



## The Existence of National Sharia Arbitration Agency in the Settlement of Sharia-Law Banking Dispute in Rejang Lebong District

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### ABSTRACT

**Purpose:** The purpose of the study was to figure out how the existence of the national sharia arbitration body was in the settlement of sharia banking disputes in Rejang Lebong district. With the writhing of sharia-based economies, it certainly does not seal the possibility of a problem arising from it. In terms of matters resolved without need to to the realm of the court whether it has gone through a national sharia arbitration body or not yet.

**Design/Method/Approach:** In the drafting of this article the author uses a qualitative approach. To search for data in this study constituents used interview methods with specific respondents. Analyzed it with deductive techniques. So that it could be narrated the results of those findings.

**Findings:** The findings in this study turned out that the existence of national sharia arbitration agencies was still minimal, this being because of some of the first minimal financial or business institutions that used sharia foundations as a foundation in transacting. Second, still the lack of community understanding of the existence of national sharia arbitration institutions. For the problem settled litigally only, many did not yet know it should be settled in the Court of Religion. Many societies who assume such things will be settled in ordinary public courts.

**Originality/Values:** The conclusion that can be drawn from research findings is the absence of existence from national arbitration agencies within the economic problems of the community of Rejang Lebong County

## INTRODUCTION

The term arbitration derives from the word “arbitrate” (Latin) meaning “power to accomplish something matter by wisdom”. The definition is terminologically argued to vary by current scholars although it actually has the same core meaning, among other things first, Subecti states that arbitration is a settlement or disputation by a judge or judges based on the consent that the parties will submit to or obey the decision given by the judge they choose.<sup>1</sup> Secondly, Priyatna Abdurasyid stated that arbitration was a process of examination of a dispute that was carried out judicially as by the parties of the dispute, and its breakdown would be based on the evidence submitted by the parties.<sup>2</sup> Third, M.N. Poerwosujipto used the term refereeing for arbitration interpreted as a justice of the peace, whereby the parties agreed that disputes assembling about the personal rights they could fully oversee and be tried by impartial judges appointed by the own party and the rulings were binding for both parties.<sup>3</sup>

Basically arbitration is a special form of court. An important point distinguishing courts and arbitration is when the court path uses one permanent judiciary or standing court, whereas arbitration uses a tribunal forum set up specifically for the activity. In arbitration, the arbitrator acts as a judge in the arbitration court, as is a permanent judge, although only for the case addressed. According to Frank Elkoury and Etna Elkoury as cited by Husseyn and Kardono, arbitration is an easy or simple process chosen by parties voluntarily who wish to have the case severed by neutral banners according to their choices where decisions are based on the postulates in the case.<sup>4</sup> The parties agreed from the beginning to accept the verdict in a final and binding manner. According to the Number 30 Act of 1999 referred to arbitration is the way of settlement of a civil dispute outside the general judiciary based on an arbitration agreement made in writing by the disputants.<sup>5</sup> Under some sense of arbitration above, there are then some elements of similarity, namely:

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<sup>1</sup>Subecti, *Arbitrase Perdagangan*, (Bandung: Bina Cipta, 2010), h.1.

<sup>2</sup>Priyatna Abdurasyid, “Penyelesaian Sengketa Komersial Nasional dan Internasional diluar Pengadilan”, Makalah, September 1996, h.19.

<sup>3</sup>H.M.N Poerwosujipto, *Pokok-Pokok Hukum Dagang, Perwasitan, Kepalitan Dan Penundaan Pembayaran*, Cetakan III, (Jakarta: Djambatan, 1992), h.45.

<sup>4</sup>M. Husseyn dan A Supriyani Kardono, *Kertas Kerja Ekonomi, Hukum dan Lembaga Arbitrase di Indonesia*, 1995, h.2

<sup>5</sup>Undang-undang Republik Indonesia Nomor 30 Tahun 1999 tentang Arbitrase dan Alternatif Penyelesaian Sengketa, Pasal 1 ayat 1.

