

CHAPTER I INTRODUCTION

1.1 Research Background

Sharia business and financial systems began to grow and develop in Indonesia, at this time the sharia financial system was not only part of Islamic teachings, but even more so in view of the halal lifestyle and was expected to have an impact on the realisation of welfare. Initially, the principles of Islamic transactions are based on agreements that are in accordance with and do not conflict with the principles of sharia.¹

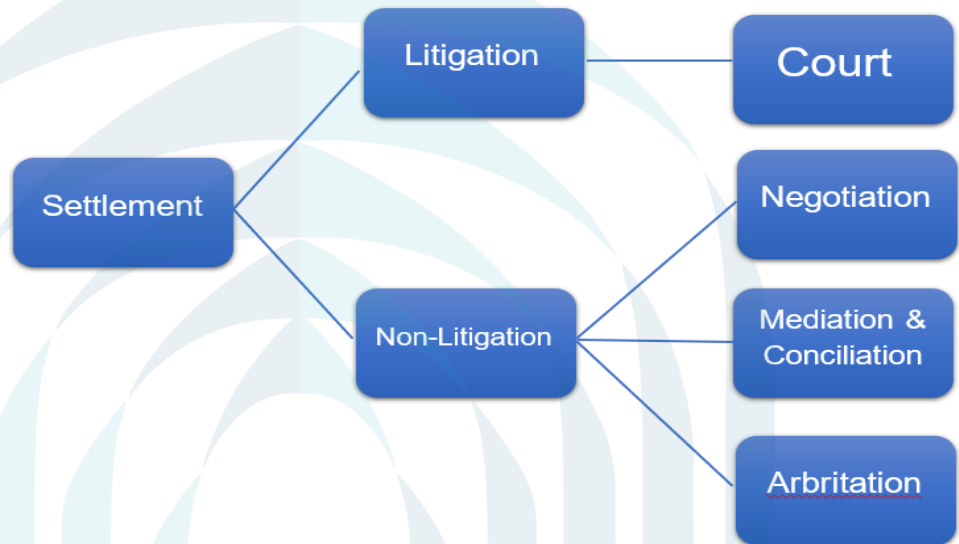
With this, conceptually existing in Islamic economic law and Islamic business law has a fairly close relationship with fiqh muamalah. If Islamic economic law has ties to fiqh muamalah. Likewise, sharia business is a collection of regulations related to business practices, such as buying and selling, trading and commerce which are based on Islamic law within the scope of the study of fiqh muamalah.²

The practice that occurs in the field regarding Islamic financial disputes can be seen from several potentials, such as errors when interpreting contracts, defaults or tort actions. And if the dispute cannot be resolved through deliberation, then the

¹ Jaih Mubarak and Hasanuddin, *Prinsip Perjanjian Fikih Muamalah - Jaih Mubarak* (Bandung: Simbosa Rekatam Media, 2018).

² andri Soemitra, *Hukum Ekonomi Syariah Dan Fiqh Muamalah Di Lembaga Keuangan Dan Bisnis Kontemporer*, Edisi Pert (Jakarta Timur: Prendamedia Gruoup, 2019).

settlement can be through non-litigation channels such as Basyarnas or litigation through the Religious Court.³



The settlement of sharia economic disputes through litigation institutions or religious courts, which includes dispute resolution in the Religious Court with a simple lawsuit, is very much needed for resolving disputes arising in business transactions, especially those carried out by MSMEs. The development of MSMEs in Indonesia continues to increase due to the global financial crisis in order to intensify policy focus on small and medium enterprises as drivers of economic growth. The civil case settlement process has a direct correlation to economic growth and investment. Every business transaction always has the potential to cause disputes.⁴

³ Devid Frastiawan Amir Sup, "Metode Penyelesaian Sengketa Dalam Produk Keuangan Syariah," *Palangka Law Review* 02, no. 02 (2022): 102–10, <https://doi.org/10.52850/palarev.v2i2.465>.

