

# DISPUTE SETTLEMENT OF ISLAMIC ECONOMIC IN ISLAMIC BANKING IN INDONESIA

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**Abstract:** One of the fundamental issues relating to the authority of religious courts in the field of Islamic banks is unclear boundaries or scope of the field of Islamic banking matters which fall within the range of absolute jurisdiction of religious courts. As can be understood from the provisions of Article 49 of Law No. 3 of 2006 relating to the authority of religious courts in the field of Islamic banks, merely that the field of Islamic banking is one of the Islamic economic fields included authority religious courts. The main purpose article is intended to determine the sense and purpose of settlement of disputes in Islamic banking as well in order to understand a basic grounding in Islamic banking as well as dispute resolution procedures or dispute settlement mechanisms of Islamic banking either through the courts or through out of court institutions. This paper uses literature study analysis method with some references that we get to expand knowledge in the understanding of Islamic banking dispute settlement in terms of its goals, foundation and dispute resolution procedures of Islamic banking. The conclusion that the dispute settlement Islamic banking can be done in two ways of settling disputes litigation and nonlitigation.

**Keywords:** Dispute, Settlement, IB

**Abstrak :**Salah satu persoalan mendasar berkaitan dengan kewenangan peradilan agama di bidang bank syariah adalah belum jelasnya batasan atau ruang lingkup bidang perkara perbankan syariah yang termasuk dalam jangkauan yuridiksi absolut peradilan agama. Adapun yang dapat dipahami dari ketentuan Pasal 49 UU No. 3 Tahun 2006 berkaitan dengan kewenangan peradilan agama dibidang bank syariah, baru sebatas bahwa bidang perbankan syariah itu merupakan salah satu bidang ekonomi syariah yang termasuk dalam kewenangan peradilan agama. Sedangkan mengenai bidang hukum apa dan samapai di mana jangkauan kewenangan mengadili lingkungan peradilan agama di bidang bank syariah tersebut, sama sekali tidak ditegaskan dalam undang-undang tersebut. Permasalahan yang akan di jawab dalam makalah ini meliputi: 1) Apa pengertian dan tujuan penyelesaian sengketa perbankan syariah; 2) apa landasan penyelesaian sengketa perbankan syariah; 3) Bagaimana mekanisme penyelesaian sengketa perbankan syariah. Tujuan utama tulisan ini dimaksudkan untuk mengetahui pengertian dan tujuan penyelesaian sengketa di perbankan syariah juga agar dapat memahami landasan dasar dalam penyelesaian sengketa perbankan syariah serta prosedur atau mekanisme penyelesaian sengketa perbankan syariah baik melalui lembaga pengadilan maupun melalui lembaga luar pengadilan. Tulisan ini menggunakan metode analisis kajian pustaka dengan beberapa referensi yang kami dapatkan guna memperluas pengetahuan dalam pemahaman penyelesaian sengketa di perbankan syariah dari aspek tujuan, landasan maupun prosedur penyelesaian sengketa perbankan syariah. Kemudian di deskripsikan untuk kemudian ditarik kesimpulannya. Kesimpulannya bahwa penyelesaian sengketa perbankan syariah dapat dilakukan melalui dua cara yaitu penyelesaian sengketa melalui peradilan (litigasi) dan melalui luar pengadilan (non litigasi) dengan prosedur yang berbeda-beda.

*Kata kunci : Penyelesaian, Sengketa, Perbankan Syariah*

## Introduction

About 30 years ago, a study of modern Islamic economics began to grow in many countries, both in Islamic countries as well as in Western countries. At Loughborough University, University of Wales, Lampeter University are all in English, Durham University and the University of Wollongong Australia, Harvard School of Law, USA, and the Institute of ISNA (Islamic Society of North America) has conducted an in-depth study of Islamic economics. In this study, the discourse of Islamic economics back dug until developed and applied in the era of globalization. Seminars, conferences, and workshops on Islamic economics repeatedly held to discuss the implementation of Islamic economics as the best alternative in today's economic arena.