1. The arbitrary of the agreement to submit disputes, both the ones that would occur and the one that was then happening, to a third-party person outside the general justice to decide.
2. The affirmative Affirmation of resolve able disputes is a dispute concerning fully master able personal rights, the cub here in the field of industrial and financial trade.
3. The ruling is a final and binding verdict.

An arbitration agreement is an agreement in the form of an arbitration clause listed in a written agreement made by the parties before a dispute arises, or a separate arbitration agreement created by the parties after a dispute arises. If associated with the notion of arbitration, then the arbitration agreement is the basis or primary condition of implementing it the settlement of disputes through arbitration. Arbitration agreements provide the authority of arbitration to resolve disputes. There is no arbitration without any arbitration agreement.

As a treaty, the arbitration agreement constitutes the agreement of the parties under the principle of freedom of contract. The free parties determine the content of an arbitration agreement among them determines the choice of law (choice of law) or governing law (governing law), the choice of dispute resolution forums, the location of dispute settlement and so on. Nevertheless the principle of freedom of contract in arbitration agreements is restricted on subjective terms and objective terms. As stipulated in Article 1320 of the Book of Civil Law Act, the subjective condition of lawfulness of the treaty is the agreement of the parties and the prowess of the parties. In addition, in Article 1 number 2 of the Number 30 Act of 1999 it was called that "Parties are legal subjects, both according to civil law and public law." Although public law subjects may carry out arbitration appointments, but are confined by the provisions of Article 5 verse 1 of the Number 30 Act 1999, "Disputes that can be resolved through the arbitrations only in trade and regarding legal rights that are under law. and the regulations per invitation are fully controlled by the disputing party."

The legitimate objective terms of the agreement according to Article 1320 of the Civil Code are about a particular subject matter and a non-bidden cause. In terms of arbitration agreements, the objective terms are set in Article 5 of the Number 30 Act of 1999, stating,

"Disputes that can be resolved through arbitration are only disputes in the field of merchandise and regarding rights that per law and regulation per law are controlled entirely by pi disputed rights. Disputes that cannot be resolved through arbitration are disputes that per statute per invitation cannot be held peace. "

To search for data in this study constituents used interview methods with specific respondents. Analyzed it with deductive techniques. So that it could be narrated the results of those findings.

Civil dispute settlement can be made through 2 (two) paths, that is, via litigation pathways and non-litigation pathways. The line of litigation is a mechanism of case resolution through the court line using legal approach (law approach) through authorized law enforcement apparatus or agencies in accordance with the rule of law. Whereas non-litigation pathways are the mechanisms of settlement of out-of-court disputes using mechanisms that live in a society whose shape and sort vary widely, such as ways of deliberation, peace, kinship, customary settlement. Dispute settlement outside this court is generally named the Dispute Settlement Alternative (APS) or Alternative Dispute Resolution (ADR). Second, article from Eko Priadi in *Iqtishaduna Journal* volume 8 issues 1 of 2019, with the title of the Legacy of the National Sharia Arbitration Agency In the Settlement of Sharia Economic Disputes In Indonesia.

This article discusses regarding the National Sharia Arbitration Agency on the settlement of sharia economic disputes determined based on the existence or absence of the Arbitration Treaty, both before dispute arises (*Pactum Compromittendo*) and after dispute arises (*Acta Compromis*). Thus, the legitimacy of the authority of the National Sharia Arbitration Agency in the settlement of sharia economic disputes is based on the *Asas Pacta Sunt Servanda* and *Consensual Principles* contained in the Civil Code. Further registration and execution of the National Sharia Arbitration Agency's ruling should have been implemented by the Court of Religion, including in legal efforts for an annulment of the Verdict. It is based on two factors: (1) the basis of the legality of absolute competence of the Court of Religion in the settlement of sharia economic disputes as stipulated in Article 49 of the Number 3 of the Year 2006 About Religious Justice; and (2) the basis of relevance of the substance of Islamic law used by the National Sharia Arbitration Agency.

