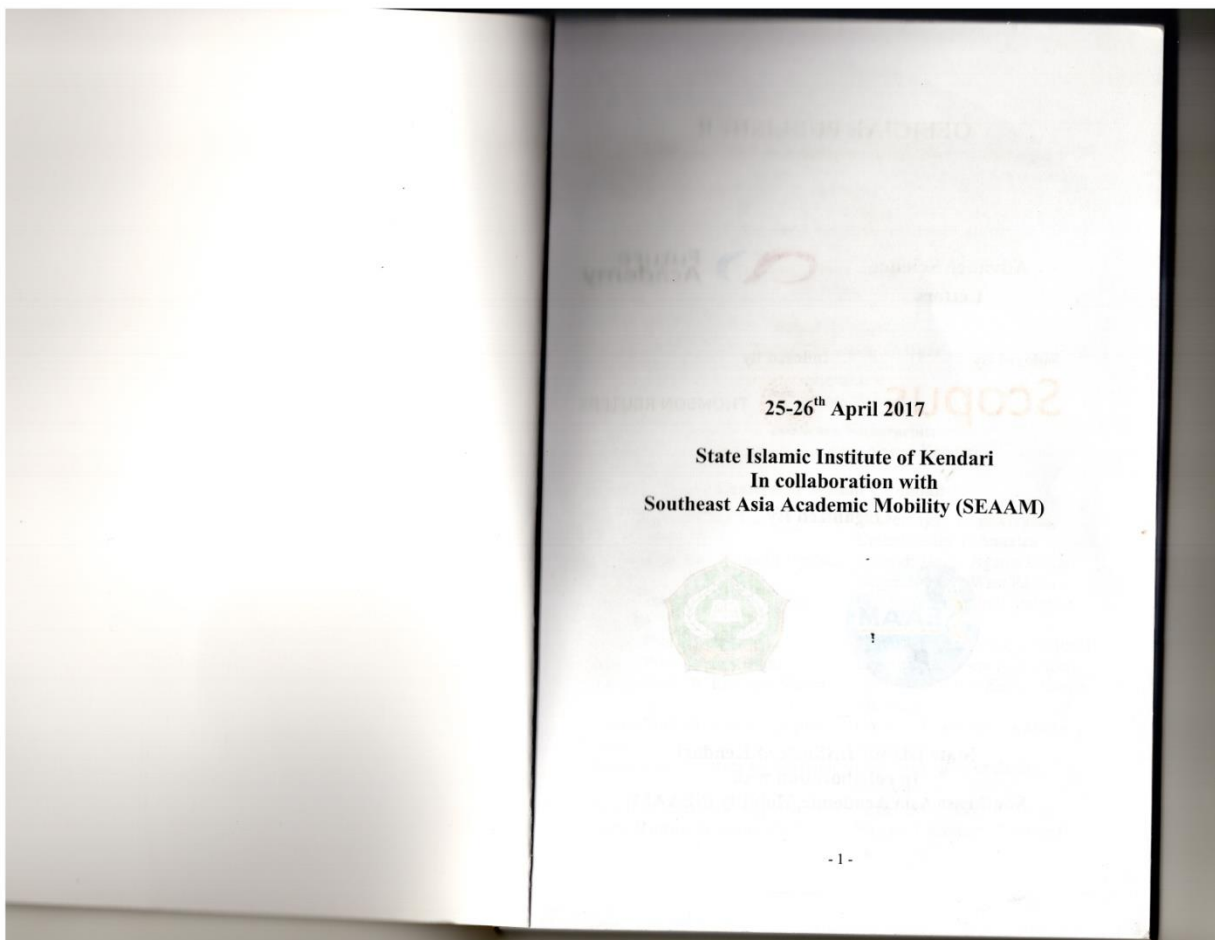
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PREFACE

It is a great honour for me to be here with you today on the occasion of the committees, participants and the 1st International Conference on Islam and Local Wisdom (ICLAW 2017). I would like to take this opportunity to extend a warm welcome for the participants to this prestigious conference to Institut Agama Islam Negeri (IAIN) Kendari and to the city of Kendari, Indonesia.

