

CHAPTER 1

INTRODUCTION

A. BACKGROUND OF STUDY

Financial institutions can never be detached from money. Money has been useful as a tool of exchange by humans and act as a tool of the movement of the economy. Before beginning of the world trading system, financial institution used the barter system as a tool of the movement of the economy. The barter system is a system of exchange between goods with goods or goods with the services or otherwise.

In the new era, the barter system has a lot of constraints. Therefore, to overcome the barriers, improvements had to be made for the Exchange to be more effective and more efficient. The general definition of money is something that can be generally accepted as means of payment in a particular area or as a means of payment or as a tool to make purchases of goods and services.¹

Islamic financial institutions are built to introduce and develop the application of the Islamic principles, and tradition into the financial transactions, banking transactions and the related business. The majority of Islamic principles embraced by Islamic financial institutions have always put forward the values of fairness, expediency, balance and universal or thorough, with no discrimination. Even at their best, there is still possibility to dispute which sometimes cannot be solved conversationally. Therefore, the world economy must be carefully anticipated. Dispute is the situation that cannot be separated in the human life. In many situation, especially with *muamalah* occurs much critical interface.²

¹ Kasmir, *Bank dan Lembaga Keuangan Lainnya*, (Jakarta: PT. RajaGrafindo Persada, 2008) p.13

² Andri Soemitra, *Bank dan Lembaga Keuangan Syariah*, (Jakarta: kencana, 2016) 6th edision, p.33

Islam also teaches about the theory of *maslahah* which means any task which has benefit and usefulness. It can also mean acting to benefit and refusing to regard (danger) in order to maintain the goal of sharia (Islamic law).³ In addition, *maslahah* is also defined as every form of goodness for worldly and prolific *ukhrawi*, material and spiritual, as well as individual and collective as well as the need to understand the three items namely Sharia compliance (halal), useful and brings goodness (*thayib*) in all aspects as a whole which does not cause any disadvantageousness. The mediation process that produces a win-win solution will cause the goodness of *maslahah* on both sides.

There are some institutions that resolve disputes outside of the Court, namely: BPSK (Business dispute resolution Bodies), BANI (Indonesia National Board of arbitration), YLKI (Foundation of Consumer Agency Indonesia), LO DIY (the Ombudsman Institutions of Yogyakarta Special Region).⁴

The details of the consultation and complaint data entered in the Yogyakarta special region Ombudsman Institution are based on the territory, fields and sectors. Incoming data starting from the year 2018 until now (last update Monday, September 24, 2018).⁵

In the year 2018, complaint data that came into the institution of Ombudsman of the special region of Yogyakarta, by region, Yogyakarta City were 55 complaints (41%), Sleman 38 Complaints (28%), Bantul 25 Complaints (19%), Kulonprogo 7 Complaints (5%), at. Yogyakarta 6 Complaints (5%), Gunungkidul 4 Complaints (3%). Based on the field, the private Agencies, there were 73 Complaints (54%) local government 60, Apartur Complaints (44%), and other 2 Complaints (2%). In the sector, services has 25 Complaints (19%), 22 Defense Complaints (15%),

³ Harun, Pemikiran najmun at-Thufi Tentang Konsep Maslahah Sebagai Teori Istinbath Hukum Islam, *Jurnal Digital Ishraqi* Vol 5 No.1, (January-June, 2009) p.24.

⁴ *Ibid*, p. 24

⁵ <http://lo-diy.or.id/lembaga-ombudsman-swasta-diy/> accessed on 7th of October 2018, 14.30 p.m.

education 15 Complaints (11%), employment 14 Complaints (10%), others 45 complaints (35%).⁶

While the consultation has entered data by sector, Yogyakarta City 56 consultations (32%), Sleman 50 consultations (29%), Bantul 33 consultations (18%), Out of Yogyakarta Special Region (7%), at. Yogyakarta 12 consultations (6%), kulonprogo 9 consultations (5%), Gunungkidul 6 (3%). Based on the field, the private Agency consultations (47%) 85, 78 regional government employers consultings (44%), other 16 consultations (9%). Based on sector, financial consultings 46 (26%), defence of 22 consultations (12%), the 17th Education consultations (10%), service 16 consultations (9%), employment consultings 15 (8%), other 63 consulting (35%).⁷