## RESULT ANDA DISCUSSION

### National Sharia Arbitration Agency

Arbitration is one form of civil dispute settlement but not through court lines in general. This is in accordance with the notion of arbitration set in Article 1 number 1 of the Arbitration Act and the Alternative of Dispute Settlement which explains that arbitration is the way of settlement of a civil dispute outside the general judiciary based on an arbitration agreement made in writing by the disputed party. Absolute competence of arbitration is born when there is an

arbitration clause within the treaty which mentions that arbitration constitutes a dispute settlement body chosen by the parties to resolve disputes that are inflicted between them. Such arbitration clauses can be created by the parties at the time before a dispute occurs as well as after a dispute arises. It is in accordance with those listed in Article 1 number 2 of the Arbitration Act and the Alternatives of Dispute Settlement, which mentions that the arbitration agreement is an agreement in the form of an arbitration clause listed in a written agreement that the parties make before a dispute arises, or a separate arbitration agreement that the parties make after dispute arises.

In Article 3 of the Arbitration Act and the Alternatives of Dispute Settlement determine that the District Court is not authorized to prosecute disputes of the parties who have been bound in arbitration treaties. This means that any treaty listing an arbitration clause, abolishes the authority of the District Court to resolve any dispute arising from the treaty containing the arbitration clause. It is asserted again in Article 11 of the Arbitration Act and the Alternatives of Dispute Settlement.

In the presence of a written arbitration treaty negates the right of the parties to submit dispute resolution or difference of opinions contained in its agreement to the District Court and District Court is obliged to refuse and will not intervene within a dispute settlement that has been established through arbitrage, except in certain matters set out in this Act. Furthermore in Article 5 of verse (1) of the Arbitration Act and the Alternative of Dispute Settlement mention that disputes that arbitration can examine are merely disputes in the field of trade and concerning rights that by law and by law of law are controlled entirely by disputed parties.

There is no explanation as to what falls within the field of trade as listed in Article 5 of verse (1) of the Arbitration Act and the Alternative of the Settlement of the Dispute. However, if connected with the explanation of Article 66 of the Arbitration Act and the Alternatives of Dispute Settlement, which falls within the scope of trade are activities among others in the areas of commerce, banking, finance, capital planting, industry and intellectual property rights. Later in Article 5 of verse (2) of the Arbitration Act and the Alternative of Dispute Settlement is mentioned that disputes that cannot be resolved through arbitration are disputes that by statutory regulation cannot be held peace. Arbitration constitutes a dispute settlement institution separate from the District Court, namely an institution that is not part of the District Court. So that, when the parties agree to choose arbitration as an institution of trade dispute settlement, the court should refuse to inspect and break the dispute. Here is a dispute over the deeds against the law that the parties are under a

treaty of arbitration clause but the dispute is resolved through the general judicial body.

The arbitration verdict constitutes a final verdict and thus cannot be appealed, cassation or review. The authority or competence of arbitration/BANI is legally separate and parallel to the District Court, meaning the arbitration/BANI decision has the same legal power as the District Court decision. The case according to the arbitration agreement was handed over the parties disputed to arbitration/BANI could no longer be examined and decided by the District Court.

Here's an explanation for the advantages and weaknesses of the dispute settlement that went through the arbitration path. In general in the fourth paragraph at the General Explanation of the Number 30 Year Act 1999 on Arbitration and the Alternatives of Dispute Settlement stated that in arbitration institutions it has advantages/excellence over general judicial institutions. First, excess arbitration includes:

1. Secrets regarding the disputes of the parties are guaranteed;
2. Can avoid the resulting slowness due to procedural and administrative matters;
3. The arbitrators may choose arbitrators who in his belief have sufficient knowledge, experience, as well as background on disputed, honest and fair matters;
4. The party's arbitration can determine the legal choice to resolve the problem as well as the process and place of organizing arbitration;
5. Arbitrator's ruling is a ruling that binds the parties and by means of simple or direct ordinances (procedures) can be implemented. The description explains on the basis of consideration why the parties prefer to resolve disputes through arbitration compared through the general judicial path, there are essentially three staples, that is, done quickly, by their experts and in secret  
Second, weakness of arbitration; although the many advantages arbitration has in resolving disputes, but in practice there turns out to be weaknesses from dispute resolution through arbitration:
  - a. Importance that to bring together the will of the disputants to bring it to the arbitration body is not easy. Both parties must agree when to be able to reach an agreement or approval it is sometimes difficult and which arbitration forums will be chosen.
  - b. Arbitrage as has been conceived, in arbitration is not known for any legal precedent or attachment to earlier arbitration rulings. Thus, any dispute containing argumentation the legal argument of the well-known jurists. Because of the absence of this precedent, it is logical of the possibility of

the onset of mutually opposite decisions, meaning that flexibility within issues decisions that are difficult to achieve.

