

ASH-SHULH AS AN ATTEMPT OF SHARIA MICROFINANCE INSTITUTIONS TO SOLVE SHARIA ECONOMIC DISPUTES IN MADURA SOCIETY

Erie Hariyanto, Harisah Harisah, Moh Hamzah, Ach. Faidi,
Hoirul Umam
Institute Agama Islam Negeri Madura, Indonesia
Email: erie@iainmadura.ac.id

Received: Oct 7, 2021; Reviewed: , 2021; Accepted: , 2021; Published: Jan 11, 2022.

Abstract

The disputes resolution in the sharia financial institution gives opportunity and challenge for the Religious Court. Society tends to use ash-shulh by conducting deliberation in solving every dispute. This dispute resolution is taken because of the given legal freedom for society. Its purpose is to analyze the information on opportunities and challenges of the Religious Court as the judicial institution that has absolute authority in solving sharia economic disputes. This is qualitative research by studying secondary data and doing online and offline interviews with the informant. The Religious Court also plays a role in solving the disputes in the sharia microfinance institutions which generally choose the alternative way in disputes resolution by doing the negotiation. The study reveals that the sharia microfinance institutions depend on alternative ways in their dispute resolution such as negotiation and mediation by involving religious figures like Kyai. Madura society puts their trust in the religious figures more than the official institutions appointed in the Supreme Court Regulation No. 1 of 2016 concerning the Mediation in Court. However, the disputes resolution taken by society with the involvement of Kyai, is still based on the decree of the Religious Court in solving sharia disputes as a legal reference and a procedure taken by the judges.

Penyelesaian sengketa di lembaga keuangan syariah memberikan peluang dan tantangan tersendiri bagi Pengadilan Agama. Masyarakat memiliki kecenderungan

menggunakan ash-shulh dengan cara musyawarah mufakat dalam menyelesaikan setiap sengketa. Upaya penyelesaian sengketa ini dipilih karena kebebasan hukum bagi masyarakat untuk memilih jalan penyelesaian sengketa. Penelitian ini dilakukan dengan menggunakan metode kualitatif melalui data sekunder serta wawancara kepada informan, baik secara online maupun offline. Hasil dan pembahasan menunjukkan bahwa lembaga keuangan mikro syariah memilih jalur alternatif penyelesaian sengketa seperti perundingan dan mediasi dengan melibatkan melibatkan seorang tokoh agama seperti Kyai. Masyarakat Madura lebih percaya terhadap tokoh agama dibandingkan lembaga resmi yang telah ditetapkan oleh Peraturan Mahkamah Agung Nomor 1 tahun 2016 tentang Mediasi di Peradilan. Namun, penyelesaian sengketa yang diambil masyarakat dengan melibatkan Kyai, tetap mengacu pada keputusan pengadilan agama dalam menyelesaikan sengketa syariah sebagai acuan hukum dan cara yang diambil oleh para hakim.

Keywords: *Ash-Shulh, Sharia Microfinance Institutions, Sharia Economic Disputes*

Introduction

Disputes are caused by a number of factors, whether it happens with other individuals or institutions. Some factors cause disputes in sharia financial institutions, it includes the misinterpretation of a contract that has been made but then (the contract) is broken or the so-called *default*. This default, among many others, often be the factor triggering disputes.¹ The disputes happen because there are no justice principles. The justice principles are the important points so one of the parties does not bear all the burdens. In this case, the relationship of two or more parties in a business or in an Islamic law context is called *muamalah*. *Muamalah* is part of Islamic law which determines the law for an individual-to-individual relationship, both in private and in a legal entity. In *Fiqh* terms, it is called *al-syakhsiyah al-itibariyyah*. *Muamalah* includes sell and purchase, tenancy, and organization. There really is a difference in principles between *aqidah* and *muamalah*. In *aqidah*, everything is banned unless it is instructed. Meanwhile, in *muamalah*, all are allowed except what is forbidden.² Social changes in *muamalah* develop rapidly due to global acceleration. Hence, the teaching of *Fiqh muamalah* in an *a priori* way based solely on classic books is inadequate, because the formulation of the past *Fiqh muamalah* has been irrelevant with the modern context. Those must be re-formulated so they can be the answers to all problems and modern economic-financial needs.³ All parties should explicitly include this dispute resolution in an agreement they made. The dispute resolution is better done in sequence, at least there should be

1 Abdul Aziz, *Etika Bisnis Perspektif Islam "Implementasi Etika Islami Untuk Dunia Usaha"*, 2013.

2 Jaya Miharja, "Kaidah-Kaidah Al-'Urf Dalam Bidang Muamalah," *El-Hikam* 4, no. 1 (2011): 104.

3 Eka Sakti Habibullah, "Prinsip-Prinsip Muamalah Dalam Islam," *Ad Deenar: Jurnal Ekonomi Dan Bisnis Islam* 2, no. 01 (2018): 34.

four alternative resolutions i.e. a deliberation, and if it is failed, other alternatives are through a banking mediation, arbitration, or a judiciary. The building of Islamic economy is based on five universal values; those are *tauhid* (faith), *adl* (justice), *nubuwwah* (prophecy), *khilafah* (government), and *maad* (result). The mentioned values will result in a good attitude (*akhlaq*) reflected in daily life.⁴