The process of disseminating Islam which influences its approval among societies as a matter of fact cannot be separated from their perspectives based on their own locality. If society's local culture is not considerably adequate to accommodate those perspectives altogether, otherwise, Islam itself cannot be in line with the society's culture, it is unlikely to approve Islam as the way of life. Furthermore, in some Indonesian cultures, Islamic rules are assigned as the governance platform to maintain human life. In Islamic jurisprudence itself, cultural practices are very likely to be utilized as the constitution which indeed does not contradict with the Islamic basic foundation. "Urf" concept in Islam for instance, has been settled on by the experts who point out that it can be used as a baseline for law implementation or decision-making in the society.

Islam synergetic and local wisdom have been previously occurred in Java and other places in Indonesia. In south-east Sulawesi, society culture which synergized with Islam can be referred to many aspects. Indigenous cultural practices of Southeast Sulawesi are compatible to Islam, even as local society's culture interpretation. For instance, Buton governance system which initially established as kingdom turned into sultanate as well as the "Undang-undang Martabat Tujuh". This policy applies not only to the Buton sultanate government system but also to other areas of Southeast

Sulawesi, such as Muna Kingdom, Kingdom of Konawe, Mekongga Kingdom, and others.

In counter to the historicity of the socio-cultural Indonesian Muslim community in general and Southeast Sulawesi community in particular, it is feasible that these writings identifying and analyzing local wisdom are compiled into a readable chapter book. This collection will be one part of International Conference on Islam and Local Wisdom organized by IAIN Kendari in order to celebrate 50 years anniversary of IAIN Kendari. This chapter book is inevitable evidence that Islam in various regions of Indonesia can accommodate all the local cultures. These writings reiterate that Islam should not be considered in dichotomous relationship which is in line with local cultural practices. The majority of Indonesia cultures regard Islam as the way of life; to act and think, but few of them do not. In other words, Islam and local wisdom can foster each other.

As the rector of IAIN Kendari, we greatly appreciate this international conference on Islamic synergy and local wisdom as well as the publication of the writings that bring together local cultural practices that are synergic with Islam. This international conferences and the publication of the writings in this book cannot be separated from the hard work of the committee since the idea was raised to final the publication. Therefore, I would like to express my gratitude to all the committees and working teams who have devoted their thoughts, concentration, energy, and also time to compile all the excellent writings in photographing how Islam is practiced in Indonesia based on the local culture of its society. I would also like to express my gratitude and deep appreciation to the writers who have conducted the research and submitted the article as part of this collection of papers. Hopefully this will become a good deeds and reward for all of us as well as

academic rewards for the contribution of science, especially in the relationship between culture and Islam.

Warm Greetings from Bumi Anoa
Rector,

Dr. H. Nur Alim, M. Pd

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Challenge of Madani Brotherhood Program on Overcoming Poverty in Kendari City

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Abstract: One of the problems of development today is the problem of high rates of poverty because poverty is not only in the developing countries, but also in the more affluent societies. For this reason, the World Bank took the theme "working together to reduce poverty" as a commitment to invite every component of the global community to tackle poverty. At the level of local government, some local governments have succeeded in making innovation programs to address the problem of poverty in the region, as also in Kendari through Madani Brotherhood Program (MBP). MBP is a humanitarian program created by the government of Asrun-Musadar to reduce of poverty through a scheme rich family help poor family. Substantially, MBP is very noble and easily done by anyone, anytime, and anywhere. The potential and local values must be preserved because it is a spiritual capital and community asset, which is not only derived from the values of Islam, but also from the values of humanity, empathy, sympathy, careness, social solidarity, *shojin*, trust and norms of reciprocity, and the culture of mutual help. Thetudy (2016) revealed that the MBP has improved the quality poor families' life from unfavorable circumstances for the better.