- c. Arbitration, however, is always the decision of arbitration to depend on how the arbitrator issues decisions satisfying the parties.

On 22 April 1992, the MUI Leadership Council invited a meeting of Muslim experts or practitioners of law or scholars including from among the Colleges in order to exchange minds the need for the absence of a formed Islamic Arbitration. After several meetings, the Early 1414 H Muamalat Arbitration Agency (BAMUI) established by the Indonesian Assembly of Ulama (MUI) dated 05 Jumadil, established the foundation's 21 October 1993 M. Established in the foundation's legal body, as confirmed in the Yudo Paripurno, SH notary deed. Number 175 dated October 21, 1993.

In the recommendation of RAKERNAS MUI, December 23–26, 2002, confirmed that BAMUI was the only hakam (arbitase syari'ah) institution in Indonesia and was a device of MUI organization. Then according to the results of the meeting between the MUI Leadership Council with the BAMUI Trustees on August 26, 2003 as well as noticing the contents of the BAMUI No.82/BAMUI/07/X/2003, dated 07 Oktobe2003, then MUI with his SK No.Kep-09/MUI/XII/2003, dated 24 December 2003, set:

1. Advance Changed the name of Indonesian ArbitrasMu'amalat Agency (BAMUI) into the National Sharia Arbitration Agency.
2. Advances changed the shape of the BAMUI body from the foundation to the body under the MUI and was the organizational device.
3. Live In carrying out its duties and functions as a hakam institution, Basyarnas is autonomous and independent.
4. Raises Basyarnas's undertaker.<sup>6</sup>

Arbitration of the National Sharia Arbitration is a name change from Indonesian Muamalat Arbitration Agency (BAMUI) which stood on 21 October 1993/5 Early Jumadil 1414 H initiated by the Indonesian Ulama Majlis. With the existence of Banking Act Number 7 of 1992 made a new era in the history of the development of Indonesian economic law. The law introduced a system for unidentified shares in the law on the subject of banking no.14 of 1967. With the system to share that result then banking can break away from the efforts that use the “interest” system. On 22 April 1992 the MUI Leadership Council invited a meeting of Muslim experts or practitioners of law or scholars including from among the Colleges in order to exchange minds the need for the absence

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<sup>6</sup>WarkumSumitro,SH,MH, *Asas-AsasPerbankan Islam dan Lembaga-Lembaga terkait BAMUI dan Takaful Di Indonesia*,(Jakarta:PT Raja Grafindo, 1996), h. 141.



of a formed Islamic Arbitration. After a few meetings, established the Early Jumadil Arbitration Agency (BAMUI) established by the Indonesian Assembly of Ulama (MUI) dated 05 Jumadil 1414 H to coincide with 21 October 1993 AD Established in the form of a foundation legal body, as confirmed in the Yudo Paripurno notary deed, SH. Number 175 dated October 21, 1993. In the recommendation of MUI RAKERNAS, December 23-26, 2002, confirmed that BAMUI was the sole sharia arbitase law institution in Indonesia and was a device of MUI organization. Then according to the results of the meeting between the MUI Leadership Council with the BAMUI Trustees on 26 August 2003 as well as noticing the contents of the BAMUI/07/X/2003 BAMUI/BAMUI/2003, October 07, then MUI with SK no.Kep-09/MUI/XII/2003, on 24 December 1993 set:

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3. Live In carrying out its duties and functions as a hakam institution, Basyarnas is autonomous and independent.
4. Agree Raises Basyarnas's undertaker.