Studies on Islamic economy continues conducted by experts of the world economy in order to seek solutions to the world economic crisis. The first meeting held in April 1984 which was attended among others Willis Clark (Vice-President of the World Bank) and H. Hellberg (Representative of WHO) and several other economic figures. In this meeting, it was agreed that the need to find a new policy era (New Economic Policy) in managing the world economy. This meeting was continued in 1985, which was attended by 150 economists the world, including Hazel Henderson (Director of the Center for the Study of alternative Economy of the Future of Florida State University, USA), which says that the emergence of the Islamic economic system as a policy alternative in finding a way out of economic distress to an adult this.

At least three economic systems prevailing in the world ever. However, these three economic systems have failed to find solutions to various key issues in economics, the more so in the face of today's economic globalization. Third is the economic system of the capitalist economic system, socialist economic system, and a mixed economic system.

The third failure of the economic system brings new wind in the economic development of the nuances of Islam. Islamic economic system is an economic system that is independent, not adopted from the economic liberal, communist, capitalist, and so on. Motif eKomi Islam is seeking good fortune in the world and in the hereafter by way of worship in the broadest sense. Islamic economic system quite glorious resolve all the

problems of the world economy in the Middle Ages, is now lost potential is starting to be rebuilt (Manan, 2012).

The genesis of Law No. 7 of 1992, Law No. 10 of 1998 and Law No. 23 of 1990 is already a strong legal basis for the implementation of Islamic Banking in Indonesia, although there are still some things that still need to be improved, including the need for the development and improvement of laws and regulations regarding the operation of Islamic banks are to be segregated in case of a dispute in this case relationship with Islamic banking can be resolved by reference to the applicable law.

In the beginning were an obstacle to the settlement of legal disputes Islamic banking is about to carry its completion, because the district court did not use sharia as a legal basis for settling disputes, whereas the authority of the Court at that time, according to Law No. 7 of 1989 is limited to hear the case of marriage, inheritance, wills, grants, endowments and shadaqoh. So then to anticipate emergency situations, the Arbitration Board established Muamalah Indonesia (BAMUI) established jointly by the Attorney General and the MUI.

Business practices of Shariah in Indonesia began to grow with the development of the desires and expectations of Muslims who have become largely the Indonesian population. The desire evolves with the effort of understanding of economic activities are based on Islamic Shari'a in the early 1990s. The economic development of Shariah in Indonesia began with the establishment of Shariah banking. In a further development, the economic practices of Shariah are not just limited to the practice of establishment and banking operations alone, but rather extends to other commercial activities, such as financing and other non-bank financial institutions. Business fields developed are, among others Sharia Insurance, Mutual Funds and Bonds Shari'ah Shari'ah, and others.

The economic development of Shariah in practice always preceded by the treaties that will bind the parties will undertake economic activities. Treaties are made not always be met because many factors that can influence it. These factors certainly no intention to deliberate, but in terms of all the legislation that there must be accountability. Retort a defense exists that would instantly be resolved, but between them must necessarily through the

intervention of a third party. In terms of legislation in Indonesia, may dispute settlement in judicial (court) and, through the institution weigh tare (arbitration).

### **Issues**

Based on the background there are problems as follows:

1. What is the sense and purpose of dispute resolution?
2. What is the legal basis for the settlement of disputes?
3. How does the dispute settlement mechanism?

### **Discussion**

The business development of Shariah in Indonesia can not be separated from the development of the business community Shari'ah Islamic countries in the world. The business development of the Shari'ah has been initiated on the results of the Ministerial Meeting of Foreign Affairs of the Organization of Islamic Countries in Karachi Pakistan in December 1970 with a proposal to establish flung Islamic bank by Egypt. This proposal is the result of a study by experts from 18 countries and was named "Study on the establishment of the Islamic Bank of International Trade and Development (International Islamic Bank for Trade and Development) and proposals for the establishment of the Federation of Bank Islam (Federation of Islamic Banks) (Antonio, 2001).

