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Dispute Resolution in Indonesian Islamic Banking: Previous Trends and Future Perspectives

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ABSTRACT: Currently, the legal environment for dispute resolution in the Islamic banking industry in Indonesia is not sufficient to achieve the main purpose of establishing a bank. Although Islamic legal frameworks are important for resolving financial disputes recognized under classical Islamic law, this paper aims to overcome increasing disputes as Islamic banking revenues increase. , provides arguments and solutions for resolving Islamic banking disputes using the Engel curve theory of microeconomics.

Therefore, changes in the income of Islamic banks in Indonesia do not significantly affect changes in alternative dispute resolution/ADR requests. Even if the demand for ADR continues to grow, the demand for ADR will be relatively smaller than the change in Islamic banking earnings. The legal framework is dispute resolution in the Islamic banking industry based on the alternative dispute resolution (ADR) process that Prophet Muhammad has demonstrated since his stay in Medina. Conclusion; With this in mind, the Islamic banking services industry is saved from litigation domination that always comes with negative stereotypes about unnecessary payments.

KEYWORDS : Sharia Banking, Dispute, Engel Curve, Arbitrase

INTRODUCTION

Islamic banking is now growing rapidly in the global arena with a wide variety of new financial products. This practice has emerged with the proliferation of Islamic financial institutions in the Islamic world and beyond. Referring to Indonesia which is the country with the largest Muslim population in the world, Indonesia should be a pioneer and laying the foundation for the development of the Islamic economy in the world. This is not something strange, because the opportunity for Indonesia to become a global player in Islamic finance is very open. Some of them are: (i) the large number of Muslim population becomes an opportunity for customers of the Islamic finance industry (ii) Stable and relatively high economic growth (5 – 6.5%) supported by a strong economic base (iii) the large number of foreign investors interested in want to invest in the domestic financial sector, including the Islamic finance industry.

Now, Indonesia ranks fourth, a country that has potential in the Islamic finance industry after Malaysia and Saudi Arabia and Iran. Taking into account several aspects of the index calculation, it is predicted that Indonesia will occupy the first position in the next few years. The growth of Islamic banking in Indonesia in meeting the needs of the community is more dependent on the real sector is also a separate opportunity.

With this rapid growth, an inevitable phenomenon in financial transactions is the constant occurrence of disputes, claims or complaints in this industry. The fragility of the Islamic economic sector, which currently benefits Muslims, could be jeopardized if the legal environment is not created to resolve disputes originating in the Islamic banking and financial industry. As an alternative to the court system, where most judges are unfamiliar with the terminology and Islamic financial instruments, an independent body can be established to resolve disputes at the local level. The alternative dispute resolution (ADR) approach adopted by this institution should be based on his Sulh, Tahkīm and Muhtasib principles of several processes recognized in Islamic law. It is important to assert that full Islamization of banks can never be achieved without the establishment of specialized judicial authorities in the areas where Islamic banks are located. The current practice of Islamic banking disputes in which civil or general courts make wrong decisions will be counterproductive for Islamic banking practices.

Against this background, this paper examines the current trends and future prospects of Islamic banking disputes. Starting with the re-emergence of Islamic banking in the modern world with so many innovative financial products. Issues arising from Islamic banking disputes and financial disputes, their claims and complaints will be rigorously investigated. It then discusses the re-emergence of alternative dispute resolution methods in the modern world and classical Islamic arbitration methods within the framework of Islamic law.

Various efforts and thoughts aimed at designing a more effective and efficient judiciary, have not yet produced satisfactory results. Meanwhile, more and more criticism is being directed at the court. All these criticisms are dissatisfied with the performance and existence of the judiciary. There can be some sharp criticisms of the court, especially after the 1980s, including:

A. Slow Dispute Resolution

Chronic diseases that are suffered and infect all judicial bodies at all levels of justice around the world are a very slow resolution or a waste of time due to a very formal and technical examination system, while on the other hand, the flow of cases is getting faster

both in quantity and quality. as well as quality so that there is an overload (overloaded) as an illustration of how slow the settlement of cases from the first level to the cassation, the data is presented as follows:[1]