Keywords: Madani Brotherhood Program (MBP), poverty, Kendari

Islamic Banking Dispute Resolution in National Sharia Arbitration Board

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Abstract: Islamic banking dispute settlement can be reached through the two institutions, namely the path of litigation or settlement through litigation and non-litigation path or institution of alternative dispute resolution, whether through mediation, consultation, conciliation and arbitration expert assessment. In practice, dispute settlement Islamic banking in Indonesia resolved by non-litigation or arbitration institution of sharia. Sharia arbitration authority to examine and decide disputes in Islamic banking is based on the contract agreement of the parties, therefore, the court is not entitled to examine and decide cases where Islamic banking has been stated in the agreement that the arbitration clause of the contract is the choice of the parties a forum to resolve disputes. Hierarchically the execution of BASYARNAS verdict should be returned to the Religious Court, since the institution of the Religious Courts have absolute authority to resolve disputes Islamic banking, but it also has the authority to confiscate the security rights and guarantees. Yet some experts argue that the District Court the authority to execute judgment BASYARNAS does not mean reducing its jurisdiction, but the nature of the execution only justifying and strengthening BASYARNAS decision not to test and evaluate.

Keywords: Islamic bank, dispute resolution, National Sharia Arbitration Board

ISLAMIC BANKING DISPUTE RESOLUTION IN NATIONAL SHARIA ARBITRATION BOARD

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Abstract

Islamic banking dispute can be resolved through the two institutions. The first is litigation path or resolution through the court process and the second is non litigation path or sharia arbitration institution. Sharia arbitration authority to examine and to decide disputes in sharia banking is based on the contract agreement of the parties. Therefore, the court is not entitled to examine and to decide a case of sharia banking if it has been delegated to the arbitration institution based agreement because it is the choice of the parties to resolve disputes. National sharia arbitration board is non litigation to investigate and to resolve sharia economic disputes in Indonesia including sharia banking. This board was formed along with the development of sharia financial institutions in Indonesia. Since its establishment, the agency has examined and decided about 24 sharia economic disputes. Legally, the national authority of sharia arbitration as a dispute resolution board of sharia banking has not appointed directly by law in Indonesia. In addition, the execution of the decision of the national Islamic juridical arbitration is still ambiguous, that it causes uncertainty in law enforcement.

Keywords: Dispute resolution, Sharia Banking, Religion Court, National Sharia Arbitration Board.

1. Introduction

Sharia banking system in Indonesia is realized in the framework of the Indonesian economy system, in particular pursuant to Law No.7 / 1992 on Banking, for example, applying dual banking system (to accommodate the application of sharia banking in the conventional banking system). Then the law was revised by Law No.10 / 1998 which regulates in detail the legal basis and the types of business that can be operated and implemented by sharia banks. Then it is reinforced by Law No. 21/2008 on sharia Banking. The legal protection has strengthened the existence of sharia banking in Indonesia (Wirdyaningsih et al, 2007; Amir Machmud et al, 2010) The provisions of legislation was followed by various operational regulations issued by Bank Indonesia based on the fatwa issued by the National Sharia Board of the Indonesian Ulama Council (DSN-MUI) as an institution has the authority to justify sharia product of sharia financial institutions in Indonesia.

The presence of the sharia banking law confirms the existence of sharia banking in Indonesia and strengthens the basis of law setting, so that all matters relating to the legal basis for operations of sharia banking refers to sharia banking law in regard to the existence of sharia supervisory board, dispute resolution, and reference in the documentation and legitimacy, as well as the setting of sanctions in case of violations and deviations from regulations.

The enactment of Law No. 3 of 2006 on the amendment of Law No. 7 of 1989 renewed in Law No. 50 of 2009 on the Religious Courts has brought great changes in the existence of Religion Court today. One fundamental change is the addition authority of Religious Court. It includes authority in adjudicating and resolving the case as disputes relating to Islamic economics.

