

Dispute Settlement in Sharia Banking in Indonesia

DOI: <https://doi.org/10.47175/rissj.v4i2.671>

| Syaifuddin |

*Legal studies, Universitas
Muhammadiyah Sumatera
Utara, Indonesia*

suryaperdana@umsu.ac.id

ABSTRACT

The birth of the dual banking system in Indonesia was marked by the establishment of Indonesia's first sharia commercial bank, Bank Muamalat. The first amendments to the Religious Courts Act of 1989 were seen as a response to dispute resolution, but the advent of the law did not immediately open an opportunity for dispute resolution, due to the National Sharia Council and banking fatwas. Indonesian regulations continue to treat disputes in the sharia banking industry as arbitrators, and Law No. 21 of 2008 on Sharia Banking Regulation is another legislative instrument that provides channels for Islamic banking disputes through litigation and out-of-court proceedings. This study was conducted normatively, using different legal materials depending on the issue. The study found that forms of Islamic banking consist of profit products and social and religious products. For charitable sharia banking products, disputes with bank customers can be resolved by national sharia arbitration courts and judicial institutions, whereas social and religious sharia banking products can only be resolved by religious courts or district courts. At the discretion of the judge according to the contract. In the case of disputes between banks and customers, the arbitration board only has the power to decide the dispute and not to enforce the law, but in sharia banks, disputes in litigation, religious courts and district courts have jurisdiction for dispute resolution. Have the right Enforcement where principal or the losing party does not act voluntarily to decide or enforce and/or where the auction leads to legal proceedings.

KEYWORDS

settlement; dispute; islamic banking products; Indonesia

INTRODUCTION

Islamic banks, better known as Islamic banks in Indonesia, are defined as "financial institutions whose principal activity is the provision of credit and other payment and currency circulation services, and whose operations are conducted in accordance with Islamic Shariah principles."¹ It has been. Established in Indonesia in November 1991, Syari'ah Bank's initial capital was Rp.106,382,000.00 soared to his Rp. In May 2003² Rp.5.09 trillion, in April 2006³ Rp.21 trillion and in the second half of 2022 he stands at

¹ Abd. Aziz Dahlan Et-al (Ed), Ensiklopedi Hukum Islam, Jilid 1, Jakarta: PT Icthiar Baru van Hove, Edition I, 1996, p. 194.

² Suaji Lestiadi, Perjanjian Pembiayaan dan Lembaga Jaminan Perbankan Syari'ah, Makalah dalam Diskusi dan Rapat Pleno Pengurus Pusat Ikatan Notaris Indonesia dan Upgrading-refresing Cours, Yogyakarta 22 Agustus 2003.

³ Yuslan Fauzi, *Peran Bank Syari'ah Dalam Perekonomian nasional* Paper in the National Seminar on the Role of Bank Syari'ah Mandiri and Participation of IAIN-SU in the Context of Increasing Community Fund Collection Through the Sharia Financial System in North Sumatra in particular and in Indonesia in general,

IDR 744.64 trillion. Since 1997, it has been plagued by an economic crisis.⁴ Interest rates for Islamic banks will reach 23.63% in the second half of 2022 due to unstable economic conditions.⁵

From a broker's point of view, Bank Syariah's performance is improving year by year. In fact, in the first half of 2006, the ratio of Indonesian Islamic banks to outstanding deposits (FDR) was 106%⁶ and the ratio of Indonesian Islamic banks to outstanding deposits⁷ (FDR) was 106%. The percentage of non-performing banks was 106% in the first half of 2006 in finance (NPF) was 4.27%, and⁸ in the first half of 2022, his FDR was 80-90% with an NPF of 2.55%. In terms of raising public funds, Shariah Banks operate not only in the form of commercial funds through savings plans, fixed deposits, etc. but also in the form of Zakat, Inforac, Sodako and Inforac Charitable Funds. Provide subsidies or other social services in accordance with Article 4 (2) and (3) of the Islamic Banking Act No. 21 of 2008.⁹ Provisions of the Law (2006) amending Section 49(3) of the Law: Law No. 7 of 1989 on religious courts (UUPERUPA) is seen as the answer to this problem. Therefore, the discussion in this article focuses on the commercial form of Islamic banking, which has powers, dispute resolution bodies, and a judiciary to resolve Islamic banking disputes.

RESEARCH METHODS

Normative legal approaches were used to collect the data for this investigation. The normative way of doing legal research is library law research, which is done by looking through books or just secondary data. Research will examine how the 1989 Religious Courts Law's First Amendment is viewed as a response to dispute resolution; nevertheless, the law's inception did not necessarily create options for dispute resolution because of the National Sharia Council's fatwa and banks. Researchers will seek additional sources from a variety of periodicals and books connected to the topic of the study challenge in addition to this data. As a result, this study was conducted normatively, using various legal resources according to the issue. The goal of this study is to determine whether Islamic banking offers both profit-oriented products and social and religious ones.

RESULTS AND DISCUSSION

Business Form of Sharia Bank

Islamic banks and other banks are classified as commercial banks and Islamic general financial banks so this classification also affects the businesses of these banks. Specifically for Islamic Commercial Bank businesses, Article 19 of the Sharia Banking Law No. 21 of 2008, hereinafter UUPBS, can be consulted:

(1) Sharia Commercial Bank's business activities include:

IAIN in collaboration with Bank Mandiri, Medan, 15 July 2006, p.s. 9. Compare with Adiwarman A. Karim, *Bank Islam. Analisis Fiqih dan Keuangan* (Jakarta: Pt. Raja Grafindo Persada, Edition. III, Ed. 3, 2006), pp. 25-27.

