

# Two lane settlement of sha 'riah economic dispute

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**TWO LANE SETTLEMENT OF SYARI'AH ECONOMIC DISPUTES  
BETWEEN RELIGIOUS COURT WITH NATIONAL SYARIAH  
ARBITRATION AGENCY (BASYARNAS)**

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**ABSTRACT**

Sharia economic development, especially in banking field both in domestic and abroad are very encouraging development. Due to a young age and it has not been sufficient understanding in various circles of economic practice, Shariah open the possibility of a dispute. When an economic dispute Shariah, there are two institutions authorized to handle its completion namely Religious Court and BASYARNAS. Both institutions that exist both religious court and BASYARNAS has advantages and disadvantages in dealing with economic disputes Shari'ah. It should be fostered openness of the various parties that prefer the Islamic Shura' (consensus) in determining everything and solve a problem. Through Shura 'dispute can be resolved satisfactorily, still can maintain the privacy of the parties, the closer the relationship of the parties, the time can be shortened, more cost-efficient, and the relationship of the parties can be improved better. If you see that the economic dispute resolution through BASYARNAS Shari'ah can be put before the settlement of disputes through the Religious Courts. Given the new economic practices Shariah, it still needs to be disseminated in addition to the economic application of Shariah, also need to be up-grade human resources and facilities, as well as the completeness of the constitutional basis and operational.

Keywords: Shari'a, economic Shari'ah, dispute settlement, Religious Court and BASYARNAS.

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## INTRODUCTION

Economic development of Shariah can not be separated from the part of the community effort to get the welfare of the corresponding shari'ah Islam. It can be seen with the rampant practice muamalah (transactions) that uses both the Islamic Shari'a in personal affairs, family and socio-economic. Muamalah practices based on Islamic shariah such as Shariah banking whichnot<sup>36</sup> only growing in Muslim countries but also in countries that are predominantly non-Muslim.

Muamalah practices based on Islamic Shariah to be found other than in marriage, inheritance, wills, grants, endowments, charity, infaq, and is in economic Shari'ah (Article 49 of Law No. 50 Year 2009) which include Shariah banks, microfinance institutions Shariah, insurance Shariah, Shariah reinsurance, mutual funds Shariah, Shariah bonds and commercial paper, medium-term Shariah, securities Shariah, Shariah financing, mortgage Shari'ah, pension funds Shari'ah financial institutions Shari'ah, and business Shari'ah (Elucidation of Article 49 letter i Law No. 50 Year 2009).

Although the ideals of goodness muamalah practice goes far beyond the economic practices of communist, socialist or liberal, still there are some problems in practice. These problems can arise because the practice muamalah by Islamic Shari'a is still relatively new, an understanding of the Islamic Shari'a was still minimal, and awareness to actual practice the Islamic Shari'a should kaffah also still was minimal.

Dispute resolution in practice muamalah by Islamic Shari'a according to Law No. 50 of 2009 on the Religious Courts<sup>2</sup> can be resolved through the Religious Courts. Settlement of disputes according to Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution<sup>1</sup> agreed disputing parties can also be resolved through arbitration.

Disputes can be settled through arbitration any dispute which arises in the case of controlled entirely by the parties to the dispute (Article 1, 2, 5 Law No. 30 Year 1999).

Previous settlement of disputes according to Islamic Shariah review is based on the Qur'an, among others surat Al Hujurot (49) of paragraph 9 and letters Nisa (4) Paragraph 35 and Sunnah are the narratives An Nasa'i, then on the 5th Jumadil Beginning 1414H coincide with the October 21, 1993 the Indonesian Ulema Council (MUI) established the Arbitration Board Muamalat Indonesia (BAMUI) which later on 30 Shawwal 1424 December 24, 2003 to coincide with Decision Letter MUI MUI No. Kep-09 / MUI / XII / 2003<sup>7</sup> changed its name to the National Sharia Arbitration Board (BASYARNAS) (Winata, 2012, hal. 145-148).

## **RESEARCH QUESTION**

Shariah dispute settlement authority as such there are two (2) lines or Double Track although both also will lead to the Supreme Court. Is the question arises with this two-track dispute resolution will facilitate the settlement of disputes? What will help each other? Besides which path is more effective and efficient way to resolve disputes Shari'ah?

To clarify the research problem, the authors propose a few questions:

1. How to resolve economic disputes Shariah in Indonesia?
2. Which path is more effective and efficient in resolving economic disputes Shari'ah?

In order for this research focus, the authors restrict research in economic dispute resolution Shariah in Islamic Court and Basyarnas.

Purpose of research is to know about the concept and practice of Shari'ah economy and problems in Indonesia.

The research objective is to seek answers on how to resolve disputes Shariah in Indonesian economy, and which path is more effective and efficient in resolving disputes between the economy Shariah Islamic Court and Basyarnas.