Islamic business dispute settlement, including Islamic banking can be reached through litigation and non-litigation. Litigation is taken by the authority of the religious courts and non-litigation is taken by Alternative Dispute Resolution and Sharia Arbitration Institution. In Indonesia, Sharia arbitration institutions are accommodated through one of the units the Indonesian Ulama Council, it is the National Sharia Arbitration Board (Badan Arbitrase Syariah Nasional or BASYARNAS). In the organizational structure, BASYARNAS is in the institutional structure of the Indonesian Ulama Council (Majelis Ulama Indonesia or MUI), it is in accordance with the MUI Decree No. Kep-09 / MUI / XII / 2003 on BASYARNAS. This decision puts BASYARNAS as the only one sharia arbitration institution in Indonesia and one organization of MUI. However, its duties and functions are autonomous and independent (Muhammad Asro, Muhammad Kholid, 2010)

2. Problem Statement

BASYARNAS as institutions of non-litigation dispute resolution has the authority to examine and decide disputes in sharia finance. The decision is final and binding. BASYARNAS legal arrangements are still based on Law No. 30/1999 on Arbitration and Alternative Dispute Resolution. BASYARNAS verdict is final and binding on the parties to the dispute. The decision in legal state administration must be analyzed because the Indonesian Ulama Council (MUI) is not State institution, both established by the Constitution, Law, and Decree of the President. In addition, Law No. 30/1999 on Arbitration and APL which is one of the basic legal arrangements BASYARNAS seem biased because it puts the sharia arbitration and district court in coordinative and hierarchical. Though in hierarchical, sharia arbitration as non on litigation dispute resolution institutions has the same authority with a religious court litigation in the case of sharia business. Therefore, the right executorial to sharia arbitration decision should be delegated to the Religious Courts but the legal protection governing it is unclear and legitimate.

3. Research Questions

In this study, the researchers formulate two research questions:

- 3.1. How is the mechanism of sharia dispute resolution of Islamic Banking in BASYARNAS?**
- 3.2. What is BASYARNAS competence and authority in deciding sharia banking disputes?**

4. Research Methods

This research used qualitative method. It integrated library research and field research. It also used content analysis. The study was conducted at the National Sharia Arbitration Board (BASYARNAS) located in Jakarta. This research used interdisciplinary approaches. They were a normative juridical approach, Islamic law approach, and civil law approach. The normative juridical approach examined the laws and regulations of the government relating to Islamic arbitration and alternative dispute resolution in Indonesia. The Islamic law approach analyzed fiqh, fatwa, and usul fiqh. Civil law approach analyzed law of agreement.

Data resources included primary and secondary data. Primary data came from field study. The data are in the form of information coming from practitioners at the National Sharia Arbitration Board (BASYARNAS), the arbitral council and BASYARNAS decisions, the National Sharia Council of the Indonesian Ulama (DSN-MUI), and academics. The data was the history of BASYARNAS, the legal basis of its formation, competence (jurisdiction), procedural procedures, and some decisions of Indonesian Muamalat Arbitration Board (BAMUI) and BASYARNAS. In addition, primary data sources were also obtained through analysis of some legal materials. They were the primary legal materials covering the provisions of legislation relating to the authority of litigation and non litigation institutions in the settlement of sharia banking disputes. Then, Secondary legal materials included explanations of primary legal materials consisting of research reports and expert opinions. This legal material was processed and analyzed by means of legal reasoning by using authentic, grammatical, and systematic interpretations. Secondary data came from legislation, Indonesian bank regulations, jurisprudence, fatwas, books, literature, and office documents. These data were obtained through the literature study.

The data is also collected through interview process. The interview was semi structured. It has researchers conducted interviews with sources relating to this research. Informants in this study include BASYARNAS board, sharia arbiters council, national sharia council (DSN-MUI), and academics as well as practitioners of sharia economy.

5. Findings

The Dispute Resolution Mechanism of Islamic Banking at the National Sharia Arbitration Board.