The dispute resolution process through the non litigation has advantages that it produces deals which are “win-win solution” and guarantees the confidentiality of disputes the parties, avoids delay caused due to procedural matters and the administrative, settlements of issues in a comprehensive way within the community, and maintaining a good relationship.⁸ Other benefits from the process of dispute resolution through the non litigation include:⁹

1. Faster processing as the dispute can be resolved in a matter of days, weeks or months.
2. Cheaper. Or even for free.
3. Informal Nature, as the deal can be specified by the parties to the dispute such as determining the schedule of meetings, meeting places, and other provisions.

⁶ *Ibid*, accessed on 7th of October 2018, 14.30 p.m.

⁷ *Ibid*, accessed on 7th of October 2018, 14.30 p.m.

⁸ Susanti Adi Nugroho, *Mediasi Sebagai Alternatif Penyelesaian Sengketa*, (Jakarta: PT. Telaga Ilmu Indonesia, 2009) p. 1.

⁹ I Made Widyana, *Alternatif penyelesaian sengketa dan ARBITRASE*. (Jakarta: PT. Fikhahati Aneska. 2014) p. 16

4. Confidentiality is assured, because the material presented is limited by certain circles, parties and the mediator.
5. The existence of freedom of choice of the third party
6. Maintaining a good relationship between the parties
7. Easily in making improvements-repairs
8. Decision is final.
9. Implementation of the face-to-face.
10. The dispute settlement procedures are set by the parties.

Mediation is a concept that is deemed most suitable by the Supreme Court to carry out the peace process in the case of civil liability are regulated by article 130 HIR/154 Rbg. This view stemmed from the rejection of the assumption that the peace process with the use of the concept of mediation will be considered to have more optimal results compared to the peace process by giving the opportunity to the parties to conduct its own peace. Mediation is a problem-solving negotiation process, where an impartial outside parties (impartial) and neutral works with the parties to the dispute to help them obtain a satisfactory agreement with the agreement.¹⁰

The Ombudsman Institution as one institution that has the competence to intervene in handling cases and dispute on Islamic financial institutions had an important role in bridging the grooves dispute resolution between the two parties.

One of the Ombudsman Institutions, namely the Ombudsman Institution of Yogyakarta Special Region is able to be a facilitator between businessmen and consumers in terms of there is a gap, the gap in order to create a good corporate governance and ethical business. This authority was reinforced by the promulgation of Regulations Governor Yogyakarta No. 69 Year 2014, about the Organization and governance of the institution

¹⁰ Elwalad Meuraksa, M. Amin. Analisis Mediasi Dalam Penyelesaian Sengketa Wanprestasi Perjanjian Sewa Menyewa di Pengadilan Negeri Tangerang Dihubungkan Dengan Undang-undang nomor 30 tahun 1999 Tentang Arbitase dan Alternatif Penyelesaian Sengketa (Analisis Putusan No.129/PDT.G/2016/PN.TNG), *Jurnal surya kencana dua: Dinamika Masalah Hukum dan Keadilan Vol 4 No.1 July 2017*. p. 76.

of Ombudsman, the Private of Ombudsman Institution and the Regional Ombudsman Institution it is combined into a single membership period starting 2015-2018.¹¹ From there, the role of the laws enacted to deal with the matter, including economic matters.

In practice, the Ombudsman Institution of Yogyakarta Special Region in Sharia business acts to resolve dispute between the parties using the mediation. Mediation is part of the alternative dispute known as the Alternative Dispute Resolution (ADR) which is currently governed by Act No. 30 of 1999 on arbitration and alternative dispute resolution.

Uniquely in the movement of the mediation conducted by the Ombudsman Institution of Yogyakarta Special Region, its existence is not as a mediator but a facilitator. The institution acts as media for the peace facility and gives both parties area to connect. The existence of Institutions such as the Ombudsman Institution is needed as it can reduce disputes between the parties. In the view of Islamic law, mediation is very influential as part of peace through trends of Sharia. The importance of Islamic trends in consideration of *ijtihad* is a remedy that can be instituted in accordance with the goals of Sharia.