1. United States 5-10 years
2. Japanese 5-12 years old
3. South Korea 5-7 years old
4. Indonesian 5-12 years old

B. Expensive Case Fee[2]

Basically the cost of litigation is expensive and the costs are increasingly expensive in relation to the length of the settlement time, the longer the settlement time, the more costs incurred. The average attorney's fee in America is US$250 per hour.[3] Pay attention to this fact. Laurence S. Clark said: "So the cost of law suits may exceed the value of winning," the amount of court costs exceeds the amount of winnings. A Chinese proverb also says "Going to he law is losing a cow for the sake of a cat" litigation in court is like losing an ox to a cat. It is so expensive that the litigant is paralyzed, as Jack Etrierge said "Litigation paralyzes people"

C. Unresponsive Judiciary (Unresponsive)[4]

Based on observations, the court is unresponsive in the form of behavior:

1. Not responsive to defending and protecting the public interest (public interest) courts or judges often ignore the protection of the public interest, do not care about the needs and feelings of justice of the wider community. Tony Mc Adam said "the courts are extremely clogged and are generally unresponsive to the needs of the public".

2. Courts often act unfairly or unfairly,[5] courts only serve and provide flexibility to large institutions or rich people so that they are not responsive and do not care about ordinary people and the poor (ordinary citizens) and often treat this group unfairly (unappropriately) and inhumane (unhumanly).[6]

The bitter experience that befell the community shows that the court system is ineffective and inefficient. Completion of cases through the courts takes years, a long-winded process, which is entangled in an endless circle of legal remedies. Starting from the appeal, cassation and review. After the decision had permanent legal force, the execution was again clashed with the efforts of the verzet in the form of the verzet and derden verzet parties. In short, there is no end to it. So entering the court forum arena is like wandering and trying your luck in the wilderness (adventure unto unknown year). This is where the justice-seeking community needs a quick settlement process, which is not formalistic, or informal procedure and can be put into motion quickly

The current fact is that dispute resolution or conflict is gradually shifting to non-litigation settlements known as Alternative Dispute Resolution (ADR). The results of studies in the United States and in Australia, almost 90 percent of disputes are resolved through non-litigation, especially among entrepreneurs.

ADR is often interpreted as an alternative to litigation and alternative to adjudication. The choice of one of the two meanings has different implications. If the first definition is the reference (alternative to litigation), all out-of-court dispute resolution mechanisms, including Arbitration, are part of ADR. Meanwhile, if ADR (excluding litigation and arbitration) is part of the notion of ADR as an alternative to adjudication, it can include consensus or cooperative dispute resolution mechanisms such as *Negotiation, Mediation*, and *Conciliation.*

General Explanation of Law Number 30 of 1999 concerning Arbitration and alternative dispute resolution, arbitration institutions have advantages compared to judicial institutions. These advantages include:

1. Guaranteed confidentiality of the dispute between the parties
2. Delays caused by procedural and administrative reasons can be avoided
3. The parties may choose an arbitrator who in their belief has sufficient knowledge, experience and background regarding the issue in dispute, is honest and fair.
4. The parties can determine the choice of law to resolve the problem as well as the process and venue for the arbitration, and Arbitration Award is a decision that is binding on the parties and through simple or direct procedures it can be implemented.

Arbitration, is one of the main forms of dispute resolution, in its journey has a long history and experienced ups and downs in the world. At the beginning of Islam, there was an Arbitration agreement, namely the Medina Agreement in 622 AD (a security pact between Muslims, non-Muslim Arabs, and Jews) which called for arbitration disputes by the Prophet Muhammad.[7] Indeed the Prophet himself was forced to arbitrate in a conflict with the Banu Quraysh tribe, the Muslim rulers later followed his example, especially in the arbitration between Muawiyah[8] (Governor of Syria) and Caliph Ali (the Prophet's son-in-law) in 659 AD to determine the rejection of the succession of Caliph Ali in accepting the arbitration rules in favor of Muawiyah . Shia and Sunni

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[1] Ramseyer, J. Mark dan Eric B. Rasmusen. "Comparative Litigation Rates." *Harvard: John M. Olin Center for Law, Economics, and Business* No. 681. November 2010.

[2] Deborah L. Rhode, Too Much law, Too Little Justice: Too much Rhetoric, Too Little Reform, 11 Geo. *Journal. Legal Ethics* (1998), 989, 1005.

[3] Karpik, Lucien e Terence C. Halliday. "The Legal Complex." *Annual Review of Law and SocialSciences* 7 (2011) 217-236.

[4] Heyes, A., Rickman, N., and Tzavara, D. (2004). Legal expenses insurance, risk aversion and litigation. *International Review of Law and Economics*, 24(1) (2004) 107–119.