⁴ *Capital Adquasi Ratio* adalah rasio kecukupan modal sebuah Bank.

⁵ Lihat Laporan Otoritas Jasa Keuangan Triwulan Ketiga Tahun 2022 p. 127.

⁶ *Ibid.*, p 10.

⁷ *Non performing loan* adalah loans that are not followed by the fulfillment of principal and/or interest payments as required in the credit agreement.

⁸ *Ibid.*, p. 11.

⁹ Lihat Pasal 5 Undang-undang Nomor 30 Tahun 1999 Tentang Arbitrase dan Alternatif Penyelesaian Sengketa.

- A. Collecting funds in the form of demand deposits, savings deposits or other equivalent forms of deposits under Wadia Agreements or other agreements not contrary to Shariah principles.
 - B. Funding for investment in the form of deposits, savings, or other equivalents under Mudharabah contracts, or any other action not contrary to Shariah principles.
 - C. Disbursement of profit sharing loans under Mudharabah Contracts, Musyarakah Contracts or other contracts not contrary to Shariah principles.
 - D. Disbursement of Murabahah Akkad, Salam Akkad, Istishna' Akkad, or other Akkad-based funds that do not violate Sharia principles.
 - E. Payment of funds under the Qardh Agreement or other agreements that do not violate Shariah principles.
 - F. Payment of lease payments for movable or immovable property to the customer under the purchase of a lease in the form of an Ijarah contract and/or Ijarah Rompiiya Bittamlik or any other contract not contrary to Shariah principles.
 - G. To incur obligations under the hawala contract or any other akkad not contrary to Shariah principles.
 - H. Conduct debit card and/or financial card transactions in accordance with Shariah principles.
 - I. Buying, selling or guaranteeing at your own risk any third party securities issued on the basis of actual trading under Shariah principles.
 - J. Purchase sharia-based securities issued by the government and/or Bank of Indonesia.
 - K. Accept payments from brokerage accounts and settle accounts with or with third parties in accordance with Shariah principles.
 - L. Exercise trusts on behalf of other parties under Shariah conventions.
 - M. Provide a place to store goods and securities in accordance with Shariah principles.
 - N. Transfer of funds for own benefit and benefit of clients in accordance with Shariah principles.
 - O. Serves as trustee under the Wakala Treaty.
 - P. Providing letters of credit or bank guarantee arrangements in accordance with Shariah principles. and
 - Q. We will carry out other activities commonly practiced in the banking and social sectors, as long as they do not conflict with Shariah principles and comply with laws and regulations.
- (2) UUS business activities include:
- A. Collecting funds in the form of demand deposits, savings deposits or other equivalent forms of deposits under Wadia Agreements or other agreements not contrary to Shariah principles.
 - B. Receive investment funds in the form of deposits, savings or other equivalents under the Mudaraba Agreement or other acad not contrary to Shari'a principles.
 - C. Disbursement of profit sharing loans under Mudharabah Contracts, Musyarakah Contracts or other contracts not contrary to Shariah principles.
 - D. Disbursement of Murabahah Akkad, Salam Akkad, Istishna' Akkad, or other Akkad-based funds that do not violate Sharia principles.
 - E. Payment of funds under the Qardh Agreement or other agreements that do not violate Shariah principles.

- F. Payment of lease payments for movable or immovable property to the customer under the purchase of a lease in the form of an Ijarah contract and/or Ijarah Rompiiya Bittamlik or any other contract that does not conflict with Shariah principles.
- G. To incur obligations under hawala or any other acad not contrary to Shariah principles.
- H. Conduct debit card and/or financial card transactions in accordance with Shariah principles.
- A. The purchase and sale of third party securities issued on the basis of bona fide transactions based on Shariah principles. B. Ijarah, Musyarakah, Mudharaba, Murabahah, Kafalah or Hawalah Contracts.
- B. Purchase of Shariah-based securities issued by the government and/or Bank of Indonesia.
- C. Receiving payments from brokerage accounts and making arrangements with third parties based on Shariah principles.
- D. l. Secure custody of goods and securities in accordance with Shariah principles.
- E. Remittances not only for the benefit of the customer, but also for the benefit of the customer, according to Shariah principles.
- F. Provide letter of credit or bank guarantee arrangements in accordance with Shariah principles. and
- G. Engage in banking or other activities normally carried out in the social sphere, as long as they do not conflict with Shariah principles and comply with laws and regulations.

Furthermore, in Article 20 it is stated as follows:

(1) Apart from conducting business activities as referred to in Article 19 paragraph (1), Sharia Commercial Banks may also:

- a. Carry out currency exchange activities based on sharia principles;
 - b. Carry out equity participation activities in sharia commercial banks or financial institutions that carry out business based on sharia principles;
 - c. Take temporary equity participation to overcome the consequences of failure in sharia-based financing, provided that you must withdraw your investment;
 - d. Acting as the founder and administrator of a pension fund based on sharia principles;
 - e. Carry out activities in the capital market sector as long as they do not conflict with sharia principles and laws and regulations in the capital market sector;
 - f. The involved in banking or Sharia-based products through electronic means;
 - g. Issuance, offering and trading of short-term sharia-based securities either directly or indirectly through the money market;
 - h. Issue, offer and trade long-term securities based on sharia principles, either directly or indirectly through the capital market; And
 - i. Offer products or do other business from Islamic Commercial Banks that are by Sharia principles.
- (2) In addition to conducting transactions as referred to in Article 19 (2), UUS may also:
- a. Conduct currency transactions based on sharia principles;
 - b. Carry out activities in the capital market, as long as they do not conflict with sharia principles and laws and regulations in the capital market sector;
 - c. Take temporary equity participation to overcome the consequences of failure in sharia-based financing, provided that you must withdraw your investment;
 - d. Conduct banking activities or sharia-based products through electronic means;

- e. Issue, offer and trade short-term sharia-based securities, either directly or indirectly through the money market; And
- f. Offers products or conducts other business from Islamic Commercial Banks by Sharia principles.