Muamalah is often practiced by someone for the sake of wealth accumulation. According to *jumbur ulama* (majority of ulama), wealth is everything that has economic value in society's perspective because it can be used; there is an obligation to pay compensation for those damaging it. The definition was approved by Hanafi ulama. Abdul Wahab al-Baghdadi, one of the ulama of Malikiyah, said, "Al-mal is something, which in society's daily life functions as wealth or property and we are allowed to demand compensation from it". In al-Muwafaqat, Syatibi emphasizes that "Wealth is something that can be possessed and the owner is allowed to act decisively toward other people trying to confiscate it". Meanwhile, Az-Zarkasyi, one of the ulama of Syafi'i Mazhab (Islamic school), defined wealth as something which can be used; it means that it has the potential to exploit.⁵

The definition of *muamalah* is categorized into two: first, linguistically, it means to act, to do, and to practice. Second, term wise, *muamalah* is divided into two: broad and narrow definitions. In a narrow definition, *muamalah* is the rules of Allah swt which regulate human-to-human relationships in an attempt to obtain the things they need for their physical needs in a good way. Meanwhile, in a broad definition, *muamalah* is the rules of Allah swt that must be followed and obeyed in social life to maintain human interests in relation to worldly life such as social interaction.⁶ In *muamalah* concept, both personal and institutional, all parties should explicitly include things about dispute resolution when making an agreement. It will be better if the disputes resolution determines at least these four alternatives in sequence, those are a deliberation-if this is failed, then the other three alternatives are-banking mediation, arbitration, and a judiciary.

Islam is a religion that loves peace and is guidance for its believers, thus, in *muamalah* disputes, Islam emphasizes that it is more preferable to solve problems with peaceful solutions (*tasalub*). Hence, all parties in dispute should prioritize deliberation to every dispute resolution. This dialogic attempt is taken so that business relations and brotherhood are peacefully maintained, and in the future, all parties are still in a good relationship. This attempt is also economical both in

4 Adiwarmam A Karim, *Ekonomi Mikro Islam*, The Fifth (Depok: Rajawali Press, 2017).

5 Lembaga Fatwa Mesir, "Fikih Kontemporer," 2013.

6 Abdul Munib, "Hukum Islam Dan Muamalah (Asas-Asas Hukum Islam Dalam Bidang Muamalah)," *Al-Ulum Jurnal Pemikiran Dan Penelitian Ke Islaman* 5, No. 1 (2018): 74.

terms of time and cost. If the deliberation does not show a good result, all parties in dispute can take other ways, namely negotiation, mediation, arbitration, and litigation through a court as the last resort to solve the problems.

Along with the sharia economy growth and development, the probability of disputes and conflicts among the parties is also bigger. A dispute starts from a disagreement which is unsolved for so long among the legal subjects that have been in a legal relationship before, so the implementation of rights and obligations are in disharmony. The larger and wider the business activities are, the higher the frequency of disputes is; it means that there will be more conflicts that need to be solved. Each kind of dispute always requires a rapid solution. Dispute resolution is a way, procedure, and mechanism taken by all parties to solve the conflicts because of their differences of interests. The attempt to search for peace also can be done in a court. However, the national statistical data, collected from Badilag website in the last three years, reveals that there are only 14 deeds of peace out of 850 cases filed in the Religious Courts.⁷

Therefore, there should be an integrative solution to encourage the Religious Courts (as the last resort of justice seeker in Sharia economy disputes) to synergize with the society, who is also the main actor of Sharia economy as a customer, and the managers of Sharia Microfinance Institutions. There are two roles of *Pesantren* (Islamic boarding school) in the Sharia economy: first, to develop and to socialize knowledge on Sharia economy to society. This is because *Pesantren* is acknowledged as the legitimate institution to teach the future *ulama* and *da'i*. The *ulama* from *Pesantren* is highly potential to be the expert of Islamic economy as they are needed to be the Sharia Supervisory Board (*Dewan Pengawas Syariah* or known as DPS) for the Sharia Financial Institutions (*Lembaga Keuangan Syariah* or LKS) functioning to supervise and maintain the activities and programs of LKS to be in line with the Sharia teachings. If *Pesantren* improves its potential in the Sharia economy and succeeds in that, the society will definitely follow the steps. The society will also migrate from capitalist to Islamic economy which is free from *riba* (interest), *maysir* (gamble), *gharar* (hazard), *risywah* (bribes), and *zalim* (cruelty). On the contrary, if the *Pesantren* is apathetic and passive, it will surely affect the society, especially when they are still used to interacting with the conventional economy.

The role of *Pesantren* widens as *Kyai* is considered as a wise intermediary figure by society to handle Sharia economic disputes within society. *Kyai's* role that has insights of Sharia economy is to be the mediator within society in a dispute

7 Badilag – The Supreme Court <https://badilag.mahkamahagung.go.id>

resolution in accordance with the principles of Sharia economy. The problem in this study is more on the tendency of society in solving the disputes in a peaceful way by involving a religious figure. This tendency will result in many problems that might happen in the future, such as, what is the expertise of the religious figure in the field of Sharia economy, what is his position in the Sharia microfinance institutions, and also how is society's understanding about the institution that manages the disputes resolution both litigation and non-litigation in Indonesia. These problems are what makes this study different compared to the previous ones because it focuses more on society's tendency to solve the disputes in Sharia microfinance institutions in Madura. On one hand, the Religious Court has absolute authority since it has facilities, infrastructure as well as supporting laws and regulations. On the other hand, this is a good chance for the Religious Court to solve sharia economy disputes at the level of sharia microfinance institutions.