⁴ Yoghi Arief Susanto, "Gugatan Sederhana Pada Penyelesaian Sengketa Ekonomi Syariah Di Pengadilan Agama" 3, no. 1 (2022): 79–98, <https://doi.org/10.15575/as.v3i1.17535>.

Litigation dispute resolution is the last resort (ultimatum remedium) after other unsuccessful alternative dispute resolution. The provisions in Article 49 of Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts, bring changes to the competence of the Religious Courts, the Religious Courts are currently authorised to resolve cases related to marriage, inheritance, wills, waqf grants, zakat, infaq, and sharia economics. The addition of the competence of the Religious Courts is due to the development of Islamic economics so that the disputes that arise are also increasing.⁵

Therefore, to ensure legal certainty for sharia economic actors, the competence was added to the Religious Court. The advantages of resolving disputes in litigation in particular are related to the power of execution and also allow for legal remedies both at the appeal and cassation levels. Of course, resolving cases by litigation is also expected to be carried out effectively, efficiently, and quickly, and at low cost. However, in reality, litigation settlement takes a long time and costs a lot of money.⁶

And from the existing dispute resolution non-litigation institutions through Arbitration is one that is of interest to most people, according to Nafisatul Muna. et. al. in their research stated that the advantages of the Arbitration institution such as the process contains peace and deliberation, guaranteed confidentiality and dignity of both parties because the trial is carried out in private, can give confidence to the parties, because

⁵ “Undang-Undang No. 3 Tahun 2006 Pasal 49,” n.d.

⁶ Zaidah Nur Rosidah and Layyin Mahfiana, “Efektifitas Penerapan Prinsip Syariah Dalam Penyelesaian Sengketa Ekonomi Syariah Di Badan Arbitrase Syariah Nasional (BASYARNAS)” 3, no. 1 (2020): 15–30.

the settlement is honourable and responsible, handled by arbitrators who are experts in their fields, save time, because the process is fast, straightforward and low cost, the decision is final and appealable, so that the parties must accept the existing decision and there are no more legal efforts.⁷

In another opinion, Tri Novianti, Ricky Fadila in their research revealed that the dispute was resolved by prioritising peace or a win-win solution, the time period did not require a long time, the costs were relatively cheap, the parties to the dispute maintained good relations and guaranteed confidentiality from the public.⁸

According to Muhammad Rian Mardiansyah et. al. about the advantage of the Arbitration institution is that because the court institution focuses more on rigid law, this sharia arbitration body focuses on its duties and functions to dilute the meeting point for the parties in dispute through a process that is extracted from the spirit of Islamic teachings and morals to lead to the divine path. National Sharia Arbitration Board (BASYARNAS) can provide rapid settlement in muamalah disputes that arise in the fields of industry, finance, trade, services and others, accepting requests from the parties to binding agreements and issues related to the agreement.⁹

In another opinion from Febby Annisa Qutrunnada er. Al. about regarding the advantages of the Arbitration Institution

⁷ Nafisatul Muna, Muhammad Khoirul Anam, and Kharis Fadlullah Hana, "Teknik Penyelesaian Sengketa Melalui Non-Litigasi Di Perbankan Syariah," *Jurnal Sahmiyya* 1, no. 2 (2022): 212–20.

⁸ Tri Novianti et al., "Penyelesaian Sengketa Ekonomi Syariah Melalui Lembaga Arbitrase" 4, no. 1 (2022): 65–78.

⁹ Muhamad Rian Mardiansyah, Devi Siti, and Hamzah Marpaung, "Arbitrase Syariah Sebagai Metode Alternatif Penyelesaian Sengketa Perbankan Syariah Di Indonesia," *JUSTITIA: Jurnal Ilmu Hukum Dan Humaniora* 9, no. 2 (2022): 862–73.

over the Court because the Parties have the freedom to choose arbitrators according to mutual agreement, confidentiality is maintained in the examination process and arbitration hearing because it is held in a remote location and is not announced publicly. This is an attraction for large companies to resolve conflicts without affecting their reputation, the process takes place faster than court proceedings because it does not involve the appeal and cassation stages, the determination of the time and location of the hearing can be adjusted to the wishes of the parties involved, making it more flexible, the decision of the arbitration is final and binding, the parties have the freedom to choose the legal system to be applied in resolving their conflict.