Some of the researchers view that there is a need of further study on the Ombudsman Institution of Yogyakarta Special Region, thus the necessity of deeper examination, research and analyses pointed to **“The Role of Ombudsman Institution on Dispute Resolution of Islamic Finance Institution (case study of the Ombudsman Institution of Yogyakarta Special Region, 2018)”**

B. PROBLEM OF RESEARCH

Based on the background of study, then the discussion of the research focused on:

1. What is the role of the Ombudsman as a facilitator in the Islamic financial institutions in resolving the disputes?

¹¹ Quoted from brochure of The Ombudsman Institution of Yogyakarta Special Region, (Yogyakarta) p. 1

2. How does the legal of the Ombudsman Institution resolve the dispute of Islamic financial institutions viewed on the concept of *maslahah mursalah*?

C. RESEARCH OBJECTIVES

The purpose of the study is a result of problem formulation. These problems have been formulated, and the objectives to be achieved from this research are:

1. To know the role of the Ombudsman Institution as facilitator of Islamic financial institution in its dispute resolution.
2. To find out how the legal bases of the Ombudsman Institution resolve the dispute of Islamic financial institution by the concept of *maslahah mursalah*.

D. SIGNIFICANCE OF RESEARCH

Significance of research is the hope, influence and benefits desired by researchers on the study.

1. Theoretical Significance.

Significance of this research, as follows:

- a. Contributions of thought in the development of the science of Islamic economics law.
 - b. To provide insight and understanding to the reader about how Islamic financial institution dispute resolved through the Ombudsman Institution of Yogyakarta Special Region.
 - c. As an additional reference in the scientific knowledge.
2. Practical Significance.

Practical significances are things that could have taken the benefits from the results of this research on practices that occur in student affairs or environment. The practical significance can be stated as follows:

- a. As a media of development of reason and the formation of the mindset and the ability to apply the acquired knowledge.

- b. As an additional reference for many students, especially students of Islamic Economics Law department.
- c. To help the Ombudsman Institution of Yogyakarta Special Region in conveying information about analysis of *maslahah* on dispute resolution Institutions in Islamic finance.

E. SYSTEMATIC WRITING.

The existence of systematic writing is to facilitate the discussion of any research results. In this research, the researcher lays out the results of the research into five chapters which consist of several sub chapters, with the following explanation:

1. CHAPTER I: in this chapter the researcher discusses about the background of the issue that is the bases for the writing to write research on the Role of Ombudsman Institution on Providing the Solution for the Dispute in the Ombudsman Institution Yogyakarta 2018. Then proceed with the formulation of the problem as the congregate statement about the things that will be scrutinized, research purposes, and usability research as a final achievement towards this research.
2. CHAPTER II: This chapter will elaborate on literature review on the research of previous media assist to reference the researcher in writing out this research, continued with the Foundation of the theory which outlines the sub-chapter on definitions the dispute, the cause of the dispute, other forms of dispute resolution. It also discusses in General regarding Islamic Finance Institutions and also discusses the general theory of the concept of *Maslahah Mursalah*. After the explanation of the researcher's theories, there will be an outline of a conceptual grounding as an explanation of the mechanism in practice regarding Islamic finance institutions of dispute resolution. In the end of this chapter, the researcher brings together existing variable from either side of the theories described in the Foundation of the theory or conceptual groundwork so that

researcher can describe the overall thoughts about research with the title the Role of Ombudsman Institution on Providing the Solution for the Dispute in the Ombudsman Institution Yogyakarta 2018.

3. CHAPTER III: In this chapter the researcher will describe about research methods of this study with further details of the type of research, place of research, and research sources. Then proceed with the data collection techniques used as well as the data analysis techniques and the nature of research.
4. CHAPTER IV of this chapter will be regarding the outlines and description about profile and background on the object of study in the Ombudsman Institution of Yogyakarta. Then the researcher further concentrates on the main discussion of the research settlement dispute on Islamic finance institutions. In the end, the researcher will find the final results of the analysis of *Maslahah Mursalah* on the Ombudsman Institution of Yogyakarta in resolving Islamic financial institution disputes.
5. CHAPTER V in this chapter discussions regarding the conclusions of the researcher about the problem thoroughly and researcher will also advise the parties and institutions concerned with this research.