Financial management based a contract agreement cannot be separated from the potential conflicts lead to disputes due to one party violates a promise. Therefore, to anticipate dispute, both banks and customers as well as the members of sharia banking and other Islamic financial institutions, in 1992 Indonesian Muamalah Arbitration Board (BAMUI) was planned to establish. The establishment was begun by a discussion attended by the experts from academics, law practitioners, scholars, and practitioners of sharia banking. At the National Workshop of Indonesian Ulama Council in 1992, they recommended to establish Muamalat Arbitration Board and insisted Indonesian Ulama Council immediately realized it. Therefore, on May 4th ,1992 Indonesian Ulama Council issued a decree. No. Kep. 392 / MUI / V / 1992 contain the appointment of a working group of an establishment of Indonesia

Muamalat Arbitration Board. BAMUI is an independent autonomous board ensconce in the legal status of a foundation.

The purpose of BASYARNAS establishment is to resolve disputes in civil cases with giving priority to the peace efforts and mediation. The presence of Sharia Arbitration Board also confirms the existence and enforceability of Islamic law in Indonesia because one of the legal proceedings used in the process of dispute resolution is the Islamic law and fiqh muamalat engagement.

The number of dispute resolved by BASYARNAS during the period 1997 to 2016 was 24 disputes. They were sharia banking disputes with customers, disputes between sharia banks and other sharia banks, sharia insurance disputes, and sharia lodging disputes. Generally, the applicant is the sharia banks. It indicates that customer as a party in default or regulation deviation.

The procedural mechanism in Jakarta National Sharia Arbitration Board of pass through litigants process. The judicial procedure in BASYARNAS, until today still refer to the rules procedure of Indonesia Muamalat Arbitration Board (BAMUI) approved and finalized on October 21st, 1993 in Jakarta. The Procedures are applicable in BASYARNAS as follows:

5.1. Application Letter Registration

The submission of the arbitration process begins with the registration of application letter to organize arbitration by the secretary of BASYARNAS. The application letter at least contains full name and residence of the parties and a brief description of case and demands. The petition file must enclose some documents: (a) a copy of the agreement manuscript specifically gives authority to BASYARNAS order to check and decide the case. (b) the agreement letter contains an arbitration clause. It is provision disputes arising will be settled in BASYARNAS.

5.2. Application Letter Verification

Application Letter submitted will be checked by BASYARNAS to determine whether BASYARNAS investigate and resolve the arbitration dispute.

If the agreement and arbitration clause are considered not quite be the basis of BASYARNAS authority to examine and to judge the dispute, then BASYARNAS will inform that an application cannot be accepted as outlined in a determination issued by the chairman of BASYARNAS before the examination process begins. Conversely, if the application is accepted by clause and the arbitration agreement, the chairman of BASYARNAS immediately establish and appoint a single arbitrator or a panel of arbitrators.

5.3. Arbitrators Appointment

When the application is accepted, the Chairman of BASYARNAS will appoint the arbitrator selected from arbitrators members registered in BASYARNAS.

Terms of the arbitrator appointments stipulated in the law No. 30/1999 are; (a) capable of taking legal action; (b) the lowest age 35 years; (c) has no cognation and consortium with any parties to the dispute; (d) has no financial interest or other interest in the arbitration decision; (e) has experience and has mastery master the field for at least fifteen years.

Additional terms for sharia arbitrators are: first, a Muslim, obey of his religion teaching and was not affected by the rules of law. Second, an expert in the science and has to experience of at least ten years in the field. Third, states to agree and to accept all the provisions contained in the articles of incorporation, bylaws, and regulations of the judicial procedure in front of board. Fourth, fill out and sign a questionnaire prepared by the board and will to be appointed oath.

The examination dispute arbitration dispute should be completed within a period of 180 days from the arbitrator or the arbitrator council is formed. This period may be extended in accordance with the conditions of the

trial. And all things related to the trial cost, such as the witness summons is the responsibility of the party invoking. Limit verdict maximum 30 days after the investigation is closed. Furthermore, the parties are given 14 days after the decision is accepted to apply mistake corrections or to add or to subtract the verdict related to administration to the arbitrator's board (Badan Arbitrase Syariah Nasional, 2005)

The decision nature of sharia arbitration on the dispute or difference of opinion in writing is final and binding on the parties to implement in good faith and it must be registered in the District Court within a period of 30 (thirty) days after the verdict is accepted.