[5] George, J. (2006). Access to Justice, Costs and Legal Aid. *The American Journal of Comparative Law*, 54 (2006),293–315.

[6] McLaughlin, J. (2007). Litigation funding: Charting a legal and ethical course. *Vermont Law Review*, 31(615) (2007), 615–662.

[7] See Abdul Hamidel-Ahdab, "Arbitration with the Arab Countries 13 (2 ded 1999.); see Am.Oil Libya Co (LIAMCO) v.Libyan Arab Republic (1977), 20

[8] See Thomas W.Lppman, *Understanding Islam: An Introduction Muslim World 121* (1982)

arbitration between Islamic countries or their citizens and non-Islamic parties. An interesting illustration of arbitration in early Islam is the story of Zaid-ibn-Sa'nah, a Jew who came to the Prophet to collect the payment of the Prophet's debt to him with harsh words. Umar bin Khatab, who witnessed, could not accept this action. But then the Messenger of Allah said: 'O Umar, it would be better if you advised him in a good way, and advised me to pay in a good way too'. In this case, Hamidullah in his Islamic state law gives the opinion that the above case is tantamount to "submitting the problem of the Prophet's dispute to a third party."

Bahrain, a center of commercial international arbitration long before Paris and London,[9] the era of international arbitration (dating from the late 19th century, but especially since World War II) has been common to the Islamic world and a "roller coaster" experience. In many of these areas, international arbitration has long been viewed with skepticism. In this modern era, international arbitration has been connected to the Islamic world which has gone through two phases.

In addition, the Hadith narrated by An-Nasa`i narrates the dialogue of the Messenger of Allah with Abu Shureih. The Prophet asked Abu Shureih: "Why are you called Abu al-Hakam?". Abu Shureih replied: "Indeed, my people when they quarrel, they come to me asking me to settle it. And they are willing to comply with it." Hearing Abu Shureih's answer, the Messenger of Allah said: "What a good deed like that!". Thus the Messenger of Allah justified and even praised the actions of Abu Shureih.

On April 22, 1992, the MUI Leadership Council invited a meeting of legal experts or practitioners or Muslim scholars including from universities to exchange ideas whether or not an Islamic arbitration should be established. After several meetings, the Indonesian Muamalat Arbitration Board (BAMUI) was established which was established by the Indonesian Ulema Council (MUI) on 05 Jumadil Awal 1414 H to coincide with 21 October 1993 AD. Established in the form of a foundation legal entity, as confirmed in a notarial deed Yudo Paripurno, SH. Number 175 dated October 21, 1993. For approximately 10 years BAMUI has carried out its role, with the consideration that many members of the supervisors and management of BAMUI have died and also because the form of the arbitration body as regulated in Law No. not in accordance with BAMUI's position, then based on the decision of the MUI leadership board meeting as stated in the MUI Leadership Council Decree Number Kep- 09/MUI/XII/2003 dated December 24, 2003, the name of BAMUI was changed to the National Syari'ah Arbitration Board (BASYARNAS).

The Greek philosopher Aristotle, for example, considered arbitration as an alternative to court because justice for this great philosopher is something that applies more than just written law. It is very fair, said Aristotle, to choose arbitration over a general court, because the views of the arbitrator always rest on justice, while the judge only focuses on the law. The reason for appointing an arbitrator in dispute resolution is because there is a guarantee of the fulfillment of a sense of justice for the parties. In the selection of arbitration institutions, both national and international in terms of arbitration institutions, it is widely agreed that arbitration is categorized as international if it fulfills one (or more) of the following requirements: a. The organization is an organization whose members are countries, so it is international. For example, the ICSID Arbitration domiciled in Washington is an international arbitration because it was established by the participating countries based on The Convention on Settlement of Investment Disputes between States and Nationals of Other States. b. The proceedings, i.e. the procedure or trial procedure is carried out according to the provisions or regulations, which are independent from the legal system of the country in which the arbitration is located. For example, the Arbitration of The International Chamber of Commerce (ICC)[10] based in Paris is an international arbitration because its member countries agree on the provisions of the ICC regardless of the French legal system. c. The place, namely in fact whether the place of arbitration relates to more than one jurisdiction, or whether there is an element of foreign jurisdiction in it.