(3) The activities referred to in numbers 1 and 2 must comply with the provisions and regulations of Bank Indonesia.

Article 4(1) states that Islamic banks and UUS are obliged to collect and distribute public funds. As sharia-based financial institutions, Islamic banks are not only profit-seeking in the collection and distribution of funds, but also social in the sense of Article 4(2). Islamic banks and UUS can perform social functions in the form of Baitul. It receives funds from maul institutions i.e. zakat, infaq, alms, subsidies or other social funds and directs them to zakat management organizations. (3) Islamic banks and UUS can collect social funds from cash and distribute them to Waqf (Nazir) administrators. .waqf (wakif) is subject to the requirements set forth in Section 4 at the discretion of the testator. The fulfillment of the social tasks referred to in paragraphs 2 and 3 shall be carried out by legal provisions. and regulation. The function of Islamic banks as performers of social activities distinguishes traditional banks focused on for-profit banking from Islamic banks that engage in social activities.

Dispute Resolving Institutions

a. Religious Court

Before UUPERUPA was passed, Islamic banking disputes were resolved through arbitration. Provisions like this are found at the end of the fatwa of the National Sharia Council¹⁰⁻¹¹ which is then positive with Bank Indonesia Regulation instruments¹² Then, on February 21, 2006, the President together with the Indonesian Parliament passed UUPERUPA amending Law no. 7 of 1989 concerning the Religious Courts. This change is reflected in the increased absolute authority of the religious courts to investigate, decide and settle sharia economic cases¹³. Since the enactment of the Sharia Banking Act No. 21 of 2008, Islamic banking has had three options for dispute resolution related to non-profit products, namely disputes through religious courts or general courts and non-disputes through sharia arbitration,¹⁴ while those that are non-profit can only be resolved through litigation.

Concerning the powers of religious courts to settle sharia financial disputes, the description of Article 49.49 of UUPERUPA states: system. This provision makes religious courts one of the bodies with the duty and power to resolve sharia economic disputes,¹⁵ regardless of whether the legal entity contracting with Islamic banks is an individual or acts as an individual. Corporations In addition to the dispute resolution procedures presented by the parties, the resolution of Sharia banking disputes in religious courts may also be conducted through mediation by selecting the sharia arbitrators of the religious

¹⁰Regarding dispute resolution in Islamic banking resolved through arbitration, see Anonimus, *Himpunan Fatwa Dewan Syari'ah Nasional Untuk Lembaga Keuangan Syari'ah* (Jakarta: DSN dan Bank Indonesia, Edisi Pertama, 2001),

¹¹ Siahaan, M., Anantadjaya, S. P., Kurniawan, I. M. G. A., & Purba, A. S. (2022). Syariah Technology Financial Potential to Reach Non-bank Financing. *Webology*, 19(1).

¹² Lihat Pasal 20 ayat (2) Peraturan Bank Indonesia Noor 7/46/PBI/2005 Concerning Fund Collection and Distribution Contracts for Banks Carrying Out Business Activities Based on Sharia Principles.

¹³ See Article 49 UUPERUPA

¹⁴ For more details on this matter, see the provisions contained in Article 55 of Law Number 21 of 2008 concerning Islamic Banking and its explanation.

¹⁵ For more, see Article 49 and the elucidation of article by article Article 49 UUPERUPA.

courts or arbitrators appointed by the religious courts. increase. Court in which the parties are fighting.¹⁶ Resolution of a case in a religious court through this mediation process will result in a final and binding decision of the mediation and will no longer provide the parties with the opportunity to submit to the normal process (Verzet, appeal, annulment).

b. Arbitrase

Arbitration is in accordance with *tahkim* in the concept of *fiqh*, although the use of *tahkim* is much broader than that of arbitration, because arbitration only resolves property disputes, especially in business, and does not apply to non-material disputes such as marriage.¹⁷ However, in the Indonesian context, *tahkim* is not as popular as arbitration because the *tahkim* institution is only known in Indonesia in *syiqaq* marriages. Since the beginning of the establishment of Islamic banks in Indonesia,¹⁸ the resolution of the dispute is determined through an arbitration institution after it has not been successfully resolved through a deliberative institution. This arbitration institution, Bank Syari'ah, which had just been applied as a commercial bank by Bank Muamalat and several Syari'ah Rural Banks in Indonesia at the time, designated an existing arbitration institution, namely the Indonesian National Arbitration Commission. I didn't (BANI).¹⁹ As an arbitration court to resolve disputes between customers and Islamic banks, however, it decided to establish a sharia arbitration institution, better known as the Indonesian Mu'amalat Arbitration Court (BAMUI) and in line with the development of Syari'ah-Commercial Banks. The arbitration institution became the National Sharia Arbitration Board (BASYARNAS).²⁰

Sharia Banking also does not use the alpha format to resolve disputes that may arise between banks and customers in accordance with Article 20 of Bank Indonesia Regulation No. Based on sharia principles which state that:

- (1) If one party does not fulfil its obligations as agreed in the contract or there is a difference of opinion between the Bank and the customer, then the agreement must be made through deliberation.
- (2) If in the negotiations referred to in paragraph (1) no agreement is reached, the further agreement can be reached through alternative dispute resolution or sharia arbitration.