Research Methods

This study applies qualitative methodology with a case study design. This methodology will deeply discuss certain aspects of the social environment including humans within. The method can be implemented to study about an individual, a group of people, human environment or social institutions. The materials for the case study can be collected from sources such as observation reports, personal journals, biography, people's reports and information that are commonly and widely known. The data collection techniques in a case study are done through observation, interviews, questionnaires, documentary study, and others to gather as much as needed information so the problems are comprehended in-depth. The informants to interview in this study are the administrators, staff, and members of the Sharia Cooperative and *Baitul Maal wa at-Tamwil*. In this study, the mentioned methodology is used to get the perfect and valid data. The researcher collected the data through observation, online and offline interviews, and documentary study. The study object is the selected Sharia Microfinance Institutions in Madura and the Religious Courts as the legal institution to solve sharia economic disputes. The selected courts are the ones owning data about solving sharia economic disputes. The amount of data is to the extent that the researcher thinks that it is valid enough to be the reference. All collected data are analyzed with theory and supported by the data obtained from Badilag.

Discussion

Disputes and Its Resolution in Sharia Economic Law

The definition of dispute (or *sengketa*) in the Indonesian language dictionary is similar to a contradiction and conflict. By 'conflict', it means that there is opposition among individuals, groups, or organizations on one problem object.⁸ Meanwhile, in Dutch, the terms are *geeding* or *process*. It means that a problem involves some people so the conflict happens, that is what we call *dispute*.⁹ It can be concluded that a dispute is a series of problems that results in loss or default in a financial institution. A dispute is seen from the legal subject (a party in dispute) and the legal object (issue). Some disputes that commonly happen in the sharia microfinance institutions are the misinterpretation of contracts by the members, the people that have financing are bankrupt, and some members breaking the promise. The type of dispute will affect the regulations ruling the mentioned disputes.¹⁰

The principles in the sharia economy cannot be positioned as a theory that follows the study and research because they are from Islamic sharia that becomes the basic theory and practice in the system of the Islamic economy. Some principles in the sharia economy become their own characteristics of Islamic teaching in showing the etiquette of economy for all people and become the norms in every activity of Muslim society. The basic assumptions or the main norms in a process and interaction of economic activities are the Islamic sharia that is applied as a whole (*kaffah*) either on the matter of personal, family, society, entrepreneur, or government in fulfilling life needs both physical and spiritual. In other words, the Islamic economy principles are the implementation of the principles of efficiency and advantage by maintaining the natural environment sustainability. These principles are no other than to give norms for all economic driving forces based on Islam to advance the economy and give peace to all levels of society.

The purpose in creating a peaceful atmosphere in the economic activities is that Islam strictly prohibits its believers to involve in a dispute of any activity including economy. Islam shows that all parties in disputes solve the problems in a peaceful manner. Dispute is indeed a phenomenon which is inseparable from human life. As long as there is an interaction among individuals, dispute or conflict is always around. Generally, it happens because one party breaks his/her promises or cheats. The promise-breaking happens if 1) parties or one of the parties do not

8 Achmad Ma'rub, "Penyelesaian Sengketa Pembiayaan Murabahah yang Bermasalah di BNI Syariah Cabang Malang," (Undergraduate Thesis, Universitas Islam Negeri Maulana Malik Ibrahim, 2013).

9 Muhammad Nasrullah, "Penanganan Sengketa Pembiayaan Bermasalah pada Akad Murabahah di Baitul Maal Wa Tamwil" (Universitas Islam Negeri Syarif Hidayatullah, Jakarta, 2019).

10 Nasrullah.

do as promised or agreed; 2) parties or one of them have done as promised but it is not exactly similar as agreed; 3) they do as promised but is too late compared to the agreed deadline; and 4) they do something which is not allowed according to the agreement they have made in advance.

The conciliation is done through a discussion and negotiation by the parties in dispute to meet the end of their conflicts. Implicitly, it is said that conciliation is the best way to solve problems (*wa al-shulh khair*). Besides, in *Fiqh*, there is a principle stating that *shulh* is the main legal settlement instrument. Although Islam has set the norms for economic activities so there will not be any conflict, human behavior who always makes mistakes here and there is the trigger for many disputes including in a sharia-based financial institution.

With the more developed sharia financial institutions in Indonesia, the probability of disputes between the mentioned institutions and its customers will be bigger. The disputes resolutions must be optimized so they can be solved well and rapidly. The mechanism in solving civil-type sharia business disputes, generally, is done in three alternatives; first, handled through conciliation or the so-called ADR (Alternative Dispute Resolution); second, through a sharia arbitration institution; and finally, through litigation (a process in the Religious Courts or the District Courts depending on the agreed clauses). Meanwhile, the disputes resolution suggested by Islam is in the form of conciliation of all parties.

A dispute resolution or conciliation in *Fiqh Muamalah* is known as *ash-shulh*. The fair conciliation must contain the most important requirement; the transaction of the two parties is valid according to *syara'*, and the conciliation does not include the ban of something *halal* or *vice versa*. One of the parties in conciliation is not allowed to tell lies in his/her indictment. Furthermore, the conciliator is someone pious and has insights into the reality, understands the mandatory, as well as, helps find justice. To conclude, *ash-shulh* is an agreement achieved after solving the conflicts between the two parties in dispute. Islam chooses peace as the best path to dispute resolution because it influences positively to all parties. Some of the positive impacts for the parties in dispute are they spend a very low cost for solving the matters, there is no grudge left, and the problems are handled well. These are what Islam wants to give lessons for its believers about a harmonious life without any conflict.

There are some institutions assigned to solve disputes in sharia banking which can be alternatives for the parties that have *murabahah* contracts, to find solutions for their conflicts. Article 1 Section 1 of the Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. Arbitration is a settlement of civil

disputes outside the public courts based on the arbitration agreement made in a written form by the parties in dispute.¹¹ For solving a particular dispute between the sharia banking party and its customer, institutional arbitration that is preferably chosen by the parties is *Badan Arbitrase Syariah Nasional* (BASYARNAS, National Sharia Arbitration Board).