The proposal was realized in 1975 in a trial Finance Minister OIC in Jeddah which approved the draft establishment of Islamic Development Bank, Islamic Development Bank (IDB abbreviated). Establishment of the IDB followed by the establishment of Dubai Islamic Bank by the United Arab Emirates in 1975. In the late 1970s and early 1980s began to be formed and operated, followed by banks Shari'ah such as: in Egypt in March 1978 under the name Faisal Islamic Bank; in Pakistan in early July 1979; in Cyprus with the establishment Faisal Islamic Bank of Kibris (Cyprus), which began operations in 1983; in Malaysia with the establishment of Bank Islam Malaysia Berhad in 1983; in Indonesia with the establishment mu'amalat Bank Indonesia on 1 November 1991.

Similarly, in supporting countries other Islamic economic concept, the business of sharia in the monetary field was first developed in Indonesia is banking Shari'ah. The main functions expected from the banking Shari'ah are: Conducting traffic mechanisms efficient payment traffic so that payments can be made at minimal cost barriers.

According to Article 6 of Law, No. letter m 7 in 1992, to carry out certain activities as a commercial bank, the business that can be done is to provide financing for customers based on the principle of profit sharing. Thus, as a commercial bank, Bank Indonesia mu'amalat carrying out its activities as a "bank sharing system". Along with the era of legal reform and the development of Shariah banking practices in Indonesia, then in the amendment of Law No. 7 in 1992, particularly Article 6 shall be detailed about this Islamic Shari'a banking practices. This article in the alteration of Shariah banking practices to the Law No. 10 1998 has been set up in more detail.

Later in the letter m Elucidation of Article 6 of Law No. 10 1998 stated that: "Commercial Bank conducting conventional business can also do business based on the principles of Shari'ah:

- 1) Establishment of a new branch or office later under new branches; or:
- 2) The conversion of the branch or office under melakukankegiatan branch offices in the conventional business into offices that perform activities based on the principle of Shari'ah.

In a further development, the economic practices of Shariah are not just limited to the practice of establishment and banking operations alone, but rather extends to other commercial activities, such as financing and other non-bank financial institutions. Regardless of "whether or not been implemented in practice the Islamic Shari'ah" because of business practices can not be separated from the contract the underlying. Business can not be separated from the work and the risks that may arise. These risks could cause legal problems such as broken promises and deed which can be categorized into contradictory actions other laws. This, of course will lead to clashes, misunderstandings, etc., which can give rise to disputes.

### **Understanding**

Some of the terminology used in the settlement of disputes is no stranger to the lawyers and the

parties involved in the settlement of disputes, but there are also terms that are unfamiliar to them. a variety of ways of working appears to pose a special network, often unattractive, DNA is no exception in apps because of various influences that have pushed apps, and the differences between countries and areas of work in which the term is used. therefore, not surprising that there are inconsistencies in the use of the term.

The term alternative to what has been understood not to submit the dispute to litigation. Arbitration was intended as part of the APS. However, any arbitration has entered the path of peaceful dispute resolution process and in terms of its nature as a court process, but through informal procedures of the simplified. Trend sometimes there is no agreed view arbitration as one of the mechanisms aps and limit the use of this term at a pressure of deliberations.

In everyday use the alternative term implies nonconfrontation and cooperative approach to resolve a dispute. Most aps looked as requirements with skills and high-level professional responsibilities. Another in litigation, where the parties to the dispute confrontational and non-cooperative.

Settlement of disputes or Ash-Shulhu means deciding quarrels or disputes. within the meaning of Sharia is a type of contract (agreement) to end the fight (dispute) between two people in conflict (Asro, 2011).

### Interest Settlement

The objective of the settlement of the dispute, namely that any existing problems in banking can be resolved so as to avoid disputes that lead to injustice. In Islam also not allowed prolonged dispute because it can lead to disputes. Dispute resolution has its own principles so that the existing problems can be resolved correctly. Among these principles are:

- a. fair in deciding the case of dispute, no party Mersa harmed in decision-making.
- b. kinship
- c. win-win solution
- d. resolve problems comprehensively in togetherness

Alternative dispute resolution (including arbitration) may be defined as a set of procedures or mechanism that serves to give an alternative

procedure for dispute resolution or arbitration as form. It was in order to obtain a final and binding on the parties, in general, do not usually involve intervention and help facilitate the settlement of the dispute.