That is, considering the place of an arbitration is considered international if: 1). The parties at the time of making the arbitration agreement have their place of business in different countries; 2). The place of arbitration specified in the arbitration agreement is located outside the country where the parties have their business. The practice of arbitration is an organic part of the daily life of the Greeks. Arbitration in ancient Greece, known as the Hellenic system, can indeed be seen as the source of the modern practice of arbitration. The Hellinic system gave rise to a number of important arbitral awards, such as the dispute between Athens and Mytilena by Priander Corinth over the ownership rights of the strategic fortress Siegeion in the Hellespont, and the dispute between Athens and the State decided by a court at Salamis. However, long before the Greek philosophers wrote about arbitration, a number of arbitration practices had been carried out in Mesopotamia since about 2800 BC. In fact, there is also evidence that records that arbitration has actually been practiced since about 2550. Arbitration was also used in ancient Egypt and Assyria, which includes the Middle East region, which gave rise to the civilization known as the Judeo-Christian Western tradition. At that time, the function of arbitration and judicial function was not clearly distinguished, but there seems to be an assumption that disputes that occur are usually resolved by the king's court, and the King can be present as judge in all kinds of matters, but other prominent members can also act as arbitrators. which is an alternative to the king to settle disputes. The role of the ancient Egyptians in arranging arbitrations was also quite important as can be traced through the leadership of the Assyrians, Babylonians and Hittites, who used to resort to arbitration in resolving disputes, although arbitration at that time was not as famous as during the reign of Hammurabi in Babylonia[11] from 1728. BC to 1686 BC which issued several rules of arbitration procedure that could be a reference for the parties involved in a dispute to resolve their disputes.

In the Roman tradition, the first recorded arbitrations were disputes that arose between the cities of the League formed in the region of Rome around the Italian Peninsula, one of which involved the arbitration of a dispute between the Aricians and the Ardeans in

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[9] See Thomas W. Lppman, Understanding Islam: An Introduction to the Muslim World 121 (1982)

[10] ICSID is an autonomous international body established under the Convention on the Settlement of Investment Disputes between States and Other States (at ICSID or the Washington Convention) with more than one hundred and forty member states

[11] Hammurabi fought many wars to conquer other kingdoms, but he is more famous because during his reign the first official code (written law) recorded in the world, called the Hammurabi Charter (Codex Hammurabi) was made. In 1901, French archaeologists discovered the charter when digging beneath the ruins of the ancient city of Susa, Babylon. Hammurabi's charter is engraved on a piece of stone that has been leveled in cuneiform. The charter contains 282 laws in total, but 32 of them are fragmented and difficult to read. Its contents are arrangements for certain criminal acts and their rewards

446 BC. The dispute is then submitted to arbitration. Arbitration was firmly entrenched in the traditions and customs of Rome, then passed on to Europe.

In medieval France, commerce and industry also made use of arbitral tribunals. The trials are usually held during the trade fairs whose centers are located in Rouen and Champagne. Disputes between sellers and buyers at the fair must be resolved quickly so that the warring parties can return home. This fast arbitration process is usually carried out by selecting a traveling arbitrator who is at the fair. These arbitral tribunals were without a doubt the precursors of the early British Pied Powder courts. The Consuls or Councils of the Union are led by "Prud hommes" (wise men). The practice of arbitration has also been well implemented in some areas of Germany which have good commercial relations with the outside world, especially with Italy.

Disputes within the church also do not fall under the jurisdiction of the general courts but are settled in church courts. As a result, some of the laws of Rome that had been protected by Canon law began to enter the arena of arbitration.

The increasing understanding of the advantages of using arbitration institutions for dispute resolution in the world of trade as opposed to going through a complicated, slow and expensive formal legal process, has encouraged the development of modern arbitration practices in such a way that it has become a procedure that is increasingly in demand by (especially) the business world in resolving business disputes. Even though in its long journey, the arbitration mechanism has raised pros and cons related to its position in the formal legal system, whether it is outside or part of the formal justice system, including the controversy regarding the position of lawyers (legal experts) in the arbitration process.

From the mid-19th century to the early 20th century, American judicial disfavor courts adopted British theory as a rationale for agreeing that arbitration “is outside the jurisdiction of the courts”; This agreement is in line with the principle of public order.

The enactment of the Arbitration Act in 1925 in the United States was specifically aimed at making arbitration agreements more acceptable on the same basis as other forms of contracts. In 1932, the Supreme Court recognized the “seriousness” of congress by saying, “Thanks to the goodwill of Congress, we are obliged to remove judicial hostility to arbitration.”