The usefulness of this study was to discover the mechanism of dispute settlement procedures Shariah economy through BASYARNAS and Religious Court. This study also intends to become an input for legal practitioners as well as for people who wish to seek justice through religious court and through the National Sharia Arbitration Board (BASYARNAS).

## **METHOD**

This research was commenced through literature study with comparative method to seek which is more effective way between BASYARNAS and Religious Court. This research available datas from various references and also from the staff and expert of the institutions related and also concern to the cases occurred.

## **THEORETICAL FRAMEWORK**

The increasing number of people, increasing the amount and the faster the activity, the interaction between each other in the fulfillment by the agreement, the agreement, cooperation, investment, and trade. The greater the number of interactions and increasingly heavy frequency of transactions in various fields, raises the possibility of disputes that require handling and settlement of a fast, effective (targeted and fast process) and efficient (minimal cost).

Islamic Sharia anticipate problems and disputes, although sometimes can not avoid the occurrence of problems and disputes. Disputes in the Islamic Shari'ah in general can be completed in two ways, namely deliberation process in the form of mediation in an effort to anticipate things that are not desirable, and tahkim (judge) something that has happened by Islamic jurists (judges).

Islamic Shariah dispute resolution, especially in the economic field of Shariah in Indonesia can be reached via a double track is through the Religious Courts (Winata, 2012) and Arbitration (Article 1, 2, 5 Law No. 30 Year 1999) in this case by BASYARNAS.

Settlement through the Religious Courts generally considered less effective and efficient because it takes a long time to remember a lot of cases they handle and ultimately the cost will also be more expensive.

Alternative dispute resolution through arbitration will be considered more efficient because it does not have to wait long in the solution, so as to reduce the cost incurred. Religious Court judgment which has the force of law still can be directly executed, while the award were not implemented voluntarily by the parties to the dispute can be submitted to the District Court to execute court decision on the request of either party to the dispute. Here occur inconsistencies in Islamic Shari'ah dispute resolution through arbitration. Islamic Shariah authority that should exist in the Islamic Court, but in case the parties do not make the results of voluntary arbitration, either party is required to register the execution to the District Court (Article 61 Law No. 30 Year 1999).

This dualism is confusing, as showing that the District Court 'not willing to' give authority to enforce Shariah Islamic Religious Court is not given full authority to enforce the Islamic Shari'a. However, strictly in accordance with Act No. 50 of 2009 on the Religious Courts that religious court has broad in resolving disputes, including disputes in the economic muamalah Shari'ah (Article 49 Law No. 50 Year 2009).

It was also confirmed in the Shari'ah banking dispute with the birth of the Constitutional Court Decision No. 93 / PUU-X / 2012 which cancels an explanation of Article 55 of the Law Sharia banking, which stated that the Shariah banking disputes resolved through the Religious Courts. Indeed they should have the authority given to the religious court in accordance wording of Article 55 of Law No. 21 of 2008 concerning Sharia Banking namely: "Sharia Banking Dispute resolution carried by the court within the Religious Courts".

Based on the elaboration above, the position of the Religious Courts in addition BASYARNAS as an economic alternative dispute resolution to resolve disputes Shariah

Shariah economy has been solid. Furthermore, the authors compare the effectiveness and efficiency of economic dispute resolution Shari'ah through the Religious Courts and BASYARNAS.

This study uses normative juridical approach<sup>2</sup> to perform a comparison between the economic dispute resolution Shariah in Islamic Court with BASYARNAS. Presentation using normative juridical analysis<sup>3</sup> with a holistic analysis, ie an approach that relies on the study of law with regard various science that includes sociology, politics and economics. Research will be conducted in reference research (research literature) and has been conducted through interviews with competent resources are expected to represent the party of Islamic Court and BASYARNAS in particular and the general society leaders danaktivis. The location is in the collection of secondary data research conducted in several libraries and related agencies in Bandung and Jakarta. In addition, interviews were conducted to the parties who are competent in the implementation of Islamic Shari'ah and dispute resolution both academics, community leaders, judges, stakeholders in communities around Bandung and Jakarta. Research has been carried out within 1 year from 2014 until 2015.

## RESULT AND DISCUSSION

### Resolution of Economic Disputes Shariah through the Religious Courts in Indonesia

#### *Profile of Religious Court*

Islamic justice in Indonesia, hereinafter referred to as "Religious Court" has existed in various places in the archipelago, far since colonial times Belanda. According to court historians, Religious Court has existed since the 16th century. In history, dated January 19, 1882 set as the anniversary, which coincide with the enactment ordonantie Gazette. 1882-152, concerning the Religious Courts in Java and Madura (Rosid, 2010, hal. 35).

Field Cod

Institutional religious courts stipulated in Law No. 7 Tahun 1989 of Religious Justice . In regards to Article 6 of the institutional, religious courts consist of two levels, namely: religious courts as courts of first instance and the Court as a religious high court of appeal.