Arbitration was originally a stand-alone procedure, but today regarded as part of the as for the understanding and implementation in dispute resolution has influence development of the processes used in the APS. As developments have now reached the form mechanism (Asro, 2011).

### Legal Basis Settlement

Basic law governing the settlement of disputes clearly is as follows.

- a. Al-Quran surah Al-Hujurat (49) verse: 9  
Meaning: "and if there are two classes of those who believe that war is ye reconciled between the two! but if one violates the Agreement against the other, let that violates the agreement you fight to recede back to God's commands. if He has receded, make peace between them justly, and be ye Be fair; Indeed, Allah loves those who Be fair. "
- b. Hadith narrated by At-Tirmidhi, Ibn Majah, Al-Hakim, and Ibn Hibban that the Prophet Muhammad. said: "The agreement between the Muslims were allowed, unless the treaty justify the unlawful and prohibiting the lawful" At-Tirmidhi in this case adds mualamalah Muslim people, according to their requirements (Asro and Kholid, 2011: 154).
- c. Article 1338 Criminal Code, the legal system Open  
Article 1338 Book of the Law of Civil Law (Penal Code) states "All agreements made in accordance with applicable laws as laws for those who make it. The treaty can not be withdrawn in addition to the reasons specified by law. The Agreement must be implemented properly" (Subekti, 2004).

### Settlement of Islamic Banking

Based on the nature of the process and decision, the dispute settlement can be divided into three categories: First; The process of adjudication, where the nature of the dispute settlement puts the conflicting parties on the two opposite sides (antagonistic) and the verdict issued by a third party who is authorized to decide to be losing and



winning (win-lose) dispute resolution processes that fall into the category of this is judicial (litigation) and arbitration. Second, the consensus process, where the nature of the dispute put the parties in a position to cooperate with each other (cooperative) and using the principle of agreement in decision making involves a third party or not, and the decision equally wins (win-win). Dispute resolution processes that fall into this category are a negotiation, mediation, conciliation, ombudsmen and neutral fact finders. Third, the process of adjudication pseudo -dispute resolution process is usually a merger between the two processes of dispute resolution at the top, so that nature and the outcome depend on the pattern of the collaboration process. As for the dispute resolution processes that fall into this category is the mediation arbitration, trial mini (minitrial), examination of jurors summary (summary jury trial), early neutral evaluation (early neutral evaluation).

Completion of Shariah in Indonesia economic disputes through adjudication process in Indonesia can be done through two formal institutions established for it. The agency is the National Sharia Arbitration Board abbreviated to BASYARNAS Religious Courts. Article 1 (1) No. 7 of 1989 stipulates that the Religious Court is a special court hear the case-that the civil cases it is Muslim (Muslim). Following the political changes in the law organizing Religious Courts in Indonesia as stipulated in Law No. changes 7 1989 by Law No. 3 In 2006, the Religious Courts are one of the perpetrators of the judicial authorities seeking justice for the people who are Muslims regarding certain matters referred to in this Act. The judge actions are provided for in Article 49 of Law No. 3 in 2006. The authority of the Religious Court under Article 49 of Law No. 3 2006 is the duty and authority to examine, decide and resolve cases at the first level among people who are Muslims in the areas of marriage, inheritance, wills, grants, endowments, charity, infaq, sadaqah, and economic Shari'ah.

With the development of economic activities of Shariah, then through Law No. 3 2006 Indonesia had agreed that in the event of a dispute relating to the economy (business) sharia, will be resolved through the Religious Courts. Use of the judiciary is a matter that is not absolute because the tradition of positive law (the laws in force in the community in Indonesia) is known what is called peace. Peace

is one of the other efforts in the resolution of business disputes.

In connection with the structure of the legal system Formilnya, on 1 October 1993 that is 2 years after the operation mu'amalat Bank Indonesia on 1 November 1991 established a dispute settlement institution. This institution is an institution in addition to the General Jurisdiction alternative. The agency was named Agency of Arbitration Mua'malat Indonesia (BAMUI).