As for the legal foundation underlying arbitration is as follows

a. Al-Hujurat's letter 9

لَتِي فَفَقْتِلُوا الْآخَرَى عَلَى إِحْدَيْهِمَا بَعْتَ فَإِنْ بَيْنَهُمَا فَاَصْلِحُوا أَقْتَتَلُوا الْمُؤْمِنِينَ مِنْ طَائِفَتَانِ وَإِنْ مَقْسَطِينَ تَحِبُّ اللَّهُ إِنْ وَأَقْسَطُوا بِالْعَدْلِ بَيْنَهُمَا فَاَصْلِحُوا فَأَفَاءَتْ فَإِنَّ اللَّهَ أَمَرَ إِلَى تَفِيءٍ حَتَّى تَبْغِي أَل

If two of them believe, fight, and then make peace between them. But if one breaks the covenant against another, then it is that you fight until it recedes to God's command. If he recedes, peace between them according to justice, and let you be fair; surely Allah loves the fair."

b. An-Nisa letter verse 35.

هُمَا اللَّهُ يُوفِّقُ إِصْلِحًا يُرِيدُ أَنْ أَهْلَهَا مِنْ وَحَكَمًا أَهْلَهُ مِنْ حَكَمًا فَابْعَثُوا بَيْنَهُمَا شِقَاقَ خِفْتُمْ وَإِنْ خَبِيرًا عَلِيمًا كَانَ اللَّهُ إِنْ بِي



And if you fear a dispute between them, send a righteous man from a man's family and a woman's family. If both people were to make a fix, God would have made a Scripture to the husbands. Indeed Allah is All-Knowing, All-Knowing.<sup>7</sup>

c. Sunnah

Hadith of An-Nasa'i history tells the dialogue of the Apostle with Abu Syureih. The Messenger asked Abu Syureih: "Why are you called Abu Al-Hakam?" Abu Syureih replied: "Indeed my people when fighting, they come to me, asking me to finish it, and they are willing to make it up to me". Hearing Abu Shi'a's reply, the Messenger of Allah said: "How good is that doing". Thus the Apostle of God confirmed even praise of the deeds of Abu Syureih, Sunnah thus called Sunnah Taqirriyah.

d. Ijma'

Many histories suggest that the scholars and companions of the Apostelah agreed (ijma') justifying the settlement of the dispute by means of arbitration. For example, it was narrated when Umar bin Khattab was about to buy a horse. By the time Umar rode the horse for trials, the horse's leg was broken. Umar was about to return to the owner. The owner of the horse refused. Umar said: "Well, point to someone you trust to be hakam (arbitrator) between the two of us. The horse owner said: "I willing Abu Syureih to be hakam". So by handing over the settlement of the dispute to Abu Syureih. The chosen Abu Syureih (hakam) decided that Umar should take and pay the price of the horse. Abu Syureih said to Umar bin Khattab: "Take what you buy (and pay the price) or return to the owner what you have taken as it was originally without disability". Umar accepted both the verdict.

e. Act No. 30 of 1999 on Arbitration and Alternatives of Dispute Settlement.

Arbitration by law no. 30 of 1999 was the way of settlement of civil disputes outside the general judiciary, whereas arbitration agencies were bodies chosen by the parties in dispute to give a verdict on the dispute. The National Shari'ah Arbitration Agency is an arbitration agency as in question of the Act No. 30/1999.

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<sup>7</sup>M.SyakirSula.AsuransiSyariah (life and general).jakarta: gema Insani.2004.hal.553

f. SK. MUI

SK Council Leadership MUI No. Kep-09/MUI/XII/2003 Date 30 Syawal 1424 H (24 December 2003) on the National Shari'ah Arbitration Agency.

g. Fatwa DSN-MUI

All fatwa of the National Shari Council of the Indonesian Assembly of Ulama (DSN-MUI) are subject to fraternity (civil) is constantly terminated with the provision: "If either party does not reap its obligations or in the event of disputes between the two sides, then the settlement is made through the Shari'ah Arbitration Agency after un achieving the agreement through deliberation. (See Fatwa No. 05 about, selling stock, Fatwa No. 06 about selling *istishna* buy, Fatwa No. 07 on financing the *mudharabah*, Fatwa No. 08 on financing of the communion, and so on).