The mentioned institution has the authority/competence to solve disputes in the sharia economic field if the parties in dispute have previously made an arbitration agreement, either before or after the dispute happened. The first mentioned is called as *pactum de compromittendo* which usually attaches to the main agreement by including the arbitration clause, whereas the second is called the act of compromise, which is an arbitration agreement separated from the main agreement.¹²

Furthermore, BASYARNAS as an institution that has authority for solving sharia business disputes, has a very significant role, some of them are ending the civil conflicts/disputes with a principle to prioritize peaceful (*ishlah*) ways, and solving the business disputes which use Islamic law as its operational, that only can be solved by Islamic law. Some advantages of using BASYARNAS are; 1) the trust and safety for parties in dispute, 2) the arbiter's expertise, 3) the confidentiality of arbitration, 4) the non-precedent (the arbitration decision does not have important influential values in deciding other arbitrations), 5) the arbitration decision is easier to do than the judiciary, and 6) the quick and low-cost in the process.¹³

Another institution is *Badan Arbitrase Muamalat Indonesia* (BAMUI, The Indonesian Arbitration Board of Muamalat). It functions as a solution media when a business is in dispute, whereas the company has no strong legitimation in a formal jurisdiction, so the dispute is unsolved. In this situation, BAMUI has a valid legal base and enables other institutions, outside the public judiciary, to be the referee/judge in parties' dispute resolution. This can be seen in Law No. 14 of 1970 Article 3 Section 1 and Law No. 20 of 1999. This arbitration regulation is a breakthrough in the economic world to lessen the burden in disputes filed to a court.¹⁴

The last institution mentioned here is the Religious Court. It is entitled to solve disputes in the sharia economic field since Law No. 3 of 2006 on Amendment

11 Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution.

12 Sri Lestari, "Penyelesaian Sengketa Pembiayaan Macet Pada Akad Murabahah Di BMT Hubbul Wathon Sumowono" (Institut Agama Islam Negeri, Salatiga, 2015).

13 Eko Siswanto, "Peranan Arbitrase (Basyarnas) Dalam Penyelesaian Sengketa Bisnis Syari'ah," *Al-Annal: Journal of Islamic Economic Law* 3, no. 2 (2018).

14 Edi Riyanto, "Arbitrase Syariah Sebagai Solusi Sengketa Bisnis di Indonesia," *Al-Intaj* 2, no. 1 (2016).

to Law No. 7 of 1989 concerning the Religious Courts was ratified. This can be read in Article 49 point (i) which states that the religious court has the duty and authority to examine, to decide, and to solve problems in the first level among Muslims in a “sharia economic” dispute. The mentioned authority in this Article is an absolute competence for the religious court as one of the pillars of judicial power in Indonesia.¹⁵

The Alternative Dispute Resolution of Sharia Economic Law

Indonesia is a plural country with diversity spread in every region. Even in matters of dispute, Indonesia has various solutions. These variations make Indonesia consistently run on its axis. Indonesia is a country that values togetherness, family, brotherhood, and peace. Therefore, to solve disputes or conflicts in finance, Indonesia has a list of alternative solutions.

Some of the alternative dispute resolutions are: first, negotiation. It is a two-way communication designed to reach an agreement when the two parties have both similar and different interests. This alternative is a medium for parties in dispute to discuss the settlement without the involvement of the third party as a mediator.¹⁶ The advantage of this kind of settlement is that the parties in dispute solve the problems by their own selves. They are the ones who know better about the matters triggering the conflicts and the preferable solutions. Therefore, they can control the dispute resolution process so they get the results they want.¹⁷

With the negotiation included in the alternative dispute resolution, it is expected that the parties in dispute will later achieve the settlement and establish a better relationship. One party can listen to and understand the reasons, explanations, and argumentations of another party, which is the basis or foundation of another party’s consideration and review to find the way out of disputes. The party expressing the argument and explanation must be able to control the anger and antagonism. It is also expected that in the meeting, all parties can find out their own weaknesses, mistakes, and fallacies so there will be a solution and a way out through a compromise that is sincerely acceptable for all of them.

The second alternative is called mediation. It is a kind of alternative dispute resolution done outside the courts. The purpose is to get a low-budget and quick dispute resolution as well as to find peace. In the process of settlement via mediation,

15 Siswanto.

16 Lestari, “Penyelesaian Sengketa Pembiayaan Macet Pada Akad Murabahah di BMT Hubbul Wathon Sumowono.”

17 Khairina, “Mediasi Sebagai Alternatif Penyelesaian Sengketa Antara Bank Dan Nasabah” (Universitas Hasanuddin, Makassar, 2013).

each party will not be prioritized or left out, instead, how the two parties accept their rights and obligations as they should. Mediation is a dispute resolution process with the involvement of a third party whose task is to give suggestions to solve disputes. It is dissimilar to arbitration where the decision of the arbiter or arbitration assembly must be obeyed by all parties, such as the court's decision. Meanwhile, in mediation, there is no obligation for each party to obey what has been suggested by the mediator.¹⁸

If mediation is chosen by all parties for stopping the conflicts, there will be some factors that must be met before conducting the mediation, namely, the disputes between two or more parties, the willingness to end the conflict, and the mediator. Here, the mediator's duty is to give suggestions. His duty is different from a judge or an arbiter. A mediator is in no position (has no authority) to give a verdict on a dispute. The duty and authority of a mediator are only to help and facilitate the parties in dispute so they are in a condition to reach an agreement about the disputed matters.¹⁹

The third alternative is conciliation. As written in the Black Law's Dictionary, conciliation is a peaceful method for a dispute resolution. It is regulated in Article 1851 to Article 1864, the eighth chapter in the Indonesian Civil Code, Book Volume III. If the parties want to solve the conflict with conciliation, they must abide by the regulations, referring to the aforementioned Articles of the Indonesian Civil Code.²⁰

Conciliation is an attempt to a dispute resolution by involving the third party called as conciliator that owns the authority to push all parties to obey and practice the things decided by them.²¹ The alternative dispute resolution through conciliation is similar to mediation, in essence. They involve the third party in the settlement process. This third party not only has the rights to give suggestions and deliver the opinion, he also has the authority to push (force) all parties to be more cooperative in the process of dispute resolution.