Religious Court as the court of first instance court is acting to receive, examine, and

<sup>2</sup> The study of jurisprudence (judicial) normative legal activity is not required to explain the data support or social facts, because science does not know the law normative social data or facts known only legal material, so to explain the law or [28] meaning and give value to be legal the only use legal concepts and measures taken are normative measures. Bahder Johan Nasution, *Metode Penelitian Ilmu Hukum*, Mandar Maju, Bandung: 2008, p. 87.

<sup>3</sup> Normative juridical analysis, analysis of different activities by analyzing the empirical legal science, the science of normative legal steps, steps or activities of analysis have very specific proper or special, specificity here that is seen is whether the normative requirements of the law are met or not in accordance with the provisions of the law and building sendiri. *Ibid*.

decide upon any request or claim at the earliest stage and bottom. Religious Court as a judicial act in everyday accommodate at an early stage and to decide or judge at an early stage any case filed looking for justice. None of community may submit a request or complaint directly to the Court of Religion.

All types of cases must first through the Religious Court in its capacity as court petition or firstly sued. To all cases referred to it in its capacity as court of first instance, should receive, examine, and decide upon, forbidden refused to receive, examine, and decide cases submitted to it under the pretext of this. It has been clearly stated in Article 56 that "The court may not refuse to examine and decide a case filed under the pretext that the law does not or less clear, but shall examine and decide upon its obligatory" (Structure and Authority of Religious Court).

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### *Dispute Settlement Mechanism*

Legal proceedings in the same religious court proceedings in the District Court. It is stipulated in Article 54 of Law No. 3 of 2006 on the Amendment of Act No. 7 1989 about the Religious Court, stating that: "The procedural law applicable to the religious courts are civil procedural law applicable in the courts in general courts, except as specifically regulated in this law".

The civil procedure law as applicable in the general court, HIR (Het Herzeine Inlandsche Reglement) and R.Bg (Rechts Reglement buitengewesten) including the provisions stipulated in Rv (Reglement of de Rechtsvordering), the Civil Code, Act No. 4 Year 2004 on Judicial Power, Law No. 5 of 2004 concerning the Supreme Court and Law No. 8 Year 2004 on the General and other related regulations.

The civil procedure law as applicable in the general court, HIR (Het Herzeine Inlandsche Reglement) and R.Bg (Rechts Reglement buitengewesten) including the provisions stipulated in Rv (Reglement of de Rechtsvordering), the Civil Code, Act No. 4 Year 2004 on Judicial Power, Law No. 5 of 2004 concerning the Supreme Court and Law No. 8 Year 2004 on the General and other related regulations.

**The first step** in resolving disputes in the Religious as well as the District Court that peace through mediation. This is stipulated in Article 154 R.Bg/130 HIR and Perma No. 1 of 2008. Article 1, point 7 PERMA states that: "a way of settling disputes through negotiation process to obtain the agreement of the parties with the assistance of a mediator". Stages of dispute resolution in the Religious Court include:

1. Registration;
2. Mediation; if there is no peace continued to stage
3. Trial:
  - Inspection;
  - Description of the parties;
  - Description of the witnesses and experts;
  - Reply and Rejoinder;
4. Consultative Panel of Judges;
5. Reading of Decision;
6. Execution Decision.

**The second step** if peace can not be occurred, then in order to bring justice Judges examine the case and request information from the parties and witnesses in the trial if necessary. Furthermore, the decision was made Judge to provide justice for the people.

Dispute resolution in the Religious Courts as in State Courts sometimes there is no time limit it, the cost is dependent to the process through. So it is common to take years and cost very high. Disputes recorded in the Religious according to information from the Director General of the Religious Courts Supreme Court Republic of Indonesia (Puwosusilo, 2013): In 2012 nationally, the number of cases handled by the PA / MS during the year 2012 amounted to 476 961. While the case on appeal, (for example) is handled PTA / MS Aceh only amounted 2.533. The number of the case on appeal and Review of the smaller back again. It shows the people's trust and satisfaction is very high toward religious court.

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### **Settlement of Disputes through Arbitration Islamic Sharia National Sharia (BASYARNAS) in Indonesia**

#### ***Profile of BASYARNAS***

Arbitration institution is always required in addition to the judiciary, as <sup>7</sup> **BANI Indonesian National Arbitration Board**: founded by the Chamber of Commerce in 1977) remain in demand despite existing eternity since the District Court, High Court and Supreme Court (BASYARNAS, 2014).

Field Cod

Therefore BASYARNAS (National Islamic Arbitration Board: founded by the MUI in 1993) is always necessary although later religious court was <sup>1</sup> **authorized to complete, examine and decide** the dispute **in the field of** Islamic economics (Amendment Act No. 7 of 1989). Compared with the judiciary (including religious court), arbitration institution chosen by the people seeking justice because it has many advantages. Excess arbitration institution



rather than the judiciary, among others are: the examination process is simple, closed, fast and dignified.