Jurisdiction of arbitrators for resolving commercial disputes containing arbitration clauses in contracts derives from Section 3 UUAAPS. It provides that district courts have no authority to arbitrate disputes between parties bound by an arbitration agreement. Therefore, if a customer who cooperates with a Syari'ah Bank indicates that the dispute resolution clause will be fulfilled by the Sharia Arbitration Institution, then the authority to resolve the dispute is only the National Syari'ah Arbitration Board, not BANI. or religious courts.

¹⁶ Regarding the procedure for mediation, see Supreme Court Regulation Number: 1 of 2016 concerning Mediation Procedures in the Courts.

¹⁷ The use of arbitration is narrower than *tahkim*, because *tahkim* is not only used as an institution that can resolve disputes in business, but also in the family field, such as divorce for more see Article 5 UUAAPS and compare with Ismail ibn Umar ibn Kasir, *Tafsir a-Qur'an al-'Azim* (Beirut: Dār al-Fikr, 1401 H), Juz I, p. 596.

¹⁸ Regarding the history of Islamic Banks can be seen A. Djazuli dan Yadi Janwari, *Lembaga-lembaga Perekonomian Umat (Sebuah Pengenalan)* (Jakarta: Raja Grafindo Persada, Edition. I, 2002), pp. 61-63. Compare with Muhammad Syafi'i Antonio, *Bank Syari'ah Dari Teori Ke Praktek* (Jakarta: Gema Insani, Edition VII, 2003), pp. 25-27.

¹⁹ Suyud Margono, *Alternative Dispute Resolution dan Arbitrae Proses Pelembagaan dan Aspek Hukum* (Jakarta: Ghalia Indonesia, Edition. I, 2000), p. 124.

²⁰ Mengenai lembaga Arbitrase ini lihat A. Rahmad Rosyadi dan Ngatino, *Arbitrase Dalam Perspektif Islam dan Hukum Positif* (Bandung: Citra Aditya Bakti, Edition. I, 2002).

Authority to Resolve Disputes

a. Religious courts

Before we talk further about the authority to resolve disputes in Islamic banking as a financial institution in the form of a legal entity, Article 7 of the Islamic Banking Act No. 21 of 2008 states that the legal form of an Islamic Bank is a limited liability company. Due to regulations requiring banks to be legal entities, the relationship between a customer and a bank becomes a legal relationship between a person and a legal entity rather than a personal relationship, but Mudorobah Muqayyadah is a person-to-person relationship. funds the legal relationship established between , not between people and the whole bank . The law is because in Mudorobah Muqayyadah the bank only acts as a dealer and is not responsible for the loss of *ṣahib al-māl*.²¹⁻²²

Therefore, under the provisions of Article 7 of the Shariah Banking Act No. 21 of 2008, the scope of disputes between entities in Islamic banking is very small. It occurs between clients, between an individual and an Islamic banking entity, or between a legal entity that is a customer of an Islamic bank and an Islamic bank that is also a legal entity. Article 49 UUPERUPA states that religious courts have the duty and authority to investigate, decide and arbitrate cases between first-level Muslims in the following areas: Marriage; B. Inheritance, c. Will, D. Grant, E. Fund, f. zakat, g. Sure Cashier S. Charity. sharia economics. The above Article 49 clause contains the words "for the settlement of first degree cases between Muslims". Then the description in the above article states that the breadth or scope of the classification is "among those who are Muslim". H. "People who signify Muslims" includes persons or entities who voluntarily submit to Islamic law in matters falling within the scope of religious courts under the provisions of this Article.

Given that Islamic banking is one of the dual banking systems employed in Indonesia, everyone involved in Islamic banking, regardless of religion, is employed in the Islamic economy, including dispute resolution. It is clear that the system must be followed. The economy is run not only by Muslims, but by everyone using Islamic banking services. Therefore, as a banking system that implements an economic system other than a capitalist economy, Islamic banking is practiced by any financial institution that wishes to conduct economic activities based on Islamic principles, regardless of religion, race, or class. can do.

Since the members of the Mu'amalah Islamic financial institution are not only Muslims but also non-Muslims, whereas the religious courts only decide cases between people of the Muslim faith, this UUPERUPA offers a solution through voluntary submissions among non-Muslims. who use the Mu'amalah Sharia economic system to resolve their disputes in the religious courts. This presentation rule is one of the principles of religious justice after the abolition of hereditary choices²³ as contained in the general elucidation of Law Number: 7 of 1989 concerning the Religious Courts.

The principle of submission as one of the principles states that if someone wants to do something, he must be prepared to accept all the consequences of that thing²⁴ (الرضا بالشيئ) (رضا بما يتولد منه). So if someone wants to conclude a contract based on the Islamic economic system, he must accept that his Islamic economic disputes will also be resolved through the judicial dispute settlement system using Islamic law. Those bound by the

²² Wantu, F. M., Mahdi, I., Purba, A. S., Haris, I., & Amal, B. K. (2021). The Law on Plant Protection, an Effort to Save Indonesia's Earth: A Review of International Publications. *International Journal of Modern Agriculture*, 10(1), 867-879.

obligations of the Islamic economic system also adjudicate in religious courts, as disputes with the Islamic system can only be settled in religious courts. However, because the Unitary State of the Republic of Indonesia is a legal state that follows the legal system²⁵ which makes written law the main law, then the application of the principle of subordination cannot be enforced without rules relating to positive law in Indonesia. The surrender instrument in the settlement of Article 49 UUPERUPA is a legal formalization that allows the religious court to examine, decide and resolve disputes between Muslims and non-Muslims who are subject to the Islamic system.