In the UK, the United Kingdom Arbitration Act of 1975 and 1979 gave effect to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, also known as the New York Convention. One of the most important international arbitration institutions in the British Commonwealth is the London International Court of Arbitration, which is based at the London International Arbitration Center and is sponsored by the London Chamber of Commerce, the City of London Corporation and the Core Arbitration Institute.

In Australia, the Arbitration Act introduced in 1984 in New South Wales, Victoria, Western Australia, South Australia and Tasmania, also known as the Uniform Commercial Arbitration Act (UCAA) reformulated and modernized Australian arbitration law which was considered archaic, in line with with the Arbitration Act 1979 (UK). The Uniform Commercial Arbitration Act (UCAA) seeks to reduce judicial interference in arbitration proceedings and streamline arbitration procedures to conform to changing international practice, as evident by the increasing acceptance of standard arbitration regulations, such as the UNCITRAL Arbitration Rules.

In Malaysia the arbitration provisions are contained in the 1952 arbitration law which follows in the footsteps of the 1950 British Arbitration Act. The 1952 arbitration law was then reviewed in 1972 and expanded to all states in Malaysia. The law was later amended in 1980 by adding a chapter reducing international judicial control. The Asia-Africa Legal Consultative Committee by establishing a Regional Arbitration Center in Kuala Lumpur This Regional Arbitration Center has its own Arbitration Rules which is a modification of the United Nations Commission's Arbitration Rules on International Trade Law (UNCITRAL).

In Singapore, the International Arbitration Act came into force in 1995. The purpose of this law is clearly reflected in its long name, namely “The Act which provides provisions for international commercial arbitration which is based on the Model Law on International Commercial Arbitration which used by the United Nations Commission on International Commercial Law and procedures for conciliation and applying the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and for matters relating thereto.” The Singapore International Arbitration Center (SIAC) was established in March 1990) and commenced operations in July 1991) to promote arbitration and dispute resolution methods as an alternative to litigation through the courts.

Trends Alternative Dispute Resolution

The bitter experience that befell the community shows that the court system is ineffective and inefficient. Completion of cases through the courts takes years, a long-winded process, which is entangled in an endless circle of legal remedies. Starting from the appeal, cassation and review. After the decision had permanent legal force, the execution was again clashed with the efforts of the verzet in the form of the verzet and derden verzet parties. In short, there is no end to it. So entering the court forum arena is like wandering and trying your luck in the wilderness (adventure unto unknown year). This is where the justice-seeking community needs a quick settlement process, which is not formalistic, or informal procedure and can be put into motion quickly

The current fact is that dispute resolution or dispute resolution is gradually shifting to out-of-court settlement known as alternative dispute resolution (ADR). Findings from the US and Australia show that nearly 90% of disputes are resolved out of court, especially among entrepreneurs.

ADR is often interpreted as an alternative to court proceedings and as an alternative to court decisions. Choosing between the two meanings makes a difference. If the first definition is reference (instead of litigation), all out-of-court dispute resolution mechanisms, including arbitration, are part of ADR. On the other hand, where ADR (other than litigation and arbitration) is part of the concept of ADR as an alternative to court decisions, it includes consensual or cooperative dispute resolution mechanisms such as negotiation, mediation and arbitration. may be included.

General explanation of Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution, arbitral institutions have advantages over judicial institutions. These benefits are:

1. Assurance of Confidentiality of Disputes Between Parties
2. Avoid procedural and clerical delays

3. The parties may choose an arbitrator who has sufficient knowledge, experience and background in the dispute and who is honest and fair.
4. The parties may determine the choice of law to resolve any dispute, as well as the procedure and venue for arbitration. An award is a decision binding on the parties and may be enforced by simple or direct proceedings.

However, alternative dispute resolution has long been developed, both in the West such as the United States and Norway[12] and in the East, such as Japan and China, both for practical and cultural reasons. Dispute resolution through courts in the West and in the East contains weaknesses, namely it takes a long time from the court of first instance to the level of appeal or cassation, costs a lot and strains the relationship between the disputing parties. In developing countries, the courts are considered an extension of the power, even in some countries the courts are considered unclean, so that the decisions are considered to be impartial which brings injustice.