<sup>11</sup> National Sharia Arbitration Board (BASYARNAS) of the establishment named Arbitration Muamalat Indonesia (BAMUI). BAMUI established on 21 October 1993 - The Foundation subsequently incorporated by Indonesian Ulama Council (MUI) Decree No. Kep-09 / MUI / XII / 2003 dated December 24, 2003 turned into BASYARNAS. BASYARNAS domiciled in Jakarta with branches or representatives in other places deemed necessary. It has some legal basis, comprises Al-Quran, Sunnah, Ijma'; Act 30 of 1999 on Arbitration and Alternative Dispute Resolution, MUI Decree No. Kep-09 / MUI / XII / 2003 dated December 24, 2003; DSN Decree-MUI.

### *The Authority of BASYARNAS*

<sup>11</sup> a. Resolve disputes fairly and quickly muamalah (civil) arising in the field of commerce, finance, industry, services and others that according to the law and regulations are fully controlled by the parties, and the parties agree in writing to submit the solution to BASYARNAS in accordance with the procedure BASYARNAS.

b. Give a binding opinion at the request of the parties without the existence of a dispute regarding the issue with respect to an agreement.

### **3. Arbitration Procedure:**

National Sharia Arbitration Board (BASYARNAS) have rules of procedure which contains provisions, among others:

- Application to conduct the arbitration;
- Determination of the arbitrator;
- Events examination;
- Peace;
- Evidence and witnesses;
- The end of the examination;
- Decision making;
- Fixes Decision;
- Cancellation of the decision;
- Decision Registration;
- Implementation of the decision (execution).

## **Case Settlement of Shariah Economy Dispute through the Religious Court and Basyarnas**

### ***Case Settlement through the Religious Courts***

There has been a dispute between a customer of Bank Mega Indonesian Shariah named Nining Rohayati Bint Waslam with Proxy Jaenurdin, SH. (Plaintiff) with Shariah Bank Mega Indonesia with Attorney Risky Aditiaresi, F. Ismail Tri Murdjaka, SH. and Sri Sawuri Ratnapuri, SH. (Defendant). Plaintiff has filed a lawsuit on December 2, 2009 and enrolled in the Religious Bandung with number: 3066 / Pdt.G / 2009 / PA.Bdg December 3, 2009. Against this case has been born Bandung Religious Court Decision No: 3066 / Pdt.G / 2009/PA.Bdg which was decided in the next year is Monday October 11, 2010. Which basically contains:

Passing:

1. Reject the Plaintiff's claim in its entirety;
2. To charge the entire cost of this case to the Plaintiff, Rp 441,000, - (four hundred and forty thousand dollars).

Furthermore, Plaintiff did appeal to the High Court of Bandung Religion and the birth date of February 14, 2011 Decision No. 10 / Pdt.G / 2011 / PTA.Bdg which basically contains:

Passing:

1. To declare, that the appeal filed by the Appellant formally acceptable;
2. Cancel the court ruling Religion Bandung on October 11, 2010 to coincide with the date of the M 3 Dzulqo'dah 1431 Number: 3066 / Pdt.G / 2009 / PA.Bdg. who filed the appeal.

Furthermore, Plaintiff act to the appeal dated March 29, 2011 and on December 5, 2011 was born Decision Number: 492 K / AG / 2011, which essentially contains:

Passing:

- Reject The appeal of Cassation Nining Rohayati the Waslam daughter;
- To Appeal Cassation / Plaintiff to pay court costs in this appeal is Rp 500.000, - (five hundred thousand dollars);

### ***Case of Economic Dispute Resolution through BASYARNAS***

There has been a dispute between bank customers (Plaintiff) with a bank (Defendant), Plaintiffs are not satisfied with the Defendants in the case of a loan of USD 878 791 366, -. The names of the parties withheld pursuant to Article 27 of Law No. 30 of 1999 which states:

"All of the dispute by the arbitrator or the arbitral tribunal conducted behind closed doors". Proceedings in BASYARNAS longest lasting about 6 months, at a cost that is agreed upon by the parties.

<sup>3</sup> Decision of the National Islamic Arbitration (BASYARNAS) No. 16/2008 / BASYARNAS / ka.Jak which essentially contains<sup>4</sup>:

In Exception:

-To declare defendant can not accepted.