The next problem is about the execution of the BASYARNAS decision. The Religious Court competence to solve sharia economic disputes is not that easy to realize. It is because the Law No. 30 of 1999 limits the competence of the Religious Court. The law states that the one owning authority to be the executorial institution is a District Court. This rule is applied for the verdict of *Badan Arbitrase Nasional*

18 Khairina.

19 Suherman, "Upaya Mediasi Dalam Menyelesaikan Sengketa Di Lembaga Perbankan," *Jurnal Yuridis* 4, No. 2 (2017): 181.

20 Nevey Varida Ariani, "Alternatif Penyelesaian Sengketa Bisnis Di Luar Pengadilan," *Jurnal Rechts Vinding* 1, no. 2 (2012): 283.

21 Khairina, "Mediasi Sebagai Alternatif Penyelesaian Sengketa Antara Bank Dan Nasabah."

Indonesia (also known as BANI Arbitration Center), BASYARNAS, and other arbitration institutions. The execution of BASYARNAS verdict triggers so many questions and debates among practitioners, academicians, and legal observers. The reason is that, normative wise, an execution of arbitration institutions' verdict, based on the Law No. 30 of 1999 is under the authority of public courts. Therefore, there happens a conflict of legal norms or legal antinomy.

The tug-of-war authority does not stop there. In 2016, *Mahkamah Agung* (the Supreme Court) issued a regulation in Article 13 Section 2 of the PERMA No. 14 of 2016 concerning The Procedure of Sharia Economic Dispute Resolution. The regulation states that the implementation of sharia arbitration decisions and its cancellation are done in the Religious Courts zone.²² Hence, the Religious Court has full authority in conducting an execution and canceling sharia arbitration decisions by referring to the Law No. 30 of 1999 as the material law source. Internally, we can say that the dualism authority among the judiciaries under the Supreme Court has been all cleared.

The Compilation of Sharia Economic Law as the Material Law of Sharia Dispute Resolution in the Religious Court

Islam is one of religions that highly loves peace and a guide for its believers. In many *muamalah* problems or conflicts, Islam emphasizes that the peaceful and familial solution must be prioritized. It is as seen in the *murabahah* contract in several sharia bankings nowadays. With the many disputes happening in the Sharia Financial Institution, the compilation of sharia economic law exists to present solutions so that the disputes in *murabahah* contract find the way out.

Disputes in the Sharia Financial Institution are more dominated by the ones related with *murabahah* contract. This kind of dispute can be solved by several ways regulated in the Compilation of Sharia Economic Law: 1) Article 25 Section 1, the seller can do the conversion by making a new contract for the buyer that cannot pay off the *murabahah* financing as the agreed amount and time. In the Section 2, the seller can give discount from the total amount of compulsory payment to the buyer in a *murabahah* contract who has paid the installment on time and/or to the buyer who is incapable to do the regular installment; 2) Article 126, the seller can reschedule the *murabahah* bill for the buyer who cannot pay off the exact amount of debt in the agreed time with some pre-determined

22 Ainun Najib, "Kepastian Hukum Eksekusi Dan Pembatalan Putusan Arbitrase Syariah Dalam Perspektif Politik Hukum, Fakultas Syariah Dan Ekonomi Islam Universitas Ibrahimy Situbondo Jln. KHR. Samsul Arifin 20 Sumberejo Banyuputih Situbondo," *Jurnal Hukum Ius Quia Iustum* 23, No. 3 (2019): 567.

requirements: (a) no additional of the remaining amount of bill, (b) the charge in rescheduling process is a real cost, and (c) the extension of repayment time should be based on all parties' agreement; 3) Article 127, the seller can ask the buyer to provide a collateral for the selling item in *murabahah* contract; 4) Article 128, Sharia Financial Institution can do a conversion by making a new contract for the customers who cannot pay off their *murabahah* financing based on the agreed amount and time, under the requirement that they are still prospective customers; 5) Article 129, *murabahah* contract can be ended by selling the object to sharia financial institution with the market price, or the customer pays off the remaining debt to the mentioned institution after selling the object; 6) Article 130, if the *murabahah* contract object's sale price is more than the debt amount, the profit will be given back to the debtor/customer; 7) Article 131, if the object's sale price is smaller than the remaining debt, the customer is still responsible for paying off the debt according to the agreement; 8) Article 132, Sharia Financial Institution and ex-*murabahah* customer can make a new contract such as *ijarah al-muntahiyah bi al-tamlik*, *mudharabah*, and/or *musyarakah*; and 9) Article 133, if one of the parties of *murabahah* conversion cannot do the obligations, or if there is a dispute among the related parties, then it should be solved by *ash-shulh* and/or courts.²³

From the aforementioned explanation on the articles included in the Compilation of Sharia Economic Law, we can conclude that dispute resolution (in this case, *murabahah* financing) can be solved through the religious courts, or it can be done according to the content of the first contract (*akad*) between bank and customer, and the bank policy toward the customers in dispute. However, the contract and policy contents must be in line with sharia principles because sharia banks are always in the line of proper sharia.