The history of the development of ADR for the first time in the United States, has begun to develop alternative dispute resolution since the 1960s. This was motivated by factors from the reform movement in the early 1970s, at which time many observers in the legal field and the academic community began to feel serious concerns about the increasing negative effects of litigation. The legislation implemented in 1960 has guaranteed various individual protections from consumer rights to civil rights. However, the struggle to obtain these rights through the legal system becomes a complicated burden. That's why people started looking for alternatives

Court adjudication of conflicts, such as court coungestion, high legal fees and waiting time in court has become a way of life for Americans who pursue the judicial system either voluntarily or involuntarily.[13]

Based on the study, alternative dispute resolution institutions in the US have expanded significantly. On February 12, 1980 to coincide with Abraham Lincoln's birthday, President Jimmy Charter signed the Dispute Resolution Act as a legal basis for mediation institutions. The phrase that was used by Abraham Lincoln in 1850: "Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out then how the nominal winner is often a real losser-infusion, expense, and waste of time".

This means that as much as possible avoid litigation in court. Invite your neighbors to compromise as much as possible. Explain to them, that in fact the party who wins the litigation is the party who loses. Why? Because to get that victory, he had to sacrifice expensive costs and wasted a long time.

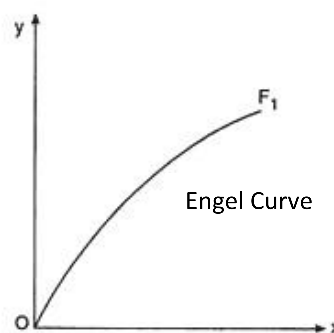
Meanwhile, in Japan during the Tokugawa era, conciliation (chotei) was implemented as an alternative dispute resolution. Furthermore, it was stated in the form of the Civil Conciliation Act or "Minji Chotei Ho" in 1951.[14] In addition, both China and Japan have long known mediation as an alternative dispute resolution. This is in line with the Chinese culture that does not like the court as a place for dispute resolution. In this case, civil disputes are resolved through mediators.

Due to cultural reasons, people tend to overlook the courts as a place to settle disputes that arise between them. Eastern societies, such as China and Japan, have traditionally disliked courts. Courts are considered a place for "bad" people, who do not obey the law. Traditionally, the Chinese and Japanese are very reluctant to bring their civil disputes to court.

As is known, problem solving through Alternative Dispute Resolution institutions has indirectly developed in Indonesia, such as negotiation, mediation, conciliation, and arbitration. Pancasila as the basis of the philosophy of life of the Indonesian people has indicated that the principle of dispute resolution through deliberation for consensus is prioritized, and so is the 1945 Constitution of the Republic of Indonesia.

METHODOLOGY

The methodology uses the Engel Curve, the Engel Curve relates the quantity of goods consumed with income. If the good is a normal good, Curve of Engel is upward sloping. If the good is an inferior good, Curve of Engel is downward sloping.



The graph above is the Engel Curve which is presented for goods that are basic necessities, such as staple foods. Where the Y axis is the number of goods while the X axis is income, according to this theory, changes in nominal income do not have much effect on

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[12] William Aubert, *Law as a way of resolving conflicts* : *the case of a small industrial society,* dalam Laura Nader (ED), Law In Culture And Society, Chicago: Aldine Publishing Company, 1969), hlm.289-291; Erman Rajagukguk, *Arbitrase Dalam Putusan Pengadilan,* (Jakarta: Chandra Pratama, 2000), 103

[13] Jacqueline M.Nolan-Haley, *Alternative Dispute Resolution In Arbitration Nushell*, (ST.Paul, Minn: West Pblishing Co, 1992),4

[14] Hodeo Tanakan,ed. *The Japanese Legal System,* (Tokyo: University of Tokyo Press, 1988), 492.

changes in demand. Even if demand continues to increase, the demand for the good changes less than the change in income. If it is related to the concept of elasticity, then the income elasticity of basic goods will be smaller when the income level is higher.

Likewise, the application of dispute resolution in Islamic banks with the Engel Curve approach, where the Y axis is ADR while the X axis is Sharia Bank Income, meaning that changes in Islamic Bank income in Indonesia do not have much effect on changes in requests for dispute resolution through ADR. Even if the demand for ADR continues to increase, the demand for ADR will be smaller than the change in the income of Islamic Banks in ratio.