10

In the research of Muhammad Abdul Aziz, Imam Kamaluddin, Mohammad Ghozali, Siti Marpuah and Syariafah Normawati (2022) stated that dispute resolution through BASYARNAS also has advantages, namely disputes that are guaranteed confidentiality from any party so that the parties will feel safe and comfortable carrying out arbitration at BASYARNAS. Dispute resolution at BASYARNAS is said to be more effective because the arbitration award is final and binding. There is no appeal or cassation even after the decision is read out and registered at the local religious court. All data from the plaintiff and defendant are guaranteed confidentiality from outside parties.¹¹

¹⁰ Febby Annisa Qutrunnada et al., "Metode Penyelesaian Konflik Bisnis Syariah: Telaah Dari Sudut Pandang Hukum Positif Di Indonesia," *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory* 2, no. 2 (2024): 408–23, <https://doi.org/10.62976/ijjel.v2i2.467>.

¹¹ M A Aziz et al., "Analysis Implementation of Sharia Economic Dispute Resolution In Non-Litigation Through BASYARNAS (Indonesian National Syariah Arbitration)" 3, no. 2 (2022): 92–102, <https://publisher.uthm.edu.my/periodicals/index.php/ahcs/article/view/9790>.

And the Sharia Arbitration institution also has a role in Islamic business investment as revealed by Dede, Asriani Khoirunnisa, Wagianto (2024) in his research which states that the role of the Sharia Arbitration institution in increasing the security of investing in business is realised through a strong legal basis involving laws governing the operation of Basyarnas. Because it gives confidence to business people and investors that sharia-based dispute resolution is carried out in accordance with the principles of Islamic law which are officially recognised by laws and regulations in Indonesia.¹²

From the statements above, it shows that the implementation of dispute resolution in the Arbitration Institution is more attractive to the public, especially in the aspect of dispute resolution in Sharia Financial Institutions, because in addition to the laws and regulations for dispute resolution are more focused on dispute resolution in sharia economics, but there are several supporting factors that are the advantages of dispute resolution in Non-Litigation Institutions at the National Sharia Arbitration Board.

The settlement of business disputes through ADR mechanisms in the form of consultation, negotiation, mediation, conciliation, and expert judgment or through arbitration mechanisms, is widely chosen by the disputing parties for several reasons, including; voluntariness in the process, fast confidential procedures, time saving, cost saving, non-judicial decisions, flexibility in designing the terms of dispute resolution, maintaining good relations between the disputing parties. The

¹² Asriani Khoirunnisa, Dede, Wagianto, "Peran Lembaga Arbitrase Syariah Dalam Mendukung Keamanan Investasi Di Dunia Bisnis Islam," *Media of Law and Sharia* 5, no. 2 (2024): 88–100, <https://mls.umy.ac.id/index.php/mlsj/article/view/73/28>.

Arbitrators are persons of expertise and the arbitral award is final and binding on the parties. In addition, there is no possibility of appeal and cassation against the arbitration decision.¹³

Based on the above background, researchers will analyse the factors that influence disputing parties in Islamic economics to choose Basyarnas as a place of dispute resolution rather than the Religious Court with cases seen from Basyarnas Indonesia. So the title that will be written by researchers in this study is 'Analysis Of Determinant Factors On Disputants Parties Behavior In National Shariah Arbitration Board (BASYARNAS) Indonesia'.