The body of the UUPERUPA and its explanation does not contain additional provisions regarding submissions and do not indicate which rules are used as reasonable provisions, so to avoid a legal vacuum in this submission, it must refer to the transitional provisions of Article II. The Republic of Indonesia of 1945 was the basis for implementing the voluntary surrender rules in the Staatsblad. 1917 number 12 as amended by Staatsblad 1926 number 360. UUPERUPA can refer to the voluntary surrender provisions according to Staatsblad 1926 § 26 § 360 mentioned in specification § 49, namely certain voluntary actions. Mention it in the assignment agreement or a separate document.

Conceptually, Islamic banking arrangements always contain dispute settlement clauses. This can be seen in some fatwas issued by the National Shariah Council on Islamic Finance. This fatwa of the National Shariah Council, under which Bank Indonesia acts as the banking regulator in Indonesia, was approved by issuing a policy regulation in the form of Bank of Indonesia Regulation No. 7/46/PBI/2005 which specifically contains provisions. Sharia Resolution - Consultation, Alternative Dispute Resolution, and Resolution of Banking Disputes by the National Sharia Arbitration Court. In connection with the enactment of the UUPERUPA, the inclusion of a dispute settlement clause from the National Sharia Arbitration Board in contracts between customers and Syari'ah Banks will enable religious courts to resolve sharia banking disputes.²⁶

b. Arbitrase

B.Rv has two types of arbitration, advertising arbitration.²⁷ Hoc and Arbitrase Institutional, however, this article has been defined by M. Yahya Harahap as an arbitration deliberately set up to address disputes that may arise to those wishing to settle out of court Applies to institutional arbitration only.²⁸ Indonesia currently has a National Arbitration Commission established by the Chamber of Commerce and Industry (KADIN)²⁹ in 1977 and the Indonesia Muammarat Arbitration Commission, now called the National Shariah Arbitration Commission (BAMUI) has two institutional arbitration systems (BASYARNAS). It was established in 1993 by the Ulema Council of Indonesia.³⁰

²⁵ For further explanation see Lili Rasyidi and I. B. Wyasa Putra, *Hukum Sebagai Sistem* (Bandung: Mandar Maju, Edition II, 2003), p. 45.

²⁶ Komar Andasmita, *Masalah Hukum Perdata Nasional Indonesia*, (Bandung: Alumni, 1983), pp. 108-109.

²⁷ See conditions Pasal 615 ayat (1) B. Rv which states that Ad Hoc arbitration is arbitration established specifically to resolve or decide certain disputes.

²⁸ M. Yahya Harahap, *Arbitrase* (Jakarta: Pustaka Kartini, 1991), p. 151.

²⁹ Suyud Margono, *Alternative...*, p. 124.

³⁰ BAMUI was established by the Central Indonesian Ulema Council on October 21, 1993 under the name of the Indonesian Muamalat Arbitration Board (BAMUI). In carrying out this arbitral award, it refers to the provisions contained in the BAMUI procedure, namely referring to Articles 637 and 639 Stb 1847 No. 52 jo Stb. 1849 No. 63 concerning Reglement op de Rechtsvordering, hereinafter abbreviated as BRv, by way of execution by the General Court for more See Warkum Sumitro, *Asas-asas Perbankan Islam dan Lembaga-lembaga Terkait (BAMUI & TAKAFUL) di Indonesia*, Edition. II, PT. Raja Grafindo Persada, Jakarta, 1997, pp. 151-164. Also compare with the provisions contained in Article 59 s.d. 64 UUAPS. Compare again with Ropaun Rambe, *Hukum Acara Perdata Lengkap*, Jakarta: Sinar Grafika, Edition II, 2003, pp. 122-123.

In relation to article 1338 KUH. Since civil law is used as the principle of freedom of contract, both arbitration institutions have equal jurisdiction to resolve disputes in the Islamic banking sector, but the Bank of Indonesia Regulation No. 7/46/PBI/2005, Article 20 Shari'ah conducts its business on the basis of Shari'ah principles. Contract clauses referenced in contracts between clients and Syari'ah Bank.³¹ However, the Financial Services Authority, as the regulator of the banking sector, bases the regulation of Bank of Indonesia on the National Shariah Council Fatwa, so that customers and Islamic banks do not comply with the regulations stipulating the National Shariah Arbitration Board as arbitration. I have to Arbitrators of the National Syari'ah Arbitration Board are considered to be more professional in the field of Islamic banking and more knowledgeable about the philosophy of Islamic banking, thus resolving disputes between customers and Islamic banks.

Scope of Authority

a. Religious Courts

The fundamental question is how far is the jurisdiction of the religious courts in resolving disputes in the Islamic banking sector, including the enforcement of sharia arbitral awards and the enforcement of guarantees? To answer this question, it is necessary to pay attention to the provisions of Article 49 of the UUPERUPA which states that the religious court has the duty and authority to examine, decide and settle cases at the first level between people who have befallen Muslims. wedding; B. inheritance, c. will, d Grant, E. Funds, f. Zakat, g. Cashier S. Charity. sharia economy.