The National Sharia Arbitration Agency authorized a fair and quick settling of the disputes of the common or civil inflicted on trade, manhood, industry, services, etc. which the statutory and regulatory agencies were fully controlled by the disputed, and the parties agreed in writing to submit their settlement to the National Sharia Arbitration Agency in accordance with the procedures already implemented. by Basyarnas. Basyarnas also authorized binding opinions at the request of the parties without any dispute regarding matters with respect to a treaty.

As an overview of Basyarnas's procedure rules are as follows:

"The filing of the Arbitration process application began with the declamation of the application letter to hold Arbitration. Furthermore the application letter will be examined by the National Shari'ah arbitrage Agency, to determine whether the National Shari'ah arbitrage Agency is concerned with checking and deciding on the Arbitration dispute that was pleaded earlier. In terms of the treaty or a copula Arbitration considered insufficiently to be the basis for the authority of the National Shari'ah arbitrage Agency to examine the disputes proposed, then the National Shari'ah arbitrage Agency would state that the plea was not acceptable poured in a designation issued by the chairman of the National Shari'ah arbitrage Agency, instead if the Arbitration agreement or clause was considered to have been considered to have been considered to have been established. Suffice, then the chairman of the National Shari'ah arbitrage Agency immediately sets out and appoints a Single Arbitrator or assembly Arbitrator that will examine and decide disputes."

The Arbitration trial examination is conducted at the National Shari'ah arbitrage Agency seat, unless there is approval of the other from both sides,

then the inspection can be conducted elsewhere. During the process and at each stage of the inspection takes place the Single Arbiter or Assembly Arbiter must give the parties a fully disputed opportunity to defend and maintain the interests it disputes. The check stage begins with the answer questioning stage (duplicreplition), proof and verdicts are made under the policy of the Single Arbiter and the Assembly Arbiter.

In the answer, at the latest on the first hearing of the inspection, the applicant may file a counterclaim against the petitioned rebuttal, the applicant may submit a response drawn up with the origin of the suit, with a relationship with the disputed principal as well as belonging to the jurisdiction of the National Shari'ah arbitrage Agency, the postulate of this matter both the Single Arbiter and the Arbiter Assembly first expelled. The endurance of peace, when it works, then the Single Arbiter or the Assembly Arbiter will make a deed of peace and require both sides to obey the peace. And instead when the means are not successful, then the Single Arbiter or the Assembly Arbiter will pass on the requested dispute check. In the event that the parties are welcome to provide their respective argumentation and stance as well as submit evidence that is considered necessary to say so. The entire examination is conducted in a closed manner according to the closed principle of arbitration.

The verdict was taken and decided in a hearing attended by the slats of the party. When the parties have been called but are not present, the verdict is nevertheless spoken. The entire examination process until the pronouncement of the verdict will be completed no later than before the term of 6 (six) months is calculated since it was first called to attend the first trial. Although the Arbitration ruling is final, the National Shari'ah arbitrage Agency procedure regulation provides the possibility to one party to submit in writing the request for cancellation of the Arbitration ruling submitted to the National Shari'ah arbitrage Agency Secretary and to the opposing party as a notification of cancellation of the verdict at the latest in 60 (six) days of the date of the verdict was accepted, except on the reason for the misappropriation. The case is only 3 years since the verdict was dropped.

In the 40th (forty) tempo the day since the request for cancellation of the verdict was accepted by the Secretaries Agency of National Shari'ah arbitrage. The Chairman of the Board of Trustees must immediately establish an Ad. Hoc committee consisting of 3(three) persons who will act inspecting and disconnecting requests for cancellation.