In Essential Case

-To grant Petition in part;

-To declare that Respondent did breach of contract;

-To declare Void Murabahah Financing Agreement date February 23 made by and in front Efran Yuniato, SH, Notary in Jakarta;

-To punish defendant to return to Plaintiff money amount Rp.878.791.366, - (eight hundred and seventy-eight million seven hundred and ninety-one thousand three hundred and sixty-six Rupiah) consisting of:

- a. Banks charge fees Payment <sup>6</sup> Rp.350.000.000, - (three hundred fifty million Rupiah) or 1% (one percent) from the value of the financing facilities totaling <sup>9</sup> Rp.35.000.000.000, - (thirty five billion Rupiah) Murabaha agreement declared null and void because of the law;
- b. Payment of insurance money project (PT. Asuransi Dayin Mitra) totaling Rp.45.027.000, - (forty five million twenty seven thousand Rupiah);
- c. Advance payment Social Security contributions Rp.5.962.700,- totaling (Five million nine hundred and sixty-two thousand seven hundred Rupiah);
- d. Payment of the fees to Arrangement and Building Control Service Jakarta Provincial Government of Rp.298.135.000, - (two hundred and ninety eight million one hundred thirty five thousand Rupiah);
- e. Money repayments Rp.179.666.666 some margin, - (one hundred and seventy-nine million six hundred and sixty six thousand six hundred and sixty six Rupiah).

-To punish Respondent to return to the Applicant costs Cost The fee is supported by other evidence all costs proof expenditure which has been verified by a public

<sup>4</sup> SENTENCE Number: <sup>3</sup> 792/Pdt.G/2009/PA.JP., Religious Court of Central Jakarta.

accounting firm regarding the truth from, whether about the authenticity of Standard and Poor evidence or about the cost;

-Resolve that public accounting firm tasked to perform Verification of the costs that have been incurred by the applicant is a public accounting firm approved by the Applicant and the Respondent within 30 (thirty) days from the verdict of the Council read.

-Resolve if the Petitioner and the Respondent failed to reach agreement <sup>9</sup> on the appointment of the Public Accounting Firm waktu30 term (thirty) days, the appointment of public accounting firm will be made by the Assembly after the Assembly to obtain a report from one of the litigants, that or of the Applicant or from the Respondent.

-Resolve the cost of public accounting firm, both appointed by the Applicant and the Respondent and appointed by the Assembly borne by the Applicant and the Respondent respectively by 50% (fifty percent).

-Reject Request applicant to put sequestration.

-Reject The petition of money forced (dwangsom).

-To declare This decision is final and binding (final and binding) and has a legally enforceable since spoken so therefore can not be canceled through any legal remedy.

-Reject Rest of the Petitioner demands.

-To Punish Respondent to implement this decision no later than 30 (thirty) days since pronouncement of this decision.

-To charge Costs incurred in this case the Applicant danTermohon respectively ½ portion of the costs of this case.

-Resolve That if the Respondent rejected both by means of silence or conduct legal measures Aimed at the cancellation of this decision, Among others, by filing an objection or create a new lawsuit over religious court or the General Court so that the execution of this decision be delayed let alone be erlarut-soluble, then the applicant may file complaints and appeals Bank Indonesia Bank Indonesia to impose administrative sanctions and reduce health and Bank Indonesia must be based on the legal force of this decision meets the petition are Reviews such that.

-To order to the Secretary of the Assembly as Authorized official arbiter for Registering derivatives arbitral awards at the Registrar's Office determined in Central Jakarta Religious Court deadline as Law <sup>3</sup> 30 of 1999 on Arbitration and Alternative

Dispute Resolution in conjunction with the Appellate Court No. 08 Date 10 October 2008.

## ANALYSIS

### Resolution of Economic Disputes Shariah in Indonesia

Shariah economic development in Indonesia is encouraging and be thankful for, especially in the field of Shariah banking. According to the Director General for Religious Courts Supreme Court, (Puwosusilo, 2013) Islamic economic development in Indonesia is growing unusually rapidly. Even Indonesia is the biggest Islamic retail banking. Along with the rapid development, the Islamic economic disputes will also be more and more. Disputes that later settled in religious courts.

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At the time the writer doing research in Public Relations (PR) Bandung Islamic Court stated that the economic disputes Shari'ah is still very minimal. This was evidenced by the small number of complaints each year dispute in his community to the religious court, especially in the city.

So even according to the staff BASYARNAS, (Basyarnas Staff, 2014) that since its establishment until 2014 economic dispute resolution Shariah new Islamic banking in particular there are about 20 cases. Thank God all disputes can be resolved through peace.

Field Cod

Shariah economic dispute resolution are required more professional in accordance Shari'ah ie rapid dispute resolution, affordable and satisfying sense of justice for the people. Dispute settlement in economic Shari'ah very noble mission and are required to maintain excellent performance, because according to the Shari'ah economic vision is to bring a more favorable economic system, fair, safe and be rahmatan lil alamin.

Implementation of Shariah are not diehard economy (overall) in fact has given rise to a negative effective that as no different from the economic system of usury that only benefit the parties alone. Similarly, if the Shari'ah economic dispute resolution professionals who do not fit the Islamic shariah will only cause negative effects for businesses of Shari'ah, people who take advantage of economies of Shariah or the subject of criticism for those who do not like the economy shari'ah.