1.2 Problem Statement

Based on the background above, the research wants to formulate problems related to fluctuations in external variables, namely the factors of Basyarnas and internal variables, namely the disputing parties choosing Basyarnas, the problems to be discussed are:

1. What is the Influence of the Secured Assured Variable, Trust, Final and Binding Decision, Low Cost, Fast Process and In Choosing BASYARNAS can affect the Disputing Parties Choosing BASYARNAS?
2. To what extent does the desire to influence the Guaranteed Confidentiality, Trust, Final and Binding Decision, Low Cost, Fast Process and In Choosing BASYARNAS Variables can influence Disputing Parties to Choose BASYARNAS in Indonesia?

¹³ Musrifah & Khairunisa, "Penyelesaian Sengketa Ekonomi Syariah Melalui Arbitrase Syariah," *Al-Amwal* 9, no. 1 (2020): 12.

1.3 Research Objectives

Based on the formulation of the problem above, the objectives of this study are as follows:

1. To find out the influence of the Secured Assured Variable, Trust, Final and Binding Decision, Low Cost, Fast Process and In Choosing BASYARNAS can affect the Disputing Parties Choosing BASYARNAS.
2. To test and analyse the variables of Secured Assured Variable, Trust, Final and Binding Decision, Low Cost, Fast Process and In Choosing BASYARNAS can influence disputing parties to choose BASYARNAS.

1.4 Research Benefits

From this research, the author hopes that it can provide benefits and uses in the following ways:

1. Theoretical Benefits

Academically, this research is expected to be able to provide information and become a reference for various parties, especially for Islamic economic law academics and institutions concerned with Islamic economic law in analysing Islamic financial disputes on non-buy and sell products that are reviewed through sharia aspects through non-litigation channels.

2. Practical Benefits

Practically, this research is expected to be an additional insight into knowledge for researchers in

particular and readers in general, and can be used as input for legal institutions in resolving Islamic financial disputes.

1.5 Research Hypothesis

The hypothesis is an initial and temporary conjecture regarding the effect between the independent variable and the dependent variable which will be proven correct after empirical data is obtained. In this study, the hypothesis proposed is related to the research objectives, namely analysing the factors that influence disputing parties to choose Basyarnas in resolving sharia economic disputes and the hypotheses of this study are as follows:

1. H1: Secured Assured has a significant positive relationship with the disputing party's perception of the desire to choose dispute resolution at BASYARNAS.
2. H2: Trust has a significant positive relationship with the perception of the disputing parties towards the desire to choose dispute resolution at BASYARNAS.
3. H3: Final and Binding Decision has a positive significant effect in the perception of disputing parties towards the desire to choose dispute resolution in BASYARNAS.
4. H4: Low Cost has a positive relationship in influencing the perception of disputing parties towards the desire to choose dispute resolution in BASYARNAS.
5. H5: Fast Process has a positive relationship in influencing the perception of disputing parties towards the desire to choose dispute resolution at BASYARNAS.
6. H6: Sharia-compliant settlement has a positive relationship in influencing the perception of the disputing parties

towards the desire to choose dispute resolution at BASYARNAS.

1.6 Systematisation of Writing

This research is arranged in one chapter which systematically consists of: Chapter I Introduction, Chapter II Literature Review, Chapter III Research Methods, Chapter IV Results and Discussion, Chapter V Closing.

CHAPTER I Introduction, in this chapter will explain the background of this research which then formulates research problems in the form of questions. Based on the formulation of the problem, the objectives and uses of the research are listed. And at the end will explain the writing systematic.

CHAPTER II Literature Review, this chapter contains theories and previous studies that underlie this research. Based on the theory and results of previous research, a framework will then be formed and determine the initial hypothesis to be tested.

CHAPTER III Research Methods, in this chapter describes the variables used in the study and their operational definitions, types and sources of data, data collection methods, and data analysis methods to achieve research objectives.

CHAPTER IV Results and Discussion, in this chapter contains an overview of the object of research. In addition, this chapter also describes the data analysis used in this study and a discussion of the results of the analysis of the object of research.

CHAPTER V Closing, this is the last chapter, this chapter briefly describes the conclusions obtained in the discussion, as well as suggestions.