The general provisions related to the dispute resolution procedures of the Number 30 Year Act 1999 are as follows:

1. The invalidation of disputes must be put forward in writing, but it can also be orally when the parties are approved and considered necessary by the Arbiter or the Arbiter Assembly.
2. Arbiter or the Arbiter Assembly first seeks peace between the disputed parties.
3. The invalidation of the dispute must be resolved in the longest time of 180 days since the Arbiter or Arbiter Assembly is formed, but it can be extended when the parties are required and approved.
4. The Arbitration's ruling should contain the head of the ruling that reads "For justice Based on One's Divinity" the name of a dispute, a brief description of disputes, the establishment of the way parties, the name of the Arbiter or the Arbiter Assembly on the whole dispute, the opinion of each Arbitrator in terms of differences of opinion in the Arbitration, the ruling, the place and date of the verdict, and the Arbiter or Arbiter Assembly's promontory.
5. Aror in a verdict set a term such verdict must be implemented.
6. Should the dispute check be completed, the inspection must be closed and set the hearing pronounces the arbitration verdict and is pronounced within at most 30 days after the inspection is closed.
7. Arbitrary In the longest time 14 days after the verdict is accepted, the parties may apply to the Arbiter or Arbiter Assembly to correct the administration's fallacy and or add or reduce any demands for a verdict.

The above procedure provisions, intended to keep lest dispute resolution through arbitration include also sharia arbitration becoming protracted. The ruling that has signed the arbitrator is final and binding means that the Basyarnas ruling has binding powers and cannot be made any legal effort. Once the ruling has a fixed legal power, the authentic copy of the verdict is submitted and registered with the clerkship of the District Court. If the verdict is not made voluntarily, it is implemented under the order of the chairman of the District Court. Under Supreme Court Circular Letters Number 8 of 2008 Change Number 2 of the Year on the Execution of the Sharia Arbitration Agency's Verdict, it is mentioned that in terms of the Sharia Arbitration Agency's rulings were not implemented voluntarily, hence the ruling under the Religious Court's order.

However, against arbitration decisions, the parties may apply for cancellation when the ruling is thought to contain the following elements:

1. The arguably letter of documents submitted in the inquest after the verdict was dropped, admittedly false or otherwise false.
2. After the decision was taken found a document of a decisive nature, which was hidden by the opposing party, or

3. The deciduousness was taken from the results of a ruse recognized by one of the parties in the dispute check.

The petition for annulment should be submitted in writing addressed to the Chief Justice, within the longest 30 days counting since the day of the surrender and registration of the arbitration verdict to the Clerk of the Court. If the annulment application is granted, then the Chief Justice within 30 days of the annulment application is filed, dropping the annulment verdict.

Basyarnas has advantages in dispute resolution over courts, among which are:

1. Heaven gave trust to the parties, because of its respectable and responsible settlement.
2. The arbitrators put great trust in the arbitrators, as it was handled by those whose experts were fielded (expertise).
3. The process of taking its verdicts is fast, by not going through convoluted procedures as well as at a cheap cost.
4. The arbitrators handed over their voluntary settlement of disputes to the trusted (bodies), so the parties would also voluntarily carry out the arbitrator's verdict as a consequence of their agreement raising the arbitrator, as the adhesiveness of the agreement contained promises and each promise was to be kept.
5. Arbitration In the process of arbitration at its right is contained peace and deliberation. Whereas deliberation and peace are the wishes of everyone's conscience.
6. Affirmative for the benefit of the Islamic Muamalat and transactions through Indonesian Muamalat Bank as well as Islamic BPR, the Arbitration of Muamalat will provide opportunities for the passage of Islamic law as a case settlement guideline, since within each contract there exists a clause of implementation of the settlement through Basyarnas.

Besides the above advantages there are also some weaknesses. If it sees the development of Basyarnas that has not been maximal to compensate for the rapid development of sharia financial institutions in Indonesia, it is best that Basyarnas revamp existing management and human resources. When compared to the Indonesian National Arbitration Agency (BANI) and the relatively new Capital Market Arbitration Agency (BAPMI) stand, Basyarnas still has to be self-flagged.

To be a community trusted institution, it must have good performance, have a representative building, good administration, secretarial that are always ready to serve the disputants, and arbitrators who are able to help their dispute settlement in good and satisfying terms. Such good intern conditions will

increase if supported by law enforcement from the government about the ruling that is final and binding in dispute resolution in arbitration.