Arbitration is an alternative non-court method of resolving disputes, which is neutral in nature. Other important features of arbitration include:

1. Efficient, compared to dispute resolution through general judicial bodies, dispute resolution through arbitration is more efficient, ie efficient in terms of time and cost.
2. Accessibility, arbitration must be affordable in terms of cost, time and place.
3. Protection of the rights of the parties, especially those who cannot afford, for example, to bring in expert witnesses or to hire lawyers famous, should receive reasonable protection.
4. Final and Binding, arbitration decisions must be final and binding unless the parties do not wish to do so or if there are reasons related to a "due process".
5. Fair and Just, appropriate and fair to the parties to the dispute, the nature of the dispute and so on.

RESULT AND DISCUSSION

Conflict resolution through peace is far more effective and efficient. For this reason, different methods of out-of-court dispute resolution (Alternative Dispute Resolution, ADR) have recently been developed in different forms, such as:

- Arbitration through compromise system between the parties. A third party will act as an arbitrator only if: helper and Moderator.
- Arbitration by an arbitrator: A third party acting as a mediator plays the role of peace-making (mediation). The right of decision rests with the parties.
- Expert judgment Appointment of an expert provides an important solution. The decisions made are therefore binding on the parties.
- Mini trial The parties agree to appoint an advisor to: exchange opinions on both sides, After hearing the dispute from both parties, an opinion is given by the consultant.

Opinions include the strengths and weaknesses of each party and provide opinions on how the parties can resolveThus at first glance the forms of dispute resolution that develop outside the courts and arbitration. Indeed, there are other forms, such as summary jury trials. However, what is stated above proves the development of ways of resolving disputes outside the court.

Currently Indonesia, with the rapid growth of Islamic Banking, is usually followed by an increase in disputes.For this reason, a dispute resolution route that is more cost-effective, time-saving and final and binding, even without hostility and grudges is needed. Learning from the Dispute of PT Atriumasta Sakti with Bank Syariah Mandiri, in which the Basyarnas Arbitrator Council on 16 September 2009 read the Decision on Case No. 16/Tahun 2008/BASYARNAS/Ka.Jak ordered PT Bank Syariah Mandiri to return to PT Atriumasta Sakti Rp 878,701,366,-. Plus other costs as long as these costs are supported by evidence of expenses that have been verified by a public accounting firm. Therefore, the defeat of this case PT. Bank Mandiri Syariah has established an allowance for the estimated loss in the case of Rp. 12,000,000,000.00 (twelve billion rupiah).

The dispute resolution of sharia economic agreements in Indonesia is related to Law No. 21 of 2008. The authors can conclude as follows: Referring to Law No. 30 of 1999 concerning arbitration and alternative dispute resolution in Article 60, it has strictly regulated economic business practices. That the arbitration award is final and binding, that is, it has permanent legal force and is binding on the parties. Customers who have litigation in Islamic banking and other economics are obliged to refer to the agreement clause; whether to use sharia arbitration services or religious courts. Although Law No. 3 of 2006 concerning religious courts regulates the settlement of sharia banking disputes which also refers to Law No. 30 of 1999, it does not have a role in resolving cases in religious courts. Sharia arbitration still has an important role in resolving sharia banking and other economic cases because the litigants are free to choose the existing court. The sharia arbitration system using the pactum the compromise approach by Islamic banks is felt to be very appropriate because this method can also function as part of the screening effort of prospective customers who have good faith, which serves to maintain the NPF (*Non Performing Financing*) number. keep it small.

The birth of an arbitration institution based on Islamic Sharia in Indonesia is needed to resolve Islamic civil disputes, especially in the fields of trade, economy, industry, and business. Although initially the cases handled were not limited to civil matters, in the end it was agreed that the problems to be handled were limited to the issue of property al-amwal. Based on this, the settlement of civil disputes in the trade sector, including settlements in the field of Islamic banking, will be much more efficient through arbitration than through courts.[15]

As has been explained, the existence of arbitration is possible in the national legal system. This is because Law No. 14 of 1970 (principles of judicial power) as well as Law of the Supreme Court No. 14 of 1985 at that time did provide an opportunity for an Arbitration body to exist among the public.

Based on the above, the Indonesian Muamalat Arbitration Board (BAMUI) which has now changed to the National Sharia Arbitration Board (Basyarnas) was established in Indonesia on October 21, 1993 by the Indonesian Ulema Council based on deliberation and consensus. There are 3 reasons behind the establishment and operation of this arbitration body:

First, the reasons for the text of the Qur'an and as-Sunnah, among others, are the verses of the Qur'an that propose the appointment of a hakam if there is a dispute in the household, as stated in the Qur'an Surah An_Nisa verse 35.