Indonesia's 2 tracks (track) Shariah economic dispute resolution is through track Religious Courts and Arbitration National Sharia (BASYARNAS). Religious Court stands for the authority of the Judicial institutions that have not applied the principles of Shari'ah. While the presence of Basyarnas an alternative dispute resolution Shariah economy is

expected to reduce the accumulation of cases in the courts of Religion and expected more simple while maintaining privacy (confidential) the parties to the dispute.

Track of Shariah economic dispute resolution through the Religious Courts in Indonesia has been steady since the Religious Courts are institutions that are already established and led the judges who are professionals. But because it uses the same legal proceedings with the General Court that still use the legal basis Civil and Criminal colonial heritage has been perceived negative impact on the economic value of the dispute settlement kesyari'ahan Shari'ah itself. For example, in the absence of a period specified in the resolution of disputes that have to spend a long time and high costs that eventually took up a lot of other things. Including because of the nature of justice is open to the public, it will lead to information case be published to various groups. Will possibly lead to a loss in the form of a negative image on the parties to the dispute. But with peace efforts in the early stages of dispute resolution in the Religious Court is expected to cover the image completion dispute always long and costly.

The track settlement of disputes through alternative dispute resolution BASYARNAS as non-litigation since the beginning is formatted for easy, low cost and maintain the privacy of the parties is to be strengthened. The period of the longest within 180 days (6 months) is a convenience, reduce costs and at the same time benefit for the community, especially Shariah economic actors. But can also be negative when the result of the arbitration is not in line with expectations for the quality of the arbitrators who lack experience, and execution of the arbitral award which is less powerful. Nevertheless, the execution of the judgment can be reinforced by the order of execution of the Chairman of the Religious. Thus in addition to fast, low cost and powerful in arbitration decision execution.

Its jurisdiction seen ups and downs, especially in resolving economic disputes Shari'ah. Although Article 18 and Article 25 of Law No. 48 Year 2009 concerning Judicial Authority<sup>27</sup> stating that the Supreme Court in charge of 4 (four) under the judiciary, the public courts, religious courts, administrative courts and military courts. Indeed, based on the law in any court having jurisdiction<sup>26</sup> to try the judicial environment (diversity jurisdiction) are absolute in their respective areas of jurisdiction.

If in the case filed by the Applicant to the Islamic Court can be directly addressed to the bitter end, but in the case of dispute resolution is done through execution BASYARNAS Decision still occur attraction authority. The absolute authority of the judiciary in the field of jurisdiction did not automatically make the Religious Courts absolute authority in Shari'ah economic settlement. Whereas Article 49 of Law No. 3 of 2006 on the Religious Courts that

have been refurbished into Law No. 50 of 2009 on the Religious Court stated that the religious court competent to deal with in the case of marriage, inheritance, wills, grants, endowments, charity, infaq, and shodaqoh economy is in Shari'ah. Even gave the Appellate Court (SEMA) No. 8 of 2008 on Arbitration Decision Execution Sharia point number 4, the more states that: "In the case of Sharia Arbitration Board's decision was not implemented voluntarily, then the decision is implemented based on the command chair of the competent court at the request of one party to the dispute and therefore in accordance with Article 49 of Law No. 7 of 1989 as amended by No. 3 of 2006 Islamic Court also assigned and authorized to examine, decide and resolve the case in the field of Islamic economics, the President of the Court ordered the execution of religion that authorized Arbitration decision Sharia". (SEMA (Supreme Court Sentence) Number 8 Year 2008).

But after the birth the Appellate Court (SEMA) No. 8 of 2010, which cancels (SEMA) No. 8 of 2008, which contains the execution of the decision of the National Islamic Arbitration Board (BASYARNAS) which is the authority of the religious courts, then based on Article 59 paragraph (3) Law No. 48 Year 2009 concerning Judicial Authority stated in terms of the parties do not implement the decision of the arbitration (including sharia arbitration) voluntarily, then the decision (arbitration) is implemented based on the command chair of the district court, at the request of either party to the dispute, (hukumonline, 2011).

In the case of execution of this Decision BASYARNAS cause confusion for law enforcer, and confusion for justice seekers. If based on Law No. 48 of 2009 on the Judiciary in particular Article 59 paragraph (3) with description and Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution, namely in Article 61 stated that in the event the parties do not implement the decision of the arbitration (including also sharia arbitration) voluntarily, then the decision is implemented based on the command chair of the district court, upon request of either party to the dispute, and the same religious court be authorized to execute the Decision of BASYARNAS (Law Number 30 Year 1999; Law Number 48 Year 2009).