5.4. Examination Mechanism

The entire examination and trial are conducted in a closed session. The entire trial and correspondence use Indonesian. Each party has equal rights to defend its interests. Arbitrators must give equal treatment to the parties adhering to the principle "equal before the law" and any evidence or documents must be copied and made duplicate copies to be given to the arbitrator and the opponent.

Before the examination begins, the arbitrator must try to reconcile the parties. In the first and second trial, the arbitrator will try to reconcile the parties. If peace is achieved, the arbitrator will make a deed of peace which will then be submitted to the District Court.

The goals in the arbitration process are the conflicting parties can take the path of peace because the arbitration is characterized by a win-win solution. Peace can be achieved if the parties have a good I'tikad and receptive to other parties. Each party must be prepared to sacrifice some of their interests for peace.

5.5. The Trial

The trial is conducted in the seat of BASYARNAS in Jakarta, except if the parties request, the trial can be conducted in another place. Sole arbitrator or panel of arbitrators can conduct the trial in place to examine witnesses, goods or documents relating to the case at issue. The trial process, from examination to the verdict is conducted behind closed door (Muhammad Amin Suma, 2004) BASYARNAS secrecy is also regulated by Law No. 30/1999 Article 27 that "All of the dispute by the panel of arbitrators or arbitration is conducted behind closed doors". The confidentiality principle embraced by BASYARNAS is part of the characteristics of the litigants in arbitration.

5.6. Duration of Proceedings

All stages of the trial begins with the receipt of registration application. The application file is received by the secretariat after the registration fees, inspection fees, and the arbitrator honorarium is paid. The cost magnitude of the arbitrator is set out in the regulations on the cost of the arbitrator. BASYARNAS chairman will select and appoint a single arbitrator or a panel of arbitrators chosen by the Arbitrators Board listed on BASYARNAS, but in terms of examination, it requires a special skill, then chairman BASYARNAS entitled to appoint an expert in a particular field is required.

Arbitrators selected and appointed should not resign. Sole arbitrator or panel arbitrators formed by the chairman BASYARNAS will examine and decide the dispute on behalf BASYARNAS and run all BASYARNAS authority with regard to the examination and termination of dispute.

5.7. The Nature of Verdict

The arbitrators' decision is based on the principle of consultation and consensus, if no agreements, the decision will be based on a majority vote. Decisions should not be published unless it is agreed by the parties. A copy of the decision signed by the arbitrator will be given to the parties to the dispute. BASYARNAS verdict is final and binding. Maximum 30 (thirty) days from the date of the verdict was read, the original or authentic copy sheet of arbitrators' verdict is registered to the District Court. If the decision is not implemented voluntarily, the decision is undertaken by the command of Court Chairman on the petition of other party

5.8. Cost Trial

Arbitration fees consist of a registration fee, examination fee, and honorarium of the arbitrators. A number of fees set by the Chairman of BASYARNAS in a separate regulation. Cost elements include: First, the registration fee is calculated based on the amount nominal demand compensation, which is 10% of the claim. Second, the administration fee or examination compensation whose amount is calculated based on the value of claims. Third, the cost of the arbitrator with a variation is between 0.70% and up to 10% of the claim. The higher the nominal value of demands, then the percentage is also getting smaller.

Competence and Authority of BASYARNAS

The establishment of the arbitration of Islam in Indonesia means to resolve disputes of Islamic financial institutions, both Islamic banking, Islamic insurance, Islamic pledagation and other businesses that are formal, such as the hospitality sharia. Sharia arbitration institution is a form of non-litigation dispute resolution that take paths of mediation and peace. Law forum selection (choice of forum) in the field of civil dispute resolution has a very significant contribution to reducing the level of cases in litigation institutions. Independent and confidential nature making it an alternative dispute resolution institutions in the field of business and commerce. (Umar A. Oseni). Therefore BASYARNAS has a role, including, the first, providing a fair and speedy settlement of the disputes arising mu'amalah and civil cases in the fields of trade, industry and services. Second, at the request of the parties to an agreement, can give a binding opinion on a matter in respect of such agreements.