The Compilation of Sharia Economic Law is an embodiment of the formal legal regulating economic transactions in Indonesia by absorbing sharia principles in each article and chapter. Beside the transformation of the Islamization process in every content, this law also potentially creates welfare and justice for the doers of sharia economic transactions. The Republic of Indonesia Supreme Court Regulation No. 2 of 2008 concerning the Compilation of Sharia Economic Law is an attempt of the Indonesian government to fill the void of law or rules in the courts focusing on the implementation and dispute resolution in sharia economic transaction activities. The reason is that in the previous year, before the issues of this regulation, the government only had a material law in the forms of *fatwa* of

23 Pusat Pengkajian Hukum Islam Dan Masyarakat Madani, *Kompilasi Hukum Ekonomi Syariah* (Jakarta: Kencana, 2017).

DSN-MUI which was considered incapable to be the guide for all judges in the court.²⁴

One of the developing economic transaction activities using sharia principles in Indonesia is Sharia Financial Institutions (sharia cooperatives, sharia banks, and so forth). Starting from the establishment of those institutions to date, they are not free from the possibility of disputes, problems, or conflicts.

Therefore, the Compilation of Sharia Economic Law (CSEL) does not only become the judges' reference in solving the problems or disputes among parties of sharia economy in the courts, but it is also implemented as a means of dispute resolution in the existing sharia financial institutions. Basically, CSEL is present to answer all problems or to solve conflicts in the Islamic economic transactions. So, we understand that if CSEL is applicable, it means that CSEL achieves its initial objectives.

Observing the disputes on *murabahah* financing in the Sharia Cooperative "Wali Songo", several steps and dispute resolutions have been done by the mentioned cooperative, namely deliberation (in this case, the deliberation is in the forms of negotiation, mediation, and conciliation), rescheduling the *murabahah* contract, and selling the collateral by cooperative to pay off the debt of the members in disputes. To find out if the dispute resolution is in accordance with the regulations written in the CSEL, the researcher will analyze as follows:

The Dispute Resolution with Peaceful Agreement (Deliberation)

The first step in solving a problem or a dispute in the sharia financial institutions, particularly in sharia cooperatives, is through a peaceful way, namely deliberation (either negotiation, mediation, or conciliation). The cooperative party and members expect that the disputes will be done by deliberation, and it can minimize the bigger dispute that might happen later.

The concrete example is what happened in the Sharia Cooperative "Wali Songo". One of the members (initial KN) whose job is a construction worker proposed a *murabahah* financing to buy a mobile phone. The contract was to pay off the debt in four months. However, in the second month, he could not install the payment because his job was halted. The cooperative then called KN to do a discussion and found out that KN's reason was true. The discussion resulted in the postponement of his debt payment.

To reach the truth of the expected conciliation, each party in dispute needs to realize and admit all the behavior. They also should refer to the right guidance

24 Bani Idris Hidayanto, "Implementasi Kompilasi Hukum Ekonomi Syariah Pada Putusan Nomor: 3333/Pdt.G/2014/PA.BL," (Universitas Islam Negeri Maulana Malik Ibrahim Malang, 2016).

in solving the problem, dispute, or conflict. Sharia Cooperative “Wali Songo” is one of institutions prioritizing deliberation in dispute resolution. The cooperative party will call the problematic members to discuss the difficulties they face that hinder them in fulfilling their obligations. The discussion aims to find a way out (a solution) and to achieve the peaceful ending of the problems among all parties.

However, when this situation is analyzed using the CSEL, the researcher could not find the mentioned dispute resolution through deliberation (either mediation, negotiation, or conciliation). Yet, since this case is about cooperatives, they usually implement the dispute resolution based on cooperative principles that prioritize kinship values.²⁵

It is as what was written in Article 2 of the Law No. 25 of 1992 on Cooperative, that the foundation of cooperative establishment is Pancasila, the 1945 Constitution of the Republic of Indonesia, and kinship principles.²⁶ So, these kinship values become the basis of the Sharia Cooperative “Wali Songo” in solving the problem or conflict.

The Dispute Resolution by Rescheduling

The Sharia Financial Institutions give products of *murabahah* financing to the existing or future members. They surely want that the financing runs well as expected and that the members do not break the agreement as decided in the beginning of the *murabahah* financing transaction. The members are also expected to pay off the given loan on time. However, it is possible that there will be some conflicts because the members find difficulties in repaying their loan off.

Therefore, to solve the problems or disputes of the members who failed to fulfill their obligations in a loan payment, the Sharia Financial Institutions implement rescheduling system, in which cooperative will make the new schedule or issuing policy on the repayment extension for the members of the Sharia Cooperative “Wali Songo”.

The example is shown when one member (initial KN) in default of *murabahah* financing payment, the cooperative rescheduled the repayment period. For the full description of what happened in the mentioned cooperative; KN proposed a financing for buying a mobile phone for as much as IDR 2,000,000 with four months installment of repayment. Since the cooperative takes 1.95% benefit of every 1 million, so, KN must repay IDR 538,000 per month. In total, KN must

25 Erie Hariyanto, “The Settlement of Sharia Banking Dispute Based on Legal Culture as a Practice of Indonesian Islamic Moderation,” *Al-Ihkam: Jurnal Hukum Dan Pranata Sosial* 14, no. 2 (January 10, 2019), <https://doi.org/10.19105/Al-Ihkam.V14I2.1888>.