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[15]Arif A. "Jamal, ADR and Islamic law: the cases of the UK and Singapore,"*Working Paper*,Faculty of Law, National University of Singapore, (2015), 7.

Second, the historical reason is that such bodies/institutions have long been known in the history of Islamic courts, which are commonly referred to as "Tahkim" (Arbitration) bodies. This institution has historically been known in Islam for a long time as a Tahkim body, or called arbitration. Tahkim's order itself has been qath'i in the Qur'an, namely to resolve disputes, reconcile by deliberation. This means that the dispute is Ishlah.

Third, the reason for the socio-economic importance is that in the increasing and developing economic conditions of Indonesian Muslims, various problems and disputes will certainly be found that require quick and efficient resolution so as not to disrupt the economic cycle of the people.

Table List of cases at Basyarnas 2013-2015

N	No. Case	Ligitant	Defendant	Legal issues
01	19/Tahun 2013/BASYARNAS/ Ka Jak	Indri Srengganing Hermi Senawijaya	Bank Mega Syariah Indonesia	Auction procedure without Notiication
02	20/Tahun 2013/ BASYARNAS/ Ka Jak	Bank Muamalat Indonesia	Jimmy Jeam dan PT Centra Lingga Perkasa	Default
03	21/Tahun 2015/BASYARNAS/ Ka Jak	Bank Syariah Bukopin	Dr H Ikhsan Lahaedy Chairudin dan PT Haseda Remindo	Default
04	22/Tahun 2015/BASYARNAS/ Ka Jak	Bank BRI Syariah	Mita Rachmawaty	Default

Of the four (4) decisions studied, the authors found that not all decisions were in favor of the plaintiff. This means that the arbitral tribunal did not punish all of the plaintiffs. However, there are some that are accepted and some are not.

From the data above, it shows that the party who is suing, in this case the Islamic bank, is always the one who becomes resistant to the vice-presidential act by the second party who made the agreement. This is a general problem for the Islamic banking industry as a financial intermediary. Default actions by bank customers will have an impact on banking stability, because banking health can at least be measured by Non-Performing Loans (NPL).[16]

CONCLUSION

The need for a dispute resolution environment originating from Islamic banking in Indonesia. Such measures should be based on classical methods of dispute resolution recognized by Islamic law. The type of framework proposed is an Alternative Dispute Resolution (ADR) mechanism, which can be easily applied to dispute resolution as disputes in the financial industry are so complex. With this in mind, the Islamic banking services industry is being saved from the dominance of litigation, which always comes with negative stereotypes about unnecessary payments.

Islamic banking dispute resolution using the Engel curve approach. The Y-axis is ADR and the X-axis is Islamic bank income. In other words, changes in the income of Islamic banks in Indonesia will not have a significant impact on changes in demand for alternative dispute resolution. I have a solution (ADR).

The dispute resolution process which is more cost-effective, time-saving and is final and binding, even without hostility and grudges, is recognized and can be practiced in Indonesia which benefits various parties, so as not to interfere with national Islamic banking. The history of Islamic law makes the resolution of many cases and has relevance in the modern era. We can't keep looking in the dark on litigation. It is time for the national judiciary for Islamic banks to seek inspiration from the practice of Islamic law, whose dispute resolution is based on a hybrid ADR process. Doing so would be a huge leap towards easy settlement in the Finance industry.

The Qur'an and Sunnah repeatedly emphasize the importance and benefits of resolving disputes quickly and quietly. Arbitration is a method that can be used to achieve this. When the parties carefully consider and formulate the arbitration clause in the Islamic finance Agreement, they can have greater confidence that if any dispute may arise, it will be handled in a fair, confidential and important manner, in accordance with Sharia.

Allah's Firman about Justice: "...Indeed Allah loves those who do justice" (Al Hujurāt, verse 9) "... Verily Allah loves those who do justice" (Al Mumtaḥanah, verse 8) "...And if they decide their case, then decide (the matter between them with justice, verily Allah loves those who do justice" (Al Maidah, verse 42)

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[16] NPL is a non-performing loan which is one of the keys to assessing the quality of bank performance. This means that NPL is an indication of a problem in the bank, which if not immediately get a solution, it will have a dangerous impact on the bank

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