Therefore, the duties and powers of the religious courts in resolving sharia banking disputes are to examine, resolve and mediate sharia banking cases. The power to investigate, decide and regulate cases in Islamic banking can be seen cumulatively and alternatively. In cases that are brought to the religious court, the religious court must also decide on the dispute. This means that all Islamic banking disputes are investigated and resolved by religious courts. Particularly in the case of a case decided by a religious court, the defendant can do so voluntarily without having to go through the religious court, and he can also carry out the decision of the religious court at the request of the plaintiff if the defendant is unsuccessful. and do not want to voluntarily carry out the decision of the religious court. Therefore, the settlement of cases in this case by imposing religious court decisions is optional and unnecessary.

In this case, the duties and powers of the religious courts to investigate and adjudicate sharia banking cases are cumulative. In other words, in every sharia banking case that is brought before the religious court, the religious court must examine the case and then decide on what is disputed by the parties. The procedural device that forms the basis for religious courts to receive, examine, adjudicate and adjudicate cases in sharia banking is Article 54 RUPA BARU, which states that the procedural law that applies to religious courts is civil procedural law that applies to religious courts. . General courts, except here specially regulated courts. Article 54 regulates the ratification of the application of civil procedural law that applies in all general courts and religious courts, both those regulated in Law no. Article 7 of 1989 concerning the Religious Courts has been or will be promulgated concerning the absolute authority of the Religious Courts.

One of the procedural laws that apply to ordinary courts in deciding cases involving arbitration clauses is Article 3 of the UUAAPS, which states that "district courts (now religious courts) may We do not have the authority to decide disputes between Therefore, religious courts should also

³¹For more on the choice of which court will resolve the dispute in accordance with the contract, see Article 55 and its explanation Law Number 21 of 2008 concerning Sharia Banking.

apply Article 3 of the UUAAPS when considering cases involving arbitration clauses. On this basis, religious courts are only empowered to investigate and decide sharia banking cases unless the contract contains a dispute settlement clause by a sharia arbitration board. , states that "the religious courts shall have the duty and power to investigate, adjudicate and determine cases...". Religious Court M. Yahya Harahap explained that the supplemental terminology is designed to enforce decisions through the law enforcement process.³²

In the history of Indonesian justice, the Raad van Justitie is a European court and is equivalent to it, and the procedural law of the Raad van Justitie is B. Rv. After Indonesia's independence, the Raad van Justitie itself was declared dissolved because post-independence Indonesia no longer recognized the division of the population, so all the absolute powers of the Raad van Justitie were transferred to the courts (Landraad).³³ Therefore, the execution of the decision of the National Syari'ah Arbitration Board is carried out by the District Court.

Article 28(2) of the Indonesian Muamalat Arbitration Procedures or the Syari'ah National Arbitration Court (BASYARNAS) states that if the decision is not implemented voluntarily as referred to in paragraph 1, then the decision will be implemented according to the provisions of Articles 637 and 639 B.Rv. so that the implementation of the BASYARNAS decision is based on Article 637 B.Rv which states that "the judge's decision is taken with the approval of the President of Raad van Justitie, according to Article 634 B.Rv Any choice given in 435 B.Rv: in the form described in (no longer valid). This was mentioned above in the original decision and copied in the published derivative. In addition, Section 639 B.Rv states that "the judge's decision was accompanied by the permission of the competent president of the Raad van Justitie and carried out according to the usual enforcement method.

The District Court leads the B.Rv and UUAAPS in enforcing arbitral awards by delegating the authority to enforce arbitral awards in the sharia economy to religious courts, in which all provisions of B.Rv and UUAAPS when implementing arbitral awards apply to religion. Therefore, every word "district court" must be read as "religious court". Therefore, after passage of UUPERUPA, the power to enforce sharia arbitral awards will be transferred from UUAAPS to district courts, as the provisions on enforcement of arbitral awards that previously applied to ordinary courts also apply to religious courts. absolute power of the court. Therefore, since article 49 of the UUPERUPA treaty authorizes religious courts to enforce (enforce) decisions of her BASYARNAS that the losing party has not voluntarily complied with, article 61 of the UUAAPS treaty: It is stipulated as The nun's officer decides on the demands of her one of the parties to the dispute.

The power of the religious court to realize the debt (da'in) of a customer receiving financing (mudarib) or an Islamic bank, which is called a debtor in conventional banking language, must comply with the provisions of Article 258. Number 1 R. Already good. Article 224 HIR, states that "The original mortgage deed and draft letter issued by a notary in Indonesia with the words "In the Name of the Court" on it have the same strength as a judge's decision letter. To clarify the term "mortgage" in Section 258 Para. 1 R.Bg, the provisions of Article 1162 StGB must be used. Under civil law, a mortgage is a substantive right over immovable property to receive repayment in fulfilment of a contract. Thus, the

³² M. Yahya Harahap, *Ruang Lingkup Permasalahan Eksekusi Bidang Perdata*, Jakarta: Gramedia Pustaka Utama, Edition IV, 1993, hal. 1.

³³ A. T. Hamid, *Hukum Acara Perdata Serta Susunan dan Kekuasaan Pengadilan* (Surabaya: PT. Bina Ilmu, Edition 1986), p.11.

provisions of this article cover all provisions that apply to real estate mortgage groups, land, ships and aircraft.