As the basis of Article 55 of the Islamic Banking Dispute Resolution, which reads:

"Settlement of disputes Islamic banking is done by the court within the Religious Courts. (Paragraph 1)

In the event that the parties have foretold the settlement of disputes other than those referred to in paragraph 1, the settlement of disputes carried out in accordance with the contents of the contract. (Paragraph 2)

Settlement of disputes referred to in paragraph (2) shall not be contrary to Islamic principles. (Paragraph 3)

Thus for Islamic banking dispute resolution, can be resolved through the courts (litigation) and out of court (nonlitigation) (Hudiata, 2015: 5-15).  
1. Religious Courts

Before the enactment of Law No. 3 of 2006 concerning the Religious Courts, dispute resolution sharia banking to do in the National Sharia Arbitration Board (Basyarnas). Conditions like these can be found at the end of the fatwa of the National Sharia Council (DSN) and subsequent positive through the instrument of Bank Indonesia Regulation. Then, on February 21, 2006, the President of the House of Representatives approved Law No. 3 of 2006 on the Amendment of UU Law No. 7 of 1989 about Religious Courts.

Fundamental change is the addition of absolute competence Religious Courts. Before the Law Courts newborn, PA is only authorized to hear the case-specific matters that disputes over marriage, inheritance, wills, grants, endowments, Sadaqah.

In Article 49 of Law Religion Court just mentioned that:

"Religious Court as the duty and authority to examine, decide and judge actions completed in the first level among people who are Muslims in the field:

- a. marriage
- b. inheritance
- c. will
- d. grant
- e. benefaction
- f. alms
- g. infaq
- h. Sadaqah
- i. sharia economy and others.

Elucidation of Article 49 letter i give sharia economic sense is any act or course of business which is executed according to Islamic principles include the following:

- a. Islamic Bank
- b. Islamic Micro Finance Institutions (LKMS)
- c. Takaful
- d. Retakaful
- e. Syariah Mutual Fund
- f. Islamic Bonds and Securities Futures
- g. Islamic securities
- h. Islamic financing
- i. Islamic pawnshop
- j. Islamic Financial Institutions Pension Fund
- k. Islamic Business

With the birth of the BAL into the formal juridical basis for the PA to be able to receive, examine, decide and resolve disputes sharia economy and not only prosecute six specific fields.

In terms of authority of the Religious Courts, in the beginning should die; ask on article 21 of Law No. 10 of 1998 on the amendment of Law No. 7 of 1992 concerning Banking noted that the shape of commercial banks in the form of limited companies, regional companies, cooperatives and limited liability company, while the Rural Bank legal entity can be a form of regional companies, cooperatives, limited liability companies, and other forms that can be assigned a government regulation.

Provision requiring banks as legal entities resulted in the customer relationship with the Bank is not a relationship that people have with people, but the legal relationship between a person with legal entities, even though the financing is muqayyadah relationship huku, what happens is the person with the bank as a legal entity, because in mudharabah muqayyadah bank serves only as

channeling agent that is partly responsible for the harm monks al-mal.

If the connected circuitry Article Religious Court, disputes that may arise among the people as subjects of law and Islamic banking chances are very small so the chances of disputes that may occur is between individual customers with the Islamic bank as a legal entity or the entity for the customers of Islamic banks to Islamic banks whose status as well as a legal entity.

From the above, it can be seen that Islamic finance has become one of the two economic systems prevailing in Indonesia and not a legal act. Thus, anyone associated with sharia economy without distinction of religion must be subject to Islamic economic system adopted, including the settlement of disputes economic Islamic economy is not only practiced by fellow Muslims but rather an economy based on the principles of Islam.

In fact, it intercommunication not just Muslims, while the Religious Courts just settlement to the case among people who are Muslims, the Law on Religious Courts provide a solution by means of voluntary submission for non-Muslims who intercommunication premises Islamic system for resolving disputes in the Religious Court. Rules of the submission are the principle of the Religious Courts after the removal of the option rights of inheritance as contained in the general explanation of Law No. 7 of 1989 on Religion Court.