26 Law No. 25 of 1992 on Cooperative.

pay IDR 2,152,000. However, KN could not continue the repayment after the first installment because of certain reasons. Then, the cooperative rescheduled the repayment period. So, KN was given the period extension to 6 months with a smaller amount of installment, that is IDR 322,000.

The resolution scheme in the CSEL can be considered as a conversion. Thus, the researcher will analyze the resolution system with the CSEL aiming at obtaining deeper understanding and confirming the similar perception in the future dispute resolution.

In the Article 125 Section 1 and 2 of the Compilation of Sharia Economic Law (CSEL) on *murabahah* contract conversion, we can conclude that the first party (seller) can give dispensation or tolerance to the second party (buyer) by making a new contract. The new contract is made based on the agreement of both parties which includes the amount and period of payment, without adding the nominal to the first party. The next section states, if the second party cannot pay off the loan based on the logical and sensible reasons (for example, the decreasing of income), the first party can give a discount to the repayment.²⁷ From this, we know that the seller (the Sharia Cooperative “Wali Songo”) has the authority to reschedule and give a discount to the second party who cannot repay the loan or has difficulty in the repayment process in a certain period.

However, Article 126 of the CSEL on *murabahah* contract conversion emphasizes that the conversion can be implemented in some conditions; no additional in the total amount of repayment and the extension period is based on the agreement of all parties.²⁸ So, in granting the conversion, the requirements from the CSEL are expected to encourage the members to be more earnest since they are given some ease such as the period extension, the real amount without additional charge, and the members are given a chance to make an agreement with the cooperative. This way, the cooperative also gets the benefits by implementing the conversion policy, so it is saved from the loss and future negative side effects.

The Dispute Resolution by Selling Collateral

The dispute resolution concept by selling collateral is done through the evaluation toward the members who fail to repay or default in the cooperative's *murabahah* contract. After the cooperative does evaluation and the result is in line with their observation, the cooperative will sell the collateral submitted by the members. If the selling price is bigger than the member's total amount of

²⁷ Pusat Pengkajian Hukum Islam Dan Masyarakat Madani, *Kompilasi Hukum Ekonomi Syariah* (Jakarta : Kencana, 2017).

²⁸ Madani.

repayment, the cooperative will give the rest to the member. On the contrary, if the price is not enough to pay off the loan, the member has an obligation to pay the rest. The act of selling collateral is done under the agreement of the cooperative and the member or the collateral's owner.

The collateral provision is in accordance with Article 127 of the Compilation of Sharia Economic Law (CSEL) on *murabahah* contract conversion. It states that the seller is authorized to ask the buyer to provide collateral that will later be the sell and purchase object in the financing practice with a *murabahah* contract.²⁹

In the CSEL, to cover the debt of members who are incapable to repay or pay off *murabahah* financing is not done by selling the collateral as implemented by the Sharia Cooperative "Wali Songo", even though it has been agreed by both parties. Instead, the contract object (or the traded object) is sold to cover the debt of *murabahah* financing, under the conditions, if the object price is more than the debt amount, the rest of the money will be given to the member. On the contrary, if the price cannot cover the debt, the member has to repay the rest.

Article 129, 130, and 131 of the Compilation of Sharia Economic Law on *murabahah* contract conversion state that the buyer (member) who cannot repay the debt to the seller (Sharia Financial Institution) can sell the contract object (the purchased item) to other parties for repaying the debt or sell the object directly to the Sharia Financial Institution. If the object is sold to the Sharia Financial Institution and the purchased price is more than the amount of debt, the institution must give the rest back to the member, and if it is less than the debt amount, the member must pay off the remaining amount.³⁰ Hence, this dispute resolution has to be the evaluation material for the Sharia Cooperative "Wali Songo". So, later, the dispute in the future will be solved quickly, accurately, properly, correctly, and in line with the sharia law that should be implemented.

To maintain the members' welfare in *murabahah* financing and to minimize the gap that will happen later, as well as to keep the stability and existence of the Sharia Cooperative "Wali Songo", they must implement the CSEL in the dispute resolution of *murabahah* financing. Besides deliberation, rescheduling, and selling the *murabahah* contract object, the Sharia Cooperative "Wali Songo" can apply Article 132 and 133 of the CSEL. Both articles say that the Sharia Financial Institution and the members who are in difficulty to repay the debt can make a new contract in the forms of *ijarah al-muhtabiyah bi al-tamlik*, *mudharabah* or *musyarakah*. The dispute resolution in *murabahah* contract can be solved with

29 Madani.

30 Madani.

shulh or conciliation.³¹

The members in dispute are guided to a new contract called *ijarah al-muhtabiyah bi al-tamlik*; the item of which is initially a sell and purchase contract is turned to be of a lease contract that eventually will be possessed by the lessee. For example, a member buys a 5-million mobile phone in five-month installment by paying IDR 1,095,000 per month, so the total amount is IDR 5,475,000. In the fourth month, the member cannot repay. So, the cooperative will apply a lease contract on the item, namely a) both parties (in this case is the Sharia Cooperative “Wali Songo” and the member in default) accept the cooperative agreement of IMBT for the mobile phone, b) the leased object (the mobile phone), even if it is brought by the member, the status is still the cooperative possession, c) the cooperative rents the object to the member, d) the member pay the rent and *ujroh* in a period based on the agreement of both parties, and e) the contract of ownership transfer from the cooperative to the member.