Mortgage terminology has continued to be used to the extent indicated above since the Indonesian Criminal Code came into effect. This civil law was in the archipelago until the enactment of Law Number 4 of 1996 (UUHT) on May 8, 1996,³⁴ Although a series of national land laws and regulations were passed in 1960, referred to as Law Number 5 of 1960 concerning Basic Agricultural Regulations, the Law does not contain a guarantee law.³⁵ Thus, in Housing Law No. 16 of 1985, the state guarantee scheme is also called a mortgage. The situation was different after the enactment of the UUHT, which stated that “after the enactment of this law, the provisions of Book II of the Criminal Code related to associations... and provisions related to mortgages. Repealing the Indonesian Civil Code concerning rights to property and relating to the property is relevant.”³⁶

On this basis, the surrender of real estate, regarding the rights equated with real estate and related objects, is no longer called a mortgage but has changed to a mortgage right, while a mortgage is mentioned in § 1162 KUH. The remaining civilian objects are only ships and aeroplanes, but with the enactment of the Aviation Law³⁷ and shipping,³⁸ Therefore, the hitota guarantee nomenclature currently only applies to marine vessels. Because the Religious Courts are authorized by Article 49 UUPERUPA to carry out their decisions in sharia banking cases and Article 258(1) R.Bg which places mortgage rights on an equal footing with court decisions that have permanent legal force, every request for coercion is a guarantee for the customer's debtor in their cooperation with sharia banks, including enforcement of mortgages and ship mortgages and performance of obligations that have been carried out in the manner referred to in Section 258(1) R.Bg. Article 224 HIR above also falls under the authority of the religious court.

b. Arbitrase

Failing Islamic banks are not only funds obtained in commercial form by the public, but can also be in the form of zakat, infaq, alms, endowments, subsidies or other social funds according to Article 4.2) and Article 3 of Law No. 21 of 2008 concerning Islamic Banking. Then in Article 28 of Law no. 2008:41 of 2004 concerning Waqf states that the function of the Syari'ah Bank as one of the Syari'ah Financial Institutions is as an intermediary in the Waqf and not as a Waqf Institution and the Syari'ah Bank then transfers it to the one named. institution

Institutions that run illegal Islamic banking from these charitable funds depend heavily on the form of funds the bank receives. Specifically, cash waqf, which is more commonly called cash waqf (productive waqf), is handed over to waqf bodies, while other matters can be handed over to the Amil Zakat Agency (BAZ) or the Amil Zakat Institution (LAZ) or

³⁴ See Articles 14 and 20 of Law Number 4 of 1996 Concerning Mortgage Rights. Therefore, once this law is enacted, land encumbered with mortgages used as collateral for debt at Islamic banks will be executed in the Religious Courts; Look Boedi Harsono, *Hukum Agraria Indonesia* (Jakarta: Djambatan, Edition. XIV, 2000), pp. 164-168.

³⁵ Provisions for the application of politics as a guarantee institution whose object is land as stated in the KUH. Civil law can be seen in the preamble to the UUPA for further details, see AP. protection, *Komentar atas Undang-undang Pokok Agraria* (Bandung: Mandar Maju, Edition VIII, 1998), p. 27.

³⁶ For more details see Article 29 UUHT and compare with Sutan Remi Syahdeini, *Hak Tanggungan Asas-asas Ketentuan-ketentuan Pokok Dan Masalah Yang Dihadapi Oleh Perbankan (Suatu Kajian Mengenai Hak Tanggungan)* (Bandung: Alumni, Edition II, Edition. I, 1999), pp. 190-191.

³⁷ Since the enactment of Law Number 1 of 2009 concerning Aviation, aircraft collateral is no longer a mortgage.

³⁸ Regarding marine guarantees, see Chap VI Pasal 60 sampai dengan 64 Undang-Undang Nomor 17 Tahun 2008 tentang Pelayaran.

Baitul. Malls are included in Islamic Banks. Therefore, Bank Syari'ah is not the owner of funds collected from the public which are charitable funds. In addition, Article 5(1) UUAAPS states that disputes that can be resolved through arbitration are only commercial disputes and litigation which are fully under the control of the parties to the dispute in accordance with laws and regulations.

Zakat, Infaq and Sodakoh funds collected by Bank Syari'ah do not belong to Bank Syari'ah but to Muslims who are managed and distributed according to current regulations. In that case, disputes between Islamic banks and their clients cannot be resolved by arbitration and must be resolved by religious courts. It prohibits the inclusion of arbitration clauses in profit-sharing agreements, and money paid must also come from business errors and not from bona fide agents.

CONCLUSION

From the description above it can be concluded as follows:

1. The Religious Courts and Arbitration are two institutions that have the same power to resolve sharia banking disputes.
2. The Religious Courts have the right to resolve any dispute between parties in Islamic banking, as long as the mandate does not contain an arbitration clause, otherwise arbitration has the right to resolve disputes between parties only if there is a clause. or agree that the parties will resolve the dispute through arbitration.
3. Religious courts have the authority to enforce arbitration awards and guarantees in Islamic banking, while arbitration can only resolve disputes between parties in the commercial field.