Thus, to resolve disputes Islamic banking has had a formal juridical rules, ie if the parties do not specify which institution or entity is entitled to resolve the dispute, which reserves the right to adjudicate disputes within the Islamic banking is the religious courts. However, if the parties have determined how or appoint an agency or agencies for settlement persekisiannya is by consensus or by Sharia Arbitration, Mediation Banking or Public Court.

### **Through the Peace Settlement**

It has become a principle in civil procedure law that the court (judge) must reconcile the parties litigate. This principle requires the court (judge) in order to deal with a civil case filed her first attempt to reconcile the two sides litigate (Basir, 2009).

#### **1) Efforts Peace Through Mediation**

Mediation is a way of settling disputes through negotiation process to obtain the agreement of the parties with the assistance of a mediator.

The fundamental elements of the definition of mediation, among others:

- a) The existence of the dispute to be solved
- b) Completion implemented through negotiations
- c) negotiations aimed at reaching an agreement
- d) The presence of a mediator role in helping to resolve.

## 2) Can Act as Mediator

- a) The judge is not the case in the court examiner concerned.
- b) Advocate or legal academics.
- c) not a legal profession that is considered the party controls or experienced in the disputed amount.
- d) The judging panel of examiners cases.
- e) The combination of mediators referred to in item a and d, or the combined points b and d, or a combination point c and d.

As a neutral third party that serves both parties, the mediator role is to conduct interaction with the parties, either jointly or individually, and bring them in three stages as follows:

- a. Focusing on efforts to open up communication between the parties;
- b. Utilizing such communication to bridge or create mutual means between the parties (based on their perception of the dispute and the strengths and weaknesses of each); and
- c. Focus on the emerging settlement (Soemartono, 2006).

The duties of the mediator are also stipulated in the regulations for the implementation of mediation in Indonesia. These tasks are listed in Article 15 of Supreme Court Regulation No. 1 Year 2008. These tasks include:

- a) Prepare the proposed meeting schedule mediation to the parties for discussion and approval.
- b) Encouraging the parties to directly play a role in the mediation.
- c) Encouraging the parties are exploring and explore their interests and find a wide selection of the best solution for both parties.

d) To assist the parties to formulate a peace agreement in terms of the mediation agreement.

e) In the event that the mediation fails, the mediator must declare in writing and notify such failure to the judge.

## 3) Measures to Do Judges for Mediation Taking

- a) To order the parties to first go through mediation
- b) Delaying the trial court
- c) Provide an explanation of the mediation procedure
- d) Mediation reach agreement
- e) Continuing the case investigation if mediation fails

### Terms to Look for in the Peace Accords

- 1) Approval of peace must be at the will of both sides
- 2) The peace agreement should put an end to disputes
- 3) Approval of peace must be in writing
- 4) The peace agreement should involve all the parties litigate

## General Jurisdiction

In Law, No. 4 of 2004 on Judicial Power, arranged that the executing judicial authority is the Supreme Court and the Constitutional Court. For Judicial bodies that under the Supreme Court include the judiciary in general courts, religious courts, military courts, and administrative courts.

The general principle that applies to the entire judiciary is the judicial body may not refuse to examine, hear and decide a case filed on the grounds that the law does not exist or is less clear, but obliged to examine and hear.

Thus the principle of the legal framework for the public courts as part of the commissioning of the judicial authorities for the creation of a justice and legal certainty.

If there is a clause in an agreement that gives authority to the general courts to receive, examine and adjudicate disputes Islamic banking, general courts are entitled to receive and obliged to complete. It is based on the elucidation of Article 55 paragraph 2 of the Law of Islamic Banking.

Procedures for settling disputes through the courts. As is usual in handling every case filed, the

judge always charged up first study the case carefully to determine the substance of the case. It is useful to determine the direction of the course of the case investigation in the trial process will be. In connection with less that, in terms of economic examine cases especially sharia court of Islamic banking in advance, to make sure the case is not a case of an agreement containing the arbitration clause, that the Court of Religion does not investigate and adjudicate cases beyond the reach of his absolute authority. Having ascertained that the case is not a treaty dispute arbitration clauses in which there is the further action that should be done is to solve the case of judges in accordance with the provisions of applicable law. Thus the process of settlement of the case will be continued with the pursuit of peace for the parties.