Alhamdulillah robbil alamin recent developments is the birth of the Decree (SK) The Constitutional Court No. 93 of 2012, (Religious Court Magazine, 2014) which cancels SEMA No. 8 of 2010, which stated that the authority to carry out the execution verdict BASYARNAS is on the order of the Chairman of the District Court canceled. Decree No. 93 of the Constitutional Court returns the absolute authority of the religious court to deal with disputes or cases in the field of jurisdiction, namely the case of religion. thus its jurisdiction has been strong to handle those cases in economics Shari'ah and issued a writ of execution against the verdict BASYARNAS.

### Analysis Against Shariah Economic Dispute Resolution Practice in Indonesia.

There are two tracks in the economic dispute resolution Shari'ah. First through religious courts and the second through the National Sharia Arbitration Board (BASYARNAS).

Excess of economic dispute resolution through Religious Court track (Fahmudin) is as follows:

1. Court have the human resources that already understand the problems of sharia, living increase their insight and knowledge through education and training on a regular basis.
2. Although a bill on Islamic economics has not ratified yet the Religious Courts have established sufficient substantive law, particularly with regard to economic sharia, including in the form of books of fiqh muamalah is contextual in its application.
3. The existence of the Religious Courts office almost covering all regions and the municipal districts throughout Indonesia and most of the landslide apply network Information Technology (IT) on the basis of the Internet, so when compared with BASYARNAS whose existence is still concentrated in the capital region, the Religious Courts have the advantage in easing service.
4. Getting the support of the majority of the population of Indonesia, which is currently muslim community has a high spirit in upholding the values of their religion.
5. There is strong political support for the government and the Parliament have agreed on the expansion of the authority of the Religious Court on 21 February 2006 that the enactment of Law No. 3 The year 2006 was a necessity to adjust to the demands of the existing law, such as paradigm shift from family courts to the modern justice.
6. The support of Banking Authority (Bank Indonesia) and the support of the Institute of Islamic Finance worldwide.

The weakness of economic dispute resolution Shariah Shariah banking in particular through the Religious Court (Fahmudin), namely:

1. Apparatus Religious Courts have a background that most of Shariah and legal disciplines lack of understanding of economic activity both micro and macro, also activities in the field of real sector, production, distribution and consumption.
2. Apparatus Religious Courts still less control of the activities of Islamic financial institutions to support the real sector business activities, such as: Bank of Sharia, Sharia, Islamic pawnshop, Multifinance, Capital Markets, and so on.



3. Imaging inferior to the Religious who viewed merely struggling to handle the problem NCTR difficult to remove, it is the impact of the lack of support from relevant agencies to socialise Law 3 of 2006 jo to Act 50 of 2009.

4. The existence of the judiciary, especially the majority of judges are still clueless (stuttering technology) became an obstacle for those who would settle disputes Islamic economics, because knowledge of Islamic economics for judges should always be up to date must be supported by their ability to access information from a variety media mainly through the internet. To anticipate this seems Badilag responsive to continue to promote the contest IT (Information Technology) for Religious Courts throughout Indonesia, call Badilag proficiency level has been getting positive response and most of the Religious Courts in Indonesia, it is proved to have been the formation of the IT team in most of the areas far from the capital. At least their IT contest held by the Badilag to provide a stimulus for the forces of religious judgement vying for access to information via the internet.

While the economic advantages of dispute resolution Shari'ah through BASYARNAS (BASYARNAS, 2014) namely:

1. The arbitral tribunal carried out simply in one level - the level of the first and last - in a family atmosphere and (special arbitration sharia) in the framework of maintaining *silaturrahim* and *ukhwuah Islamiyah*.
2. The arbitral tribunal held behind closed doors (confidential) - do not open as a trial, so that the parties to the dispute and the dispute of material unknown to the public at large. Full disclosure of personal disputes and disputes both companies can bring down both the dignity, self-esteem and personal honor and the image and performance of the company.
3. The arbitral tribunal implemented faster. The arbitral tribunal should have taken the decision not later than 180 days (6 months). Compare with the trial court that often takes many years with no small cost.
4. The arbitration decision is "final and binding" final and binding, there is no appeal and cassation - short, fast and efficient. Efficiency is greatly appreciated in all affairs, especially in the world of commerce.
5. The award has executorial strength. Arbitral award, if not carried out voluntarily, then the execution of the decision implemented by the **command Chairman of the Court at the request of** either party - such as a civil judgment on the legal system in general.

The shortage of Shari'ah economic dispute resolution through BASYARNAS namely:

1. This institution is still relatively new experience in resolving disputes, especially in the economic Shari'ah was not really tested.

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2. The arbitrator is also despite coming from various backgrounds who are experts in their field but in understanding Shari'ah relatively new economy remains to be improved.
3. The amount of the fee agreed by the parties can be a separate mental burden for the parties to proceedings in BASYARNAS because it is not defined by BASYARNAS but by the parties. Maybe the parties feel proud to establish a low cost case, when in fact the court fee need not be expensive.
4. Decisions are not directly executed by the parties and require command Chairman of the Religious to carry out the execution of the arbitration decision raises less powerfullnya perception of this institution.
5. The new and relatively new arbitrators may not very well known by the public, so that the level of confidence to these institutions is still not high.