Conclusion

The Sharia Microfinance Institution, generally, still prefers the alternative dispute resolution through a discussion and mediation by involving a religious figure such as *Kyai*. In the sharia economic field, *Kyai*'s position in the institution is as a Mediator because he is able to give solutions on the problems compared to using litigation through courts or involving a certified Mediator. This is the challenge for the Religious Courts to solve disputes in the sharia financial institution in Madura. This is because the society there believes in the religious figures more than the official institution determined by The Supreme Court Regulation (PERMA) No. 1 of 2016 concerning Mediation in Court. Dispute Resolution is solved by a conciliation (deliberation) through the roles of religious figures, rescheduling, and selling the collateral. The roles of religious courts needs to be optimized to take parts in sharia economic dispute resolution via the Compilation of Sharia Economic Law, PERMA No. 14 of 2016 concerning the The Procedure of Sharia Economic Dispute Resolution, and a certified Mediator in a Dispute Resolution between the Customer and the Sharia Microfinance Institutions. However, the dispute resolution done by the society with the involvement of *Kyai* is still based on the verdict of religious courts in solving sharia-related disputes as a legal reference and methods used by the judges.

31 Madani.

References

- Ma'rub, Achmad. "Penyelesaian Sengketa Pembiayaan Murabahah yang Bermasalah di BNI Syariah Cabang Malang". Undergraduate Thesis, Universitas Islam Negeri Maulana Malik Ibrahim, 2013.
- Ariani, Nevey Varida. "Alternatif Penyelesaian Sengketa Bisnis Di Luar Pengadilan." *Jurnal Rechts Vinding* 1, No. 2 (2012): 283.
- Aziz, Abdul. *Etika Bisnis Perspektif Islam "Implementasi Etika Islami untuk Dunia Usaha"*. 2013.
- Habibullah, Eka Sakti. "Prinsip-Prinsip Muamalah dalam Islam." *Ad Deenar: Jurnal Ekonomi dan Bisnis Islam* 2, No. 01 (2018): 34.
- Hidayanto, Bani Idris. "Implementasi Kompilasi Hukum Ekonomi Syariah pada Putusan Nomor: 3333/Pdt.G/2014/PA.BL." Universitas Islam Negeri Maulana Malik Ibrahim Malang, 2016.
- Hariyanto, Erie. "Penyelesaian Sengketa Akad Pembiayaan dalam Praktik Perbankan Syari'ah di Kabupaten Pamekasan." *Nuansa: Jurnal Penelitian Ilmu Sosial Dan Keagamaan Islam*, 2013. <https://doi.org/10.19105/nuansa.v10i2.172>.
- . "Penyelesaian Sengketa Ekonomi Syariah di Indonesia." *Iqtishadia: Jurnal Ekonomi & Perbankan Syariah*, 2014. <https://doi.org/10.19105/iqtishadia.v1i1.365>.
- . "The Settlement of Sharia Banking Dispute Based on Legal Culture as a Practice of Indonesian Islamic Moderation". *Al-Ihkam: Jurnal Hukum Dan Pranata Sosial* 14, No. 2 (January 10, 2019). <https://doi.org/10.19105/Al-Hikam.V14I2.1888>.
- Karim, Adiwarman A. *Ekonomi Mikro Islam*. The Fifth. Depok: Rajawali Press, 2017.
- Khairina. "Mediasi Sebagai Alternatif Penyelesaian Sengketa Antara Bank dan Nasabah." Universitas Hasanuddin, Makasar, 2013.
- Lestari, Sri. "Penyelesaian Sengketa Pembiayaan Macet pada Akad Murabahah di BMT Hubbul Wathon Sumowono." Institut Agama Islam Negeri Salatiga, 2015.
- Madani, Pusat Pengkajian Hukum Islam dan Masyarakat. *Kompilasi Hukum*

- Ekonomi Syariah*. Jakarta: Kencana, 2017.
- . *Kompilasi Hukum Ekonomi Syariah*. Jakarta: Kencana, 2017.
- Mesir, Lembaga Fatwa. “Fikih Kontemporer,” 2013.
- Miharja, Jaya. “Kaidah-Kaidah *Al-'Urf* Dalam Bidang Muamalah.” *El-Hikam* 4, No. 1 (2011): 104.
- Munib, Abdul. “Hukum Islam dan Muamalah (Asas-Asas Hukum Islam dalam Bidang Muamalah).” *Al-Ulum Jurnal Pemikiran dan Penelitian Keislaman* 5, No. 1 (2018): 74.
- Najib, Ainun. “Kepastian Hukum Eksekusi dan Pembatalan Putusan Arbitrase Syariah dalam Perspektif Politik Hukum, Fakultas Syariah dan Ekonomi Islam Universitas Ibrahimy Situbondo Jln. KHR. Syamsul Arifin 20 Sumberejo Banyuputih Situbondo.” *Jurnal Hukum Ius Quia Iustum* 23, No. 3 (2019): 567.
- Nasrullah, Muhammad. “Penanganan Sengketa Pembiayaan Bermasalah pada Akad Murabahah di Baitul Maal Wa Tamwil.” Universitas Islam Negeri Syarif Hidayatullah, Jakarta, 2019.
- Riyanto, Edi. “Arbitrase Syariah sebagai Solusi Sengketa Bisnis di Indonesia.” *Al-Intaj* 2, No. 1 (2016).
- Siswanto, Eko. “Peranan Arbitrase (Basyarnas) dalam Penyelesaian Sengketa Bisnis Syari’ah.” *Al-Amwal: Journal of Islamic Economic Law* 3, No. 2 (2018).
- Suherman. “Upaya Mediasi dalam Menyelesaikan Sengketa di Lembaga Perbankan.” *Jurnal Yuridis* 4, No. 2 (2017): 181.
- Law No. 25 of 1992 concerning the Cooperative, issued 2021.
- Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (n.d.).