BASYARNAS jurisdiction competence regulated in BAMUI procedure that includes:

- Settlement of disputes arising in relation to commerce, industry, finance, services and others
- Provide a binding opinion in the absence of a dispute regarding an issue with regard to the agreement at the request of the parties.

Competence BASYARNAS jurisdiction contained in BASYARNAS procedure in accordance with the provisions set forth in Law No. 30/1999 About the Arbitration and Alternative Dispute Resolution Section 2, namely: "These laws regulate the settlement of disputes or differences of opinion between the parties in a particular legal relationship which has entered into an arbitration agreement that expressly states bring all disputes or differences of opinion that arise or which may arise from a particular legal relationship will be settled by way of arbitration or through alternative dispute resolution ". And Article 5 (1) "the dispute can be resolved by arbitration only in trade disputes and the rights according to the legislation and fully controlled by the parties to the dispute".

Act No. 21 of 2008 concerning Islamic Banking Article 55 (2) states that "In the event that the parties have foretelod dispute settlement other than those referred to in paragraph (1), the settlement of disputes conducted in accordance with the contents of the Agreement". In the explanation of Article 55 (2) states that the definition of "settlement of disputes conducted under the terms of the Agreement" is an effort to, (a) meetings, (b) banking mediation, (c) through Arbitration National Sharia (BASYARNAS) or institution other arbitration , (d) through the courts in the General courts.

Law No. 3 of 2006 on the amendment of Law No. 7 of 1989 On the Religious Courts Religious Courts authorizes agencies, among others in the field of Islamic economics. According to Article 49 letter (i) Act No. 3 of 2006 on the Religious Courts Religious Courts confirmed that the duty and authority to examine, hear and resolve cases, including disputes relating to Islamic economics. The sound of the article: "(1) The court of religious duty and authority to examine, decide and resolve cases at the first level between people who are Muslims in the field; (A)

marriage. (B) the message. (C) a will. (D) grants. (E) endowments. (F) charity. (G) infaq. (H) Sadaqah. (I) and Islamic economics.

At first glance there has been a dispute settlement authority dualism Islamic banking. The dualism of authority makes Islamic banking dispute resolution process does not have legal certainty, but one aspect of law enforcement can work well if a legal substance in the form of legislation have legal certainty. Norms conflict resulting in uncertainty. It is also contrary to Article 28 D (1) of the Law of the Republic of Indonesia Year 1945 which reads: "Everyone has the right to recognition, security, protection and legal certainty and equal treatment before the law" (Triana Sofiani, 2015)

Legislation Hierarchically, legislation that inferior should not be contrary to the constitution. The theory of the hierarchy of norms proposed by Hans Kelsen asserts that the establishment of a lower legal norms determined by the higher legal norms whose establishment is determined by other higher norms, ie norms supreme or constitutional basis (Teguh Prasetyo, Abdul Halim Barakatullah, 2013)

Conflicts of this norm can be solved through the Constitutional Court Decision No. 93 / PUU-X / 2012 verdict stated that, first, the elucidation of Article 55 paragraph (2) of Law No. 21 of 2008 concerning Sharia Banking (State Gazette of the Republic of Indonesia Year 2008 Number 94, Supplement to State Gazette of the Republic of Indonesia Number 4867 is contrary to the Constitution of the Republic of Indonesia Year 1945. Second, elucidation of Article 55 paragraph (2) of Law No. 21 of 2008 concerning Sharia Banking (State Gazette of the Republic of Indonesia Year 2008 Number 94, Gazette of the Republic of Indonesia Number 4867 does not have binding legal force.