Furthermore, if the remedies through both forms of peace are not successful, where the two sides did not meet an agreement to settle their case amicably then in accordance with the provisions of Article 155. Article 131 HIR R.Bg or paragraph (1) and (2) jo. Article 18 paragraph (2) PERMA judge shall continue the examination of the case in accordance with the provisions of the procedural law. Thus, the case will be examined and resolved through court proceedings (litigation) as it should be (Basir, 2009).

### **National Sharia Arbitration Board (BASYARNAS)**

Arbitration or Arbitrage (Netherlands), Arbitration (latin), tahkim (Islam). According to R. Subekti, deciphering Arbitration is a dispute resolution conducted by one or more arbitrators by agreement of the parties will abide by the decision given by the arbitrators of their choosing.

Under Article 1, paragraph (1) of Law Number 30 of 1999 concerning arbitration and alternative dispute resolution that arbitration is the way of settlement of civil disputes outside the courts of general jurisdiction based on the arbitration agreement made in writing by the parties to the dispute (Effendi, 1994).

Current Settlement Islamic economic system in Indonesia is mostly done in arbitration institution called the Arbitration Board Muamalat Indonesia (BAMUI) initiated by the Indonesian Ulema Council on 21 October 1993. The organization changed its name to the National Sharia Arbitration Board (NSAB atau BASYARNAS) aligned with the

Agency Indonesian National Arbitration Board (AINAB atau BANI) which may settle economic disputes by conventional law.

Arbitration raised their written agreement of the parties to the dispute in writing of the parties to the dispute to submit the dispute to arbitration institutions economy. Thus, the rights of the parties to the dispute settlement submit to justice has been dispensed. Party justice must reject and will not intervene to resolve disputes that have been defined through arbitration (Iska, 2014).

Procedures for settling disputes through arbitration in global Syariah. The deal to hand over BASYARNAS dispute settlement to be made by each party when an agreement or after the agreement through. Arbitration authority is to settle disputes surrounding the entire case arising in trade relations, industry, finance, services and others. As for the decision, in case the arbitrator made up of three people, then it should be taken a majority vote. When it is not achieved, then the chairman of the arbitrators could take and impose its own decisions are final and binding.

If the arbitration path can not resolve the dispute, then the judiciary is the last resort as the case breaker. The judge must consider referrals coming from the arbitrator who has handled the case as a material consideration to avoid the lengthy process of completion (Iska, 2014).

### **Conclusion**

Based on the nature of the process and decision, the dispute settlement can be divided into three categories: First; The process of adjudication, where the nature of the dispute settlement puts the conflicting parties on the two opposite sides (antagonistic) and the verdict issued by a third party who is authorized to decide to be losing and winning (win-lose) dispute resolution processes that fall into the category of this is judicial (litigation) and arbitration. Second, the consensus process, where the nature of the dispute put the parties in a position to cooperate with each other (cooperative) and using the principle of agreement in decision making involves a third party or not, and the decision equally wins (win-win). Dispute resolution processes that fall into this category are a negotiation, mediation, conciliation, ombudsmen and neutral fact finders. Third, the process of adjudication pseudo -dispute resolution process is usually a merger between the two processes of



dispute resolution at the top, so that the nature and the outcome depend on the pattern of the collaboration process. As for the dispute resolution processes that fall into this category is the mediation arbitration, trial mini (minitrial), examination of jurors summary (summary jury trial), early neutral evaluation (early neutral evaluation). Completion of Shariah in Indonesia economic disputes through adjudication process in Indonesia can be done through two formal institutions established for it. The agency is the National Sharia Arbitration Board abbreviated to BASYARNAS Religious Courts.

Settlement of disputes that occur in Islamic banking can be resolved through two pathways. The first, the settlement of disputes through the courts or litigation are regulated in Law No. 3 of 2006. The second, dispute resolution through outside agencies or non-litigation court is based on Article 1 (1) and (3) UUA. Dispute resolution through the courts conducted by the Religious Court and the General Court, while the settlement of disputes through nontrial conducted by the National Sharia Arbitration Board (NSAB atau BASYARNAS) with the completion of each procedure different.

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