Based on the explanation above, we get the information that the **first**, more religious court proceedings get legal certainty than in BASYARNAS. **Secondly**, but proceedings in the Religious too wordy, long and expensive, while in BASYARNAS more simple, easy and inexpensive. **Third**, It privacy in BASYARNAS more awake than in the courts that are open. **Fourth**, the ability of the judges in the Court of religion in religious matters no doubt but the economic case may still need to be improved, while in BASYARNAS the arbitrators may be recruited from among the experts and practitioners in the field of law and economics Shariah. **Fifth**, and if in the Religious equipment and facilities of organization assembly is completed, in BASYARNAS may still be perfected.

## CONCLUSION

After doing research and discussion on the economics of Shariah, implementation and dispute resolution in the economy of the Shari'ah, the authors obtained the following conclusions:

- 1). Implementation of the rules is not always perfect something, it can open up opportunities for disputes. Likewise in the implementation of Shari'ah economy. Implementation of Shariah economy also open the possibility of a dispute, let alone application is still very new and still in the learning stages. But as the perfect teachings of Islam always provide a solution that is a solution through syu'ro (consensus of the parties to the dispute) and tahkim (trial). In Indonesia, the second track (track) the settlement of the dispute, namely through the track by track Religious Court and Arbitration Board of the National Shariah (BASYARNAS). After the establishment of the Constitutional Court Decree No. 93 of 2012 became powerful within its jurisdiction to deal with disputes and cases in the jurisdiction of religion.

2). In resolving disputes Shariah economy obtained the following information: **first**, more religious court proceedings get legal certainty than in BASYARNAS. **Secondly**, but proceedings in the Religious too wordy, long and expensive, while in BASYARNAS more simple, easy and inexpensive. **Third**, It privacy in BASYARNAS more awake than in the courts that are open. **Fourth**, the ability of the judges in the Court of religion in religious matters no doubt but the economic case may still need to be improved, while in BASYARNAS the arbitrators may be recruited from among the experts and practitioners in the field of law and economics Shariah. **Fifth**, and if in the Religious equipment and facilities persidang organization is complete, in BASYARNAS may still be perfected.

Considering the above conclusions, the authors noticed that the existing institutions the Religious Court and BASYARNAS both have advantages and disadvantages in dealing with Shari'ah economic disputes.

It should be fostered openness of the various parties that prefer the Islamic Shura' (consensus) in determining everything and solve a problem. Through Shura' dispute can be resolved satisfactorily, still can maintain the privacy of the parties, the closer the relationship of the parties, the time can be shortened, more cost-efficient, and the relationship of the parties can be improved better.

If see that the economic dispute resolution Shari'ah through BASYARNAS can put before the settlement of disputes through the Religious Courts. In the end of the conclusion, this article proposes several advice as mentioned below.

1). Islam is the only religion that is good and perfect that the only proper life system to be implemented by humans as a caliph in the earth. Among the tangible evidence of the truth of Islam is the economic teachings of Shariah. Shariah can bring economic justice, comfort, security, safety and welfare of the human world and the hereafter. Unfortunately, not all people understand it, especially the Muslims themselves do not all understand let alone implement it. For that we need to be improved socialization application of Islamic Shariah Shariah economic particularly through sermons, proselytizing, and tausiyah in various groups and agencies. Even should also formed containers both in the realm of public and private institutions or community for the implementation of Islamic shariah, especially economic Shari'ah.

2). To anticipate and resolve problems in the application of Shari'ah as the uneven economic knowledge of Shari'ah in the economy as well as their users, it needs to be improved socialization and even training Shari'ah economy; still lack basic support legal and operational framework for the implementation of Shariah economy, it should be more

intensified demands and legislation, rules and policies concerning the economic implementation of Shariah; and still lack the institutions implementing Shariah economy, it is necessary to continue to be made in various forums, institutions or community economic lover Shari'ah.

3). In economic dispute resolution Shariah necessary to do some upgrading that involve human resources and facilities. That needs to be refined on the basis of legal and economic operation of Shariah, consistency and independence rules of law enforcement; need to increase economic understanding of Shariah in the public and law enforcement officials, especially in the Religious and BASYARNAS; businesses need to be motivated to implement Shariah economy through policies that favor the implementation of Shariah economy in our country; the need for improved skills of judges and arbitrators to handle economic disputes Shariah; facilities need to increase the implementation of Shariah good economic dispute resolution standard operational procedures (SOP) as well as other supporting facilities; the need for society to give political support to the leaders of the pro Shariah; and the need for the public to participate actively in the implementation and development of he economy, especially the Islamic shariah Shariah. Allohu knows best.

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