REFERENCES

- A. Djazuli dan Yadi Janwari. (2002). Lembaga-lembaga Perekonomian Umat (Sebuah Pengenalan), Jakarta: Raja Grafindo Persada, Edition. I.
- A. T. Hamid. (1989). Hukum Acara Perdata Serta Susunan dan Kekuasaan Pengadilan, Surabaya: PT. Bina Ilmu.
- Anonimus. (2001) Himpunan Fatwa Dewan Syari'ah Nasional Untuk Lembaga Keuangan Syari'ah, Jakarta: DSN dan Bank Indonesia, First edition
- Antonio, Muhammad Syafi'i, Bank Syari'ah Dari Teori Ke Praktek, Jakarta: Gema Insani, Edition VII, 2003.
- Dahlan, Abdul Aziz (et-al), Ed., (2001). Ensiklopedi Hukum Islam, Jakarta: PT. Ichtiar Baru van Hoeve, Edition Ke- 5.
- Fauzi, Yuslan (2006). Peran Bank Syari'ah Dalam Perekonomian nasional Makalah Dalam Seminar Nasional Peran Bank Syari'ah Mandiri dan Partisipasi IAIN-SU Dalam Rangka Peningkatan Penghimpunan Dana Umat Melalui Sistem Keuangan Syari'ah di Sumatera Utara pada Khususnya dan di Indonesia pada Umumnya, IAIN Bekerjasama dengan Bank Mandiri, Medan, 15 Juli 2006.
- Harahap, M. Yahya (1991) Arbitrase, Jakarta: Pustaka Kartini..
- Harsono, Boedi. (2000). Hukum Agraria Indonesia, Jakarta: Djambatan, Edition XIV
- Het Herziene Indonesisch Reglement (HIR) Staatsblad 1941 Nomor 44.
- Ibn Kasir. (2006). Ismail ibn Umar, Tafsir a-Qur`an al-`Azim, Beirut: Dār al-Fikr, 1401 H.
- Karim, Adiwarmar A., Bank Islam. Analisis Fiqih dan Keuangan, Jakarta: Pt. Raja Grafindo Persada, Edition III, Ed. 3.
- Komar Andasasmita (1983). Masalah Hukum Perdata Nasional Indonesia, Bandung: Alumni
- Laporan Otoritas Jasa Keuangan Triwulan Ketiga Tahun 2022.

- Lestiadi, Suyadi. (2003). Perjanjian Pembiayaan dan Lembaga Jaminan Perbankan Syariah, Makalah dalam Diskusi dan Rapat Pleno Pengurus Pusat Ikatan Notaris Indonesia dan Upgrading-refresing Cours, Yogyakarta 22 Agustus 2003.
- Lili Rasyidi and I. B. Wyasa Putra (2003). Hukum Sebagai Sistem, Bandung: Mandar Maju, Edition II.
- Margono, Suyud. (2000). Alternative Dispute Resolution dan Arbitrae Proses Pelembagaan dan Aspek Hukum, Jakarta: Ghalia Indonesia, Edition I.
- Parlindungan, AP. (1998) Komentar atas Undang-undang Pokok Agraria, Bandung: Mandar Maju, Edition VIII.
- Peraturan Bank Indonesia No. 7/46/PBI/2005 Tentang Akad Penghimpunan Dan Penyaluran Dana Bagi Bank Yang Melaksanakan Kegiatan Usaha Berdasarkan Prinsip Syariah .
- Peraturan Mahkamah Agung Nomor: 2 Tahun 2003 Tentang Prosedur Mediasi di Peradilan.
- Rambe, Ropaun (2003). Hukum Acara Perdata Lengkap, Jakarta: Sinar Grafika, Edition II.
- Reglement Opde Rechtdvordering (Rv) Staatsblad No. 52 jo. 1849 No. 63
- Reglement Tot Regeling van Het Rechtswezen in de Gewesten Buitten Java en Madura (RBg) Staatsblad 1927 Nomor 227.
- Rosyadi, A. Rahmad and Ngatino (2002). Arbitrase Dalam Perspektif Islam dan Hukum Positif, Bandung: Citra Aditya Bakti, Edition I.
- Syahdeini, Sutan Remi. (1999). Hak Tanggungan Asas-asas Ketentuan-ketentuan Pokok Dan Masalah Yang Dihadapi Oleh Perbankan (Suatu Kajian Mengenai Hak Tanggungan), Bandung: Alumni, Edisi II, Edition I.
- Sumitro, Warkum. (1997). Asas-asas Perbankan Islam dan Lembaga-lembaga Terkait (BAMUI & TAKAFUL) di Indonesia, Edition II, PT. Raja Grafindo Persada, Jakarta.
- Surat Keputusan Direksi Bank Indonesia No. 32/34/Kep/Dir Tentang Bank Umum Berdasarkan Prinsip Syari'ah, date May 12, 1999.
- Surat Keputusan Direksi Bank Indonesia No. 32/36/Kep/Dir Tentang Bank Umum Berdasarkan Prinsip Syari'ah, date May 12, 1999.
- Siahaan, M., Anantadjaya, S. P., Kurniawan, I. M. G. A., & Purba, A. S. (2022). Syariah Technology Financial Potential to Reach Non-bank Financing. *Webology*, 19(1).
- Suyuti, Jalaluddin, al-Asbāh wa al-Najāā'ir fi al-Furū', Jakarta: as-Ṭakofah al-Isamiyah, tt.
- Undang-undang Nomor 4 Tahun 1996 Tentang Hak Tanggungan Tanah Beserta Benda-benda Yang Berkaitan Dengan Tanah
- Undang-undang Nomor 30 Tahun 1999 Tentang Arbitrase dan Alternatif Penyelesaian Sengketa.
- Undang-undang Nomor: 41 Tahun 2004 Tentang Perwakafan
- Undang-undang Nomor 3 Tahun 2006 Tentang Perubahan Atas Undang-undang Nomor: 7 Tahun 1989 Tentang Peradilan Agama
- Undang-Undang Nomor 21 Tahun 2008 tentang Perbankan Syariah Undang-Undang Nomor 17 Tahun 2008 tentang Pelayaran.
- Undang-Undang Nomor 1 Tahun 2009 tentang Penerbangan
- Wantu, F. M., Mahdi, I., Purba, A. S., Haris, I., & Amal, B. K. (2021). The Law on Plant Protection, an Effort to Save Indonesia's Earth: A Review of International Publications. *International Journal of Modern Agriculture*, 10(1), 867-879.