Based on the decision of the Constitutional Court Number 93 / PUU-X / 2012 regarding testing norm of Article 55 paragraph (2) Oops there are some things that can be inferred :

- Elucidation of Article 55 paragraph (2) Oops opening forum selection (choice of form) the settlement of disputes, either through litigation institutions, namely the district court and religion, as well as through non litigation under the terms of the contract. Based on the empirical fact that the choice of the form has a lot of legal uncertainty which may be detrimental to the parties to the dispute, and also contrary to the 1945 Constitution of Article 28 paragraph (1), for the Article 55 paragraph (2) shall not have binding force.
- Under the provisions of the DSN-MUI fatwa and Bank Indonesia Regulation recommend any contract agreed upon between Islamic banking and the customer always include a clause dispute resolution forum, both litigation and non-litigation.
- The contract agreement does not state clearly and concretely dispute resolution forum, it fully into its jurisdiction.
- In law hirerakis choice dispute resolution forum based contract agreement is the second option if the parties include them in the contract clause of the agreement and does not give authority over Islamic Court. because the agreement is the law for those who made it as the provisions of Article 1338 of the Civil Code (principle of pactasuntservanda). (Agus Yudha Hernoko, 2011)

Litigation dispute resolution has clear legal basis, namely the absolute authority of the religious courts. While the dispute settlement non-litigation Islamic economics is based on the agreement of the parties, either through pactum de compromettendo or acte compromise, commonly referred to as submission agreement, ie an agreement with respect to a dispute that has been going on. While the verdict execution BASYARNAS delegated to the district court pursuant to Law No. 30/1999 About the Arbitration and Alternative Dispute Resolution Section 61 "in case the parties do not implement voluntary arbitration decision, the decision is implemented based on the command Chairman of the Court at the request of the parties to the dispute".

Act No. 48 Year 2009 concerning Judicial Authority Article 59 states that:

- Arbitrase is how to settle a civil dispute out of court based on the arbitration agreement made in writing by the parties to the dispute.

- The arbitration decision shall be final and have permanent legal force and binding on the parties.
- In the event that the parties do not implement voluntary arbitration decision, a decision carried out by court order at the request of the chairman of one of the parties to the dispute.

In the explanation of Article 49 paragraph (1) states that: "what is meant by" arbitration "in this provision, including sharia arbitration." Legally, the execution verdict BASYARNAS the authority of the District Court. Therefore, there is no dualism related to the execution of the verdict BASYARNAS. This is what happened in the case between PT. Atriumasta Sakti against PT. Bank Syariah Mandiri has been completed by the National Sharia Arbitration Board (Basyarnas) on 16 September 2009 No. 16 / Year 2008 / Basyarnas. Basyarnas against the decision has been filed for cancellation to the Religious Court of Central Jakarta by PT. Bank Syariah Mandiri on 10 November 2009 with the provisions of Article 70 and the general explanation Chapter VII of Law - Law No. 30 In 1999, Jo Act - Act No. 3 of 2006 on the Religious Courts Jo SEMA No. 8 of 2008 concerning Arbitration Decision Execution Sharia. Then SEMA 8 of 2008 dated October 10, 2008 is revoked as contrary to article 59, paragraph 3 of Law - Law No. 48 of 2009 on judicial power. Therefore, SEMA No. 8 Year 2008 was declared invalid by SEMA No. 8 of 2010 dated May 20, 2010.

6. Conclusion

Islamic banking dispute resolution can be reached through two institutions, namely (1) litigation. In this case its jurisdiction at all hierarchical levels. (2) the non-litigation or alternative dispute resolution and sharia arbitration. Dispute resolution through sharia arbitration was resolved in the National Sharia Arbitration Board (BASYARNAS). BASYARNAS dispute resolution mechanisms based on the rules of procedure of the National Sharia Arbitration Board (BASYARNAS) and Law No. 30 Year 1999 on Alternative Dispute Resolution and Arbitration.

Competence and Authority BASYARNAS in examining and deciding the case in non-litigation Islamic economics is based on the agreement of the parties, either through treaties or agreements pactum de comprometindo or acte compromise. Disputes can be settled by arbitration only in trade disputes and the rights according to the legislation and fully controlled by the parties to the dispute.

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