Although wrestling in the field of settlement of sharia economic disputes, Basyarnas was quite short on funds. To close operating costs only, Basyarnas had to thrust proposals for a plea of funds from a number of Banks. To Bank Indonesia (BI), in 2006 Basyarnas appealed for Rp 200 million in aid. Luckily, the BI Sharia Banking Directorate is willing to disburse Rp 100 million in funds. Yudho Paripurno, Chairman of Basyarnas did not dismiss the funds circulating in Basyarnas quite minimally, although he did not want to call the numbers. The existing funds are enough to run the secretariat. But to do socialization, of course, it is still very lacking.<sup>8</sup>

### **The Settlement of Sharia Banking Disputes in Lebong Release District**

At first, which became a legal constraint for the settlement of sharia banking disputes was about to be brought where the settlement was, as the state courts did not use sharia as a legal foundation for the case settlement whereas the authority of the courts at the time was according to Law No. 7 The year 1989 limited only to prosecuting marriage cases, inheritedness, wills, grants, endowments, and sociable that the current settlement of sharia banking disputes can be carried out through nonlitigation methods.

In principle, law enforcement is only exercised by judicial power (judicial power) which is constitutionally prevalent to the name of judicial body (Article 24 of the 1945 Act). Thus, the authorities examine and prosecute disputes only judicial bodies that have adhered under judicial rule culminating in the Supreme Court. Article 2 of the UU No. 14 Year 1970 expressly stated that the authorized and functioning executing the baths were only judicial bodies established under law. Beyond that is not justified as it does not qualify floral and official as well as contrary to the principle under the authority of law. However under Article 181, 1855, and 1858 of the Civil Code, the explanation of Article 3 of Law No. 14 Years of 1970 as well as Law No. 30 Year 1999 on Arbitration and ADR, it is openly likely that the parties resolved disputes using institutions other than courts (non litigation) such as arbitration or peace (islah). The completion of disputes through non litigation pathways is set in one article, namely Article 6 of Law No.30 of the Year 1999 on Arbitration and Alternatives of Dispute Settlement.<sup>9</sup>

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<sup>8</sup>Sudikno Mertokusumo, *Mengenal Hukum: Suatu Pengantar*, Yogyakarta: Liberty, 1999, h. 144.

<sup>9</sup>Adrian Sutedi. *Perbankan Syariah*. Bogor: Ghalia Indonesia, 2009. 167

In Rejang Lebong district, regarding the economic problems of sharia is indeed very rarely once in existence in the Ib Curup class Court of Religion. It is based on author observation to the information center section of the Court itself. Never mind about aribtrase, regarding the general sharia economic dispute alone, the public still thinks the authority is in the District Court.

With the reason above the author then directly searched data to the two sharia banks that exist in Rejang Lebong District, namely Muamalat Bank and the Curup branch of Indonesia Sharia Bank. According to Adsitya Dian Eko Putra as head of the Muammalat Curup Bank branch, so far there have never been any problems or disputes that occurred at the bank settled through Basyarnas. Even for a regular classified dispute it hasn't happened either. In line with Muammalat Bank, in the BSI Bank the Curup branch also experiences the same.<sup>10</sup>

Some of the costumers in the bank were when asked about the existence of Basyarnas, on average they did not know it. The public considers that if there is a problem in the bank it will be settled as a matter of ordinary civil matters such as the issue of the treaty, debts of receivables and others that are the realm of the general judiciary. All they understand is that the Court of Religion solves family hokum issues only like divorce, child rights and so on.

## CONCLUSIONS

In this study it turned out that the existence of national sharia arbitration agencies was still minimal, this being because of some of the first of the lack of financial institutions or businesses that used sharia foundations as a foundation in transacting. Second, still the lack of community understanding of the existence of national sharia arbitration institutions. For the problem settled ligitally only, many did not yet know it should be settled in the Court of Religion. Many societies who assume such things will be settled in ordinary public courts. Third, based on the recognition of bank leaders using the principle of sharia transactions, there was indeed no dispute at the bank yet. The conclusion that can be drawn from research findings is the absence of existence from national arbitration agencies within the economic problems of the community of Rejang Lebong County.■

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<sup>10</sup>Interview with Ari A. Irawiza, Consumer Business Relationship Manager BSI Branch Office Curup



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